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Notice of Appeal.

Filed July 2, 1910,

In Chancery of New Jersey

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

On Bill, &c.

Edmond L. Brown, hereby appeals from the decree made on the third day of June, Nineteen hundred and ten, and from the whole and every part thereof, made in this Court in the above stated cause, as disallows his claim to be an existing and valid claim against the defendant corporation, to the Court of Errors and Appeals in the last resort in all causes.

GEORGE R. BEACH,
Solicitor for and of Counsel with
Edmond L. Brown.

Dated, June 30th, 1910.

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

GEORGE R. BEACH,
Of Counsel with Edmond L. Brown.

Notice of Appeal

An identical notice of appeal was filed on the above date on behalf of the following named claimants and printing of the same and of the further papers with respect to their several claims except as hereinafter printed, is waived by stipulation of counsel, viz.:

Edward G. Miner.
Morton C. Nichols.
Union Trust Company, a corporation.
C. Walter Smith.
J. N. Beckley.
Charles H. Wilcox.
Frank Taylor.
F. N. Whitney.
Gertrude P. Powers.
Henry W. Wick.
Henry D. Quimby.
Erickson Perkins.
Erickson Perkins as Administrator of Sarah A. Perkins, deceased.
Joseph E. Otis, Walter H. Wilson and Ralph C. Otis, co-partners trading as Otis, Wilson & Co.

Petition of Appeal.

Filed July 8, 1910.

NEW JERSEY COURT OF ERRORS AND APPEALS.

IN THE LAST RESORT IN ALL CAUSES.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

To the Honorable Court of Errors and Appeals,

In the last resort in all causes:

The petition of Edmond L. Brown, the appellant in the above stated cause, respectfully shows, that your petitioner finds himself aggrieved by a decree made in the Court of Chancery, by his Honor Mahlon Pitney, Chancellor of New Jersey, bearing date the third day of June, Nineteen hundred and ten, wherein the said Chauncey H. Strickland is complainant and the National Salt Company, is defendant, in this respect, to wit, that the said decree Ordered, Adjudged and Decreed that the adjudication of said Frank P. McDermott and Nathan S. Beardslee, receivers of the National Salt Company, as to the claim of Edmond L. Brown, be and the same is hereby approved and confirmed and the appeal of said Edmond L. Brown is hereby dismissed and the said claim of said Edmond L. Brown be and the same is hereby disallowed.

Petition of Appeal.

And your petitioner humbly appeals from that decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous and that the said claim should be allowed as a valid claim against the estate of said National Salt Company.

Your petitioner therefore prays that the said decree of said Chancellor may be in all things reversed and set aside and for nothing holden.

And that your petitioner may have such other relief in the premises as this Honorable Court shall deem meet.

GEORGE R. BEACH,
Solicitor for and of Counsel
with Appellant.

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

GEORGE R. BEACH,
Of Counsel.

An identical petition on appeal was filed on the same date on behalf of the other appellants above named.

Answer to Petition of Appeal.

Filed July 20, 1910.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill, &c. On Appeal from Court of Chancery.

The answer of National Salt Company and Nathan S. Beardslee and Frank P. McDermott, Receivers of National Salt Company, respondents, to the petition of appeal of Edmond L. Brown, appellant:

These respondents, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless say and admit that a decree was, on the third day of June, in the year Nineteen hundred and ten, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, these respondents pray to refer thereto when the same shall be produced.

And these respondents are advised and believe that the said decree appealed from by the said appellant is agreeable to equity, and they pray that the said decree may be affirmed with costs to be adjudged to these respondents.

CHARLES W. FULLER,
Solicitor for and of counsel with National Salt Company, and Nathan S. Beardslee and Frank P. McDermott, Receivers of National Salt Company,
Respondents.

Identical answers to all the petitions on appeal were filed by the receivers.

Stipulation.

Filed November 4, 1910.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill &c., on appeals from Chancery.

It is hereby stipulated and agreed between George R. Beach, solicitor for the following named appellants, viz.: Edmond L. Brown, Edward G. Miner, Morton C. Nichols, Union Trust Company, a corporation, C. Walter Smith, J. N. Beckley, Charles H. Wilcox, Frank Taylor, F. N. Whitney, Gertrude P. Powers, Henry W. Wick, Henry D. Quimby, Erickson Perkins and Erickson Perkins, as administrator of Sarah A. Perkins, deceased, and Joseph E. Otis, Walter H. Wilson and Ralph C. Otis, co-partners trading as Otis, Wilson & Company, and Charles W. Fuller, solicitor for National Salt Company and the Receivers of National Salt Company, respondents, that whereas the fifteen appellants above named have all filed separate petitions of appeal from the final decree of the Chancellor filed in the above entitled cause, to all of which separate answers have been filed, and the testimony taken before the Receivers and used by the Court of Chancery having had relation in some instances to all the claims of the appellants and in other instances to some but not all of said claims—that on the hearing of the appeals of the above mentioned appellants before the Court of Errors and Appeals of this State all of said appeals shall be argued together from the same printed statement of

the case, which shall be complete and cover all the testimony and proofs submitted in relation to all the claims of the said appellants.

It is further stipulated and agreed that but one deposit of one hundred dollars be made, and but one bill of costs be taxed, viz.: in the appeal of the said Edmond L. Brown, under the rules and practice of the Court; such deposit in the other fourteen appeals being hereby waived.

GEORGE R. BEACH,
Solicitor for Claimants.
CHARLES W. FULLER,
Solicitor for Respondents.

Petition to File Claims.

Filed June 13, 1904.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY, *et al.*,
Defendants.

} On Bill.

To William J. Magie, Esq., Chancellor of the State of New Jersey:

The petition of John L. Wilkie of the City and State of New York, respectfully shows:

I am the attorney of Edmond L. Brown, Henry Wick, Otis, Wilson & Company and C. H. Wilcox, hereinafter more fully referred to; that the said Edmond L. Brown is at present sojourning temporarily

at Greenwich in the State of Connecticut. The said Henry Wick resides at Youngstown in the State of Ohio. The firm of Otis, Wilson & Company and C. H. Wilcox are both residents of and located in the City of Chicago and State of Illinois, and that all of said parties are without the States of New York and New Jersey.

Your petitioner further shows that during the month of October, 1899, the National Salt Company, a domestic corporation organized under the laws of the State of New Jersey, executed and delivered certain certificates of indebtedness in form as appears by Schedule "A" hereto annexed and by this reference made a part hereof, and that they delivered said certificates to shareholders in the United Salt Company as part consideration on the sale by said share holders of their certificates of stock in pursuance of an agreement of sale by said stockholders of the United Salt Company.

Your petitioner further shows that before the issue of said certificates they were duly countersigned and registered by the American Trust Company as required by the terms thereof.

Your petitioner further shows that subsequent thereto the holders of certain of said certificates of indebtedness surrendered the same for cancellation to the National Salt Company at various dates, in accordance with the terms thereof, and obtained therefor certain other certificates of indebtedness of similar tenor and form, though of different amounts, likewise executed by the National Salt Company and countersigned and registered by the American Trust Company, and that the said stockholders in the United Salt Company did, after obtaining such second or substituted certificates of indebtedness, sell the same, and that certain of said certificates were thereafter purchased by the clients of your petitioner; that Schedule

"B" hereto annexed, and by this reference made a part hereof contains a list showing the names of the clients of your petitioner, the assignors of each, the face value of each of the certificates of indebtedness, the date of issue of the certificates so held, the date of transfer and the amount due by the National Salt Company upon each of said substituted certificates.

Your petitioner further shows that the National Salt Company failed to pay the installment due upon said certificates of indebtedness upon the first day of July, 1901, and that thereupon seven unpaid installments became due and payable, and that no payment has since been made upon said certificates, and that in each case there is due and owing from the said National Salt Company to each of said parties the sum set opposite his name in Schedule "B" together with interest thereon from the first day of July, 1901.

Your petitioner further shows that on or about the 30th day of September, 1902, the complainant in this action as a creditor of the National Salt Company filed a bill of complaint in this court setting forth that the said National Salt Company was insolvent and applied to this court for a writ of injunction and for the appointment of receivers in accordance with Section 65 of the Act Concerning Corporations (Revision of 1896) in that case made and provided, and that thereafter this Court, by order duly made and entered, did appoint as receivers of the assets of the said National Salt Company, Nathan S. Beardslee and Frank P. McDermott, and that they subsequently entered into the bonds required of them by the order of the Court and complied with such other terms as the Court prescribed, and took the oath required by Section 67 of the aforesaid statute, and that thereupon all of the real and personal property and other assets of the said National Salt Company became vested in the said receivers.

Petition to File Claims

Your petitioner further shows that thereafter and during the month of January, 1903, this Court by an order duly made and entered, directed that all claims against the National Salt Company should be presented on or before a certain day fixed therein, which day was subsequently extended to June 1st, 1903, by a further order granted during the month of May, 1903, and that those claims not presented before such time should not be received by the said receivers; that no copy of said notice was ever served upon the clients of your petitioner, nor did they ever receive such a notice, nor did they nor your petitioner have knowledge of such notice until long after the expiration thereof.

Your petitioner further shows that prior to the last day within which claimants might, under the terms of such order, present claims to the said receivers, the American Trust Company, a corporation existing under the laws of the State of Ohio, duly verified and filed a claim against the said National Salt Company with the said receivers as trustee for the holders of the certificates of indebtedness before mentioned, among whom were the clients of your petitioner, for the amount due on said certificates.

That thereafter the said receivers rejected the claim of the said American Trust Company as Trustee for the holders of said certificates of indebtedness; that said American Trust Company subsequently took an appeal from the decision of the said receivers rejecting such claim, which appeal is at present before a vice-chancellor of this Court for decision.

Your petitioner further shows that in or about the month of June, 1901, the said National Salt Company brought an action in the Court of Common Pleas, Cuyahoga County, State of Ohio, against the United Salt Company, the American Trust Company and a number of the former shareholders of the United

Salt Company, among whom, however, were not any of the clients of your petitioner. That in the complaint filed in said action the National Salt Company alleged that the contracts between the stockholders of the United Salt Company and itself was void and illegal, and demanded back among other reliefs prayed for the certificates of stock in the National Salt Company and the certificates of indebtedness referred to and tendered to the stockholders of the United Salt Company their own shares of stock in the United Salt Company.

Your petitioner further shows that on the 9th day of December, 1903, a judgment was entered in said action adjudging the sale aforesaid to have been void and decreeing a return of the stock of the National Salt Company by the shareholders of the United Salt Company and a return by the American Trust Company of the stock in the United Salt Company deposited with it to the shareholders of said Company, and also directing the shareholders of the said United Salt Company to deliver over for cancellation the said certificates of indebtedness held by them.

Your petitioner further shows that neither he nor his said firm of Gould & Wilkie, knew of the existence of said decree until the 3rd day of June, 1904, and that the clients of your petitioner have never learned of the existence of such decree and are still ignorant of the same.

Your petitioner further shows that his clients have heretofore relied upon the claim of the American Trust Company heretofore filed herein for the enforcement of their rights against the National Salt Company upon the certificates of indebtedness held by them as aforesaid, but that they are advised, and now verily believe, that owing to the entry of said decree in the Ohio Court, they cannot now rely upon

the claim of the said American Trust Company, but that they must file individual claims upon the certificates of indebtedness held by them in order to enforce any claims on said certificates of indebtedness against the said National Salt Company.

Your petitioner further shows that heretofore and on the 6th day of April, 1904, the United States Circuit Court of Appeals for the Second District, in an action brought by George S. Ingraham against the National Salt Company upon a certificate of indebtedness similar to those held by your petitioners, decided that such certificates of indebtedness constituted a valid and subsisting obligation of the National Salt Company and reversed a judgment in favor of the defendant which had been rendered in the Court below. That your petitioner is advised by counsel learned in the law, and verily believes, that said certificates did, in fact, form a valid and subsisting obligations of the National Salt Company, and that the claim upon them is a valid claim against the assets which may come into the hands of the receivers in this proceeding.

Wherefore, your petitioners pray that this Court will grant an order permitting them to file their claims upon such certificates of indebtedness with the receivers aforementioned, and that the same may be considered by said receivers and passed upon as other claims against the said National Salt Company, and your petitioners will ever pray, etc.

Dated, June 13th, 1904.

(Sd.) JOHN L. WILKIE,
Petitioner.

George R. Beach,
Solicitor for and of Counsel
with Petitioner,
15 Exchange Place,
Jersey City,
New Jersey.

State of New Jersey, }
County of Hudson, } ss.:

John L. Wilkie, of full age, being duly sworn, on his oath says, that he is a resident of the City of New York; that he is a member of the firm of Gould & Wilkie, who are the attorneys in the State of New York for Edmond L. Brown, Henry Wick, Otis, Wilson & Company and C. H. Wilcox, the petitioners herein, in relation to the enforcement of their certificates of indebtedness and of their claims against the National Salt Company.

Deponent further says, that said claims have been placed in his hands for a period of more than one year; that he has made diligent investigation of the facts concerning the same as set out in the foregoing petition which he has read, and that the facts stated in said petition are true to the best of his knowledge, information and belief.

This deponent further says that the sources of his information are conversations with the attorneys for the United Salt Company, for the American Trust Company, the possession of certain of the original certificates of deposit and of indebtedness, copies of the decrees of the United States Circuit Court of Appeals in the Second District in the action of Ingraham against the National Salt Company and of the final decree in the action of the National Salt Company against the United Salt Company in the State of Ohio, and various correspondence between his clients and himself and the attorneys for the United Salt Company and the American Trust Company.

(sd.) JOHN L. WILKIE.

Subscribed and sworn to before
me, this 13th day of June, 1904.

SCHEDULE "A."

$.....

Jersey City, N. J., October , 1899.

National Salt Company (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to or order Dollars, in ten equal semi-annual installments, beginning January 1st, 1900. The failure to pay any installment when due shall make all future installments become due and payable. Until such a default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt, now owned by The United Salt

Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with the American Trust Company, of Cleveland, Ohio, as trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,

By

President.

Attest:

Secretary.

Countersigned and Registered.

The American Trust Company,

By

Petition to File Claims

Schedule "B."

Name of Holder	Date of issue	Date of transfer to holder	Name of Assignor	Face Value of cert.	Amt. due July 1/01
Edmond L. Brown	Aug. 16, 1900	March 30, 1901	H. A. Hutchins	$2800	$2450
Edmond L. Brown	Aug. 16, 1900	March 30, 1901	H. A. Hutchins	$4000	$3500
Henry Wick	Aug. 16, 1900	March 30, 1901	H. A. Hutchins	$2800	$2450
Henry Wick	Aug. 16, 1900	March 30, 1901	H. A. Hutchins	$4000	$3500
C. H. Wilcox	Aug. 16, 1900	March 30, 1901	H. A. Hutchins	$1400	$1225
C. H. Wilcox	Aug. 16, 1900	March 30, 1901	H. A. Hutchins	$2000	$1750
Otis, Wilson & Company	Mch. 22, 1901	May 18, 1901	Herman Frasch	$1750	$1750
"	" "	" "	" "	$1750	$1750
"	" "	" "	" "	$1225	$1225
"	" "	" "	" "	$1225	$1225

Petition to File Claims.

Filed June 27, 1904.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY and others, Defendants.	On Bill Petition for leave to file Claims.

To the Hon. William J. Magie, Chancellor of the State of New Jersey:

The petition of Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, Edward G. Miner, Union Trust Company, H. D. Quimby, Frank Taylor and C. Walter Smith respectfully shows:

That during the month of October, 1899, the National Salt Company, a corporation organized under the laws of the State of New Jersey, executed and delivered certain certificates of indebtedness in form as appears by Schedule "A," hereto annexed and by this reference made a part hereof, and that it delivered said certificates to the shareholders in The United Salt Company as part consideration on the sale by said shareholders of their certificates of stock, in pursuance of an agreement of sale by said stockholders of The United Salt Company.

Your petitioners further show that before the issue of said certificates, they were duly countersigned and registered by The American Trust Company, as required by the terms thereof.

Your petitioners further show that subsequent thereto the holders of certain of said certificates of indebted-

ness surrendered the same for cancellation to the National Salt Company at various dates, in accordance with the terms thereof and obtained therefor certain other certificates of indebtedness of similar tenor and form, though of different amounts, likewise executed by the National Salt Company and countersigned and registered by The American Trust Company, and that the said stockholders in The United Salt Company did, after obtaining such second or substituted certificates of indebtedness, sell the same or part thereof, and that certain of said certificates were thereafter purchased by your petitioners herein.

That Schedule "B" hereto annexed and by this reference made a part hereof, contains a list showing the names of your petitioners, the face value of the certificates of indebtedness held by them, the assignors of said certificates of indebtedness and the date of issue of the certificates so held, and amount due by the National Salt Company upon each of said substituted certificates.

Your petitioners further show that the National Salt Company failed to pay the installment due upon said certificates of indebtedness on the first day of July, 1901, and that thereupon seven unpaid installments became due and payable, and that no payment has since been made upon said certificates, and that in each case there is due and owing from the said National Salt Company to each of said parties petitioners hereto the sum set opposite his name in Schedule "B," together with interest thereon from the first day of July, 1901.

Your petitioners further show that on or about the 30th day of September, 1902, the complainant in this action, as a creditor of the National Salt Company, filed a bill of complaint in this Court, setting forth that the said National Salt Company was insolvent,

and applied to this Court for a writ of injunction and for the appointment of receivers, in accordance with Section 65 of the Act Concerning Corporations (Revision of 1896) in that case made and provided; and that thereafter this Court, by order duly made and entered, did appoint as receivers of the assets of said corporation Nathan S. Beardslee and Frank P. McDermott, and they subsequently entered in to the bonds required of them by the order of the Court, and complied with such other terms as the Court prescribed and took the oath required by Section 67 of the aforesaid statute; and that thereupon all of the real, and personal property and other assets of the said National Salt Company became vested in said receivers.

Your petitioners further show that thereafter and during the month of January, 1903, this Court by an order duly made and entered, directed that all claims against the National Salt Company should be presented on or before a certain day fixed therein, which day was subsequently extended to June 1, 1903, by a further order granted during the month of May, 1903, and that those claims not presented before such time should not be received by the said receivers; that no copy of said notice was ever served upon the petitioners herein, nor did they ever receive such notice, nor did they have knowledge of said notice until long after the expiration thereof.

Your petitioners further show that prior to the last day within which claimants might, under the terms of said order, present claims to the receivers, The American Trust Company, a corporation existing under the laws of the State of Ohio, duly verified and filed a claim against the said National Salt Company with the receivers, as trustee for the holders of the certificates of indebtedness before mentioned, among whom were your petitioners, for the amounts due on said certificates.

That thereafter the said receivers objected to the claim of the said The American Trust Company as trustee for the holders of said certificates of indebtedness; that said The American Trust Company subsequently took an appeal from the decision of said receivers rejecting such claim, which appeal is at present before a Vice-Chancellor of this Court for decision.

Your petitioners further show that in or about the month of June, 1901, the said National Salt Company brought an action in the Court of Common Pleas of Cuyahoga County, State of Ohio, against The United Salt Company, The American Trust Company and a number of the former shareholders of The United Salt Company, among whom, however, were none of the petitioners herein. That in the complaint filed in said action the National Salt Company alleged that the contract between the stockholders of The United Salt Company and itself was void and illegal and, among other reliefs prayed for, demanded the return of the certificates of stock in the National Salt Company and the certificates of indebtedness referred to, and tendered to the stockholders of The United Salt Company their own shares of stock in said company.

Your petitioners further show that on or about the 9th day of December, 1903, a judgment was entered in said action adjudging the sale aforesaid to have been void and decreeing a return of the stock of the National Salt Company by the shareholders of The United Salt Company, and the return by The American Trust Company of the stock in the United Salt Company deposited with it to the shareholders of said company, and also directing the shareholders of the said The United Salt Company to deliver over for cancellation the said certificates of indebtedness held by them.

Your petitioners further show that neither they nor their attorney knew of the existence of said decree until on or about the 3rd day of June, 1904.

Your petitioners further show that they have heretofore relied upon the claim of The American Trust Company filed herein for the enforcement of their rights against the National Salt Company upon the certificates of indebtedness held by them as aforesaid; but that they are now advised and believe that, owing to the entry of the said decree in the Ohio Court, they cannot now safely rely upon the claim of the said The American Trust Company, but must file individual claims upon the certificates of indebtedness held by them, in order to enforce any claims upon said certificates against the said National Salt Company.

Your petitioners further show that heretofore and on or about the 6th day of April, 1904, the United States Circuit Court of Appeals for the Second District, in an action brought by George S. Ingraham against the National Salt Company upon a certificate of indebtedness similar to those held by your petitioners, decided that said certificates of indebtedness constituted a valid and subsisting obligation of the National Salt Company and reversed a judgment in favor of the defendant which had been rendered in the Court below.

That your petitioners verily believe that said certificates do in fact form a valid and subsisting obligation of the National Salt Company, and that the claim upon them is a valid claim against the assets which may come into the hands of the receivers in this proceeding.

Wherefore, your petitioners pray that this Court will grant an order permitting them to file their claims upon said certificates of indebtedness with the receivers aforementioned, and that the same may be considered by said receivers and passed upon as other

claims against the said National Salt Company, and your petitioners will ever pray, etc.

Dated, June 22d, 1904.

GERTRUDE P. POWERS,
MARTIN C. NICHOLS,
F. A. WHITNEY,
EDWARD G. MINER,
J. E. BECKLEY,
UNION TRUST COMPANY,
H. D. QUIMBY,
FRANK TAYLOR,
C. WALTER SMITH,
Petitioners,
by Henry Willard Bean,
Attorney.

George R. Beach,
Solicitor for and of Counsel
for Petitioners,
15 Exchange Place,
Jersey City, N. J.

State of New York, }
County of New York, } ss.:

Henry W. Bean, of full age, being duly sworn, on his oath says, that he is a resident of the City of New York, in the State of New York; that he is the attorney in the State of New York for Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, Edward G. Miner, J. E. Beckley, Union Trust Company, H. D. Quimby, Frank Taylor and C. Walter Smith, the petitioners herein, in relation to the enforcement of their certificates of indebtedness and their claims against the National Salt Company.

Deponent further says, that said claims have been placed in his hands for a period of more than a year past; that he has made diligent investigation of the

facts concerning the same as set out in the foregoing petition, which he has read, and that the facts stated in said petition are true to the best of his knowledge, information and belief.

Deponent further says that the sources of his information are conversations with the attorneys for The United Salt Company and the American Trust Company, possession of certain of the original certificates of indebtedness, copies of the decree of the United States Circuit Court of Appeals in the Second District, in the action of Ingraham v. National Salt Company and of the final decree in the action of the National Salt Company against The United Salt Company in the State of Ohio, and various correspondence between his clients and himself and the attorneys for The United Salt Company, The American Trust Company and from investigations extending over many months past of the affairs of these companies.

HENRY WILLARD BEAN.

Subscribed and sworn to before
me, this 22nd day of June, 1904.
Joseph G. Dean,
Notary Public,
N. Y. Co.
(Notarial Seal.)

Schedule "A."

$\$$——

Jersey City, N. J., October 1899.

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to
or order Dollars, in ten equal semi-annual installments, beginning January 1st, 1900.

The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this agreement to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of the United Salt Company. And until such payments or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt, now owned by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland,

Ohio, as Trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,
By

President.

Attest:

Secretary.

Countersigned and Registered:
THE AMERICAN TRUST COMPANY,
By

Petition for Leave to File Claims

Schedule B.

me of Holder	Date of Issue	Name of Assignor	Face Value	Amount Due July 1, 1901	
ude P. Powers,	Feb. 11, 1901	J. H. Brown	$175.00	$ 175.00	
lo do	Feb. 11, 1901	do	122.50	122.50	$ 297
on C. Nichols	Sept. 14, 1900	F. B. Squire	1400.00	1225.00	
lo do	do	do	2000.00	1750.00	
lo do	Nov. 27, 1899	H. Frasch	8500.00	5950.00	
lo do	Sep. 14, 1900	F. B. Squire	1400.00	1225.00	
lo do	Nov. 27, 1899	H. Frasch	8500.00	5950.00	
lo do	Sep. 14, 1900	F. B. Squire	2000.00	1750.00	
lo do	Apr. 1, 1901	E. Perkins	1225.00	1225.00	
lo do	do	do	1750.00	1750.00	$20825.0
Whitney	Sep. 14, 1900	F. B. Squire	1400.00	1225.00	
lo	Sep. 15, 1900	do	2000.00	1750.00	$ 2975.0
Beckley	Sep. 14, 1900	do	2000.00	1750.00	
lo	do	do	1400.00	1225.00	$ 2975.0
n Trust Co.	Sep. 14, 1900	do	1400.00	1225.00	
do	do	do	1400.00	1225.00	
do	Sep. 15, 1900	do	2000.00	1750.00	
do	Sep. 14, 1900	do	2000.00	1750.00	$ 5950.0
). Quinby	Sep. 15, 1900	do	2000.00	1750.00	
do	Sep. 14, 1900	do	1400.00	1225.00	
do	do	do	2000.00	1750.00	
do	do	do	1400.00	1225.00	$ 5950.0
k Taylor	Sep. 15, 1900	do	1400.00	1225.00	
do	do	do	2000.00	1750.00	$ 2975
alter Smith	Sep. 14, 1900	do	1400.00	1225.00	
do	do	do	2000.00	1750.00	$ 29
. Miner	do	do	1400.00	1225.00	
do	Sep. 15, 1900	do	2000.00	1750.00	$ 297

Petition to File Claims.

Filed June 27, 1904.

IN CHANCERY OF NEW JERSEY.

Between, CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, *et al.*, Defendants.	Claims. On Bill—Petition to File.

To Hon. William J. Magie, Chancellor of the State of New Jersey:

The petition of Erickson Perkins and Sarah A. Perkins, respectfully shows to the Court:

That, during the month of October, 1899, the National Salt Company, a corporation organized under the laws of the State of New Jersey, executed and delivered certain certificates of indebtedness in form as appears by Schedule "A" hereto annexed, and by this reference made a part hereof, and that they delivered the said certificates to the shareholders in the United Salt Company, as part consideration on the sale by said shareholders of their certificates of stock, in pursuance of an agreement of sale by said stockholders of the United Salt Company.

Your petitioners further show that, before the issue of said certificates they were duly countersigned and registered by the American Trust Company, as required by the terms thereof.

Your petitioners further show that, subsequent thereto, the holders of certain of said certificates of indebtedness, surrendered the same for cancellation to the National Salt Company at various dates in accordance with the terms thereof and obtained therefor certain other certificates of indebtedness of similar tenor and form though of different amounts likewise exe-

cuted by the National Salt Company and countersigned and registered by the American Trust Company and that the said stockholders in the United Salt Company did, after obtaining such second or substituted certificates of indebtedness, sell the same and that certain of said certificates were thereafter purchased by your petitioners. That Schedule "B," hereunto annexed and by this reference made a part hereof, contains a list showing the face value of each of the certificates of indebtedness held by them, the date of issue of the certificates so held and the amount due by the National Salt Company upon each of said substituted certificates.

Your petitioners further show that the National Salt Company failed to pay the installment due upon said certificates of indebtedness upon the first day of July, 1901, and that thereupon seven unpaid installments became due and payable, and that no payment has since been made upon said certificates, and that in each case there is due and owing from the said National Salt Company to each of your petitioners the sum set opposite their respective names in Schedule "B," together with interest thereon from the 1st day of July, 1901.

Your petitioners further show that on or about the 30th day of September, 1902, the complainant in this action, as a creditor of the National Salt Company, filed a bill of complaint in this Court, setting forth that the said National Salt Company was insolvent and applied to this Court for a writ of injunction and for the appointment of receivers in accordance with Section 65 of an Act concerning corporations (Revision of 1896), in that case made and provided, and that thereafter this Court, by order duly made and entered, did appoint as receivers of the assets of said National Salt Company, Nathan S. Beardslee and

Frank P. McDermott, and that they subsequently duly qualified as receivers and became vested with all of the real and personal property and other assets of said National Salt Company.

Your petitioners further show that thereafter and during the month of January, 1903, this Court, by order duly made and entered, directed that all claims against the National Salt Company should be presented on or before a certain day fixed therein, which day was subsequently extended to June 1, 1903, by further order granted during the month of May, 1903, and that those claims not presented should not be received by said receivers. That no copy of said notice was ever served upon your petitioners, nor did they ever receive such notice, nor did they have knowledge of such notice until long after the expiration thereof.

Your petitioners further show that, prior to the last day within which claimants might, under the terms of such order, present claims to the said receivers, the American Trust Company, a corporation existing under the laws of the State of Ohio, duly verified and filed a claim against the said National Salt Company with said receivers, as trustees for the holders of the certificates of indebtedness before mentioned, among whom were your petitioners for the amount due on said certificates. That thereafter the said receivers rejected the claim of the said American Trust Company, as trustee for the holders of said certificates of indebtedness. That said American Trust Company subsequently took an appeal from the decision of the said receivers rejecting such claim, which appeal is at present before a Vice Chancellor of this court for decision.

Your petitioners further show that they have relied upon the claim of the American Trust Company heretofore filed herein for the enforcement of their rights against the National Salt Company upon said certifi-

cates of indebtedness held by them, but they are advised and believe that they cannot safely rely upon the claim of the said American Trust Company as filed, but that they must file individual claims.

Your petitioners further show that heretofore, and on or about the 6th day of April, 1904, the United States Circuit Court of Appeals for the Second District, in an action brought by George S. Ingraham against the National Salt Company upon a certificate of indebtedness similar to those held by your petitioners, decided that such certificates of indebtedness constituted a valid and subsisting obligation of the National Salt Company, reversing a judgment in favor of the defendant which had been rendered in the court below. That the courts in the State of Ohio in an action brought there by the National Salt Company have declared that such certificates of indebtedness are invalid. That your petitioners, in reliance upon the claim presented by the American Trust Company on their behalf and upon a former decision of the said United States Circuit Court that said certificates were of doubtful validity, have not heretofore filed their claim against the National Salt Company on the said certificates of indebtedness and have had no opportunity to have their validity determined by this court.

Wherefore, your petitioners pray that this court grant an order permitting them to file their claims upon such certificates of indebtedness with the receivers before mentioned, and that the same may be considered by said receivers and passed upon as other claims against the National Salt Company as if filed within the time fixed to present claims.

And your petitioners will ever pray, etc.

Dated, New York, June 22, 1904.

SARAH A. PERKINS and
ERICKSON PERKINS,
Petitioners.
By Henry Willard Bean,
Their Attorney.

Petition to File Claims

George R. Beach, Esq.,
Solicitor for and of counsel
for petitioners,
15 Exchange Place,
Jersey City,
New Jersey.

State of New York, }
County of New York, } ss.:

Henry W. Bean, of full age, being first duly sworn on his oath, says: That he is a resident of the City of New York. That he is the attorney for Sarah A. Perkins and Erickson Perkins, the petitioners herein, in relation to the enforcement of their certificates of indebtedness and of their claims against the National Salt Company. Deponent further says that said claims were placed in his hands upwards of a year ago, and that he has made diligent investigation of the facts concerning the same as set out in the foregoing petition, which he has read, and that the facts stated in said petition are true to the best of his knowledge, information and belief. That the reason this verification is made by deponent and not by the petitioners is that neither of the petitioners is within the City and County of New York, where deponent resides and has his office, and that the sources of his information as to the matters alleged in said petition are the investigations made by him into the affairs of the National Salt Company, communications and interviews with the attorneys for the United Salt Company and the American Trust Company, the examination and possession of the original certificates of indebtedness mentioned, copies of the decrees of the United States Circuit Court of Appeals in the Second District in the action of Ingraham against National Salt Company, and various correspondence and interviews with his

clients and with the attorneys for the various parties in interest.

HENRY WILLARD BEAN.

Subscribed and sworn to before me
this 22nd day of June, 1904.
Joseph G. Deane,
Notary Public,
N. Y. Co.
(L. S.)

Schedule "A."

$.....

Jersey City, New Jersey,
October 1899.

National Salt Company (of New Jersey) hereby agrees to pay at the office of the American Trust Company, Cleveland, Ohio, to
or order,
Dollars in equal semi-annual instalments beginning January 1, . The failure to pay any instalment when due shall make all future instalments become at once due and payable. Until such default shall have occurred, the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future instalments hereby secured to the American Trust Company of Cleveland, Ohio in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1, 1899, and that no improvements erected or to be

erected by the United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, incumbered or in any way disposed of until this obligation is paid or discharged and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of the United Salt Company shall be made a charge upon or lien against the property or assets of the United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that the United Salt Company shall not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt now owned by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15, 1899; and that upon all licenses issued by said Salt Company, there shall be paid to it a royalty of at least twenty-five cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with the American Trust Company of Cleveland, Ohio, as Trustee, all stock of the United Salt Company acquired by it under an option given by certain stockholders of said company bearing date July 20, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company, dated October 2, 1899, and filed at the office of the said Trust Company.

Upon surrender and cancellation of this obligation, the National Salt Company will, from time to time, upon demand, issue new agreements of like tenor for such amounts as the holder may desire, not exceeding however, in the aggregate the amount then remaining unpaid herein.

Petition to File Claims

This instrument shall not be valid until countersigned and registered by said Trust Company.

NATIONAL SALT COMPANY,
By

President.

Attest:

Secretary.

Countersigned and registered:
THE AMERICAN TRUST COMPANY,
By

Schedule B.

Name of Holder	Date of Issue	Face Value	Amount Due July 1, 1901	
Sarah A. Perkins	Mar. 6, 1901	$1225.00	$1225.00	
do do	do	1750.00	1750.00	$2975.00
Erickson Perkins	Apr. 1, 1901	3500.00	3500.00	
do do	do	2450.00	2450.00	
do do	do	1225.00	1225.50	
do do	do	1750.00	1750.00	$8925

Order Allowing Claim to be Filed.

Filed June 28, 1904.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant.
and
NATIONAL SALT COMPANY,
Defendant.

On Bill, &c.

Application having been made to the Court by petition on behalf of Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, The Union Trust Company, body corporate, H. D. Quimby, Frank Taylor, C. W. Smith, and Edward G. Miner, for leave to file their claims with Nathan S. Beardslee and Frank P. McDermott, Receivers of the National Salt Company; and the counsel of the Receivers having been heard in opposition to the granting of such permission;

It is, on this twenty-seventh day of June, Nineteen hundred and four, on motion of George R. Beach, Solicitor of said petitioners, ordered, that the said Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, The Union Trust Company, body corporate, H. D. Quimby, Frank Taylor, C. W. Smith and Edward C. Miner, have five days' time from this date within which to file their claims with the said Receivers.

And it is further ordered, that the said petitioners, on notice being given them by the said Receivers (which notice shall be a five days' notice), present full proofs before said Receivers to substantiate their claims; and that there may be offered on behalf of the Receivers a copy of the evidence and testimony

now before the Court of Chancery, in the matter of the appeal of the American Trust Company, with the same force and effect as if said testimony and evidence had been offered in this proceeding. And it is further ordered, that in case an appeal shall be taken, by either the said Receivers or the said petitioners, that same shall be taken within ten days from notice of allowance or disallowance of the claims of said petitioners by said Receivers; and that said appeal shall be heard by the Court of Chancery on the testimony and proofs before the said Receivers, and no other.

W. J. MAGIE,
C.

Respectfully advised,
Eugene Stevenson, V. C.

An identical order was made and filed on the same date on the petition of Erickson Perkins and Sarah A. Perkins.

Order Allowing Claims to be Filed.

Filed June 13, 1904.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill, &c., Order.

Application having been made to the Court by petition of John L. Wilkie, in behalf of Edmond L.

Brown, Henry Wick, Otis Wilson & Company and C. H. Wilcox, for leave to file their claims with Nathan S. Beardslee, and Frank P. McDermott, Receivers of the National Salt Company; and the counsel of the Receivers having been heard in opposition to the granting of such permission:

It is, on this thirteenth day of June, Nineteen hundred and four, on motion of George R. Beach, solicitor of said petitioners, ordered, that the said Edmond L. Brown, Henry Wick, Otis Wilson & Company and C. H. Wilcox have ten days' time from this date within which to file their claims with the said Receivers.

Respectfully advised,

W. J. MAGIE,
C.

Eugene Stevenson,
V. C.

Order Modifying Order.

Filed June 28, 1904.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant

and

NATIONAL SALT COMPANY,
Defendant.

} On Bill &c.

Due notice having been given of an application to modify the order made in the above entitled cause on the thirteenth day of June, instant,

Order Modifying Order

It is, on this twenty-seventh day of June, Nineteen hundred and four, ordered, that the said order made in above entitled cause on the thirteenth day of June, Nineteen hundred and four, giving to Edmond L. Brown, Henry Wick, Otis Wilson & Company and C. H. Wilcox ten days' time within which to file their claims with the Receivers of the defendant corporation, be and the same is hereby modified so as to require the said Edmond L. Brown, Henry Wick, Otis Wilson & Company and C. H. Wilcox, on notice being given them by the receivers of the defendant corporation, which notice shall be a five days' notice, to present full proofs before said Receivers to substantiate their claims, and permitting the said Receivers to offer in their behalf a copy of the evidence and testimony now before the Court of Chancery in the matter of the appeal of the American Trust Company, with the same force and effect as if the same had been offered in the proceedings on the claims of the parties above mentioned; and further requiring that in case an appeal shall be taken by either the said Receivers or the said parties, that the same shall be taken within ten days from notice of the allowance or disallowance of the claims of said parties by said Receivers, and that said appeal shall be heard by the Court of Chancery on the testimony and proofs before the said Receivers, and no other.

Respectfully advised,

W. J. MAGIE,
C.

Eugene Stevenson,
V. C.

Notice.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant.
and
NATIONAL SALT COMPANY,
Defendant.

On Bill &c.

To Edmond L. Brown, Claimant:

You are hereby notified that the above named claimant is hereby required to submit to an examination in relation to the claim filed by said claimant with the subscribers, Receivers of the National Salt Company, and to produce all books, papers and records in the possession or under the control of said claimant relating to the claim, and to make proof of said claim upon oath or affirmation before the Receivers of the defendant Company, the National Salt Company, at the office of Frank P. McDermott, one of said Receivers, in the Davidson Building, 259 Washington Street (corner Montgomery St.), Jersey City, N. J., on Thursday the seventh day of July, 1904, at the hour of two o'clock in the afternoon.

Dated, June 27, 1904.

NATHAN S. BEARDSLEE,
FRANK P. McDERMOTT,
Receivers.

Identical notices were filed by the Receivers with respect to all of the other claims herein.

Proofs of Claim.

Filed June 15, 1904.

IN CHANCERY IN NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant.

against

NATIONAL SALT COMPANY,
Defendant.

Greenwich, June 15, 1904.

State of Connecticut, } ss.:
County of Fairfield, }

Edmond L. Brown, of full age, being duly sworn, according to law, on his oath, says:

That National Salt Company, a corporation of the State of New Jersey, is justly indebted to him in the sum of Five thousand nine hundred and fifty ($5,950) Dollars being the amount due on two (2) certain notes or certificates of indebtedness, one of Two thousand eight hundred ($2,800) Dollars, to be made in eight (8) payments, upon which is credited Three hundred and fifty ($350) Dollars, leaving due Two thousand four hundred and fifty ($2,450) Dollars, and one of Four thousand ($4,000) Dollars, to be made in eight (8) payments, upon which is credited Five hundred ($500) Dollars, leaving due Three thousand five hundred ($3,500), in form as appears by Schedule "A," hereto annexed and made a part hereof, with interest thereon from July 1, 1901; each of the said notes or certificates of indebtedness being duly countersigned or registered by American Trust Company as required by the terms thereof.

That said notes or certificates of indebtedness were issued by the said National Salt Company upon the

surrender to it of certain other notes or certificates of indebtedness for cancellation by it, in accordance with the terms thereof, the original notes or certificates of indebtedness having been made, executed and delivered by said National Salt Company to certain individuals, shareholders of United Salt Company, a corporation of Ohio, upon the sale by such individuals to said National Salt Company of their shares of the capital stock of said United Salt Company.

That the said National Salt Company filed a certain statement or statements with the officials of the New York Stock Exchange of the City of New York in reference to the said notes or certificates of indebtedness, and that thereafter such notes or certificates of indebtedness were dealt in and were bought and sold in said city, and that this claimant purchased the said notes or certificates hereinabove referred to from the Stock Exchange brokerage house or firm of Stewart Barr & Co., in or about the month of March, 1901, before any default of any kind in connection therewith, and paid full value therefor, and without any notice of any equitable defense that might be alleged to defeat the same.

That the National Salt Company did not pay the installment due upon said notes or certificates of indebtedness upon the first day of July, 1901, and that thereupon seven (7) unpaid installments became due and payable, and that no payment has been made thereon, and that the whole amount of said notes or certificates of indebtedness is due and owing to this claimant with interest thereon from July 1, 1901, and that there are no offsets or counterclaims against the claim here made, and that the sum of Five thousand nine hundred and fifty ($5,950) Dollars, with interest, as stated, is justly due and owing to the said claimant from said National Salt Company.

New Jersey State Library

Deponent further saith that he is not now and never has been a stockholder in the United Salt Company nor has he ever to his knowledge been a party to any litigation affecting said notes or certificates.

EDMOND L. BROWN.

Sworn to before me, a Notary Public of the State of Connecticut, duly commissioned and sworn, and qualified to take oaths and affirmations in the County and State aforesaid this 15 day of June, A. D., 1904.

Jas. Frasch,
Notary Public,
Connecticut.

(Seal.)

Schedule "A."

$.....

Jersey City, N. J., October , 1899.

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to..... or order.....Dollars, in ten equal semi-annual installments, beginning January 1st, 1900. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this agreement to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleve-

land, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of the United Salt Company. And until such payments or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt, now owned, by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Com-

pany dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY.

By.....,
President.

Attest:

.....,
Secretary.

Countersigned and Registered:
The American Trust Company,
By.....

Proof of Claim.

Filed June 29, 1904.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and

NATIONAL SALT COMPANY, *et al.*,
Defendants.

IN THE MATTER
of
The Claim of Union Trust Company.

National Salt Company to Union Trust Company. To amount of notes or certificates of indebtedness, as per Schedule "A" annexed, $5,950.00 with interest thereon from July 1, 1901.

State of New York, }
County of Monroe, } ss.:

Frederick W. Zeller, of lawful age, being first duly sworn, upon his oath, says, that he is Secretary of the Union Trust Company, a New York corporation; that, the National Salt Company, a corporation of the State of New Jersey, is justly indebted to said Company in the sum of $5,950.00, being the amount due on certain notes or certificates of indebtedness shown on the annexed schedule, with interest thereon from July 1, 1901. Said notes or certificates of indebtedness are

identical in form, save for the date, amount and number of payments, and are in the form set forth in said Schedule "A," each of said notes or certificates of indebtedness being duly countersigned and registered by the American Trust Company, as required by the terms of said notes. Schedule "A" set forth also a statement of each note held by deponent.

That the said notes or certificates of indebtedness were issued by said National Salt Company in exchange for certain other notes of said National Salt Company of like tenor, surrendered to said Company, the original notes or certificates of indebtedness having been made, executed and delivered by said National Salt Company to certain individuals, shareholders of the United Salt Company, a corporation of Ohio, upon the sale by such individuals to said National Salt Company of their shares of the capital stock of said The United Salt Company, as deponent is informed and verily believes.

That the said National Salt Company, as deponent is informed and believes, filed a certain statement or statements with the officials of the New York Stock Exchange of the City of New York, including among other things, reference to said notes or certificates of indebtedness and showing them to be an outstanding valid charge against that Company, and that thereafter such notes or certificates of indebtedness were dealt in and were bought and sold in said city, and that claimant purchased or caused to be purchased said notes or certificates hereinabove referred to from the stock exchange brokerage house or firm of Stewart Barr & Company, in the City of New York, in or about the month of March or April, 1901, before any default of any kind in connection therewith had been made, and paid value therefor, and without any notice of any defect or of any equitable defense that might be alleged to defeat the same, and that deponent is a

bona fide holder for value before maturity of said certificates of indebtedness.

That the National Salt Company did not pay the installment due upon said notes or certificates of indebtedness upon the 1st day of July, 1901, and thereupon, by the terms of said notes the remaining unpaid installments became immediately due and payable, and that no payment has been made thereon, although duly demanded, and that the whole amount of said notes or certificates of indebtedness is due and owing from said National Salt Company to this claimant, viz.: $5950 with interest thereon from the 1st day of July, 1901, and the said amount is due over and above all offsets and counterclaims and that there are no offsets or counterclaims against the same.

Deponent further says that he is not now and never has been a stockholder in The United Salt Company, nor has he ever to his knowledge been a party to any litigation affecting said notes or certificates.

That deponent has not presented said notes or certificates of indebtedness to any other Receiver of said National Salt Company in any other State.

UNION TRUST COMPANY
OF ROCHESTER,
by Frederick W. Zeller,
Secy.

Subscribed and sworn to before me, a Notary Public of the State of New York, duly commissioned and sworn and qualified to take oaths and affirmations in the County and State aforesaid, this 25th day of June, 1904.

L. M. Gleason,
Notary Public.

Seal.

Proof of Claim

Schedule "A."

$.....

Jersey City, N. J.

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to or order Dollars, in equal semi-annual installments, beginning . The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt, now owned by

The United Salt Company, or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said Company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company, dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,

By

President.

Attest:

Secretary.

Countersigned and Registered:

The American Trust Company,

By

Notice of Disallowance of Claims by Receivers

Statement of Debt Certificates held by Union Trust Company.

Date of Issue.	Face Value.	Amount Due July 1, 1901.
Sep. 14, 1900	$1,400.00	$1,225.00
do.	1,400.00	1,225.00
Sep. 15, 1900	2,000.00	1,750.00
Sep. 14, 1900	2,000.00	1,750.00
		$5,950.00

Verified Proofs of Claim, identical with the foregoing except as to amounts and the verifications were filed upon the same day by the other claimants herein.

Notice of Disallowance of Claims.

Filed June 2, 1910.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

On Bill, &c. Notice of Disallowance of Claims by Receivers.

To George R. Beach, solicitor of F. A. Whitney, Morton C. Nichols, Gertrude P. Powers, Erickson Perkins, C. Walter Smith, Erickson Perkins, administrator of Sarah A. Perkins, deceased, Frank Taylor, Henry D. Quimby, Union Trust Company, J. N. Beckley, Edward G. Miner, Edmond L. Brown, Henry Wick, Otis Wilson & Company and Charles H. Wilcox.

Memorandum of Reasons on Disallowance of Claims by Receivers

You are hereby notified that the subscribers, receivers of National Salt Company, have passed upon the several claims of the above named claimants, and have disallowed the said claims and each of them.

NATHAN S. BEARDSLEE,
FRANK McDERMOTT,
Receivers of
National Salt Company.

March 4, 1907.

Memorandum of Reasons on Disallowance of Claims by Receivers.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

The claims of F. A. Whitney, Morton C. Nichols, Gertrude P. Powers, Erickson Perkins, C. Walter Smith, A. Erickson Perkins, Administrator of Sarah C. Perkins, deceased, Frank Taylor, Henry D. Quimby, Union Trust Company, J. N. Beckley, Edward C. Miner, Edmund L. Brown, Henry Wicks, Otis, Wilson & Company and Charles H. Wilcox, against the National Salt Company, filed with the subscribers as Receivers of said company, further proofs having been

required and taken, pursuant to notice, and the same considered, with briefs of counsel, are hereby disallowed for the following reasons:

I. The said claims are based on certain certificates of indebtedness made by the National Salt Company as a component part of certain agreements constituting one contract wherein and whereby the National Salt Company purchased the United Salt Company agreeing to pay therefor to the stockholders of the United Salt Company two millions and a half of National stock with a five-year guaranty of dividends thereon, amounting to $1,062,500.00 which said guaranty was represented by these certificates of indebtedness.

The actual value of all the property of the United Salt Company was less than $2,500,000. The Directors of the National Salt Company in making the contract in question did not estimate or consider the amount of the certificates of indebtedness as entering into the valuation of the property at all, but regarded them solely as a guarantee of dividends.

They considered the amount of $2,500,000 in stock, which was then selling on the market at forty for common stock and seventy-five for preferred, as a very high price, but were willing to pay this because of their expectations of large profits; these expectations were not realized and in April, 1901, the United Salt Company was put into the hands of a Receiver. They also considered as part of the consideration a process for making salt cheaply, under a patent owned by the United Salt Company, which turned out absolutely worthless.

The certificates of indebtedness were therefore issued without any consideration.

II. Such guarantee of dividends, made as aforesaid and represented by these certificates of indebt-

edness, was illegal as contrary to the corporation laws of New Jersey and the charter of the National Salt Company, and not within the express or implied powers of a corporation.

III. The said certificates of indebtedness were issued and accepted with intent to violate Section 30 of our Corporation Act, which declares that no corporation shall make dividends except from the surplus or net profits arising from its business.

IV. The claimants had knowledge or means of knowledge that the certificates of indebtedness were an illegal guarantee of dividends and were issued without consideration.

V. The agreements in question including the said certificates of indebtedness were issued in order to effect a monopoly in a staple article of food, and constituted a restraint of trade illegal (1) under the common low; (2) under the United States Anti-Trust Law; (3) under the Anti-Trust Law of Ohio.

VI. The certificates of indebtedness were not negotiable instruments; among other things they provided that they could be paid off by payment to the Trust Company, irrespective of who was the owner or holder thereof and that the Trust Company could pay the amount thereof to the *registered* holder, irrespective of who might be the *actual* owner and holder of the instrument. For this reason among others the certificates lost their character of negotiability and not being negotiable, were subject to any and all defenses.

VII. The Decree of the Ohio Court duly made and entered on December 12, 1903, adjudged these certificates of indebtedness null and void, and the claimants are bound by such decree.

Memorandum of Reasons on Disallowance of Claims by Receivers

The action leading up to this decree was brought for the express purpose of having these certificates of indebtedness declared null and void. The American Trust Company which was the expressed Trustee for the holders of the certificates of indebtedness, was a party, and appeared and defended the action on behalf of all the holders of said certificates including these claimants.

The vendors who sold the certificates of indebtedness to the claimants were the registered holders of the certificates in question, and were parties to the Ohio suit. The registered holders held the legal title to the certificates under their expressed terms, as until transferred on the books of the Trust Company the certificates could be satisfied legally by payment by the Trust Company to the registered holder. The decree against the registered holder bound him and should bind his assignee under the circumstances proved in this case.

The decree of the Ohio Court against the American Trust Company as such Trustee and against the registered holders, adjudging these certificates null and void seems to be binding and conclusive upon these claimants.

VIII. As to the claimants Erickson Perkins and the administrator of Sarah A. Perkins, deceased, who were parties to the Ohio action, they are specifically bound by the decree, and their claims are covered by the adjudication of this Court disallowing the claim of the American Trust Company.

Respectfully submitted this fourth day of March, 1907.

NATHAN S. BEARDSLEE,
FRANK P. McDERMOTT,
Receivers of National Salt Co.

Petition of Appeal From Receiver's Ruling.

Filed April 1, 1907.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill, &c. Petition of Appeal from Receiver's Ruling.

The petition of Edmond L. Brown respectfully shows that your petitioner, being a creditor of the said defendant corporation, National Salt Company, to a large amount did heretofore and within due time present his claim to the receivers appointed in this cause, for allowance; that the same was presented in due form, properly proved and substantiated by evidence, and submitted to said Receivers, and that the said Receivers, after an examination of the said claim and proofs wholly refuse to allow the same.

And your petitioner conceives that he is aggrieved by said refusal of said receivers and insists that the proofs show that the sum of fifty-nine hundred and fifty dollars with interest as in the said proof of claim filed with said receivers is due and owing to this petitioner from said National Salt Company, and the said receivers erred in disallowing the said claim of this petitioner.

And your petitioner respectfully appeals from said determination of said receivers refusing as aforesaid to this Honorable Court, and prays that the same may

be reversed, and such order made in the premises as shall be agreeable to equity and good conscience.

And your petitioner will ever pray, etc.

GEORGE R. BEACH,
Solicitor for and of counsel
with Petitioner.

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

GEORGE R. BEACH,
Of Counsel with Petitioner.

An identical petition of appeal from Receiver's Ruling was filed on above date in behalf of the other claimants above named.

Answer.

Filed March 29, 1907.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bills, &c. On Appeal from Receivers Disallowance of claim of Edmond L. Brown. Answer to Petition of Appeal.

The receivers of the National Salt Company, not acknowledging all or any of the matters which in the petition of appeal filed by the said Edmond L. Brown, are contained, to be true, for answer thereto nevertheless say and admit, that the said claim of said appellant was presented to said receivers for allowance, and that after an examination of the said claim and the proofs submitted they wholly refused to allow the same, but said Receivers deny that the said claim was properly proved and substantiated by evidence, and further state that they are advised and believe that the refusal to allow the said claim was agreeable to equity, and they pray that their action in the premises may be approved and affirmed by this Honorable Court.

N. S. BEARDSLEE,
FRANK P. McDERMOTT,
Receivers of National Salt Company.

Identical answers were filed by the Receivers upon the same day to the petitions of the other claimants.

Order of Reference.

Filed April 3, 1907.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill, &c. Order of Reference.

It is, on this 2nd day of April, nineteen hundred and seven, on motion of Charles W. Fuller, solicitor of the Receivers of the National Salt Company,

Ordered that the appeals of Henry D. Quimby, The Union Trust Company, F. A. Whitney, Edmond L. Brown, J. N. Beckley, Edward G. Miner, Frank Taylor, Erickson Perkins, C. Walter Smith, Morton C. Nichols, Erickson Perkins, administrator of Sarah C. Perkins, deceased, Charles H. Wilcox, Henry Wick, Gertrude P. Powers and Otis, Wilson & Company, claimants, from the adjudication of the Receivers disallowing their said claims be and the same are hereby referred to Hon. Eugene Stevenson, one of the vice-chancellors, to hear the same for the chancellor and to report thereon to him and advise what order or decree should be made therein.

W. J. MAGIE,
C.

We hereby consent to the making of the foregoing order of reference.

GEORGE R. BEACH,
Solicitor of Appellant.
CHARLES W. FULLER,
Solicitor for Receivers.

Oral Opinion.

Filed Jan. 6, 1910.

IN CHANCERY OF NEW JERSEY.

Chancery Chambers, Jersey City,
Monday, May 23, 1910, 2 P. M.

Between

CHAUNCEY H. STRICKLAND,
Compl't,
and
NATIONAL SALT COMPANY,
Def't.

} On Bill, &c.

Transcript of stenographic report of the oral opinion in the above stated cause, delivered at the Chancery Chambers in Jersey City, on Monday, May 23, 1910, at 2 o'clock in the afternoon by His Honor.

EUGENE STEVENSON,
Vice Chancellor.

Appearances:

Mr. George R. Beach, Mr. Joseph G. Deane (of New York), Mr. Learned Hand (of New York), for the claimants-appellants.

Mr. Charles W. Fuller, Mr. Henry B. Twombly (of New York), for the receivers of National Salt Co., respondents.

Stevenson, V. C. (orally):

In the matter of the appeals of certain claimants from the adjudication of the Receivers in the case of Strickland against the National Salt Company disallowing their claims, my conclusion is that the adjudication of the Receivers should be affirmed.

It would be impossible for me at present to traverse the whole of this complicated case, and it is not neces-

sary that I should do so. I understand the case will be carried to the Court of Appeals; it is very proper that it should. Counsel have, before me, argued carefully and thoroughly all the points involved perhaps, with the exception of one which I intend to touch upon. I doubt if any elaborate opinion of this Court would be of great value to the court above. It would be a little more than an argument coming from the bench by the side of arguments coming from counsel which will fully cover the whole case. There is just one line of thought and investigation, however, which I shall follow out to some extent, in order that, with the suggestions that I shall make, counsel may fully argue this case in the court above.

The first question which perhaps conveniently may be taken up is, what is the character in respect of the negotiability of the certificates sued on by these claimants. In my judgment, they are not negotiable. They do not exhibit on their face a promise, on the part of the National Salt Company, to pay a sum of money in installments to the holder of the instrument absolutely and at all events, and I find, very much to my surprise, that the difficulty in the way of attributing negotiability to this instrument which impresses me most is not referred to in the opinion of Judge Wallace in the Federal Court of Appeals (143 Fed. Rep., 805).

I shall not take up the question whether the reference in this instrument to other papers effects this question of negotiability. There were some other objections to the finding in favor of the negotiability presented by counsel which I do not stop to recall. In my judgment it is sufficient, to establish the fact that this instrument is not negotiable, to point out the condition which, at the start, confronts the purchaser of this piece of paper. The certificate starts out with an agreement on the part of the National Salt Company

to pay to a party named, or to his order, a sum of money, at the office of the American Trust Company of Cleveland, Ohio, in ten equal semi-annual installments, beginning January 1, 1900. The paper then provides that "the failure to pay any installment when due shall make all future installments become at once due and payable." It may be conceded that that provision does not affect the negotiability of the paper. The certificate then proceeds as follows:

"Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to the American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand."

Now, who is the "registered holder" of this piece of paper? I confess that I have no difficulty—I do not see how there can be room for argument as to what person is intended by that phrase. The original option agreement, dated July 20, 1899, signed by all these stockholders, under which they disposed of their holdings to the National Salt Company and took its stock, and took these certificates, provides for the form of certificate which the United Stockholders are to receive in case this option is acted upon. The form of certificate is attached to this option agreement, and the agreement provides as follows:

"To evidence the agreement of the National Salt Company to make such payments, it shall execute and deliver to each owner its agreement substantially in the form shown in Exhibit 'A,' attached hereto and made part hereof. New agreements of like tenor shall be issued in lieu of said original or any reissued agreements, upon their surrender and cancellation, for such amounts as the holder may desire"—

("the *holder* may desire,"—the man who presents the certificate)—

"not exceeding in the aggregate the amount then unpaid upon the agreements so surrendered and cancelled, and before such original or re-issued agreements shall become binding upon said National Salt Company they shall be registered and countersigned by The American Trust Company of Cleveland, Ohio, and the said Trust Company shall be required to keep a record of all agreement so registered and countersigned."

The certificate at the end contains this paragraph:

"This instrument shall not be valid until countersigned and registered by the said Trust Company."

Then follow the blank places for the signatures, and then we have these words: "Countersigned and registered" and then a blank place for the signature of the officer of the American Trust Company, which is required to countersign and register these papers.

Now, isn't that scheme perfectly plain? Every one of these certificates, when it was delivered, was countersigned and registered and a record thereof kept by The American Trust Company. It was a promise on its face to pay the amount mentioned to the party named in the certificate, or his order. The party receiving that certificate could transfer it by endorsement, by delivery—could sell it to anybody; but the party who received this paper, it was expected, would come to the Trust Company, the registrar, and get his own certificate in his own name and that would be countersigned and registered.

Of course, the paper would pass from hand to hand. It might go through the hands of a dozen owners, no one of whom might deem it worth while to go or to send out to Cleveland, Ohio, (I think the Trust Com-

pany was located there) and surrender the certificate thus bought in the market and get a new one countersigned and registered in its place.

But during that period perhaps, while one of these papers was going from hand to hand in New York, on the street, there seems to be nothing to prevent the National Salt Company, under the terms of this express provision, from discharging itself from all liability by paying the amount of all future installments secured by this certificate to the American Trust Company of Cleveland, Ohio, "in trust to pay the same to the registered holder hereof upon demand." "Hereof"—that means that paper. Who is the registered owner of one of these certificates after it has been sold perhaps four or five times and passed through four or five hands? Why, the registered holder is the party who appears upon the books of the Trust Company as the holder of that paper. There cannot be any other registered holder, according to this scheme, until the purchaser—owner of the paper—deriving title perhaps through half a dozen individuals, his predecessors, has surrendered the certificate and obtained a new one which will be countersigned and registered and will show on its face that it belongs to him.

Now that is an exposition which I am forced to make of the meaning of this agreement, and it seems to me that it is impossible to attribute negotiability to such a paper as that. The paper does not on its face bear a promise to pay the amount named to the holder or owner absolutely and at all events. As it passes from hand to hand every man who gets it by a title from the original registered holders knows right well —is warned—that no promise is made to him that is absolute. The only promise that is made to him is that the money will be paid if the National Salt Company has not seen fit to avail itself of the privilege

which it reserves to itself in that paper of paying the entire amount to the Trust Company in trust for the registered holder, to be paid over to the registered holder on demand. All parties are acquitted if the money is paid by the National Salt Company to the Trust Company, and then is paid by the Trust Company to the registered holder on demand.

Now, it seems strange to me that this feature of the paper, affecting so vitally the question of its negotiability, has not been discussed in the series of interesting decisions in the Federal Court. I find a discussion of the question of negotiability only in the opinion of Judge Wallace, in the last decision of the series in the 143rd Federal Reporter, and he deals with the effect of the reference in the certificate to other papers upon this question of negotiability. And, also, I might say, he deals with the effect of the provision in the certificate for the payment of the amount named therein in advance of its terms, but he does not deal with the effect of this particular provision which makes the right of the holder of the paper to receive payment conditional upon the money not having been paid by the National Salt Company to the Trust Company and then paid over by the Trust Company to the registered holder.

If my conclusion on this question of negotiability is correct, then we have to deal with this case precisely as if the claims were made by the original takers of these certificates, and the question is, whether these certificates are enforceable in the hands of the original parties who took them—the stockholder of the National Salt Company of Ohio—against the National Salt Company of New Jersey.

Four or five different defences were presented to the Court, and were the subject of argument pro and con, which was very full and very satisfactory. I have just come from a re-perusal of all the briefs. I

do not doubt, with the aid of those arguments, a final decision will be reached by the Court of Errors and Appeals in this case which will certainly give to the parties the benefit of the best thought and the best judgment of that court. I have concluded not to take up these defences in order, not to discuss them, not to set forth any positive opinion in regard to them. I am satisfied that these papers—these certificates—are not enforceable contracts in the hands of the original takers against the National Salt Company and, therefore, as they are not negotiable these present holders have no claim.

Without discussing very many of these defenses, those that have been the subject-matter of thorough argument by counsel, I think it worth while to point out perhaps what I might call one additional defect in these papers—one additional defense on behalf of the National Salt Company—which, it seems to me, is conclusive and which ought to be presented to the court above. Of course, it is altogether probable that another court might select some one or other of the defenses which I am not going to deal with and sustain the action of the receivers and the action of this court on account of that defense. It seems to me, without dealing with these other defenses that I have referred to, that the defense based upon the doctrine laid down by the Court of Errors and Appeals in the case of Volney v. Nixon (68 N. J. Eq., 605) is absolute. I have tried carefully to consider this matter—all the more carefully because it was not the subject of argument by counsel, and as a rule I am opposed to disposing of an important case upon a matter which has not been argued. I am not doing that in this case, by any means. I am only touching upon this one defense in order that it may be included in the presentation of the entire cause to the Court of Errors and Appeals.

Oral Opinion

The case of Volney v. Nixon, as I read it, where we have the unanimous opinion, if I remember correctly, of the Court of Errors and Appeals through Mr. Justice Dixon, decides that an over-issue of stock by a corporation in New Jersey—an original issue of stock—in violation of the distinct mandates of our statutes is against public policy and is therefore unlawful, not merely in the sense of its being *malum prohibitum* but in the sense of its being *malum in se,* and that no right under a contract for such an over-issue of stock is enforceable by any New Jersey Court, and that any contract or agreement between parties for such a violation of the statute is as unlawful and as much against public policy as a contract for the maintenance of a lottery or a gambling house. By referring to the decisions cited by Mr. Justice Dixon, the true character of the doctrine laid down will plainly appear. It would seem that a contract involving necessarily the violation of our statutes which prohibit the over-issue of stock is to be assimilated to the renting of a building for the maintenance of a disorderly house, and that where a party is seeking to enforce a contract involving such violation of our laws he is in the same position as when a man files a bill in this court for an accounting in respect of the profits of a gambling house.

Of course, when these papers were drawn, when these transactions were had out in Ohio, counsel in Ohio and very few counsel perhaps, in New Jersey, had any idea of the doctrine which was laid down in Volney v. Nixon, I think in 1905. I may say here that I am very sure that the impression quite widely prevailed in New Jersey lawyers who were engaged in conducting corporate enterprises involving issues of stock consolidation, etc., that while the over-issue of stock on a consolidation or upon the acquisition of

property—issuing a million dollars, for instance, on a patent that was not actually worth more than $50,000 —I say the impression I think generally prevailed that while such a transaction as that involved civil liability of various kinds, yet it was not to be considered as much more than *malum prohibitum,* and that men who united their properties and made schemes for issue thereon large amounts of stock in excess of its value did not place themselves in the position of outlaws.

The case of Volney v. Nixon has been cited several times, and it is perhaps worth while to take note of the citations of it. Reference may be had to the citation of the case by Mr. Justice Swayze in the Court of Errors and Appeals, in the case of the Ecuadorian Association, L't'd v. Ecuador Company (71 N. J. Eq., 757). It is also cited by Vice Chancellor Pitney in the case of See v. Heppenheimer (69 N. J. Eq., 36) the citation being on page 50. It may be worth while to read a portion of pages 50 and 51:

"So far from approving these transactions" (that is to say, over-issues of stock) "our Court of Errors and Appeals has recently, in a case not yet reported, made a decision and rendered an opinion, in which it disapproves of these inflated transactions in the most emphatic and practical manner. I allude to the case of Volney v. Nixon, since reported (68 N. J. Eq., 605) the opinion in which I have had opportunity to examine, the headnote of which is as follows: 'A contract between two persons that, in exchange for their joint property, one of them shall procure from a corporation of this State an original issue of stock to an amount known by all parties to be in excess of the value of the property, and shall divide the stock thus procured from the other person, is illegal; and the courts of this State, will not aid in its enforcement,

even though the objectional feature has been accomplished by the actual issue of the stock.' "

It is easy to see what very severe consequences will flow from applying that doctrine to a case where two or more convey their property to a corporation and unite in having an over-issue of stock. It may very well be that the application of that doctrine will leave one of the parties plundered of his property, the whole of it practically in the possession of the other and he being without remedy.

Now, then, with that doctrine before us, what sort of a transaction is this that these parties went into? It seems to me very clear that the whole transaction by which the National Salt Company undertook to issue two million and a half dollars, par value of its stock and give its obligation to pay in cash over a million dollars more in cash for one million dollars, par value of the United Salt Company's stock was a direct, bold violation of our statute. The proof is ample that no appraisement was ever made of the value of the United Salt Company's stock. First of all, we have the option agreement signed by all the stockholders, or most of them, of the United Salt Company, by which they gave the National Salt Company an option to take their stock at a certain price, the price which was afterwards paid. For every one share of United Salt stock the holder was to have one and one-quarter shares preferred stock and one and one-quarter common stock of the National Salt Company, and then he was to have the certificate which entitled him to five annual payments amounting to $106.25. Why it is perfectly plain—must be plain to everyone of common sense, upon perusing these papers—that all parties knew that this was an agreement for the exchange of stock in order to affect a consolidation. There isn't a suggestion that

anybody had in view the actual value of the United Salt Company's stock, or the relation of that actual value to the two and one-half shares of the National stock and this peculiar obligation which accompanied it. The stockholders of the United Salt Company who signed this paper knew perfectly well that there was no appraisal of their stock and that a share of their stock, the stock of the United Salt Company of Ohio, was not worth even the par value of the two and one-half shares of National stock which they were to receive, disregarding the additional cash payment of $106.25.

It appears from the testimony that the stock of the National Company was selling at the rate of $40 for the common stock and $75 for the preferred stock. Now, if you take one and one-quarter shares of each —I made a rough calculation—if you take one and one-quarter shares of each kind of stock, at those prices, the total market value of the whole—one and one-quarter shares of common and one and one-quarter shares of preferred stock, with the full right to receive dividends thereon, was $143.75. The United stockholder, according to this agreement, was to hand over his share, one share of the United stock and receive stock that was less by a very substantial sum in the market than $143.75, because that stock was stripped of all power to receive any dividend for five years. There is no evidence on the subject, but it is perfectly safe to infer that the actual value of that stock, thus denuded of all possible dividends for five years, as determined by the market value of the stock in its natural condition, should be put down very far below $143.75; it might safely be placed, perhaps, at something like $100.

What else did the United Salt stockholder get? Why, he received this obligation of the National Salt

Company to make ten semi-annual installments aggregating $106.25, and if we make allowance—if we discount these payments so as to find out what the real value of that obligation was when that transaction occurred—I did not have time to make a calculation on here in pencil, but I made a rough calculation that the present worth of that obligation at the time this stock was exchanged would be about $90; I think not much more, if any.

And thus we have the United stockholder delivering his one share of the United Salt Company's stock and receiving therefor money and stock which was not worth more than about $190 to $200 at the most. Can there be any doubt about it that every holder of the stock of the United Salt Company knew right well that his stock was not worth $250, not to say $356.25?

I spent some time last night in trying again to go through the very voluminous testimony in this case, to discover every particle of direct testimony in regard to the value of the United Salt Company stock. I may have overlooked something, and I should be very glad if counsel would correct any errors in which I may say on this subject. I only found one piece of testimony and that is contained in the letter from Mr. Squire, the President of the United Salt Company and a lagre stockholder evidently, and the man who conducted this transaction on the part of the Ohio Company to a very large extent, and he must have been fully informed in regard to all values so far as anybody knew anything about them.

He offered for sale a thousand shares of his stock (which I understand is the stock of the United Salt Company of Ohio) for sixty, and he offered to sell another thousand shares for sixty-five, and he offered to sell out all his holdings, I think, for about sixty-five. Well, it is not shown that all of these certificate holders knew of that fact. But, here we have stock

which the President of the Company, and a man who is perhaps more largely engaged in operating it than anybody else, offers to sell for from sixty to sixty-five. We have an agreement which, right on its face, shows that it is an exchange of stock and does not suggest an appraisement of the stock of the United Salt Company of any kind whatever. When we look at what the stockholders of the United Salt Company got and presumably must have known they were getting, we find that they were taking an original issue of stock from the National Salt Company of the par value of $250 which would not sell in the market for $143.75, stripped of all right to dividends as it was for a period of five years.

It is incredible to my mind that any stockholder of the United Salt Company of Ohio could have supposed that his stock was worth even $250. If the new issue of two million and a half of dollars, par value, of the National stock was to be honestly issued in accordance with the laws of New Jersey, the million dollars of stock, par value, of the United Company had to be worth $3,562,500 less the allowance or discounts to which I have heretofore referred.

It may be worth while to note that this Ohio scheme if lawful suggests a very simple means for evading the statutes of New Jersey which limit an original issue of stock for property purchased to the actual value of such property.

In my judgment this is a plain case where all parties to this transaction—to this complicated agreement—for the exchange of stock of these two companies in order to effect this consolidation are charged with notice that an issue of stock would be made, and was to be made, in pursuance of their agreement, in direct violation of the laws of New Jersey and that therefore, under the ruling in Volney v. Nixon, no agree-

ment, no contract, which is a part of that arrangement, which is a part of that agreement, is enforceable against the National Salt Company.

If I have misunderstood, or in any way have misapplied, the doctrine laid down in Volney v. Nixon—if a stockholder of the United Salt Company could enforce any legal claim upon this obligation of the National Salt Company in the courts of New Jersey—it would seem that an appraisal would have to be made first, to ascertain what was the actual cash value of the United stock when this exchange was made. Nothing would be recoverable until $250 in cash value of the Ohio stock had been paid for every two and a half shares of the National stock. It is very evident that even on this theory nothing would be found due to any of these appellants.

I do not think of anything further to say. This is only a small part of this important and complicated case, but it is all it is necessary, it seems to me, to deal with in order to dispose of the case, so far as this Court is concerned.

Decree Disallowing Claim.

Filed June 9, 1910.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

On Bill, &c.

The claim of Edmond L. Brown for the sum of five thousand nine hundred and fifty dollars with interest thereon from July 1, 1901, filed by said claimant with the Receivers of the National Salt Company, having been disallowed by said Receivers, and an appeal having been taken by said claimants from such disallowance, and the said appeal coming on to be heard before this Court in the presence of Charles W. Fuller, solicitor for and Henry B. Twombly of counsel with the Receivers and George R. Beach, solicitor for the said claimant-appellant, and the Court having heard and determined the said appeal and the matters therein complained of,

It is, on this third day of June, nineteen hundred and ten,

Ordered, adjudged and decreed that the adjudication of the said Receivers as to the said claim of the said claimant-appellant be and the same is hereby approved and confirmed, the appeal of the said claimant-appellant is hereby dismissed and the said claim of the said claimant-appellant, Edmond L. Brown is hereby disallowed.

MAHLON PITNEY,
C.

Respectfully advised,
Eugene Stevenson, V. C.

Identical decrees were entered upon the same day disallowing the remaining claims.

Testimony Taken Before Receivers.

Filed June 9, 1910.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

In the matter of the hearing before the Receivers of the claims of Edmond L. Brown, Henry Wick, Otis, Wilson & Company and C. H. Wilcox.

Examination of witnesses, &c., on Friday the eighth day of July, nineteen hundred and four, at two o'clock P. M., at the office of Frank P. McDermott, one of the Receivers, 259 Washington Street, Jersey City, N. J.

Appearances:

Gould & Wilkie and George R. Beach, appearing for the claimants.

Henry B. Twombly, appearing for the receivers.

The orders permitting parties to file their claims was produced by Mr. Beach and marked Claimants' Exhibit 1. These orders are printed at pages 35, 36 and 37.

Claimants offer in evidence agreement between the United Salt Company stockholders and the National Salt Company, dated at Cleveland, Ohio, July 20, 1899, and endorsed with an acceptance by the National Salt Company under date of September 16, 1899, together with Exhibits A, B and C attached thereto (marked Claimants' Exhibit 2). These papers are printed as a part of Claimants' Exhibit 3, page 269, *et seq.*

Subsequent to the execution and acceptance of said agreement the National Salt Company acquired, in the manner provided for in the foregoing agreement, from various stockholders of the United Salt Company, the Ohio corporation referred to in said agreement, their several holdings of stock, amounting in the aggregate to very nearly the total capitalization of the United Salt Company, and thereafter the documents called certificates of indebtedness were issued to the various persons, who under said agreements deposited the stock of the United Salt Company with the American Trust Company of Cleveland, Ohio, and thereafter document called Exhibit B was executed by the National Salt Company and the receipts C and D were also issued to those of the United Salt Company stockholders who deposited their stock under said agreement. The National Salt Company paid three of the installments called for in the agreement, those installments becoming due January 1 and July 1, 1900, and January 1, 1901.

GEORGE P. TOBY, a witness called on the part of the claimants, being duly sworn, according to law, on his oath saith:

Examined by Mr. Wilkie:

Q. Where do you live, Mr. Toby? A. South Orange, New Jersey.

Q. And what is your business? A. Broker.

Q. Where are you engaged in business just state generally? A. 25 Broad Street.

Q. And what is your firm name? A. Toby and Lamarche.

Q. Were you engaged in the same business of brokerage in the year 1901? A. Yes.

Q. And your business as broker is dealing with investment securities of one sort and another, isn't it? A. Yes.

Q. Do you remember anything in connection with the purchase of certain so-called certificates of indebtedness of the National Salt Company in or about the month of March, 1901, and if so state fully what you know about that transaction? A. The matter was called to my attention by another broker, who in turn had had it called to his attention, by Stewart, Barr & Company.

Q. When, about, was this, Mr. Toby? A. About the end of March, 1901.

Q. Go right on. What did you do and with whom? A. I notified Mr. Popper, the broker. He was the broker who called it to my attention; and he in turn notified Stewart, Barr & Company that I purchased about that time, about the 27th or about the 27th or 29th of March, 1901, 350 shares of stock or certificates —however you would express that.

Q. You bought certificates of indebtedness? A. Certificates of indebtedness.

Q. Had you done anything prior to making the purchase? Commence at the beginning and give us your transaction. Did you go to see Stewart, Barr & Company before you made the purchase? A. I did.

Q. When was that? How long in advance of making the purchase? A. At about the same time.

Q. Did you receive anything from Stewart, Barr & Company calling your attention to whatever those things were that they were selling? A. Yes, sir; a printed circular.

Q. I show you that paper, and I ask you if you can identify that as the circular that was delivered to you at that time? A. The same as this copy.

Paper offered in evidence and marked Claimants' Exhibit 3, printed at page 269.

Q. Did you have any conversation with any of the members of the firm of Stewart, Barr & Company with regard to these trust certificates that were offered for sale, which are referred to in this circular Exhibit 3? A. I did, as to whether those circulars were issued by them and with their approval, and they said "Yes."

Q. Anything further than that that you recall? A. No.

Q. Did you make any further investigation, on the Stock Exchange or elsewhere, in regard to those certificates? A. I made inquiry of the Salt Company in regard to those circulars.

Q. Who did you see there? A. The Secretary.

Q. Anyone else? A. I saw Mr. A. S. White, the President of the National Salt Company, in regard to the earnings.

Q. Did you speak to either the President or the Secretary in regard to these securities which Stewart, Barr & Company offered for sale? A. Not the Secretary of the National Salt Company, but Mr. White, the President's Secretary.

Q. Did Mr. White, the President of the company, refer you to his secretary? A. No.

Q. Did you make any investigations at the New York Stock Exchange in regard to these securities that Stewart, Barr & Company had offered? A. At the time, not.

Q. At what time; prior to the sale? A. At the time these purchases were made. Later a circular was issued by the Stock Exchange, a regular listing, circular of these certificates.

Q. Of the certificates that were being sold by Stewart, Barr & Company? A. Yes.

Q. Do you remember whether or not before you made any purchase from Stewart, Barr & Company,

that you had inquired at the Stock Exchange in regard to reports of the National Salt Company and obtained copies? A. Not before the purchase.

Q. Was that before the purchase or subsequent to it? A. Subsequent to it.

Q. How long? A. A few days afterwards.

Q. Can you identify these papers which I show you as statements which you obtained from the New York Stock Exchange? A. I do, yes.

Mr. Wilkie: I offer in evidence statement headed "Department of Unlisted Securities; Committee on Unlisted Securities," signed by H. K. Pomeroy, Chairman. It is apparently not dated. Also, a statement made in the same way, signed in the same way, marked "Number 2, Supplemental Statement."

Marked Claimants' Exhibits 4 and 5, pp. 282-289.

Q. When did you get that? A. I should say about two weeks afterwards.

Q. Did you get both these statements 4 and 5 at the same time? A. No. The first one, Exhibit 4, was received and issued by the Stock Exchange in advance of the purchases made by me from Stewart, Barr & Company, and this one, Exhibit 5, was issued subsequently.

Q. Now after you had gotten this information from Stewart, Barr & Company, and after your interview with Mr. White and his secretary, what did you do, if anything, in regard to this matter? A. I bought those certificates, after a thorough examination of the data of Stewart, Barr & Company, through their broker, Mr. Popper.

Q. Did you call to the attention of any of your customers the fact of the offer of these certificates for sale and purchase? A. I did

Q. Did you call to their attention the information that you had acquired in regard to these certificates? A. I gave them all the printed matter that I had.

Q. And you called their attention to the circular of Stewart, Barr & Company, a copy of which is Claimants' Exhibit 3? A. Yes.

Q. And did you receive any instructions from them with regard to the purchase of any of these certificates? A. I did.

Q. Do you remember whether or not you purchased any of the certificates and, if so, can you fix the time you made the purchases and for whom? A. On the 27th of March, 1901, I bought 100 shares for Mr. Edmond L. Brown, and on the 29th or within a week of the 27th of March, I bought 250 shares more, 100 shares of which were for Mr. Henry Wick and 150 shares for Mr. Wilcox and Otis, Wilson & Company.

Q. Do you remember how many shares were held for Mr. Wilcox and how many for Otis, Wilson & Company? A. 50 shares for Mr. Wilcox and 100 shares for Otis, Wilson & Company.

Q. You speak of these as shares, Mr. Toby. Do you remember what the unit of purchase was? A. Yes; 100 shares of preferred stock of the National Salt Company, 100 shares of common of the same company, represented by certificates of deposit in the American Trust Company of Cleveland, with notes —attached for five years' interest at the rate of seventeen per cent a year, on which three payments have been made and endorsed on their face.

Q. Do you remember, Mr. Toby, whether the unit, reducing it to that, was one share of preferred stock, one share of common stock, and a debt certificate on which there was due $59.50? A. That $59.50 represents less the three payments the whole amount.

Q. Now look at Claimants' Exhibit 3 and see if you can refresh your recollection and tell from that? A. Yes.

Q. And what was the price for each of such units? A. $115.

Q. Do you remember whether or not you paid for the stock you testified you purchased within a week of March 27th, at the rate of $115 for each one of said units? A. Yes; I did.

Q. That is, can you testify that you paid for the 100 share lot, as you refer to it, that you purchased for Mr. E. L. Brown, which you say was 100 shares of preferred stock and 100 shares of common stock and debt certificates? A. $11,500.

Q. Did you yourself pay the money? A. Either I did or the broker when the clearance was made.

Q. I call your attention to these two papers and ask you whether you can identify them as the debt certificates purchased by you at that time for Mr. Brown? A. I do.

Q. Through whom was the purchase made? A. Mr. Popper.

Q. Of Stewart, Barr & Company? A. Yes.

The two papers referred to offered in evidence.

CROSS-EXAMINATION by Mr. Twombly:

Q. I notice on the back of both of these certificates the date March 30, 1901. Do you know what that refers to? A. That is usually the date of the witness.

Mr. Twombly: The endorsements on the back haven't been proved.

Q. You don't know as a matter of fact whether that was the date when the witness was made? A. I do not.

By Mr. Wilkie:

Q. Do you know the signature of Stewart, Barr & Company, endorsed on the back of these certificates? A. Yes.

Q. Is that the signature of that firm as then constituted? A. Yes.

Q. Stewart, Barr & Company were at that time what is called a New York Stock Exchange house, were they not? A. Yes.

Q. And their signature was supposed to guarantee all the foregoing signatures on any paper?

Objected to.

Question overruled.

Q. Is it the established custom of the New York Stock Exchange for a stock exchange house, that is, a firm which has a member in the New York Stock Exchange, to endorse certificates as a guaranty of all preceding signatures? A. Yes.

Mr. Twombly: I don't object to these certificates, except as to Mr. Hutchins' endorsement.

Q. You have records which will fix absolutely the days on which you purchased these certificates? A. Yes.

It is agreed that Mr. Wilkie can substitute copies for these certificates, and that they be marked in evidence, with the exception of the endorsement of Mr. Hutchins, which has not been proved.

Marked Claimants' Exhibits 6 and 7, the copies to be marked as such instead of the originals.

Claimants' Exhibit 6 is printed in full at page 292,*et seq.* of this record.

Claimants' Exhibit 7 is in all respects the same as Claimants' Exhibit 6, except that it is for $2,800 with installment paid $350, and the printing of said Exhibit 7 is hereby waived.

Q. Mr. Toby, I show you two certificates, and ask you whether you can identify them as the certificates thus bought by you at the time that you have testified, for Mr. Henry Wick? A. I do.

Offered in evidence and admitted in the same way. Certificate for $4,000 becomes Exhibit 8, and certificate for $2,800 becomes Claimants' Exhibit 9, with same privilege to claimants to introduce copies in evidence, and subject in the same way to the objection as to the endorsement of H. A. Hutchins.

Claimants' Exhibits 8 and 9 are in all respects the same as Claimants' Exhibit 6, except that Claimants' Exhibit 8 is for the same amount and has the same endorsement as Exhibit 7, and the printing of said exhibits is hereby waived.

Q. Can you fix definitely when you purchased these —whether earlier or later? A. The 28th or 29th, I think.

Q. But you can fix definitely from your books? A. Yes.

Q. I show you these four certificates and ask you if you can identify them as certificates purchased by you at that time. Were those the certificates purchased by you for Messrs. Otis, Wilson & Company? A. Yes.

Offered in evidence Certificate for $1,750, Claimants' Exhibit 10; Certificate for $1,750, Claimants' Exhibit 11; Certificate for $1,225, Claimants' Exhibit 12; Certificate for $1,225,

Claimants' Exhibit 13. Admitted in the same way as foregoing certificates and subject to the proof of the endorsement of Herman Frasch.

Q. Mr. Toby, I show you these two certificates, and ask you whether you can identify them as certificates purchased by you at that time for the account of Mr. C. H. Wilcox? A. Yes.

Offered and admitted in evidence, except as to endorsement of H. A. Hutchins. Certificate of $2,000, with endorsement of payment of $250, Exhibit 14; Certificate of $1,400 with endorsement of the payment of $175, Exhibit 15.

Claimants' Exhibits 10 to 15 both inclusive are in all respects the same as Claimants' Exhibit 6 except that Exhibit 10 is for $1,750 and is dated Jersey City, N. J., March 22, 1901, and is issued in the name of Herman Frasch. It is endorsed on the reverse side, Herman Frasch, Stewart, Barr & Co. There is no endorsement across the face thereof showing any installment paid Claimants' Exhibit 11 is the same as Exhibit 10. Claimants' Exhibit 12 is the same as Exhibit 10 except it is for $1,225. Claimants' Exhibit 13, is the same as Exhibit 10, except it is for $1,225. Claimants' Exhibit 14 is for $2,000 with endorsement showing installment of $250, said Claimants' Exhibit 15 is for $1,400 with endorsement showing installment of $175.75 and the printing of said exhibits is hereby waived.

Q. After the purchase of these certificates, you or the person who cleared these certificates on the purchase paid for them, at the rate of $115 per unit of purchase, as above described; is that so? A. I did.

Q. What did you do with the certificates after you took them up? A. Delivered them to the respective parties.

Q. Did you at the time of making such purchase have any knowledge of any claimed invalidity of these certificates in any way? A. None, whatever.

Objected to as immaterial, on the ground that the invalidity appears on the face of the certificate.

Question admitted. Exception.

Q. Do you know whether or not any of these four persons for whom you made these purchases which you have described—Mr. Brown, Mr. Wick, Mr. Wilcox and the firm of Otis, Wilson & Company—were, or any of them had ever been stockholders of the United Salt Company? A. No; they had not.

CROSS-EXAMINATION by Mr. Twombly:

Q. Do you know that of your own knowledge? A. To the best of my knowledge and belief.

Q. But you don't know as a matter of fact whether they ever have been or not, do you? A. I don't know what you want to get at. I can answer, to the best of my knowledge, no.

Q. When did these parties pay you for these purchases, and when did you turn the certificates over to them? A. At the time the purchase was made, either the day or a day or two afterwards. That is the usual custom.

Q. Well, did they pay you for these certificates? A. Yes; they did. They paid for these certificates.

Q. Do you know whether they paid for them by check? A. They paid them by check, to the best of my knowledge.

Q. Have you a record in your office of when they paid these various certificates? A. Yes, I have.

Q. Will you produce it next time? A. I will.

Q. Did you send these certificates on to Cleveland to have them exchanged for other certificates? A. I did not.

Q. Do you know whether the various parties did so? Did any of these parties send their certificates on to Cleveland? A. Brown did, and got trust certificates. They exchanged those, but not the notes.

Q. What have been put in evidence here called certificates of indebtedness; did any of the parties for whom you bought the certificates of indebtedness put in evidence exchange them for other certificates of indebtedness made out in their own names, or otherwise? A. They attended to their own affairs. To the best of my knowledge some of them did. I didn't attend to that.

Q. Have you, also, with you the certificates of stock which were issued at that time to those parties?

Mr. Wilkie: He hasn't, but I have.

Q. Had you heard prior to the delivery of these certificates to your customers of the institution of a suit in Ohio by the National Salt Company against the United Salt Company for the purpose of declaring this whole transaction illegal and void? A. No.

Q. Did you have any conversation with any of these various parties for whom you bought these certificates subsequent to the purchase, with reference to this suit in Ohio that I have just mentioned.

Objected to by Mr. Wilkie as immaterial.

The Receiver: I am inclined to take the answer under the circumstances.

Exception.

A. I did.

Q. With which of these purchasers did you have this conversation? A. Mr. Brown.

Q. Anybody else? A. Yes; Mr. Wick.

Q. Did you have any conversation with Wilcox or anybody representing Otis, Wilson & Company, about the same subject? A. I think not.

Q. When was your conversation with Mr. Brown? A. I should say, practically on the day that the notice of this suit appeared in the papers of New York.

Q. Well, how soon after the purchase that you made do you think that this notice appeared in the papers in New York? A. Within a few weeks, I think.

Q. Within a month, at least? A. Within a few weeks afterwards.

Q. What conversation did you have with Mr. Brown? A. He called my attention to this suit, in a general way.

Q. What did he state about it? A. What was in the paper.

Q. Do you remember what was in the paper? A. No.

Q. What else did he say? A. That was all.

Q. What did you say to him? A. That I would go out to Cleveland and look into the matter myself.

Q. Did you go out? A. I did.

Q. With whom did you have an interview in Cleveland? A. Mr. Klein and Mr. Squire, in Mr. Klein's office.

Q. What facts you learned you told Mr. Brown on your return, did you? A. I think so.

Q. What did you learn from Mr. Klein and Mr. Squire, which you told Mr. Brown?

Objected to.

The Receiver: I am inclined to admit what he told Mr. Brown.

A. I don't know.

Q. You remember something of what you told Mr. Brown? A. I assume the main point was the question of their appointing a receiver for the company.

Q. Did you tell him that the question of the validity of these certificates was involved in this suit? A. Absolutely not.

Q. Did you find that out from Mr. Klein? A. I did not.

Q. You knew, did you not, that a suit had been commenced by the National Salt Company against the United Salt Company and the various stockholders of the United Salt Company, and certain holders of the certificates of indebtedness, to declare that the purchase by the National Salt Company of the United Salt Company stock was void; you knew that, didn't you? A. Yes.

Q. And was that the suit that you had a conference with Mr. Klein and Mr. Squire about? A. No.

Q. Well, what was the suit that you had the conference with them about? A. I saw Mr. Klein the day after this notice, and they only contemplated bringing an action for a receiver.

Q. Receiver of what? A. Of the United Salt Company.

Q. Well, that was a different action from the action I had reference to, Mr. Toby? A. Yes.

Q. There was an action which contemplated putting the United Salt Company in the hands of a receiver. The action to which I refer was an action by which the National Salt Company sought to set aside the transactions which resulted in the agreement of July 20th and of the issuance of these certificates of indebtedness? A. I have no recollection of talking that suit over with Mr. Brown, at all.

Q. Did you talk about that suit with Mr. Klein and Mr. Squire at all? A. No; not at all.

Q. Did you ever have any talk with Mr. Brown with reference to the suit to which I have referred, brought by the National Salt Company against the United Salt Company? A. Not to my knowledge.

Q. Did you see Mr. Brown in the fall of 1903, with reference to these certificates of indebtedness which you purchased? A. This matter was in the hands of Mr. Wilkie, and from that time on I don't recall any particular details of what I may have talked to him.

Q. You may have talked to him? A. I say I don't recall any particular details of what I may have said to him after that time.

Q. Did you talk with Mr. Wick about the same matter that you talked to Mr. Brown? A. I don't think so, and yet I may have. I don't recall it.

Q. When was it that you had your last talk with Mr. Wick with reference to these certificates of indebetedness? A. Why, at various times within the last three years, in a general way only.

Q. At any time, did you talk to him about the suit that I have referred to, in which the National Salt Company sought to set aside all these various agreements which have been put in evidence here? A. Not to my knowledge.

Q. Do you have any clear remembrance of what was contained in that circular issued by Stewart, Barr & Company, Exhibit 3? A. Not now.

Q. Do you know that the stock of the United Salt Company was deposited with the American Trust Company of Cleveland? A. I so understood.

Q. Did you know what the National Salt Company stock, which was to pay for the United Salt Company stock, was also deposited with the American Trust Company of Cleveland? A. I so understood.

Q. And what did you understand the purpose of these notes, as you call them, certificates of indebtedness, was?

Mr. Wilkie: I object to what this witness's understanding of the purpose was. It isn't testimony of the facts.

Question admitted. Exception.

A. They were notes representing a certain amount of money to be paid in installments pending the delivery of the National stock.

Q. Didn't you understand that they represented dividends on the stock of the National Salt Company?

Objected to. Question admitted. Exception.

A. Yes, and no. You can't declare dividends in advance of earning them.

Q. Take it as yes; what do I understand? A. The equivalent of dividends for the payments that were made. There was a note for the balance.

Q. What was to be done with the dividends of the National Salt Company during the time that these certificates of indebtedness were outstanding? A. That I don't know.

Q. Was the National Salt Company to declare dividends and was it to be paid to the holders of the trust certificates? A. These certificates simply carried the notes, on which certain payments were made and others were to be made.

Q. What was to be done with the dividends that were declared or to be declared by the National Salt Company on the stock that was paid for the stock of the United Salt Company? A. That I don't know.

Q. Will you look at that circular of Stewart, Barr & Company and see if you can refresh your recollection a little bit? A. These certificates were bought in accordance with this (referring to circular).

Q. What was your understanding? A. Whatever was expressed at the time. I have forgotten what it was.

Q. And you don't remember what you did understand about it? A. Whatever is expressed in there, I understood at the time (referring to Exhibit 3, first page).

Q. Did you understand that the certificates of indebtedness were in lieu of dividends on the National Salt Company stock which was to be paid for United Salt Company stock? A. I don't recall, unless it is expressed in that.

Q. Did you understand that there were no dividends to be paid to the holders of these trust certificates on the stock of the National Salt Company which was deposited with the American Trust Company as the purchase price of the stock of the United Salt Company? A. Again, I don't recall; only as is expressed in that; I don't recall.

Q. Did you expect that the National Salt Company was to pay dividends on the stock deposited in the American Trust Company as a part of the purchase price of the United Salt Company stock, and at the same time pay these certificates of indebtedness?

Objected to. Question overruled.

Q. Did you understand that the National Salt Company was to pay these certificates of indebtedness and at the same time pay dividends on the stock represented by the trust certificates in the hands of the holders of the certificates of indebtedness also? A. I answer, again, I don't know, except as mentioned in that.

Q. Did you tell parties for whom you purchased these various certificates all that you knew about the certificates? A. I did, and handed them that printed circular in connection with it.

Q. Did you see in addition any statements made in the newspapers with reference to these certificates before you purchased? A. I don't know now.

Q. Did you see any statements in the newspapers published by Stewart, Barr & Company prior to your purchase? A. The advertisement?

Q. Yes? A. Yes.

Q. Did you see any other printed memoranda or data with reference to these certificates in this transaction prior to the purchase, except the statement in the newspapers and the printed slip introduced in evidence, furnished by Stewart, Barr & Company, Exhibit No. 3? A. I presume the Stock Exchange records.

Q. Did you see statements made by Mr. White, the President of the company, other than those put in evidence? A. Printed statements?

Q. Yes? A. No.

Q. Did you see a statement made by Mr. White to the following effect: "This agreement of July 20, 1899, contemplated the payment semi-annually for a period of five years of a sum of money which would be the equivalent of seven per cent per annum on preferred and ten per cent per annum on common stock of the National Salt Company, so deposited with the American Trust Company. The agreement provides that if the amount of dividends declared by the National Salt Company on such stock held by the American Trust Company are not equal to the sum above referred to, then the National Salt Company is to remit to the American Trust Company whatever deficit may exist. The total amount of the dividends so assured was evidenced by an instrument which is best described as a detached interest coupon, but which, for the want of a better name, was at one time inappropriately called 'certificate of indebtedness,' representing semi-annual dividends on the stock of the National Company for the period of five years"? A. I did not.

Q. Did you ever see any statement? A. I don't recall that.

Q. Did you ever see any statement substantially to that effect? A. Unless contained in that circular issued by Stewart, Barr & Company.

Q. Was the stock of the National Salt Company on the market at that time? A. Yes.

Q. Both preferred and common? A. I think it was, on the unlisted department of the Stock Exchange.

Q. Wasn't it on the listed, too? A. Well, in the Stock Exchange, but under what was called the Unlisted Department.

Q. Do you remember at what that was quoted at that time—about the time of these purchases?

Objected to as immaterial and not the best evidence. Question admitted.

A. I don't recall the exact figures.

Q. Was it at a higher rate or a lower rate than the purchase price of these securities under the agreement of July 20?

Objected to. Question admitted. Exception.

A. I don't know, because the stocks were too inactive.

Q. You don't know of your own personal knowledge? A. Because it was too inactive, I don't know.

Q. You just said a moment ago there was a good reason why the stock itself should be higher than the price of the units. Will you explain that?

Objected to. Question admitted.

A. The quotations of the National Salt Company preferred and common stock market were very inactive and widely quoted. If they did sell at a higher price combined, which I think they did, it was explained by the fact that those certificates of indebtedness and the National Salt certificates attached were practically un-

saleable, except at this particular time. They had no market. Consequently, a man in buying these realized that he was getting a higher rate of interest, but a lack of market, and consequently making a long time investment, whereas the certificates listed on the stock exchange he had a ready market to buy and sell at any time.

Hearing adjourned to Friday, July 15th, 1904, at 10:30.

Hearing adjourned from July 15, 1904, to July 21, 1904, at 10:30 A. M., and resumed on that day.

Appearances:

Mr. Wilkie, for the claimants.

Mr. Twombly, for the Receivers.

Examination of Mr. George P. Toby continued, by Mr. Wilkie:

Q. Mr. Toby, have you looked up your records since the last hearing to determine just when you made the purchases of the debt certificates of which you testified? A. I have.

Q. Now, can you testify, refreshing your recollection from them, exactly when you made these purchases? A. On the 27th of March, 1901, I bought 100 shares, each, preferred and common stock of the National Salt Company and debt certificates, two for $1225 and two for $1750. These were purchased from Stewart, Barr & Company and delivered to Messrs. Woerishoffer & Company, 20 Broad Street, against payment of check for $11,500. The delivery of these securities was made on March 28, 1901. On March 29th, I bought from Stewart, Barr & Company

250 shares, each, preferred and common stock of the National Salt Company, with debt certificates, two for $2800, less $350 paid 1/2/01 (net amount $2,-450), and one certificate of indebtedness for $1400, less $175 paid 1/2/01 (net amount $1225), two certificates of indebtedness for $4000, less $500 paid 1/2/01 (net amount $3500), and one certificate of indebtedness, $2000, less $250 paid 1/2/01, net amount $1750). The 29th being Friday, and no deliveries being made on Saturday or Sunday, delivery was made by Stewart, Barr & Company to Woerishoffer & Company on Monday, April 1, 1901, against payment of their check for $28,750.

Q. When you say in this matter, that you bought shares of preferred and common stock of the National Salt Company, do you not mean that you bought the trust certificates of the American Trust Company of Cleveland, Ohio, referred to in the circular of Stewart, Barr & Company for an equivalent number of shares of stock of National Salt Company? A. Yes.

Q. When was delivery of these certificates of indebtedness and trust certificates for stock made to your clients or customers? A. To the best of my recollection, the same day.

Q. And they paid by check to Woerishoffer & Company for the amount that Woerishoffer & Company had advanced for taking up these securities at the time from Stewart, Barr & Company? A. They did.

By Mr. Twombly:

Q. Do your books show such deliveries to your customers? A. The books of Woerishoffer & Company.

Q. The books of Woerishoffer show when the stock was delivered to your customers? A. Yes.

Q. Have you examined the books of Woerishoffer & Company to find out exactly the dates on which de-

livery was made to your customers? A. No, as Woerishoffer & Company have recently dissolved.

Q. Don't you know which member of the firm has their books? A. I think so.

Q. Who has them? A. Mr. Burke, I think. C. H. Burke. He is probably the liquidating partner.

Q. Will you examine these books and if there is any correction which you wish to have in your testimony notify me and have it made? A. Yes.

Q. You have stated that you saw certain advertisements with reference to the trust certificates and certificates of indebtedness, &c., in certain of the New York papers. Do you remember what papers they were? A. I don't recall any particular paper.

Q. Did you see it in The Post? A. I assume that the Post and Times and the Herald would be the most likely papers in which advertising of that character would be done.

Q. And those are your papers, that you take yourself, personally? A. The Post I took.

Q. Any others? A. I can't recall definitely.

Hearing adjourned to July 28, 1904, at 2 o'clock.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

On Bill, &c.

Examination of witnesses, &c., in the matter of the claim of Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, The Union Trust Company, a corporation, H. D. Quimby, Frank Taylor, C. W. Smith and E. G. Miner, all of whose claims have been duly presented under an order of the Court of Chancery, dated the 27th day of June, 1904, at the office of Frank P. McDermott, one of the Receivers, 259 Washington St., Jersey City, N. J., on Friday, the Eighth day of July, nineteen hundred and four.

Appearances:

Joseph G. Deane and George R. Beach, for claimants.

Henry B. Twombly, for the Receivers.

Upon consent of the attorney for the claimant and the attorney for the Receivers, the hearing in above matter is adjourned to Friday, July 15, at 11:30 A. M.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill, &c.

In the matter of the claim of Erickson Perkins and Erickson Perkins, as administrator of Sarah A. Perkins, deceased, whose claims have been duly presented pursuant to an order of the Court of Chancery, dated the 27th day of June, 1904.

Examination of witnesses, &c., on Friday, the eighth day of July, nineteen hundred and four, at the office of Frank P. McDermott, one of the Receivers, 259 Washington Street, Jersey City, N. J.

Appearances:

Joseph G. Deane and George R. Beach, for claimants.

Henry B. Twombly, for the Receivers.

Upon consent of the attorney for the claimants and the attorney for the Receivers, the hearing in above matter is adjourned to Friday, July 15, 1904, at 11:30 A. M.

IN CHANCERY OF NEW JERSEY.

In the Matter

of

The claims of Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, The Union Trust Company, a corporation, H. D. Quimby, Frank Taylor, C. W. Smith and E. G. Miner.

In the Matter

of

The claim of Erickson Perkins and Erickson Perkins, as administrator of Sarah A. Perkins, deceased.

Examination into the above claims on Friday, July 15, 1904, at the office of Frank P. McDermott, one of the Receivers of the National Salt Company, 259 Washington Street, Jersey City, N. J.

Appearances:

For claimants, Joseph G. Deane and George R. Beach.

For Receivers, Henry B. Twombly.

Counsel of claimants offer in evidence the order of the Court of Chancery made on the 27th day of June, 1904, granting the claimants leave to file their claims with the Receivers within five days from that date.

This order is printed at page 35 of this record.

ERICKSON PERKINS, a witness produced on the part of the claimants, being duly sworn according to law, on his oath saith:

Examined by Mr. Deane:

Q. Where do you reside, Mr. Perkins? A. Rochester, New York.

Q. And you lived there in the spring of 1901? A. I did.

Q. What was your business at that time? A. Banker.

Q. In Rochester? A. Yes, sir.

Q. When was your attention first called to the National Salt Company and its certificates of indebtedness? A. The latter part of February or early part of March—an advertisement in the Evening Post, Stewart Barr & Company.

Q. What did you do then? A. I wrote to Stewart Barr and asked them for facts, or rather, information on the subject.

Q. Did you receive a reply from them? A. Yes.

Q. And did you receive a prospectus from them? A. Yes.

Q. I show you a paper purporting to be a prospectus of Stewart Barr & Company, and ask if that is the paper you received, or is similar to the paper you received? A. Yes, this is the same or similar.

Paper offered and received in evidence. It is printed at page 269.

(This exhibit is the same as Claimants' Exhibit 3 in the claims of Brown and others, represented by Mr. Wilkie, and duplicate printing thereof is hereby waived.)

Q. After you received this prospectus, did you have an interview with Stewart Barr & Company? A. Yes; sometime after that.

Q. Do you remember about when that was? A. About the 23d of March, I think.

Q. Who did you see? A. A man named Fisher, one of the members of the firm.

Q. What inquiries, other than Stewart Barr & Company, did you make in reference to these Salt certificates? A. I asked a friend of mine to write to Mr. White, the president of the company, inquiring about them. This man was already a large holder of the stocks of the Salt Company and a friend of Mr. White.

By Mr. Twombly:

Q. Who was it? A. E. Frank Brewster of Rochester.

By Mr. Deane:

Q. Any other inquiries or investigations in reference to these certificates and the condition of the Salt Company? A. I asked Mr. Marshall, of McIntyre & Marshall, New York.

Q. Did you see the report issued by the Stock Exchange in reference to these certificates? A. Mr. Fisher showed me that report.

Q. Is this the paper, or a copy of the papers, that you saw (shown papers marked for identification, Perkins 1 and 2; these are the same as Claimants' Exhibits 4 and 5)? A. Yes; I saw Perkins Exhibit 2, but I don't remember whether I saw Exhibit No. 1 or not.

Q. Did you make any other inquiries? A. I asked several people about the standing of the National Salt Company. I don't remember the facts of that now. Among others, Mr. Powers, who was secretary of the Fidelity Trust Company of Rochester.

Q. Did you purchase from Stewart Barr & Company any of these certificates of indebtedness? A. Yes, I purchased them.

Q. When was this; do you remember? A. The latter part of March.

Q. 1901? A. 1901.

Q. The unit of purchase was what in these certificates? A. $115.

Q. And what did you receive for that? A. It was the American Loan & Trust Company of Cleveland, I think was the name of it—receipt for one share of National Salt Company preferred stock and one share of the common, and the notes of the National Salt Company for—I forget the exact amount. On $5,000 it amounted to over $2,000. I am only describing them as Mr. Fisher described them to me.

Q. Do you remember how much of these you purchased from Stewart Barr & Company? A. The face value of about $100,000—a little over $1,000—a premium; you know each thousand dollars of what they called face value I paid $1150, and my payments to them amounted to about $125,000.

Q. Do you know how many units you purchased, all told? A. Well, what do you mean by units?

Q. What I understand by unit is a share of preferred and a share of common and $59.50 of certificates of indebtedness? A. About 1065 shares of preferred, 1065 shares of common, and the accompanying notes, or certificates of indebtedness.

Q. When did you say that these purchases were made, Mr. Perkins? A. The latter part of March.

Q. And did you pay to Stewart Barr & Company the amount represented by these at 115? A. Yes, sir.

Q. When were those payments made, do you recall? A. Between the time the contract of purchase was made with Barr and, I think, the last payment was made, a small balance, about April 10th.

Q. But all of the payments were made prior to the 15th of April? A. Oh, yes.

Q. And all that had been contracted for in March? A. Yes.

Objected to by Mr. Twombly on the ground that if the contract is in writing he would like to have the contract.

The Witness: Mr. Fisher has got the contract.

Question admitted.

A. I asked Mr. Fisher to hold them for me until the first of April. This was in March. And he did hold them for me until the first of April.

By Mr. Twombly:

Q. The contract was in writing and consisted of a letter that you wrote to him; is that it? A. Yes.

Q. What was the date of that letter, do you know? A. Sometime in March.

Q. Have you a copy of the letter? A. No.

Q. Have you a letter book with a copy of the letter? A. No.

Mr. Twombly: I shall object to all these questions as to the contents, except the date of the contract.

The Receiver: The question will be admitted for the purpose of fixing approximately the date of the transaction. I don't mean to admit the contents of the contract.

By Mr. Deane:

Q. As a result of the investigation, or in course of your investigations, did you learn or receive any information that these certificates of indebtedness were invalid? A. No, sir.

Q. Did Stewart Barr & Company say anything to you in reference to the invalidity or otherwise of these certificates? A. No, sir.

Q. Did you have any knowledge at that time of any action brought or to be brought by the National Salt Company in reference to these certificates? A. No, sir.

Q. For whom were you purchasing these certificates, Mr. Perkins? A. For myself and friends.

Q. After you received the certificates did you turn them over to your various friends? A. I did.

Q. And received pay therefor? A. I did.

Q. When was this? A. As fast as I got the certificates. That was shortly afterwards—within a week or two.

Q. And at the time you turned these over to these various friends of yours, did you have any knowledge of the pendency of any suit to declare these certificates invalid? A. No, sir.

Q. Can you give me a list of the various persons to whom you turned these over, and the amount of your respective holdings? A. I can from memory; yes.

Q. And you can verify that? A. Yes.

Q. Do you remember how many you sold to Gertrude Powers? A. Well, what you would call a five unit lot.

Q. That would be five shares of stock, common and preferred, and $297.50 of debt certificates? A. Yes. Miner had 50 units, $2975 of debt certificates; C. Walter Smith, $2975; Frank Taylor, $2975; John E. Beckley, $2975; F. A. Whitney, $2975; M. C. Nichols, $20,825; H. D. Quimby, $5950; Union Trust Company of Rochester, $5950; S. A. Perkins, $2975; Gertrude Perkins Powers, $297.50; and Erickson Perkins, $8925.

Q. These debt certificates were accompanied by preferred and common stock in the proportion of one share of common stock and one share of preferred stock and $59.50 of debt certificates? A. I think that

is right. Three payments had been made when I bought these certificates.

Mr. Deane: I offer in evidence certificate of indebtedness of National Salt Company, dated Jersey City, February 11, 1901, for $122.50, standing in the name of John Hartness Brown, purporting to be endorsed by John Hartness Brown and by Stewart Barr & Company. (Marked Claimants' Exhibit 18, printed pp. 295 *et seq.*)

Also certificate of indebtedness of National Salt Company, dated Jersey City, February 11, 1901, for $175, in the name of John Hartness Brown, purporting to be endorsed by John Hartness Brown and Stewart Barr & Company. (Marked Claimants' Exhibit 19.) (These two constitute the Powers claim.)

Mr. Twombly: These are all not objected to, subject to my asking for proof of the endorsement subsequently.

Nichols Certificates.

Mr. Deane: I also offer in evidence certificate of indebtedness of National Salt Company, dated Jersey City, September 14, 1900, for $1400, in the name of F. B. Squire, marked "installment paid $175," purporting to be endorsed by F. B. Squire and Stewart Barr & Company. (Marked Claimants' Exhibit 20, printed at p. 299 *et seq.*)

Also certificate of indebtedness of National Salt Company, dated Jersey City, September 14, 1900, for $2000, standing in the name of F. B. Squire, marked "Installment paid $250," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 21.)

Also certificate of indebtedness of National Salt Company, dated Jersey City, November 27, 1899, for $8500, in the name of Herman Frasch, marked "First, second and third installments of $850 each paid," purporting to be endorsed by Herman Frasch and Stewart Barr & Co., and witnesses by J. C. Updegrove. (Marked Claimants' Exhibit 22.)

Also certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid $175," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 23.)

Also certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, November 27, 1899, for $8500, in the name of Herman Frasch, marked across the face, "First, second and third installments of $850 each paid," purporting to be endorsed by Herman Frasch and Stewart Barr & Co., and witnessed, J. C. Updegrove. (Marked Claimants' Exhibit 24.)

Also certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $2000, in the name of F. B. Squire, marked across the face, "Installment paid, $250," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 25.)

Also certificate of indebtedness, National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed by F. B. Squire and

Stewart Barr & Co. (Marked Claimants' Exhibit 26.)

Also certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed, F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 27.)

Whitney Certificates.

Also (the following certificates are those of F. A. Whitney), certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 15, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 28.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 29.)

John N. Beckley Certificates.

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 30.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed by F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 31.)

Union Trust Co. Certificates.

Certificate of indebtedness National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 32.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "$175 paid," purporting to be endorsed, F. B. Squire and Stewart Barr & Co. (Marked Claimants' Exhibit 33.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 15, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed, F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 34.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $2,000, in the name of F. B. Squire, marked "Installment $250 paid," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 35.)

New Jersey State Library

Henry D. Quimby Certificates.

Certificate of indebtedness, National Salt Company, dated Jersey City, New Jersey, September 15, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 36.)

Certificate of indebtedness National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed F. B. Squire, Stewart Barr & Company. (Marked Claimants' Exhibit 37.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 38.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 39.)

Frank Taylor Certificates.

Certificate of indebtedness of National Salt Company, dated Jersey City, N. J., September 15, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 40.)

Erickson Perkins, Direct

Certificate of indebtedness, National Salt Company, dated Jersey City, New Jersey, September 15, 1900, for $2000, in the name of F. B. Squire, marked "Installment, $250, paid," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 41.)

C. Walter Smith Certificates.

Certificate of indebtedness of National Salt Company, dated September 14, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 42.)

Certificate of indebtedness, National Salt Company, dated Jersey City, N. J., September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid, $175," purporting to be endorsed F. B. Squire, Stewart Barr & Company. (Marked Claimants' Exhibit 43.)

Edward G. Miner Certificates.

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 14, 1900, for $1400, in the name of F. B. Squire, marked "Installment paid $175," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 44.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, September 15, 1900, for $2000, in the name of F. B. Squire, marked "Installment paid, $250," purporting to be endorsed F. B. Squire, Stewart Barr & Co. (Marked Claimants' Exhibit 45.)

Erickson Perkins, Direct

Sarah A. Perkins Certificates.

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, March 6, 1901, for $1225, in the name of Sarah A. Perkins. (Marked Claimants' Exhibit 46.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, March 6, 1901, for $1750, in name of Sarah A. Perkins. (Marked Claimants' Exhibit 47.)

Erickson Perkins Certificates.

Certificate of indebtedness, National Salt Company, dated Jersey City, New Jersey, April 1, 1901, for $3500, in the name of Erickson Perkins. (Marked Claimants' Exhibit 48.)

Certificate of indebtedness, National Salt Company, dated Jersey City, New Jersey, April 1, 1901, for $2450, in the name of Erickson Perkins. (Marked Claimants' Exhibit 49.)

Certificate of indebtedness, National Salt Company, dated Jersey City, New Jersey, April 1, 1901, for $1225, in the name of Erickson Perkins. (Marked Claimants' Exhibit 50.)

Certificate of indebtedness of National Salt Company, dated Jersey City, New Jersey, April 1, 1901, for $1750, in the name of Erickson Perkins. (Marked Claimants' Exhibit 51.)

It is admitted by the solicitor of the Receivers that no payments have been made on account of these certificates except as endorsed upon the certificates themselves.

Erickson Perkins, Cross

CROSS-EXAMINATION by Mr. Twombly:

Q. Mr. Perkins, do you remember the contents of the advertisement in the "Post" that you saw in reference to these certificates prior to the purchase thereof? A. I remember the heading.

Q. I have got a copy of an advertisement, and I will ask you if you remember (witness shown advertisement)? A. That is not what I saw.

Q. You got certain information, didn't you with reference to these certificates, from Stewart Barr & Company? A. Yes.

Q. From what member of the firm of Stewart Barr & Company did you get your information? A. Fisher.

Q. Anybody else? A. No.

Q. Did you see Popper,—employed by that firm as I understand? A. No.

Q. Do you remember just what information you received from Fisher? A. The first lot of certificates I bought I bought by correspondence.

Q. Have you that correspondence? A. No. I am sorry to say I am pretty careless. I may have some of it, but if I have it is by chance. I can look it up.

Q. Will you? A. Yes. Prior to paying for the first lot of certificates of April 1st I stopped in at Stewart Barr & Company's and in the meantime I had made inquiries as to the National Salt Company and was favorably impressed. Then in my conversation with Mr. Fisher he was so strongly of the opinion that these securities were gilt edged that I agreed to buy about $80,000 additional.

Q. I show you this advertisement, made by Stewart Barr & Company in The Sun, under date of January 27, 1901? A. I never saw that.

Q. Did he show you at any time any printed matter other than what your counsel has put in evidence.

with reference to these certificates? A. He showed me the last statement of the National Salt Company brought down to date.

Q. I show you a statement of the National Salt Company with reference to this United Salt Company transaction, and ask you if you remember seeing a statement similar to that. I would like to have you read it all? A. I don't remember the statement now presented to me, but I do remember the one marked Perkins' Exhibit No. 2, and the statement of earnings of the Company of that date.

Q. Is there anything in the statement that I show you now, Receiver's Exhibit 1 for identification, that was not told you by Stewart Barr & Company or which you did not know prior to your purchase of those securities?

Mr. Deane: I object to that, on the ground of the form of question more than anything else. It is almost impossible for him to answer that.

A. I don't think I can answer that question. There are so many things in here.

Q. Read it over and give us your best recollection? A. The only thing I remember is that Stock Exchange statement and the pamphlet of Stewart Barr & Company and the statement of earnings. That is all I remember about it. The advertisement in the Evening Post was headed "What are National Salt Certificates? For further information, &c., inquire." It was a small advertisement.

Q. Do you remember whether it was like the advertisement I have shown you? A. No; it was not like that at all. It was "What are National Salt Certificates?"

Q. What was your understanding of these certificates? Did you understand that they were to represent the dividends on the stock that you received?

Mr. Deane: I object, the understanding of the witness being not at all competent or relevant.

(Question admitted.)

A. I thought I was buying the stock,—preferred and common stock of the National Salt Company, and the notes of the National Salt Company payable semi-annually in installments.

Q. You knew that the Salt Company was declaring dividends, didn't you?

Objected to.

A. Yes; I had some stock in the Salt Company, besides,—regular stock in the Salt Company.

Q. And you have already stated that one reason why you bought these certificates was the fact that you knew that the National Salt Company had declared dividends right along? A. Yes, and, therefore, their notes would be good.

Q. Did you understand that you were to receive dividends on these certificates of stock that you bought?

Objected to. Admitted.

A. I can't see where dividends could come before me at all. I had nothing to do with dividends. There was no way I could get dividends. There was no earthly way, on the facts of the case, or on the certificates, or on the stock, where I could get dividends.

Q. You were familiar before you bought the stock with the statement in the Claimants' Exhibit No. 3? A. I read that statement; yes, sir.

Q. Had you read these various documents contained in Claimants' Exhibit No. 3? A. Yes; I read that document.

Q. All through? A. All through.

Q. Familiar with every part? A. No; I am not familiar with every part.

Q. Didn't you understand that the purpose of the trust certificates, or the certificates of indebtedness, was to insure the payment of dividends on the stock in question for five years, during the formative period of the Company?

Objected to. Question admitted.

A. I don't know that I can answer that. I can't go beyond this statement. I bought the stock and bought the notes.

Q. You were a defedant in the suit brought in the State of Ohio, Court of Common Pleas, Cuyahoga County, by the National Salt Company against the United Salt Company and others? A. Personally?

Q. Personally? A. I don't know. I don't remember. I remember that Sarah A. Perkins was.

Q. Don't you remember that you appeared by Kline, Carr, Tolles & Goff? A. I turned the matter over to my lawyers in Rochester, Foote & Havens, and they turned it over to Kline.

Q. When you say Kline you mean Kline, Carr, Tolles & Goff? A. Vergil P. Kline's firm. I can't remember what it was.

Q. I only want to get the fact that you were the same Perkins? A. I am the same Perkins.

Q. You were the same Perkins who was a defendant in that suit? A. Yes.

RE-DIRECT by Mr. Deane:

Q. As soon as you received notice of the suit you turned the matter over to your attorneys? A. No; as soon as it was brought to my knowledge I turned it over to my attoneys.

Q. And they have had charge of it since? A. I don't know whether I wrote first or whether Kline wrote.

Q. And you haven't had anything to do with the details of it since? A. I knew nothing about it from that day to this.

By Mr. Twombly:

Q. Did you know that Mr. Kline did appear for you in that suit,—his firm? A. I suppose he did. I don't know anything about it.

Q. Did you authorize your attorneys to employ Mr. Kline to defend this suit for you? A. I don't know. I just placed it in their hands.

Q. You knew that he had placed the matter in the hands of Mr. Klein? A. I supposed that he did.

Q. And you never objected to his putting it in the hands of Mr. Klein? A. Not the slightest.

By Mr. Deane:

Q. When did you first learn of the pendency of the suit in Ohio, do you remember? A. I think in the early part of May, 1901.

Q. Was it before or after you had purchased these certificates from Stewart Barr & Company? A. Afterwards.

Q. And at the time of the purchase you knew nothing of the pendency of this suit? A. Nothing, whatever.

Q. And at the time that you turned over the certificates to your various friends did you know of the pendency of this suit? A. Not that I remember of.

By Mr. Twombly:

Q. What information you had with reference to these trust certificates, did you inform these other people for whom you bought them about the status and whatever you knew about them? A. Not fully. I simply said that it was a good thing and I was going to buy some and we had better hurry and get on the work.

Q. Did you give them a copy of the statement that Stewart Barr & Company gave you? A. No.

Q. They bought this property through you as agent? A. Absolutely, on my recommendation, I am sorry to say.

By Mr. Deane:

Q. You didn't know of the pendency of this suit when you turned the property over to them? A. No.

Hearing adjourned to July 28, 1904, at 2 o'clock.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

} On Bill &c.

In the matter of the claims of Edwin L. Brown, Henry Wick, Otis, Wilson & Company and C. H. Wilcox.

In the matter of the claims of Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, The Union Trust Company, a corporation, H. D. Quimby, Frank Taylor, C. W. Smith and E. G. Miner.

In the matter of the claims of Erickson Perkins and Erickson Perkins as administrator of Sarah A. Perkins, deceased.

Examination resumed in the matter of the above claims, before the Receivers, at the office of Frank P. McDermott, one of said Reecivers, 259 Washington Street, Jersey City, N. J., on Thursday, the 28th day of July, 1904.

Appearances:

George R. Beach and Mr. Wilkie for the claimants Brown *et al,* and Mr. Deane, for the claimants Gertrude P. Powers *et al.* and Erickson Perkins.

Mr. Twombly, for the Receivers.

Mr. Wilkie offers in evidence the following extract from the books of Woerishoffer & Company, 20 Broad St., New York:

"1901, March 28. Received from E. L. Brown $11,500. April (same year) Received from American Exchange National Bank $11,500. (Same date) Received from Henry Wick $11,500. (Same date) Received from Post & Flagg $5,750. Total $40,250.

CONTRA.

March 28, 1901, paid George P. Toby $11,500;

April 1, paid Stewart Barr & Company $28,750. (Same total of) $40,250."

The counsel of the several claimants announce that this completes their proof, reserving the right, however, at a subsequent hearing, to prove the signatures endorsed on the several certificates of indebtedness, if required.

On behalf of the Receivers Mr. Twombly offers in evidence a certified copy of the Charter of the Company and the By-Laws. (These documents are printed as a part of the record in the Ohio suit.)

Mr. Twombly: I further offer in evidence a copy of the evidence and testimony now before the Court of Chancery in the matter of the appeal of the American Trust Company, the said testimony including copy of the Anti-trust law of the State of Ohio, the petition or bill of the National Salt Company in the Cuyahoga

County Court against the American Trust Company, Herman Frasch, F. B. Squire, John Harkness Brown, H. A. Hutchins, Sarah A. Perkins, Erickson Perkins and others, together with the answer and cross petition of the American Trust Company, and the decree of December 13th, 1903. (This is offered as the equivalent of, and is to have the same force and effect, as testimony actually given in this case.)

Mr. Wilkie: This offer is objected to as irrelevant to the issues being here heard before the Receivers, in regard to the claimants whom I represent, and as incompetent, unless it is first shown that the claimants whom I represent were parties to that action in some way.

Mr. Deane: I make the same objection, except on behalf of the claimants Perkins.

(Record offered, admitted and marked for convenience Receivers' Exhibit 1.) (The decree is hereinafter printed as a part of Receivers' Exhibit 6.)

It is admitted that Erickson Perkins was not a party to the original bill filed, and was made a party by supplemental bill filed on the 15th of April, 1901.

ALONZO M. SNYDER, a witness on the part of the Receivers, being duly sworn according to law, on his oath saith:

Examined by Mr. Twombly:

Q. Mr. Snyder, you are a counsellor-at-law of the State of Ohio and have been so for many years, I understand? A. Since 1887.

Q. You are familiar with the laws of the State of Ohio with reference to the anti-trust? A. Yes.

Q. And also familiar with the practice and laws in connection with the practice in your courts? A. I think so.

Q. You are in active practice and have been all this time? A. Ever since 1887.

Q. Were you one of the attorneys of record of the National Salt Company in the case in the Court of Common Pleas, Cuyahoga County, entitled The National Salt Company vs. The United Salt Company *et al.*? A. I personally handled the litigation.

Q. Was the Court of Common Pleas a court of competent jurisdiction of the subject-matter in that suit?

Mr. Wilkie: What do you mean by "competent?"

Mr. Twombly: Full and complete.

A. Yes, sir.

Q. Will you tell me when the suit of the National Salt Company against the United Salt Company was commenced? A. The original bill was filed the third of April, 1901.

Q. The precept was issued the same time? A. The same day.

Mr. Deane: Please note my exception to this entire line of testimony as irrelevant and immaterial as against the claimants other than Perkins.

Q. Do you know whether or not the defendant Squire appeared in that suit?

Objected to as immaterial by Mr. Wilkie.

A. He filed an answer and cross petition.

Mr. Wilkie: On behalf of the claimants whom I represent, in this proceeding, I object to any testimony in reference to a suit brought in the Court of Common Pleas of the County of Cuyahoga by the National Salt Company

against the United Salt Company and other defendants, on the ground that these claimants were not parties to that action or privy to it. This objection is to cover all the testimony in that regard, and for all the parties.

Mr. Deane: I make the same objection, except as to the Perkinses, who were parties to the suit.

Mr. Twombly: I offer in evidence an exemplified copy of the answer and cross petition of Herman Frasch.

(It is agreed that a copy may be furnished instead of the exemplified copy.)

Marked "Receivers' Exhibit 1-A."

I offer in evidence an exemplified copy of the answer and cross petition of F. B. Squire.

Marked Receivers' Exhibit 2.

Q. Was John Harkness Brown also a party to the suit? A. He was.

Q. And did he file an answer and cross petition? A. Yes, sir.

Mr. Twombly: I offer in evidence an exemplified copy of the answer and cross petition of John Harkness Brown.

Marked Receivers' Exhibit 3.

Q. Was Erickson Perkins also a party to this suit? A. He was made a party later by supplemental bill filed, I think, in the neighborhood of the 15th of April.

Q. Did he file an answer and cross bill? A. Yes.

Q. By whom did he appear? A. I think by Kline, Carr, Tolles & Goff.

Mr. Twombly: I offer in evidence exemplified copy of answer and cross petition of Erickson Perkins.

Marked Receivers' Exhibit 4.

Q. Was Sarah A. Perkins also an original party to the bill? A. I think so.

Q. And she also appeared by Kline, Carr, Tolles & Goff? A. Yes.

Mr. Twombly: I offer in evidence an exemplified copy of the answer and cross petition of Sarah A. Perkins.

Marked Receivers' Exhibit 5.

Q. Was H. A. Hutchins a party to the suit? A. He was.

Q. And was he served with process in that suit? A. He was served by publication, under our statute.

Q. In what manner under your law is service made by publication? A. An affidavit precedes an order of publication, which is made in a newspaper of general circulation in the county for six weeks, and a copy of it is also mailed to the address of the party being served, if known. If not known, it is simply stated "unknown."

Q. Was this done in accordance with the statute in the case of H. A. Hutchins? A. Yes.

Q. Do you know as a matter of fact, Mr. Snyder, whether or not the notice was sent in accordance with your law to Mr. Hutchins? A. I personally wrapped the papers and put stamps on them and delivered them to the clerk, who mailed them.

Q. And was he properly and legally brought in as a party to this suit, under your statute? A. Under our statute.

Mr. Twombly: I offer in evidence a copy of the record of the Court of Common Pleas for Cuyahoga County in the State of Ohio.

Marked Receivers' Exhibit 6.

Q. Do you remember the date when that notice was mailed to Mr. Hutchins? A. I wouldn't recall it, except it shows on the docket the 16th of April, 1901. It followed very shortly after.

Q. Was this action brought on for trial in that Court in accordance with the laws of Ohio? A. It was.

Q. And the practice of your court? A. Yes.

Q. Was evidence put in in that case? A. It was.

Q. And subsequently the judgment which has been offered in evidence, of December 13th, was entered by the court? A. Yes. The latter part of last year; I don't remember the exact date. (After referring to papers) December 9. It was heard a few days prior to December 9th, and the order was signed on the 9th, and the judgment was entered on the docket a few days later.

Q. Has any appeal been taken from that judgment? A. No appeal.

Q. Has the time gone by within which an appeal might be taken under your law? A. Long since; yes.

Q. Has any motion been made for a new trial? A. No new trial.

Q. Has the time gone by within which they could make such motion? A. Yes.

Q. Do you know how many certificates of indebtedness of the National Salt Company in amount remained outstanding prior to the entry of this decree? A. I think there were, in round numbers, $725,000.

Q. Do you know the amount of the certificates of indebtedness against which this judgment was specifically directed? A. $631,000, in round numbers.

(It is agreed that the exact figures may be put in.)

Q. Do you know how many certificates in amount have been turned in in pursuance of this decree, and cancelled? A. $456,201.46.

CROSS-EXAMINATION by Mr. Wilkie:

Q. Do you know, Mr. Snyder, whether Mr. C. H. Wilcox is a party defendant in that action? A. I think not.

Q. Do you know whether Otis Wilson & Company, of Chicago, Illinois, are parties defendants in that action? A. I think not.

Q. And whether Mr. Henry L. Wick is a party defendant in that action? A. Of Youngstown?

Q. Yes. A. I think not.

Q. And whether Mr. Edmond L. Brown is a party defendant in that action? A. There was a Brown,—Browne,—Harold J. Browne. There was a J. C. Brown, too.

Q. Mr. Edmond L. Brown? A. I think not. Two Browns, but not that.

Q. As I remember your testimony, you said that Mr. Frasch was made a defendant to the action and that he appeared in the action and filed a cross-bill, or an answer? A. Yes; an answer.

Q. Mr. Frasch was a holder at one time of a number of the certificates of indebtedness? A. A very large amount.

Q. Do you know whether or not he transferred these certificates of indebtedness to other parties? A. Subsequently, you mean?

Q. At any time? A. At the time we filed the suit a list was furnished by the Trust Company which showed Mr. Frasch to be the owner. I learned later, — a considerable time after the suit was filed, that Mr. Frasch had disposed of, I think, all of his certificates. That is what I heard.

Mr. Twombly: I object to what Mr. Snyder heard, and ask to have that portion of his answer stricken out.

Objection overruled.

Q. You say that you got a list from the Trust Company; I suppose you refer to the American Trust Company? A. The American Trust Company, Trustee.

Q. Did you get from that Company a list of the holders of certificates of indebtedness or notes of the National Salt Company? A. Yes.

Q. You are familiar with these debt certificates, are you not? A. I have seen a number of them.

Q. You know that these debt certificates were transferred by the National Salt Company, and not by the Cleveland Trust Company? A. Yes, but the Trust Company kept a record of them in some way. I also had a list sent me by the National Salt Company, which were checked up by the Trust Company.

Q. Did you know that Mr. Frasch had transferred any of these debt certificates prior to the filing of your bill? A. No.

Q. You had no knowledge at the time of bringing this suit that Mr. Frasch had transferred any of these certificates at that time we filed the bill? A. Yes.

Q. And is that true of Mr. Hutchins? A. My information was that all of the parties named had certificates at the time we filed the bill.

Q. Did you know that these certificates of indebtedness had been traded in by the New York Stock Exchange and by stock exchange houses in New York City prior to the filing of your bill? A. No. It came later to me that Stewart Barr & Company had some of them.

Q. When did you learn that Stewart Barr & Company had been trading in these debt certificates?

Objected to. Question admitted.

A. Sometime after the bill was filed. I can't say just how soon. It came to my attention that Stewart

Barr & Company were probably holders of some of the certificates, and I think I made them parties.

Q. Stewart Barr & Company you made parties? A. Yes; and served them by publication.

Q. Did you know at the time you made them parties that they were brokers dealing with these for principals? A. No. A supplemental list was furnished me, and I simply made them parties and brought them in in the regular way.

Q. Who furnished you that supplemental list? A. I think I got it from Mr. Hill, the American Trust Company man. I asked him to keep me posted if any more of them came in, and I think he sent me them, if I remember.

Q. When did you first have knowledge of the fact that parties other than the parties to this bill were holders of debt certificates? A. I thought we had them all in. From the information that I had I thought we had all of the holders, and when the matter of putting on a decree came up and the matter was reported to me by Mr. Quail and Mr. Morley, representing a number of them, about October or September, 1903, the question came up as to the entering of the decree and the representation of some of the certificates here, and they reported to me that they had seen you gentlemen who were representing some certificates which Squire and Frasch had sold, that you gentlemen were making no objection to the entry, because you expected to hold Squire and Frasch for having sold something of no value. I think that is perhaps my first information.

Q. Are you quite sure that that is the first information you had of the fact that there were other certificate holders than those that were joined to your action and brought into the matter by your supplemental bill? A. I think so. I kept asking. I wrote a gen-

eral letter asking for a revised list, and I understood them to say finally that they had refused to transfer or permit any transfers to be made.

Q. Did you have any conference with Mr. Archibald S. White, the president of the National Salt Company, in the summer of 1901, with regard to this action, or in regard to these certificate holders? A. Not in 1901. I didn't know Mr. Archibald S. White.

Q. Did you have any conference with Mr. Clark, of Clark & Culver, during the summer of 1901, in regard to the certificate holders? A. Not in regard to certificate holders, but in other matters.

Q. You had conferences with him both in New York and Cleveland, both in the summer and early fall of 1901? A. I saw him in his office once in New York. I can't quite make the date connect. I saw him once or twice in Cleveland in connection with this litigation. He came on to file a demurrer which was filed to our bill.

Q. But in your conversation was there nothing said in regard to other certificate holders—other than those made parties? A. I think not.

Q. To the best of your recollection your first information that there were any holders of these certificates other than in your bill was in September or October, 1903? A. I know of nothing prior to that.

Q. You had a conversation with Mr. Quail and Mr. Morley at that time and they told you? A. Yes.

Q. Who did they say were not objecting, specifically? Mr. Quail and Mr. Morley both told me that your firm, Gould & Wilkie, and Mr. Bean, represented quite a few of the certificate holders,—principaly those that had acquired, as I understood them, through Frasch and Squire, and they had come on here and had shown to you gentlemen a copy of the decree proposed to be put, and that you were making no objection to it, because you really wanted something of that kind, be-

cause you could get after the people who sold them to you, and I believe later on Mr. Quail told me that one of you gentlemen,—I forget which,—was about to stop at Cleveland about it; that you were talking about writing some letters to the Trust Company saying you would make no claim against it if a decree was put on in terms quoted. The Trust Company had raised some question about it, and in order to make itself safe some suggestion was made that you gentlemen write a letter to it saying that you made no objection and made no claim about it.

Q. Did either Mr. Quail or Mr. Morley say to you that they represented either the firm of Gould & Wilkie or the claimants who we represent, namely Mr. C. H. Wilcox, Otis, Wilson & Company, Henry Wick and Edmond L. Brown? A. I don't recall that they made such a claim,—the claim being that they had consulted with you with reference to the putting on of a decree and it seemed to be satisfactory. At least no protest came, and we went on and had our hearing and put on a decree.

Q. Then at that time in September or October, 1903, you knew there were certificate holders who were not parties to your action who were represented by attorneys; isn't that so? A. Oh, yes.

Q. You don't make any effort to bring in those particular certificate holders, at that time or any time, did you? A. I didn't have their names. As I always conceived the suit, they were in by the American Trust Company.

Q. But you made no attempt, whatever, to bring them in? A. I didn't even know their names.

Q. The names of the attorneys were mentioned to you, either by Mr. Quail or Mr. Morley? A. Yes.

Q. And you knew that they were attorneys in New York and represented certain certificate holders? A. From what they said; yes.

Q. When this decree was entered, in December, 1903, it was entered by agreement between the parties, wasn't it? A. No; not strictly. We had a hearing, so as to have a decree in regular form,—not by consent. We had a regular trial. We had witnesses sworn, and the court who had decided the demurrer, Judge Sloan, heard the evidence and rendered a decree.

Q. The decree was carried out on the terms of the agreement? A. Yes; there was no dissent from it by any parties.

Q. You were aware of the fact that Kline, Carr, Tolles & Goff and Morley and other attorneys had been sending out circulars asking them to come in, that a settlement had been agreed to? A. I don't know what they were about. They were to secure expressions from all of the attorneys before the decree was put in. I think they did it, whether by circular or by letter.

Q. You never saw any of those circulars? A. I never saw any of the circulars.

Q. You didn't know that there was a circular with a perforated slip at the bottom, asking for the consent of the certificate holders to the proposed settlement of this litigation? A. I am not sure but maybe Mr. Morley did say he was going to, but I never saw it.

Q. The decree as entered carried out the terms of the settlement agreed upon by the various parties? A Yes, sir.

Q. There was no opposition on the part of the defendants? A. There was no opposition by anyone.

Q. The American Trust Company and its successor stood mute in the matter, neither acted affirmatively or negatively? A. They were notified of the hearing and took no part in it, whatever, except they were bound to do in the hearing.

Q. They distinctly refused to take any action in regard to this agreement; isn't that so? A. Well, not strictly so, although they were advised about it and had the decrees in their hands, looked them over. I went over it with Mr. Johnson. I went over it with Mr. Hogshead, of the firm of Johnson & Johnson, who appeared for the Trust Company, and asked them if they had any suggestions to make, and had numerous conferences with them in reference to them.

Q. Isn't it a fact that Johnson & Johnson, who were the parties representing the American Trust Company in that litigation, refused to take any action either for or against the decree, leaving the actual intervention to be taken by the actual holders of certificates? A. No. They filed an answer and cross-petition on behalf of all of the certificate holders, and Mr. Johnson said to me: "If the Court sees fit to order this, why that is the decree of the Court," and their firm didn't put their O. K. on the decree entered. They said they wanted it to appear as the order of the Court.

Q. This cross-petition was filed sometime in the year 1901, wasn't it? A. They asked for a considerable delay. They asked me on a number of occasions to extend the answer day, and they filed their answer later on. I don't know just when,—much later than some of the other answers (after referring to papers). It was verified in 1902, in March.

Q. Did you represent the receivers of the National Salt Company in the entry of the decree in December, 1903? A. I represented the National Salt Company. Under our practice the suit continues in the name of the original party, and I was all the time representing the National Salt Company.

Q. But that suit had devolved by the appointment of the receivers upon them, had it not?

Objected to.

A. Well, there was no change of parties.

Q. Who were your clients after the receivers were appointed, the Company, acting by its officers, or the receivers? A. I couldn't say. My instructions came the same as before.

Q. Who paid your bills? Did the receivers pay your bill, or the National Salt Company? A. The National Salt Company paid the bills until we came to the final distribution, when we took all the money which was there by the decree, so the National Salt Company, by having deposited the money, paid the bill.

Q. Did you have no communication with the receivers of the National Salt Company in regard to the entry of this decree? A. I don't think I ever had a communication from the receivers. Maybe I did.

Q. Did you have any communication with the attorneys of the receivers of the National Salt Company? A. If you will tell me who they were I will tell you.

Q. Putney, Twombly & Putney? A. Yes. Mr. Putney and Mr. Twombly, and Mr. Clark, and Culver.

Q. You know as a matter of fact that the settlement as carried into effect by the decre of December, 1903, was with the consent and approval of the receivers? A. I couldn't say that. I wasn't watching that end of it.

Q. Did you have any advices from Putney, Twombly & Putney to that effect? A. We had correspondence about it; I think so. I think so, or I shouldn't have entered it.

Q. You entered it with their approval and knowledge and more or less in accordance with their instructions? A. Well, I worked up the deal and submitted it to them.

Q. What was the deal? A. Closing the litigation, and restoring the parties to their original positions, and drawing the decree in accordance with that.

Q. What was the deal? A. The whole transaction is set out in our petition, and the Court overruled the demurrer and sustained the petition.

Q. A moment ago you said you advised Putney, Twombly & Putney after you had worked up the deal. A. That I had Kline, Carr and all the attorneys represented, ready to go on and have the decree entered.

Q. And that you communicated with the attorneys of the receivers of the National Salt Company? A. I communicated that with Putney, Twombly & Putney.

Q. And the decree was entered, as you said, with their full knowledge and approval? A. I think so.

CROSS-EXAMINATION by Mr. Deane:

Q. Under your statutes in Ohio how is a summons, or precept, served by publication? A. A praecipe is filed originally, and if it is made to appear by affidavit that the party cannot be served in the state publication by summons and is made and the publication is made for six weeks in a newspaper of general circulation, and following the first advertisement,—very shortly thereafter, a copy of it is mailed to the persons named in the order. The proof as to publication is made by the manager or someone connected with the paper who knows it has been published there, and filed with the court.

Q. And when is the service deemed complete? A. At the expiration of the six weeks.

Q. When did Erickson Perkins appear in this action? A. You mean when did he file an answer.

Q. Enter his appearance or file his answer, either? A. I don't remember the date the demurrer was filed. A general demurrer was filed by practically all of the defendants very shortly after the bill was filed—the amended bill, and we had a hearing on that and that

was held by the Court for decision a long time and then the answers were filed after his decision sustaining the bill.

Q. He didn't actually appear? A. He filed his answer April 5, 1902.

Q. And he wasn't required to appear by the bill until May 27, 1901? A. May 26 or 7,—about six or eight weeks afterwards.

Q. Why didn't you make unknown owners of these certificates parties to this suit? A. Because we thought we had all the owners.

Q. Could you under your practice have made the unknown parties. A. There is a provision for making unknown parties—whether it would apply to exactly this kind of a suit.

Q. That relates only to suits *in rem?* A. Yes.

Q. And this was a personal action? A. No, it was also *in rem*. We tied up the stuff. We had all the securities tied up in the Trust Company.

Q. You didn't have the certificates tied up in the Trust Company? A. We thought we had them.

Q. You didn't have the certificates physically there? A. No.

Q. The place at which they were and the holder —these weren't tied up? A. Had the trustee named in the certificate, which is always equivalent to the owner. We made these individuals parties as a matter of precaution. The trustee might have been sufficient, but we didn't want to take a chance on it.

Q. You spoke of having conversation in reference to certain attorneys representing owners of certificates, and that you stated that they had no objection to the decree. Can't you refresh your recollection sufficient to say whether that didn't refer entirely to Erickson Perkins and Sarah Perkins? A. The information that I had from Mr. Morley and Mr. Wail was that it re-

ferred to all of the certificates represented by Gould & Wilkie and Mr. Bean and yourself. We had already in on this matter some 90 per cent, or about 90 per cent. We understood that the remaining 10 per cent was represented pretty well by the firms I have mentioned —yourself and Gould & Wilkie, and my effort was to secure the co-operation of 100 per cent if possible, and so I suggested to them that while we had the consent of 90, and perhaps everybody was bound, it would be just as well to have the co-operation of these other people, and they made an effort to secure it. Quail happened to be in Europe at the time, which delayed the matter some, and we thought that we had the consent of all of the certificate holders when we went on with the decree.

Q. Was any evidence introduced on the part of the defendants in that case? A. No.

RE-DIRECT by Mr. Twombly:

Q. Were Messrs. Morley, Quail and Kline, attorneys for various defendants? A. Morley is associated with the firm of Kline, Carr, Tolles & Goff, and had really the actual charge of this matter for Kline, Carr, Tolles & Goff.

Q. Who are the attorneys for the Trust Company? A. M. B. & H. H. Johnson and T. H. Hogsett.

Q. Were they notified of the hearing on December 9, 1903? A. Yes.

Q. Did you do it personally? A. Mr. Quail did it.

Q. Do you know whether they knew the trial was to come off on that day? A. Yes. I had a conversation with Mr. Johnson the day prior to the hearing and I told him that the hearing would come up at ten o'clock the next morning, and Mr. Quail notified him or reported that he notified him, and he said: "Go ahead."

Q. You are familiar with the anti-trust law, you said, of Ohio? A. Yes.

Q. Has that been passed upon by your highest Court? A. Our Supreme Court; yes. Buckeye Pipe Line case, State of Ohio, found I think it is 61 Ohio, at page 520, if I remember.

Q. Has it been passed upon in this particular action? A. Yes; sustained in this action.

Q. In what way? A. The Court held that the Act was constitutional, and that the bill disclosed a state of facts which violated that act.

Q. That was on the demurrer? A. Yes.

Q. And Judge Sloan wrote the opinion? A. Yes.

Q. And the same judge made the final decree? A. Yes.

RE-CROSS by Mr. Wilkie:

Q. That statute is a penal statute, isn't it? A. Well, not entirely so. There is a penalty attached, but it also declares all agreements entered into in violation of it void.

Q. It is the Act known as Senate Bill 336, is it not? A. Yes.

Q. And it is entitled "to define Trusts and to provide for criminal penalties, &c.," is it not? A. Yes.

Mr. Twombly: I will admit for the purpose of this action that the signatures of the endorsees are the signatures of the payees named in the particular certificates.

Hearing adjourned to Thursday, September 22, 1904, at 10:30 A. M.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

State of Ohio,
Cuyahoga County, } ss.:

Be it remembered that on this 2nd day of May, in the year of our Lord One thousand nine hundred and five, at Cleveland, before me, George H. Kelly, a foreign commissioner of deeds for New Jersey, resident in said State of Ohio, appeared John E. Morley, Homer H. Johnson, Frank A. Quail and George B. Siddall, produced before me as witnesses in a suit now pending in Chancery of the State of New Jersey, wherein Chauncey H. Strickland is Complainant and National Salt Company is defendant, and I having first taken an oath fairly and impartially to take the depositions of witnesses in the said cause before George Cook Ford, a Notary Public, who is lawfully authorized to administer oaths and affirmations in this State and County, proceeded, pursuant to the notice a copy of which is hereto annexed, to take the testimony of said witnesses hereinafter named upon interrogatories put by Henry B. Twombly, Esq., who appeared on behalf of the Receivers, John L. Wilkie, Esq., who appeared on behalf of the claimants, Edwin L. Brown, Henry Wick, Otis, Wilson & Company and C. H. Wilcox, and Henry W. Bean, Esq., who appeared on behalf of Gertrude P. Powers, Morton C. Nichols, F. A. Whitney, J. E. Beckley, Frank Taylor, C. Walter Smith, Union Trust Company, Erickson Perkins, Sarah A.

Perkins, H. D. Quimby, Erickson Perkins, administrator and E. G. Minor, caused such interrogatories and the answers thereto to be reduced to writing by Lura M. Pomerine, she having first been duly sworn by Notary Public George Cook Ford to carefully, faithfully and impartially take the evidence of the witnesses hereinafter mentioned and to make a true and correct transcript thereof, and caused each witness to subscribe his deposition in my presence, as follows:

GEORGE H. KELLY,
Foreign Commissioner of Deeds
for New Jersey in Ohio.

It is stipulated and agreed by and between the attorneys for the parties hereto that the testimony taken herein shall be deemed to be taken simply as to the parties with whom the same is properly connected.

JOHN E. MORLEY, a witness produced on behalf of the Receivers, being duly sworn, deposes and says as follows:

Direct-examination by Mr. Twombly:

Q. Mr. Morley, you were connected with the firm of Kline, Carr, Tolles & Goff in the year 1903? A. Yes, sir.

Q. And during the whole of the year? A. Yes, sir.

Q. I understand they were attorneys of record for certain of the defendants in the suit in the State of Ohio, Cuyahoga County in the Court of Common Pleas, entitled The National Salt Company, plaintiff, against The United Salt Company, defendants? A. They were.

Q. And you are familiar with that suit? A. Yes, sir.

Q. Did you have charge of the various matters in connection with that suit? A. I had charge of some of the matters connected with it, and generally conversant with the subject-matter.

Q. In the fall of 1903, in connection with the journal entry which has been offered in evidence herein, dated December 9, 1903, did you have a conversation with Mr. Henry W. Bean, who is one of the attorneys for the claimants herein? A. I had a conversation with Mr. Bean with respect to the final decree in the case; I assume that is what you refer to.

Q. Journal entry, or decree? A. Yes, sir.

Q. When was that interview? A. Sometime during the summer of 1903.

Q. Can you state more definitely? A. I can only place it with reference to the date of Mr. Quail's arrival from Europe.

Q. Do you remember when that was? A. I should have said it was sometime during the late summer, possibly early fall of 1903.

Q. Could you remember the conversation that you had with Mr. Bean with reference to the proposed final decree or journal entry of December 13, 1903? A. I can recall the substance of it.

Q. Will you state what you said and what he said? A. I called at the office of Mr. Bean in company with Mr. Frank Quail of this city. We first informed Mr. Bean of the object of our visit. I do not recall whether I stated the object or Mr. Quail, but I presume we both had something to say about it.

Q. What was the object of your visit you told Mr. Bean? A. I stated to him that most of the defendants in the suit of the National Salt Company against The United Salt Company whom our firm, Kline, Carr, Tolles & Goff represented, were desirous of set-

tling the suit, and that an agreement had been worked out between the representatives of the National Company and ourselves by which it was agreed that a decree might be entered in the suit pending here adjudging the contract between the National Salt Company and the former stockholders of the United Salt Company, and the certificates issued thereunder to be invalid, finding that the National Salt Company had no claim against these certificate holders for dividends or installments of interest already paid, and ordering that these certificates be returned and the old stock of the United Salt Company turned back to the holders of the certificates in proportion to their respective interests.

Q. Did you have a copy of the proposed decree with you? A. I had a copy of the proposed decree. I said to Mr. Bean that although this proposed decree had been agreed upon by substantially all, or by a great majority of the defendants in the case, The American Trust Company, who was a defendant in the suit as Trustee for the certificate holders, would not consent to the entry of the decree unless all the certificate holders consented. I further stated that it was my understanding that he represented a number of these certificate holders who as yet had not consented to this settlement, and asked him to take the matter up with his clients and advise us with respect to their wishes in the matter.

Q. And what did Mr. Bean say? A. My recollection is that Mr. Bean said that he had been ill for sometime and that he was not very familiar with the salt situation at that time; that he represented a number of certificate holders who had purchased their certificates in the open market, I think he said from Stewart, Barr & Company, certificates that had formerly belonged to Messrs. F. B. Squire and Herman Frasch of this city, and that they had some notion of holding either Stewart, Barr & Company or Mr. Squire and

Mr. Frasch on some theory of implied guaranty in the sale of the certificates, and that he thought the interests of his clients were perhaps more along this line than in the Ohio litigation. He said he could not advise us just what position he would take in the Ohio suit, but stated that he could not see that so far as his present notion went, that his clients would care what was done in the Ohio suit.

Q. Did you leave a copy of the proposed decree with Mr. Bean? A. My recollection is that we did.

Q. Did you have any other interview with Mr. Bean subsequent to the one that you have just mentioned? A. I think we had an interview with Mr. Bean that same day, some time later. I think he was to make some effort to get into communication with one of his clients over the long distance telephone.

Q. What was said there, anything different from what you have stated? A. I think we afterwards called to find out whether he had any further information for us, and found that he did not.

Q. Did you have any other interview with him later on in the year? A. No, I do not recall ever having talked with Mr. Bean except on those two occasions.

Q. Did you have an interview with either Mr. Wilkie or some one in Mr. Wilkie's office about the same time that you had your interview with Mr. Bean? A. Yes, I called in company with Mr. Quail if I remember rightly, and we had a conference with some gentleman who purported to be connected with the office; it was not a clerk; it was some one who represented himself to be in a position to talk matters over.

Q. Did he apparently know all about the litigation, whoever it was? A. He knew about the litigation, but my recollection is he did not seem to be entirely familiar with all its phases.

Q. What conversation did you have with him, whoever he was? A. I stated to him, together with Mr. Quail, we both took part in the conversation—I would not want to say whether I said everything or not,—but between the two of us, we informed this gentleman of the object of our visit, stating it substantially as I have testified to, with respect to the conversation with Mr. Bean, and asked him if the parties represented by Gould & Wilkie had any objection to the entry of such decree.

Q. Did you show him the decree, that is, the proposed decree? A. I would not want to say whether we did or not; we had it with us, the scope of its terms —we did not leave a copy of it; whether we showed the gentleman the copy I wouldn't say.

Q. What was said by him? A. I might state that our purpose in going to Gould & Wilkie's office was a little different from that of going to see Mr. Bean in this respect; Mr. Bean represented the holders of certificates who were parties defendant in the suit here in Cleveland. Messrs. Gould & Wilkie, so far as I know, did not represent any one who at that time was defendant in this suit, but they did represent certificate holders who were not parties. The Trust Company were insisting that we procure consent from every one, whether they were parties to this suit or not, to the surrender and exchange of securities, as provided in the decree. And our object in seeing Messrs. Gould & Wilkie was to find out whether they would consent to such an arrangement.

Q. What was said by this gentleman representing Gould & Wilkie? A. The gentleman stated that the certificate holders represented by them had purchased their certificates from Stewart, Barr & Company, and that they conceived their best remedy lay in enforcing such rights as they might have against Stewart, Barr & Company, or Squire and Frasch, and that he

could not see that it made any difference what took place in the litigation here, or what sort of a decree were entered, since his clients were not parties to this suit.

Q. Anything further that you remember? A. Well, something was said about taking the matter under consideration and letting us know more definitely what their ideas about the matter were; it was some general talk along that line, I can't remember exactly.

Q. Did you see this gentleman from Gould & Wilkie's subsequent to that interview? A. No, I don't think I did.

Q. Your firm were attorneys of record for the Perkins people, were they, in the suit of the National Salt Company against the United Salt Company? A. Well, I believe we were, inasmuch as we filed answers in the suit for them. I never had any personal conversations with any of those persons. I can't say just what the employment of our firm was with respect to the suit, but we did file answers for them.

Q. Do you know who their attorneys were in Rochester? A. We corresponded with Foote & Havens with respect to the claims of Mr. Perkins.

Q. Have you a copy of a letter dated October 22, 1903, written by your firm to Foote & Havens here? A. Yes, sir.

Q. That letter was sent to Messrs. Foote & Havens, was it, about that time? A. Yes, sir, I wrote the letter myself.

Q. Did you receive an answer to it from Foote & Havens? A. Yes, sir.

Mr. Twombly: I offer in evidence the letter dated October 22, 1903, from Kline, Carr, Tolles & Goff to Messrs. Foote & Havens, a copy of which is hereto attached and made a part hereof, marked Receivers' Exhibit B."

Also offer in evidence the letter from Foote & Havens in reply, dated October 30, 1903, which is marked by the Commissioner "Receivers' Exhibit C," hereto attached and made a part hereof.

Q. Did your firm ever hear anything from Mr. Bean with reference to the matters referred to in Receivers' Exhibits "B" and "C"? A. I don't think that we did, but I wouldn't say positively that we did not, I do not recall.

Q. Have you hunted for any letter that you might have got from Mr. Bean with reference to that matter? A. My recollection is that I did at Mr. Snyder's request, sometime ago.

Q. Did you find anything at all? A. And didn't find any. I have not made any recent search.

CROSS-EXAMINATION of John E. Morley by Mr. Wilkie:

Q. Do you remember, Mr. Morley, whether in the conversation that you and Mr. Quail had with some one at Gould & Wilkie's office, anything was said to you about the fact that the American Trust Company, at the instance of Gould & Wilkie, had presented a claim to the Receivers; that certain testimony had been offered, and that the matter was then pending in the Court of Chancery in New Jersey. A. I don't recall any such thing.

Q. You knew that such a claim had been presented? A. I knew that the Trustee had presented a claim in the suit in New Jersey, but I didn't know whether particularly in behalf of persons whom Gould & Wilkie represented. I supposed they had presented a claim generally as Trustee for all the certificate holders.

Q. You didn't know that the Trust Company, at the request of Messrs. Gould & Wilkie for the claim-

ants they represented, and at the request of Mr. Bean for the claimants he represented, had offered a proof of claims in the receivership proceeding pending in the Court of Chancery? A. No, I did not.

Q. That was not, as you now remember it, referred to at all at that time? A. Not that I recall.

Q. Can you make any more definite than you have the statements that were made to you by the person you saw at Gould & Wilkie's office in regard to their attitude in connection with the litigation in Ohio? A. No, I cannot make it more definite. The general substance was that they did not see how they were interested in that litigation.

Q. Do you remember that it was stated at that conversation that the claimants represented by Messrs. Gould & Wilkie were not parties to the action in Ohio? A. I think that was stated.

Q. That they did not want to render themselves subject to the jurisdiction of the Ohio Court in that suit? A. Well, I do not recall whether that was stated.

Q. You cannot recall that anything was said at that time by these persons, either Mr. Wilkie or Mr. Gould, or whoever it was, in which he said that they were not going to take any action in the Ohio suit that would in any way render their clients subject to the jurisdiction of the Ohio court, and that had been their attitude constantly from the time when the suit was begun some two or more years prior to that time? A. I do not recall that that was stated.

Q. Was there anything of that general tenor stated at that time? A. There may have been, I wouldn't state; I do not recall that feature of the conversation.

Q. Do you remember that it was further stated that in the event that these certificates of indebtedness or notes issued by the National Salt Company should be declared void for any reason, that then it was the intention of the claimants to endeavor to hold their ven-

dors for selling them worthless paper instead of alleged securities? A. My recollection is that at the time of this interview, the certificates had been held to be invalid by the Federal Court.

Q. Was that stated at the time? A. I don't remember whether that was referred to or not; my recollection is that that was the fact.

Q. Now, going back to the question I asked you as to whether or not it was stated that in the event that they should be held to be void, then the claimants would seek to hold their vendors—do you remember that that was stated? A. I do not recall that it was stated in just that way; I say my recollection is that the certificates at that time had been held to be invalid. and as I remember the statements made, they were to the effect that the clients represented by Messrs. Gould & Wilkie intended to enforce what rights they might have along those lines against the brokers, or Squire and Frasch.

Q. In that connection, does that at all refresh your memory as to anything having been said to you at that time in regard to the claim that had been presented to the Receivers in the Chancery action by the trustee? A. No, I don't remember that the Chancery action was referred to; it may have been, but I do not recall it.

CROSS-EXAMINATION of John E. Morley by Mr. Bean:

Q. When you saw me on the 28th of September, did you know who the claimants were I represented; was that stated to you in any way? A. I knew in part, and one of the objects of my visit was to ascertain definitely just who they were, and that inquiry was made, as I recall.

Q. You were not then at that time in September looking to Foote, Perkins & Havens as your employers

in reference to the Perkins cases? A. No, we had received information from some source that you were representing a number of parties, including the Perkins, and as it was our desire to notify the persons for whom we had filed answers, to the effect that we could no longer represent them in this litigation unless they desired to come into the settlement, I was desirous of finding out just exactly what clients you did represent.

Q. Did you make any inquiries at that time? A. From you?

Q. From me. A. Yes, sir.

Q. What was the necessity of writing, if you so understood on September 28th, before writing the letter "Exhibit B," to Messrs. Foote & Havens of October 22nd? A. We had not received any reply from you with respect to what attitude you proposed to take Foote & Havens were the attorneys who originally requested us to file answers for Mr. Perkins and Mrs. Tuckerman, and as the matter had come to a point where hearing was being forced in this salt case, I felt that it was essential that some sort of notice ought to be given to Perkins and Tuckerman of the fact that a hearing was about to be had.

Q. It was simply for the purpose of notifying Perkins and Tuckerman that you came to see me? A. No, not solely for that purpose.

Q. Are you positive that you mentioned that you knew the claimants that I represented? A. That I knew them?

Q. Yes. A. No, I did not. I say I made inquiry with respect to who they were. I had information that you represented a number of others besides the Perkins and Tuckerman claims, and I asked you just who you did represent, and you didn't know everybody that you did represent, could not give me the information.

Q. Was the decree subsequently entered in December the same as the copy of a proposed decree that you submitted to me? A. No, not exactly the same.

Q. In what did it differ? A. Well, I couldn't state all the particulars, but the decree submitted was substantially in effect the decree that was finally entered; the changes were more in the method of working out results and details.

Q. It was substantially the same? A. Substantially the same.

Q. Did you submit that to me as the representative of the Tuckerman and Perkins' interest who were defendants in the suit? A. Yes, sir.

CROSS-EXAMINATION of John E. Morley by Mr. Wilkie:

Q. You personally, nor your firm of Kline, Carr, Tolles & Goff, never received any letters from the firm of Gould & Wilkie in the year 1903, did you? A. I don't recall any.

Q. You never received any authorization on behalf of the clients whom they represented to enter into any settlement or consent to any decree in the Ohio suit, did you?

Objected to on the ground that he said what has been said, and he said that there was no letter written.

A. I would prefer to have you ask me some question of fact rather than of conclusion.

Q. Did you ever receive, by word of mouth, from any member of the firm of Gould & Wilkie, on behalf of the claimants whom they represented in this matter, any authority to enter into settlement then in process of negotiation?

Objected to as calling for a conclusion. The witness has already stated what was said, and all that was said between the parties.

A. I never received any authority from Gould & Wilkie, verbally, to consent, in behalf of their clients, to any decree.

Q. Did you receive any authorization, verbally, to consent to the settlement?

Same objection.

A. I would rather answer that question by saying that I never received any authority other than what may be deduced from the conversation I have testified to.

Q. Did you ever receive any writing of any kind from Gould & Wilkie during the year 1903, either you or your firm? A. I have never seen any such writing; whether the firm ever received any, I couldn't state positively.

Q. What is your best knowledge on the subject? A. My best knowledge is that we have not.

By Mr. Bean:

Q. Did you ever receive from me, verbally, any authority to make a settlement on behalf of the Perkins?

Same objection.

A. No, I never received in terms any authority from you to consent to any decree on behalf of your clients.

Q. Neither verbally or in writing? A. No.

RE-DIRECT EXAMINATION of John E. Morley:

Q. I suppose, when you say you never received any authority, as a matter of fact, wasn't it the inference

that you drew from the conversation that you had with Mr. Bean that he did not care whether or not the decree was entered?

Objected to.

A. My recollection is that Mr. Bean stated that so far as he could see from his present knowledge of the salt situation, it wouldn't make any difference to his clients; he stated that he wasn't familiar with the matter and did not give us any final answer at that time.

RE-CROSS EXAMINATION by Mr. Wilkie:

Q. Did you, Mr. Morley, or your firm of Kline, Carr, Tolles & Goff, write any letters to the firm of Gould & Wilkie, subsequent to this conversation which you say you had in the fall of the year 1903, in reference to the pending matter? A. My impression is that we did not.

RE-CROSS EXAMINATION of Mr. Morley by Mr. Bean:

Q. Did you write any letters to either myself or Foote & Havens, other than the one introduced in evidence, in 1903? A. I think not, but I wouldn't want to state that positively; we may have; I have no definite recollection.

Q. Haven't you looked up the matter to ascertain—isn't it your best impression that no other letter was written? A. It is my impression.

RE-DIRECT EXAMINATION by Mr. Twombly:

Q. Mr. Morley, I call your attention to a circular signed by your firm and others, and ask you whether or not you did not send a copy of that circular to Mr.

Receivers' Exhibit B

Bean and also to Mr. Wilkie (handing to witness), and to Foote & Havens? A. I couldn't positively state whether this was sent to Mr. Bean.

Q. Did you send a copy of that circular to all the holders of the certificates of indebtedness that you knew anything about? A. Yes, sir, they were sent out by our firm to holders of certificates as shown by the records of The American Trust Company.

Q. When was this circular sent out? A. This circular was sent out somewhere in the neighborhood of February 10, 1903.

Mr. Twombly: I offer in evidence the circular referred to.

The same was marked by the Commissioner "Receivers' Exhibit D," a copy of which is hereto attached and made a part hereof.

Q. To the certificate holders of record this circular was sent? A. As shown by the books of The American Trust Company.

The foregoing was all of the testimony given by John E. Morley on the taking of his deposition.

Receivers' Exhibit B, Under the Foregoing Deposition.

Cleveland, Ohio, Oct. 22, 03.

Messrs. Foote & Havens,
Attorneys at Law,
Rochester, New York.

Gentlemen:

The case of The National Salt Company v. The United Salt Company *et al.*, pending in the Court of Common Pleas of this county, has been reached in its

order on the docket, and can be set down for trial at any time.

We are attorneys of record, and have filed answers, for a large number of defendants in the case, owners of certificates of indebtedness issued by the National Salt Company, among them Erickson Perkins, Sarah A. Perkins and Mary H. Tuckerman, for whom we filed answers and cross-petitions at your request, they being, as we understand, your clients. You are doubtless aware that a settlement of this matter has been negotiated between the holders of these certificates of indebtedness and the National Salt Company on the terms of a proposed settlement as stated in a circular letter which we sent to the various certificate holders some time ago, asking for their consent to such settlement. About ninety per cent in interest of the holders of such certificates have consented to the terms of this settlement, and are desirous that it be carried out.

As we represent a large number of these consenting certificate holders, whose interests are, in this respect, of course, adverse to those who are still unwilling to settle, we will be unable to represent your clients for whom we have filed answers and cross-petitions, should the case go to a hearing, and they insist upon an actual trial upon such answers and cross-petitions.

Attorneys representing other certificate holders here are insisting that the case be taken up at once and disposed of on the lines of the proposed settlement, and propose to have the case set down for hearing some time next week. It is desired to have a final disposition made of the case, and a decree entered finding the agreement providing for the transfer of the United Salt Company stock, and the issue of the certificates of indebtedness therefor, to be invalid, and directing that the Trust Company return to the respective certificate holders the proportion of stock of the United Salt

Company represented by their certificates; the decree also finding that the National Salt Company has no claim against the certificate holders for the amounts already paid to them thereon, and providing for a return of the National Salt Company certificates to that Company.

If your clients desire to make a contest in this case for a decree other than along the lines above stated, our interests are such, as we have said, that it will not be possible for us to represent them further. Will you kindly advise us as promptly as possible what your wishes may be in the premises?

We enclose herewith circular letter embodying the terms of the settlement, which was sent out to the various certificate holders.

Very truly yours,
KLINE, CARR, TOLLES & GOFF.

Receivers' Exhibit C, Under Foregoing Deposition.

Rochester, N. Y. 30 October, 1903.

Messrs. Kline, Carr, Tolles & Goff,
Counsellors at Law,
Williamson Bldg.,
Cleveland, Ohio.

Gentlemen:

Your letter of recent date, asking us to instruct you what to do with reference to your appearance for Mr. Erickson Perkins and others, defendants, in the suit brought by the National Salt Co. against the United Salt Co., *et al.*, was duly received.

Receivers' Exhibit D

We referred the same to Mr. Perkins, who has, in turn, referred it to Mr. Bean of New York, who has now charge of these matters for him and who will advise you in regard to the matter.

Very truly yours,
FOOTE, PERKINS & HAVENS.

Rceivers' Exhibit D, Under Foregoing Deposition.

Cleveland, Ohio, February 10, 1903.

Dear Sir:

Efforts have been made for some time to effect a settlement of the litigation now pending in the Court of Common Pleas of Cuyahoga County, Ohio, between The National Salt Company and The United Salt Company and its stockholders. A proposition has been submitted, substantially as follows:

The National Salt Company will release all claims against the stockholders of The United Salt Company for moneys heretofore paid upon its certificates of indebtedness, amounting to the sum of $316,582.50.

It will authorize The American Trust Company, trustee, to turn back the stock of The United Salt Company to the stockholders of The United Salt Company, or such parties as may be entitled thereto as evidenced by the ownership of the trust certificates heretofore issued by The American Trust Company therefor, thereby releasing all interest or claim it may have upon the property of The United Salt Company.

It will also surrender to The United Salt Company a note which it holds against The United Salt Company in the sum of about $70,000.

In consideration of the foregoing, the trust certificate holders will release The National Salt Company

from all claims or demands by reason of the certificates of indebtedness now held by them, and release all claims against The National Salt Company for any common or preferred stock of that Company held by The American Trust Company pursuant to the terms of the agreement made at the time of the sale.

It is believed by the undersigned, who represent a large number of stockholders of The United Salt Company, and some of whom are themselves holders of such trust certificates, that, in view of the financial condition of The National Salt Company (it being in the hands of receivers and of doubtful responsibility), this adjustment, which, if concurred in by the trust certificate holders, will substantially restore to the stockholders their entire property, will be a wise settlement of the litigation. If such an adjustment will be acceptable to you, please sign the enclosed assent, and return the same to any of the undersigned.

Yours respectfully,

KLINE, CARR, TOLLES & GOFF.
HENDERSON & QUAIL.
WILLIAMSON, CUSHING & CLARKE.
WHITE JOHNSON, MCCASLIN & CANNON.

The undersigned hereby assents to and authorizes the proposed settlement of the litigation between The National Salt Company and The United Salt Company and its stockholders as set forth in the letter of February 10th, 1903, from Kline, Carr, Tolles & Goff and others to The United Salt Company trust certificate holders, and appoints Virgil P. Kline, John M. Henderson, John G. White and John H. Clarke, or either of them, his attorneys to carry out the terms of such settlement.

Owning trust certificate for shares

Dated,

Frank A. Quail, Direct

FRANK A. QUAIL, a witness produced on behalf of the Receivers, being duly sworn, according to law, on his oath deposes and says:

Direct-examination by Mr. Twombly:

Q. Mr. Quail, you were attorney for a number of the defendants in the suit of the National Salt Company against the United Salt Company and others, in the Court of Common Pleas, Cuyahoga County, in 1903? A. The firm of which I was a member were attorneys for them.

Q. Did you have particular charge of the action on behalf of your clients? A. Yes, sir.

Q. Do you remember meeting Mr. Bean in the fall of 1903, with reference to a proposed decree to be entered in that suit? A. Yes, sir.

Q. And do you remember about what time it was? What time of the year? A. I should say about the 29th day of September, 1903.

Q. Did you have a conversation with him at that time? A. I did.

Q. And what was said by you and what was said by Mr. Bean with reference to the proposed decree and the suit in general? A. Mr. Morley and I met in New York and went to Mr. Bean's office, having first visited the office, as I remember, of Gould & Wilkie. We found Mr. Bean at his office and one of us said to him, in substance, after some preliminaries, that a settlement of the controversy in the case you referred to had been substantially agreed upon by the principal parties interested, and that we wanted to have his clients come in, or else have some adjustment of the matter, so as to clear up all the issues in the case as to all parties. We said to him that we had found that the securities of the National Salt Company, for which substantially the case was then being fought out, were of very little or no value; that it was the opinion of

most of us here in Cleveland that since that was true, there wasn't much occasion to continue the fight; that we felt that we could win out in the end in the litigation, although Judge Stone had decided adversely to our position on demurrers, but that it seemed at that time that there was so little to be gained by it that we concluded the best thing for us to do was to settle up and be done with it. We told him that it was proposed that the certificate holders—I should say the holders of the certificates of indebtedness issued by the National Salt Company, should surrender those certificates for cancellation and that they should receive in lieu of them stock in the United Salt Company, the entire stock of the company to be distributed among all the holders of such certificates of indebtedness in proportion to the several holdings of the certificates, and that it was further proposed that the persons claiming adversely to the National Salt Company should surrender to the National Salt Company the certificates of its stock which were held by them or for their benefit by The American Trust Company. Now, the details of this transaction are not so clear in my mind as they used to be. There were a number of different kinds of securities there, and I explained what was proposed to be done with all the different securities.

Q. Did you have a copy of the proposed decree with you? A. I am not sure whether we had that with us or not; I think we did.

Q. What did Mr. Bean say? A. Mr. Bean said that he had been very busy, I think, about some receivership matters prior to that time, that required his constant attention, and he had not been able to give this Salt matter as much attention as he had wanted. But he said that he would take it up at once and investigate it and conclude what he would do. He asked some questions about the situation, I don't remember

what all they were, the details of it. We discussed it for some little time, and he spoke especially of the interest of his client, Mr. Perkins, who, I think, lived at Rochester, and called up Mr. Perkins by telephone while we were there; I don't know whether by long distance or whether he got him in New York, but at least we understood he was talking with Mr. Perkins; sometime during that conversation, or the next (we had two conversations with him, I think, on two successive days—I am not sure about that though—it may have been the same day), he said that Mr. Perkins held a number of the certificates, a considerable amount of certificates, and some of his other clients were somewhat interested in it (I don't remember whether he gave us the names of the others or not); and that he would investigate and let us know very shortly what he thought ought to be done, so far as he was concerned. He stated that the position of his clients was different from the position of most of the holders of the certificates of indebtedness, since they had purchased them from Mr. Squire and Mr. Frasch, and under circumstances which, as he felt, rendered Mr. Squire and Frasch liable to his clients if it should turn out that the certificates were invalid or worthless, words to that effect; and he stated that he didn't want to do anything in the case pending in Cleveland that would in any way prejudice or effect his rights as against Mr. Squire and Mr. Frasch. We said to him that the settlement and judgment which was proposed for the case was, as we viewed the matter, exactly in line with his interests in that respect; that what we proposed to do was to have a finding to the effect that the certificates were invalid and worthless, and that therefore our course in the matter must be exactly in line with what he wanted. Mr. Bean said that seemed to him to be entirely

true, and yet he felt that he had not given enough thought to that side of it to say finally that day that he was entirely satisfied, but he said he could see no objections to it whatever, and he thought it was an entirely satisfactory disposition of the case. He asked us, as I remember, to come in either later in the day or the next day. He spoke of Messrs. Gould & Wilkie being interested with him, their clients had the same interest as his, and some of them being identical, possibly all of them, I am not sure about that. We told him that we had that morning been to see Messrs. Gould & Wilkie and had talked with one of the members of the firm, and that they had referred us to him. This we told him early in the conversation, that they had said they did not care what sort of disposition was made of the Cleveland case, but they recommended that we talk to Mr. Bean about it. We also told him that Mr. Ingraham, a Brooklyn attorney, represented several clients, and had himself a personal interest, as I remember it, in the case, his clients being holders of the National certificates of indebtedness, and that we proposed to see Mr. Ingraham on the same sort of an errand, to see if we couldn't get the controversy cleared up as to his clients, and I think, my recollection is that he asked us to come back after talking with Mr. Ingraham, something of that sort.

Q. Had you had a conversation with Mr. Wilkie prior to that time? A. We had a conversation at Mr. Wilkie's office, and I think it was Mr. Wilkie, but I won't be absolutely sure it was Mr. Wilkie we talked to; I thought it was a man a little heavier than Mr. Wilkie; possibly he has lost some flesh. I always had the impression that we talked with Mr. Wilkie—my understanding was that it was Mr. Wilkie I talked to—at any rate, the one with whom we talked stated that he knew about the case and talked to us of the in-

terests of his clients and of the issues in the case, indicating familiarity with the case. We had a very short talk, though, with Mr. Wilkie, didn't last very long.

Q. Was the substance of what you stated to Mr. Bean stated to Mr. Wilkie? A. No, not so long a conversation.

Q. What was said to Mr. Wilkie? A. We stated briefly to Mr. Wilkie the object of our visit, and stated that in the Salt controversy pending at Cleveland the principal parties interested had about agreed on a disposition of the case, and we wanted to have all the holders of the certificates of indebtedness brought into the adjustment so as to clear up all the controversy, and Mr. Wilkie stated that he represented only holders of certificates of indebtedness, as I remember it, I think he said his clients did not own certificates of the National Salt Company's stock, and he stated that they had claims against Mr. Squire and Mr. Frasch growing out of the sale of certificates, and that as he looked at it, it didn't make any difference to them what became of the case in Cleveland. We said we had wanted to explain what we proposed to do if he cared to go into it, and Mr. Wilkie said, "Why, no, our position is that we don't care what you do out there in Cleveland on that case," but he said, "I recommend that you go and talk to Mr. Bean about it." Mr. Bean, he said, was associated with him, as I understood it, in the case, or represented similar interests, I don't know which it was.

Q. Did you say anything to him about the nature of the decree that you proposed to enter? A. Briefly, yes, sir.

Q. Did you have another conversation with Mr. Wilkie subsequent to that time? A. I think not.

Q. Did you write a letter to Messrs. Gould & Wilkie on or about October 6, 1903, Mr. Quail? A. I did.

Q. I show you a copy; is that a copy of the letter? A. Yes, I had this copy prepared for you.

Mr. Twombly: I offer in evidence copy of letter dated October 6, 1903.

The same is marked "Receivers' Exhibit E," hereto attached and made a part hereof.

Q. Did you also write a letter at the same time to Mr. Bean enclosing a copy of your letter of October 6th, "Receivers' Exhibit E," to Messrs. Gould & Wilkie? A. I did. Those letters were mailed at the same time.

Mr. Twombly: I offer this letter of October 6th, to Mr. Bean from Henderson & Quail, marked "Receivers' Exhibit F," a copy of which is hereto attached and made a part hereof.

Q. Did you receive any reply from Gould & Wilkie to that letter? A. I don't think we did.

Q. Did you receive any reply from Mr. Bean? A. Yes, sir, we received an answer from Mr. Bean.

Q. Of what date? A. October 9, 1903.

Mr. Twombly: I offer the letter of October 9, 1903, from Mr. Bean to Henderson & Quail marked "Receivers' Exhibit G," a copy of which is hereto attached and made a part hereof.

Q. Did you subsequently on October 15th, write a letter to Mr. Bean? A. Yes, sir.

Mr. Twombly: I offer that letter of October 15, 1903, marked "Receivers' Exhibit H," a copy of which is hereto attached and made a part hereof.

Q. Did you send a telegram to Gould & Wilkie on October 21, 1903? A. I did, and also to Mr. Bean. The telegram to Gould & Wilkie was as follows: "Date, October 21, 1903, Gould & Wilkie, attorneys, 3 Wall Street, New York. Kindly answer letter about Salt case. Matter is urgent. Signed, Henderson & Quail."

The telegram sent the same day to Mr. Bean was as follows: "Herbert W. Bean, Attorney, Corn Exchange Bldg., New York. Will you kindly write about Salt matter? It is urgent. Signed, Henderson & Quail."

In answer to the telegram to Mr. Bean we received the following: "New York, October 21, 1903. Henderson & Quail, Cleveland, Ohio. Mr. Bean engaged in trial of case. Will bring telegram to his attention. Signed, C. F. Colton, Secretary."

Q. Did you receive a further telegram October 31, 1903? A. We did.

Q. What was that telegram? A. "New York, October 31, 1903. Henderson & Quail, Cleveland, Ohio. Mr. Bean will be in Cleveland Wednesday, November 4th. Signed, C. F. Colton, Secretary." In connection with the telegram last read, I may say that Mr. Siddall, who was at that time connected with our firm as an attorney, had been in New York several days before that and, as I understand, had called upon Mr. Bean and Mr. Wilkie with reference to this matter. He was in New York about the 27th or 28th of October, and my understanding was that the telegram was pursuant to some conversation that he had had with the gentlemen at the time.

Q. Did you send the letter of November 6, 1903, to Mr. Bean? A. I did.

Mr. Twombly: I offer letter of November 6, 1903, to Mr. Bean in evidence, marked "Receivers' Exhibit I" a copy of which is hereto attached and made a part hereof.

Q. Do you know whether Mr. Siddall had a copy of the decree with him in New York? A. My recollection is that he took a copy of the decree to New York with him.

Q. After this first conversation, did you have a further conversation with Mr. Bean either that day or the next day? A. I think we did; I think we talked to Mr. Bean after seeing Mr. Ingraham; my recollection is that we stated to him what Mr. Ingraham had said.

Q. Did you say anything further in general than what you have already testified that you told Mr. Bean, except what Mr. Ingraham said? A. Yes, we said to him that the matter was quite urgent, and that we were anxious to have it disposed of at once; and he said he would take it up immediately and let us know if there was anything that he cared to have in the decree, so far as he was concerned.

Q. Now, was there any further letter after this letter of November 6th, that you recollect that you sent to either Mr. Wilkie or Mr. Bean? A. I think that was the end of it, so far as I know. At that time the decree had gone on, and I was notifying Mr. Bean —I say gone on—it is my recollection—

Q. The decree was not entered until December? A. I don't mean the decree, I mean the hearing had taken place, and all the terms of the decree, the details, were substantially agreed upon at the time I wrote the letter.

Q. The case was regularly tried before Judge Stone, wasn't it?

Objected to by Mr. Bean.

A. It came up for hearing before Judge Stone and evidence was offered, and the case was disposed of in the ordinary way.

CROSS-EXAMINATION of Frank A. Quail, by Mr. Wilkie:

Q. As I understand, Mr. Quail, you say you and Mr. Morley called at my office the 28th day of September, 1903, and had an interview there? A. Well, I should say it was the 29th, somewhere along there, yes, sir.

Q. Do you remember at the interview that you had there it was stated to you by Mr. Wilkie that his clients had not been made parties to the suit pending in Ohio? A. I think Mr. Wilkie so stated.

Q. And that it had been his policy and object not to have them intervene in any way in the suit in Ohio? A. I am not sure that that was stated.

Q. Well, do you remember anything of that general tenor, and in that connection I will add to my question this, that therefore he did not care what disposition was made of the suit in Ohio, as his clients would not be bound in any way by whatever action was taken there? A. The statement was made that you didn't care what sort of a decree was entered in Ohio, and I think you said that your clients were not parties to that case, and that you did not propose to take any hand in determining what should be done with the case. I don't know that it was made so strong as that. My impression of your statement was that it was immaterial to you what decree was entered.

Q. Do you remember my saying to you that The American Trust Company, at the instance of both Mr. Bean and myself on behalf of our respective clients, had presented a claim against the receivers of the National Salt Company appointed in the Court of Chancery in the State of New Jersey? A. I don't remember that you spoke of that claim. I knew there was such a claim.

Q. Do you remember my calling your attention to the fact that the brief in support of the claim was just about being submitted in that connection? A. I don't think you spoke of that.

Q. Do you remember my saying anything to you in reference to that claim which had been made by The American Trust Company at our joint instance for the total amount of the indebted certificates? A. I don't remember your speaking of that at all, Mr. Wilkie.

Q. You do remember that I said something about Mr. Bean representing a larger interest, do you? A. Yes, sir.

Q. And that the total amount of the claims that our firm represented were small in comparison with the amount that he represented? A. I didn't understand that exactly.

Q. There was something in that connection said at the time I referred you to Mr. Bean, that his representation was a very much larger one than our interest, wasn't there something of that kind said as a means, or as a reason for referring you to Mr. Bean in connection with the matter? A. You did say that he represented more clients than you, as I recollect, that is, more interests. I don't know what else you said about his connection exactly with you, but you said that it would be just as well for us to talk with Mr. Bean, it wasn't a matter you cared about.

Q. Do you remember anything said, Mr. Quail, in connection with our lack of interest in the matter in Ohio, that if it was decreed or determined that the debt certificates of the National Salt Company were void, that it was then our intention to pursue the people who had sold them to our clients? A. I think you so stated.

Q. You have said that there was a trial before Judge Stone here. That trial was merely a formal

one, wasn't it? That trial was simply brought on by the parties in interest for the purpose of effectuating by legal decree the settlement already agreed to by the various parties to the litigation? A. So far as those parties were concerned, yes.

Q. They were the only parties before the court, weren't they? A. They were not all represented there.

Q. Were not all the parties to the litigation represented in court? A. Not by attorneys at the time, so far as I know. The case was regularly set and everybody notified, but they didn't all come there.

Q. But it was known in advance that all that was going to be done was to offer such testimony as would be necessary for the purpose of such a decree as the parties had agreed to, wasn't that so?

Objected to.

A. Known by whom?

Q. By all the parties that were represented by attorneys? A. I didn't know that that was understood.

Q. You say that you had talked it over with Mr. Bean in the month of September, 1903. That was long before there was any trial, wasn't it? A. Yes, sir.

Q. And that decree you were getting all the parties to the litigation to approve of and consent to? A. So far as we could, yes, sir.

Q. And the decree that was entered in December, 1903, was a decree which had been approved by all the attorneys representing parties to the litigation, wasn't it? A. You mean as finally entered?

Q. As finally entered? A. Well, I don't know whether all the attorneys interested in that case O. K.'d that decree or not. I should say that most of them did, certainly.

Q. And as to those attorneys who did not O. K. it in advance, what notice was given to them of the

fact that it was to be entered on a particular day, and none of them attended to object? A. They were notified that it was to be up for hearing.

Q. And hearing on a particular day? A. Yes, sir.

Q. And if those other attorneys who did not O. K. the decree attended, they did not object to the decree? A. I haven't separated them into classes, the class of those who attended and those who did not; I don't know about that exactly.

Q. Was there any objection of any kind made to the decree by anybody? A. Oh, yes.

Q. At the time of its entry? A. No, not when it was entered.

Q. The objection had been to its form while the negotiating for the decree was pending; that is the objection you refer to? A. Oh, yes, many objections of that character.

Q. Those objections were all disposed of by making modifications in the proposed decree to satisfy their objections, that was a fact? A. Well, some of them were disposed of by the court.

Q. Was there any testimony offered in this hearing before Judge Stone on behalf of any of the defendants? A. As I recollect it, the only testimony that was offered was the statement of attorneys in connection with the papers in the case, and Judge Lamson, I should say also, while he was an attorney, yet he was acting then as receiver, that is true. It was stated to the court that we all realized that Judge Stone knew the situation as well as we did; he had been familiar with the case from the start, and that we felt it wasn't necessary to offer formal evidence of the facts that he already was cognizant of. But statements were made covering what the attorneys felt was understood were the facts not already brought to the Court's attention, and the receiver made an extended statement of the situation, and the statement was further made

to the court that we would furnish any other evidence that the court desired. Some considerable time was consumed with objections made by The American Trust Company, and I think some questions in connection with the substance or the form of the decree had to be passed upon entirely by Judge Stone.

Q. So the decree as entered on the 13th of December, 1903, had been modified and changed, and was modified and changed down to the time of the hearing, is that so? A. To the time of the hearing?

Q. Yes, down to the time of the hearing, or the time of its entry? A. Down to the time of the entry. Prior to the hearing we had only a skeleton decree—I say sketeton—it embodied the principal terms of the settlement, so far as material interests were concerned, I think.

CROSS-EXAMINATION of Frank A. Quail, by Mr. Bean:

Q. You came to really persuade me to come into this decree of settlement, didn't you—it was your purpose to? A. In a general way, the purpose was to dispose of your controversy as well as the rest of them.

Q. And you or your firm did not represent me in any way? A. Oh, no.

Q. Did you know at the time that you came that I represented Mr. Perkins? A. I understood so.

Q. And it was specially desired to notify me in that capacity, of the settlement, as his attorney? A. Oh, no, it was as to all your clients.

Q. You received no further statement about my attitude, no final statement about what my attitude would be in any way further than you have testified to? A. I think I have given the substance of all the conversation.

Receivers' Exhibit E

By Mr. Twombly:

Q. Didn't you receive word from Mr. Siddall after his return from his interview with Mr. Bean as to what he would report? A. Yes, sir.

Q. What did he report?

Objected to.

The foregoing was all the testimony given by Frank A. Quail on the taking of his deposition.

Receivers' Exhibit E, Under Foregoing Deposition.

Cleveland, O., Oct. 6, 1903.

Messrs. Gould & Wilkie,
Attorneys at Law,
No. 2 Wall Street,
New York, N. Y.

Gentlemen:

We have recently submitted to the attorneys for The Citizens Savings & Trust Company (formerly the American Trust Company) a form of decree proposed to be entered in the National Salt Company case, and, in discussing the matter with these attorneys, find that they would be glad to have if possible, from you and Mr. Bean, a letter with reference to the division of the securities in the hands of the Trust Company. It does not seem likely that any possible liability would attach to the Trust Company for carrying out the directions of the court in disposing of the securities in the manner ordered by the decree. It is expected that a decree will be entered directing that the stock of the United Salt Company be divided among the holders of the certificates of indebtedness of the

National Salt Company, in proportion to their holdings of such certificates. Of course, all the parties consenting to the decree would receive their respective shares of the United Salt Company stock, and the remainder of that stock would be held by the Trust Company for the benefit of the holders of the remaining National Salt Company certificates, whether they have already appeared in the litigation or not, and would be surrendered by the Trust Company under the terms of the decree at such time in the future as such holders of certificates of indebtedness might see fit to avail themselves of the decree. There seems now to be no difficulty from any source in carrying out these arrangements, except that the Trust Company desires to avoid the assumption of any possible liability to any parties not at this time participating in the settlement. Its attorneys have therefore requested us to ask if you and Mr. Bean, on behalf of the clients whose appearance you have not entered in the case, would be good enough to give to the Trust Company such an assurance as Mr. Ingraham has already stated that he would give to it, namely, that no claim would be asserted in the future against it by your clients on account of its distributing to parties other than your clients their respective proportions of the United Salt Company stock.

Will you kindly take this matter up with Mr. Bean as soon as possible and let us know whether or not you would be willing to give to the Trust Company such a letter?

In disposing of this case, we are endeavoring to locate as far as possible the outstanding certificates of indebtedness of the National Salt Company. If you can inform us what certificate holders you represent and the amounts of their respective holdings, we will be further greatly obliged to you.

Very truly yours,

(Signed) HENDERSON & QUAIL.

Receivers' Exhibit F, Under Foregoing Deposition.

Cleveland, O., Oct. 6, 1903.

Mr. Bean,
Attorney at Law,
Corn Exchange Bldg.,
New York, N. Y.

Dear Sir:

We have just written Messrs. Gould & Wilkie a letter with reference to a certain assurance wanted by the Citizens Savings & Trust Company in connection with the settlement of the National Salt Company case. As the matter is intended to be submitted to you as well as to them we herewith enclose a copy of the letter. Will you kindly give it your earliest possible attention.

If you have not already written Messrs. Kline, Carr, Tolles & Goff or ourselves with reference to the form of decree to be entered, we would be very greatly obliged if you would let us hear from you at once, as the matter is quite urgent.

Very truly yours,
(Signed) HENDERSON & QUAIL.

Enc.

Receivers' Exhibit G, Under Foregoing Deposition.

New York, October 9, 1903.

Messrs. Henderson & Quail,
Garfield Building,
Cleveland, Ohio.

Gentlemen:

Your letter of the 6th enclosing copy of a letter of even date to Messrs. Gould & Wilkie has just come

to my attention. I have been under great pressure this week, having been out of the city on a motion for receivers' certificates.

I shall endeavor to see Mr. Wilkie today, and let you and Messrs. Kline, Carr, Tooles & Goff receive our instructions at the earliest possible moment.

Very truly yours,

(Signed) HENRY WILLARD BEAN.

Receivers' Exhibit H, Under Foregoing Deposition.

Cleveland, Ohio, October 15th, 1903.

Mr. Henry W. Bean,
Attorney at Law,
New York City.

Dear Sir:

Your favor of October 9th was duly received. We are much disappointed that you and Mr. Wilkie have been prevented from giving us a definite answer with reference to the disposition of the Salt case. The situation is such that it will be necessary for us to dispose of the matter in some way within a very short time. Your interest will, of course, be taken care of in any event, but we especially want to know at this time what disposition you want made of the case, so far as your clients are concerned. If the course you decide upon shall not be entirely inconsistent with our recent suggestion as to the responsibility of the Trust Company, we would, of course, be glad to have you give the Trust Company the assurance mentioned in our letter, so that there may be as few questions as possible left open for the future. We ought to know immediately whether or not we are to proceed with

the trial of the case. If that course shall be necessary, we want to ask the court some time next week to arrange for the earliest possible hearing.

Trusting we may hear something definite from you by Monday, we remain,

Very truly yours,

(Signed) HENDERSON & QUAIL.

Receivers' Exhibit I, Under Foregoing Deposition.

Cleveland, O., November 6, 1903.

Mr. Herbert W. Bean,
Attorney at Law,
Corn Exchange Building,
New York City.

Dear Sir:

We were of course disappointed after so long a delay, in not seeing you or hearing from you on Wednesday last. We concluded that it would be necessary to submit the matter to the court, and as the condition of the United Salt Company is such as to require a prompt reorganization of the company, the attorneys interested here had the case brought on for hearing yesterday before Judge Stone. Some formal proof was offered, and Judge Stone, having been already familiar with the facts of the case, stated that he was prepared to make a decree along the lines upon which the attorneys have heretofore agreed. Such a decree is being prepared, and will include the details not set out in the former draft. Inasmuch as we have not heard from you, we presume that you have not much if any preference as to the manner in which the case should be disposed of.

Very truly yours,

(Signed) HENDERSON & QUAIL.

HOMER H. JOHNSON, a witness produced on behalf of the Receivers, being duly sworn, according to law, on his oath deposes and says:

Diret-examination by Mr. Twombly:

Q. Mr. Johnson, your firm represented The American Trust Company in the suit in the Cuyahoga Court of Common Pleas of The National Salt Company against the United Salt Company and others? A. We did, yes, sir.

Q. In the year 1903, and prior to the entry of the decree on December 13, 1903, did you have any conversation with reference to a proposed decree with Mr. Bean or Mr. Wilkie? A. I couldn't say how long before the decree was entered, but it was sometime befor the decree was actually put on.

Q. Was it that fall? A. No, I think it was in the summer, I think it was warm weather; I think though, let me see, I was at Mr. Bean's office when it was a chilly day, whether it was in the fall or the early spring, I wouldn't attempt to say. I know I was there when the negotiations had been brought up to us for a settlement of the case.

Q. Have you got any record in books? A. Why, I looked for an expense account, but I can't find any item of it. I dropped in one afternoon in Wilkie's office, and I think I went from there over to Bean's.

Q. In the fall? A. I wouldn't say it was in the fall; it was when they had up with us the question of cleaning up the case, settling it. We were not interested in the decree, or that is to say, I went in to Mr. Wilkie's and Mr. Bean's office simply to talk over with them what their position was in making that settlement.

Q. What did you say and what did they say in reference to Mr. Bean first? A. It was quite a while prior to that; this decree, my best recollection is, ran

along for a long time; the subject was taken up and then dropped, of making a settlement, so that my best recollection is that the decree was not actually entered until a considerable time after I had seen you gentlemen and my best recollection is that we didn't get to Bean's office the day I went to Jersey City, but one day after that I went over to your office. You Bean had just moved into new offices and your desk was in the center of the floor of the room which you were going to occupy, and had not been there but a short time at that time.

Mr. Wilkie: You can't fix the time any more definitely than that it was some months before the entry of the decree.

A. I can't say positively, it was sometime before.

Q. What conversation did you have with Mr. Bean with reference to the proposed settlement and the proposed decree? A. I asked Mr. Bean what he was doing about cleaning up the matter out at Cleveland, that the representatives of the Salt people here had been after us and were making up a settlement. Well, he said, "We are not interested in that settlement out there." I said, "The Trust Company is in the position simply of impartiality, we took on the trust, and so far as we know it is binding, and whatever you want done by us that comes within our province to carry out we stand ready to do." "Well," he said, "we haven't anything to suggest on that line, we don't want to be a party to any action out there because it might affect us otherwise." I don't think he told us how otherwise it would affect him, but from some things I had learned, I jumped to a conclusion, but I think that is all he said about that, as near as I can remember about the substance. And I told him all the Trust Company was interested in was to stand on its agreement, and that if they wanted anything in the

line of proceeding further under the contract, we stood ready to do it. He said, "Well, you needn't bother much about us one way or the other, we are not specially interested in that end of it, but we don't want to take any position that might affect us in, I think he said other relations, or something of that sort, in substance.

Q. Did you talk with Mr. Wilkie about the same time? A. I think I went to see Mr. Wilkie the same day. I remember I was in New York on other matters and simply had this in mind that if you, Wilkie & Bean, wanted to do anything, why I wanted to know it.

Q. Did you have any talk with Mr. Wilkie? A. Yes, sir.

Q. What did you say and what did he say? A. I told Mr. Wilkie that the matter was up for settlement and supposed he had seen some of the people out here. My best recollection is now that he said he had had some interview with some of Mr. Kline's firm, I am not certain what that was; that is my best recollection, however, that he said he had some interview, and I told him we were not interested at all in the settlement or what it was, except to carry out the agreement and whatever they wanted us to do. He said, "Well, I don't think it makes much difference to us, we are standing pat," something to that effect.

Q. Did you have subsequent conversations with either of these gentlemen with reference to the same matters? A. This, I think, was the last conversation I had with them. I came out home and paid no more attention to the matter until after the decree was entered, when I wrote them that there had been a decree entered.

Q. Did they write any letters to you between the

men and the time when the decree was entered? A. I don't think they did.

Q. And you say you didn't see either of them between the time of this interview and the time the decree was entered? A. No, I don't think I did.

CROSS-EXAMINATION of Homer H. Johnson, by Mr. Wilkie:

Q. Do you remember, Mr. Johnson, having an interview with me on the 21st day of May, 1903? A. I do not.

Q. Do you remember calling on me in reference to a hearing which was to take place on the claim of The American Trust Company against the receivers of The National Salt Company in the spring of 1903? A. I remember that.

Q. If I were to tell you that was on the 21st day of May, 1903, would that refresh your recollection at all? A. I presume so; the only uncertainty was about the date; I remember the interview perfectly.

Q. Do you remember that we both, you and I, had an interview with Mr. Bean and with Mr. Adams? A. Yes, sir.

Q. An attorney or solicitor in the Chancery? A. I think at that time I retained Mr. Adams to act in that suit for the Trust Company.

Q. Do you remember that on the following morning, whatever the day was, that you, accompanied by Mr. Bean and Mr. Adams attended before the receivers in New Jersey and gave certain evidence in support of the claim of The American Trust Company? A. Yes, sir.

Q. The evidence on behalf of the claimant was closed in that hearing, wasn't it, that is, there was no other testimony submitted that you have any knowledge

of? A. I don't know that I remember about that, I should think it was.

Q. In any event, you were examined as a witness and gave certain testimony in support of the claim? A. Yes, sir.

Q. And your examination was taken at that time? A. Yes, sir; so far as I know, that was the end of the hearing, but whether it was finally submitted that day, I do not now recall; I left that, in fact, to Mr. Adams, and there may have been something done after that that I don't know.

Q. Have you any recollection that in the month of October, 1903, a brief was submitted in support of the claim of The American Trust Company to the receivers? A. I can't remember the date; there was a brief submitted; my recollection is Mr. Adams sent out for any authorities or briefs that might have been filed out here on that subject. I think I told him to.

Q. Can you fix the time when that was? A. I could possibly by the letter, if there is a letter from him; I don't remember it myself.

Q. Without at this time hunting up through your letter files, can you fix that time as in the month of October? A. No, I could not fix the date.

Q. Do you remember that it was sometime in the fall? A. I could not even remember that; I don't doubt it was.

Q. But you do remember being apprised of it at the time when the brief was submitted? A. Yes, sir.

Q. Now, you say that you had a conversation with me at some time, a few months prior to the entry of the decree. Now, if I tell you that the decree was entered on the 13th of December, 1903, does that help to fix the time at all? A. No, because they fooled along out here for a long time before fixing it up; how long that was, the way time flies with an ordinary man, I couldn't tell you whether it was three months

or six months; my best recollection is that it was a considerable time after this meeting in May. It was when the settlement was on here hot that I had particularly on my mind when in New York to see you gentlemen, to see what your attitude was. I remember that state of mind most distinctly of anything, and I went up to your office afterwards, also to Mr. Bean's and inquired for Mr. Adams—I think maybe I saw him at that time and he asked me about this brief. As it comes to me now, I think he did, and I think I told him that I would see Mr. Kline's firm and see if they had anything that would be of any assistance to him, and I think I didn't find anything out here, and that he got up a brief himself; that is my best recollection.

Q. Well, you knew at that time that I, on behalf of the clients represented by my firm, as well as Mr. Bean on behalf of the parties that he represented, were very much interested in the claims presented by The American Trust Company, and were co-operating with Mr. Adams in preparing his brief in support of the claims—did you know that? A. Oh, yes. I told Mr. Adams to co-operate with you gentlemen in that matter. I told him in your presence, I think, that The American Trust Company was simply trying to carry out its independent position in the matter; that you were the only people, as far as I knew, who were urging the pressing of claims; the others I understood were settled, and whatever you wanted in the matter, to push those claims in your behalf.

Q. You knew, as a matter of fact, that we were doing all that we could in support of the claim of The American Trust Company then pending before the Court of Chancery? A. Yes, sir, we were talking to Mr. Adams about it.

Q. Did you at any time notify me either verbally or in writing that The American Trust Company was

contemplating taking any action which would make the proceeding pending in the Court of Chancery absolutely nugatory?

Objected to as incompetent and immaterial and calling for a conclusion.

A. I told you at this meeting which I have described on direct-examination, that the parties in Cleveland were getting up a settlement, and that whatever was done out there I supposed you would know about and co-operate therein. As I understood you, you said you had not become a party to that and probably would not. I told you that the Trust Company wished to do whatever you wanted to do in that direction, but that if there was a deal arranged at Cleveland they wanted to know what your attitude in that matter was, and your reply was that you were not particularly interested in that end of it.

Q. Is that the only communication either verbally or in writing, that you recollect of that passed between us? A. Before the decree was entered, I think so, yes; I took that as an assurance that you were not interested one way or the other out here, and when the settlement was entered I was told that you had assented to it, and I made no further communication to you.

Q. Do you remember in our conversation my having stated to you that the parties whom I represented were none of them parties to the suit in Ohio? A. I don't remember whether you did or did not; you may have done so, very likely did; I don't remember that.

Q. In connection with the statement that you say I made to you that we were not interested in the suit in Ohio, do you not now remember that I said to you we were not parties to that suit and were not going to submit ourselves to the jurisdiction of the Ohio Court in any way? A. I couldn't say that you ex-

pressed it exactly that way; I couldn't say that you didn't say something possibly in substance amounting to that.

Q. I am not pretending to give the exact form? A. Your statement to me in substance was that the matter out here you didn't want to take part in because of some effect on some other purpose which I don't think you went into with me, but I didn't know what the fact was; in fact, I didn't know what either side was driving at, to tell the truth. I merely was there to protect the Trust Company as far as I could, and I don't think you explained to me, either you or Mr. Bean, what your particular point was.

Q. Are you very sure, Mr. Johnson, that there was any conversation had between you and myself subsequent to the 22nd day of May, 1903? A. Yes, sir, I am pretty sure there was; I have a distinct recollection of being in New York while the negotiations here were pending, and desiring to be sure about the Trust Company, I went in to see both you gentlemen on that subject, because I don't think it had come up in May.

Q. Have you the letter which was written to you by myself on the 4th day of June, 1904? A. I think that is it (producing letter).

Q. You received that letter on or about the time of its date, did you not? A. Yes, I presume in the course of mail after its date.

Mr. Wilkie: I offer a copy of the letter referred to in evidence.

Mr. Twombly: I object to the letter on the ground that it is long after any of the transactions in question, and as making evidence for yourself.

A copy of said letter is marked "Mr. Wilkie's Exhibit 1" and hereto attached.

Q. You replied to that letter on the 8th of June? A. Yes, sir.

Mr. Wilkie: I offer in evidence the letter of June 8th, 1904.

Same objection.

Said letter dated June 8, 1904, is marked "Mr. Wilkie's Exhibit 2," a copy of which is hereto attached.

It is consented by counsel that copies of letters may be offered with the same force as the original.

Q. To the letter of June 8th you received a reply under date of June 10, 1904? A. Yes, sir.

Mr. Wilkie: I offer the letter dated June 10, 1904, in evidence.

Same objection.

The letter dated June 10, 1904, is marked "Mr. Wilkie's Exhibit 3," a copy of which is hereto attached.

Q. To that letter you replied under date of June 15th, the letter which I now show you? A. Yes, sir.

Mr. Wilkie: I offer the letter dated June 15, 1904, in evidence. Said letter is marked "Mr. Wilkie's Exhibit 4" a copy of which is hereto attached.

Q. As I remember your testimony, Mr. Johnson, you had no interviews or correspondence of any kind with either myself or my firm subsequent to this interview which you testified to as taking place some months prior to the entry of the final decree? A. I couldn't testify how many months; it was sometime before.

Q. Some time prior? A. I had no other communication, I think, prior to the entering of the decree.

Q. Prior to this correspondence which you have just identified? A. Yes, sir.

Q. In the month of June, 1904? A. Yes, I don't think I saw you in the meantime.

CROSS-EXAMINATION of Homer H. Johnson, by Mr. Bean:

Q. Mr. Johnson, did you have any correspondence with me in 1903? A. I don't remember that I did.

Q. (Handing letter to witness.) Is that your signature? A. No, that is not my signature.

Q. Is that the signature of your firm? A. That is the signature of the firm by Mr. Hogsett. This letter of May 18, 1903, to Mr. Bean was written by Mr. Hogsett, who went to New York at some time in reference to those proceedings before the receiver, I don't remember when it was.

Mr. Bean: I offer in evidence the letters identified by the witness.

Objected to.

Said letters dated May 18th and May 20, 1903, were marked "Mr. Bean's Exhibit 1" and "Mr. Bean's Exhibit 2," copies of which are hereto attached.

Q. Did you receive a letter from me dated June 5, 1904? A. Yes, sir.

Q. Did you receive before that a letter dated May 25, 1904, from me? A. Yes, sir, I think I received that letter, I am pretty sure I did. I haven't any particular recollection of Mr. Bean's letter, but I think I received it, dated May 25, 1904.

Q. And the letter of June 5, 1904, you received? A. June 5th, I have no doubt I received.

Mr. Bean: I offer the letters dated May 25th and June 5th, 1904, in evidence.

Mr. Twombly: I object to them both on the ground that they are communications subse-

New Jersey State Library

quent to December 13, 1903, and as incompetent and immaterial, and as an attempt to make evidence on the part of the claimants represented to Mr. Bean.

Said letters dated May 25th and June 5th, 1904, were marked "Mr. Bean's Exhibit 3" and "Mr. Bean's Exhibit 4" copies of which are hereto attached.

Q. Your last conversation with me was at the same time as with Mr. Wilkie? A. My best recollection is I went from Mr. Wilkie's office over to your office.

RE-DIRECT EXAMINATION of Homer H. Johnson, by Mr. Twombly:

Q. The conversation you have last referred to is the second conversation that you had with these gentlemen? A. Well, it was the only one, I think, when the decree came up, yes, sir.

Q. And you had one prior to that in May, in the spring of the year? A. Oh, yes, I think I had one or two perhaps prior to that.

Q. That was with reference to presenting the claim of The American Trust Company? A. Yes, sir, and as Mr. Wilkie has described, we went over to Jersey City and appeared before the receivers and I gave testimony.

Q. Was that claim presented at the request of Messrs. Bean and Wilkie? A. Well, it was presented in their behalf as the only ones who were not parties out here to the contemplated settlement at that time, and we asked Mr. Henderson and Mr. Kline if they wished us to present them in their behalf, and they said no, they wished us not to, and I think Mr. Hogsett's letter to Mr. Bean outlines our request to them, to know if they wanted to put it in, and they said

yes, and Mr. Hogsett went down and filed the papers, and then I went down to the hearing; they say it was in May; I couldn't be sure of that, but that date I ought to have; whenever that hearing was, I think we had filed an amended petition in the suit down there.

The foregoing was all the testimony given by Mr. Homer H. Johnson at the taking of his foregoing deposition.

Mr. Wilkie's Exhibit 1, Under Foregoing Deposition.

GOULD & WILKIE,

2 Wall Street,

New York, June 4, '04.

Homer H. Johnson, Esq.,
M. B. & H. H. Johnson,
Counsellors at Law,
American Trust Company,
Cleveland, Ohio.

Dear Mr. Johnson:

Mr. Bean has called my attention to your letter of the 2nd inst., and to a copy of the decree apparently entered in the suit of National Salt Company v. United Salt Company, *et al.*, some time in last December.

To say that I am amazed at the proposed method of disposing of the trust property held by the American Trust Company as Trustee under the deed of trust made by that Company in September and October, 1899 (and in which it has apparently been succeeded by The Citzens Savings and Trust Company) contemplated by the decree, is to speak mildly. I object to it most decidedly, and I hereby beg to notify

the Trustee through you, its attorneys, that on behalf of the parties in interest whom we represent we do object to any such distribution, and that we shall hold the Trustee liable for any and all loss and damage which our clients may suffer by reason thereof.

We also beg to notify you that we represent the following parties, none of whom are parties to the action in which the decree was entered, and all of whom were and have been continuously from a period antedating the bringing of the action, owners and holders of debt certificates and stock trust receipts arising out of the United Salt Co.—National Salt Co. —American Trust Co. transaction.

Edmond L. Brown	100	Share	interest.
C. H. Wilcox	50	"	"
Otis, Wilson & Co.	100	"	"
Henry Wick	100	"	"

Will you also be good enough to accept notice on behalf of the Trustee that on behalf of our clients we expect the Trustee to actively press the claim for the balance due from the National Salt Co., either against that Company or its Receivers; and on collection, if that can be made, to pay to them the amounts to which they are entitled. In that connection we understand that you have been advised of the decision of the United States Circuit Court of Appeals for this Circuit in the Ingraham suit, upholding the validity of the debt certificates, and that in view of that decision our clients have an interest in the claim against the National Salt Co., on the debt certificates, on the stock of the National Salt Co., deposited with the Trustee, and in the stock of the United Salt Co., deposited to secure the performance by the National Salt Co., of its agreement.

Mr. Wilkie's Exhibit 2

Kindly acknowledge receipt of this letter and advise us of the proposed action of the Trustee and oblige,

Yours very truly,
JOHN L. WILKIE.

P. S. This letter is written away from our office which will account for the informal paper.
J. L. W.

Mr. Wilkie's Exhibit 2, Under Foregoing Deposition.

June 8, 1904.

Mr. John L. Wilkie,
2 Wall Street, New York City.

Dear Sir:

I am in receipt of your favor of the 4th in the matter of the National Salt Company, and have noted its contents. I have informed the Trust Company of your position, and I do not think they will turn over any certificates of stock represented by your certificates of interest, until you have an opportunity to make some move looking to the change in the order entered here. The Trust Company is of the opinion that they are bound by the decree by reason of the jurisdiction over the Res affected by it, and that they shall be obliged to comply with that decree unless it is altered. They are perfectly willing however, to remain simply a stake holder, giving you any opportunity you may wish to take advantage of in the premises.

I understood both from Mr. Bean and yourself that you neither of you were interested out here and that so far as you were concerned the parties were at liberty

to take any order they chose. I called on you both in New York myself, to be sure that the Trust Company would be able to do anything that you desired them to do in the premises, but certainly got the idea that it did not matter what was done here, as you were looking to enforce your rights in another way.

Personally I cannot see anything here that would interest you much, as you can get the United stock if you wish to take it down, and as I understand it, the other is substantially worthless. It would seem also that the United stock is practically worthless, as there is now a suit against the receiver, which tends to show that the receiver will lack about 50 per cent in assets for paying the debts that he has incurred himself in running the business. The creditors of the receiver are putting up a big fight now in our courts to see if they cannot get more than 50 cents on their debts out of the concern, but it does not look as though they would be very successful.

Of course this is none of my funeral, but I am not able to see how you will be able to get much, if any, real value in case you should win all you might hope to. Of course the change in the opinion of the court may give you something by way of dividend from the company, and as that dividend will be much larger by reason of the other certificate holders having surrendered their rights, the decree apparently works to your advantage rather than to your disadvantage. This again is none of my business, and you will please consider it simply a personal suggestion made to you for what it is worth.

The Trust Company, as I told you in New York, wishes to occupy a perfectly neutral position, and is willing, as it has always been, to do anything that those beneficially interested wish it to do for the preservation of their rights. We will instruct Mr. Adams to take

any further action that you may wish, though it has always seemed to us that the Trust Company had nothing to do in behalf of the certificate holders as against the Salt Company.

If Ingraham can recover in a suit at law, I do not see why you cannot do so as against the receiver, and if you can do so, I do not see how the Trust Company can likewise have any rights.

With best regards, I am,

Yours very truly,

H. H. JOHNSON.

(Also envelope in which same was enclosed as follows): "M. B. & H. H. Johnson, Cleveland, O." To "Mr. John L. Wilkie, 2 Wall Street, New York City."

Mr. Wilkie's Exhibit 3, Under Foregoing Deposition.

June 10, 1904.

Homer H. Johnson, Esq.,
Care M. B. & H. H. Johnson, Esqs.,
American Trust Bldg., Cleveland, Ohio.

My dear Mr. Johnson:

I am duly in receipt of your favor of the 8th inst. in the matter of the National Salt Company-United Salt Company, and note its contents.

In the first paragraph of your letter you say that you do not think the Trust Company will turn over any certificates of stock represented by the certificates of interest to which I called your attention in my letter of the 4th inst. until I have had an opportunity to make some move looking to a change in the decree entered in the suit in your state.

Mr. Wilkie's Exhibit 3

I do not know what position the Trust Company took at the time that decree was entered, nor how the decree came to be entered, but I assume from the slight information which has come to me that the decree was entered on consent of those of the holders of the debt certificates and stock certificates who negotiated and put through the settlement.

I cannot believe that the Trust Company consented to the decree, knowing as it did that certain of its *cestui que trustent* were opposed to the settlement and had refused to have anything to do with it, were not parties to the action in the Ohio court, and therefore could not be bound by any decree that might be entered.

What some of the certificate holders, even a majority of them, may be willing to do in violation of the trust agreement cannot, in my judgment, affect the rights or interests of the remainder of the certificate holders.

Of course you realize that under the pending application of the Receivers of National Salt Company to the Court of Chancery of New Jersey, in which they ask to file as part of the case a certified copy of the Ohio decree, which recites that the trust certificates and the debt certificates are absolutely void, the rights of these dissenting beneficiaries, in the event of the application being granted, might thereby be destroyed.

What I think the Trust Company is bound to do under its acceptance of the trust and under the decision of the United States Circuit Court in the Ingraham suit, is to assert the validity of the debt certificates, certainly so far as the dissenting parties in interest are concerned, and to explain so far as it can how it came to permit such a decree as that entered last December to be entered against it.

Mr. Wilkie's Exhibit 4

I note further that the decree distributes among the attorneys a fund which the trustee holds for the beneficiaries. I cannot see how that can be legal, particularly as the Trustee under the terms of the deed of trust agreed to look to the National Salt Company for all its compensation, charges and expenses.

Faithfully yours,

(Signed) JOHN L. WILKIE.

Mr. Wilkie's Exhibit 4, Under Foregoing Deposition.

June 15th, 1904.

Mr. John Wilkie,
c/o Gould & Wilkie,
2 Wall Street, New York.

Dear Sir:

Replying to your favor of the 10th in the Salt matter, we beg to say that the Trust Company did not consent to the decree. It declined to consent in any way whatsoever. The decree was entered and a copy furnished the Trust Company, and in so far as it is valid it is binding upon it. How far it binds the Trust Company you can judge as well as we, but in my opinion it is binding to the extent of the trust *res* in its possession at least. How far it affects securities pledged for those who are not parties to it, I do not attempt to say. I am sure that no one has any evidence that the Trust Company ever consented in behalf of anybody, so that there has been no attempt on the part of the Trust Company to decide anybody's rights or to give way their rights. As you people represent all of the outside certificate holders who were not actual parties to the decree, except perhaps the Ingra-

hams (and I think they give a written consent though not actual parties) the Trust Company does not consider that it can do anything in the matter that you cannot do for yourselves, and that, therefore, you should assume the burden of any further proceedings either here or in New Jersey that you may desire to undertake; also, that it should be at your expense. So far as they are concerned in the appeal now pending, and which Mr. Adams has had charge of, we think the same policy applies, and we have tried to tell Mr. Adams that so far as you may wish to use the name of the Trust Company in attempting to enforce those rights you may do so. The Trust Company has nothing whatever to do with asserting the validity of the debt certificates or of explaining the decree entered here, for the reason that the parties beneficially interested, viz., yourselves, are on the ground, and can take any action you deem wise in that direction. The Trust Company was passive in the entering of the decree here, because no one came in to indemnify it for its costs and asked it to take any other action, and likewise because you and Mr. Bean both distinctly said that while you could not consent to a decree here, because it might affect your rights over against other parties, you were not interested sufficiently to care what was done with the case here.

Regarding the question as to the distribution of the fund which the trustee holds, the above points apply with equal force. The Court had jurisdiction to try the question of the legality of this contract, because it had the parties present in court. It had the Trustee in court and the trust *res* in court, and it made the distribution after a full hearing on the subject.

So far as we are familiar with the situation, we cannot see our way clear to advise the Trust Company along any other line than that above suggested.

Yours very truly,

M. B. & H. H. JOHNSON.

Mr. Bean's Exhibit 1

(Also envelope in which same was enclosed): "M. B. & H. H. Johnson, Cleveland, Ohio." To "Mr. John Wilkie, c/o Gould & Wilkie, 2 Wall St., New York."

Mr. Bean's Exhibit 1, Under Foregoing Deposition.

May 18, 1903.

Mr. Henry Willard Bean,

Dear Sir:

We represent The American Trust Company, which was made the Trustee in the deal between The National Salt Company and the stockholders of the United Salt Company.

At the time the National went into the hands of a receiver, there was something over $700,000.00 remaining unpaid on the certificates issued by the National, and under the provisions of the trust agreement, payments were to be made to The American Trust Company, and by it distributed to the holders of the certificates issued by the National to the stockholders of the United Company.

There being some question in our mind as to whether it was the duty of the Trust Company to present to the Receiver of the National Company a claim for this balance, as a matter of precaution we presented such claim, and the Receiver has fixed next Friday, the 22nd, at 11 o'clock, at the office of Frank D. McDermott Commericial Trust Building, Jersey City, as the time and place for hearing the proofs on that claim.

To us, the right of the Trust Company to recover seems very doubtful indeed, and particularly so in view of the recent decisions involving the right of recovery on these certificates; but if there is a right of recovery,

it seems to us that it is a right of the certificate holders and probably not one vested in the Trust Company; and in view of this, it has occurred to us to notify either the certificate holders themselves or their representatives; and in an effort to ascertain who they are we called upon Mr. Virgil P. Kline, and he has given us your name, together with the names of Gould & Wilkie and James P. Lee, as attorneys representing those certificate holders who have not indicated their willingness to join in a proposed settlement of the controversy between the National Salt Company and the present holders of the certificates which were issued to the stockholders of the United Salt Company in this transaction.

While we presume that the claims of your clients have probably been presented to the Receiver, and that you have already taken the burden of prosecuting the same, we take the liberty to call the matter to your attention so that if you have not already done so you may yet probably desire to present the claims of your clients to the Receiver.

Our Mr. Hogsett expects to be in New York Thursday, and if you desire, he will call and confer with you on this subject.

Yours very truly,

M. B. & H. H. JOHNSON.

Mr. Bean's Exhibit 2, Under Foregoing Deposition.

May 20, 1903.

Messrs. M. B. & H. H. Johnson,
American Trust Building,
Cleveland, Ohio.

Gentlemen:

Your favor of May 18th was handed to me by Mr. John L. Wilkie this morning. I represent some of the holders of the trust certificates, and should be very pleased to see your Mr. Hogsett in New York tomorrow.

Very truly yours,
HENRY WILLARD BEAN.

Mr. Bean's Exhibit 3, Under Foregoing Deposition.

New York, June 5, 1904.

Henry Willard Bean,
15 Wall Street.

H. H. Johnson, Esq.,
M. B. & H. H. Johnson,
Attorneys at Law,
American Trust Building,
Cleveland, Ohio.

Dear Sir:

Your favor of the 2nd inst. came to my attention yesterday afternoon for the first time, on account of absence from the city, and today is the first opportunity I have had to reply thereto.

The decree apparently entered in the action of the National Salt Company against the United Salt Company, *et al.*, some time last December, a copy of which

you enclosed, came as a distinct surprise. On behalf of my clients I object to the decree most emphatically and desire to notify the trustee through your firm, its attorneys, that on behalf of the parties in interest whom I represent, I do object to the distribution therein provided, and shall hold the trustee liable for any and all loss and damage which my clients may suffer by reason thereof.

I beg to notify you that I represent the following persons, none of whom are parties to the action in which the decree was entered, and all of whom were and have been continuously from a period antedating the bringing of the ation, owners and holders of Debt Certificates and Stock Deposit Certificates arising out of the transaction had between the owners of the stock of the United Salt Company, National Salt Company, and the American Trust Company, in September and October, 1899:

Gertrude P. Powers, Certificate 5 shares Preferred, 5 shares common stock; Certificates of Indebtedness for $297.50.

Morton C. Nichols, Certificates 50 shares Preferred, 50 shares Common stock; Certificates of Indebtedness for $2875.

F. A. Whitney, Certificates 50 shares Preferred, 50 shares Common stock; Certificates of Indebtedness for $2975.

J. K. Beckley, Certificates 50 shares Preferred, 50 shares Common stock; Certificates of Indebtedness for $2975.

Union Trust Company, Certificates 100 shares Preferred, 100 shares Common stock; Certificates of Indebtedness for $5950.

H. D. Quimby, Certificates 100 shares Preferred, 100 shares Common stock; Certificates of Indebtedness for $5950.

Mr. Bean's Exhibit 3

Frank Taylor, Certificates 50 shares Preferred, 50 shares Common stock; Certificates of Indebtedness for $2975.

C. Walter Smith, Certificates 50 shares Preferred, 50 shares Common stock; Certificates of Indebtedness for $2975.

C. F. Colton, Certificates 300 shares Preferred, 300 shares Common stock; Certificates of Indebtedness for $17,850.

I also represent Sarah A. Perkins, who holds certificates for 50 shares Preferred and 50 shares Common stock, and Certificates of Indebtedness for $2975; and Erickson Perkins, who holds certificates for 150 shares Preferred and 150 shares Common stock, and Certificates of Indebtedness for $8925.

I note that Sarah A. Perkins and Erickson Perkins are stated in the decree to be parties and that the interest of Erickson Perkins is stated to be 150 shares, and that of Sarah A. Perkins as 50 shares; that the interest of Erickson Perkins in the Certificates of Indebtedness is found to be $8925.00, and of Sarah A. Perkins $2975.00.

I find that Kline, Carr, Tolles & Goff state in a letter that they have filed an answer and a cross-petition for Erickson Perkins and Sarah A. Perkins, and also state that inasmuch as they represent a large number of certificate holders consenting to a proposed settlement that they are unwilling and unable to represent them further in case they did not care to agree to the settlement. A representative of Kline, Carr, Tolles & Goff had an interview with me, asking me to consent to the settlement on behalf of the parties I represented. This I did not do and in no way authorized them to consent on behalf of Erickson Perkins or Sarah A. Perkins to any decree or to take any action whatsoever. Neither did I hear from them further in regard to their withdrawal from the case or the necessity for any

action on my part. I protest, therefore, most vigorously against any decree entered against Erickson Perkins and Sarah A. Perkins on the appearance or by the consent of that firm.

Please accept notice therefore on behalf of the trustee, the American Trust Company, or its successor, on behalf of my clients above named, that I expect the Trustee to actively press the claim for the balance due from the National Salt Company, either against that Company or its receivers, and on collection ask that they be paid the amounts to which they are entitled on distribution.

As I stated in my letter to you of the 25th ult. the Circuit Court of Appeals for the Southern District of New York has held these Debt Certificates a valid obligation of the National Salt Company, and in view of that decision my clients have an interest in the claim against the National Salt Company on the Debt Certificates, on the stock of the National Salt Company deposited with the Trustee and in the stock of the United Salt Company deposited to secure the performance by the National Salt Company of its agreement.

Please acknowledge receipt of this matter, and advise me of any proposed action of the Trustee, and oblige.

Very truly yours,

HENRY WILLARD BEAN.

Mr. Bean's Exhibit 4, Under Foregoing Deposition.

In re Nat. Salt Co. No.
Dictated by H. W. B.,
Compared by C, Entered by M. C. A.
Filed by C.

May 25, 1904.
Re National Salt Co.

Homer H. Johnson, Esq.,
c/o M. B. & H. H. Johnson,
American Trust Building,
Cleveland, Ohio.

Dear Sir:

Could you send, on behalf of Mr. Wilkie and myself, a copy of the decree entered in the Ohio Courts on the settlement of the litigation of the United Salt Company, and also let us know the situation in regard to the dissenting parties, who in part include our clients.

You are probably aware that Mr. Adams, on behalf of your client, the Trust Company, has presented to the Court of Chancery a copy of the recent decision of the United States Circuit Court of Appeals for this district, reversing its former decision and now declaring that the debt certificates issued by the National Salt Company on the purchase of the various properties was a valid obligation of The National Salt Company. No decision has as yet been rendered by Vice Chancellor Stevenson, before whom the matter is pending.

Hoping to hear from you as soon as possible, I am,

Very truly yours,
HENRY WILLARD BEAN,
C."

It is stipulated and agreed by and between all the parties hereto, that the notice of taking of testimony may be amended by including the name of George B. Siddall as one of the witnesses to be examined in this hearing.

GEORGE B. SIDDALL, a witness produced on behalf of the Receivers, being duly sworn, according to law, on his oath, deposes and says:

Direct-examination by Mr. Twombly:

Q. Mr. Siddall, you were connected with the firm of Henderson, Quail & Siddall along in 1903, were you not? A. The firm of Henderson, Quail & Siddall was organized in January, 1904. Prior to that time I was connected with the firm of Henderson & Quail.

Q. Did you, representing the firm of Henderson & Quail, have an interview in October, 1903, with Mr. Bean with reference to a proposed decree in the Ohio suit of the National Salt Company against The United Salt Company and others? A. I did.

Q. Do you remember just what date that was? A. I can't give the exact date; it was sometime during the latter part of October.

Q. Where was it? A. I went to Mr. Bean's office in New York City; he wasn't in when I first called, and I went over to the office of Gould & Wilkie and found Mr. Bean and Mr. Wilkie together. I said to them that I wished to talk with them about Salt Company matters, that I called at the request of Mr. Quail, who was looking over the matter from our office. I think I could not talk with them on that day, and at their request called the following day at Mr. Bean's office and there found Mr. Wilkie and Mr. Bean. I said to them that a decree was about to be taken in the

matter, and I gave them, as I now recall it, for their examination, a copy of the proposed decree. They looked it over and talked about it to some extent. I was very anxious to secure their approval of the decree, and said to them that a decree was going to be taken and that we much preferred to have it a consent decree in every sense. They said that they didn't see why they should be asked to consent to the decree, because their clients were not, as I recall, parties to the suit, and they preferred not to consent to it; said they had no objection to it, so far as they knew, but they didn't care to formally consent to it, or O. K. the decree. I think I left a copy of the decree which I had with them; of that I am not quite certain.

Q. That was the only conversation you had with them at that time? A. Yes, that is the only conversation I had.

Q. Did they say anything about their claim against Messrs. Squire and Frasch as a reason for not wishing to consent to the decree, do you remember anything about that? A. Yes, I think they gave as a reason for not wishing to consent to the decree, approve the decree, that it might in some way affect the claims which they had or proposed to make against Squire and Frasch.

CROSS-EXAMINATION of George B. Siddall by Mr. Wilkie:

Q. As I understand your testimony, you say you had two interviews with both Mr. Bean and Mr. Wilkie? A. Yes, sir; I should hardly characterize the first as an interview. I called at your office and arranged at your convenience for an interview on the following day.

Q. Nothing much was done or said at the first interview, as I understand it? A. Nothing, except I

stated in a general way the object of my proposed interview with you.

Q. Did you fix the date upon which this first interview took place? A. No, I cannot.

Q. The end of October? A. The latter part of October.

Q. Now, you say at the second interview both Mr. Bean and myself were present? A. Yes, sir.

Q. And that you showed us a copy of the proposed decree? A. Yes, sir.

Q. Are you sure of that, Mr. Siddall? A. I think so.

Q. Now, if I were to say positively that you never showed me a copy of any decree, would that affect your recollection at all? A. I might be less sure, but my recollection is now that I had with me, I am sure I had with me, a copy of the decree. I am sure that the substance of that proposed decree was discussed. I will not be sure that you gentlemen read it through, but the substance of it was the subject of discussion, I have a distinct recollection of that, and my present recollection is that I showed you at the time the copy of the proposed decree, and that I left it with Mr. Bean.

Q. Why would you show me a copy of the decree, Mr. Siddall, because, as I understand it, you knew the people whom I represented were not parties to the action? A. That was for the reason that it was thought wise, on the part of Mr. Quail, and I might say that I never had any very intimate connection with the litigation, and that I called at the request of Mr. Quail—I wasn't in New York for that purpose—called at his request, and I know that he was very anxious to secure the approval of both Mr. Bean and yourself to the decree. Now, just why that was so, Mr. Wilkie, I cannot tell you.

Q. Do you remember my saying to you that I had discussed the matter with Mr. Quail, and that I had

explained to him fully what position we were going to take on behalf of our clients in reference to the Ohio suit, and that we saw no reason to change from that position? A. You said something of that sort; I don't recall just what you said.

Q. I don't pretend to quote the exact words, I am simply asking if you remember the substance of the conversation? A. I think you said more than once that you didn't see why you should be asked to approve the decree, but that you saw no objection to it; it was a matter of indifference with you.

Q. Do you remember my stating to you that I had told Mr. Quail that none of the parties whom we represented were parties to the litigation, and that we were not going to submit ourselves, voluntarily at least, to the jurisdiction of the Ohio court so that we would not be bound by any proceedings taken in that action? A. I don't recall just what you said, Mr. Wilkie, about that.

Q. Well, now, that I have called your attention to these specific things, does that call up any recollection in your mind of what was said by me in reference to the position that we had taken and that we proposed to continue in in reference to the claimants whom we represented? A. Well, nothing further than what I have already said. You said, as I have already stated, that you didn't see why you should be asked to approve the decree. I do now recollect that I said to you that a decree was going on anyway, and in order to avoid any possible question about securing the Court's order, that it would facilitate matters if you would consent to it. I think I said to you that we might have, if we did not secure your consent, some little difficulty in getting the Court to put the decree on, but I told you that the decree would certainly go on; and I remember your saying to me, "Well, if the decree is going on anyway, I don't see why it will make any difference

whether we consent or not;" I remember both you and Mr. Bean saying that you could see no particular objection to the decree and to that method of disposing of the litigation.

Q. Now, you state it that way. Don't you recollect that what I said was, I didn't care what the Ohio court did, I wasn't going to be a party to it? A. Well, you ask me if I recollect that. I will have to say that I do not, Mr. Wilkie.

Q. Don't you recollect anything in the conversation which indicated that as the position which I had adopted and was continuing? A. The impression that I had of your position was that it was a matter of indifference with you, that you were not going to oppose the thing. I think I said to you the matter would be taken care of the next week; and as I now recall it Mr. Bean said he was coming out this way and would stop here. I don't believe that he did stop. I know we had some communication from him, telegrams and letters, he found it impossible to stop. But the impression I got of your position was that you had no objection to it, but as affecting your future proposed litigation, or such as you might have then in process, you would a little rather not approve the decree.

Q. You don't pretend that I consented to the decree in any way, do you, Mr. Siddall?

Objected to as incompetent.

A. I can't say, Mr. Wilkie, that you in so many words consented to the decree. I had a feeling that you were not going to oppose it, that you tacitly consented.

Q. What do you mean by "tacitly consented," Mr. Siddall? A. You didn't see any reason why you should be asked to consent; that you hadn't any objection to it, but that for the reasons which I have given,

you would rather not put your name down on it as consenting to it, because it might affect your future rights.

Q. And you have no recollection whatever of the fact that I told you at that time that not only would I not consent to the decree, but I wouldn't do anything in the Ohio action that would give that Court jurisdiction over the parties whom we represented? A. I can't say that you did not say that, Mr. Wilkie. I have not, as I say, any recollection that you did say it.

CROSS-EXAMINATION of George B. Siddall by Mr. Bean:

Q. Do you differentiate, Mr. Siddall, my conversation with you apart from Mr. Wilkie? A. Yes; you took part in the conversation. I should say that Mr. Wilkie took the greater part in the conversation.

Q. You saw me at no time to have any talk with me, except when Mr. Wilkie was present? A. No, sir, I saw you together.

Q. And if I say that you did not leave a copy of the decree, would you be inclined to change your recollection? A. I could not change my recollection, Mr. Bean, about it. I should have, perhaps, a little more doubt about it, if you said that I did not. I know this, Mr. Bean, that I had that copy of the decree with me, and that I had it before me and that you had it before you. I remember your looking at it and handing it to Mr. Wilkie. Now, whether I left it or not, I don't know. I can't say that you read it through. I know that you had it in your hands.

Q. Did I consent to the entry of the decree in any way? A. Not affirmatively, not in so many words, no, sir, I don't think you did.

RE-DIRECT EXAMINATION of George B. Siddall by Mr. Twombly:

Q. Mr. Siddall, didn't you go there with that decree with the express purpose of getting Messrs. Bean and Wilkie to write their O. K. on the decree? A. I did.

Q. That was the one thing you went for? A. Yes, I did.

Q. And that was the reason you took the decree with you? A. Yes, sir.

By Mr. Wilkie:

Q. You failed in your object, didn't you, Mr. Siddall? A. So far as securing your O. K. on the decree, I did; I didn't secure that,

The foregoing was all the testimony given by Mr. George S. Siddall at the taking of his foregoing deposition.

IN CHANCERY OF NEW JERSEY.

Between CHAUNCEY H. STRICKLAND, Complainant, and NATIONAL SALT COMPANY, Defendant.	On Bill, &c.

In the matter of the claims of Edmond L. Brown, Henry Wick, Otis, Wilson & Company and C. H. Wilcox.

In the matter of the claims of Gertrude P. Powers, Martin C. Nichols, F. A. Whitney, J. E. Beckley, The Union Trust Company, a corporation, H. D. Quimby, Frank Taylor, C. W. Smith and E. G. Miner.

In the matter of the claims of Erickson Perkins and Erickson Perkins, as administrator of Sarah A. Perkins, deceased.

Examination of witnesses, &c., in the matter of the above claims, resumed before the Receivers of the National Salt Company, at the office of and in the presence of Frank P. McDermott, one of said Receivers, 259 Washington Street, Jersey City, N. J., on Friday, the Third day of November, nineteen hundred and five, the hearing having been adjourned from the twenty-second day of September, nineteen hundred and four.

Appearances:

George R. Beach, Solicitor for Claimants; Gould & Wilkie, of counsel, and Henry W. Bean, of counsel.

Henry B. Twombly, for Receivers.

Claimants' Rebuttal.

JOHN L. WILKIE, being duly sworn, on his oath saith:

I am an attorney at law of the Supreme Court of the State of New York, and have my office and reside in the Borough of Manhattan, in the City of New York.

I am and have been for sometime attorney and counsel for the claimants whom my firm represent in this proceeding.

On the 21st day of May, 1903, Mr. Homer H. Johnson, an attorney of Cleveland, Ohio, called at my office

in reference to the interest represented by my clients in certain debt certificates of the National Salt Company, of which his client, the American Trust Company, of Cleveland, had been trustee, under the deed of trust heretofore referred to in this action. At his request, I arranged a conference at my office between myself, Mr. Henry W. Bean, an attorney who represented certain other claimants, and Mr. James P. Lee, who represented Mr. Parrish, a holder of certain debt certificates. That conference was held at my office in the afternoon of the 21st day of May, 1903.

On the 22nd day of May, 1903, Mr. Johnson, Mr. Bean, Mr. Lee and Mr. Adams, a solicitor and attorney of the New Jersey courts, attended before the Court of Chancery in Jersey City and Mr. Johnson was examined as a witness in support of the claim of the American Trust Company for the balance due on the outstanding debt certificates of the National Salt Company.

I never saw Mr. Johnson after that day, the 22nd day of May, 1903, until I saw him in Cleveland. He did not at that time say anything to me about any proposed decree to be entered in the Ohio suit, nor did he at any time say anything to me about any such proposed decree. He did speak to me in reference to a circular letter which had been sent out by various attorneys in Cleveland, Ohio, in the month of February of the year 1903, in general reference to some proposed settlement of the Ohio action.

I was present at the examination of Mr. Johnson in Cleveland and heard him testify that he had talked with me two or three months prior to the entry of the decree in the Ohio action, in the month of December, 1903, and that he had discussed the decree with me. Mr. Johnson is in error. He never had any such conversation with me, whatever.

On the 28th of September, 1903, both Messrs. Quail and Morley called at my office. Again on the 27th day of October Mr. Siddall, who was connected with one of the firms in Ohio, connected with the litigation there, also called upon me. I can't remember separately the conversations that I had with any one of those people. They were all of the same general tenor. They stated to me that they proposed, if possible, to carry through some settlement of the Ohio action, and that they wanted, if possible, to get my clients to join in the proposed settlement. No one of them at any time ever showed me any copy of a proposed decree that was intended to be entered in the action, nor did they tell me the contents of the decree. They spoke generally in reference to the terms of the settlement, which were that the original stockholders in the United Salt Company of Ohio should get back their stock; that they should surrender any claim to the stock of the National Salt Company, and that there should be ratably divided between them a sum of money held by the successor or consolidation trust company of the American Trust Company.

I stated to all of these people that my position remained as I had stated it to them a year or more previous, when one or more of these gentlemen had called upon me, namely, that the people whom I represented were not parties to the Ohio action, there had been no service upon them, either direct or substituted, of which they or I had any knowledge; that we wouldn't voluntarily do anything by which the Ohio courts could claim jurisdiction over them, nor would we consent in any way to anything that was done in Ohio. So far as their interests were concerned, I personally didn't care what the Ohio court did, because its action, in my judgment, could not and would not in any way be binding upon my clients. I also told them that the American Trust Company, partly at my request and

partly at that of Mr. Bien and other debt certificate holders, had presented a claim to the Court of Chancery of New Jersey for the balance that was due on the debt certificates, and that that claim was being litigated, and I remember telling Mr. Siddall—if he was the last man who came to see me, on the 27th of October, 1903, that in conjunction with Mr. Adams I had prepared a brief which had been submitted to the vice-chancellor in New Jersey, and that the matter was then awaiting the decision of the Chancery Court, and that we were going to take our chances with that Court.

There was some conversation with reference to what we would do if the Court of Chancery should throw out our claims. I stated to some one of these people that in that event we would have to see if we could maintain any cause of action against either the brokers who had sold the certificates or their principals who had given them to them for sale.

I want to repeat that at no time did any one of these people ever speak to me or show me any decree—any decree which it was intended to enter.

The first knowledge I had of the decree was when Mr. Bean made an appointment with me and met me on the evening of the fourth of June, 1904, at the bar association, when he showed me a copy of the decree which had been entered in December, 1903, in the action. That was the first knowledge that I had of the terms of the decree in the action, and that night at the bar association I wrote to Mr. Johnson a letter, which is an exhibit in this case. That letter was followed by correspondence which is also an exhibit on the cross-examination of Mr. Johnson in this matter.

John L. Wilkie, Cross

CROSS-EXAMINATION by Mr. Twombly:

Q. Do you remember very distinctly your interview with Mr. Morley? A. I remember my interview with him. I remember the fact of the interview; yes.

Q. Do you remember that you didn't remember that when you were in Cleveland at the taking of the examination? A. No; I don't recollect it.

Q. Don't you remember that prior to Mr. Morley's testifying you informed Mr. Morley and myself that you had never seen the gentleman, and hadn't had the interview with him that you have been referring to, and that it was somebody else in your office who must have seen him? A. I remember there was a discussion of that kind, and I find in my diary under the date of September 28th, 1903, that both Mr. Morley and Mr. Quail called on me and had a conference with me in reference to the National Salt Company matters, and I find a memorandum as I have here testified.

Q. You remember Mr. Morley in his testimony was careful to say the gentlemen he did call upon, for the reason that you said you weren't the man upon whom he had called? A. I remember that I didn't recall Mr. Morley's face.

Q. And you didn't recall the conversation with him? A. I didn't remember the interview with him. I did distinctly remember Mr. Quail's visit, because I had seen him a number of times, but I had only seen Mr. Morley this once, September 28th.

Q. You were familiar, Mr. Wilkie, with the terms of the circular, Receivers' Exhibit D, dated February 10, 1903, at the time when these gentlemen called upon you, were you not? A. Yes. My recollection is that that circular was shown to me by Mr. Johnson in the month of May, and I find a copy of it in my papers.

Q. Did Mr. Johnson tell you that he expected to enter a decree in accordance with the terms of that circular if they could get the consents of parties in interest? A. No. Mr. Johnson told me that the American Trust Company was going to stand mute in the matter and was going to let the stockholders do whatever they thought wise.

Q. Didn't he tell you the security holders were going to enter a decree according to that circular? A. No; there was no talk in reference to a decree when I saw him in the month of May.

Q. Was there any talk with anybody in reference to that circular? A. I had this talk with Mr. Johnson when he came on in the month of May, and he had that circular.

Q. Was that mentioned by Mr. Morley or Mr. Quail or Mr. Siddall? A. Not at all.

Q. Did they state the terms of the proposed decree? A. They made a statement to me, as I have said, that they intended to put through a settlement.

Q. Did they tell you anything about what dividend would be paid? A. They told me that the holders of the stock of the United Salt Company should surrender any claim to the stock of the National Salt Company and should divide ratably the fund which was held by the American Trust Company.

Q. Did they also tell you what the terms of the decree were to be in reference to the certificates? Didn't they say that the certificates were to be turned in and cancelled? A. I don't remember. I think it very possible that they did.

Q. Wasn't it true that Mr. Morley or Mr. Quail stated to you that they wanted to have all those other certificates of indebtedness brought into the adjustment so as to clear up all the controversy? A. They stated that they wanted to have everything brought in and clean up the whole litigation; yes.

Q. You remember receiving the letter of October 6th—Receivers' Exhibit E, on or about the 7th of October, 1903? A. Yes, sir.

Q. You notice that that refers to a decree and the terms in general of what the decree was to be? A. Yes; it talks about a decree. Yes, sir.

Q. Did you see the letter that was sent to Mr. Bean, Receivers' Exhibit 1, of November 6, 1903, at about the time of its date? A. I don't know, but I think it probable that I did. I have no recollection of ever having seen that letter, and yet I may have. Its contents may have been communicated to me. My recollection is that in the month of November, 1903, down to Thanksgiving day, that I was out of town, at Coopersville. I may or may not have seen it; I have no recollection.

Q. Weren't you in frequent consultation with Mr. Bean in reference to these matters? A. From time to time, as anything would develop; yes.

Q. It is likely that you did see it or had the contents given to you about that time? A. It is very probable that Mr. Bean told me he had received such a letter and what the contents were.

Q. What is the first letter after November 6, 1903, that you wrote to Mr. Johnson or to the American Trust Company with reference to these matters? A. The only written communications that I had with Mr. Johnson were a telegram on May 20, 1903, and my letter of June 4, 1904.

Q. Did you have any communication with the American Trust Company? A. None, whatever; except that I had communications with Mr. Adams, who represented them in the matter that they had pending here in the Court of Chancery—if you refer to that.

Q. Mr. Adams—were you the one that suggested him to the American Trust Company? A. I suggested him to Mr. Johnson; yes.

Q. And Mr. Adams was practically acting in your behalf as well as in behalf of the American Trust Company, as I understand it? A. Mr. Johnson said: "Here! We want to do whatever is necessary for us to do, and I have come on here for that purpose, and have brought on these papers." He said: "Do you want the claim proved?" and I said yes—we wanted the claim proved, and to do that it was necessary for the American Trust Company to be represented by a local attorney in New Jersey.

Q. And the claim was proved really in behalf of you and your clients? A. It was, also, in behalf of Mr. Lee, who represented Mr. Parrish, and in behalf of Mr. Bean, who represented his clients here. I understood from Mr. Johnson that nobody else had asked to have it done, but we did. I certainly asked to have it done.

Q. Mr. Wilkie, you know that these gentlemen came to New York for the express purpose of talking to you and Mr. Bean in reference to a proposed settlement in Cleveland? A. Through me to see whether I or clients of mine whom I represent would consent to a settlement that they wanted carried out.

Q. What makes you so sure, as you have testified, that they didn't show you a copy of the proposed decree? —Personally, I know they had one with them, because they came to the office and showed it to us. A. The only person, as I remember the testimony, who says he had a copy of the decree, was Mr. Siddall. Neither Mr. Quail nor Mr. Morley, whom I had my talk with, pretend to have had a copy of the decree, as I remember their testimony. My interview with Mr. Siddall was of the briefest kind. I told him that the interest I then represented was a comparatively small one, and I gave him Mr. Bean's address and telephoned Mr. Bean that he was coming over. I know that he didn't leave any papers. I know that if he had shown me a copy of the decree to follow out the lines

of the one entered I certainly would have had a great interest in it. I know that no such a decree was shown. Quite on the contrary—I can't place whether that was in the talk with Mr. Siddall or not—but my recollection is that it was. There was some talk that if we didn't agree to it the Trust Company wouldn't take any action unless it were indemnified against any possible claim by our people, either by the other certificate holders or some other persons in interest. That was entirely open in his mind.

Q. You don't remember that he did say that to you or not? A. I don't remember that he did, at that time.

Mr. Twombly: I ask that that be stricken out.

A. It was either by Mr. Quail or Mr. Morley. It was told to me by someone—either Mr. Quail or Mr. Morley, at that conversation.

HENRY W. BEAN, being duly sworn on the part of the claimants, on his oath, saith:

I am an attorney and counsellor of the Supreme Court of the State of New York, and reside and have an office in the City of New York, Borough of Manhattan.

I am attorney for certain parties, whose names appear on the record.

I saw Mr. Homer Johnson, who has testified, in May, 1903, and came over on that day or the following day to Jersey City. I didn't see Mr. Johnson after he left New York in May until I saw him in Cleveland at the taking of this testimony. I had no communication with him or with the American Trust Company, which he represented, until I wrote to him sometime in the latter part of May or first of June,

1904, asking him for certain information. I received from him, either directly or indirectly, a copy of the decree, and made an appointment with Mr. Wilkie, and at that appointment wrote a letter which is in eviednce. was about that time, according to my recollection, that I learned that the Trust Company, having been indemnified by the other parties to the suit, had stood mute, or consented to the settlement.

Mr. Twombly: I move to strike that out, on the ground that if it was in writing the writing is the best evidence; if it was by word of mouth, it should be told who said it and the conversation.

The Receiver: I will let it stand.

Exception.

Mr. Morley and Mr. Quail and Mr. Siddall came to see me in the fall of 1903, and Mr. Quail had been to see me once before, endeavoring to secure the assent of myself to the settlement proposed. He did that—all of these parties—several times—endeavored to secure our assent to the proposed settlement. In the fall, at the interviews testified to by Mr. Quail, I not having paid any attention for sometime to the matter, asked the wishes of my clients in regard to going into the settlement.

At this interview I discussed with Mr. Quail the advantages of the settlement and the method by which it was to be brought on—was proposed to be made—and Mr. Quail explained the terms to me of the settlement and what was proposed to be done by the various parties. I did not accept the settlement in behalf of my clients, or authorize anyone to accept the settlement in my behalf. Mr. Siddall had with him a draft form of a decree or order which he showed to me. I did not read it, but simply asked him in general what were its contents, and my recollection is

that he told me that it was merely a proposed means of carrying out this proposed settlement. My recollection is that he did not leave the copy with me.

CROSS-EXAMINATION by Mr. Twombly:

Q. You state that you heard that the Trust Company, at about the first of June—that you heard that the Trust Company, being indemnified by the parties, had stood mute or consented to the decree. From whom did you hear that? A. I should say that I heard that from Mr. Adams.

Q. Who is Mr. Adams? A. Mr. Joseph H. Adams. That is my recollection.

Q. You mean that man who has been testified to as representing the trust company by Mr. Wilkie? A. Yes.

Q. Did you hear it at that time from anyone else? A. No.

Q. From whom else did you hear it later on? A. From Mr. Johnson.

Q. When was that—in Cleveland? A. In Cleveland.

Q. When this testimony was taken? A. Yes.

Q. How many discussions did you have with reference to that proposed settlement with either Mr. Morley, Quail or Siddall? A. My recollection is that I had two talks, on two different days, with Mr. Morley and Mr. Quail.

Q. And one with Mr. Siddall? A. And one with Mr. Siddall. I think that Mr. Siddall came in to see me more than once but I failed to see him except on the one occasion, when the interview was very brief.

Q. Do you remember, Mr. Bean, along in the fall of 1903, prior to the time when this decree was entered, calling into my office and examining the depositions that were taken in the suit of the National Salt

Company against the United Salt Company, the suit being in the Cuyahoga County Court, Ohio, the depositions having been taken at our office at sometime prior to the time when you came in, and the depositions being the same ones that have been put in evidence in this case? A. I recall going to your office and endeavoring to see the depositions, but for one reason or other I didn't see them.

Q. I think you must be mistaken, Mr. Bean, because I remember giving you a copy of the depositions and your sitting in my office an hour or two hours and reading them all over and stating to me that there was no question in your mind as to the effect of the depositions? A. I have a positive recollection in my mind of having read the depositions. I was present at some of the testimony. My very clear recollection would be that that would be in the fall of 1902 or the spring of 1903, at the very latest. In any event, this was shortly after the taking of the depositions, whatever that was, at your office.

Q. Do you remember stating to me at that time that you didn't care much what happened to the suit, as your remedy was against the parties from whom you bought the certificates? A. At that time it was my feeling, and I may have stated it to you. I have no recollection.

Q. Were you familiar with the contents of the circular of February 10, 1903 (Receivers' Exhibit D) at or about the time of its date? A. My recollection is that this was forwarded to me sometime in the spring of 1903. It came into my possession then.

Q. Did Messrs. Foote & Havens forward to you the letter of October 22 written to them by Kline, Carr, Tolles & Goff, being Receivers' Exhibit B? A. I presume I received it.

Q. If I understand your testimony right, Mr. Bean, you said that you told them that your clients did not

care to go in the proposed settlement. Can you give me a little more in detail what you said in reference to that? A. I have only the vague—or not a vague impression, but no independent recollection—of what was said on either side, further than that the interview had no especial importance.

Q. In other words, you gave them to understand that you didn't care to do anything in that suit; is that the idea? A. I absolutely didn't want to have anything to do with the suit.

Q. Didn't care to get into the suit? A. Wouldn't go into the settlement.

Q. You did tell them that you wouldn't go in the settlement? A. I left it open first.

Q. When was it that you told them finally that you wouldn't go into the settlement? A. I had only the two interviews with Morley or—

Q. As a matter of fact isn't it a fact that you left the matter open until after the decree was entered? A. I think not.

Q. You remember receiving the letter of October 6, 1903, Receivers' Exhibit F, with the enclosed letter, being Receivers' Exhibit E? A. Yes.

Q. Do you remember writing in answer to that letter, Receivers' Exhibit G, of October 9, 1903? A. I do; yes, sir.

Q. And do you remember receiving letter of October 15th, Receivers' Exhibit H? A. I find that letter in my files.

Q. Do you remember the telegram that was sent to you on October 21st? A. Such a telegram was received.

Q. Which was as follows, "Will you kindly write about the Salt matter; it is urgent?" A. Yes.

Q. And do you remember sending a telegram November 3, 1903, to the effect that "Mr. Bean will be in Cleveland November 4th?" A. The telegram was

sent at my direction. I was in Cleveland on that date on my way to Chicago, but owing to pressure of business I was unable to stop.

Q. And do you remember discussing the letter of November 6, 1903, Receivers' Exhibit I? A. I have no recollection of having received that, but I believe it is among my files. I was engaged with Mr. Wilkie in the trial of a case extending over the period of the early part of November.

Q. If it came to your office it was probably called to your attention, wasn't it? A. Sometime.

Q. And sometime about the date of its receipt; wasn't it? A. In all probability; yes.

Q. And do you remember discussing the letter of November 6, Receivers' Exhibit I, with Mr. Wilkie? A. I do not.

Q. You did discuss, generally, all these matters with Mr. Wilkie? A. Yes.

Q. What was the first letter that you wrote, either to Henderson & Quail, Kline, Carr, Tolles & Goff or M. B. & H. H. Johnson subsequent to November 6, 1903, if you know? A. All the letters are in evidence. There were no letters to either of those parties except those in evidence.

Q. Then the first letter you wrote after that was May 25, 1904? A. Yes; that is correct.

Q. Mr. Bean, in behalf of your clients, you joined with Mr. Wilkie in requesting the Trust Company to file a proof of claim before the receivers in this actioi? A. I did, at the time it was done.

Q. Are you sure that Mr. Siddall didn't leave a copy of that proposed decree with you as he testified, when he saw you in October? A. To the very best of my recollection. I haven't looked for it recently, and if it had been left with me I should have it at the present time.

Q. And you haven't looked for it? A. I haven't looked for it recently, and I don't remember whether--

Q. You understood all the trems of the decree at the time? A. I did not.

Q. Didn't he tell you all the terms of the proposed decree? A. I shouldn't want to say whether he did or not.

Q. He gave you in general, to understand what they were; you will testify to that. A. Yes.

The further taking of testimony was then adjourned to Saturday November 18th, 1905, at 10 o'clock, at the office of Frank P. McDermott, one of the receivers.

On Saturday, November 18th, 1905, at the hour appointed, the Receivers attended to hear further testimony, and none being offered the testimony was declared closed.

N. S. BEARDSLEE,
FRANK P. McDERMOTT,
Receivers.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,

and

NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

In the matter of the claims of Edmond L. Brown, Henry Wick, Joseph E. Otis, Charles H. Wilcox,

Notice having been given to the solicitors of the above named claimants of an application to the Re-

ceivers of the National Salt Company, for leave to reopen the hearings in the matter of the above mentioned claims and to introduce further testimony, and the same coming on to be heard before said Receivers on Friday, the 23rd day of November, 1906, at 10:30 A. M., the following counsel appeared:

George R. Beach, with whom was associated Messrs. Gould & Wilkie, for the said claimants.

Louis H. Hall, of Putney, Twombly & Putney, of counsel for the Receivers.

Testimony on Re-opened Hearing.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,

and

NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

In the matter of the claims of F. A. Whitney, Morton C. Nichols, Gertrude P. Powers, Erickson Perkins, and Erickson Perkins, administrator of Sarah A. Perkins, deceased, C. Walter Smith, Frank Taylor, H. D. Quimby, Union Trust Company, J. N. Beckley and E. J. Miner.

Notice having been given to the solicitors of the above named claimants of an application to the receivers of the National Salt Company for leave to reopen the hearings in the matter of the above mentioned claims and to introduce further testimony, and the same coming on to be heard before said receivers on Friday, the 23rd day of November, 1906, at 10:30 A. M., the following counsel appeared:

George R. Beach, solicitor for the claimants, with whom was associated Mr. Henry W. Bean and Mr. Joseph G. Deane.

Louis H. Hall, of Putney, Twombly & Putney, of counsel for the receivers.

Mr. Hall states that he appears in behalf of the motion and makes application for leave to reopen the hearing in the matter of the claims, and to introduce further testimony.

Mr. Beach, on the part of the claimants, objects to the reopening of the hearing and the introduction of any further testimony, on the ground, among others, that this matter was closed over a year ago and no excuse is presented on behalf of the attorneys for the receivers, or reason given, why such testimony as they desire to introduce should not have been introduced before the hearings were closed, and on the further ground that the attorneys for the receivers have not stated the substance of the testimony which they desire to introduce, nor limited the subject-matter of the hearing, and on the further ground that any testimony except such as tends to show that the claimants are not *bona fide* holders for value before maturity of the obligation in question is incompetent, immaterial and irrelevant, and that the introduction of further testimony will be an unnecessary hardship on these claimants and a source of expense that they should not be called upon to meet, and on the further ground that the opening of the hearing would tend to prolong the litigation and unnecessarily and improperly increase the expense of the receivership. Under all these grounds the claimants object to and protest against the opening of the hearings and the taking of further testimony.

The receiver states that on careful consideration of the matter presented and of the objections thereto, believing that the introduction of further testimony will be to the interest of the creditors and stockholders of the defendant corporation, he will permit the introduction of further testimony on the part of the receivers, and the claimants, if they desire, upon condition that the taking of said testimony on the part of the receivers shall be commenced within fifteen days from this date.

Mr. Beach: I ask that the receiver instruct the attorneys for the receivers within five days from now, to prepare and send to the attorneys for the claimants, a statement of the facts which they propose to prove in this matter.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,

and

NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

In the matter of the claims of Edmond L. Brown, Henry Wick, Joseph E. Otis, Charles H. Wilcox.

Examination of witnesses, &c., in above entitled matters before the receivers of the National Salt Company, at the office of Frank P. McDermott, one of said receivers, 259 Washington Street, Jersey City, New Jersey, on Saturday, the eighth day of Decem-

ber, nineteen hundred and six, at eleven o'clock in the forenoon.

Appearances:

George R. Beach, with whom was associated Mr. John L. Wilkie, for the said claimants.

Henry B. Twombly, of Putney, Twombly & Putney, of counsel for the receivers.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,

and

NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

In the matter of the claims of F. A. Whitney, Morton C. Nichols, Gertrude P. Powers, Erickson Perkins, A. Erickson Perkins, administrator of Sarah A. Perkins, deceased, C. Walter Smith, Frank Taylor, H. D. Quimby, Union Trust Company, J. N. Beckley and E. G. Miner.

Examination of witnesses, &c., in above entitled matters before the receivers of the National Salt Company, at the office of Frank P. McDermott, one of said receivers, 259 Washington Street, Jersey City, New Jersey, on Saturday, the eighth day of December, nineteen hundred and six, at eleven o'clock in the forenoon.

Appearances:

George R. Beach, with whom was associated Mr. Joseph G. Deane, for the said claimants.

Henry B. Twombly, of Putney, Twombly & Putney, of counsel for the receivers.

Mr. Twombly: I offer in evidence from the Commercial and Financial Chronicle the record of the prices of the sales of the National Salt Company stock, both common and preferred, from July, 1900, until June, 1901.

Mr. Deane: Objected to as incompetent, immaterial and irrelevant, and on the further ground that any evidence of the price at which the stock of the National Salt Company sold prior to the purchase by the claimants of the certificates held by the claimants in this action, have no possible bearing upon their claims, and claimants further repeat the objection made at the hearing on November 23, 1903, against the taking of any further testimony in this proceeding.

Objection overruled by receiver. Exception.

Mr. Wilkie: No objection is made to the fact that proof of the sales at the prices set forth in the Financial Chronicle is made in that manner rather than by individual testimony to such effect.

It is agreed that a schedule be made up of the sales as shown by the Chronicle.

Adjourned to a day to be fixed by agreement.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,

and

NATIONAL SALT COMPANY,
Defendant.

On Bill, &c.

1.

In the matter of the claims of Edmond L. Brown, Henry Wick, Joseph E. Otis, Charles H. Wilcox.

2.

In the matter of the claims of F. A. Whitney, Morton C. Nichols, Gertrude P. Powers, Errickson Perkins, A. Errickson Perkins, administrator of Sarah A. Perkins, deceased, C. Walter Smith, Frank Taylor, H. D. Quimby, Union Trust Company, J. N. Beckley and E. G. Miner.

Examination of witnesses in the above entitled matter, before the receivers of the National Salt Company, at the office of Putney, Twombly & Putney, attorneys for the receivers, 170 Broadway, New York City, on Tuesday, February 26, 1907, at two o'clock in the afternoon.

Appearances:

John L. Wilkie, Esq., attorney for Edmond L. Brown, and others.

H. W. Bean and Joseph G. Deane, attorneys for F. A. Whitney, and others.

Henry B. Twombly, attorney for the receivers.

Deposition taken in New York by consent of attorneys for all parties.

ARCHIBALD S. WHITE, a witness called on behalf of the receivers, being first duly sworn, testified as follows:

Examined by Mr. Twombly:

Q. In the matter of the purchase of the United Salt Company by the National Salt Company, in 1899, you had charge of the negotiations as president of the National Salt Company?

Mr. Wilkie: Objected to as incompetent, irrelevant and immaterial.

Question admitted. Exception.

A. Yes.

Q. What examination of the property of the United Salt Company did you make, Mr. White, before entering into the contract of July, 1899?

Mr. Deane: This question and all questions of similar purport are objected to as incompetent, immaterial and irrelevant—this objection to apply to each question and answer as if specifically made thereto. This objection is made on behalf of all the claimants.

A. There was very little physical examination of the property.—

Mr. Wilkie: I object to that and move to strike it out as not responsive.

The Receiver: The answer will stand.

A. (Continued.) As I remember, a proposition was made by Mr. Squire, the president of the United Salt Company—(interrupted.)

Mr. Deane: That is not responsive.

Witness: I was endeavoring to give a comprehensive answer. I cannot answer that question in one word.

Q. What was done, Mr. White? A. Well, I started to describe the situation. I do not know how to answer that direct question. If you ask me again I will see if I can answer "Yes," or "No."

Q. What was done with reference to the investigation of the property and assets of the United Salt Company before the purchase of July, 1899? A. A general statement was examined. Very little physical examination of the property, the books were not examined,—we relied almost entirely upon the representations of the president of the United Salt Company as to what its property consisted of—its physical value and earning capacity, contracts, obligations, etc.

Mr. Deane: I move to strike out the answer on the ground already stated, that it is not responsive.

The Receiver: Motion to strike out denied.

Q. Did you examine, or cause to be examined, the books of the company, to ascertain its accounts receivable? A. No, sir.

Q. Or accounts payable? A. I did not.

Q. Did you examine the contracts that the United Salt Company had? A. No, sir.

Q. Did you examine the merchandise on hand? A. No, sir.

Q. Or did you examine the profits of the company? A. No, sir.

Q. From the books? A. No.

Q. Did you examine into whether or not the company had ever paid any dividends? A. You mean upon an examination of the books?

Q. Yes. A. No; did not examine the books at all.

Q. How much of an examination did you make of the plant itself—the buildings, machinery, wells, etc.? A. Well, some of the directors of the National Salt Company, including myself, went through the plant and generally observed the condition of the property.

Q. You had been familiar with the plant for some years? A. Yes, more or less.

Q. Were any steps taken to make an appraisal of the United Salt Company property? A. No, no formal appraisal, except the impression that was formed in the minds of the various members of the Board of Directors of the National Salt Company, who visited the premises.

Q. Was a report made? A. Never made any formal report—at least I don't remember it.

Q. What representations were made by Mr. Squires or others representing the United Salt Company, with reference to the value of their plant?

Mr. Bean: Objected to on the ground that it is irrelevant, immaterial and incompetent testimony.

Question admitted.

A. As I remember it, Mr. Squires, the president of the United Salt Company, represented that their plant—(interrupted.)

Mr. Wilkie: I object. He should be limited to what was said.

Mr. Twombly: I will withdraw the question.

Q. What representations were made by Mr. Squires or any other parties representing the United Salt Company just about the time when you entered into

this agreement of July, 1899, or just prior thereto, with reference to the value of the plant of the company—of the United Salt Company? A. I cannot recall the detail of the conversation. I have not seen any papers on the subject for several years.

Q. What was the substance of this conversation? A. My recollection is that Mr. Squires represented that the plant was making about 100,000 tons of salt a year, that they had made large earnings, that the property had been kept in a high state of efficiency and its capacity increased from time to time, that they had valuable contracts for the purchase of exhaust steam at very low prices. That they had a patented process as well as a secret process for the utilization of this exhaust steam in the evaporation of brine and the production of salt. That the cost of equipping a plant with this method of manufacture was very small, that the cost of producing salt by that method was less than fifty cents a ton, and that it produced a quality of salt that was readily saleable at more than two dollars a ton. That contracts had been entered into with large consumers of salt to take the output of this new patented process of manufacture and they fixed a price on the value of their property of stock of the National Salt Company—I think it was $1,250,000 preferred, and $1,250,000 of common, par value. They argued that their property was so valuable that they did not feel that they could take the ordinary business risk as to whether these securities which they would receive would pay a dividend or not, and they insisted upon an arrangement whereby they would be assured of their receiving seven per cent on the preferred stock and ten per cent on the common stock. I think those are the figures.

Mr. Wilkie: I object to that and move to strike it out.

Answer permitted to stand.

Q. Did you make an examination into the working of this so-called secret process that they said they had of making salt? A. No.

Q. Why not? A. Well, they would not permit any representative of the National Salt Company to see it, claiming that it was a secret.

Q. Did you subsequently, after the United Salt Company had been purchased by the National Salt Company, make an examination of this process? A. Yes, sir.

Q. Of what value, if any, was it?

Mr. Wilkie: Objected to on the ground that it is subsequent to the purchase.

The Receiver: The question will be admitted.

A. No value whatever.

Q. What valuation did you put on the physical plant of the United Salt Company, Mr. White, at that time?

Mr. Wilkie: What time is that?

Mr. Twombly: July, 1899.

A. Outside of the value of the real estate, which I am not competent to pass upon, I should say the physical property could have been duplicated for in the neighborhood of $300,000.

Q. And in your opinion, was the value of the real estate more than $100,000?

Mr. Wilkie: Objected to on the ground that the witness, by his own admission, is not qualified to testify as to the value of the real estate.

The Receiver: Question overruled.

Q. You have purchased salt properties? A. Yes, sir.

Q. And sold salt properties? A. Yes, sir.

Q. How long have you been in the salt business? A. I have been in the salt business about fifteen years.

Q. During all that time you have been familiar with the value of salt properties,—lands, buildings and machinery? A. Generally.

Q. Now, with that experience, are you not able to state the value of the land in connection with the salt business of the United Salt Company?

Mr. Wilkie: Objected to.

A. No.

Q. Mr. White, what was the chief value of the United Salt Company to the National Salt Company, as discussed by you in the Board of Directors of the National Salt Company?

Mr. Wilkie: Objected to.

Question admitted.

Mr. Deane: The question is further objected to as assuming a fact not shown to be so.

The Receiver: The question will be admitted.

A. As I remember—its ability to earn money and its competition, if not controlled. I think those two points cover it.

Q. And as to the value in money of the United Salt Company, business and plant, what was the discussion as to the money value of that property? A. You mean the value of the plant or the value of the business?

Q. The value of the whole thing? A. You know the price we agreed to pay for it—I don't know how to answer the question.

Q. Was the value you paid for it based upon the par value of the stock of the National Salt Company, or the value of the stock of the Salt Company, as it was sold in the market at that time?

Objected to by Mr. Wilkie.
Question admitted.

A. It was not based on either of those propositions. They made a proposition that they would take so much preferred and so much common stock, which proposition was accepted.

Q. Did you consider, as one of the directors of the National Salt Company, in making that deal that the property that you bought of the United Salt Company was worth $2,500,000 in cash?

Mr. Wilkie: Objected to.
Question admitted.

A. No.

Q. Did you consider that what you were getting in your purchase of the United Salt Company was worth $2,000,000 in cash? A. No, sir.

Q. Did you consider that what you were purchasing from the United Salt Company was worth $1,750,000 in cash? A. No.

Q. Do you remember what the market price of the stock of the National Salt Company was in July and August, 1899? A. It was about 40 common—75 preferred.

Q. On the average? A. I guess so.

Q. What was the reason as discussed in your board of directors for issuing its certificates of indebtedness at the rate of $106.25 a share of common and preferred?

Objected to by Mr. Wilkie.

The Receiver: The question will be admitted upon assurance of counsel that it was communicated to the United Salt Company.

A. I cannot answer that question "Yes" or "No." I will have to explain it.

Q. I ask you what was said? A. The proposition as presented was a demand that the dividends on this stock should be guaranteed—by "this stock" I mean the stock of the National Salt Company that was delivered in exchange for the United Salt Company.

Q. Who made this demand? A. Mr. Squire, president of the United Salt Company.

Q. Was this demand communicated to your board of directors, of the National Salt Company? A. Yes.

Q. Was it discussed? A. Yes.

Q. What was said? A. The demand was that their property was a very valuable one, capable of earning a large amount of money; that the National Salt Company, as a whole, had such a number of plants that its entire property might not make the proportionate amount of money to the stock issued as this particular United Salt Company property about to be acquired, and they demanded a guarantee that the dividends would be paid. It was discussed and the matter referred to counsel, who drafted this paper called a "certificate of indebtedness."

Q. What was said about these certificates of indebtedness when they were finally decided upon between you and Mr. Squires? A. What was said by Mr. Squire and me?

Q. Yes, in substance? A. On which particular point?

Q. As to whether or not they were intended as a guarantee of dividends? A. Absolutely intended as a guarantee of dividends, nothing else.

Q. Do you remember when the United States Salt Company went into the hands of a receiver, Mr. White? A. No, I do not; I could not tell the exact date.

Q. Assuming that the company went into a receiver's hands in April, 1901, at that time had you any knowledge what the condition of the plants of the United Salt Company was? A. Generally, yes.

Q. Was that condition as good as when the plant was acquired by the National Salt Company? A. Substantially as good.

Q. Do you know whether or not the United Salt Company property was finally sold by the receiver? A. I understood it was.

Q. Do you know what it brought? A. I heard that it brought something over $100,000. Some figure near $100,000—I do not know the exact figures.

Q. Is it a fact, Mr. White, that when you bought the United Salt Company you had in mind—paying what you did—its prospective earnings and the increase in price that it might be possible to obtain because of the fact that the competition between the National Salt Company and the United Salt Company would be destroyed? A. Yes—not exactly destroyed.

Q. But controlled? A. Controlled.

CROSS-EXAMINATION by Mr. Wilkie:

Q. As I understand your direct-examination, Mr. White, you have been in the salt business about fifteen years. Was that prior to the month of July, 1899, or continued down to a later period of time? A. I went in the salt business, as I remember, about 1885.

Q. What positions had you held in the salt business prior to July, 1899? A. Well, I had been gen-

erally through every department of it—manufacturing, sales, &c.

Q. Were you one of the organizers of the National Salt Company? A. Yes, sir.

Q. What offices did you hold in that company? A. I was president of it.

Q. For how long a period of time prior to July, 1899? A. From the time it was organized.

Q. How long was that? A. Without referring to the records I could not tell you. It was organized in 1898, wasn't it?

Q. The United Salt Company had been in existence for several years before that? A. I should suppose so, I would have to look these records up to be accurate.

Q. It had been the owner of a salt business or interested in the salt business even before the organization of the National Salt Company? A. Yes, sir.

Q. Are you still selling salt properties? A. No, sir; I do not make a business of selling salt properties.

Q. You had purchased and your associates had purchased various salt properties that you controlled? A. Yes, sir.

Q. And some of these companies were sold to the National Salt Company or merged into it in some manner? A. Yes, sir.

Q. You were familiar, generally, with the value of said properties prior to this transaction with the United Salt Company? A. Yes, sir.

Q. You had in charge the negotiations with the United Salt Company? A. Yes, sir.

Q. When did you have your first interviews with the officers or directors of the United Salt Company, in reference to the purchase of the properties of that

company? A. Now, as near as I can remember, Mr. Wilkie, these negotiations covered substantially a year before they were concluded.

Q. So, from about the time of the organization of the National Salt Company until the month of September or October, 1899, you had been engaged in negotiations with the officers and directors of the United Salt Company, for the purchase of their properties? A. I don't recognize the date—September or October—but if that is the date the property was taken over, I should say "yes" to the question.

Q. What did the properties of the United Salt Company consist of—substantially,—each one? A. Well, they owned one plant known as Plant No. 1, located in Cleveland, on the Lake Shore and Michigan Southern Railroad.

Q. Describe all of these properties, as you remember them? A. They owned one in the eastern part of the City of Cleveland, near, I think, Wilson Avenue,—I think that was the name of the Street. It was a plot of land, about seven or ten acres, on which there was a plant capable of producing fifty to one hundred thousand tons of salt a year. You don't want a full description of it, do you? They also had some property in the southern part of the City of Cleveland, in the District known as Newburg, on which there was located a small plant that I don't think was running at that time. I think that it had been closed down permanently. They also had this patent process installed about a quarter of a mile from the No. 1 works, on a plot of land located near the American Steel & Wire Company. They also had a small parcel of land near the foot of Washington Street, Cleveland, on which they proposed to install this patent process. I think that covers the properties, as I remember it.

Q. Do you remember whether or not they owned property in Akron, Ohio? A. I have heard that they owned some land near Barberton, Ohio. That is all I know—I never saw the land.

Q. You didn't know that they owned this property? A. No, sir.

Q. Do you know whether or not they owned a plant at Pomeroy, Ohio? A. At the time the National Salt Company purchased their property?

Q. Yes? A. No, sir.

Q. You never heard of it, if they did? A. No, sir.

Q. Do you know whether or not they owned or were the lessees of certain salt property in Meigs County, Ohio, at that time? A. No, sir.

Q. You didn't know that? A. No, sir.

Q. Don't you remember that you issued a statement in the New York stock exchange in which you recited that the United Salt Company owned these properties in Cleveland that you described and that they owned a salt plant in Akron and Pomeroy and was also the lessee of a certain salt property in Meigs County, Ohio? A. Are you talking about a time prior to when the National Salt Company purchased this stock or subsequent?

Q. At the time when the National Salt Company purchased the stock of the United Salt Company—what property the United Salt Company owned at that time (hands witness printed statement)? A. This statement is dated September 13, 1900, that is subsequent to the National acquiring the property of the United. This statement is dated in September, saying that the United Salt Company had acquired a plant at Pomeroy and leased some property in Meigs County. That was subsequent to the purchase of the United Salt Company stock by the National Salt Company.

Q. What did the United Salt Company own at the time of the purchase of the stock of that company by the National Salt Company in the year 1899—only the properties in Cleveland? A. That is all that I know of.

Q. You don't know of any other? A. Except, perhaps, a little piece of land in Barberton, Ohio.

Q. You didn't know that at that time they owned these properties at Arkon and Pomeroy? A. I am quite clear that they didn't.

Q. These properties, then, were purchased by the United Salt Company subsequent to the acquisition of the stock of that company by the National Salt Company? A. That is my recollection.

Q. Do you know how long the United Salt Company had been engaged in business prior to the time when the National Salt Company purchased its stock? A. Ten or fifteen years.

Q. Do you know whether or not its business had been successful? A. Well, they had always been large factors in the market, selling a large amount of salt. I don't know how much money they made.

Q. Do you know whether or not they had paid dividends on the stock? A. No, I have no positive knowledge on the subject.

Q. Have you any information on that subject? A. Nothing, except hearsay.

Q. Well, what information have you? A. The only information I have is a figure in my mind—that they once declared a dividend, I think 1%.

Q. You don't know, as a matter of fact, that the United Salt Company for some years continuously had been paying dividends on its stock to its shareholders? A. No, sir; I don't.

Q. Do you know how large a percentage of the salt business in Ohio the United Salt Company was supply-

ing at the time of its purchase—the purchase of its stock by the National Salt Company? A. I should say considerably more than a majority.

Q. Don't you know that it was supplying between seventy-five and ninety per cent of the total salt business in the State of Ohio at that time? A. All I can say is that their producing capacity as compared with other manufacturing plants in the State of Ohio represented considerably more than a majority. I could not attempt to give any more detailed figures. It might be sixty-five or it might be seventy-five per cent.

Q. Do you know anything about the market value of the United Salt Company stock prior to the purchase of the stock by the National Salt Company? A. No, sir.

Q. Have you heard of any of the sales at any time? A. No, sir.

Q. You don't know that the stock had been selling at $200 a share? A. No, sir.

Q. Have you any recollection of hearing of any price? A. Yes, I heard a price of $40 or $50 a share, but what time—I was trying to place the time when such a transaction took place, but I could not state with any accuracy at all. I think it was many years preceding this transfer.

Q. You haven't any recollection of the market price obtained for the shares of that company for a year prior to its purchase by the National Salt Company? A. Have no recollection of it; no, sir.

Q. Did you make any inquiries at all in connection with the purchase by the National Salt Company, to find out what that stock had been selling for in the market? A. I don't remember that I did.

Q. You purchased all the outstanding stock of the company, did you not—the National Salt Company did? A. I think so, yes, sir.

Q. And that was a trifle less than shares of the total par value of $1,000,000? A. About that; yes, sir.

Q. $994,000 par value of stock, or something like that amount? A. It was intended to be about all of it.

Q. After the purchase of that stock by the National Salt Company the National Salt Company voted the stock, didn't it, at stockholders' meetings? A. I really don't remember. I presume so.

Q. Do you know whether or not persons representing the National Salt Company were elected officers of the United Salt Company?

Mr. Twombly: What time was this?

Mr. Wilkie: Immediately after the purchase.

A. I am not clear on that point. I am inclined to think that the old officers continued for a time.

Q. How long a time? A. I could not say without referring to the records.

Q. Do you remember that in the beginning of the year 1900 the National Salt Company at the annual meeting of shareholders of the United Salt Company elected a Board of Directors of that Company and officers of that company who were its representatives? A. No, I don't remember the event.

Q. Do you remember that at any time the National Salt Company elected its representatives directors and officers of the United Salt Company? A. Yes, but my memory is too hazy to give you particulars or details. My recollection is that the National Salt Company directed the operation of the United Salt Company's property.

Q. The purchase of the United Salt Company stock was made in the month of October, 1899, wasn't it? A. I don't remember the date.

Q. Well, you have stated that the negotiations lasted for about a year prior to their consummation, is that right? A. Yes, sir.

Q. And you have spoken of the month of July, when you were negotiating with Mr. Squire, the president of the United Salt Company? A. Yes, sir.

Q. Do you remember whether or not it was two or three months after your conference with Mr. Squire in July, 1899, that the transaction was actually consummated? A. No, sir; I would not attempt to give detailed dates. The papers ought to show that. I merely remember that the matters was begun about a year before the negotiations were concluded and for one reason or another negotiations were delayed, and I do remember in the summer of that year going to Cleveland with some of the directors of the National Salt Company. I think from that time on negotiations were hurried or endeavored to be brought to a conclusion.

Q. Do you recollect that the National Salt Company paid the first installment of interest on these debt certificates in the month of January, 1900? A. Now, Mr. Wilkie, I don't want to appear evasive, but I have had no occasion to refer to this matter for a long, long time, and none of the records are in my possession. I have not refreshed my memory on these things and I can only answer in the most general way.

Q. Do you remember the fact that in the month of April, 1901, the National Salt Company brought an action against the United Salt Company in the Court of Common Pleas for Cuyahoga County, in the State of Ohio, to set aside these stock purchases? A. I remember such an action was brought, but I do not know the date.

Q. Do you remember whether or not any payments were made on these certificates of indebtedness? A. Certainly, there were.

Q. How many were made? A. I could not say that.

Q. Were payments made in January and July, 1900, and in the month of January, 1901, three payments in all? A. I could not tell you from memory—I would have to refer you to the papers.

Q. How did the National Salt Company undertake the operation of the United Salt Company after the purchase? A. The United Salt Company continued to operate as the United Salt Company. Its organization was maintained as formerly and they continued to sell salt and conduct their business as the United Salt Company.

Q. But under the superintendance and direction of the officers and directors of the National Salt Company, is not that so? A. Yes, sir.

Q. The National Salt Company entered into actual possession of the property of the United Salt Company through its representatives after the purchase of its stock?

Mr. Twombly: I don't know how you can say that.

I object to that.

A. Through the ownership of stock they dictated the policy of the United Salt Company.

Q. The business of the United Salt Company was maintained in accordance with the directions of the officers and directors of the National Salt Company? A. Yes, sir.

Q. Do you remember what the result of the first year's business was of the United Salt Company after the National Salt Company had purchased the stock? A. No, sir.

Q. Do you remember writing a letter to Mr. Herman Frasch, Cleveland, under date of January 15, 1901, stating that the profits of the business of the United

Salt Company from the first of October, 1899, to the 30th of November, 1900, were $125,752.42? A. I don't remember that.

Q. If you wrote such a letter, would that be the fact?

Mr. Twombly: I object to that unless the letter is produced.

The Receiver: I think the witness is entitled to see the letter.

Question overruled, unless letter is produced.

Q. Do you know whether or not the United Salt Company in the period from October 1, 1899 to the 30th of November, 1900, made profits of $125,752.-42? A. I do not.

Q. Do you know whether it made any profits in that period of time? A. I don't know. I am not certain.

Q. You can't tell anywhere near what the amount was? A. I have no memorandum or record or anything of that sort by which I base an opinion now, and I have no recollection of these figures.

Q. Have you any recollection that you paid $65,-000 of notes held by the Euclid Avenue Bank out of the earnings of the period of time just referred to? A. I remember something about some notes, what notes they were or the amount of them or who held them I don't know.

Q. You have no recollection at all as to what the amount was? A. No, sir; I could not tell you. I don't remember.

Q. And you have no recollection at all as to the amount of profits made in the period referred to? A. No, sir; I don't remember.

Q. You don't know whether they were as much as the sum I have stated? A. I don't remember.

Q. Do you remember whether they were as much as $100,000? A. No, sir; I don't remember what they were.

Q. Or $50,000? A. I have no recollection.

Q. You have a recollection, however, that the company showed net profits over its operating expenses? A. No, sir; I could not even go to make a definite statement on that point. I have not seen the records for many years and the matter has entirely passed from my mind.

Q. Do you know when the Board of Directors of the National Salt Company determined to bring this action in the Ohio Court against the United Salt Company? A. I remember it, yes, sir.

Q. When was that? A. I don't remember the time. I remember they decided to bring such an action.

Q. About what time? A. Well, I could not tell you without referring to some papers. I haven't the papers with me.

Q. Do you remember that the matter was one of discussion in the Board of Directors for a period of two months prior to the bringing of the action? A. It was discussed at considerable length.

Q. And there was a division in the Board of Directors as to whether or not such an action should be brought? A. There was a great deal of discussion and my impression is there was a matter referred to a committee. I am not sure, however, as to that.

Q. You, yourself, were opposed to bringing such an action originally, were you not? A. Yes, sir.

Q. And finally a majority of your Board determined to bring such an action, that is the fact, is it not? A. Yes, sir.

Q. Subsequent to the determination by the Board of Directors of the National Salt Company to bring an action against the United Salt Company was there any change made in the management of the business

and properties of the United Salt Company? A. You mean by that the officers who were administering the United Salt Company's business?

Q. No, not the personnel, but only in the management of the business and property of the United Salt Company? A. I don't know. As far as I recall the business was conducted substantially as formerly, when this litigation was commenced. Soon after that, if I remember correctly, a receiver was applied for and appointed.

Q. Do you know whether as a matter of fact the business and properties of the United Salt Company were wrecked in the two or three months preceding the bringing of this action in the month of April, 1901? A. No, sir; I do not.

Q. Do you know whether or not in that same period of time the pipe system which was incidental to the manufacture of salt by the United Salt Company was so operated as to become stuffed and clogged and made entirely unfit for use? A. There were two plants there—one was the original plant known as number 1 which was operated by the well known method known as the Grainer system. My recollection is that that plant, No. 1, located on the Lake Erie shore in Cleveland, operated right along about as it had; but there was another plant known as the Marquette Street plant, where there was installed this patent process which was going to make salt at fifty cents a ton. That plant, after the National Salt Company acquired it, never ran, to my knowledge, for one continuous day. It was very difficult to get any information about it, as to what they were doing. The officers of the United Salt Company were unable to report to the National Salt Company's officials as to how much salt they were making or what it would cost to make it, and my recollection is that the plant finally closed itself down by

becoming clogged and choked with salt, and that the whole system of operation was a failure. That was the supposed patent process, in other words, it didn't work.

Q. And do you remember whether or not that was about the time in question, the bringing of this suit against the United Salt Company in April, 1901? A. I don't remember whether the plant was completed at that time or whether it was not, but I do remember seeing it in operation, seeing the brine being sprayed, some salt being made, but I do not remember ever seeing any report that indicated the amount of salt made or the cost of making it. I do remember distinctly making a great many efforts to find out and visiting the plant on several occasion to determine what was doing.

Q. For some time prior to the purchase? A. Subsequent to the purchase. Prior to the purchase we were not permitted to inspect the system.

Q. You know as a matter of fact that the United Salt Company had been operating this plant prior to the sale of the stock to the National Salt Company? A. I do not think so. They said they did, but I don't believe it. The plant has never been operated, to my knowledge, since it was closed down. I was out in Cleveland last Friday and it looked to be in quite a dilapidated condition. I passed by on the railroad.

Q. Now you testified in answer to Mr. Twombly that the properties of the United Salt Company were sold on receiver's sale for something in the neighborhood of $100,000? A. I said that I had been informed that they had been sold and I understood that was the price.

Q. You know, do you not, that at or about the time of the sale by the receiver of the United Salt Company properties, the National Salt Company was in the

hands of receivers, do you know that? A. When the property was sold?

Q. When the United Salt Company property was sold by the receiver the National Salt Company was in the hands of a receiver? A. Yes, sir, I believe it was.

Q. You know that the company had made a very disastrous failure, do you not?

Objected to by Mr. Twombly.

A. I don't know how disastrous it was.

Q. You don't? A. No, sir.

Q. Do you know whether or not at the time of that sale litigations were pending or were threatened against the officers and directors of the National Salt Company or certain of them charging them with fraud and deceit in connection with the management of the affairs of the National Salt Company?

Mr. Twombly: I object to that.
Question admitted.

A. I heard some discussion about it, but I don't know of any action that was brought.

Q. The matter was one that was discussed in the public newspapers, was it not, Mr. White?

Objected to by Mr. Twombly.
Question admitted.

A. I don't remember having read it.

Q. Do you know whether any one told you that it had appeared in the newspapers, if you didn't read it personally? A. I might be more able to say that I don't remember of having read it or hearing it discussed.

Q. Do you remember that the International Salt Company made public a report in which it charged the officers and directors with paying dividends out of

other moneys than earnings of the company? A. I never saw the report.

Q. Did you ever hear of such a report? A. No, sir.

Q. Did you ever see any such statement in any of the public newspapers? A. Yes, sir; I remember some four years ago, it might be five or six years ago, there was some general talk that the National Salt Company had paid dividends not out of earnings but I don't know where it emanated from.

Q. Do you know whether or not the National Salt Company had made a disastrous failure?

Objected to by Mr. Twombly.
Question admitted.

A. I know that it passed into a receiver's hands. I don't know how disastrous it was.

Q. Do you know whether as a matter of fact the stockholders are going to receive any dividend for their interest in the company? A. I don't know anything about it.

Q. What is your best information on the subject, assuming that you have no personal knowledge? A. I have no facts on which to predict anything.

Q. Are you a stockholder of the National Salt Company? A. I am.

Q. Were you president of the National Salt Company at the time it went into the hands of receivers? A. No, sir.

Q. At the time of this purchase, Mr. White, by the National Salt Company of this stock, you say the matter had been in negotiation for about a year and that you and certain of the directors of the National Salt Company had been in Cleveland and had made some examination of the properties of the United Salt Company? A. Yes, sir.

Q. That is so? A. Yes, sir.

Q. Do you remember how many times you went there to examine the properties? A. I individually?

Q. You or any of the members of your Board of Directors? A. I remember being there on one occasion and I remember another occasion when there were several of the directors present, I think Mr. Otis and Mr. Halliday, and others whose names I do not remember now.

Q. There were these physical properties that you have spoken of in the City of Cleveland, I think the properties are numbered 1, 2, 3 and 4 as you have referred to them, and there was also an organized and going business, wasn't there? A. Yes, sir.

Q. Had been in operation for some fifteen years? A. Yes, sir; ten or fifteen.

Q. It had a certain good will attached to it, wasn't that so? A. Yes, sir.

Q. There was an organization at that time which managed and conducted the business? A. Yes, sir.

Q. And you continued that organization for a time after the purchase by the National Salt Company of the stock of the United Salt Company? A. Yes, sir.

Q. I also understood from your testimony in answer to Mr. Twombly that you had made no appraisal of the different items of assets of the company? A. No, sir.

Q. You did not for yourself attempt to segregate the physical properties, good will or any of the other items of assets? A. No, sir.

Q. You made no list of the bills receivable? A. No, sir.

Q. Or of the accounts receivable? A. No, sir.

Q. Did you examine the cash on hand? A. No, sir.

Q. Was there any list made of the liabilities of the company? A. There was some memorandum or statement in memorandum form made by Mr. Squire, the president of the company, purporting to reflect the condition which existed at that time.

Q. Were any balance sheets submitted to you or the directors? A. I don't remember any formal balance sheets.

Q. Any informal balance sheets submitted? A. No, sir. I think Mr. Squire's memorandum might be considered as reflecting a balance.

Q. Was there any representation made to the National Salt Company by any of the officers or directors of the United Salt Company in regard to the obligations of the United Salt Company at the time of the purchase of this stock? A. I think there was some general statement made about contracts which they had for the purchase of salt. Very little information—detailed information—given, on the ground that if their proposition was not accepted we were not entitled to look into their affairs and their records.

Q. That is, that the sale would have been consummated even though it had turned out that the United Salt Company had outstanding obligations amounting to any sum of money, $1,000,000 or $10,000,000? A. No, I think that would have been most unreasonable.

Q. But there was no obligation on the United Salt Company to limit its outstanding obligations to any sum whatsoever? A. I don't remember of any.

Q. And there was no statement showing any assets over liabilities, of the total value of any sum of money? A. I don't remember of such a piece of paper.

Q. Was the matter of good will discussed between you and any of the persons with whom you negotiated for this purchase? A. Yes, sir.

Q. What was said in that regard? A. Mr. Squire, the president of the company, spoke of the large going

business that they had and of its contracts which it had for exhaust steam, which were supposed to be of great value, and of this patented process, and of the value of the salt that would utilize this exhaust steam—how cheaply it would make salt, the market they could secure for it, and the different grades of salt that it made and how cheaply they would make it and how profitable it was going to be.

Q. There was no attempt made to appraise or value any of these items of value in connection with the purchase, was there? A. The purpose of the argument was to the large earning capacity of the United Salt Company by the utilization of this exhaust steam and these patented methods which were supposed to be a valuable thing and make the profits of the company very large, and that justified the price they were asking for the property.

Q. Fixing a price for the property, did they give total figures, or did they add each of the pieces with a percentage, or did they in substance state that they would sell for $2,483,000 worth of stock, equally divided between preferred and common, or was it based on a percentage of stock of the National Salt Company? A. There was just the plain proposition, as I remember it, for $1,000,000 capital stock of the United Salt Company par value they wanted $1,250,000 of the National Salt Company stock, preferred, and $1,250,000 of the National Salt Company, common.

Q. That was to be the purchase price, that was their sale price, is that right? A. That is right, except with this guaranteed dividend.

Q. Was the proposition made in writing or verbally? A. Why, my impression is that toward the conclusion it was made in writing, signed by a number of their stockholders.

Q. Do you know what became of that writing? A. No, sir.

Q. Was that turned over to your successor in office, among the records of the company? A. Filed among the National Salt Company's records, and all of the records remained with the company.

Mr. Wilkie: I call upon the receiver and his counsel to produce that proposition.

Mr. Twombly: We do not know of any such paper if there is any in existence, and it is not now among the records in the hands of the receivers, as far as we know by examination.

Q. What was the substance of this paper, so far as you recall it, Mr. White? A. If I remember this paper, it was two or three sheets letter size, reciting the terms of exchange of stock or purchase, whatever you please to call it, and was signed by various stockholders of the United Salt Company and beside their signatures was the number of shares of stock of the United Salt Company which they owned.

Q. Was that paper sent to you or delivered to you personally? A. I remember having seen it, Mr. Squires showed it to me. I don't know whether he gave it to me or took it away or what became of it.

Q. Was that the final paper in the negotiations, as far as the United Salt Company was concerned? A. Well, I think when the matter came close to the conclusion where it was referred to our counsel, Davies, Stone & Auerbach, who took it up with counsel of the various stockholders of the United Salt Company, Kline, Carr, Toles and Goff of Cleveland, Mr. Goff came to New York and Mr. Cornell, of Davies, Stone & Auerbach, attempted to get this agreement into shape.

Q. So far as you as president of the National Salt Company and the directors of the company were concerned, this paper writing to which you have referred

was the final document resulting from a long series of negotiations, is that so? A. Yes, sir.

Q. Was that presented to your Board of Directors? A. I don't remember.

Q. Was its substance discussed, in your Board of Directors? A. Oh, yes, sir.

Q. And did your Board of Directors take action on the proposition contained in that paper writing? A. It took action on the whole proposition—I do not recall.

Q. What action did they take? A. Decided to accept the offer.

Q. Was the action of the board entered in the minute book of the company? A. I suppose so, the secretary was there for that purpose and I have no doubt but that an accurate record was kept.

Q. The action of your board was that they voted to accept the offer of sale made for this stock of the United Salt Company at the terms set out in the proposal, is that right? A. Yes, sir.

Q. Now, I have understood from your direct-examination that in addition to the items of property, good will, and assets, tangible and intangible, possessed by the United Salt Company, your Board of Directors considered as an element in the value of the United Salt Company to the National Salt Company, the possibility of competition by the United Salt Company, if that company were not controlled, is that right? A. Yes, sir.

Q. You further testified that subsequent to the purchase of this stock by the National Salt Company you made an examination of the physical properties belonging to the United Salt Company and that you considered that they could be duplicated for the sum of $300,000 is that right? You don't pretend that the value of a going manufacturing concern is to be measured by

the replacement value of its physical properties, do you, Mr. White? A. No, sir.

Q. There is a very large value in any manufacturing or industrial concern or enterprise outside of the physical properties which are used in connection with it? A. There is supposed to be a value. I don't know how large it is. It must be determined by each specific instance.

Q. It is determinable in each instance by whatever that particular business may be? A. Very correct.

Q. You don't pretend to be able to appraise the value of real estate in Cleveland, Ohio? A. No, sir.

CROSS-EXAMINATION by Mr. Deane:

Q. Mr. White, how long were you president of the National Salt Company? A. For a period, I think, something over two years, perhaps three.

Q. Do you recall when you ceased to be president? A. I think it was in December. I could not give you the year without looking at the papers.

Q. But you were president of the company during the year 1900? A. I think so, yes, sir.

Q. How much attention did you give to the affairs of the company? Were you actively engaged as president? A. Yes, sir; gave my entire attention.

Q. Do you recall a report which you made to the stockholders of the company, covering the operations of the company for the year 1900? A. I do not recall it.

Q. Do you recall that you did make a report? A. I presume so; that was the custom and practice.

Q. The report that I refer to is dated the 27th of March, 1901, and is a general report to the stockholders of the company for the operation of the company for the preceding year, ending December 31; do you recall making such a report? A. I do not recall

making it. I presume I did; it was my custom to make very full reports.

Q. Were you familiar with the books of the National Salt Company? A. In a general way, yes, sir.

Q. Examined them from time to time? A. No, the accounts were all under the charge of the Audit Company of New York.

Q. But you know what went into the various items? A. Only in a very general way.

Q. For instance, before you declared dividends, what steps did you take to learn that such dividends were earned?

Objected to as absolutely incompetent.
Motion to strike out. Question withdrawn.

Q. Mr. White, do you know whether or not any attempt was made to estimate or appraise the value of this stock before you purchased it? A. What stock?

Q. The stock of the United Salt Company? Other than as you have testified that you considered the earning capacity and that sort of thing? A. I don't remember that I did.

Q. So far as you know, there was no specific valuation put upon the stock which you had purchased? A. You mean only through a mental process was any specific valuation put upon it in any way? A. I do not remember of any specific figures that were made.

Q. Do you know whether or not this stock was carried by the National Salt Company among its assets? A. I suppose it was.

Q. Do you know? A. No, I did not have charge of the books, but I was of the practical end of the business, and I do not know.

Q. You haven't any doubt that it was, have you? A. No, sir.

Q. Did you ever get out more than one of the statements of the National Salt Company? A. Oh, yes.

Q. And you reported from time to time to the stockholders of the company, didn't you? A. I reported from time to time various matters to the Board of Directors and they in turn reported conditions to the stockholders.

Q. And at the annual meeting you presented ordinarily a written report, didn't you? A. Yes.

Q. And in that report was included a balance sheet of the company, wasn't there? A. Yes.

Q. A statement of any properties you had purchased? A. Yes, sir.

Q. Usually it was intended to be full and complete? A. Yes.

Q. You were not trying to conceal anything, were you? A. I was not. Never.

Q. You hadn't interest enough in the affairs of the company to examine this balance sheet? A. I had a great deal to do and the bookkeeping end of it was in charge of competent accountants, and my entire time was absorbed in the practical end of the business.

Q. So you do not know, as a matter of fact, whether this stock of the United Salt Company which you purchased was carried, at par or at the price you paid for it, among the assets of the company? A. The par value of that stock?

Q. Yes? A. That is a million dollars, you mean?

Q. Yes? A. My impression is that it was carried at the price it was bought for.

Q. You think so? A. I believe so.

Q. Were any dividends declared during the time you were president? A. Yes, sir.

Q. And, before declaring these dividends, you made an investigation of the affairs of the company to see whether they were earned? A. I?

Q. Yes, you. A. No. Reports were presented to the board by the various departments and among the various reports was the treasurer's report, showing the earnings of the company. I passed on them with all the other directors.

Q. And you believed them to be true? A. Yes.

Q. Did you know that the reports of your company were published from time to time? A. Yes, I saw them in a newspaper.

Q. You advertised them? A. I do not remember ever having advertised them.

Q. From seeing these reports you knew that they were very much in this shape (showing witness copy), did you not, an ordinary balance sheet? A. You mean as to this general form?

Q. I mean the general form of assets on one side and liabilities on the other, ordinary form of balance? A. Oh, yes.

Q. Did you ever examine them sufficiently to know that they were included in your report? For instance, for the year ending December 31st, 1900, an item of stock of constituent companies as an asset? A. Yes.

Q. Did you know what items went into that to make up that amount? A. I presume all the items of all the stock that the National Salt Company held.

Q. Including also the stock of the United Salt Company? A. Yes.

Q. And you assumed also that that stock was carried at the price you gave for it, didn't you? A. I supposed it was.

Q. You don't know any other stock that the National Salt Company held that would account for an item of $3,260,000 odd, which would account for that item, do you? A. No, sir.

Q. The stock of the United Salt Company was turned over to the National Salt Company, wasn't it? A. Yes, sir.

Q. Actually delivered to it? A. I believe so. I am not entirely clear, however. Wasn't it held in escrow?

Q. I don't know. It was delivered to you first, was it not? A. I don't remember.

Q. As a matter of fact, Mr. White, you have been a very busy man for the last six or seven years, haven't you? A. Yes.

Q. You have forgotten practically all of the details of this matter? A. I have.

Q. And some that weren't details? You don't pretend to speak accurately? A. I don't know.

Q. For about a year prior to the completion of the purchase of this stock, you had been negotiating with Mr. Squire for the turning over of this United Salt proposition? A. I had been negotiating with Mr. Squire.

Q. And he made one proposition and another to you and you tried to arrive on a working basis for carrying it through, did you not? A. Yes; all sorts of discussions.

Q. You remember, when you thought you had the transaction completed, some new suggestion of Mr. Rockefeller's was presented to put it through on some other basis? You remember that? A. I don't know whether Mr. Rockefeller was responsible—

Q. You said so in your letter? A.—for various discussions of all kinds and phases.

Q. These stockholders of the United Salt Company were a little loath to give up their small concern unless they had some assurance that the new enterprise was to be successful, weren't they? A. I don't know how they felt about it.

Q. I mean they so reported to you, by Mr. Squire? A. Oh, yes.

Q. And he stated in substance that they were unwilling to sell unless they could get substantially their price for it, did he not? A. Yes, sir.

Q. And, among other things, that they were unwilling to go into the National Salt Company and become a very small part of that, with practically no voice in the control, unless they had some assurance that they would be paid on the interest that they transferred, were they not? A. Well, I can recall the exact way the matter was put up; that is, they said they had a valuable property, they were earning lots of money, the National was a large company which might not make money, and they wanted that their dividends should be guaranteed.

Q. You weren't trying to unload worthless property on the National, were you? A. I?

Q. Yes? A. What property do you mean?

Q. Property of the United Salt Company? A. I had no interest in it.

Q. Pardon me, you weren't trying to unload worthless property on the National; you believed it was thoroughly good property, didn't you? A. I believed it was very important that the National Salt Company should own that property.

Q. And you believed that the National Salt Company could earn a good amount of money out of this property, didn't you? A. I believed they could, yes, sir.

Q. And you believed they could earn a fair return on the price they gave for it? A. Well, I would not attempt to indicate how much I thought they could earn.

Q. No, but you believed that it was a good trade for the National Salt Company, the acquiring of this stock? A. Yes, sir.

Q. And you did not believe you were unloading any worthless property on them? A. No, sir.

Q. And you did not believe that the National Salt Company was making a bad bargain? A. No, but I did not think they were making a very good bargain.

Q. You had charge of it for the National Salt Company, didn't you? A. Not entirely.

Q. You were the principal factor at that time? A. I was president of the company.

Q. You could have probably defeated this sale, if you had tried to? A. Well, I would not say that I could.

Q. The sale had your approval? A. Oh, yes, sir, it had.

Q. And without making formal, definite appraisal of the property, item by item, you believed that there would be substantial equivalent for the stock you issued for the purchase of this property, didn't you? A. I could not answer that question directly. I believed it was better for the National Salt Company to take the property at the price at which they offered it, than not to take it.

Q. That there was a substantial *quid pro quo?* A. Yes.

Q. You didn't think you needed any guardian in this trade, did you, Mr. White? A. No, but I can't—I did not require any guardian.

Q. You went into the trade with your eyes open? A. Oh, yes, absolutely. I knew the obligations imposed.

Q. After very careful deliberation of the pros and cons, you decided that it was for the best interests of your company to purchase the property of the United Salt Company at the price you agreed to give them? A. Yes, sir.

Q. And you did therefore, actually pay the price by the issue of these certificates? A. Yes, sir.

Q. Do you remember whether, after the purchase of the stock of the United Salt Company, dividends were paid by the National Salt Company on its stock? A. I think they were.

Q. Including the stock paid for the purchase of the United Salt Company holdings? A. My recollection of the form that that United Salt transaction took was that the dividends on the stock of the National Salt Company that was expended for stock of the United Salt Company were paid to the trustee.

Q. But they were paid to the holders of the stock, whoever they might be, trustee or otherwise, a dividend was paid? A. Yes, sir, stockholder of record.

Q. This whole transaction of the purchase of the stock by the United Salt Company was carried through under the legal guidance of Messrs. Davies, Stone & Auerbach and Kline, Carr, Tolles & Goff, was it not? A. Yes, sir.

Q. And you were advised by these counsel that the transaction was legal? A. No, sir.

Q. Mr. Cornell of Davies, Stone & Auerbach had charge of that transaction for them, did he not? A. Principally, I think; there were others in the office who also took part in it.

Q. And so in spite of their advice that the proposition was illegal, you went ahead with it? A. Well, I can't say that they directly informed us by letter that it was not a legal thing and advised us not to do it. I generally understood from Mr. Cornell that the instrument they were drawing was not a legal one.

Q. Was not a legal one? A. Yes, sir. I think all the National Salt Company's Board of Directors had all the facts before them on which they might judge the whole situation practically.

Q. If you refresh your recollection a little, won't it help you to remember that the matter came before

the board and they were advised that it was legal? A. You have a better recollection than I. I have not had this thing in my mind for a good many years and I do not recall the facts.

Q. You would not state positively now that you were informed it was illegal? A. I am just giving my impression.

Q. What you mean is that it is your impression that there was some doubt of this being done this way, that they would not guarantee that it would stand? A. Something like that.

Q. With the ordinary lawyer's caution of not liking to go too far? A. It is my impression, more than a recollection of the facts.

Q. As far as you recollect, you never saw a quotation for United Salt Company prior to the time of the purchase? A. I don't remember.

Q. The National Salt Company held all of the stock? A. I think they did. Of course, they did not sell it.

RE-DIRECT EXAMINATION by Mr. Twombly:

Q. Mr. White, you have been asked about the price that has been paid for this United Salt Company stock; isn't it a fact that Mr. Squire originally agreed to go into the National Salt Company on the same basis of share per share with the other companies and then backed out? A. Yes.

Q. And didn't you think, when you bought this stock of the United Salt Company, this two million and a half of stock of the United Salt Company, that you were paying more for the United Salt Company stock than it was worth?

Objected to.

Objection overruled. Exception.

A. I personally thought the price terrifically high, and I knew that there was not a physical value there to support that price. Nevertheless, we, as a board, decided to buy it.

Q. Was it because you wanted to control the salt trade? A. Oh, absolutely; one of the principal considerations.

Q. Didn't you immediately raise the price of salt after you bought this stock?

Objection. Question overruled.

Q. Now, you were asked whether or not the business of the United Salt Company was not wrecked by the National Salt Company in the two months prior to the receivership; do you mean to say that the National Salt Company did wreck the business? A. They certainly did not.

Q. Did not the National Salt Company advance, in the year prior to the receivership of the United Salt Company, $70,000 to pay indebtedness and obligations of the United Salt Company? A. I am inclined to think that they advanced some money, but I do not remember how much it was.

Q. You remember it was over $50,000? A. I would not attempt to give you the figures.

Q. Now, as a matter of fact, was not that Marquette Salt Company, to use the phrase, a gold brick,—the Marquette Street plant? A. A fake, pure and simple.

Q. Never could make the salt that they claimed it could? A. Never.

Q. This patent process was carried on in the Marquette Street plant? A. Supposed to be.

Q. What was the matter with that process that they claimed to be so valuable? A. Why it did not seem to make any amount of salt, no one could find out what it cost to make it, the brine clogged in the pipes, or

rather the pipes were covered with salt; the whole thing strangled itself.

Q. Did you try to manufacture salt in that plant after you got hold of the United Salt Company? A. We tried it.

Q. Was it successful? A. No, sir.

Q. At the time that you have been asked about, when the Board of Directors decided to bring this suit to upset this purchase of the United Salt Company, didn't at that time you know you paid a great deal more for the plant than it was worth? A. Yes, sir.

Q. And didn't you know that you had been deceived by false representations on the part of the directors and stockholders of the United Salt Company as to the value of their plant? A. I knew we had been deceived, but I would not attempt to place the responsibility on the stockholders.

Q. You knew you had been deceived? A. Yes.

Q. And that the value of the United Salt Company plant was not anything like what you had thought it was? A. Yes.

RE-CROSS EXAMINATION by Mr. Wilkie:

Q. This suit in Ohio, Mr. White, you have testified was brought in April of 1901; that was the time when it was brought? A. The record shows; I do not remember the date.

Q. And the purchase of the United Salt Company had been consummated, the possession of the plant delivered to the National Salt Company, in the month of October, 1899? A. I can only remember in the most general way.

Q. You have a report of the earnings and expenses of the United Salt Company from the representative

of the National Salt Company in charge as of the 30th of November, 1900; is that so? A. I do not remember of receiving it.

Q. Do you remember in the month of January, 1901, stating, either orally or in writing, to anyone that the profits on the operation of the United Salt Company plants from October 1st, 1899, to the 30th of November, 1900, a period of 13 months, amounted to upwards of $125,000? A. I do not remember such a statement.

Q. Do you remember having stated, either orally or in writing, to anyone, that of earnings which the United Salt Company had made, for the period of 13 months referred to, that no dividends whatever had been declared by the National Salt Company on the stock of the United Salt Company which it held? A. I do not remember ever having made such a statement.

Q. Do you remember whether or not in the month of December, 1901, you made any statement, either orally or in writing, to anyone, stating that of these earnings of upwards of $120,000, $65,000 had been used to pay off notes due the Euclid Avenue Bank, $10,000 had been paid for legal expenses, and the balance had been held for capital account? A. I do not remember the statement.

Q. Do you remember whether at that time, in January, 1901, you made any statement, either orally or in writing, to anyone, that the United Salt Company at that time was in excellent condition? A. No, sir, I do not remember the statement.

Q. Is it a matter of fact in your recollection that, on the reports which you had received of the operation of the United Salt Company, that you believed in the month of January, 1901, that the United Salt Company was in excellent condition? A. I do not remember

the reports. My memory on the whole subject is very dim. The National Salt Company must have the record to show for themselves.

Q. Have you any independent recollection of what your judgment was in the month of January, 1901, of the value of the United Salt Company or of the profitableness of its operation in the period of time which the National Salt Company controlled it? A. No, sir.

Q. You can't say whether or not in the month of January, 1901, you, as president of the National Salt Company, knew that the operation of the United Salt Company had been disastrous or profitable? A. I can't remember any statements that may have been sent from the united officers of the National, but, answering your question in the most broad and general way, I should say that no great disaster had overtaken them.

Q. Can you tell whether or not at that time, in January, 1901, you believed that the business of the United Salt Company was in excellent condition? A. I do not know. I can't answer that question. I do not remember details as of that date.

Q. You can't say whether or not at that time you believed that the business was in excellent condition or in an unprofitable condition? A. I can't remember the condition of the business as of that date. Six years have elapsed and I have not thought about it.

Q. If you made reports over your signature that the business was in excellent condition at that time, would such reports be true?

Objected to.

Objection overuled. Exception.

Q. Do you know whether or not you made any reports to either Mr. Squire or Mr. Frasch or Mr. Wil-

liam Rockefeller in the month of January, 1901, in reference to the operation of the properties of the United Salt Company since the purchase by the National Salt Company of the stock of that Company? A. I think Mr. Squire was President of the company. He was for some time after the National took charge. That is my recollection.

Q. Mr. Squire was also a member of the National Salt Company and of its executive committee for some time? A. I don't—it seems to me that Mr. Frasch was on the United Salt Company board for awhile. I don't remember ever having made any report to Mr. Rockefeller.

Q. Have you any recollection then of having made any report to either Mr. Squire or Mr. Frasch? A. No, I have not.

Q. You have no recollection? A. No, sir.

Q. You have no recollection as to what the condition of the United Salt Company was at that time, in January, 1901, whether it was profitable or unprofitable? A. No, I have no recollection.

Q. Mr. White, I show you this letter, dated January 15, 1901, addressed to Mr. Herman Frasch and signed by A. S. White; did you write that letter on that day to Mr. Frasch? A. Yes.

Letter offered in evidence and copied.

"Jan. 15, 1901.

"Mr. Herman Frasch,
"Standard Oil Bldg.,
"Cleveland, Ohio.

"Dear Mr. Frasch:

"For your information I beg to hand you herewith a comparative statement showing the condition of this Company on Jan. 1st, 1900 and on Nov. 30th, 1900.

"Our earnings in the first few months of 1900 were rather thin due to contracts at low prices, but in the latter part of the year our earnings were very satisfactory. At prevailing prices and in view of the trade prospects for this year, I think a conservative estimate of the earnings for this Company for 1901 will be $2,000,000.

"The profits on the business of the United Salt Company which embraces the Ohio River field as well as that of Cleveland, from the 1st of Oct. 1899 to the 30th of Nov. 1900, were $125,752.42. The United Salt Company have declared no dividends, and, therefore, not one dollar of these earnings have reached the National Salt Company. You may properly inquire as to what has become of those earnings. When we took hold of this business on Oct, 1, 1899, there was no cash on hand whatever; on the contrary, their bank account was overdrawn $2,532.04. We have paid off $65,000 of notes held by the Euclid Ave. Bank. There has been sufficient working capital accumulated and there has been paid out for legal expenses over $10,000. The United Salt Company is now in excellent condition and it is to be hoped that the

time is not far distant when we can receive some substantial dividends from that source.

"Yours very truly,

"A. S. WHITE,

"President.

"Dic. A. S. W./M."

Testimony closed.

Mr. Twombly: I offer in evidence the depositions taken in this cause before George H. Kelly, a Foreign Commissioner of Deeds for New Jersey, at Cleveland, Ohio, on the 2nd day of May, 1905.

By consent of counsel these depositions are admitted in evidence. (They are printed *supra* as a part of the testimony.)

Testimony closed.

Claimants' Exhibit 3.

NATIONAL SALT COMPANY.

What are the National Salt Co. trust certificates which we are offering to investors at $115.00?

They represent one share of the National Salt Co.'s preferred stock;

one share of the National Salt Co.'s common stock; and a certificate of indebtedness given by the National Salt Co., amount still due, $59.50, payable in seven semi-annual payments, July 1st and January 1st, each year; these payments are in lieu of dividends on the National Salt Co. stock for 3½ years from January 1st, 1901. After 3½ years the holder will become a regular stock owner and receive whatever dividends the Company may declare.

Consequently for 3½ years from January 1st, 1901, the holder of American Trust certificates will receive the equivalent of 3½% semi-annually on the National Salt Co.'s preferred stock and 5% semi-annually on the common stock.

These dividends are protected by collateral security, consisting of all The United Salt Company stock, three-tenths of the original obligation having been paid, the security is now that much better for the remainder.

This insures the owners of these trust certificates 7% per annum on the National Salt Co.'s preferred stock and 10% on its common stock per annum during the early period of the National Salt Co.'s existence which is always the trying time of corporations.

A copy of the papers giving a full and complete history of these trust certificates is herewith given as follows:

COPY OF ORIGINAL AGREEMENT WITH THE UNITED SALT CO. STOCKHOLDERS AND THE NATIONAL SALT CO.

Cleveland, O., July 20th, 1899.

The undersigned, owning the number of shares of the capital stock of the United Salt Company (of Cleveland, Ohio) set opposite their respective names, in consideration of the sum of one dollar paid to each

by the National Salt Co. (of Jersey City, New Jersey) hereby severally agree to sell, assign and transfer to said company at the price and upon the terms and conditions hereinafter stated, the number of shares of stock so owned by them in The United Salt Company of the par value of one hundred dollars per share, provided that prior to September 20th, 1899, said National Salt Company shall have elected to purchase the same under the terms of this option.

For each share of stock in The United Salt Co. purchased from the undersigned there shall be given 1.25 shares of the seven per cent. preferred stock and 1.25 shares of the common stock of said National Salt Co., and in addition thereto said company shall pay for each share of the stock of the United Salt Co. the sum of the $106.25 in cash, payable in ten equal semi-annual installments on the 1st days of January and July of each year, beginning with January 1st, 1900.

As a further consideration, said National Salt Co. shall agree that until said cash payments shall have been fully made the United Salt Co. will not mortgage, encumber or otherwise in any manner dispose of any interest in any contract for the purchase of exhaust steam entered into by The United Salt Co., prior to October 1st, 1899, nor any improvements erected or to be erected by said company for utilizing said steam for the manufacture of salt, and that until such time no money borrowed or advanced by the National Salt Co. for extending, improving or operating the property of The United Salt Co. shall be made a charge upon or lien against the property or assets of the United Salt Co. And until such obligations shall have been paid or discharged, said National Salt Co. shall further agree that the United Salt Co. shall not otherwise than by the issue of licenses sell or dispose of any interest in, any patented process for

the manufacture of salt now owned by The United Salt Co., or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said company under said patents there shall be paid to The United Salt Co., a royalty of at least 25 cents per ton, settlement for which shall be made quarterly.

To evidence the agreement of the National Salt Company to make such payments, it shall execute and deliver to each owner its agreement substantially in the form shown in Exhibit "A" attached hereto and made part hereof. New agreements of like tenor shall be issued in lieu of said original or any re-issued agreements, upon their surrender and cancellation, for such amounts as the holder may desire not exceeding in the aggregate the amount then unpaid upon the agreements so surrendered and cancelled, and before such original or re-issued agreements shall become binding upon said National Salt Company they shall be registered and countersigned by The American Trust Company of Cleveland, Ohio, and the said Trust Company shall be required to keep a record of all agreements so registered and countersigned.

To jointly and ratably secure the payment of said obligations and the performance upon its part of the above conditions and agreements, said National Salt Co. shall endorse in blank and deposit with the American Trust Company, of Cleveland, Ohio, as Trustee, under a declaration of trust substantially as shown in Exhibit "B" attached hereto and made part hereof, all stock of the United Salt Co. acquired by it under this option.

All dividends paid on the stock of The National Salt Co. so to be given the undersigned in exchange for their stock in The United Salt Co., shall be applied toward the payment of the amounts so agreed to be paid, and to insure such application the under-

signed will deposit said stock with The American Trust Co. under a declaration of trust substantially as shown in Exhibit "C" attached hereto and made part hereof.

It is an express condition of this option that, if accepted, all stockholders of the United Salt Company not parties hereto are to have the privilege of disposing of their holdings in said Company to the National Salt Company upon the same terms herein named, at any time before November 1st, 1899.

All compensation, charged and expenses of the Trustee shall be borne and paid by the National Salt Company. Also all revenue tax required to be paid for the execution of all transfers and instruments herein referred to.

Name.	Shares Owned.
.....	.....
.....	.....
.....	.....

New York City, Sept. 16th, 1899.

We hereby accept the above option.

NATIONAL SALT COMPANY.
By A. S. White,
President.

Attest:
Jno. Allen Young,
Secretary.
(Seal.)

Exhibit A, Attached to and Forming a Part of Claimants' Exhibit 3.

$.....

Jersey City, N. J., October , 1899.

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to.....or order.....Dollars, in ten equal semi-annual installments, beginning January 1st, 1900. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said United Salt Company has further agreed that The United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt, now owned by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and

that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of the United Salt Company acquired by it under an option given by certain stockholders of said company bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY.

By.....,

President.

Attest:

.....,

Secretary.

Countersigned and Registered:

THE AMERICAN TRUST COMPANY,

By.....

Exhibit B, Attached to and Forming a Part of Claimants' Exhibit 3

This declaration of Trust executed by the National Salt Company, a New Jersey corporation, this 2nd day of October, 1899, WITNESSETH, that said Company has this day endorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, all stock of The United Salt Company, an Ohio corporation, which was acquired by said National Salt Company under an agreement with certain stockholders of said The United Salt Company, dated July 20th, 1899, for the following purposes, to wit:

First: To jointly and ratably secure the payment of the amounts of money agreed to be paid said stockholders for said stock, evidenced by the notes or certificates of indebtedness of the National Salt Company, countersigned and registered by The American Trust Company, amounting in the aggregate to not exceeding the sum of $1,062,500, payable as provided in said notes or certificates of indebtedness.

Second: To secure the performance of its agreement to permit no contract for the purchase of exhaust steam entered into by said The United Salt Company prior to October 1st, 1899, and no improvements erected or hereafter to be erected for utilizing said steam to be in any manner mortgaged, encumbered, or disposed of until all of said notes or certificates of indebtedness shall have been fully paid or discharged, and that until such time no moneys borrowed or advanced by said National Salt Company for extending, improving or operating the property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company.

Third: To secure the performance of the agreement of said National Salt Company that until said notes or certificates of indebtedness shall have been

fully paid or discharged The United Salt Company will not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt now owned by said The United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company under such patent there shall be paid to it a royalty of at least 25 cents per ton, settlements for which shall be made quarterly.

Fourth: If said National Salt Company shall well and truly make such payments in the manner and at the time specified in said notes or certificates of indebtedness, and shall in all things comply with the agreements above recited, then and thereupon said stock shall be returned to said National Salt Company by said Trustee. But if said Salt Company shall at any time be in default in the payment of any portion of any installment to become due upon any of said notes or certificates of indebtedness for a period of sixty days after demand for the payment thereof shall have been made (in which event all future installments shall immediately become due and payable), or shall in any manner violate any of the agreements above recited, then said Trust Company, upon written notice and demand of any holder of said notes or certificates of indebtedness and upon being indemnified to its satisfaction in the premises as to costs, liabilities and expenses, and not otherwise, shall sell the stock so deposited with it, or so much thereof as may be necessary to pay the amounts then remaining due upon said notes or certificates of indebtedness and to satisfy and release all liens or claims (if any) upon said contracts, improvements or patented processes, at public auction to the highest bidder after having given thirty days' printed notice of its intention so to do, published

once a week for four consecutive weeks in the Cleveland Plain Dealer and the New York Tribune. After deducting its reasonable charges and expenses in the premises it shall apply the proceeds realized from such sale to the payment of the balance then remaining due upon said notes or certificates of indebtedness, and to the discharge of all such liens or incumbrances, turning the balance, if any there be, over to the National Salt Company. For the purpose of reference copies of said option and the form of said notes or certificates of indebtedness are hereto attached. All charges and expenses of the Trustee are to be paid by the National Salt Company.

NATIONAL SALT COMPANY.
By A. S. White,
President.

Attest:

.....,
Secretary.

Cleveland, Ohio, 1899.

The American Trust Company, Cleveland, O., designated as Trustee in the foregoing instrument accepts of said trust and acknowledges the receipt of..... shares of the capital stock of the United Salt Company, deposited with it by the National Salt Company upon the foregoing trusts.

THE AMERICAN TRUST COMPANY.
By.....,
President.

Attest:

.....,
Secretary.

Exhibit C, Attached to and Forming a Part of Claimants' Exhibit 3.

THIS IS TO WITNESS that the undersigned have this day deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, certificates for the respective numbers of shares of Preferred and Common Stock of the National Salt Company (of New Jersey), of the par value of $100 per share, set opposite their respective names, to be held, managed and controlled by said Trust Company on the following trusts until all indebtedness of the National Salt Company upon its notes or certificates of indebtedness this day issued to the undersigned and countersigned and registered by said Trust Company in pursuance of the provisions of Exhibit "A" hereto attached and made part hereof and any and all such notes or certificates of indebtedness hereafter issued pursuant to said Exhibit "A" are fully paid or discharged, but in no event later than January 1st, 1905, to wit:

1. Until such time to demand, collect, receive and receipt for all dividends paid upon said stock, and to that end it is authorized, if it so desires, to have said stock issued to itself or to its nominee. Said Trust Company shall pay interest at the rate of three (3%) per cent. per annum on money so deposited from date of receipt until disbursed.

2. To retain all moneys so paid until the installment next to become due upon the obligation referred to in Exhibit "A" shall have become due and payable, and then to apply the same to the payment of such installment.

3. For each share of stock so deposited, said Trustee shall issue to the undersigned its trust certificate, substantially in the form following, to wit:

No. Shares Preferred Stock
Shares Common Stock.

Claimants' Exhibit 3.

NATIONAL SALT COMPANY.

Incorporated under the laws of the State of New Jersey.

THE AMERICAN TRUST COMPANY, of Cleveland, Ohio, CERTIFIES, that there have been deposited with it certificates for.....shares of $100 each of the Preferred Stock and .....shares of $100 each of the Common Stock of NATIONAL SALT COMPANY, a New Jersey corporation, and that....., or his assigns will be entitled to receive the said certificates upon performance by said National Salt Company of an Agreement entered into by it with certain stockholders of The United Salt Company, bearing date July 20th, 1899, a copy of which is on file with the undersigned, but in no event later than January 1st, 1905, upon surrender of this certificate properly endorsed for cancellation.

Pending the delivery of such shares of stock and surrender and cancellation of this certificate, The American Trust Company will pay over to the said National Salt Company, or otherwise as provided in said agreement, any and all dividends received by it upon said shares of stock, and will also vote or cause said shares of stock to be voted at any meeting of said NATIONAL SALT COMPANY in accordance with the written request of the said.....

This certificate is transferable only upon the books of said Trust Company in person or by attorney and upon surrender of this certificate.

Dated, Cleveland, Ohio.

THE AMERICAN TRUST COMPANY.

By.....

Claimants' Exhibit 3

Endorsement for back of Certificate.

FOR VALUE RECEIVED.....hereby sell, assign and transfer to....., all right, title and interest in and to the within certificate, subject to the conditions contained herein.

Dated.....

Witness.....

4. All compensation, charges and expenses of said Trustee are to be paid by the National Salt Company.

IN WITNESS WHEREOF, we have hereunto set our hands and opposite thereto the number of shares deposited by us respectfully as aforesaid.

Name	No. of Shares Preferred	Common
.....	.....	.....

Cleveland, Ohio, October 2nd, 1899.

The American Trust Company designated as Trustee, in the foregoing instrument, accepts of said trust, and acknowledges the receipt of.....shares of the capital stock of the Naitonal Salt Company deposited with it upon the foregoing trusts.

THE AMERICAN TRUST COMPANY.

By.....,

President.

Attest:

.....,

Secretary.

From this information it will be seen that for investment these trust certificates are first-class, very remunerative, and superior to the regular stock of the National Salt Company.

We observe by report recently made by the National

Salt Company, that they are earning at the rate of $2,000,000.00 per annum.

Respectfully yours,
STEWART BARR & CO.,
96 Broadway,
New York.

Claimants' Exhibit No. 4.

DEPARTMENT OF UNLISTED SECURITIES.

Committee on Unlisted Securities.

THE NATIONAL SALT COMPANY.

Incorporated March 18, 1899, under the Laws of the State of New Jersey.

Authorized Capital, all outstanding:

Preferred Seven per cent non-cumlative	$5,000,000
Common	7,000,000

Par value of shares $100 each. No personal liability. Registrar, United States Mortgage & Trust Company, New York. Transfer Agent, Registrar & Transfer Company, New York.

Bonded Debt.

Hutchinson-Kansas Salt Company. Mortgage due January 1, 1912. $300,000 outstanding.

The business conducted by the Company is the manufacture, purchase and sale of evaporated salt. The estimated annual total production of salt handled by this Company is about 10,000,000 barrels of 280 pounds each, of which about 4,850,000 barrels are produced at the plants owned by this Company, and about 5,150,000 barrels are purchased.

Claimants' Exhibit 4

This estimated quantity of 10,000,000 barrels of salt is produced in the following localities:

New York	about	2,250,000	barrels,	or	22½	per cent.
Ohio	"	1,400,000	"	"	14	" "
Michigan	"	4,650,000	"	"	46½	" "
Kansas	"	1,350,000	"	"	13½	" "
Texas	"	350,000	"	"	3½	" "

This total output represents more than Ninety per cent. of the evaporated salt manufactured in the United States east of the Rocky Mountains.

The Company commenced business April 1, 1899, by acquiring the New York properties. In October, 1899, the Ohio and Michigan interests were acquired, and in January, 1900, this Company acquired control of the Kansas and Texas plants.

Location of properties owned by the National Salt Co.:

Cayuga Plant, Lansing, N. Y.
Ithaca Plant, Ithaca, N. Y.
Glen Plant, Reading, N. Y.
Perry Plant, Perry, N. Y.
Kerr Plant, Rock Glen, N. Y.
Yorkshire Plant, Warsaw, N. Y.
Empire Plant, Warsaw, N. Y.
Hawley Plant, Warsaw, N. Y.
Guinlock Plant No. 1, Warsaw, N. Y.
Warsaw Plant, Warsaw, N. Y.
Pearl Plant, Pearl Creek, N. Y.
Pavillion Plant, Pavilion, N. Y.
Le Roy Plant, Le Roy, N. Y.
Morton Plant, Wyandotte, Mich.
Eddy Plant, Saginaw, Mich.
Guinlock Plant No. 2, Warsaw, N. Y.

Statement of stock of Constituent Companies owned by National Salt Company:

Claimants' Exhibit 4

All of the issued Capital Stock of the United Salt Company, an Ohio corporation, which owns three plants located in Cleveland, Ohio, one plant located at Pomeroy, Ohio, one plant at Akron, Ohio, and leases four plants located in Meigs County, Ohio.

All of the Capital Stock of the Hutchinson-Kansas Salt Company, consisting of 2,000 shares of the par value of $100 each. Plants located at Hutchinson, Kansas.

1,326 shares of the Capital Stock of the Lone Star Salt Company, of the par value of $100 each, out of a total of 1,950 shares. Plants located at Grand Saline, Texas, and Colorado, Texas.

36 shares of the Capital Stock of the Walton Salt Association, Limited, of the par value of $100 each, out of a total of 400 shares. Plant located at Algonac, Michigan.

Location of Plants leased by National Salt Company:

Miller Salt Co., Warsaw, N. Y.
Crystal Salt Co., Salt Vale, N. Y.
York Salt Co., York, N. Y.
Castile Salt Co., Castile, N. Y.
Lacakawanna Salt Co., Mt. Morris, N. Y.
Royal Salt Co., Mt. Morris, N. Y.
Anchor Salt Co., Ludington, Mich.
Tecumseh Salt Co., Ecorse, Mich.
Marine City Stave Co., Marine City, Mich.
Thomson Brothers, St. Clair, Mich.
Hutchinson Packing Co. Hutchinson, Kansas.

The maximum amount of annual rentals due in any one year during the life of leases now in force is $130,000. Leases aggregating an annual rental of $88,000 contain a provision whereby they may be canceled on six months' notice.

Claimants' Exhibit 4

Statement, July 31, 1900.

Assets.

Plant and construction account	$ 8,525,275.70
Investments; Stock constituent companies, etc.	3,159,005.00
Cash in banks	195,476.93
Prepayments and advances	177,905.49
Accounts and bills receivable	281,494.39
Accrued earnings constituent companies	190,969.91
Treasury Stock	97,745.00
Furniture and Office fixtures	5,247.41
Merchandise, salt and supplies on hand, at cost	1,080,283.05
	$13,713,402.88

Liabilities.

Capital Stock	$12,000,000.00
Deferred payments, securities purchased	300,000.00
Accounts payable	256,238.32
Bills payable	502,500.00
Surplus	654,664.56
	$13,713,402.88

The Audit Company of New York were appointed Auditors of this Company, and the accounts of the various departments are under their supervision.

Extract from Certificate of Incorporation.

Paragraph III. "The objects for which the Corporation is formed are to carry on the trade or business of manufacturing, mining, producing, preparing, refining, adapting, buying and selling, and otherwise dealing in all varieties of salt, and all ingredients thereof, and to manufacture, produce, purchase,

prepare, use, sell, or otherwise deal in any materials, machinery, apparatus, appliances, articles or things required for or used for or in connection with or incidental to the manufacturefi mining, production, use, purchase, sale, preparation, working or refining of or other dealing in salt of all kinds and other articles of which salt is a component part, or which are used in connection with its manufacture, production and refinement, and generally to carry on any manufacturing business which can conveniently be carried on in connection with any of the matters aforesaid; also to purchase, acquire, hold and dispose of patent rights, letters patent, trade-marks, contracts and other rights; and also to purchase, hold, sell, assign, mortgage, pledge or otherwise dispose of shares of the Capital Stock, or of any bonds, securities or other evidences of indebtedness created by any other corporation or corporations of the State of New Jersey, or of any other State, and while the owner of such stocks to exercise all the rights, powers and privleges of ownership, including the right to vote thereon; and also to do and transact all acts, business and things incident to and relating to or convenient in carrying out its business as aforesaid."

Extracts from By-Laws.

Article II. Sec. 1. "The Board of Directors shall be increased so as to consist of fifteen persons, who shall all be stockholders, and said Board of Directors shall be divided into five classes, each class consisting of three Directors."

Sec. 2. "At each annual meeting hereafter three Directors shall be elected, constituting one class, who shall hold office for five years from the date of their election and until their successors are elected and qualified in their stead."

Claimants' Exhibit 4

Article III. Sec. 1. "The Board of Directors shall appoint not less than two of their number, who with the President shall constitute an executive committee, to hold office for one year, which Committee shall have and exercise the powers of the Board in the intervals between the meetings of the Board. A majority of said Committee shall constitute a quorum."

Sec. 2. "The Committee shall keep full and complete minutes and records of all its meetings, proceedings and acts held and taken in the intervals between the meetings of the Board of Directors, and the same shall be open to the inspection of the Board of Directors."

Article VIII. Sec. 1. "All dividends of the Preferred Stock shall be declared quarterly on the 15th day of July, October, January and April of each year, and dividends on the Common Stock shall be declared annually on the 15th day of April in each year, or, in the discretion of the Board, may be declared either semi-annually or quarterly on the days fixed for declaring dividends upon the Preferred Stock."

Sec. 2. "The power to fix the amount to be reserved as working capital for the Corporation is vested in the Directors, and the right to dividends from profits shall be subject thereto."

Sec. 3. "The Preferred Stock shall receive dividends at the rate of and not exceeding Seven per Cent, in each year from April 15, 1899, but such dividends shall not be cumulative and if the net earnings of any year declarable as dividends shall not be sufficient to pay for such year Seven per Cent. upon said Preferred Stock, the same shall not be made up from any profits of any later period. The balance of the net profits of the Company declarable as divi-

dends shall be distributed among the holders of the Common Stock."

"The par value of the Preferred Stock shall, in the event of the dissolution of the Company and division of its assets, be paid in full force before any sum whatever shall be paid in liquidation on account of the Common Stock, and thereafter the Common Stock shall be entitled to the entire assets remaining."

Article IX. Sec. 1. "No mortgage shall be created or assumed by the Company, unless there shall be first obtained the consent in writing of the holders of Seventy-five per Cent. of the Preferred Stock outstanding at the time, and also the like consent of Seventy-five per cent of the outstanding Common Stock."

Sec. 2. "At no time shall the total amount of the outstanding Preferred Stock exceed two-thirds of the actual capital paid in cash or property."

The Board of Directors of the Company is as follows: George W. Young, New York City; Joy Morton, Chicago, Ill.; F. B. Squire, Cleveland, Ohio; John Alvin Young, New York; N. S. Beardslee, Warsaw, N. Y.; Warren W. Hawley, Warsaw, N. Y.; W. C. Guinlock, Warsaw, N. Y.; Mark W. Maclay, New York; Samuel T. Kerr, Philadelphia, Pa.; Edwin Hanson, Montreal, Canada; Oscar L. Gubelman, Jersey City, N. J.; Archibald S. White, New York; W. S. Eddy, Saginaw, Mich.; Frederick F. Culver, New York; Frederick R. Blount, New York.

The officers of the Company are as follows: President, Archibald S. White; Vice-president, George W. Young; Vice-president, Joy Morton; Secretary and Treasurer, John Alvin Young; Assistant Secretary, Charles L. Paar; Assistant Treasurer, Rollin W. White.

Claimants' Exhibit 5

September 13, 1900.

$5,000,000 Preferred Stock and $7,000,000 Common Stock admitted to quotation in the Unlisted Department this day.

H. K. POMROY,
Chairman.

Wm. McClure,
Secretary,

Claimants' Exhibit 5.

DEPARTMENT OF UNLISTED SECURITIES.

Committee on Unlisted Securities.

No. 2 Supplemental Statement.

THE NATIONAL SALT COMPANY.

The Committee on Unlisted Securities desires to supplement the statement made by it, dated September 13, 1900, on the application made to said Committee by the National Salt Company for a quotation for its Common and Preferred Stocks in the Unlisted Department. The following appears in said statement:

"All of the issued Capital Stock of the United Salt Company, an Ohio corporation, which owns three plants located at Cleveland, Ohio, one plant located at Pomeroy, Ohio, one plant at Akron, Ohio, and leases four plants located in Meigs County, Ohio."

On February 27, 1901, the following statement supplemental to the foregoing was received, to wit:

"In October, 1899, National Salt Company acquired the Capital Stock of the United Salt Company,

on Ohio corporation, by paying the purchase price therefor in Preferred and Common Stock of National Salt Company, which stock, in the shape of regular engraved certificates of National Salt Company, made out in the name of the nominee of The American Trust Company, was deposited with the American Trust Company of Cleveland, Ohio, in trust for five years, and certificates of The American Trust Company were issued therefor to the former owners of the stock of The United Salt Company, entitling the holders of said certificate of The American Trust Company to a participation in the shares of stock of National Salt Company so held in trust, upon performance of an agreement entered into by the National Salt Company with certain stockholders of the United Salt Company, bearing date July 20, 1899, a copy of which was filed with The American Trust Company, and upon surrender of the Trust Company's certificate, properly endorsed, for cancellation."

During the period of trusteeship, and pending the delivery of such shares of National Salt Company stock, any and all dividends declared by National Salt Company on such stock were to be paid to The American Trust Company to be placed to the credit of National Salt Company, to be applied towards the payment of the semi-annual dividend next due thereafter to the holders of The American Trust Company's certificates, as set forth in the above mentioned agreement dated July 20, 1899.

This agreement of July 20, 1899, contemplated the payment semi-annually, for a period of five years, of a sum of money which would be the equivalent of Seven per Cent. per annum on Preferred and Ten per Cent. per annum on Common Stock of National Salt Company so deposited with The American Trust Company. The agreement provides that if the amount of dividends declared by National Salt Company on

such stock held by The American Trust Company are not equal to the sum above referred to, the National Salt Company is to remit to The American Trust Company whatever deficit might exist.

NATIONAL SALT COMPANY.
By A. S. White,
President.

Memorandum of aggregate amount of "Certificate of Indebtedness" or detached interest coupons:

Original amount		$1,055,487.50
January 1, 1900, first		
January 27, 1900, installment	$105,548.75	
March 19, 1900, released	17,595.00	
July 1, 1900, second installment	103,593.75	
January 1, 1901, third installment	103,593.75	
		330,331.25
Maturing		$ 725,156.25

H. K. POMROY,
Chairman.

Wm. McClure,
Secretary.

Claimants' Exhibit 6.

$4000.00

Jersey City, N. J., Aug. 16, 1900.

National Salt Company (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to H. A. Hutchins or order Four Thousand 00/100 Dollars, in eight equal semi-annual installments, beginning January 1st, 1901. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacure of salt, now owned by The United Salt Company or for which it shall have applied for Letters Patent prior to November 15,

1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,
By A. S. White,
President.

(Seal)

Attest:
Jno. Alvin Young,
Secretary.

Countersigned and Registered.
The American Trust Company,
By F. F. Sanford,
Ass't Sec'y.

(Endorsed on reverse side) : H. A. Hutchins, Stewart Barr & Co., Frank Wright.

Said certificate is endorsed on the face thereof "Jan. 2, 1901. Installment paid Five Hundred Dollars $500. F. F. Sanford, A. Secy."

Claimants' Exhibits 7 to 15 both inclusive are certificates in all respect identical with Claimants' Exhibit 6, except in the particulars hereinafter noted and printing of the same at length is hereby waived.

Claimants' Exhibit 7 is for $2,800. Said certificate is endorsed across the face thereof showing installment paid $350.00.

Claimants' Exhibit 9 same as Exhibit 7.

Claimants' Exhibit 10 is for $1,750, dated Jersey City, N. J., March 22, 1901, and is issued in the name of Herman Frasch.

It is endorsed on the reverse side: Herman Frasch, Stewart Barr & Co.

There is no endorsement showing any installment paid.

Claimants' Exhibit 11 same as Exhibit 10.

Claimants' Exhibit 12 same as Exhibit 10 except it is for $1,225.

Claimants' Exhibit 13 same as Exhibit 12.

Claimants' Exhibit 18

Claimants' Exhibit 14 is for $2,000. Said certificate is endorsed across the face thereof showing installment paid $250.

Claimants' Exhibit 15 is for $1400. Said certificate is endorsed across the face thereof showing installment paid $175.75.

Claimants' Exhibit 18.

$122.50 Jersey City, N. J. February 11, 1901.

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to John Hartness Brown or order One Hundred Twenty-two & 50/100 Dollars, in seven equal semi-annual installments, beginning July 1, 1901. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until

this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt, now owned by The United Salt Company, or for which it shall have applied for Letters Patent prior to November 15, 1899, and that upon all licenses issued by said Salt Company, there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said Company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trusts executed by said National Salt Company, dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, in the aggregate the amount then remaining unpaid hereon.

Claimants' Exhibit 18

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,
By A. S. White,
President.

Attest:
Jno. Alvin Young,
Secretary.

Countersigned and Registered.
The American Trust Company,
By F. F. Sanford.

(Endorsed on reverse side): John Hartness Brown
Stewart Barr & Co.

Certificate of Protest attached to the foregoing certificate is as follows:

Certificate of Protest No. 280
Ohio Legal Blank Co., Cleveland.

The State of Ohio, } ss.:
Cuyahoga County, }

I, H. O. Messick, Notary Public, duly appointed, commissioned and sworn, residing in the City of Cleveland, in the County and State aforesaid, do hereby certify and declare, that on the 1st day of July, in the year of our Lord one thousand nine hundred and one at the request of The Cleveland Trust Co., I did present the original promissory note which is hereto annexed, at The American Trust Co. Cleveland, Ohio, where the same is made payable, and duly demanded payment of first installment due July 1st, 1901 thereof, which was refused;

WHEREUPON, I, the said Notary, at the request aforesaid, did protest, and by these presents do publicly

and solemnly protest, as well against the Drawer and endorsers of the said note as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages and interests already incurred and to be hereinafter incurred, for want of payment of said first installment.

AND I FURTHER CERTIFY, that I have no interest in said note, and that on the day and year above written I deposited in the Post Office at Cleveland, Ohio in said County, Notices of the foregoing Protest, signed by me, and addressed as follows: Notice for The Fidelity Trust Co. of Rochester, directed to Rochester, New York, inclosing Notice of John Harkness Brown & Stewart Barr & Co., also mailed Notice for John Harkness Brown, Hickox Bldg., Cleveland, Ohio, said places being the reported places of residence of the persons to whom said Notices were addressed.

I FURTHER CERTIFY, that on the day and year last aforesaid, I served Notice of the foregoing Protest, as follows, to-wit:

THUS DONE AND PROTESTED, in the City of Cleveland, Ohio, on the day and year above written.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my seal of office.

H. O. MESSICK,
(Seal) Notary Public.

Claimants' Exhibits 19, 46, 47, 48, 49, 50 and 51 are protested certificates in all respects identical with Claimants' Exhibit 18 except in the particulars hereinafter noted and printing of the same at length is hereby waived.

Claimants' Exhibit 20

Claimants' Exhibit 19 is for $175.

Claimants' Exhibit 46 is for $1225, dated Jersey City, N. J., March 6th, 1901, and is issued in the name of Sarah A. Perkins.

Claimants' Exhibit 47 is for $1750, dated Jersey City, N. J., March 6th, 1901, and is issued in the name of Sarah A. Perkins.

Claimants' Exhibit 48 is for $3500, dated Jersey City, N. J., April 1st, 1901, and is issued in the name of Erickson Perkins.

Claimants' Exhibit 49 is for $2450, dated Jersey City, N. J., April 1st, 1901, and is issued in the name of Erickson Perkins.

Claimants' Exhibit 50 is for $1225, dated Jersey City, N. J., April 1st, 1901, and is issued in the name of Erickson Perkins.

Claimants' Exhibit 51 is for $1750, dated Jersey City, N. J., April 1st, 1901, and is issused in the name of Erickson Perkins.

Claimants' Exhibit 20.

$1400. Jersey City, N. J., September 14, 1900

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland Ohio, to F. B. Squire or order Fourteen hundred Dollars, in eight equal semi-annual installments, beginning January 1st, 1901. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National

Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by the United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt, now owned by The United Salt Company or for which it shall have applied for Letters Patent prior to Nov. 15, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of The United Salt Company acquired by it under an option given by certain stock-

holders of said Company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,
By A. S. White,
President.

Attest:
Jno. Alvin Young,
Secretary.

Countersigned and Registered.
The American Trust Company,
By F. F. Sanford,
Ass't Sec'y. (Seal)

(Endorsed on the reverse side): F. B. Squire, Stewart Barr & Co.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1901. Installment paid $175 (One hundred and seventy-five Dollars). F. F. Sanford, A. Secy.

Certificate of Protest attached to the foregoing certificate is as follows:

Claimants' Exhibit 20

THE UNITED STATES OF AMERICA.

The State of Ohio, }
Cuyahoga County, } ss.:

BE IT KNOWN BY THIS INSTRUMENT OF PROTEST, that I, Francis W. Treadway, a Notary Public, duly appointed, commissioned and sworn, residing in the City of Cleveland, in the county and state aforesaid, at the close of banking hours, on the first day of July, in the year of our Lord, one thousand nine hundred and one, at the request of The Fidelity Trust Co. of Rochester, N. Y., did present the original promissory note which is hereunto annexed, at office of The American Trust Co., to paying Teller of Cleveland, where the same is made payable, and duly demanded payment thereof which was refused and reason given: No funds for payment.

WHEREUPON, I, the said notary, at the request aforesaid did protest, and by these presents do publicly and solemnly protest, as well against the maker, drawer and endorsers of the said note as against all others whom it doth or may concern, for exchange, re-exchange, and all costs, damages and interests already incurred, and to be hereinafter incurred for want of payment of the said note.

AND I FURTHER CERTIFY, That I have no interest in said note and that on the day and year above written, I deposited in the Postoffice at Cleveland, Ohio, in said county, notices of the foregoing protest, signed by me, and addressed as follows:

To Stewart Barr & Co., 6 Wall St., New York and
" F. B. Squire, Esq., 53 Euclid Ave., Cleveland.
enclosing notices for

said place being the reputed place of business of the person to whom said notices were addressed.

THUS DONE AND PROTESTED, in the City of Cleveland, on the day and year above written.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal.

FRANCIS W. TREADWAY,
Notary Public.

(Seal)

Claimants' Exhibits 21 to 45 both inclusive are protested certificates and in all respects identical with claimants' Exhibit 20, except in the particulars hereinafter noted and printing of same at length is hereby waived.

Claimants' Exhibit 21 is for $2000, dated Jersey City, N. J. Sept. 14th, 1900, and is issued in the name of F. B. Squire.

It is endorsed on the reverse side: F. B. Squire, Stewart Barr & Co.

Said certificate is endorsed on the face thereof in red ink: Jan. 2, 1901; installment paid $250 (Two Hundred and Fifty Dollars). F. F. Sanford, A. Secy.

Claimants' Exhibit 22 is for $8500, dated Jersey City, N. J., Nov. 27, 1899 and is issued in the name of Herman Frasch. Payable in ten equal semi-annual installments.

(It is endorsed on the reverse side): Herman Frasch Stewart Barr & Co. Witness: J. C. Updegrove.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1900. First installment paid $850 (Eight hundred and Fifty Dollars) F. F. Sanford, A. Secy. Jul. 2, 1900 Second installment paid $850 (Eight hundred and fifty Dollars). F. F. Sanford, A. Secy. Jan. 2, 1901 Third Installment paid $850 (Eight hundred and fifty Dollars.) F. F. Sanford, A. Secy.

Claimants' Exhibit 23 is for $1400, dated Jersey City, N. J. Sept. 14, 1900 and is issued in the name of F. B. Squire.

(It is endorsed on the reverse side): F. B. Squire Stewart Barr & Co.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1901 installment paid $175. F. F. Sanford, A. Secy.

Claimants' Exhibit 24 is for $8500 payable in ten equal semi-annual installments; dated Jersey City, N. J., Nov. 27, 1899 and is issued in the name of Herman Frasch.

(It is endorsed on the reverse side): Herman Frasch Stewart Barr & Co. Witness: J. C. Updegrove.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1900. First installment paid $850 (Eight hundred and fifty Dollars) F. F. Sanford,

A. Secy. Jul. 2, 1900 Second installment paid $850 (Eight hundred and fifty Dollars) F. F. Sanford, A. Secy. Jan. 2, 1901, Third installment paid $850 (Eight hundred and fifty Dollars) F. F. Sanford, A. Secy.

Claimants' Exhibit 25 is for $2000, dated Jersey City, N. J. Sept. 14, 1900, and is issued in the name of F. B. Squire.

(It is endorsed on the reverse side): F. B. Squire Stewart Barr & Co.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1901 installment paid $250 (Two hundred and fifty Dollars). F. F. Sanford, A. Secy.

Claimants' Exhibit 26 is for $1400, dated Jersey City, N. J., Sept. 14, 1900, and is issued in the name of F. B. Squire.

(It is endorsed on the reverse side): F. B. Squire Stewart Barr & Co.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1901 Installment paid $175 (One hundred and seventy-five Dollars). F. F. Sanford, A. Secy.

Claimants' Exhibit 27 is for $2000, dated Jersey City, N. J. Sept. 14, 1900 and is issued in the name of F. B. Squire.

(It is endorsed on the reverse side): F. B. Squire Stewart Barr & Co.

(Said certificate is endorsed on the face thereof in red ink): Jan. 2, 1901, Installment paid $250 (Two hundred and fifty Dollars). F. F. Sanford, A. Secy.

Claimants' Exhibit 28 is for $2000 dated Sept. 15, 1900, endorsements same as Exhibit 21.

Claimants' Exhibit 31 is for $2000 dated Sept. 14, 1900, endorsements same as Exhibit 21.

Claimants' Exhibit 34 is for $2000 dated Sept. 15, 1900, endorsements same as Exhibit 21.

Claimants' Exhibit 35 is for $2000 dated Sept. 14, 1900, endorsements same as Exhibit 21.

Claimants' Exhibit 36 is for $2000 dated Sept. 15, 1900, endorsements same as Exhibit 21.

Claimants' Exhibit 38 is for $2000 dated Sept. 14, 1900, endorsements same as Exhibit 21.

Claimants' Exhibit 40 is for $1400, dated Sept. 15, 1900, endorsements same as Exhibit 20.

Claimants' Exhibit 41 is for $2000 dated Sept. 15, 1900, endorsements same as 21.

Claimants' Exhibit 42 is for $2000 dated Sept. 14, 1900, endorsements same as 21.

Claimants' Exhibit 45 is for $2000 dated Sept. 15, 1900, endorsements same as 21.

Receivers' Exhibit 1, Proof of Claim of American Trust Co.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,

vs.

NATIONAL SALT COMPANY,
Defendant.

} In Equity.

Cuyahoga County, }
The State of Ohio, } ss.:

Edwin V. Hale being first duly sworn says:

(I) That he is a resident of the County of Cuyahoga and State of Ohio, and that he is the Secretary and Treasurer of The American Trust Company, a corporation organized under the laws of the State of Ohio, and having its principal office within that State at Cleveland, Cuyahoga County, Ohio.

(II) That National Salt Company is justly indebted to said The American Trust Company as Trustee and Agent for certificate holders as set out below, in the sum of Seven hundred and twenty-five thousand one hundred and fifty-six and 40/100 ($725,156.40) dollars exclusive of interest upon the same since January 1st A. D., 1901, and that such indebtedness arose from the following facts, to-wit:

FIRST: That in the year 1899 the United Salt Company, a corporation organized under the laws of Ohio, having a capital stock of One Million Dollars

divided into ten thousand shares of one hundred dollars each, owned, maintained and operated large and successful salt works in the City of Cleveland and elsewhere.

SECOND: That on the 18th of March, 1899, a corporation was organized in New Jersey under the "Act concerning corporations" (Revision of 1896) by the name of the National Salt Company, for the purpose amongst others of manufacturing and selling salt, and the purchase of various salt works in the United States, and elsewhere, for that purpose, and that said corporation had corporate power to purchase, own and hold stock in other salt companies and the same to sell, mortgage and pledge.

THIRD: That the said National Salt Company became desirous of owning so much of the stock of said United Salt Company as it could acquire and for that purpose at different times during the summer and fall of the year 1899 made propositions to stockholders in said United Salt Company for the purchase of their stock, the said propositions being substantially embodied in the draft of an agreement bearing date the 20th day of July, 1899, which said proposed agreement the said National Company requested stockholders in the United Company to sign, and which agreement was substantially,—signatures being omitted—in the words and figures as follows:

Cleveland, Ohio, July 20th, 1890.

The undersigned, owning the number of shares of the capital stock of The United Salt Company (of Cleveland, Ohio), set opposite their respective names, in consideration of the sum of one dollar paid to each

by the National Salt Co. (of Jersey City, New Jersey), hereby severally agree to sell, assign and transfer to said company at the price and upon the terms and conditions hereinafter stated, the number of shares of stock so owned by them in The United Salt Company of the par value of one hundred dollars per share, provided that prior to September 20th, 1899, said National Salt Company shall have elected to purchase the same under the terms of this option.

For each share of stock in The United Salt Co. purchased from the undersigned there shall be given 1.25 shares of the seven per cent, preferred stock and 1.25 shares of the common stock of said National Salt Company, and in addition thereto said company shall pay for each share of the stock of the United Salt Co. the sum of $106.25 in cash, payable in ten equal semi-annual installments on the 1st day of January and July of each year, beginning with January 1st, 1900.

As a further consideration, said National Salt Co. shall agree that until said cash payments shall have been fully made the United Salt Co. will not mortgage, encumber or otherwise in any manner dispose of any interest in any contract for the purchase of exhaust steam entered into by the United Salt Co. prior to October 1st, 1899, nor any improvements erected or to be erected by said company for utilizing said steam for the manufacture of salt, and that until such time no money borrowed or advanced by the National Salt Co. for extending, improving or operating the property of the United Salt Co. shall be made a charge upon or lien against the property or assets of the United Salt Co. And until such obligations shall have been paid or discharged, said National Salt Co. shall further agree that the United Salt Co. shall not otherwise than by the issue of licenses sell or dispose of any

interest in, any patented process for the manufacture of salt now owned by the United Salt Co., or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Company under said patents there shall be paid to The United Salt Co., a royalty of at least 25 cents per ton, settlement for which shall be made quarterly.

To evidence the agreement of the National Salt Company to make such payments, it shall execute and deliver to each owner its agreement substantially in the form shown in Exhibit "A" attached hereto and made part hereof. New agreements of like tenor shall be issued in lieu of said original or any re-issued agreements, upon their surrender and cancellation, for such amounts as the holder may desire not exceeding in the aggregate the amount then unpaid upon the agreements so surrendered and cancelled, and before such original or re-issued agreements shall become binding upon said National Salt Company they shall be registered and countersigned by The American Trust Company of Cleveland, Ohio, and the said Trust Company shall be required to keep a record of all agreements so registered and countersigned.

To jointly and ratably secure the payment of said obligations and the performance upon its part of the above conditions and agreements, said National Salt Co. shall endorse in blank and deposit with The American Trust Company, of Cleveland, Ohio, as Trustee, under a declaration of trust substantially as shown in Exhibit "B" attached hereto and made a part hereof, all stock of The United Salt Co. acquired by it under this option.

All dividends paid on the stock of The National Salt Co. so to be given the undersigned in exchange for their stock in The United Salt Co., shall be applied

toward the payment of the amounts so agreed to be paid, and to insure such application the undersigned will deposit said stock with The American Trust Co. under a declaration of trust substantially as shown in Exhibit "C" attached hereto and made a part hereof.

It is an express condition of this option that, if accepted, all stockholders of The United Salt Company not parties hereto are to have the privilege of disposing of their holdings in said Company to the National Salt Company upon the same terms herein named, at any time before November 1st, 1899.

All compensation, charges and expenses of the Trustees shall be borne and paid by the National Salt Company. Also all revenue tax required to be paid for the execution of all transfers and instruments herein referred to.

Name.	Shares Owned.
.....	.....
.....	.....
.....	.....

New York City, Sept. 16th, 1899.

We hereby accept to the above option.

Receivers' Exhibit 1

NATIONAL SALT COMPANY,

By A. S. White,

President.

Attest:

Jno. Allen Young,

(Seal) Secretary.

FOURTH: That after due consideration of said propositions by different stockholders in said United Company the said offer was at various times accepted and signed by the several owners of stock in said United Company, each acting for himself, and that by this means and through successive purchases the said National Company finally acquired all said stock.

FIFTH: That the cash indebtedness by said National Company to the different persons by whom the stock in said United Company was sold to it as aforesaid was evidenced by certificates of indebtedness issued by the said National Company at different times directly to the said vendors; said certificates of indebtedness referred to in the draft of agreement hereinbefore set out as Exhibit "A" being substantially in the following form:

$.....

Jersey City, N. J., October.....1899.

National Salt Company (of New Jersey) hereby agrees to pay at the office of the American Trust Company, Cleveland, Ohio, to or order Dollars, in ten equal semi-annual installments, beginning January 1st, 1900. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the

National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to The American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder thereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt, now owned by The United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has endorsed in Blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of The United Salt Company acquired by it under an option given by certain stockholders of said Company, bearing date July 20th,

New Jersey State Library

1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,

By

President.

Attest:

Secretary.

Countersigned and registered,

The American Trust Company,

By

SIXTH. That to secure the payment of said certificates of indebtedness and for other purposes the said National Salt Company deposited with your orator The American Trust Company all stock of said United Salt Company under a declaration of trust hereinbefore in said draft of agreement referred to as Exhibit "B," which said declaration of Trust was accepted by The American Trust Company, and was with its acceptance, substantially in the words and figures as follows:

Receivers' Exhibit 1

Exhibit "B."

This declaration of Trust executed by the National Salt Company, a New Jersey Corporation, this 2d day of October, 1899, Witnesseth that said Company has this day endorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, all stock of The United Salt Company, an Ohio corporation, which was acquired by said National Salt Company, under an agreement with certain stockholders of said The United Salt Company, dated July 20th, 1899, for the following purposes, to wit:

First. To jointly and ratably secure the payment of the amounts of money agreed to be paid said stockholders for said stock, evidenced by the notes or certificates of indebtedness of the National Salt Company, countersigned and registered by The American Trust Company, amounting in the aggregate to not exceeding the sum of $1,062,500 payable as provided in said notes or certificates of indebtedness.

Secondly. To secure the performance of its agreement to permit no contract for the purchase of exhaust steam entered into by said The United Salt Company prior to October 1st, 1899, and no improvements erected or hereafter to be erected for utilizing said steam to be in any manner mortgaged, encumbered, or disposed of until all of said notes or certificates of indebtedness shall have been fully paid or discharged, and that until such time no moneys borrowed or advanced by said National Salt Company for extending, improving or operating the property of The United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company.

Third. To secure the performance of the agreement of said National Salt Company that until said notes or

certificates of indebtedness shall have been fully paid or discharged the United Salt Company will not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt now owned by said The United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company under such patent there shall be paid to it a royalty of at least 25 cents per ton, settlements for which shall be made quarterly.

Fourth. If said National Salt Company shall well and truly make such payments in the manner at the time specified in said notes or certificates of indebtedness, and shall in all things comply with the agreements above recited, then and thereupon said stock shall be returned to said National Salt Company by said Trustee. But if said Salt Company shall at any time be in default in the payment of any payment of any portion of any installment to become due upon any of said notes or certificates of indebtedness for a period of sixty days after demand for the payment thereof shall have been made (in which event all future installments shall immediately become due and payable), or shall in manner violate any of the agreements above recited, then said Trust Company, upon written notice and demand of any holder of said notes or certificates of indebtedness and upon being indemnified to its satisfaction in the premises, as to costs, liabilities and expenses, and not otherwise, shall sell the stock so deposited with it or so much thereof as may be necessary to pay the amounts then remaining due upon said notes or certificates of indebtedness and to satisfy and release all liens or claims (if any) upon said contracts, improvements or patented processes, at public auction to the highest bidder after having given thirty days' printed notice of its intention so to do, published once

a week for four consecutive weeks in the Cleveland Plain Dealer and the New York Tribune. After deducting its reasonable charges and expenses in the premises it shall apply the proceeds realized from such sale to the payment of the balance then remaining due upon said notes or certificates of indebtedness, and to the discharge of all such liens or encumbrances, turning the balance, if any there be, over to the National Salt Company. For the purpose of preference copies of said option and the form of said notes or certificates of indebtedness are hereto attached. All charges and expenses of the Trustee are to be paid by the National Salt Company.

NATIONAL SALT COMPANY,
By A. S. White,
President.

Attest:

Secretary.

Cleveland, O., October 1899.

The American Trust Company, Cleveland, O., designated as Trustee in the foregoing instrument, accepts said Trust and acknowledges the receipt of
shares of the capital stock of the United Salt Company, deposited with it by the National Salt Company upon the foregoing trusts.

THE AMERICAN TRUST COMPANY,
By
President.

Attest:

Secretary.

Receivers' Exhibit 1

And your orator shows that the option referred to in the foregoing instrument is the draft of agreement hereinbefore first recited and that the certificate of indebtedness therein mentioned is the instrument hereinbefore set out as Exhibit "A."

SEVENTH. That the common and preferred stock in the National Salt Company purchased by the persons selling stock in the United Salt Company as above stated was in accordance with the agreements with the several parties deposited with your orator under a trust agreement, referred to in the foregoing draft of agreement as Exhibit "C," substantially in the words and figures as follows:

Exhibit "C."

THIS IS TO WITNESS that the undersigned have this day deposited with The American Trust Company of Cleveland, Ohio, as Trustee, certificates for the respective numbers of shares of Preferred and Common Stock of the National Salt Company (of New Jersey), of the par value of $100 per share, set opposite their respective names, to be held, managed and controlled by said Trust Company on the following trusts until all indebtedness of the National Salt Company upon its notes or certificates of indebtedness this day issued to the undersigned and countersigned and registered by said Trust Company in pursuance of the provisions of Exhibit "A" hereto attached and made a part hereof and any and all such notes or certificates of indebtedness hereafter issued pursuant to said Exhibit "A" are fully paid, or discharged, but in no event later than January 1st, 1905, to wit:

1. Until such time to demand, collect, receive and receipt for all dividends paid upon said stock, and to

that end it is authorized, if it so desires, to have said stock issued to itself or its nominee. Said Trust Company shall pay interest at the rate of three per cent. (3%) per annum on money so deposited from date of receipt until disbursed.

2. To retain all moneys so paid until the installment next to become due upon the obligations referred to in Exhibit "A" shall have become due and payable and then to apply the same to the payment of such installment.

3. For each share of stock so deposited said Trustee shall issue to the undersigned its trust certificates, substantially in the form following, to wit:

No. Shares Preferred Stock.
Shares Common Stock.

NATIONAL SALT COMPANY.

Incorporated under the laws of the State of New Jersey.

The American Trust Company, of Cleveland, Ohio, certifies that there have been deposited with it certificates for shares of $100 each of the Preferred Stock and shares of $100 each of the Common Stock of National Salt Company, a New Jersey corporation, and that or his assigns will be entitled to receive the said certificates upon performance by said National Salt Company of an agreement entered into by it with certain stockholders of The United Salt Company, bearing date July 20th, 1899, a copy of which is on file with the undersigned, but in no event later than January 1st, 1905, upon surrender of this certificate properly endorsed for cancellation.

Pending the delivery of such shares of stock and surrender and cancellation of this certificate, The American Trust Company will pay over to the said National Salt Company, or otherwise as provided in said agreement, any and all dividends received by it upon said shares of stock, and will also vote or cause said shares of stock to be voted at any meeting of said National Salt Company in accordance with the written request of the said

This certificate is transferable only upon the books of said Trust Company in person or by attorney and upon surrender of this certificate.

Dated, Cleveland, Ohio, 1899.

THE AMERICAN TRUST COMPANY,

By

Endorsement for back of certificate.

For value received hereby sell, assign, and transfer to all right, title and interest in and to the within certificate, subject to the conditions contained herein.

Dated .....

Witness .....

NAME.	No. of Shares.	
	Preferred	Common.
.....	.....	.....

Cleveland, Ohio, October 2d, 1899.

The American Trust Company, designated as Trustee in the foregoing instrument, accepts of said trust, and acknowledges the receipt of shares of the capital stock of the National Salt Company deposited with it upon the foregoing trusts.

THE AMERICAN TRUST COMPANY,

By

President.

Attest:

.....

Secretary.

EIGHTH: That pursuant to the authority conferred by the terms of Exhibit "C" in paragraph 7 hereof, said stock in the National Salt Company, at the request of The American Trust Company was issued in the name of Frederic F. Sanford, who is the holder of said shares upon the books of said National Salt Company issued in the name of Sanford have by him been endorsed in blank and delivered to the American Trust Company, and are now in its possession.

NINTH: That by agreement with the National Salt Company and some holders of stock small portions of the securities above named were released from the trusts above recited, but that The American Trust Company now holds under the foregoing agreements Twelve thousand one hundred and eighty-seven and one-half (12,187 1/2) shares of the preferred and a like amount of the common stock of said National Salt Company.

That said The American Trust Company has issued for said stock a large number of trust certificates in the form embodied in the instrument designated "Exhibit C" and hereinbefore set out; that said certificates have been a recognized subject of dealing among brokers in the City of New York and elsewhere; that affiant is not now informed of and does not know the names of all the holders thereof; that the names of said holders according to the books of The American Trust Company are given in a list hereto annexed marked "Exhibit A" which list likewise shows the face or par value of the certificates owned by each holder.

TENTH: The total amount of the certificates of indebtedness issued as aforesaid to sellers of stock in said United Salt Company was $1,055,487.50; that on or about the first day of January, A. D. 1900, the National Salt Company had declared and paid on its capital stock, held by The American Trust Company

in the name of Frederick F. Sanford, certain dividends and also paid certain money all amounting to $105,-548.61, which sum was by The American Trust Company distributed and paid to the then holders of said certificates of indebtedness to be applied as part payment thereof; and on July 1st, A. D. 1900, there was declared, paid and distributed in like manner a further sum of $103,593.89, and on January 1st, 1901, there was declared and paid and distributed in like manner the further sum of $103,593.60 about one-half of which was declared and paid as dividends on the said capital stock, common and preferred, of the National Salt Company and which was deposited with and held by the American Trust Company under the arrangements and upon the trusts hereinbefore set forth.

That no payments have been made either to The American Trust Company or upon said certificates of indebtedness since last mentioned date except that on or about the 4th day of February, A. D., 1901, $39,-609.38 was paid to The American Trust Company as a dividend on such stock in National Salt Company of which amount there now remains unexpended the sum of $37,569.57 which is subject to lien of The American Trust Company for expenses and charges, and there is now due on said certificate the sum of $725,-156.40 with interest.

That by the certificates of indebtedness issued by the National Salt Company as aforesaid it was provided that failure to pay any installment thereon when due should make all future installments become at once due and payable; that default was made in payment in the installment due upon said certificates which matured on the first day of July, 1901; that the said installment is now due and wholly unpaid; that by reason thereof the whole principal of all of said outstanding certificates has become and now is due and

payable and that said National Salt Company has wholly failed to pay the same or any part thereof.

(III) And affiant further says that there are no counterclaims or set-offs to such indebtedness and that no note or other security has been given for such indebtedness except as stated above and that no judgment has been recovered for such indebtedness and that his post office address is Cleveland, Cuyahoga County, Ohio, and further affiant saith not.

EDWIN V. HALE.

Sworn to before me by the said Edwin V. Hale and by him subscribed in my presence this 16th day of February, A. D. 1903.

GEORGE G. WHITCOMB,
Notary Public.

(Seal)

Exhibit "A."

Virgil P. Kline	$2,231.25
F. Rockefeller	51,541.88
D. A. Dangler	25,585.00
John D. Rockefeller	134,544.38
J. M. Henderson	6,693.75
W. A. Dutton	1,115.63
W. H. Foster	743.75
H. J. Doolittle	5,950.00
Newton J. Worley	371.88
Joy Morton & Co.	5,578.13
James Corrigan	1,859.38
W. E. Judd	371.88
Mary J. Crain	1,859.38
W. C. Spalding	223.13
Percy S. Balkwill	2,975.00

Receivers' Exhibit 1

	S. T. Curtis	223.13
	W. P. Cowan	3,718.75
	Mrs. Henrietta E. Robinson	14,949.38
	Eva L. Page	3,718.75
	Marietta L. Huntington	4,462.50
	Paul Calvi, Trustee	223.13
	H. H. Hodell	1,115.63
10	Mrs. E. A. Benham	371.88
	L. A. Crandall	5,578.13
	L. M. Bailey	74.38
	B. A. Mathews	743.75
	F. W. Lothman	1,115.63
	A. V. Tiedemann	371.88
	C. E. Waite	371.88
	Charles G. Little	148.75
	W. W. Barkwill	2,231.25
	D. W. Lothman	892.50
20	Charles Baird	1,933.76
	Lucy V. Baird	148.75
	Bessie C. Baird	74.38
	L. O. Sherman	371.88
	F. A. Kilmer	1,115.63
	Charles M. Lines	297.50
	Mrs. Florence H. Benjamin	743.75
	T. R. Hoffman	1,115.63
	E. S. Harkness	10,858.75
30	C. W. Harkness	30,791.25
	L. H. Severence	44,773.75
	William Chisholm	66,937.50
	Herman Frasch	17,850.00
	O. C. Barber	76,903.75
	J. K. Robinson	743.75
	J. H. Cooper, Trustee	148.75
	Mrs. Anna L. Bevan	20,601.88
	H. C. Ellison	223.13
	National Salt Co.	2,677.50
40	H. A. Hutchins	14,875.00

Receivers' Exhibit 1

Charles I. Dangler	2,454.38
D. Edward Dangler	2,454.38
I. C. Alden	3,123.75
John Hartness Brown	2,380.00
W. T. Kirk	297.50
Edward Calm	1,190.00
Freeman C. Sherman	892.50
Clarence N. Flack	2,975.00
Robert S. Ingraham	3,272.50
George S. Ingraham	9,222.50
Edward A. Brion	297.50
Sarah A. Perkins	2,975.00
A. E. Overton	595.00
William M. Ingraham	3,570.00
George W. Underhill	1,190.00
S. R. Underhill, Jr.	595.00
Margaret R. Underhill	297.50
William H. Eaton	297.50
Dwight H. Cady	297.50
Charles W. Prescott	3,867.50
Mrs. Frances P. Mathews	595.00
Harold J. C. Browne	595.00
Stewart, Barr & Co.	3,049.38
John Bensinger	1,190.00
Joe W. Swaine	5,950.00
Miss Frances T. Ingraham	1,785.00
Samuel R. Underhill	595.00
Sarah U. Carpenter	595.00
Flower & Co.	17,850.00
Mary H. Tuckerman	595.00
Erickson Perkins	8,925.00
F. B. Squire	65,450.00
Augustus M. Hodge	595.00
	$725,156.40

Receivers' Exhibit 1, Testimony Upon American Trust Co. Claim.

IN CHANCERY OF NEW JERSEY.

Between

CHAUNCEY H. STRICKLAND,
Complainant,
and
NATIONAL SALT COMPANY,
Defendant.

} On Bill, &c.

Examination of witnesses &c., in relation to the claim and supplemental claim filed by the American Trust Company, of Cleveland, with the subscribers Receivers of the defendant corporation, on Friday the twenty-second day of May, nineteen hundred and three, at the office of Frank P. McDermott, one of said Receivers, 17 Exchange Place, Jersey City, N. J., in the presence of Mr. Joseph H. Adams, appearing for American Trust Company, and Mr. William B. Putney, appearing for the Receivers and for some other creditors.

It is stipulated and agreed that the testimony be taken stenographically, the signatures of witnesses being waived.

Receivers.

HOMER H. JOHNSON, being duly sworn on behalf of the Claimant, on his oath says:

I am the counsel for the American Trust Company and have been since and during the times described in the proof of claim of that company filed herein, and have been familiar with the facts.

The contracts set out in the proof of claim were made and filed by the National Salt Company and

the various signers of the other contracts, namely, the stockholders of the United Salt Company, and the two kinds of certificates issued by the American Trust Company as described in the proof of claim.

I hereby offer the contracts and copies of certificates in evidence, which are quoted in the proof of claim, and they may be marked and attached to this proof. The papers I present are correct copies of the original papers in the possession of the American Trust Company, except so far as they profess to be copies of certificates held by various parties. It is a copy of the original contract in our possession, and they are offered in evidence as such copies.

The American Trust Company received for the account of the certificate of indebtedness holders, being one kind of certificate, and a certificate representing stock another—a certificate representing indebtedness—the American Trust Company received on the certificates of indebtedness on or about January 1, 1900, $105,548.61, which was distributed by the company to the holders of the certificates of indebtedness of the National Salt Company. On July 1, 1900, they received $103,593.89 and paid out substantially that sum less a few cents, to the certificate holders, and on January 1, 1901, they received and in like manner paid out to the certificate holders $103,593.60, and on about the fourth day of February, 1901, they received $39,609.38, of which there now remains unexpended the sum of $37,569.57, which they hold subject to the contracts and subject to the lien of the American Trust Company for their expenses and charges, as mentioned in the proof of claim.

By Mr. Putney:

Q. Is there any distribution since the receipt of this last $39,000? A. My recollection is that that was

certain expenses which the American Trust Company has paid.

Q. Your recollection is that there has been no distribution? A. That none of this $39,609.38 has gone to the certificate holders, I think. But I think there were certain charges paid that left $37,509.67 now on hand, subject of course, to the settlement of claims against it.

Crediting what has been paid to the American Trust Company there is now due to the Trust Company for the benefit of the certificate holders $725,156.40, with interest due and accumulating, which is the amount.

By Mr. Putney:

Q. That interest would be, would it not—it became due, if at all, the first of July, 1901, didn't it? A. July, 1901.

Q. So that if there is any interest it would commence from that date? A. It would commence from July 1, 1901.

We understand that certain dividends were declared by the National Salt Company which were not paid to us on the stock, one of the provisions of the contract being that they would pay dividends on the stock that we held in the name of F. F. Sanford to us; that certain dividends were paid as described in our supplemental bill, which were paid to other stockholders but refused to pay to us—our representative Mr. Sanford—as stockholder in the company, and we have filed a supplemental account asking specifically for the share of the dividends paid to other stockholders and not to us on account of the stock held by us. We do not claim a double remedy, but have put in the proof in that way because the other contract—the National Salt Company agreed to pay the dividends to us, and we think we are entitled to them as a separate form of claim, under the provisions of the contract,

and as recited in our supplemental proof of claim there is $118,828.11 due us on account of these dividends as recited in the 8th article of the amended proof of claim, with interest of various dates as described in the amended claim.

By Mr. Putney:

Q. Mr. Johnson, is that an additional account, or is it embraced in that? A. Embraced in this, but they agreed to do two things, that is all. We have two contracts for that, I think. It is duplicated, however.

Q. It is only an additional ground of claim? A. It is additional. We have two contracts with the National Salt Company, one to pay us the amount of the certificates of indebtedness and the other to pay dividends to us on the stock that we hold.

Q. Do you claim that the American Trust Company was entitled to receive moneys by way of dividends as a stockholder? A. Well, we held the stock as collateral to the indebtedness, and I take it that—

Q. No, but my question is directly to a point; do you claim that you were entitled to receive dividends as a stockholder of the National Salt Company? A. I don't think I ought to answer that, Mr. Putney. We claim, as the documents will—

Q. It is a proper question for me to ask for the information of the receivers, but, of course, I cannot compel an answer? A. You are asking me the construction we put on it. We have an agreement signed by the National Salt Company. I can give my interpretation.

Q. But the way you spoke I thought you put it as a debt due by way of a dividend that your company was entitled to? A. No; we put it on the agreement of the American Trust Company which I have put in evidence.

Q. I asked that question in view of the way you made the statement. Now all the payments to the holders of these obligations were made by your Trust Company, were they not? A. There may have been other payments; I don't know.

Q. Well, all the moneys that you know of that have been paid by the National Salt Company for the benefit of the stockholders of the United Salt Company have been paid to your company? A. All that I know of; yes, sir.

Q. And your company ordered to pay to the obligation holders what under your trust agreement were belonging to them, then? A. Yes, sir; we paid out what was paid to us for their account and we are asking for the balance.

Q. Your company holds all the capital stock of the United Salt Company, does it not, now? A. It holds all that was deposited with us.

Q. All that was deposited under this agreement? A. Yes, sir.

Q. And it holds two and a half million of National Salt Company stock deposited under this agreement? A. Somewhere around that; couldn't say from memory, I couldn't remember. We have, however, all that was deposited with us in the name of Mr. Sanford.

It is stipulated and agreed by and between the counsel of the respective parties, with the assent of the Receivers, that in the event of an appeal from the determination of the Receivers that either party may put in such testimony before the Chancellor or Vice-Chancellor hearing said appeal as they may be advised.

Receivers' Exhibit 1, Petition in Ohio Suit.

April 2, 1901.

State of Ohio, }
Cuyahoga County, } ss.:

IN THE COURT OF COMMON PLEAS.

NATIONAL SALT COMPANY,

Plaintiff,

against

THE UNITED SALT COMPANY, The American Trust Company, Herman Frasch, F. B. Squire, L. H. Severance, F. Rockefeller, O. C. Barber, C. W. Harkness, D. A. Dangler, J. D. Rockefeller, H. A. Hutchins, Elmer Turner, J. M. Henderson, V. P. Kline, E. S. Harkness, W. C. Spaulding, Marietta L. Huntington, Charles Baird, I. C. Alden, Mrs. H. E. Robinson, Joy Morton & Co., H. J. Doolittle, Percy S. Balkwell, S. T. Curtis, W. P. Cowan, T. R. Hoffman, D. W. Lothman, W. A. Dutton, Mrs. F. A. Benjamin, O. B. Hoover, L. M. Bailey, F. W. Lothman, Dr. George Lunge, Mrs. E. A. Benham, B. A. Matthews, Kate Balkwell, W. E. Judd, Eva L. Paige, L. A. Crandall, Bessie C. Baird, Lucy V. Baird, C. G. Little, W. H. Foster, Mary J. Crain, James Corrigan, J. K. Robinson, J. H. Cooper, Trustee; Mrs. George Predmore, Paul Calvi, Trustee; F. A. Kilmer, L. O. Sherman, Newton J. Worley, C. M. Lines, C. E. Waite, A. V. Tiedeman, Lucy E. Britton, W. W. Balkwell, H. H. Hodell, W. W. Barkwill, Edward A. Brion, John Hartness Brown, Edward Calm, William Chisholm, Charles I. Dangler, D. Edward Dangler, H. C. Ellison, Clarence N. Flack, George S. Ingra-

ham, Robert S. Ingraham, William M. Ingraham, W. T. Kirk, A. E. Overton, Sarah A. Perkins, Freeman C. Sherman, George W. Underhill, S. R. Underhill, Jr., Margaret R. Underhill, F. F. Sanford,

Defendants.

Petition for Equitable Relief.

Comes now the plaintiff, National Salt Company, and says it is a corporation, duly organized and existing under the laws of the State of New Jersey, they are earning at the rate of $2,000,000.00 per year, and was such corporation at the times hereinafter specified, with its principal office and place of business at New York City, New York; that the defendant, The United Salt Company, is a corporation, duly organized and existing under and by virtue of the laws of the State of Ohio, and was such corporation at the times hereinafter specified, with its principal office and place of business in the City of Cleveland, County of Cuyahoga and State of Ohio; that the defendant, The American Trust Company, is a corporation, duly organized and existing under the Laws of the State of Ohio, and was such corporation at the times hereinafter specified, with its principal office and place of business in the City of Cleveland, County of Cuyahoga and State of Ohio; that the defendant, Joy Morton & Co., is a co-partnership, with its principal office and place of business in the City of Chicago, County of Cook and State of Illinois; that the defendants Herman Frasch, F. B. Squire, L. H. Severance, F. Rockefeller, O. C. Barber, C. W. Harkness, D. A. Dangler, J. D. Rockefeller, H. A. Huchins, Elmer Turner, J. M. Henderson, V. P. Kline, E. S. Harkness, W. G. Spaulding, Marietta L. Huntington, Charles Baird, I. C. Alden, Mrs. H. E. Robinson, Joy Morton &

Co., M. J. Doolittle, Percy S. Balkwell, S. T. Curtis, W. P. Cowen, T. R. Hoffman, D. W. Lothman, W. A. Dutton, Mrs. F. A. Benjamin, O. B. Hoover, L. M. Bailey, F. W. Lothman, Dr. George Lunge, Mrs. E. A. Benham, B. A Mathews, Kate Balkwell, W. E. Judd, Eva L. Paige, L. A. Crandall, Bessie C. Baird, Lucy V. Baird, C. G. Little, W. H. Foster, Mary J. Crain, James Corrigan, J. K. Robinson, J. H. Cooper, Trustee; Mrs. George Fredmore, Paul Calvi, Trustee; F. A. Kilmer, L. O. Sherman, Newton J. Worley, C. M. Lines, C. E. Waite, A. V. Tiedeman, Lucy E. Britton, W. W. Balkwell and H. H. Hodell, were on and prior to the 22d day of September, 1899, the owners and holders of all the capital stock issued and outstanding of the defendant, The United Salt Company, and are owners and holders of Trust certificates issued by the defendant, The American Trust Company, representing shares of the stock, common and preferred, of the plaintiff, National Salt Company, as hereinafter set out. That for convenience, and to avoid repetition, said defendants will be hereinafter designated as "defendant stockholders." That said last-named defendants also received certain instruments, which purport to be certificates of indebtedness, issued by the National Salt Company, and countersigned by the defendant, The American Trust Company, the same having been delivered to them in the carrying out of the alleged agreement hereinafter set out. That said defendants, W. W. Barkwill, Edward A. Brion, John Hartness Brown, Edward Calm, William Chisholm, Charles I. Dangler, D. Edward Dangler, H. C. Ellison, Clarence N. Flack, H. H. Hodell, George S. Ingraham, Robert S. Ingraham, William M. Ingraham, W. T. Kirk, A. E. Overton, Sarah A. Perkins, Freeman C. Sherman, George W. Underhill, S. A. Underhill, Jr., and Margaret R. Underhill, since the 22d day of September, A. D. 1899,

have acquired from certain of said "defendant stockholders" certain of the last-named instruments in writing, which purport to be certificates of indebtedness, and are now holding the same. That the defendant F. F. Sandford is Assistant Secretary of the defendant, The American Trust Company, and is the holder of a certain certificate or certificates of the common and preferred capital stock of the National Salt Company, issued to him and in his name, pursuant to the nomination of said The American Trust Company, as is provided in the alleged agreement hereinafter set forth.

Plaintiff further says that it was organized under and by virtue of the laws of the State of New Jersey (Revision of 1896) on or about the 20th day of March, 1900, to carry on the trade or business of manufacturing, mining, producing, preparing, refining, adapting, buying and selling, and otherwise dealing in all varieties of salt and all ingredients thereof and to manufacture, produce, purchase, prepare, use, sell, or otherwise deal in any materials, machinery, apparatus, appliances, articles or things required for or in connection with or incidental to the manufacture, mining, production, use, purchase, sale, preparation, working or refining of or otherwise dealing in salt of all kinds and other articles of which salt is a component part, or which are used in connection with its manufacture, production and refinement, and generally to carry on any manufacturing business which can conveniently be carried on in connection with any of the matters aforesaid; also to purchase, acquire, hold and dispose of patent rights, letters patent, trade-marks, contracts and other rights, and also to purchase, hold, sell, assign, mortgage, pledge or otherwise dispose of shares of the capital stock of or any bonds, securities, or other evidence of indebtedness, created by any corporation or corporations of the State of New Jersey,

or of any other State, and while the owner of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; also to do and transact all acts, business and things incident to or relating to or convenient in carrying out its business as aforesaid. Said corporations may conduct business in other States or in foreign countries, and have one or more offices out of the State of New Jersey, and may hold, purchase, mortgage and convey real and personal property out of the State of New Jersey.

That said National Salt Company, of the State of New Jersey, was, at, before and during all the times hereinafter mentioned, engaged within the State of Ohio in the business of selling salt manufactured by it in the State of New York, as an act of interstate commerce, and as such was the competitor of the defendant, The United Salt Company, which, under its charter, was, at, before and during the times hereinafter mentioned, engaged in the business of producing and manufacturing minerals and chemicals, and such other articles as might be requisite, convenient or necessary in the production, manufacturing, preservation, sale, shipment and transportation of the same; and as a part of said business, under its said charter, it was, at and before such times, engaged within said State in the business of manufacturing, producing and selling salt, and was a competitor of the plaintiff, National Salt Company, in said business, within the State of Ohio, and in so operating its business, was able to, and did control more than seventy-five (75) per cent. of the salt business within the State of Ohio. Plaintiff says that it brings this action at the request of George K. Page and E. O. McNair, stockholders of the plaintiff, who have not assented to any of the transactions hereinafter set forth, and who were stockholders at all of the dates hereinafter

mentioned, and which request is in the following words and figures, to wit:

Warsaw, N. Y., Feb. 19, 1901.

To the Directors of the National Salt Company,

#26 Broadway, New York City, N. Y.

Gentlemen:

We, the undersigned, stockholders of the National Salt Company, hereby demand and request that you forthwith take steps to annul the contract heretofore entered into on or about the 22d day of September, A. D. 1899, by and between the National Salt Company, and certain stockholders of The United Salt Company, of Cleveland, Ohio, whereby the National Salt Company acquired all the outstanding capital stock of said United Salt Company.

The grounds, among others, on which we ask that said contract be annulled, are:

1. That we have never consented to or ratified the same in any way, and upon learning the terms and conditions of said transaction, have taken immediate steps to repudiate said contract, which is a fraud upon the stockholders and works an injury to them.

2. That the terms of said contract were *ultra vires* of both the National Salt Company and the United Salt Company.

3. That certain stock of the par value of $1,250,000.00 of both the preferred and common stock of the National Salt Company has been by said agreement or transaction preferred to the remaining stock of said National Salt Company, and to the injury of the undersigned stockholders as well as others.

4. That said contract was secured by the stockholders of the United Salt Company from the National Salt Company by fraud and fraudulent representations, and if said contract and agreement should be fully carried out, the same would result in squandering the property and assets of the National Salt Company and the spoliation of the stockholders of National Salt Company.

5. That said contract or agreement between National Salt Company and the stockholders of The United Salt Company is in violation of the Anti-trust laws of the State of Ohio, and is void under the laws of said State.

In view of the magnitude of the interests involved and the importance of this matter to the stockholders of the National Salt Company, we request prompt action by you upon this communication, and that you will immediately, upon taking action, inform the undersigned of the decision at which you have arrived; for should you determine not to take the action above requested, we, the undersigned, shall institute proceedings on behalf of ourselves and all stockholders of the National Salt Company for the purpose of annulling said contract agreement between National Salt Company and the former stockholders of The United Salt Company, having the same declared null and void, and obtaining restitution of such consideration as National Salt Company has parted with in partial fulfillment of said contract.

E. O. McNAIR.
GEORGE K. PAGE.

The plaintiff further says that, in compliance with said request, it brings this action for the benefit of said stockholders and of all of the stockholders of said Company, as well as for itself.

Receivers' Exhibit 1

Plaintiff says that on and prior to the 22d day of September, A. D. 1899, plaintiff, National Salt Company, and the defendant, The United Salt Company and the "defendant stockholders," desiring to combine their capital stock and acts, to create and carry out restriction in the trade in salt within the State of Ohio, and to limit or reduce within the State of Ohio the production of salt, and to increase or reduce the price of said commodity within the State of Ohio, and to prevent competition within said State of Ohio, in manufacturing, making, producing, transporting, selling or purchasing said commodity, salt, made and entered into, in the manner and form hereinafter set out, certain alleged agreements hereinafter mentioned, by which the plaintiff and said The United Salt Company and said "defendant stockholders" agreed to pool, combine and unite within the State of Ohio said interests which they and each of them had, as hereinbefore mentioned, connected with the sale and transportation of said common article, salt, that its price in the State of Ohio might be affected.

Plaintiff further says that in order to carry out the foregoing intent and purpose, on or about the 22d day of September, 1899, said "defendant stockholders" and plaintiff, through its then officers, executed an instrument in writing, a copy of which, with all the exhibits thereto is hereto attached for reference, and marked "Exhibit 1." That by said written instrument, the plaintiff, through its officers, purported to purchase from said last-named defendants, all of the capital stock of said defendant, The United Salt Company, and in exchange therefor and in consideration thereof, it was provided in said alleged agreement that plaintiff should pay for each share of said capital stock so purported to be purchased the sum of One hundred six and 25/100 dollars ($106.25) in cash, payable in ten equal instalments on the first days of January

and July, in each year, beginning with January 1, 1900. And in addition thereto it was provided in said alleged agreement that said "defendant stockholders" should receive in exchange for each share of stock of said United Salt Company 1.25 shares of the seven per cent. preferred stock, and 1.25 shares of the common stock of said National Salt Company; that to secure said payment and exchange it was further in said agreement provided among other things that, until the cash payment above set out was fully completed, the plaintiff should endorse in blank and deposit with the defendant, The American Trust Company, of Cleveland, Ohio, as Trustee, all of said stock of The United Salt Company, so purported to be acquired by it under said alleged agreement; that it was further in said alleged agreement provided that, as an evidence of said cash payment of $106.25 per share, said plaintiff should execute and deliver to each of said "defendant stockholders," or his order, its agreement to pay, at the office of The American Trust Company, in Cleveland, Ohio, an amount equal to $106.25 for each share, par value, of the stock of The United Salt Company so purported to be sold to said National Salt Company, in ten equal semi-annual instalments, beginning January 1, 1900; and that, upon failure to pay any instalments when due, all future instalments should become at once due and payable, and that what purported to be certificates of indebtedness, incorporating said agreement and promise to pay, should be issued to each of said owners, or order, from time to time, for said amounts. A copy of one of said alleged certificates of indebtedness is hereto attached for reference and marked "Exhibit 2." That it was further in said agreement provided, on behalf of said "defendant stockholders" that all dividends paid thereafter on the stock of the National Salt Company, both preferred and common, so provided

in said instrument to be given in exchange for the stock of the United Salt Company, should be applied toward the liquidation of said cash payments, and that to ensure such application, said last-named defendants would deposit said stock with the defendant, The American Trust Company, to be held, managed and controlled by said Trust Company until all of the alleged indebtedness of the National Salt Company to said holders of said alleged certificates of indebtedness was fully paid.

That in and by said alleged agreement, it was further provided that the "defendant stockholders" upon depositing with the defendant, The American Trust Company, their respective numbers of shares of preferred and common stock of the National Salt Company, of the par value of $100 per share, to be held, managed and controlled by said Trust Company as hereinbefore set out, should receive from the said The American Trust Company a certificate reciting that such shares had been deposited and were held by it, or its nominee for the purpose of carrying out the terms of the alleged agreement of deposit hereinbefore set out.

That the defendant, The American Trust Company, accepted the conditions of said alleged agreement, and is now pretending to act as trustee thereunder.

Plaintiff further says that thereupon the parties to said alleged agreement proceeded to act thereunder as follows, to wit, the "defendant stockholders" above mentioned pretended to assign and deliver the certificates of stock of The United Salt Company, to wit, 9,934 shares thereof, held by them, to the National Salt Company, and thereafter said certificates so pretended to be assigned by said "defendant stockholders" to National Salt Company were endorsed in blank by the National Salt Company, and deposited with the defendant, The American Trust Company, in pursuance of the alleged agreement hereinbefore set out;

that in exchange for the alleged transfer and delivery to said The American Trust Company of said 9,934 shares of the capital stock of The United Salt Company, said National Salt Company issued and delivered for and upon account of said "defendant stockholders" certificates for the common and preferred stock of the National Salt Company to the amount of one and one-fourth shares of the preferred and one and one-fourth of the common for each share of the capital stock of the United Salt Company. And thereupon, under and pursuant to said alleged agreement, said stock was issued to the nominee of said defendant, the American Trust Company, to wit: William T. Hunter, and was deposited with The American Trust Company, as trustee, and said The American Trust Company, under and pursuant to said alleged agreement, issued to each of said defendant stockholders a certificate certifying that each of said "defendant stockholders" was entitled to receive his *pro rata* share of said certificate of the capital stock of the National Salt Company so deposited, upon the performance by said National Salt Company of said alleged agreement, and that pending delivery thereof, and the surrender of the trust certificates, said The American Trust Company would pay over to the plaintiff, National Salt Company, any and all dividends received by it on said shares of stock of the National Salt Company so deposited with it, by applying the same to the payment of the amounts due on the alleged certificates of indebtedness issued by the National Salt Company, and countersigned by The American Trust Company above referred to; that thereupon the National Salt Company executed and issued to the "defendant stockholders" alleged certificates of indebtedness, duly countersigned and registered by The American Trust Company, under said alleged agree-

ment, in the form of "Exhibit 2" hereto attached, amounting in the aggregate to one million fifty-five thousand four hundred eighty-nine and 50/100 dollars ($1,055,489.50) and thereby agreeing to pay said sum in ten equal semi-annual instalments *pro rata* to the holders of said certificates, on the first days of January and July of each year, beginning January 1, 1900, and said pretended certificates are now outstanding.

That thereafter all of the certificates of the capital stock, both preferred and common, of the National Salt Company, so deposited, were, upon nomination of the defendant, The American Trust Company, transferred to F. F. Sanford, defendant, and said certificates now stand in the name of said F. F. Sanford, who is acting as the agent and nominee of the defendant, The American Trust Company; that thereafter certain of said alleged certificates of indebtedness, pursuant to the power given in said alleged certificates of indebtedness, were transferred by the original holders thereof, and are now held and owned by the following named defendants, to wit: W. W. Barkwill, Edward A. Brion, John Hartness Brown, Edward Calm, William Chisholm, Charles I. Dangeler, D. Edward Dangler, H. C. Ellison, Clarence N. Flack, H. H. Hodell, George S. Ingraham, Robert S. Ingraham, William M. Ingraham, W. T. Kirk, A. E. Overton, Sarah A. Perkins, Freeman C. Sherman, George W. Underhill, S. R. Underhill, Jr., and Margaret R. Underhill; that thereafter said plaintiff, National Salt Company, duly paid to the respective holders of said alleged certificates of indebtedness, in accordance with the terms thereof, on January 1, 1900; July 1, 1900, and January 1, 1901, the sum of three hundred sixteen thousand five hundred eighty-two and 50/100 dollars ($316,582.50); that the alleged certificates of indeb-

tedness, as provided in said agreement, have been issued in accordance with the terms thereof; that the stocks of the National Salt Company, as well as of the United Salt Company, agreed to be deposited with the American Trust Company, have been so deposited and accepted by it in accordance with the terms of said alleged agreement, and the same are now in the possession of said The American Trust Company.

Plaintiff further says that while the transaction between plaintiff and defendants, The United Salt Company and the "defendant stockholders" took the form of the alleged agreements hereinbefore set out, the real transaction was as heretofore set forth; and that the pretended purchase and sale of all of the stock issued and outstanding of the United Salt Company in exchange for cash and stock of the National Salt Company was for the purpose of combining the business of the United Salt Company and the National Salt Company of the State of Ohio into one combination and under one control, with a view and intent and for the purpose of restraining the trade in said commodity, in said State, and preventing the competition theretofore existing between plaintiff and the United Salt Company in the purchase and sale of salt in the State of Ohio, so that they might be enabled to control and increase or decrease the price and production of said commodity, salt, within the State of Ohio, at will.

Plaintiff further says that in order to conceal the real object and purpose of the transaction, and for the purpose of avoiding the anti-trust law of the State of Ohio, and to avoid the appearance of corporate action on the part of both The United Salt Company and National Salt Company, said plaintiff and said defendants, The United Salt Company and the "defendant stockholders," agreed among themselves that the transaction should take the form of a purchase and sale as between the individual stockholders of The United

Salt Company and this plaintiff, and that thereupon and to carry out this purpose, to wit, the purpose of defeating said anti-trust law, and for avoiding the appearance of corporate action, said plaintiff entered into the alleged agreements with the individual stockholders of said The United Salt Company hereinbefore set out, whereby and by which said individual stockholders of The United Salt Company pretend to sell to the National Salt Company their respective holdings of stock in said The United Salt Company. That in order to further conceal the real objects and purpose of the transaction between the plaintiffs and said defendants, The United Salt Company and the "defendant stockholders," it was agreed among themselves that the business of the combination to be affected by them should be conducted in the name of The United Salt Company, and thereafter said business of said combination was so conducted in the State of Ohio. That thereafter, and from the 22d day of September, 1899, said combination between said plaintiff and said defendants became and was complete and effective, and thereafter, and by reason of said combination, competition in the sale of salt in the State of Ohio between plaintiff and said United Salt Company ceased, and the trade in said commodity was thereafter restricted in said State of Ohio.

Plaintiff further says that whereas said alleged agreements in writing provided for the cash payment of $106.25 per share for each share of the capital stock of The United Salt Company, and the issuing of certificates of indebtedness to the respective stockholders, in accordance with their holdings, to evidence the same, said provisions for cash payment was in fact a mere subterfuge, and the real agreement was that said plaintiff, National Salt Company, should make a guarantee of seven per cent. upon the preferred stock and ten per cent, upon the common stock, to the stockhold-

ers of The United Salt Company, upon the stock of the National Salt Company to be exchanged for the stock of the United Salt Company; that said guarantee extends over a period of five years and until the sum of $106.25 per share has been paid. That thereby the stock which should be given by the National Salt Company to the stockholders of the United Salt Company was and is given a preference over and above the stock held by any of the other stockholders of said National Salt Company; that the stock issued by plaintiff, National Salt Company, is divided into two classes, to wit: preferred stock, upon which shall first be paid out of the earnings of the company seven per cent; common stock, upon which shall be paid such dividends after the payment of seven per cent, as may be earned and declared by the Board of Directors. That there is no guarantee of dividends upon either of said stocks, and no dividends have been earned or declared upon said stock except one at the rate per annum of seven per cent upon the preferred and of six per cent upon the common. Plaintiff says that said guarantee of said dividends by the National Salt Company upon the stock exchanged by the stockholders of The United Salt Company was without power on plaintiff's part to make, and was therefore void and no effect.

Plaintiff further says that by the terms of the said alleged agreements for deposit of stock of The United Salt Company by the National Salt Company, said defendant, The American Trust Company, in case of default in the payment of the certificates of indebtedness issued by it, or in case of the failure of the National Salt Company to carry out the terms of said alleged agreement, has power to sell any or all of said stock at public auction to the highest bidder, and make application of the proceeds derived from said sale to the liquidation of the amount or amounts due upon said alleged certificates so issued by said National Salt Com-

pany. Plaintiff says that the force and effect of said alleged agreement to deposit, coupled with the power of sale aforesaid, is the giving of a mortgage upon said stock. That the charter of the plaintiff provides that no mortgage shall be created or assumed by the company without first obtaining the consent, in writing, of the holders of 75 per cent of the preferred stock outstanding at the time, and also the like consent of the holders of 75 per cent of the outstanding common stock. Plaintiff says that no consents have been obtained or given to the mortgage of said stock, and that the same became, was and is, *ultra vires* and wholly void.

Plaintiff further says that the execution, on September 22d, 1899, of the alleged agreement and of all other alleged agreements hereinbefore referred to, and the pretended carrying out of the same, were a part of a scheme to evade the anti-trust law of the State of Ohio; and were so executed and entered into by said parties for the sole and only purpose of evading the law with reference to trusts, to wit, Sec. 4427, 1 to 12, Revised Statutes of Ohio, and that the said alleged agreements were and are of no effect, are still executory, and have not been fully executed. That each and all of said defendants had full and complete notice of the facts and circumstances above set forth as affecting the validity of said alleged agreements, and of the invalidity of the same.

Plaintiff further says that in the carrying out of said transaction it has paid upon the alleged certificates of indebtedness issued by it the sum of $316,582.50, as hereinbefore set out, and that there will be due another installment upon said alleged certificates on the first day of July, A. D. 1901, and that, unless it pays said installment, said The American Trust Company will proceed to sell the stocks so held by it, and apply the proceeds derived from the sale thereof toward the

payment of the installments becoming due on said alleged certificates and that thereby the property of this plaintiff will be lost to it and to its stockholders; that the "defendant stockholders" threaten to and are about to dispose of the alleged certificates of indebtedness received and held by them, and that unless the said The American Trust Company be restrained from selling said stocks, or from doing anything more under the said so-called agreements, and that unless said defendant stockholders, and each of them, be restrained from selling or transferring any of said alleged certificates of indebtedness, or from proceeding further under said alleged agreements, plaintiff and its stockholders will be subjected to irreparable loss, for which they have no adequate remedy at law. Said alleged agreements being wholly void, of no force and effect, and being still unexecuted, plaintiff, in behalf of said requesting stockholders and on behalf of all of its stockholders, as well as of itself, hereby offers to release and relinquish unto the defendants and each of them, or their nominees or assigns, all interests or rights pretended to be transferred to it by said alleged agreements.

Wherefore, plaintiff prays that said alleged agreements may be declared null and void; that the defendants and each of them may be required to restore to plaintiff all they have received in the attempted performance thereof; that the defendant, The American Trust Company, may be restrained from delivering the stocks of the National Salt Company in its possession, or the dividends declared upon the same, to the defendant stockholders, or any of them, or any one else, and from in any way selling or disposing of the same or the doing or attempting to do anything to carry out any of the provisions of said alleged agreements; that said The American Trust Company may

be ordered to deliver the certificates of stock of the National Salt Company in its hands to this plaintiff; that the defendants, holders of any alleged certificates of indebtedness, and each of them, may be restrained from disposing or attempting to dispose of the same, and may be ordered to deliver the same to the plaintiff; that the plaintiff may have a temporary order restraining the defendants and each of them, in accordance with the above prayer, and that, after the final hearing hereof, a perpetual injunction may be granted this plaintiff, and for all proper relief in the premises.

FORD, SNYDER, HENRY & MCGRAW,
Plaintiff's Attorneys.

State of New York, } ss.:
County of New York, }

Archibald S. White, being duly sworn, says: That he is president of the plaintiff, National Salt Company, a corporation, and that the facts and allegations contained in the foregoing petition of plaintiff are true as he verily believes.

A. S. WHITE.

Subscribed in my presence and sworn to
before me this 2nd day of April, 1901.
C. L. Paar,
(Seal.) Notary Public.

Exhibit "1."

Cleveland, Ohio, July 20th, 1899.

The undersigned, owning the number of shares of the capital stock of the United Salt Company (of Cleveland, Ohio) set opposite their respective names, in consideration of the sum of One dollar paid to each

by the National Salt Company (of Jersey City, New Jersey) hereby severally agree to sell, assign and transfer to said Company at the price and upon the terms and conditions hereinafter stated, the number of shares of stock so owned by them in the United Salt Company of the par value of One hundred dollars per share, provided that prior to September 20th, 1899, said National Company shall have elected to purchase the same under the terms of this option.

For each share of stock in the United Salt Company, purchased from the undersigned there shall be given 1.25 shares of the seven per cent preferred stock and 1.25 shares of the common stock of said National Salt Company, and in addition thereto said company shall pay for each share of the stock of the United Salt Company the sum of $106.25 in cash, payable in ten equal semi-annual instalments on the 1st days of January and July of each year, beginning with January 1st, 1900.

As a further consideration, said National Salt Company shall agree that until said cash payments shall have been fully made the United Salt Company will not mortgage, encumber or otherwise in any manner dispose of any interest in any contract for the purchase of exhaust steam entered into by the United Salt Company prior to October 1st, 1899, nor any improvements erected by said company for utilizing said steam for the manufacture of salt, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating the property of the United Salt Company shall be made a charge upon or lien against the property or assets of the United Salt Company. And until such obligations shall have been paid or discharged, said National Salt Company shall further agree that the United Salt Co. shall not otherwise than by the issue of licenses sell or dispose of any interest in, any patented process

for the manufacture of salt owned by the United Salt Co. or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said company under said Letters Patent there shall be paid to the United Salt Company a royalty of at least 25 cents per ton, settlement for which shall be made quarterly.

To evidence the agreement of the National Salt Company to make such payments, it shall execute and deliver to each owner its agreement substantially in the form shown in Exhibit "A" attached hereto and made part thereof. New agreements of like tenor shall be issued in lieu of said original or any reissued agreements upon their surrender and cancellation, for such amounts as the holder may desire not exceeding in the aggregate the amount then unpaid upon the agreements so surrendered and cancelled, and before such original or reissued agreements shall become binding upon said National Salt Company they shall be registered and countersigned by the American Trust Company of Cleveland, Ohio, and the said Trust Company shall be required to keep a record of all agreements so registered and conutersigned.

To jointly and ratably secure the payment of said obligations and the performance upon its part of the above conditions and agreements, said National Salt Company shall endorse in blank and deposit with the American Trust Company, of Cleveland, Ohio, as Trustee, under a declaration of trust substantially as shown in Exhibit "B" attached hereto and made part hereof, all stock of The United Salt Company acquired by it under this option.

All dividends paid on the stock of the National Salt Company so to be given the undersigned in exchange for their stock in the United Salt Company, shall be applied toward the payment of the amounts so agreed to be paid, and to insure such application the under-

signed will deposit said stock with the American Trust Company under a declaration of trust substantially as shown in Exhibit "C" attached hereto and made a part hereof.

It is an express condition of this option that, if accepted, all stockholders of the United Salt Company not parties hereto are to have the privilege of disposing of their holdings in said Company to the National Salt Company upon the same terms herein named, at any time before November 1, 1899.

All compensation, charges and expenses of the Trustee shall be borne and paid by the National Salt Company. Also all revenue tax required to be paid for the execution of all transfers and instruments herein referred to.

Name	Shares owned.
D. A. Dangler	410
O. C. Barber	277
Herman Frasch	2,012
F. B. Squire	1,027
W. A. Dutton	15
Virgil P. Kline	30
John D. Rockefeller	1,809
Frank Rockefeller	693
J. M. Henderson	90
Elmer Turner	115

O. B. HOOVER,
W. H. FOSTER,
by F. H. Goff,
Their Attorney in Fact.

New York City, Sept. 16th, 1899.

We hereby accept the above option.

NATIONAL SALT COMPANY,
By A. S. White,
President.

Attest:

JNO. ALVIN YOUNG,
[SEAL.] Secretary.

Receivers' Exhibit 1

"A."

Jersey City, N. J., October, 1899.

National Salt Company (of New Jersey) hereby agrees to pay at the office of the American Trust Company, Cleveland, Ohio, to or order, $1,055,489.50 in ten annual instalments, beginning January 1st, 1900. The failure to pay any instalment when due shall make all future instalments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all furture instalments hereby secured to the American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder thereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by the United Salt Company prior to October 1st, 1899, and that no improvements erected or to be erected by the United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of the United Salt Company shall be made a charge or lien against the property or assets of the United Salt Company. And until such payments or discharge shall be made, said National Salt Company has further agreed that the United Salt Company shall not otherwise than by license sell or dispose of any interest in any patented process for the manufacture of salt, now owned by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15, 1899,

and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with the American Trust Company, of Cleveland, Ohio, as Trustee, all stock of the United Salt Company acquired by it under an option given by certain stockholders of said company, bearing date July 20, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time, upon demand, issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said company.

NATIONAL SALT COMPANY,

By

President.

Attest:

Secretary.

Countersigned and registered,

The American Trust Company,

By

Receivers' Exhibit 1

"B"

This declaration of trust executed by the National Salt Company, a New Jersey corporation, this 2nd day of October, 1899, Witnesseth, that said Company has this day endorsed in blank and deposited with the American Trust Company of Cleveland, Ohio, all stock of the United Salt Company, an Ohio corporation, which was acquired by said National Salt Company under an agreement with certain stockholders of said The United Salt Company, dated July 20th, 1899, for the following purposes, to wit:

FIRST. To jointly and ratably secure the payment of the amounts of money agreed to be paid said stockholders for said stock, evidenced by the notes or certificates of indebtedness of the National Salt Company, countersigned and registered by the American Trust Company, amounting in the aggregate to not exceeding the sum of $1,062,500, payable as provided in said notes or certificates of indebtedness.

SECOND. To secure the performance of its agreement to permit no contract for the purchase of exhaust steam entered into by said United Salt Company prior to October 1, 1899, and no improvements erected or hereafter to be erected for utilizing said steam to be in any manner mortgaged, encumbered, or disposed of until all of said notes or certificates of indebtedness shall have been fully paid or discharged, and that until such time no moneys borrowed or advanced by said National Salt Company for extending, improving or operating the property of the United Salt Company shall be made a charge or lien against the property or assets of the United Salt Company.

THIRD. To secure the performance of the agreement of said National Salt Company that until said

notes or certificates of indebtedness shall have been fully paid or discharged the United Salt Company will not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt now owned by said The United Salt Company or for which it shall have applied for Letters Patent prior to November 15, 1899, and that upon all licenses issued by said Salt Company under such patent there shall be paid to it a royalty of at least 25 cents per ton, settlements for which shall be made quarterly.

FOURTH. If said National Salt Company shall well and truly make such payments in the manner and at the time specified in said notes or certificates of indebtedness, and shall in all things comply with the agreements above recited, then and thereupon said stock shall be returned to said National Salt Company by said Trustee. But if said National Salt Company shall at any time be in default in the payment of any portion of any instalment to become due upon any of said notes or certificates of indebtedness for a period of sixty days after demand for payment thereof shall have been made (in which event all future instalments shall immediately become due and payable) or shall in any manner violate any of the agreements above recited, then said Trust Company, upon written notice and demand of any holder of said notes or certificates of indebtedness, and upon being indemnified to its satisfaction in the premises as to costs, liabilities and expenses, and not otherwise, shall sell the stock so deposited with it, or so much thereof as may be necessary to pay the amounts then remaining due upon said notes or certificates of indebtedness and to satisfy and release all liens or claims (if any) upon said contracts, improvements or patented processes, at public auction to the highest bidder after having given thirty days printed notice of its intention so to do, published once

a week for four consecutive weeks in the *Cleveland Plain Dealer* and the *New York Tribune*. After deducting its reasonable charges and expenses in the premises it shall apply the proceeds realized from such sale to the payment of the balance remaining due upon said notes or certificates of indebtedness, and to the discharge of all such liens or encumbrances, turning the balance, if any there be, over to the National Salt Company. For the purpose of reference, copies of said option and the form of said notes or certificates of indebtedness are hereto attached. All charges and expenses of the Trustee are to be paid by the National Salt Company.

NATIONAL SALT COMPANY,
by A. S. White,
President.

Attest:

Secretary.

Cleveland, O., October , 1899.

The American Trust Company, Cleveland, O., designated as Trustee in the foregoing instrument, accepts of said trust and acknowledged to receipt of $9,932 shares of the capital stock of the United Salt Company, deposited with it by the National Salt Company upon the foregoing trusts, and also covered by our letter of October 4th, 1899, to Davies, Stone & Auerbach, and of October 30, 1899, and November 5th, 1899, to National Salt Company.

THE AMERICAN TRUST COMPANY,
by Wm. G. Mather,
President.

Attest:
E. V. Hall,
Secretary.

Receivers' Exhibit 1

"C"

This is to witness that the undersigned have this day deposited with the American Trust Company, of Cleveland, Ohio, as Trustee, certification for the respective number of shares of Preferred and Common Stock of the National Salt Company (of New Jersey), of the par value of $100 per share, set opposite their respective names, to be held, managed and controlled by said Trust Company on the following trusts until all indebtedness of the National Salt Company upon its notes or certificates of indebtedness this day issued to the undersigned and countersigned and registered by said Trust Company in pursuance of the provisions of Exhibit "A" hereto attached and made part hereof, and any and all such notes or certificates of indebtedness hereafter issued pursuant to said Exhibit "A" are fully paid or discharged, but in no event later than January 1st, 1905, to wit:

1. Until such time to demand, collect, receive and receipt for all dividends paid upon said stock, and to that end it is authorized, if it so desires, to have said stock issued to itself or to its nominee. Said Trust Company shall pay interest at the rate of three per cent (3 per cent) per annum on money so deposited from date of receipt until disbursed.

To retain all moneys so paid until the installment next to become due upon the obligations referred to in Exhibit "A" shall have become due and payable, and then to apply the same to the payment of such instalment.

3. For each share of stock so deposited said Trustee shall issue to the undersigned its trust certificate, substantially in the form following, to wit:

Shares Preferred Stock.
Shares Common Stock.

Receivers' Exhibit 1

"D"

NATIONAL SALT COMPANY.

(Incorporated under the Laws of the State of New Jersey.)

THE AMERICAN TRUST COMPANY, of Cleveland, Ohio, Certifies that there have been deposited with it certificates for shares of $100 each of the Preferred Stock and shares of $100 each of the Common Stock of National Salt Company, a New Jersey corporation, and that or his assigns will be entitled to receive the said certificates upon performance by said National Salt Company of an agreement entered into by it with certain stockholders of the United Salt Company, bearing date July 20th, 1899, a copy of which is on file with the undersigned, but in no event later than January 1st, 1905, upon surrender of this certificate properly endorsed for cancellation.

Pending the delivery of such shares of stock and surrender and cancellation of this certificate, the American Trust Company will pay over to the said National Salt Company, or otherwise, as provided in said agreement, any and all dividends received by it upon said shares of stock, and will also vote or cause said shares of stock to be voted at any meeting of said National Salt Company in accordance with the written request of the said George S. Ingraham.

This certificate is transferable only upon the books of said Trust Company in person or by attorney and upon surrender of this certificate.

Dated Cleveland, Ohio, February 15, 1901.

THE AMERICAN TRUST COMPANY,
By F. F. Sanford,
Asst. Secy.

Receivers' Exhibit 1

Endorsement for back of Certificate:

For value Received hereby sell, assign and transfer to , all right, title and interest in and to the within certificate, subject to the conditions contained herein.

Dated

Witness:

4. All charges and expenses of this Trust are to be paid by the National Salt Company.

In witness whereof we have hereunto set our hands and opposite thereto the number of shares deposited by us respectively as aforesaid.

Name.	Number of Shares. Preferred.	Common.

Exhibit 2.

New Jersey, N. J., October, 1899.

NATIONAL SALT COMPANY (of New Jersey) hereby agrees to pay at the office of The American Trust Company, Cleveland, Ohio, to or order dollars in seven equal semi-annual installments, beginning January 1st, 1900. The failure to pay any installment when due shall make all future installments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby se-

cured to The American Trust Company of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by The United Salt Company prior to October 1st, 1899, and that no inmprovements erected or to be erected by The United Salt Company for utilizing said steam in the manufacture of salt, shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of the United Salt Company shall be made a charge upon or lien against the property or assets of The United Salt Company. And until such payment or discharge shall be made, said National Salt Company has further agreed that The United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt, now owned by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15, 1899, and that upon all licenses issued by said Salt Company, there shall be paid to it a royalty of at least 25 cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as trustee, all stock of the United Salt Company acquired by it under an option given by certain stockholders of said company, bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said

National Salt Company, dated October 2d, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, however, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,

By

[SEAL.] President.

Attest:

Secretary.

Countersigned and Registered.

The American Trust Company.

Receivers' Exhibit 1, Ohio Statute.

SENATE BILL No. 336.

AN ACT

TO DEFINE TRUSTS and to provide for criminal penalties and civil damages, and punishments of corporations, persons, firms and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in the state.

SECTION 1. Be it enacted by the General Assembly of the State of Ohio, that a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons,

or of any two or more of them for either, any or all of the following purposes:

1. To create or carry out restrictions in trade or commerce.

2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

4. To fix at any standard figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this state.

5. To make or enter into or execute or carry out any contracts, obligations, or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interest that they may have connected with the sale or transportation of any such article or commodity, that its price might in any man-

ner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

SECTION 2. For a violation of any of the provisions of this act by any corporation or association mentioned herein, it shall be the duty of the attorney-general, or the prosecuting attorney of the proper county, to institute proper suits or *quo warranto* proceedings in the court of competent jurisdiction in any of the county seats in the state where such corporation or association exists or does business or may have a domicile. And when such suit is instituted by the attorney-general in *quo warranto,* he may also begin any such suit in the supreme court of the state, or the circuit court of Franklin county, for the forfeiture of its charter rights, franchises or privileges and powers exercised by such corporation or association, and for the dissolution of the same under the general statutes of the state.

SECTION 3. Every foreign corporation, as well as any foreign association, exercising any of the powers, franchises or functions of a corporation in this state, violating any of the provisions of this act, is hereby denied the right and prohibited from doing any business in this state, and it shall be the duty of the attorney-general to enforce this provision by bringing proper proceedings in *quo warranto* in the supreme court, or the circuit court of the county in which defendant resides or does business, or other proper proceedings by injunction or otherwise. The secretary of state shall be authorized to revoke the certificate of any such corporation or association hereto authorized by him to do business in this state.

SECTION 4. Any violation of either or all of the provisions of this act shall be and is hereby declared a conspiracy against trade, and any person who may

become engaged in any such conspiracy or take part therein, or aid or advise in its commission, or who shall as principal manager, director, agent, servant or employer, or in any other capacity, knowingly carry out any of the stipulations, purposes, prices, rates, or furnish any information to assist in carrying out such purposes, or orders thereunder or in pursuance thereof, shall be punished by a fine of not less than fifty ($50) dollars nor more than five thousand ($5,000) dollars, or be imprisoned not less than six months nor more than one year, or by both such fine and imprisonment. Each day's violation of this provision shall constitute a separate offense.

SECTION 5. In any indictment for any offense named in this act, it is sufficient to state the purpose or effects of the trust or combination. And that the accused is a member of, acted with or in pursuance of it, or aided or assisted in carrying out its purposes, without giving its name or description, or how, when and where it was created.

SECTION 6. In prosecutions under this act, it shall be sufficient to prove that a trust or combination, as defined herein, exists, and that the defendant belonged to it, or acted for or in connection with it, without proving all the members belonging to it, or proving or producing any article of agreement, or any written instrument on which it may have been based; or that it was evidenced by any written instrument at all. The character of the trust or combination alleged may be established by proof of its general reputation as such.

SECTION 7. Each and every firm, person, partnership, corporation or association or persons, who shall in any manner violate any of the provisions of this act, shall for each and every day that such violations shall be committed or continued, after due notice giv-

en by the attorney-general or any prosecuting attorney, forfeit and pay the sum of fifty ($50) dollars, which may be recovered in the name of the state, in any county where the offense is committed, or where either of the offenders reside; and it shall be the duty of the attorney-general, or the prosecuting attorney of any county on the order of the attorney-general, to prosecute for the recovery of same. When the action is prosecuted by the attorney-general against a corporation or association of persons, he may begin the action in the circuit court of the county in which defendant resides or does business.

SECTION 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity.

SECTION 9. That the provisions hereof shall be held cumulative of each other and of all other laws in any way affecting them now in force in this state.

SECTION 10. It shall not be lawful for any person, partnership, association or corporation, or any agent thereof, to issue or to own trust certificates, or for any person, partnership, association or corporation, agent, officer or employe, or the directors or stockholders of any corporation, to enter into any combination, contract or agreement with any person or persons, corporation or corporations, or with any stockholder or director thereof, the purpose and effect of which combination, contract or agreement shall be to place the management or control of such combination or combinations, or the manufactured product thereof, in the hands of any trustee or trustees with the intent to limit or fix the price or lessen the production and sale of any article of commerce, use or consumption, or to prevent, restrict or diminish the manufacture or output of any such article, and any person, partnership, association or corporation that

shall enter into any such combination, contract or agreement for the purpose aforesaid shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not less than fifty dollars, nor more than one thousand dollars.

SECTION 11. In addition to the criminal and civil penalties herein provided, any person who shall be injured in his business or property by any other person or corporation or association or partnership, by reason of anything forbidden or declared to be unlawful by this act, may sue therefore in any court having jurisdiction thereof in the county where the defendant resides or is found, or any agent resides or is found, or where service may be obtained, without respect to the amount in controversy, and to recover two-fold the damages by him sustained, and the costs of suit. Whenever it shall appear to the court before which any proceedings under this act may be pending, that the ends of justice require that other parties shall be brought before the court, the court may cause them to be made parties defendant and summoned, whether they reside in the county where such action is pending, or not.

SECTION 12. The word "person" or "persons" whenever used in this act, shall be deemed to include corporations, partnerships, and associations existing under or authorized by the state of Ohio, or any other state, or any foreign country.

SECTION 13. This act shall take effect and be in force from and after the first day of July, 1898.

HARRY C. MASON,
Speaker of the House of
Representatives.
ASAHEL W. JONES,
President of the Senate.

Passed April 19, 1898

Receivers' Exhibit 1, Answer and Cross Petition of American Trust Co. in Ohio Suit.

The State of Ohio, }
Cuyahoga County, } ss.:

IN THE COURT OF COMMON PLEAS.

NATIONAL SALT COMPANY, Plaintiff, vs. THE UNITED SALT COMPANY, *et al.*, Defendants.	#74,054

Answer and Cross-Petition of the American Trust Company.

Now comes the defendant, The American Trust Company, and for its separate answer to the petition herein admits that the plaintiff is a corporation under the laws of the State of New Jersey, with its principal office and place of business in Jersey City, in said State; that the defendants The United Salt Company and The American Trust Company are Ohio corporations as averred, and that the defendant Joy Morton & Company, is a copartnership of the City of Chicago.

It admits that the other defendants were on and prior to the twenty-second day of September, A. D. 1899, the owners and holders of all of the capital stock issued and outstanding of the defendant The United Salt Company, and avers that certificates were issued to them by this answering defendant representing the shares of stock, common and preferred, of the National Salt Company, but it avers that the said certificates have been freely transferred from hand to hand since the same were issued, and it is unable

now to state who the owners and holders thereof are.

It admits that certain of said defendants received the certificates of indebtedness issued by the National Salt Company and countersigned by this answering defendant, and that the same were delivered to them in the carrying out of the agreements set out in said petition.

This answering defendant avers that it is unable to state who the present owners and holders of said last-named certificates are, but it denies that all of the same are held by the defendants named in the petition.

It admits that the defendant Frederick F. Sanford is the Assistant Secretary of this answering defendant, and is the holder of certain certificates of the common and preferred stock of the National Salt Company, as averred.

It admits that the plaintiff, as such New Jersey corporation, had power, among other things, to the extent averred in the petition.

This defendant, further answering, says it is not informed, except as averred in said petition, of the nature and extent of the plaintiff's business, or as to whether or not it was a competitor of said The United Salt Company in Ohio, and is therefore unable to admit or deny the averments of plaintiff's petition in that behalf, and for the same reason this defendant is unable to admit or deny the averments in said petition that said action was brought at the request of George K. Page and E. O. McNair, as averred, and it asks that if either of said facts be material, plaintiff be required to make proof thereof.

This defendant further admits the making by said parties of the agreements referred to in said petition as Exhibit I, and that said agreements and certificates of shares were deposited with this defendant as trustee, and that the plaintiff, National Salt Company,

issued its certificates of indebtedness, and that trust certificates were issued by this defendant as stated in said petition, and that payments were made on said certificates of indebtedness as alleged.

The defendant is unable to ascertain any facts as to the object and purpose for which said agreements were made other than appears on the face thereof, and it denies each and every of the averments of the petition in that behalf, and further answering denies each and every allegation of said petition not herein specifically admitted or denied.

Cross-Petition.

The defendant, The American Trust Company, for its cross-petition herein says that in the year 1899 The United Salt Company, a corporation organized under the laws of the State of Ohio, having issued and outstanding a capital stock of one million dollars ($1,000,000) divided into ten thousand (10,000) shares of One Hundred Dollars ($100.00) each, owned, maintained and operated large and successful salt works in the City of Cleveland and elsewhere; that on the eighteenth day of March, A. D. 1899, a corporation was organized in the State of New Jersey under the "Act Concerning Corporations" (Revision of 1896) by the name of "National Salt Company" for the purpose, among other things, of manufacturing and selling salt and the purchase of various salt works in the United States and elsewhere, for that purpose, the charter of said corporation providing that it should have power to purchase, own and hold stock in other salt companies and the same to sell, mortgage or pledge.

Defendant further avers that plaintiff, National Salt Company, desiring to purchase the capital stock of the said The United Salt Company, made, at dif-

ferent times during the summer and fall of the year 1899, propositions to stockholders of said The United Salt Company for the purchase of their stock, said proposition being substantially as set out in Exhibit "I," attached to plaintiff's petition.

That defendant stockholders in said The United Salt Company at different times accepted said proposition, and the same was signed by the several owners of stock in said The United Salt Company, each acting for himself, and by this means and through successive purchases the said National Salt Company finally acquired all of the stock.

That by the terms of said proposition, so as aforesaid accepted, and by the terms of which said capital stock in said The United Salt Company was acquired, it was provided among other things that for each share of stock in The United Salt Company purchased by plaintiff there should be given one and twenty-five hundredths (1.25) shares of the seven per cent (7%) preferred stock and one and twenty-five hundredths (1.25) shares of the common stock of the said National Salt Company, and in addition thereto that plaintiff should pay for each share of the stock of The United Salt Company the sum of One hundred and six dollars and twenty-five cents ($106.25) in cash, payable in ten (10) equal semi-annual instalments, on the first days of January and July of each year, beginning with January 1, 1900, and that to evidence the agreement of plaintiff to make payments of such cash indebtedness it, the said National Salt Company, should execute and deliver to each of the persons from whom the said The United Salt Company stock was purchased its agreement in form as contained in Exhibit "2," attached to plaintiff's petition, which certificates of indebtedness this defendant avers was issued by the said National Salt Company at different times directly to the said vendors;

that said certificates provided that to secure the payment thereof National Salt Company should endorse in blank and deposit with this defendant, The American Trust Company, as Trustee, all stock of The United Salt Company acquired by it under said agreement bearing date of July 20, 1899; that pursuant to such agreement, and to secure the payment of such certificates of indebtedness, the plaintiff deposited with this defendant the stock of said The United Salt Company under a declaration of trust which was accepted by this defendant, and which was substantially in the words and figures set out in Exhibit "B" of the agreement attached to the petition and marked Exhibit "I."

That said declaration of trust provided that said certificates of stock in said The United Salt Company should be endorsed in blank and deposited with the defendant, The American Trust Company, to jointly and ratably secure the payment of the amounts of money agreed to be paid such stockholders for said stock evidenced by the notes or certificates of indebtedness of the National Salt Company, countersigned and registered by The American Trust Company, amounting in the aggregate to not exceeding One million sixty-two thousand five hundred dollars ($1,062,500.00) payable as provided in said notes or certificates of indebtedness, and that if said National Salt Company shall well and truly make such payments in the manner and at the time specified in said notes or certificates of indebtedness, and shall in all things comply with the agreements above recited, then and thereupon said stock shall be returned to said National Salt Company by said Trustee.

But if said Salt Company shall at any time be in default of the payment of any portion of any instalments to become due upon any of said notes or certificates of indebtedness for a period of sixty (60) days after demand for the payment thereof shall have

been made, then all future instalments should immediately become due and payable, and upon written notice and demand of any holder of said notes or certificates of indebtedness, and upon being indemnified to its satisfaction in the premises as to costs, liabilities and expenses, and not otherwise, shall sell the stock so deposited with it, or so much thereof as may be necessary to pay the amounts then remaining due upon said notice or certificates of indebtedness, at public auction to the highest bidder after having given thirty (30) days' printed notice of its intention so to do, published once a week for four consecutive weeks in the Cleveland *Plain Dealer* and the New York *Tribune*. And that after deducting its reasonable charges and expenses in the premises it should apply the proceeds realized from such sale to the payment of the balance then remaining due upon said notes or certificates of indebtedness and to the discharge of all liens and encumbrances upon the property of said The United Salt Company.

That by the terms of said contract of purchase, it was provided that all dividends paid on the stock of the National Salt Company, so to be given in exchange for said stock in The United Salt Company, should be applied toward the payment of said cash indebtedness, and to insure such application said vendors should deposit said stock with the American Trust Company under a declaration of trust substantially as shown in Exhibit "C" attached to said agreement marked "I;" that pursuant to such agreement said common and preferred stock in the National Salt Company so purchased or taken in exchange by the persons selling stock in The United Salt Company, as above stated, was in accordance with said agreements with the several parties, deposited with this answering defendant, which declaration of trust provided that this answering defendant should demand, col-

lect, receive and receipt for all dividends paid upon said stock, and to that end it was authorized, if it so desired, to have such stock issued to itself or its nominee; that pursuant to such provision this defendant named as the person to whom such stock should be issued Frederick F. Sanford, its assistant secretary, and that thereafter said stock was issued in the name of said Sanford, and the certificates so issued in his name delivered to him, and that the same appeared upon the books of the said National Salt Company in the name of said Sanford. But this defendant avers that said certificates were issued to him at the request and as the agent of this defendant, and have been endorsed by him in blank and delivered to this defendant and are now in its possession.

This defendant avers that by agreement with the National Salt Company and some holders of stock, small portions of the securities above-named were released from the trust above recited, and this defendant now holds under said agreement fourteen thousand one hundred and eighty-seven and one-half (14,187½) shares of the preferred stock and a like amount of the common stock of said National Salt Company.

Said Exhibit C further provided that this defendant as trustee as aforesaid should retain all moneys so paid as dividends on said stock, common and preferred, of the National Salt Company, until the instalment of said cash indebtedness next to become due should become due and payable, and then to apply the same to the payment of such instalment; that on the first day of January, A. D. 1900, the National Salt Company had declared and paid on its capital stock held by this defendant in the name of Frederic W. Sanford, as aforesaid, dividends amounting to one hundred and five thousand five hundred and forty-eight dollars and sixty-one cents ($105,548.61), which sum was by this defendant distributed to the

then holders of said certificates of indebtedness to be applied as part payment thereof, and on July 1, A. D. 1900, there was declared, paid and distributed in like manner, and in accordance with the terms of said declaration of trust, the further sum of one hundred and five thousand five hundred and ninety-three dollars and eighty-nine cents ($105,593.89), and on January 1, A. D. 1901, there was declared and paid to this defendant dividends upon said stock amounting to the further sum of one hundred and three thousand five hundred and ninety-three dollars and sixty cents ($103,593.60), all of which were declared and paid as dividends upon the said capital stock, common and preferred, of the National Salt Company, and which was deposited with and held by this defendant under the agreement and upon the trust declared in said Exhibit C; that of said last dividends paid this defendant has in its hands the sum of $39,222.08/100 to be distributed to the holders of said certificates of indebtedness, subject to the payment of the reasonable charges of this defendant for services, and its costs and expenses heretofore and hereafter incurred in the matter of said trust.

That on or about the 29th day of June, 1901, said National Salt Company notified this answering defendant that it would not pay the instalment on said certificates of indebtedness falling due on July 1, 1901, and at the same time notified this defendant of its determination not to make any further payments on account of the indebtedness evidenced by said certificates; that no payments have been made either to this defendant or upon said certificates of indebtedness since said first day of January, A. D. 1901, and there is now due on said certificates the sum of seven hundred and twenty-five thousand one hundred and fifty-six dollars and forty cents ($725,156.40), with interest.

Receivers' Exhibit 1

That since the first day of January, 1901, said National Salt Company has declared and paid dividends on its capital stock, both common and preferred, except that held by this defendant as aforesaid, but it avers that said National Salt Company has ever since said last-mentioned date refused and still neglects and refuses, to pay to this defendant any dividend upon said capital stock of National Salt Company so held by this defendant.

This defendant has been unable to ascertain, and is unable to state, the exact amount of dividends declared and paid by plaintiff, National Salt Company, since January 1, 1901, or the share or proportion of such dividends to which it is entitled upon said capital stock so held by it in trust as aforesaid.

This defendant further says that said certificates of indebtedness and trust certificates have passed from hand to hand on the market; that this defendant is not now informed, and does not know the names of all the holders thereof; that they are numerous, and that many of said holders are beyond the jurisdiction of this Court.

After purchasing said stock in the United Salt Company and creating said trusts said National Salt Company, by and through its agents and employees, took possession of all of the property and assets of said The United Salt Company, and assumed to control and operate the same, and continued such possession and control until on or about the time of the bringing of this action, when it undertook to abandon the same and repudiate all of said agreements; that ever since said time said National Salt Company has neglected and refused to do and perform any of the things by it to be done and performed by the terms of its said contracts and agreements.

Wherefore, this defendant prays that an account may be had of the money owing by said plaintiff, Na-

tional Salt Company, upon said certificates of indebtedness issued by it, both for principal and interest, as dividends upon its stock, and otherwise, and that the plaintiff National Salt Company, be ordered to pay the amount so found due forthwith into court, and that in default of payment thereof the securities therefor held by this defendant may be directed to be sold under the order of this Honorable Court in such manner and at such time as this Court may direct; that all moneys collected be distributed to the various parties entitled thereto as the same may be found and determined, and that it be found and determined to whom said certificates in National Salt Company belong and ought to be paid; that said National Salt Company be ordered to pay to this defendant all of its reasonable costs and charges in the premises, and that this defendant may have such other and further relief as equity and good conscience may require.

THE AMERICAN TRUST COMPANY,
By M. B. and H. H. Johnson,
Its Attorneys.

The State of Ohio, }
Cuyahoga County, } ss.:

Edwin V. Hale, being first duly sworn, says that he is the Secretary and Treasurer of the American Trust Company, the defendant above named; that said defendant is a corporation under the laws of the State of Ohio, and that he believes the averments of the foregoing answer and cross petition to be true.

EDWIN V. HALE.

Sworn to before me and subscribed
in my presence this 22d day of
March, A. D., 1902.
George H. Kelly,
Notary Public.

Receivers' Exhibit 1-A.

State of Ohio,
Cuyahoga County, } ss.:

IN THE COURT OF COMMON PLEAS.

NATIONAL SALT COMPANY, Plaintiff, vs. THE UNITED SALT COMPANY, *et al.*, Defendants.	Answer of Herman Frash

Now comes Herman Frash, one of the defendants in this action, and by way of answer to the petition of the plaintiff herein filed represents and alleges as follows:

1. That he admits the following allegations of such petition, to wit:

Those relating to the organization and corporate existence of the plaintiff, of The United Salt Company, and of said The American Trust Company, as well as the co-partnership of the defendant Joy Morton & Co.

Also the allegations reciting the issuing of certain certificates of indebtedness through The American Trust Company to various stockholders, and that certain of the same have since the 26th day of December, 1899, been acquired from the original holders by certain of the defendant stockholders.

Also that the said defendant Sanford is secretary of said Trust Company, and holder of certain of the certificates of the National Salt Company pursuant to the nomination of said Trust Company.

Also that said National Salt Company was, prior to the 22nd day of September, 1899, as was also said The United Salt Company, engaged in the manufacture and sale of salt.

Also that on or about the 22nd day of September, 1899, certain of said defendant stockholders, and plaintiff through its then officers, executed an instrument in writing, as shown by exhibits attached to the petition.

Also that the plaintiff thereby, through its officers, purported to purchase, and did purchase, from a large number of stockholders, including this defendant, their shares of stock in The United Salt Company, upon the terms and conditions as to payment and security as set forth in said petition.

Also that said National Salt Company has, since the time of making the purchase of such shares, paid to this defendant and, as he believes, to other holders of like certificates, such amounts, as have matured and become payable under the terms thereof.

Also that it was one of the provisions of such agreement that all dividends paid thereafter on the stock of the National Salt Company so held by such Trust Company for the benefit of this defendant and other certificate holders, should be applied toward the liquidation of the amounts payable upon such certificates of indebtedness, for the purpose of securing the application of which payments the stock of this defendant and others from whom such purchases were made were deposited with and held by said Trust Company.

Also that the defendant The American Trust Company accepted the trust created by the terms of such agreement, and is now acting as trustee under the same.

Also that the National Salt Company issued and delivered of its stock to this defendant and other stock-

holders from whom it made purchases, certificates of its common and preferred stock to the amount of one and one-fourth shares of each for each of the shares of stock of The United Salt Company by it so purchased.

Also that such stock was issued to said Hunter as the nominee of said Trust Company, and was by him deposited with such company in pursuance of such agreement; it, the said Trust Company, issuing to this defendant and others making like sales certificates as in said petition alleged.

Also that said certificates of stock in the plaintiff company were transferred to said F. F. Sanford.

Also that by the terms of such agreement for the deposit of such stock of the United Salt Company with said American Trust Company, it was provided that in case of default in the payment of the amounts from time to time maturing upon such certificates of indebtedness or in case of the failure of the plaintiff company to carry out the terms of such agreement, the stock purchased from the several stockholders of such National Company should be sold at public auction, to the highest bidder, the proceeds to be applied to the liquidation of the amounts due upon such certificates of indebtedness, it being a part of the terms of such certificates of indebtedness that in case of default on the part of the plaintiff company in the making of such payments as the same matured, the principal sum thereof should also become due and payable.

2. The following allegations of said petition are not true, and this defendant denies the same and each of them, to wit:

That the plaintiff company being, on or before the said 22nd day of September, 1899, a competitor of said The United Salt Company in said business in the

State of Ohio, the so-called defendant stockholders desired to combine their capital stock, or create and carry out the restriction in the trade of salt within the State of Ohio, or to limit or reduce within such state the production of salt or to increase or reduce the price of the said commodity within the said state, or to prevent competition within such state in manufacturing, making, producing, transporting, selling or purchasing said commodity, and for such reasons, or any of them, did enter into the agreements set out in such petition, or that this defendant, or said defendant stockholders, by virtue of such agreements, or otherwise, agreed to pool, combine and unite within the State of Ohio with the interest of the said plaintiff company connected with the sale and transportation of salt and for the purpose of effecting the price thereof, or that such agreements so made or any of them were entered into by this defendant or others of said defendant stockholders with the view of carrying out such purposes or any of them.

This defendant further denies that the transaction between the plaintiff and the several defendants whose stock in The United Salt Company it purchased, was for the purpose of combining the business of said companies within the State of Ohio under one combination, or for the purpose of restraining the trade in said commodity in said state, or preventing any competition theretofore existing between said companies in the production or sale of said commodity, or for any purpose of controlling the price thereof or the extent of production.

This defendant further says that it is not true that to conceal the real object and purpose of the transaction, or for the purpose of avoiding the anti-trust law of the State of Ohio, or to avoid the appearance of corporate action on the part of said The United Salt Company and the said National Salt Company, the

plaintiff and the said defendants agreed among themselves that the transaction should take the form of a purchase and sale as between the individual stockholders of The United Salt Company and the plaintiff, or that for the purpose of defeating said anti-trust law, or avoiding such appearance of corporate action, said defendants or either of them entered into said agreement as individual stockholders; or that, in order to conceal the object and purpose of the transaction between the plaintiff and said defendants, said The United Salt Company and its stockholders agreed among themselves that the business of the combination to be effected by them should be conducted in the name of The United Salt Company, or that the business of such combination was thereafter conducted with any such purpose or object in view. Nor is it true that such provision for a cash payment was in fact a subterfuge, or that the real agreement was that said National Salt Company should make a guarantee upon its perferred stock of seven per cent and ten per cent upon its common stock to the stockholders of the United Salt Company, receiving its said stock in part payment upon such purchase. Nor is it true that, by virtue of the agreement then and thereby entered into between the parties, the stock so taken in part payment was given preference over and above the stock held by other stockholders of said National Salt Company. Nor is it true that the agreement of the plaintiff to make such payments upon the purchase of such shares, as by the terms in such certificate of indebtedness provided, was *ultra vires* or beyond the power in any of its officers and agents acting for it in the transaction. Nor is it true, as in said petition stated, that the agreement so made between the plaintiff and the several defendant stockholders providing for the sale of the shares of the stock of such United Salt Company, in case of default in the pay-

ment of such several payments, should operate as a mortgage upon its property, or was an engagement not within the power of its directors.

And this defendant further says that it is not true that he and his co-defendants had any notice or knowledge of any purpose or intention on the part of either the said National Salt Company or of The United Salt Company, acting in its corporate capacity or through its said stockholders, of any purpose or intention on the part of either in the making of such sale, or in carrying out of the details of the terms of purchase, to in any way evade or violate the terms of such anti-trust law, or to thereby effect any injurious or unlawful combination.

Wherefore, this defendant denies said allegations and each of them.

This defendant further says that as to each and every remaining allegation in said petition, he is without knowledge or means of knowledge sufficient to enable him to speak as to the truth or falsity of the same, and therefore denies such allegations and each of them.

Wherefore, this defendant prays that he may go hence with his costs.

KLINE, CARR, TOLLES & GOFF,
Attorneys for answering defendant.

State of Ohio,
Cuyahoga County, } ss.:

Virgil P. Kline, being duly sworn, says that he is one of the attorneys of the defendant above named; that said defendant is absent from the County; and that the averments of the foregoing answer are true as he verily believes.

VIRGIL P. KLINE.

Subscribed and sworn to by said Virgil P. Kline, before me, this 1st day of May, 1901.

C. H. Gale,
Notary Public.

Notarial Seal.

Receivers' Exhibit 2.

This exhibit was an identical answer made by F. B. Squire.

Receivers' Exhibit 3.

IN THE COURT OF COMMON PLEAS.

The State of Ohio, } ss.:
Cuyahoga County, }

NATIONAL SALT COMPANY, Plaintiff, vs. THE UNITED SALT COMPANY, *et al.* Defendants.	Answer of John Hartness Brown. April 4th, 1902.

John Hartness Brown, one of the defendants in this action, by way of answer to the petition of the plaintiff herein, says he admits the averments of the petition relating to the organization and corporate existence of the plaintiff, of The United Salt Company and The American Trust Company, as well as the co-partnership of the defendant Joy Morton & Co.

That said defendant Sanford is secretary of said Trust Company, and holder of the certificates of stock of the National Salt Company pursuant to the nomination of said Trust Company; that the plaintiff issued

certain certificates of indebtedness through The American Trust Company to various former stockholders of The United Salt Company, and that certain of the same have, since the 26th day of December, 1899, been acquired from the original holders by certain of the defendants herein.

That both said Salt Companies were, prior to the 22nd day of September, 1899, engaged in the manufacture and sale of salt; that on or about said date certain of The United Salt Company's stockholders, and plaintiff through its then officers, executed an instrument in writing, as shown by exhibits attached to the petition; that plaintiff thereby, through its officers, purported to purchase, and did purchase, from a large number of stockholders, their shares of the stock of The United Salt Company, upon the terms and conditions as to payment and security set forth in said petition.

That the plaintiff since the time of making such purchase paid to the holders of such certificates of indebtedness the three earlier installments maturing under the terms thereof; that it was one of the provisions of said agreement that all dividends paid thereafter on the stock of the National Salt Company so held by said Trust Company for the benefit of this defendant and other certificate holders should be applied toward the liquidation of the amounts payable upon said certificates of indebtedness, for the purpose of securing the application of which payments, stocks of the plaintiff, issued in carrying out said purchase, were deposited with, and held by, said Trust Company; that the defendant The American Trust Company accepted the trust created by the terms of said agreement, and is not acting as trustee under the same.

That the National Salt Company issued and delivered of its stock to the stockholders of The United Salt Company from whom it made such purchases, cer-

tificates of its common and preferred stock to the amount of 1 1/4 shares of each for each of the shares of The United Salt Company by it so purchased; that said stock was issued to the nominee of said Trust Company, was deposited with said Company in pursuance of said agreement, and said Trust Company issued to the owners thereof certificates as in the petition alleged; that the certificates of said stock of the plaintiff Company were transferred to said F. F. Sanford, and are held by him as a nominee of, and on behalf of, said Trust Company; but the defendant denies each and every other allegation in the petition contained.

Further answering the defendant says that after the payment by the plaintiff of the first two installments maturing upon the certificates of indebtedness so issued by it, he purchased in the open market certain certificates of such indebtedness, and certain certificates of said Trust Company evidencing the ownership of certain shares of the capital stock of the plaintiff so held by it in trust, and the same were thereupon transferred to his name; that he thereafter received the third installment paid by the plaintiff upon such certificates of indebtedness, but, prior to the commencement of this action, sold and transferred to others all such certificates theretofore held by him, and although the same, or some part thereof, may not have been transferred upon the books of the plaintiff, this defendant has in fact no interest of any kind whatsoever therein.

Wherefore, he prays to be hence dismissed with his costs.

KLINE, CARR, TOLLES & GOFF,
Attys. for Answering Deft.

Receivers' Exhibit 3

The State of Ohio, }
Cuyahoga County, } ss.:

John Hartness Brown, being first duly sworn, says that he is one of the defendants in the above entitled action, and that the averments of his foregoing answer are true as he verily believes.

JOHN HARTNESS BROWN.

Sworn to before me by the said John Hartness Brown, and by him subscribed in my presence, this 4th day of April, A. D., 1902.

C. H. GALE,
Notary Public.

(Seal.)

Certificate to Common Pleas Record.

The State of Ohio, }
Cuyahoga County, } ss.:

I, Chas. P. Salen, Clerk of the Court of Common Pleas, within and for said County, and in whose custody the Files, Journals and Records of said Court are required by the Laws of the State of Ohio to be kept, hereby certify that the foregoing copy is taken and copied from the original answer of John Hartness Brown in cause #74054 of the Proceedings of the Court of Common Pleas, within and for said Cuyahoga County, and that said foregoing copy has been compared by me with the original answer, and that the same is a correct transcript thereof.

In Testimony Whereof, I do hereto subscribe my name officially, and affix the Seal of said Court at the Court House in the City of Cleveland, in said County, this 9th day of July A. D., 1904.

(Seal.)

CHAS. P. SALEN,
Clerk.

Receivers' Exhibit 3

I, Thomas K. Dissette, Presiding Judge of the Court of Common Pleas, within and for the Fourth Judicial District of the State of Ohio, in which District is said County of Cuyahoga, do hereby certify, that Chas. P. Salen was at the date of the above certificate, and now is, Clerk of said Court of Common Pleas, within and for said Cuyahoga County, and State of Ohio, and that said Clerk is the officer in whose custody said original pleadings are required to be kept by the laws of the State of Ohio, and authorirzed by the laws of the State of Ohio, to certify as aforesaid, and that said attestation to said copy of said record is in due form of law.

Signed by me, and dated at Cleveland, Cuyahoga County, Ohio, this 9th day of July A. D., 1904.

T. K. DISSETTE,
Judge, as aforesaid.

The State of Ohio, } ss.:
Cuyahoga County, }

I, Charles P. Salen, Clerk of the Court of Common Pleas, a Court of Record of Cuyahoga County, aforesaid, do hereby certify that Thomas K. Dissette, before whom the annexed certificate was taken, was, at the date thereof, the Presiding Judge in and for said County, duly authorized by the laws of Ohio, and that I am well acquainted with his handwriting, and believe his signature thereto is genuine.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at Cleveland, this 9th day of July A. D., 1904.

(Seal.)

CHAS. P. SALEN,
Clerk.

No. 55

Receivers' Exhibit 4.

IN THE COURT OF COMMON PLEAS.

The State of Ohio, } ss.:
Cuyahoga County, }

NATIONAL SALT COMPANY, Plaintiff, vs. THE UNITED SALT COMPANY, *et al.* Defendants.	Answer and Cross Petition of Erickson Perkins.

Erickson Perkins, one of the defendants herein, for his answer to the petition says, he admits the averments thereof:

1. With respect to the incorporation and organization of the National Salt Company, The United Salt Company and The American Trust Company, and as to the copartnership of Joy Morton & Co.

2. That he is the owner and holder of certain certificates of indebtedness issued by the plaintiff and countersigned by the defendant The American Trust Company evidencing the receipt by it of certain shares of the capital stock, common and preferred, of the plaintiff, which shares stand in the name of the defendant Sanford, who is the Secretary of said Trust Company and its nominee.

He further admits that on or about the 22nd day of September, 1899, as disclosed upon the face of the certificates held by him and the said agreement referred to therein, the plaintiff purchased some or all of the shares of the capital stock of The United Salt Company and issued in payment therefor shares of its own capital stock, common and preferred, and cer-

tificates of indebtedness; that to secure payment of said certificates of indebtedness the shares purchased by plaintiff of the capital stock of The United Salt Company were by it deposited with said Trust Company, and are now held by it; and that to secure certain other provisions of said agreement referred to the shares of its own capital stock issued in payment therefor, have been deposited in the name of the said Sanford, and are held by said Trustee; but as to all and singular the remaining averments in said petition, this defendant, having no knowledge thereof, denies the same.

SECOND. By way of cross petition and counterclaim herein this defendant says that the plaintiff and the defendants The United Salt Company and The American Trust Company are corporations, organized and existing as in the petition set forth; that on or about the 22nd day of September, 1899, plaintiff, which had full power under its organization so to do, purchased of various stockholders of the defendant The United Salt Company a large part or all of the shares of its capital stock and entered into an agreement with the stockholders from which it purchased, severally, a copy of which is annexed to the petition herein.

The defendant further says that said agreements or purchase, among other things, provided that the stockholders so selling their stock should receive in payment for each share thereof 1.25 shares of the common and preferred stock of the plaintiff and $106.25 in cash, payable in ten equal semi-annual instalments on the first days of January and July thereafter; that said deferred payments should be evidenced by certificates of indebtedness of a prescribed form, setting forth the amount and maturity thereof, be countersigned by said Trust Company as trustee, and be transferrable by endorsement; that to secure payment

thereof the shares of stock of The United Salt Company purchased by plaintiff should be by it transferred and deposited with said Trust Company, to be held by it as security therefor; that until such certificates were paid the dividends declared by the plaintiff upon the stock delivered by it as part consideration should be applied, so far as required, to the payment of such certificates, and that to insure such application the shares of the plaintiff's stock issued by it in payment of stock so purchased by it should be issued in the name of said trustee company, or such person as it might name, and be held by it so that it might collect the dividends from time to time accruing thereon, and apply the same toward the payment of such certificates.

Said contract further provided, among other things, that said Trust Company should issue its negotiable receipts or certificates of a prescribed form to the person depositing stock of the plaintiff with it for such purpose and that upon the termination of said trusts and the payment of said certificates of indebtedness said stock in the plaintiff should be surrendered by the Trust Company to the person or persons then the owners of its receipts or certificates therefor.

The defendant further says that he is informed and believes that the plaintiff, having purchased a large portion or all of the stock of The United Salt Company, by virtue of such ownership entered into and took possession of its property and the management of its business, and continued therein down to the time of bringing this action; that the various transfers were made and certificates issued as provided in said agreement by said selling stockholders, by the plaintiff and by the said Trust Company; that during its management of said business and upon the first days of January and July, 1900, and January, 1901, the plaintiff declared and paid dividends upon its stock so deposited

with said Trust Company, and the Trust Company therefrom paid the semi-annual installments maturing on said dates upon said certificates of indebtedness to the holders thereof.

This defendant further says that the plaintiff National Salt Company desiring to have it capital stock a marketable security, dealt in upon the New York Stock Exchange, so that the same might come to the attention of and be freely purchased by investors, on or about the first day of March, 1901, procured and caused the same to be quoted among the unlisted securities quoted and dealt in upon said Exchange, and in order to accomplish its purpose in that respect made a written statement to the committee on unlisted securities of said Exchange, in which, among other things, it set forth that it had purchased the capital stock of said The United Salt Company, and had issued its certificates of shares of its capital stock, made out in the name of the nominee of said Trust Company, with whom said stock was deposited, and that certificates evidencing the receipt of stock of the plaintiff by said Trust Company had been issued by it and were in the market, as well as certificates of indebtedness issued by the plaintiff for the cash portion of such purchase price; said statement containing also a memorandum of the amount of said certificates of indebtedness then outstanding; that the plaintiff made said statement for the purpose of indicating to the public that said certificates of indebtedness and said certificates of said Trust Company representing shares of the plaintiff's capital stock were valid and valuable securities to be purchased and dealt with by persons desiring to invest therein, and by reason of such statement caused its said securities to be quoted in the daily reports of said Stock Exchange and so brought to the attention of the investing public; that in pursuance of the custom and course of busi-

ness of said Stock Exchange, as the plaintiff well knew there would be done, there were printed for distribution among the financial houses, so as to reach the investing public a large number of circulars containing a copy of said statement made by the plaintiff; that in this manner the said securities were brought to the attention of this defendant and in reliance thereon subsequent to the issuance of said statement, and without further information other than contained therein, in the open market and at the prices current, he purchased and paid for certificates of said Trust Company evidencing shares of the capital stock of the plaintiff held by it and certificates of indebtedness issued by the plaintiff as follows, to wit:

A certificate of said Trust Company entitling him under the terms of said agreement to 550 shares of the preferred and 550 shares of the common stock, and a certificate of indebtedness whose original amount was $12,750.00, and upon which there remains due, after the payment of the three installments above mentioned, $8,925.00, an installment of $1,275.00, becoming due thereon July 1, 1901, and a like amount semi-annually thereafter until its full amount should be paid; that the certificates so purchased by him were duly transferred to his name upon the books of the plaintiff and of said Trust Company.

He further says that although the plaintiff declared and paid dividends upon its preferred and common stock other than that held by said Company, upon July 1, 1901, and semi-annually thereafter it wrongfully refused to pay said dividends upon said stock and wholly refused and neglected to pay the installments maturing upon said certificates of indebtedness, or any part thereof; that said agreement having provided that in case of such default continued for sixty days, the holder of any such certificate of indebted-

ness might at his option declare the entire amount remaining unpaid thereon at once due and payable, this defendant elected so to declare, and there remains due him upon said certificate the full sum of $8,925.00, with interest from July 1, 1901, the date of the default by reason of which said certificate was matured.

The defendant further says that by reason of the premises said securities in his hands are valid obligations of the plaintiff and that the plaintiff, by reason of its representations which induced this defendant to make such provision, is estopped from in anywise questioning the validity thereof; that by reason of the premises he is entitled to full payment of his said certificates of indebtedness; that he is entitled to have paid to said trustee by the plaintiff upon his shares of its capital stock held in trust for him like dividends as have been declared and paid by it upon other portions of its capital stock, with interest from the times of their several payments, and to have same applied by said trustee toward the liquidation of the amount due upon his said certificate; that in addition thereto he is entitled to have the shares of the capital stock of The United Salt Company deposited on account of the certificate of indebtedness held by him sold, and the proceeds applied to the payment of such certificate; and that upon the payment of said certificate he is entitled to have said shares of the capital stock of the plaintiff delivered to him by said trustee, under such order as the court may deem wise, for the application of dividends which may accrue thereon up to the amount of the unpaid portion of said certificate.

Wherefore, he prays the court that an account may be taken of the amount due him by reason of his said certificates; that plaintiff be ordered to pay the same, and in default of such payment said shares of the capital stock of The United Salt Company be sold and

the proceeds applied thereto, and for such other and further relief as he may be entitled to receive.

KLINE, CARR, TOLLES & GOFF,
Attorneys for answering defendant.

The State of Ohio, }
Cuyahoga County, } ss.:

S. H. Tolles, being duly sworn, says that he is one of the attorneys of record of the above named answering defendant a non-resident and absent from the County and that the averments of his foregoing answer and cross petition are true as he verily believes.

S. H. TOLLES.

Subscribed and sworn to by said S. H. Tolles before me this 19th day of March, 1902.

C. H. GALE,
Notary Public.

Receivers' Exhibit 5.

This exhibit was an identical answer made on behalf of Sarah A. Perkins.

Receivers' Exhibit 6, Depositions in Ohio Suit.

The State of Ohio, }
Cuyahoga County, } ss.:

IN THE COURT OF COMMON PLEAS.

NATIONAL SALT COMPANY,
Plaintiff,
against
THE UNITED SALT COMPANY, *et al.*
Defendants.

Depositions taken before me, Louis H. Hall, a Notary Public within and for the County of New York, in the State of New York, pursuant to the annexed notice, at the time and place therein specified, to be read in evidence on behalf of the plaintiff, in an action pending in the Court of Common Pleas, in and for Cuyahoga County, in the State of Ohio, in which The National Salt Company is plaintiff and The United Salt Company and others are defendants.

Present:

W. B. Putney, T. P. Linn and A. M. Snyder, on behalf of the plaintiff, and

F. A. Quail, on behalf of defendants for whom Henderson & Quail appear at attorneys of record.

John H. Clarke, of the firm of Williamson, Cushing & Clarke, attorneys for L. H. Severance and Elmer H. Turner, and

J. E. Morley, representing the firm of Kline, Carr, Tolles & Goff, and appearing for defendants for whom they are attorneys of record.

Receivers' Exhibit 6

Charles Baird, attorneys for defendants for whom they are attorneys of record.

N. S. BEARDSLEE, of lawful age, being by me first duly sworn as hereinafter certified, deposes and says as follows:

By A. M. Snyder:

Q. State your name in full? A. Nathan S. Beardslee.

Q. What is your age? A. Fifty-three.

Q. What is your occupation? A. I am President of the National Salt Company.

Q. How long have you been President of The National Salt Company, the plaintiff in this action? A. Since January 8, 1902.

Q. How long prior to that time had you been engaged in the salt business? A. Since 1884.

Q. Where? A. At Warsaw, N. Y.

Q. And is that the place of your residence? A. It was.

Q. Are you residing there now? A. Temporarily in Scranton, Pa.

Q. With what concern were you connected, in the salt business, in the year 1898? A. I was the President of the Empire Dairy Salt Co., of Warsaw.

Q. Give us generally the concerns in New York State doing, or engaged in the salt business in 1898? The names of the concerns? A. The Leroy Salt Co., Pavilion Salt Co., Pearl Salt Co., Pearl Creek, N. Y., Warsaw Salt Co., Warsaw, N. Y., W. C. Gouinlock (two plants), Hawley Salt Co., Warsaw, Empire Dairy Salt Co., Warsaw, Bradley Salt Co., Warsaw, Kerr Salt Co., Rock Glen, Silver Lake Salt Co., Perry, N. Y., Glen Salt Co., Watkins, N. Y., Ithaca Salt Co., Ithaca, N. Y., Cayuga Lake Salt Co., Ludlow-

ville, N. Y. There were two others that did not go in the combination.

Q. Were these plants which you have named actively engaged in the business? A. They were.

Q. What proportion of the salt business of New York State did the plants that you have named do?

Defendants object generally and as to form of question.

Q. What familiarity or knowledge had you of the business done by these companies? A. From statements made by the manufacturers and from my familiar knowledge of the business.

Q. What was the source of your knowledge? A. Horse power boiler capacity produced a given quantity of salt; I knew that; I knew the amount produced; an open pan of a given size with a fire built underneath produced a given amount of salt; I knew what that was; and I think that's enough; I had been in the business fifteen years and knew all about it.

Q. When you speak of knowing the horse power, state as to whether or not you mean the horse power of each plant named? A. Yes.

Q. Likewise the capacity of each plant? A. Yes.

Q. What kind of salt were these plants making or producing? A. Producing coarse salt, common fine salt, table and dairy salt.

Q. What other kinds of salt are produced and put upon the market, if any? A. Solar salt and mined salt.

Q. How is solar salt made or produced? A. The brine is evaporated by the sun; mined salt is produced by mining, the same as coal. I want to say, in the percentage which I gave, it did not include the solar salt nor the mined salt in New York State; all salt for domestic purposes must be evaporated by the heat to be fit for use on the table or dairy purposes.

Q. What percentage? A. I should say 85%.

Receivers' Exhibit 6

Q. In 1898, prior to the organization of the National Salt Co. of West Virginia, what was the price of salt in New York?

Defendants object.

A. From 45 to 47 cents a barrel.

Q. In what year, if you know, was the National Salt Co. of West Virginia organized? A. In 1898.

Q. I will ask you whether or not Mr. A. S. White and Mr. F. B. Squire were connected with the National Salt Company of West Virginia?

Defendants object to the form of the question and generally.

A. They were.

Q. What, if any, business did the National Salt Company of West Virginia do in the State of New York after its organization? A. They purchased the entire output of the fourteen plants named.

Q. Are you acquainted with Mr. A. S. White and Mr. F. B. Squire? A. I am.

Q. How long have you known Mr. A. S. White? A. Some years; perhaps seven or eight years; ten years.

Q. How long has Mr. White been engaged in the salt business? A. I should say—dating from this date?

Q. How long, to your knowledge, has he been in the salt business? A. I can't answer that accurately; I should say twelve or fourteen years.

Q. How long have you known Mr. F. B. Squire? A. I think since 1897.

Q. Did you know that he was engaged in the salt business, at that time? A. I did.

Q. Who, if you know, negotiated the contracts for the output of the fourteen New York concerns you

have named, on behalf of the National Salt Co. of West Virginia?

Defendants object generally and as to the form of the question.

A. Mr. White principally, assisted by Mr. Squire.

Q. Do you recall about the time the National Salt Co. of New Jersey, plaintiff in this case, was organized?

Defendants object to form of question and generally.

A. I do.

Q. When? A. Early in 1899.

Q. When, if at all, did you have the first conversation with reference to the formation of such a company?

Defendants object generally and as to form of question.

A. During the winter of 1899. It was organized in March, I think; late in March; the subject had been brought up during the winter. Had been discussed during the winter; during January and February.

Q. Where did this first conversation take place, and who were present? A. I don't recall that.

Q. With whom did you first discuss it? A. With Mr. White and Mr. Squire and the other manufacturers.

Q. Where? A. I think at Warsaw.

Q. Whereabouts in Warsaw, what place? A. At Mr. Fowler's house.

Q. As nearly as you can, give the names of the persons present? A. It will be, as near as I can recall, the President or owner of each property.

Q. Of each property you have named? A. Yes.

Q. And who else? A. I do not recall anybody else.

Q. Were Mr. White and Mr. Squire present? A. They were.

Q. Fix the time of this first meeting as nearly as you can? A. We had—meetings had been held during—several times during 1897 and 1898, at which —at Buffalo, at Rochester, at Warsaw and in New York, at which Mr. Squire and Mr. White were present, urging a combination; Mr. Squire was an interesting talker and gave his experience in connection with the Standard Oil Co. He showed how effective a combination was and how the competition could be fought successfully in some places and while at others full prices would be obtained.

Defendants object to the answer generally and as not responsive to the question, and ask to have it stricken out.

Q. Now, Mr. Beardslee, when was the first talk between you, Mr. White and Mr. Squire, and where did it take place? A. The National Salt Co. of New Jersey? I should say in Warsaw; possibly in Rochester.

Q. When was that? A. During January or February of 1899.

Q. Prior to that time, had you any conversation with Mr. Squire and Mr. White, relative to the forming of a combination of the salt companies in the United States? A. I had, on many occasions.

Q. When was the first occasion of such a talk? A. Some time during 1897; at the Iroquois Hotel at Buffalo.

Q. Now, who were present at that meeting? A. The owners of these fourteen plants mentioned; the representatives of them.

Receivers' Exhibit 6

Q. Just tell us what was said by Mr. Squire, if he said anything at that meeting? A. Mr. Squire—

Q. Tell us what he said; if you can't give the exact language give the substance? A. He urged the formation of a—he urged a combination of the different companies and pointed out the benefits derived from the same and gave his experience.

Q. What did he say? A. He gave his experience in connection with the Standard Oil Co. showing how competition could be met at certain points and destroyed and how good prices could be obtained at other places; what Mr. Squire said had great weight.

Q. What did he say with reference to the forming of a salt combination? A. He advised it should be done by all means.

Q. What did he say, substance of it? A. That much better prices could be obtained. And consequently a much larger amount of money could be made. That is the substance of it.

Q. What, if anything, at that conversation or meeting, was said with reference to the salt business in Ohio?

Defendants object to the form of the question and generally.

A. Said by Mr. Squire?

Q. Anybody? A. Mr. Squire, being President of the United Salt Co. implied—

Q. Tell us what was said? A. He said that his company would be willing to enter a combination on the same basis as those in New York.

Q. Anything else? A. I don't care to go further than that.

Q. What, if anything, was said by Mr. Squire, with reference to the business of the United; the character, the amount of it?

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Defendants object to form of question and generally.

A. He said they had a large business and you—he said they had a large business, the general character of which was the same as that of all the other manufacturers present.

Q. When was the next meeting that you recall, at which Mr. Squire and Mr. White were present? A. I think in Warsaw.

Q. When? A. During the winter of 1899.

Q. And who were present at that meeting? A. The owners of these same plants mentioned.

Q. Will you tell us what was said at that meeting, relative to a combination of salt companies and salt business? A. The owners were discussing the advisability of taking stock in the new combination to be formed, called the National Salt Company.

Q. Was anything said, at that meeting, by Mr. Squire, relative to the United Salt Co.? A. I don't recall at that particular meeting.

Q. What, if any, conclusion was reached, with reference to the New York companies going into a combination.

Objection by defendants as to form and generally.

A. The owners of the properties named decided to go into a combination.

Q. And what form was it to take?

Same objection by defendants.

A. The form of an organization organized under the Laws of the State of New Jersey to be called the National Salt Co.

Q. How was it to be accomplished?

Same objection by defendants.

A. By the owners of the various plants taking preferred and common stock, or cash, as they might decide—might elect.

Q. When, after that meeting, was there any discussion in your presence of the Ohio salt business and that of the United Salt Co. in particular? A. Most of the discussions had taken place during a year and a half previous to this time and it was so well understood by the manufacturers of New York State that the manufacturers did not hesitate to turn over their properties to the National Salt Co. and take common and preferred stock, in payment.

Defendants object to the answer, to the form and generally.

Q. What territory was discussed at this meeting to be covered by the combination which was to be formed?

Defendants object to the form of the question and generally.

A. The territory lying east of the Ohio line. It was understood that the United would not sell any salt east of that.

Defendants object to form of answer and generally.

Q. I guess you did not understand my question. My question is what territory was to be included in the combination which was sought to be formed?

Defendants object to form of question and generally.

A. Generally speaking, the territory east of Ohio.

Q. I don't understand your answer. Do you mean that the sales were to be confined to that territory and that no properties lying west thereof were to be included?

New Jersey State Library

Receivers' Exhibit 6

Defendants object to the form of the question and generally.

A. I mean that no properties west of the east line of Ohio were included in the agreement to take stock in the corporation known as the National Salt Co.

Q. Now, my question is, what territory was to be included in the combination, when it was ultimately effected; the whole combination—as discussed at that meeting?

Defendants object to the form of question and generally.

A. All territories in which salt could be sold at a profit, which depended entirely upon the size of the combination.

Q. And what territories were discussed at that meeting?

Defendants object to the form of question and generally.

A. Generally speaking, the territory lying east of the east line of Ohio.

Q. Now, when, if at all, were there meetings at which you were present and Mr. Squire and Mr. White were present, when the territory west of that line was discussed?

Defendants object to form of question and generally.

A. I can't give dates; at meetings held during the period of a year and a half previous, the desirability of covering the whole territory by combination was always discussed.

Q. And what territory did that include? A. The United States or the earth.

Receivers' Exhibit 6

Q. Where, and in what States, is salt produced; or was it at the times you mention? A. Texas, Kansas, Illinois, Michigan, Ohio, New York; that sufficient. Louisiana.

Q. What portion did the State of New York produce? A. I don't know.

Q. I will ask you what salt was produced in Ohio?

Defendants object to form of question and generally.

A. A large quantity.

Q. What States produced practically all the salt in the United States?

Defendants object to form of question and generally.

A. Those which I have named.

Q. Now, Mr. Beardslee, after the formation of the combination of the salt companies in New York State and the organization of the National Salt Company of New Jersey, when, if at all, did the subject of the Ohio business come up? A. As I remember, it first came up in June, 1899. I mean it came before the Board of Directors of the National Salt Co. for consideration.

Q. To go back to that, when was it first discussed by you and others interested in the combination which had been formed by the uniting of the New York properties? A. It was discussed at all meetings held for some years previous.

Q. Coming down to the time after the date of the organization of the National Salt Co., which, I believe, was in April, 1899, when did the first discussion take place? A. I believe in June, 1899, at 26 Broadway.

Q. Prior to June, 1899, what, if any, business was the National Salt Co. of New Jersey doing, or attempting to do, in the State of Ohio?

Receivers' Exhibit 6

Defendants object to the form of question and generally.

A. Practically doing very little.

Q. What, if any, salt was it selling in the State of Ohio? A. Very little, so far as I know.

Q. Who had charge of the sales department of the National Salt Co.? A. Mr. C. L. Parr.

Q. Now coming down to the time when the discussion took place in June, 1899, I will ask you who were present at that time? A. I think that the matter came before the Board of Directors, at first.

Q. At that meeting, was Mr. Squire present? A. Mr. Squire and Mr. Frasch were present, at or after the meeting, to discuss the question with a committee.

Q. Who were the members of the committee? A. Those that I recall were Mr. White, Mr. Kerr—Mr. Samuel Kerr, of Philadelphia—myself, and I don't know who else; I don't know who else was there.

Q. And where did the meeting at which Mr. Squire and Mr. Frasch were present, take place? A. Around the directors' table; in the directors' room.

Q. At 26 Broadway? A. 26 Broadway; yes, sir.

Q. Will you tell us what was said by Mr. Squire at that meeting with reference to the Ohio salt business and in particular with reference to the United Salt Co.?

Each of the defendants object to the form of the question and generally.

A. Mr. Squire and Mr. Frasch—they named the price on the Ohio property, of $1,250,000.00 of preferred stock and $1,250,000.00 of common stock; the manufacturers of New York State had taken stock in the combination on a basis of a low valuation of their properties, and also with the understanding which had been arrived at from conferences extending over

a period of at least three years—they were so astounded at the amount named for these properties that every endeavor was being made to induce Mr. Squire and Mr. Frasch to name a lower price—to take a less amount of stock.

Defendants object to form of answer and generally.

Q. Confine yourself to what was said between the parties. What they said, and what you said, and what was said in their presence, with reference to the matter under discussion.

Defendants object to form of question and generally.

A. They said that they—the property—a combination of this sort could be made to show handsome profits on the amount of stock which they named; the directors present maintained that the amount was excessive.

Q. Who said anything about it? A. Mr. Squire and Mr. Frasch representing the United Salt Co. and the directors present, representing the National Salt Co.

Defendants object to form of answer and generally.

Q. Tell us what was said by the directors, or any member of the Board of Directors? Tell us first what you said? A. I said that the amount of stock that they required for their property was out of all proportion to its value.

Q. And what was said by Mr. Squire and Mr. Frasch about that? A. They said it was not; that the geographical position was such that they were in a position to demand that price.

Q. What else, if anything? A. Two or three meetings of this nature were held and no conclusions reached, going over the same ground, each time; finally Mr. White went to Ohio and presented to the Board of Directors a proposition in writing from the United Salt Co.

Defendants object to the form of the answer, also generally.

Q. When did he do this? A. I should say—that is a part of the records, I presume; that would give the date when it was done.

Q. You mean to say that on the day the Board took some action? A. They had a meeting in June; later than that, in July or August, this proposition was presented by Mr. White.

Q. And what position did Mr. White hold with the National Salt Co. at that time? A. He was President of the Company.

Q. And for how long had he been President? A. Since its organization.

Q. And did he continue to be President down to the time you succeeded him? A. He did.

Q. At what kind of a meeting was this proposition you speak of presented; a regular meeting of the Board of Directors or others? A. A regular Board meeting. ing.

Q. Who was present at that meeting of the Board of Directors? A. The minutes of the meeting will show; there was more than a quorum present.

Q. Do you recall whether or not Mr. Squire or Mr. Frasch were present at that meeting, or at a time after the meeting adjourned? A. Do you refer to the meeting at which that proposition was accepted?

Q. Yes. A. I think not; they may have been; I think that was in writing.

Receivers' Exhibit 6

Q. Do you recall what the proposition Mr. White presented was? A. It was very lengthy; covered plants in Michigan and all over the United States, as well as the United.

Q. Would you recognize the report, if you saw it? A. I think so.

At this point the hearing was adjourned to be resumed at 1:30 p. m.

Testimony resumed at 1:30 p. m.

N. S. BEARDSLEE, continued:

Present: Same parties.

Q. The report to which you have referred was a report made by Mr. White, to the Board of Directors, and containing a statement of the doings in connection with acquiring of property, was it not? A. Yes.

Q. And that statement contained a reference to the property of the United Salt Co.? A. It did.

Q. I will ask you if you recall that the report contained the following: "The consideration wanted by the United Salt Co. is that for each and every share of the capital stock of the United Salt Co. (which consists of 9500 or 10,000 shares of the par value of $100.00 each), they shall obtain one and one-fourth shares of preferred and one and one-fourth shares of common stock of the National Salt Co. of New Jersey. They further require that we shall pay them an additional sum of money, the equivalent of $17.00 for each share of preferred and common stock of the National Salt Co. exchanged for United stock for a period of five years they agreeing that during said period of five years they will return to the Na-

tional Salt Company any dividend which may be declared and paid upon any National Salt stock given them by this exchange?"

Defendants object to form of the question and generally.

A. I do.

Q. I will ask you whether or not, at the meeting of September 22, 1899, being the directors meeting at which the report was presented, Mr. White, then President of the Company, said, in explanation thereof, that the additional sum—the equivalent of $17.00 for each share of preferred and common stock of the National Salt Co., exchanged for United stock, for the period of five years, was in the nature of a guaranty of dividends of that amount which the United Salt Co. was requiring, in making the combination?

Defendants object to the form of question and generally.

A. He made that explanation.

Q. Give us all that was said by him at that meeting, in that connection?

Defendants object to the form and substance of the question. Each of the defendants objects separately.

A. Mr. White said that he did not see his way clear to—it was not clear to him how he could recommend that; it might be illegal; and it was exhaustively discussed by the Board of Directors. The United Salt Co.'s position in Ohio was so strong and the trade which they controlled was so large that in order to obtain control of the entire output of that field and be able to control the prices, not only through Ohio but throughout Western Illinois and also as far east as Washington, he deemed it advisable to accept

their proposition and a resolution, as I remember, was passed authorizing Mr.—authorizing Mr. White to arrange the details.

Q. What, if anything, was said by Mr. White, in that connection, with reference to having advice from counsel that to put it in the form of guaranteeing of dividends was illegal?

Defendants object to the form and substance of the question.

A. Mr. White said that he wished to have the advice of counsel in the matter, and so far as he understood the matter he thought it was illegal; but if the United Salt Co. was willing to take chances in the matter perhaps we ought.

Q. You say there was considerable discussion concerning that matter, in the Board, and that finally the Board passed some resolutions concerning the matter? A. The Board discussed the whole situation as to the location of the United Salt Co., the necessity of getting control of that output, to maintain prices, because the vital point—the success of the whole scheme depended upon being able to control a very large percentage of the output of the State of Ohio; and whatever the price was the Board felt it was absolutely necessary to control that output and to control their product, in order to maintain the prices.

Q. That was the discussion that took place in the Board of Directors?

Defendants object to form of question and substance.

A. Yes, sir.

Q. The question before related as to whether or not the Board finally did pass a resolution with ref-

erence to the United Salt Company's property; answer yes or no? A. They did.

Q. Now, tell us what discussion, or what was said, at the meeting of the Board of Directors, concerning the combination with the United Salt Co.?

Defendants object to the form and substance of the question.

Q. Just give us the discussion that took place at that meeting with reference to the property of the United Salt Co. of Cleveland?

Defendants object to the form and substance of the question.

A. The discussion was in the form of the advisability of making this exchange, and the position occupied by the United Salt Co. was freely discussed; their output is large and they distributed salt throughout the south, far west as Chicago and as far east as Washington and Richmond, and the success of the scheme depended largely upon being able to control that property in Ohio, to raise the prices throughout Ohio and the territories where they were able to ship salt. That was the only subject of the combination. It necessarily had to double the prices in order to pay dividends on an enormous capitalization.

Q. Was any discussion had at that meeting, relative to the acquiring other properties in the State of Ohio? A. They were.

Q. What were they? What was said upon that subject? A. It was decided to obtain control of all the salt producing properties if possible.

Q. What properties were mentioned? A. The properties at Akron and vicinity; also the product of what is known as the Ohio River district.

Q. And what is the fact as to whether or not those properties were acquired by the National? A. The

product of the Ohio district was acquired by purchase; all other properties we obtained control of, except two.

Q. What were they? A. I think they were two plants known as the Ohio Salt Co. and one at Wadsworth, known as the Wadsworth & Rittman plant.

Q. I will ask you, Mr. Beardslee, what was the purpose and intention of the National Salt Co. in gaining control of the salt properties in Ohio.

Defendants object to the form and substance of the question.

A. The object was to be able to control the price of salt and advance it to a point to where they would be able to pay dividends on the capital stock.

Q. What percentage, if you know, of the salt business, in Ohio, did the property, so sought to be acquired and acquired, do?

Defendants object to the form and substance of the question.

A. 75 to 80%. I have not the exact figures; Mr. White, I think, has.

Q. And did he have the figures at the meeting referred to?

Defendants object to the form and substance of the question.

A. I think so.

Q. In June, 1899, and for a short time prior thereto, what was the price of salt, in Ohio, if you know?

Defendants object to the form and substance of the question.

A. The United Salt Co. sold a great many thousands of tons, on the basis of 45 cents a barrel, barrel and all.

Q. What was the price, generally, in Ohio? A. I should say from 45 to 48 cents.

Q. And what was the price of salt, in Ohio, up to the time the National was in control of the properties you have mentioned? A. From 40 cents to 48 per barrel.

Q. After the National was so in control, was there any change in the price of salt? A. There was.

Q. What, if any, change was there? A. The price advanced immediately to 70 cents a barrel; soon afterwards to 85 cents a barrel; and again to $1.00 a barrel, at the works. These prices I have mentioned are all at the works. The price of dairy salt was advanced from something over $2.00 per ton to over $7.00 a ton; nearly 300%.

Q. I will ask you whether or not you have given all of the conversation which you had with Mr. Squire relative to the United Salt Co.? A. These conversations took place over a period of two or three or four years; we had been discussing this matter. Mr. Squire always urged the—the combination of works, of capital, or the manufacturing plants; he was the leader in expounding the benefits to be derived therefrom; we listened to him with great interest.

Q. What connection, if any, did Mr. Squire have with the National Salt Co.?

Defendants object to form of question and generally.

A. He was a director.

Q. What position did Mr. Squire hold in the United Salt Co. during the progress of the negotiations? A. He was also a member of the Executive Committee of the National Salt Co. He was President of the United Salt Co.

Defendants object to the form of the answer and generally.

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Q. In order to make clear your answers, will you tell me again what connection Mr. F. P. Squire, of Cleveland, Ohio, had with the National Salt Co. at the time of those negotiations?

Defendants object to the form and substance of the question.

A. I ought to refresh my memory, so that I might be clear whether Mr. Squire was a director of the National Salt Co. when organized, or whether he was taken in after the United Salt Co. was taken over. That I am not clear on, just this minute. Subsequently, he was a director and member of the Executive Committee of the National Salt Co.

CROSS-EXAMINATION by John H. Clarke, Esq.:

Q. Recalling, now, the meeting of the directors of the National Salt Co., at which you say Mr. White recommended the purchase of various salt properties, and, among others, the property of the United Salt Co., you said, did you not, that Mr. White reported to you and the other directors, that the making of the cash payment, which was to be as part consideration of the purchase of the stock of the United Salt Co., was illegal? A. The record is not clear on that subject, they thought it might be illegal; they were not clear upon the subject.

Q. But, while thinking it to be illegal, you, as a director, voted to make that purchase and payment, did you? A. Yes; leaving the details to be arranged by Mr. White.

Q. I understand you to say that your purpose as a stockholder and director in the National Salt Co., when voting for the purchase of the stock of the United Salt Co., was to restrict the production of

salt, to the end that you might control the price of it and increase the price in Ohio? A. I used the word "control" the production.

Q. Changing, then, the word "restrict" to "control" as used in my question, your answer would be "yes?" A. Yes.

Q. I believe you were a director in the National Salt Co. throughout the entire year 1899? A. I was.

Q. Mr. White suggested, at the time of some of these meetings of the directors of the National Salt Co., to which you have referred, that the control of the market was illegal? A. Not that I recollect.

Q. That the subject of such control being illegal was not discussed? A. Not that I recall.

Q. Please state precisely what was said with reference to the payment of the cash part of the consideration for the purchase of the United Salt Co.'s stock or property being illegal; who said it; the date of the meeting at which it was said and where the meeting was held? A. The meeting was held at 26 Broadway; at that time I think there was no lawyer on the Board and the members of the Board were uncertain as to the legality of that cash payment, and we did not wish to do any illegal thing, so that the matter was referred to Mr. White, as stated.

Q. He reported back to you at another meeting, didn't he? A. I don't remember that the matter was discussed again; after that the meeting was only held quarterly.

Q. When was that meeting held? A. I think on September 22, 1899.

Q. Did the Board of Directors of the National Salt Co. determine the prices at which salt was to be sold, from time to time? A. That was determined by a Committee.

Q. Wasn't it discussed by your Board of Directors, from time to time? A. Not usually.

Q. Was it discussed at all? A. I don't remember that it was.

Q. Were you a member of the sales committee, after September, 1899? A. Not for the first two years.

Q. Did not the sales committee report to your Board, from time to time, its action in fixing prices? A. I think not; they had authority to act.

Q. That authority was given by your Board, was it? A. It was.

Q. Did you, in the year 1899, have any other official position to the National Salt Co. than that of Director? A. Chairman of the Manufacturing Committee.

Q. As Chairman of the Manufacturing Committee you knew the prices at which salt was being sold all the time? A. Yes.

Q. And as a director you approved of the action of your Sales Committee, did you not? A. I did.

Q. Did the Sales Committee fix the prices for Ohio? A. Yes.

Q. Then you had full knowledge of, and approved, such increases of price as were made in Ohio, after the National Salt Co. went into the control of the United Salt Co.'s plant? A. I offered no objection.

Q. I understood you to say that as a director you approved the conduct of the sales committee? A. I don't know that I approved; I did not object.

Q. I suppose it is a fact, is it not, that this method of doing business and fixing prices, which you have described as prevailing with the National Salt Co. in 1899 and thereafter continued until July, 1901; and I suppose the same methods of business continue on the part of the Company, to this time? A. Practically.

Q. And with the exception of the plant of the United Co., now being operated by the Receiver, your Company is conducting the business done at the other

plant in the manner thus described? A. Yes; except that, at present, there is no sales committee; that the Salt Co., owing to outside competition, is compelled to take whatever prices it can obtain.

Q. And you are operating the other plants which you have described in your direct-examination as owned or controlled by the National Salt Co., in the manner that you did prior to the appointment of the Receiver of the United Salt Co. plant? A. A portion of them only.

Q. What ones do you not operate or control in this manner? A. Eight of the plants in New York have been sold or dismantled. During the past six months we have operated only four plants in New York State.

Q. What has become of the other ten plants? A. Three of them have been sold; and the others have been dismantled; we were not able to sell the product owing to increase of competition.

Q. Your Company dismantled these plants that you refer to in the State of New York? A. Yes.

Q. For what purpose? A. We couldn't sell the product.

Q. If you could have sold the product would you have kept them in operation just as before? A. Certainly.

Q. You say that three of the plants have been sold? A. Yes.

Q. To what company? A. One at Leroy was sold to parties there and in Buffalo; one at Perry, N. Y., was sold to parties there or in Buffalo; and a large plant at Rock Glen was sold to an electrolytic company for the purpose of making caustic soda, &c.

Q. Are any of these three plants now being used for the manufacture of salt? A. Two of them.

Receivers' Exhibit 6

Q. And is their product sold in competition with your products? A. Yes.

Q. What arrangements have you with reference to the output of those plants? A. None whatever.

Q. The product of these plants is devoted to special uses, is it not? A. No. No more than our product, it is the same grade of salt.

Q. When were those plants sold? A. Last year.

Q. What time last year? A. Early last year.

Q. Do you mean early in 1901? A. With the exception of the plant at Perry, N. Y., it was sold in 1900.

Q. Were those large plants? A. No, not very. Among the smallest we had.

Q. And they were distant from other plants, were they, so that it was expensive to operate them? A. No more so than the ordinary property.

Q. What reason did your company have for selling those plants? A. One of them we abandoned and parties we had started to build a new 1,000 barrel plant (meaning 1,000 barrels a day); the capacity of this plant at Perry was only 400 barrels a day, and we never could use it again and by selling this property for cash we were able to prevent the competition temporarily—for about a year—of the 1,000 barrel plant.

Q. That was the purpose for selling one of the plants How about the others? A. Same cause at Leroy. The other reason was that two very large and modern plants had been put in central New York, outside the National Salt Co., located in Cayuga and Seneca Lake, and we saw the competition would soon be so keen that we thought the best thing the National Co. could do would be to get something out of these plants; otherwise they would have gone to decay and would have been of no value whatever.

Q. You mean to be understood that because competition was threatened from other sources by new plants

you thought it would be wise to increase competition by selling some of your plants? A. It would decrease competition. Because in each case a large and modern plant would have been erected within a few hundred feet of these plants that were sold.

Q. Then the effect of your increase in prices was to create opposition which promptly decreased prices? A. Decidedly, as to practical effect.

Q. Now, as a member of the manufacturing committee of the National Salt Co., I suppose you had, in a general way, charge of the plants of the United Salt Co. after its stock was purchased by the National? A. To a limited extent.

Q. Your committee had entire control? A. Yes.

Q. Who was chairman of that committee? A. I was.

Q. Did you, from the time that your committee assumed charge of the plants of the United Co. keep in touch with the conditions at Cleveland? A. To some extent; Mr. Turner the former superintendent was in direct charge of the property.

Q. Mr. Turner was in the employ of the management of the company and acted under general instructions of your committee after the acquiring of the United Co.'s stock? A. Yes.

Q. I understood you to say that your company disposed of two of the three plants that you had sold early—one of them early in 1901 and the other in 1900? A. In 1900. Late.

Q. And you said, did you not, that those sales were made because competition had developed and was becoming stronger every day, and I suppose that competition continued to increase notwithstanding the sale of those properties, didn't it? A. Yes.

Q. And it became very strong or severe more than a year ago? A. It did.

Receivers' Exhibit 6

Q. Now, when did this competition commence so that you appreciated that it was a factor to be reckoned with? A. About a year and a half after the formation of the company.

Q. So that by the summer of 1901—by the summer of 1900—a large competition had developed? A. No; just beginning to be felt; the summer of 1901 became very severe particularly in Michigan.

Q. You said plants—large plants were being built in New York in 1900? A. Yes; two large plants; one at Watkins and one at Ithaca.

Q. In the year 1900 severe competition developed in Michigan also? A. Developments began, but the salt didn't come on the market until early in 1901.

Q. Did competition develop or was it threatened in any of the other salt territories, in the year 1901? A. It did.

Q. Where, for instance? A. Kansas, Texas and New York State.

Q. I suppose you were not able to maintain your prices, then, throughout 1900, were you? A. Pretty well.

Q. But less successfully toward the end of the year than early? A. In Michigan only.

Q. But the Michigan product went throughout a large territory, did it not? A. It did.

Q. And where did you feel that competition springing from Michigan; I mean what territory? A. Throughout the northwest; the middle west.

Q. And that salt went largely into competition with other salt in the Ohio River trade, did it not? A. The Michigan salt; yes.

Q. And the Ohio salt went largely into the Ohio River trade? A. Almost entirely. The Ohio River salt, not the Ohio.

Q. Is it not a fact that in the year 1900 a large part of the product of the United Salt Co.'s works at Cleve-

land went into what is known as the Ohio River market such as Louisville and further west and south? A. I can't give you the percentage; Mr. Turner had entire charge of the distribution.

Q. But you know, as a fact, do you not, that a large part of the salt—a large amount of the salt made at Cleveland at what was known as the United Works, went into the lower Ohio market? A. No special effort was made to place it there as far as I know.

Q. Still you do not answer my question? A. I know nothing about—Mr. Turner had charge of the distribution and I did not pay any attention.

Q. How did prices in the early part of 1901 compare with the prices you obtained in the early part of 1900; I mean in the quality of salt made at the works of the United Co.? A. I don't know about that; the details of the business I am not familar with; I had only to deal with the physical condition of that United plant.

Q. When was it that prices did materially yield under this increase of competition? A. I think in April, 1901.

Q. By that time prices had fallen so that it became apparent that through this increase of competition lower prices must rule in the future? A. Yes.

Q. You were president of the National Co.? A. I am now.

Q. What was the date of the annual meeting of the stockholders of that company? A. The fourth Wednesday in March.

Q. Was it the same in the years 1899, 1900 and 1901? A. I think so.

Q. Did you have any special meetings of the stockholders of the company—I mean any meetings other than the annual meetings of stockholders, in the years 1899, 1900 and 1901? A. I don't recall any; I didn't attend any such meetings, if held.

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Q. Can you produce the minutes of the annual stockholders meeting of the National Salt Co. held in March, 1900? Who has custody of the books in which appear the names of the stockholders of the National Salt Co. for the years 1899, 1900 and 1901, and 1902? Who has custody of those books? A. The Register & Transfer Co. of New Jersey.

Q. Where is the office of that company? A. In Jersey City, N. J. They are now with the Corporation Trust Co. of New Jersey and have been since some time this spring; prior to that they were with the Register & Transfer Co. of New Jersey.

Q. From the time that the National Salt Co. purchased the stock of the United Salt Co., the National Co., voted that stock and elected the directors of the United Co.? A. I don't understand that the National purchased the stock; it exchanged the stock.

Q. From the time that the National Co. entered into the contracts whatever they were, under which it took possession of the plants of the United Co., the National Co. voted the stock of the United Co. and elected the directors of the United Co.? A. Yes.

Q. I now hand to you a pamphlet upon the back of which appears the following: "1900. Annual Report of the National Salt Co. for the Fiscal Year ending December 31st, 1900." Let me ask you if that is a true copy of the report of the company and particularly whether or not the report addressed to the stockholders of the National Salt Co. dated New York, March 27, 1901, and signed A. S. White, President, is the report which the president of the company made to the meeting of the stockholders of the company held on the 27th day of March, 1901? A. I suppose it is; yes.

Q. Please state whether or not, in the report of the president of the National Salt Co., just identified by you, the following appears: "In October, 1899, your

company purchased the entire capital stock of the United Salt Company, an Ohio corporation, which owned three plants at Cleveland, one plant at Pomeroy, Ohio, one plant at Akron, Ohio, and leased four plants located in Meigs County, Ohio"? A. Yes.

Q. Do you remember that that report was made to the stockholders meeting, do you? A. I do.

Q. And it was approved by the stockholders, was it not? A. I think so.

Q. As a matter of fact, this purchase of the stock of the United Salt Co. was also reported to the stockholders meeting held in March, 1900, was it not? A. I don't remember; I was not present at that meeting.

CROSS-EXAMINATION by J. E. Morley:

Q. Prior to the acquisition of the property of the United Co. by the National Co., the National Co. sold practically little, if any, salt in Ohio, did it not? A. The great bulk of the trade in Ohio the Ohio people had. The great bulk of the salt trade was done by the United Salt Co. of Ohio, on account of the prevailing freight rate.

Q. It is a fact, isn't it, that scarcely any salt was sold by the National Co. in Ohio? A. I think it was very little.

Q. At the time of the acquisition of the stock of the United Co. by the National Co., these other Ohio properties that you have mentioned were not acquired, were they? A. Mr. White will have to answer that question; I cannot.

Q. You remember saying, do you not, that besides the United Salt Co. there were doing business in Ohio several other salt companies; a company at Wadsworth, Ohio; one at Akron, Ohio, various plants in the Ohio river district, and the Ohio Salt Co.? A. I can't state whether those were acquired after or before;

about the same time; some negotiations had been in progress during that period.

Q. They were no part of the negotiations, however, that you have related here on your direct-examination? A. No.

Q. In the fall of 1900, the competition which had arisen in Michigan cut into the Ohio trade considerably, did it not? A. Not to affect the prices seriously until 1901.

Q. They were, however, selling considerable salt in the fall of 1900, in Ohio, were they not? A. They were, which displaced the product of the United Salt Co.

Q. So that prices were seriously affected, in the early part of 1901? A. Yes, sir.

Q. What office did you hold in the National Salt Co. in 1899 and 1900, other than that of a director? A. I was chairman of the manufacturing committee; also a member of the executive committee.

Q. You attended the directors meetings pretty regularly? A. Yes. Quite regularly.

Q. Previous to the acquisition by the National Co. of stock of the United Salt Co., Mr. F. B. Squire was not a member of the Board of Directors of the National, was he? A. I don't know positively.

Q. But you never remember of seeing him at a meeting of the Board of Directors, do you, previous to that time? A. I don't remember.

Q. Do you remember a letter which he wrote declining to serve as a member of the Board of Directors of the National Co.? A. After—some time in 1900 or 1901?

Q. No. A. No; I don't remember anything about that.

Q. Do you remember a letter written by Mr. Squire to the Board of Directors of the National Co. some

time in 1900; protesting against the policy of the National Co. in raising prices of salt? A. I do not.

Q. You never saw such a letter? A. Not to my recollection.

RE-DIRECT EXAMINATION by Mr. Snyder:

Q. Following the combination between the United and National under what name was the business of the United plant conducted? A. My impression is it was conducted under the name of the United Salt Co.

Q. Mr. Beardslee, you answered a question or two put by Mr. Clark, in which he said something about cash consideration for the United Salt Co.'s stock; you answered with reference to a cash consideration. I will ask you what the fact was as to whether there was any cash consideration discussed at the directors meeting of September 22, 1899, or at any other time?

Defendants object to the form and substance of the question.

A. There was not.

Q. What consideration other than the exchange of stock was there, if any?

Defendants object to the form and substance of the question.

A. Never was discussed in the directors meeting.

Q. What did the discussion as to legality or illegality refer to?

Defendants object to the form and substance of the question.

A. The directors discussed the question of undertaking to make preferred stockholders in the corporation by guaranteeing the dividends for a period of five years, although there might not be any; and the almost

unanimous opinion of the directors was that such a guaranty would be illegal and the subject was referred to Mr. White, as stated, with the understanding that he would consult an attorney. Afterwards, at any subsequent meetings, the only action taken was for the payment of dividends on the stock of the National Salt Co.

Q. Mr. Beardslee, between June, 1899, and September 22, 1899, I will ask you whether or not you had any conversation with Mr. Squire relative to the Ohio property owned by the United Salt Co.? A. On several occasions.

Q. When; state month? A. In June and July.

Q. And where? A. 26 Broadway.

Q. As nearly as you can, fix the time of the first meeting and conversation with reference to the meeting when Mr. Squire and Mr. Frasch, in June, 1899, appeared, as you say, either at or just subsequent to the directors meeting? A. Within two or three weeks; either at 26 Broadway or at the Waldorf Hotel.

Q. At which place was the first meeting? A. At 26 Broadway.

Q. What was said by Mr. Squire, to you, at that first meeting, with reference to the property of the United Salt Co.?

Each of the defendants object to the question, as to form and substance.

A. Mr. Squire stated that the property of the United Salt Co. being located in Ohio, midway between the New York properties and those of Michigan, and owing to the advantages which they possessed in freight rates, they were able to control a large portion of the salt trade of Ohio; and under a combination which the board proposed to effect, this trade could be made very valuable.

Q. Is that all of the conversation? A. That is the substance of it; to control the salt trade of Ohio, a portion of Indiana, a portion of western New York and western Pennsylvania and also a large trade throughout the south.

Q. Is that all of the conversation had at that time? A. Well, the reason of the geographical—

Q. Was anything else said by Mr. Squire? A. That he would be willing to enter into the combination on the terms proposed, which had been submitted to the board.

Q. Did he state to you, at that time, what those terms were? A. Yes.

Q. What were they; what did he say? A. Nothing was said at that time in reference to the guaranteeing of the dividends; that was the conversation in June.

Q. What did he say was the basis upon which he was willing to buy?

Defendants object to form of question.

Q. State what was said in that connection by Mr. Squire? A. On the basis of $1,250,000 of preferred stock and $125,000 common stock.

Q. What did you say to him concerning that, if anything? A. I objected to the terms—

Q. What did you say to him? A. I said that the New York properties had been put into the combination on much lower valuation and the understanding that he had had for two years past was that the Ohio properties should be put into the combination on the same basis as the New York properties, at not to exceed $1,000,000 in stock.

Q. What did he say to that? A. He claimed that the geographical position was such that he was justified in—I don't know exactly how he specified—but he claimed that he was justified in putting in this property on the valuation which he named. The New

York properties had nearly all accepted preferred and common stock of the National Salt Co. and the amount of stock which he named was considered excessive.

Q. Now, when did you next meet him? A. I met him again in July and we went over the same ground; and as I remember during these discussions no mention was ever made of guaranteed dividends.

Q. When did you first hear of the guaranty of dividends? A. Only a short time before the meeting of September 22nd, when the property was taken over; because, as I said, my home is at Warsaw, N. Y., and I had charge only of the manufacture of products in New York State at that time. I did not have to do with negotiations and control of the properties.

RE-CROSS EXAMINATION by J. H. Clarke, Esq.:

Q. In answering my questions, with reference to the cash payments, asked you on cross-examination, you understood perfectly, did you not, that I referred to the sum of money that was represented by these certificates of indebtedness issued by the National Salt Co. to the American Trust Co. at Cleveland, and which constituted a part of the purchase price of the stock of the United Co. A. I understood that you referred to the dividends that were paid by the National Salt Co.

Q. Do you swear, now, that when answering my question, asked you upon this subject, upon cross-examination, you did not understand me as then referring to the certificates of indebtedness which I described in my last question? A. The certificates of indebtedness have not been mentioned here today around this table.

Q. Will you answer my question yes or no; when you answered my questions with reference to the cash

payment, the questions which I asked on cross-examination, did you or did you not understand me as referring to the certificates of indebtedness which I referred to in my last question? A. I understood you to refer to cash received in the way of a dividend on the stock of the National Salt Co. No questions has been asked me by anyone with regard to the certificates of indebtedness.

Q. Do you mean then, that in answering my question upon cross-examination, with reference to cash payment, you referred to or had in mind, the dividend paid upon the stock of the National Salt Co. which was given in part consideration for the purchase of the stock of the United Salt Co? A. I understood you to ask in regard to a certain amount of money which they may have received and which could only come in the way of dividends on the stock of the National Salt Co. And so far as I remember, no cash was at any time paid to the United Salt Co. in any way whatever except by way of a dividend on the stock.

Q. Then your answer to my last question would be "yes," would it not? A. Yes.

RE-CROSS EXAMINATION by Mr. Morley:

Q. You say, Mr. Beardslee, that the matter of the cash indebtedness of the National to the United Co. never arose in the Board of Directors? A. It did not.

Adjourned to Saturday, July 12, at 10 A. M.

NATHAN S. BEARDSLEE,
LOUIS H. HALL.

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Examination resumed at 10:15 A. M.

Present: Same parties.

WILLIAM B. PUTNEY, JR., being by me first duly sworn, deposes and says as follows:

Direct-examination by A. M. Snyder, Esq.:

Q. State your name? A. William B. Putney, Jr.

Q. Your age? A. Twenty-three.

Q. Your occupation? A. Secretary of the International Salt Co. and assistant secretary of the National Salt Co.

Q. Where do you reside? A. In New York City.

Q. As assistant secretary of the National Salt Co. of New Jersey have you the records of the meetings of stockholders of the directors and of the executive committee of that company from the time of the organization to the present time? A. I have it in so far as the minute books are concerned. I have the minute books in my possession.

Q. Will you turn to the minute book containing the by-laws of the company and find the by-laws fixing the time of holding the annual meeting of the stockholders. Read us the provision with reference thereto. A. Section 1, Article 1: The annual meeting of the stockholders shall be held at the principal office of the company in the State of New Jersey on the fourth Wednesday of March, in each year, after the year 1899, at 12 o'clock M. Polls shall be open from 12.15 to 1.15 p. m. under the supervision of two or more inspectors (no one of whom shall be a candidate for the office of director), to be appointed by vote of the stock present or represented at the meeting." The same article provides for at least ten days notice to be given to each stockholder and a majority of the stock constitutes a quorum.

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Q. Will you now turn to and read the provision with reference to directors? A. "Article 2, Section 1: The Board of Directors shall consist of nine stockholders. The first board shall be elected by ballot at the first meeting of the company and the members thereof shall hold office as herein provided and until their successors are elected by ballot by the stockholders. Section 2: The directors shall be divided into five classes: the first class to consist of two directors to hold office for one year; the second class to consist of two directors to hold office for two years; the third class to consist of two directors to hold office for three years; the fourth class to consist of two directors to hold office for four years; the fifth class to consist of one director to hold office for five years. Such directors shall hold office until their successors are chosen and qualified in their stead. For the purpose of this article the first year constituting a term of office for the first class of directors shall be deemed to have expired on the fourth Wednesday of March, 1900, which is the day fixed for the first annual meeting of the stockholders. At such annual meeting and at each annual meeting thereafter, directors shall be elected for the term of five years, to succeed those whose term of office expires at the time of such annual meeting." Same Article goes on to state that a majority of the Board shall constitute a quorum for the transacting of business.

Q. Please turn to what is called the first meeting of the incorporators held March 20th, 1899, at 3 P. M., and read what action was taken with reference to the adoption of by-laws including those which you have read? A. "Proposed By-Laws for the company were submitted to the meeting. The same were read by the secretary, discussed and finally the following were, on motion duly made and carried, declared to be the by-laws of the National Salt Co."

Receivers' Exhibit 6

Q. Will you return to the record of the meeting held the same day and read resolutions pertaining to the capital stock of the Company? A. "On motion duly made and carried, the following resolution was unanimously adopted: Whereas, this Company has under consideration and contemplation, transactions in the course of its business which, in order to effect the consummation thereof, may require its entire capital stock as fixed in its certificate of incorporation; Now, therefore, be it Resolved, that the Board of Directors may at any time and from time to time, in the course of the business and transactions of this Company, and issue and dispose of capital stock of this Company and certificates for shares thereof, in such amounts as they may deem expedient beyond the amount of $1,000,000 heretofore subscribed as the amount with which this company was to commence business, and up to the amount of $12,000,000."

Q. Will you now turn to the minutes of a meeting of the stockholders of the National Salt Co., held at the office of the company, 55 Montgomery Street, Jersey City, April 15, 1899, at 10 A. M., and first read us the record as to the attendance at the meeting? A. "There were present in person stockholders owning 24,000 shares of the preferred, and 35,010 shares of the common stock of this company, being all of its capital stock."

Q. What action, if any, was taken, as shown by the record, with reference to the amending of Sections 1 and 2 of Article 2 of the by-laws? A. Section 1 was amended so that the Board of Directors was made to consist of thirteen stockholders; each class was to have three members, except the fifth class which was to have one member.

Q. Will you turn now, to the minutes of the second meeting of the Board of Directors of the National Salt Co., held March 21, 1899, at 10:30 A. M., at

32 Nassau Street, New York City, and read the record as to action of the Board on the capital stock of the company? A. "On motion duly made and carried, it was Resolved: that the amount of the capital stock of this company authorized to be issued at present be increased from $1,000,000, the amount with which the company will commence business, to the sum of $12,000,000, and that certificates for such additional stock be executed and issued hereafter from time to time as the business of the company requires."

Q. Will you now turn to the minutes of the fifth meeting of the Board of Directors of the National Salt Co., held at the office of the Company, No. 55 Montgomery Street, Jersey City, April 15th, 1899, 9:30 A. M. What does the record show as to the directors present? A. It shows that all the directors were present.

Q. What, if any, action is shown by the record upon Article 3 of the by-laws? A. The by-laws were amended by resolution as follows: "Article 3 to read as follows: Section 1, The Board of Directors shall appoint not less than two of their number who, with the President shall constitute an executive committee to hold office for one year, which committee shall have and exercise the powers of the Board in the interval between the meetings of the Board. A majority of said committee shall constitute a quorum. Section 2: The Committee shall keep full and complete minutes and records of all its meetings, proceedings and acts held and taken in the intervals between the meetings of the Board of Directors and the same shall be open to the inspection of the Board of Directors."

Q. What action, if any, is shown, at that same meeting, to have been taken, by Article 4 of the by-laws? A. Article 4 was amended to read as follows: "Section 1: The President shall sign all bonds and obligations of the Company. He shall prepare a report

for the annual meeting of the stockholders which shall be submitted to the Board for approval. He shall have and exercise general supervision over all the business affairs of the company and shall have authority to negotiate trade contracts and engage and discharge and fix the salaries of all employees other than those appointed and employed by the Board of Directors or by the executive committee. He shall report from time to time to the Board and executive committee and keep them advised of all business of the company. Section 2: In case of the absence or inability of the President the duties of his office shall be performed by the Vice-President, subject however to direction and approval of the executive committee."

Q. What action, if any, is shown in the record, to have been taken at the same meeting, with reference to Article 8 of the by-laws? A. Article 8, Section 1, was amended to read as follows: "All dividends on the preferred stock shall be declared quarterly on the 15th days of July, October, January and April of each year, and dividends on the common stock shall be declared annually on the 15th day of April in each year, or in the discretion of the Board, may be declared either semi-annually or quarterly on the days fixed for declaring dividends upon the preferred stock."

Q. Have you made an examination of the record pertaining to the election of directors of the company up to and including April 15, 1899, so as to be able to give us the directors of the company, elected and in office, on the 15th day of April, 1899; if so, please do so? A. W. C. Gouinlock, first class; W. W. Hawley, first class; G. C. Otis, first class; S. T. Kerr, second class; N. M. Maclay, second class; N. S. Beardslee, second class; O. L. Gubelman, third class; Edwin Hanson, third class; G. H. Southard, third class; S. W. Young, fourth class; J. A. Young,

fourth class; F. B. Squire, fourth class; A. S. White, fifth class.

Q. When was F. B. Squire elected to the Board, as shown by the record? A. At a meeting on the 15th day of April, 1899.

Q. What record is there as to the election of President on the 15th day of April, 1899? A. "Mr. A. S. White was nominated for director and President to fill the vacancy caused by the resignation of Mr. Lawrence, and on motion duly made and carried, was elected a director of the fifth class and President, and entered the meeting and took the chair as such.

Q. What does the record of the same meeting of April 15th, 1899, show as to the election of other officers and committees? A. "On motion, duly made and unanimously carried, the following officers of the company were elected: First Vice-President, George W. Young; Second Vice-President, Frank Kerr; Secretary, John Alvin Young; Assistant Secretary, C. L. Parr; Treasurer, John Alvin Young; Assistant Treasurer, John Alvin Young; Assistant Treasurer, R. W. White. On motion duly made and carried, the following were unanimously elected as members of the executive committee: George W. Young, F. B. Squire, S. T. Kerr and N. S. Beardslee. On motion duly made and carried, the following were appointed a committee on sales: C. L. Parr, A. S. White, Frank Kerr, Samuel Kerr, M. W. Maclay. On motion duly made and carried, the following were appointed a committee on salaries: G. W. Young, A. S. White, M. W. Maclay, Frank Kerr, N. S. Beardslee, George C. Otis and W. W. Hawley. On motion duly made and carried the following were appointed a committee on manufacturing: N. S. Beardslee, George C. Otis, W. Gouinlock, W. W. Hawley and S. T. Kerr."

Q. Will you turn to the meeting of April 28, 1899, the Board of Directors of the National Salt Co., held

at the Company's office, and read the record with reference to the presentation of the resignation of F. B. Squire? A. "The resignation of Mr. F. B. Squire, as director of the fourth class term expiring on the fourth Wednesday of March, 1903, was presented, and on motion, was laid over for further consideration."

Q. Now, turn to the record of the same meeting, and read that record with reference to the acquisition of property? A. "The President reported to the Board that it would be the policy of the company to acquire, from time to time, salt plants in the States of Ohio and Michigan, equipped with modern machinery and appliances, and on motion, this matter was referred to the executive committee with power to negotiate for the acquisition of such plants and report to the Board of Directors."

Q. Will you now turn to the record of the minutes of meetings of the executive committee, and particularly to the meeting of May 16th, 1889. Is that the first meeting recorded in the book? A. That is the first meeting.

Q. What does the record show as to who were present? A. "There were present, Messrs. A. S. White, N. S. Beardslee, Samuel T. Kerr."

Q. What does the record show with reference to the appointment of a Secretary to the Board? A. "Upon motion, it was Resolved, that the appointment by the President of Mr. W. T. Hunter, as Secretary of the Executive Committee, with authority to perform the duties of Secretary of Committee on Sales, be and the same is hereby approved and confirmed."

Q. Will you now turn to the meeting of that committee held Friday, July 14th, 1899, at 11 o'clock a. m., and read the record with reference to dividends? A. "On motion of Mr. Kerr, seconded by Mr. Young, it was Resolved, that the Executive Committee recommend to the Board of Directors of this Company that

a dividend of 1 3/4 per cent be declared on the preferred stock of the company, payable to the holders thereof out of the earnings of the company, for the period from April 1st to July 1st, 1899, and that at present no dividend be declared on the common stock of the company."

Q. Will you now turn to the record of the meeting of the Board of Directors of the National Salt Co., held at the office of the Company, September 22nd, 1899, at 2:30 o'clock p. m. First read the record as to who were present? A. "There were present Messrs. A. S. White, W. W. Hawley, N. S. Beardslee, George C. Otis, W. C. Gouinlock, Edwin Hanson, Oscar L. Gubelman, Samuel T. Kerr, M. W. Maclay, John Alvin Young. Also Messrs. C. F. Stone and H. Barry, of the company's counsel."

Q. Will you read the minutes of that meeting following immediately what you have just read? A. "The minutes of the meeting of the Board, held on July 14th, 1899, were read, and upon motion, approved. President White presented a report setting forth various agreements and contracts which he had entered into, looking to the acquirement by the National Salt Co. of salt properties in the States of Ohio, Michigan and Kansas. Upon the report of the President was accepted. Following a discussion of the President's report by the several members of the Board present, resolutions were offered and adopted as follows: Resolved that the agreement dated August 25th, 1899, between Thomson Brothers, a Michigan corporation, and this Company, executed by Chas. W. Thomson, Manager for Thomson Brothers, and on behalf of National Salt Co., by A. S. White, President, for the lease of the Thomson Brother's plant, situated at St. Clair, Michigan, be, and the same hereby is, ratified and approved. Also

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Resolved that the contract dated September 2nd, 1899, between Brownlee & Company, a Michigan corporation, and the National Salt Company, executed on behalf of Brownlee & Company, by J. N. Brownlee, President, and on behalf of the National Salt Company, by A. S. White, President, for the purchase of Brownlee & Company's production of salt at their plant, situated at Detroit, Michigan, for a term of five years, be, and the same hereby is, ratified and approved. Also

Resolved that the agreements dated July 29, 1899 and August 15, 1899, between the Detroit Salt Company, a Michigan corporation, and the National Salt Company, executed by J. M. Mulkey, President of the Detroit Salt Company, and A. S. White, President of the National Salt Company, for the leasing of the plant of the said Detroit Salt Company, at Detroit, Mich., be, and the same are hereby ratified and approved. Also

Resolved that the contracts dated September 15, 1899, and September 23, 1899, between the Anchor Salt Company, a Michigan corporation, and the National Salt Company, executed by D. E. Skinner, President of the Anchor Salt Company, and A. S. White, President of the National Salt Company, for the purchase of the production of the Anchor Salt Company, for a period of five years, be, and the same are hereby ratified and approved. Also

Resolved that the contract dated September 13, 1899, between the Tecumseh Salt Company, a Michigan corporation, and the National Salt Company, executed on behalf of the Tecumseh Salt Company, by Ernest G. Henderson, Vice-President, and on behalf of the National Salt Company, by A. S. White, President, for the leasing of the salt plant of the Tecumseh Salt Company, situated at Ecorse, Wayne

County, Michigan, be, and the same hereby is, ratified and approved. Also

Resolved that the agreement dated September 16, 1899, between the Michigan Salt Association, a corporation, and the National Salt Company, executed on behalf of the Michigan Salt Association, by W. S. Eddy, President, and on behalf of the National Salt Company, by A. S. White, President, for the purchase of their salt on hand and all salt produced by them, or under contracts which they hold, up to and including March 1st, 1904, be, and the same hereby is, ratified and approved. Also

Resolved that the agreements dated September 8, 1899, between Justice S. Stearns and the National Salt Company, executed on behalf of the National Salt Company, by A. S. White, President, for the purchase of all salt on hand, or which shall be produced by said Justice S. Stearns, at his salt plant situated at Ludington, Michigan, for a term of five years, be, and the same hereby is, ratified and approved. Also

Resolved that the agreement dated September 9, 1899, between Butters & Peters Salt & Lumber Company, a Michigan corporation, and the National Salt Company, executed on behalf of the Butters & Peters Salt Company by M. F. Butters, Secretary and Treasurer, and on behalf of the National Salt Company, by A. S. White, President, for the purchase of salt on hand and produced by said Butters & Peters Salt & Lumber Company, at its works at Ludington, Michigan, for a term of five years, be, and the same hereby is, ratified and approved. It was further

Resolved that the action of the President in signing the foregoing contracts and agreements, on behalf of the National Salt Company, be, and the same hereby is, ratified and confirmed.

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The advisability of acquiring the plant of the United Salt Company, of Cleveland, Ohio, according to the plan presented by the President, was discussed, and on motion of Mr. Kerr, seconded by Mr. Gouinlock, it was

Resolved that the contract of option as made by the President of this Company for the purchase of certain shares of the capital stock of the United Salt Company, of Cleveland, Ohio, be accepted subject to such alterations and additions as may be approved by the counsel of the parties in interest. It was also

Resolved that none of the leases or contracts ratified by any of the foregoing resolutions be delivered, nor any of the foregoing resolutions certified to the several companies or persons unless and until all the contracts, and also the option above recited, shall have been duly ratified, accepted and executed with such respective companies. On motion of Mr. Hawley, seconded by Mr. Otis, it was

Resolved that the plant of the Loomis Salt Company, of Akron, Ohio, be acquired under the terms of the contract as now held by E. G. Henderson, of Windsor, Ontario.

In the matter of the conclusion of the purchase of the Cleveland Salt Company, and the various other plants mentioned in the report of the President, on the Ohio River, it was, on motion of Mr. Maclay, seconded by Mr. Hawley,

Resolved that the same be referred to the executive committee with full power.

At this juncture Mr. Joy Morton of Chicago, was introduced, and after a verbal statement of the requirements for the attainment by the National Salt Company of the several properties controlled by Joy Morton & Company, of Chicago, it was, on motion of Mr. Hawley, seconded by Mr. Otis,

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Resolved that the question be referred to the Executive Committee with power to conclude a contract with Joy Morton & Company, on terms and conditions as may be necessary in the premises.

On motion, the meeting adjourned."

Q. Will you turn to the meeting of the Board of Directors of the Company, held September 28th, 1899, and read the record with reference to the increase of the membership of the executive committee? A. "It was, on motion, resolved that the executive committee be increased to seven members. And on motion, Mr. Joy Morton was appointed to membership of the executive committee.

Q. Read the motion which follows the one you have just read? A. "On motion of Mr. Gubelman, seconded by Mr. Gouinlock, it was resolved that Mr. W. S. Eddy, of the Michigan Salt Association, be invited to the meeting of the Board of Directors and Executive Committee in order that this company might have the benefit of his counsel."

Q. Will you turn now, to the meeting of the executive committee of the company, held December 6, 1899, at 11 o'clock a. m., and read, first, the record of the members present? A. "There were present Messrs. A. S. White, F. B. Squire, Samuel T. Kerr, Joy Morton."

Q. Will you turn now, to the meeting of the executive committee held October 24th, 1899, at 2 p. m., and read the record as to those present? A. "There were present Messrs. A. S. White, N. S. Beardslee, E. B. Squire, Samuel T. Kerr, Joy Morton."

Q. If the record shows any motion made by Mr. Squire, will you read the same? A. "Upon motion of Mr. Squire, seconded by Mr. Morton, it was Resolved, that in the event of our inability to place the insurance of the company at rates not exceeding one and one-half per cent, we establish a fund for the

purpose of insuring our own properties and set aside for this purpose a sum equal to the amount now paid for insurance premiums; also Resolved, that there be no marine insurance carried on salt shipped from Michigan works."

Q. Will you now turn to the meeting of the executive committee of the National Salt Co., held in the City of Cleveland, Ohio, November 20th, 1899, at 11 o'clock a. m., and read the record as to those present? A. "There were present Messrs. A. S. White, F. B. Squire, N. S. Beardslee, Samuel T. Kerr, Joy Morton; also Mr. W. S. Eddy, of the Saginaw office."

Q. Come now, to the meeting of the same committee, December 6, 1899, at the company's office, and read again the record of those present? A. "There were present Messrs. A. S. White, F. B. Squire, Samuel T. Kerr, Joy Morton."

Q. What does the record show as to distribution of salt in the west? A. "On motion, it was Resolved, that the sale and distribution of salt in the west be under the supervision and direction of a committee to be known as the Western Sales Committee, composed as follows: Joy Morton, Chairman; Mark Morton, W. S. Eddy, Elmer Turner."

Q. Turn, now, to the meeting of the executive committee of the company, held January 6th, 1900, at 11 a. m. What does the record show as to who were present as members of the committee? A. "There were present Messrs. A. S. White, Joy Morton, N. S. Beardslee, Samuel T. Kerr, F. B. Squire; also Mr. W. S. Eddy, of the Michigan Department."

Q. Will you read the record with reference to the Michigan Salt Manufacturing Co., of Marine City, Mich.? A. "The President presented all papers in the matter of arbitration as to the purchase price of the works of the Michigan Manufacturing Co., at

Marine City, Mich., and on motion of Mr. Squire, seconded by Mr. Morton, the President was directed to advise the Michigan Salt Manufacturing Co. that we would accept the award of the arbitration of $105,000 for the plant, and $5,000.00 to Messrs. F. D. Moulton & Co., but that the $75,000.00 awarded by Mr. Shaw, arbitrator, for the prospective profits of the Michigan Salt Manufacturing Co. was not a subject for arbitration, and the arbitrator had not confined his award to the subject-matter presented to him."

Q. Read the record immediately following that? A. "On motion of Mr. Morton, seconded by Mr. Squire, it was Resolved, that the President be and he is hereby authorized to conclude a contract for the acquirement of the property and interest of the Hutchinson-Kansas Salt Co., for a sum not to exceed $750,000.00."

Q. Omit the next motion and read the one following that? A. "On motion of Mr. Squire, the President was authorized to conclude a new contract with the Mathieson Alkali Co., for their output of salt in 1900, at a price not exceeding $3.75 per ton, in bulk, at the works at Saltville."

Q. Read the next motion? A. "On motion of Mr. Morton, seconded by Mr. Beardslee, it was Resolved that a proxy be issued to Mr. F. B. Squire to represent this company at the annual meeting of the stockholders of the United Salt Co., to be held during the month of January, 1900, or at any adjournment thereof."

Q. Read the motion which follows? A. "On motion, Mr. W. S. Eddy was directed to take such measures as were necessary to complete the contract made between John Wansey, of Marine City, and S. C. McLouth, of Marine City, on behalf of the National Salt Co., for the acquirement of one-half interest in the firm of Davison & Wansey."

Receivers' Exhibit 6

Q. Read the next motion? A. "On motion, it was Resolved that the President be and he is hereby directed to conclude a contract with James P. Loomis, of Akron, Ohio, for the purchase of the mortgage for $22,500.00, which he holds on the Loomis Salt Works, for 300 shares of the common capital stock of the National Salt Company, and that on the conclusion of such contract the transfer agent and registrar of the company be and they are hereby authorized respectively to issue and register 300 shares of common capital stock of this company, to James P. Loomis, or order, as consideration for the purchase of said mortgage."

Q. Skip the next two motions and read the one following? A. "The President was authorized to secure by purchase 7 shares of the capital stock of the United Salt Co., for the purpose of supplying one share to each director, in order that they may qualify, in accordance with the law governing corporations."

Hearing and taking of testimony was adjourned to Monday morning, July 14, 1902, at 10 o'clock a. m.

Examination resumed Monday, July 14, 1902, at 10:15 a. m.

WILLIAM B. PUTNEY, JR., on the stand:

Same parties present.

By Mr. Snyder:

Q. Will you turn to the record of the meeting of the executive committee, held February 8, 1900, at 2:30 o'clock p. m., and read the action which appears of record concerning the issuing of notes by the United Salt Co., to the National Salt Co.? A. "Also re-

solved that the action of the President of the United Salt Co., in issuing to the National Salt Co., two notes for $50,000.00 and $39,075.00 respectively, to cover certain advances made by this Company to the United Salt Co., and the action of the President of the National Salt Co. in endorsing said notes and discounting the same with the Atlantic Trust Company and the United States Mortgage & Trust Co., of New York, be and the same is hereby ratified and approved."

Q. Will you now turn to the minutes of the annual meeting of the stockholders of the National Salt Co., held March 28, 1900, at the Company's office, and first read the record with reference to the amount of stock present at that meeting? A. "Parties were present in person or by proxy, constituting more than a majority of the capital stock of the Company, viz: the holders of 42,101 shares of preferred and 59,911 shares of common capital stock, as per list on file with the Secretary."

Q. Will you next turn to the action taken with reference to the alteration of the by-laws? A. "Mr. Beardslee moved, seconded by Mr. Frank Kerr, Resolved, that whereas, in the notice of this meeting notice was given of the proposed alteration of sections 1 and 2 of Article 2 of the by-laws of this company, whereby the Board of Directors should be increased to fifteen members, divided into five classes, and Whereas, there appears present in person or by proxy at this meeting the holders of 75% of all the outstanding common stock of the company and the holders of 75% of all the outstanding preferred stock of the company; Now, therefore, be it resolved, that Sections 1 and 2 of Article 2 of the by-laws be amended so as to read as follows: 'Section 1: The Board of Directors shall be increased so as to consist of fifteen

persons who shall all be stockholders, and the said Board of Directors shall be divided into five classes, each class consisting of three directors. The two additional directors provided for in this by-law shall in the first instance be elected by the Board of Directors as provided in Article 2 of Section 6, and shall become members of the class of directors now consisting of one director only, being the five year class elected March 20th, 1899, now having a four year term and said additional two directors, when elected by the Board of Directors, shall hold office for and during the term of the director now constituting said class or four years from and after the date of this annual meeting. Section 2: At each annual meeting hereafter three directors shall be elected, constituting one class, who shall hold office for five years from the date of their election and until their successors are elected and qualified in their stead.' The motion was put and carried by a vote of the holders of more than 75% of the preferred stock and more than 75% of the common stock voting in favor thereof. The president then declared said amendment carried."

Q. What immediately follows what you have just read in the record? A. "Thereupon the President read his annual report."

Q. What action was taken upon that? A. "Mr. Arthur Turnbull moved, seconded by Mr. Daniel Waters, as read, be adopted and approved, and that the acts, doings of the Board of Directors of the Company, and of the officers of this Company, in the acquisition and purchase of the properties acquired by the company, as set forth in the report of the said President, and all of their acts, deeds on behalf of the company, up to the date hereof, be and the same hereby are authorized, adopted, ratified, approved and confirmed by the stockholders of this company. The motion was put and carried by the vote of all the

stock represented by the parties in attendance at the meeting."

Q. Will you read a copy of the report which was to be presented to the stockholders by Mr. White, and upon which action was taken as just read? A:

"New York, March 28th, 1900.

To the Stockholders of the National Salt Company:

I have the honor to present to you a brief report of the completion of the organization of this Company as contemplated when it was incorporated, and of its present condition. Immediately after incorporation, this company acquired, by purchase, the following properties:

Cayuga Lake Salt Co., Ludlowville, N. Y.
Ithaca Salt Co., Ithaca, N. Y.
Glen Salt Co., Watkins, N. Y.
Silver Lake Salt Co., Perry, N. Y.
Kerr Salt Co., Rock Glen, N. Y.
Bradley Salt Co., Warsaw, N. Y.
Empire Dairy Salt Co., Warsaw, N. Y.
Hawley Salt Co., Warsaw, N. Y.
W. G. Gouinlock, Plant No. 1, Warsaw, N. Y.
W. C. Gouinlock, Plant No. 2, Warsaw, N. Y.
Warsaw Salt Co., Warsaw, N. Y.
Pearl Salt Co., Pearl Creek, N. Y.
Pavilion Salt Co., Pavilion, N. Y.
Le Roy Salt Co., Le Roy, N. Y.

The above properties embraced an output of about 90% of the product of evaporated salt in the State of New York.

Receivers' Exhibit 6

This Company also acquired the business of the National Salt Company of West Virginia, a distribution company, which handled the product of the above named works.

They also acquired leases on the following properties:

Crystal Salt Co., Salt Vale, N. Y.
York Salt Co., York, N. Y.
Castile Salt Co., Castile, N. Y.
Royal Salt Co., Mt. Morris, N. Y.
Miller Salt Co., Warsaw, N. Y.
Lackawanna Salt Co., Mt. Morris, N. Y.

Immediately after the perfection of a system for handling the properties in New York State that would produce the best results, I proceeded, under instructions of your Board of Directors, to negotiate for salt producing properties in the west. At a special meeting held on September 22nd, 1899, I submitted to your Board of Directors the result of these negotiations, and by unanimous vote, they ratified and approved the making of contracts and purchase of property by which was acquired about 86 % of the production of evaporated salt in Ohio; about 94% of the product of Michigan. Details of these transactions are on file in our New York office.

On January 29th, 1900, we entered into a contract to acquire the entire capital stock of the Hutchinson-Kansas Salt Company, of Hutchinson, Kansas, who own 9 plants located in and about Hutchinson, having a capacity of about 1,000,000 barrels of salt, annual. This, together with the other plants owned by us in Kansas, constitutes more than 90% of the product of that State.

On February 27th, 1900, we acquired control of the product of salt in Texas by the purchase of the product of one plant of the capacity of, about, 50,000

barrels of salt annually, and the controlling interest in another plant with a capacity of, about, 300,000 barrels of salt annually.

This Company now controls more than 90% of the production of salt evaporated from brine in the United States, east of the Rocky Mountains, which is produced in the following localities:

New York, about 2,250,000 bbls. or 22 1/2 per cent.

Ohio, about 1,400,000 bbls. or 14 per cent.

Kansas, about 1,250,000 bbls. or 12 1/2 per cent.

Michigan, about 4,750,000 bbls. or 47 1/2 per cent.

Texas about 350,000 bbls. or 3 1/2 per cent.

Your attention is invited to the fact that earnings of 1 1/2¢ per 100 lbs. of salt will pay 7% on our preferred stock, while 2¢ more per 100 lbs. will pay 8% on our common stock, aggregating 4 1/4¢ per 100 lbs. More than 3 1/4¢ per 100 lbs. profit can be realized from economies in the manufacture of packages and the distribution of salt, which economies can only be attained by a concern doing a tremendous volume of business, and are unavailable to any competitor of ours. I purposely avoid reference to our facilities for the manufacture of salt, which, I believe, are not excelled by competitors at home or abroad.

Our present earnings are highly satisfactory and much in excess of dividend requirements, I have no doubt that at the end of our fiscal year your directors, while not departing from their established policy of creating and maintaining a surplus, will take such action regarding the dividend on common stock as will be most gratifying to the holders of that class of securities.

Respectfully submitted:

A. S. WHITE."

Receivers' Exhibit 6

Q. Will you read the record as to the election, or rather the President's declaration, as to the directors elected at that meeting? A. "The President then declared the said Messrs. Frederick F. Culver, Frederick R. Blount and Warren W. Hawley duly elected as Directors for the term expiring on the fourth Wednesday of March, 1903."

Q. Will you now turn to the record of the meeting of the Board of Directors held March 28, 1900; and first read the record as to those present? A. "There were present Messrs. A. S. White, Frederick F. Culver, N. S. Beardslee, Frederick R. Blount, M. W. Maclay, Joy Morton, John Alvin Young, Oscar L. Gubelman.

Q. Will you next read the record of that meeting pertaining to the election of the two additional directors? A. "The President reported that at the annual meeting of the stockholders of the company held this day, sections 1 and 2 of article 2 of the by-laws were amended, increasing the Board of Directors to fifteen members, divided into five classes of three directors each. By this amendment two places were created in the class of directors the term of which expires on the fourth Wednesday of March, 1902. On motion of Mr. Morton, seconded by Mr. Blount, it was resolved that we proceed to the election of two directors to fill the places created in the class of directors for the term expiring on the fourth Wednesday of March, 1904. The President called for nominations; whereupon Mr. N. S. Beardslee nominated for directors to fill these two places Messrs. William C. Gouinlock and Walter S. Eddy. There being no further nominations the chairman declared the nominations closed. The Board proceeded with the balloting, with the result that the above named parties were unanimously elected directors of the class expiring in 1904."

Receivers' Exhibit 6

Q. Will you now turn to the record of the meeting of the Board of Directors of the National Salt Company held April 16th, 1900, and read the record pertaining to dividend on the common stock? A. "Mr. Maclay presented the following resolutions which were seconded by Mr. Gubelman and on voting were unanimously adopted: Resolved that the policy of this company is to pay dividends on its common stock at the rate of 6% per annum from the surplus earnings such extra dividends as in the judgment of the directors is considered conservative; and Resolved that a quarterly dividend of the common stock one and one-half per cent is hereby declared payable August, 1900, out of the net earnings and an extra dividend of one-half per cent is hereby declared out of the surplus net earnings payable August 1st, 1900."

Q. Now turn to the record of the meeting of the Board of Directors held October 17th, 1900. First tell us how many directors are shown present by the record? A. Eleven.

Q. Will you read the record with reference to Mr. E. B. Squire. A. "At the call of the roll, Mr. George W. Young called the attention of the Chair to the fact that Mr. F. B. Squire was not a stockholder of record of this company and was accordingly disqualified as a director. On confirmation of this statement by the Secretary, the Chair declared vacant the position formerly held by Mr. F. B. Squire on this Board of Directors."

Q. Will you read the record with reference to a dividend on the common stock? A. "This is found in the meeting of the directors of November 14th, 1900. "The treasurer presented a statement showing the financial condition of the company and upon motion of Mr. Blount, seconded by Mr. Gubelman, it was Resolved that a dividend of one and one-half per cent on the common stock be declared payable December

1st, 1900, out of the surplus or net profits of the company on hand April 30th, 1900, after paying all dividends for the preceding year on preferred stock to the holders of record November 24th."

Q. Now turn to the meeting of the Board of Directors of January 16th, 1901. Read the record with reference to the dividend on the common stock. A. "On motion of Mr. Hawley, seconded by Mr. Maclay, it was Resolved that a quarterly dividend of one and three-quarters per cent on the preferred stock and a quarterly dividend of one and one-half per cent on the common stock be declared payable on February 1st, 1901, to the holders of record January 24th, 1901."

Q. In the record of the same meeting read the action of the meeting filling the vacancy on the Board. A. "Mr. F. R. Blount presented the name of John H. Flagler as a nominee for director to fill the vacancy on the Board created by the removal of F. B. Squire, and by unanimous vote Mr. Flagler was elected a director of his company to fill the existing vacancy for the term expiring on the fourth Wednesday of March, 1903."

Q. Will you turn to the record of the action taken with reference to the protest filed by Paige & McNair. First give us the date of the meeting and the character. A. "Meeting of the executive committee held on the 11th day of March, 1901, at 11 o'clock a. m. There were present Messrs. A. S. White, Joy Morton, W. S. Eddy, Samuel T. Kerr, Mr. Kerr moved, seconded by Mr. Morton, that whereas E. O. McNair, of Buffalo, New York, and other stockholders of the National Salt Company who were such stockholders of the National Salt Company who were such stockholders on, prior and subsequent to September 22nd, 1899, and have at all times continued to be such stockholders and have never consented in any way to the

contracts between the National Salt Co., and the stockholders of the United Salt Co., have requested and demanded the directors of the National Salt Co. to take such action as may be necessary including legal proceedings to annul the contract between the stockholders of the United Salt Co. of Cleveland, Ohio, and the National Salt Co., entered into September 22, 1899, on the grounds, amongst others, that the said contract is a fraud upon the National Salt Co., was obtained by fraud and fraudulent representations, is *ultra vires* of both the United Salt Co. and National Salt Co. and violates the Anti-Trust laws of Ohio, and is void and constitutes spoliation of the stockholders of the National Salt Co., and whereas upon investigation the grounds of objection are found to be fully supported by the facts and the National Salt Co. has been advised by its counsel that said contract can be annulled on the ground stated; Resolved that suit be brought by and in the name of the National Salt Co. to annul and set aside said contract and to that end and for all other purposes that Walter S. Eddy, as agent of the National Salt Co., be and he is hereby placed in full charge, control and management of the Ohio Department of the National Salt Co., and report at each meeting of the executive committee, and be and is hereby instructed, authorized, empowered and directed to take such steps and action and employ such agents and legal counsel as he may deem advisable or necessary, and that he take immediate steps by and with the advice of such counsel as he may select to have said contract between the National Salt Co. and the stockholders of the United Salt Co. annulled, and that all the acts and doings of said Walter S. Eddy, in connection with said Department, performed or hereafter performed, be and the same are hereby approved, ratified and confirmed, and the

National Salt Co. does and will hereafter hold and save said Walter S. Eddy harmless in relation thereto. This motion was put to vote and carried, all voting aye."

Q. Will you now turn to the meeting of the Board of Directors of the National Salt Co. held March 26th, 1901, and first give us the record of those present at the meeting. A. There were present Messrs. A. S. White, Edwin Hanson, J. H. Flagler, W. S. Gouinlock, Samuel T. Kerr, O. L. Gubelman, Walter S. Eddy, John Alvin Young."

Q. What action, if any, is shown by the record, of the Board upon the doings of the executive committee; read the record? A. "The Secretary read the synopsis of the transactions of the executive committee at its meetings held on February 21st and March 11th, 1901, and upon motion of Mr. Young, seconded by Mr. Flagler, it was Resolved that the minutes of transactions of the executive committee, as reported, and their acts as therein set forth, be and they are hereby ratified and confirmed."

W. B. PUTNEY, JR.
LOUIS H. HALL.

WILLIAM T. HUNTER, being first duly sworn, deposes and says:

By Mr. Linn:

Q. What is your full name and age? A. William T. Hunter; age 31.

Q. What is your residence and your present occupation? A. I reside in Arlington, Town of Kearney, New Jersey. My occupation is Secretary of the Atlantic Securities Co.

Receivers' Exhibit 6

Q. Were you ever in the employ in any capacity of the National Salt Co. of New Jersey? And, if so, at what time and in what capacity; and how long did that employment continue? A. I was in the employ of the National Salt Co. from April 15, 1899, until March 1st, 1902, in the capacity of Secretary to the President, Secretary to the executive committee and assistant secretary of the company respectively.

Q. How were you first employed? A. As Secretary to the President and Secretary to the Executive Committee.

Q. How soon, if you know, was this after the organization of the National Salt Co.? A. I should say about two weeks; practically the beginning of the company.

Q. Who was the President of the National Salt Co. at that time? A. Archibald S. White.

Q. At that time, what properties did the National Salt Co. own or control, and over what territories did its business extend? A. It was, at that time completing taking ownership and control of about a dozen concerns in New York State and one plant at Saltville, Va.

Q. If you know, you may state what proportion of the plants, or what number of the plants in New York State, were then owned or controlled by the National Salt Co.

Defendants object to the form of question and substance.

A. I judge 90 or 95% of the plants in New York State.

Q. What plants or salt works, in New York State, were not owned or controlled by the National Salt Co., at that time, if you know? A. The plants of the Worcester and the Genesee Salt Companies and the coarse salt production of Syracuse.

Q. You say you were Secretary of the Executive Committee of the National Salt Co. I would ask you to state who were the members of that Executive committee during the year 1899. A. As near as I can recall it consisted of the President of the Company, Mr. George W. Young, Mr. Samuel T. Kerr, Mr. N. S. Beardslee and, I think, Mr. F. B. Squire.

Q. Had you known Mr. A. S. White, or Mr. F. B. Squire, before your employment by the National Salt Co.? A. No, sir.

Q. During the year 1899, you may state whether or not negotiations were undertaken by and between the National Salt Co. and the United Salt Co. of Ohio, looking toward the acquisition by the National Salt Co. of the United Salt Co.'s properties, and, if so, when those negotiations commenced and by whom they were conducted?

Defendants object to form of question and generally.

A. I simply knew in a general way that negotiations were under way during the summer of 1899, for the acquirement of the United properties; I was not familiar with any details prior to September, of that year, or as to the date they commenced nor the persons transacting them.

Q. What persons, if any, did you hear talking over the matter of the acquisition of the United properties, during that summer; who were connected with either the United Salt Co. of Ohio or the National Salt Co. of New Jersey? A. I remember that there were several conferences between the President of the National Salt Co. and Mr. Squire, on this subject, on one or more of which occasions Mr. Herman Frasch was present.

Q. You may state what was the substance of the conversations between these parties, in regard to the

two properties mentioned? Give as near the exact conversation as you can recall?

Defendants object to the form of question, and also generally.

A. As I was not a participant in these conferences, I could not attempt to give even the substance of them.

Q. What conversations, if any, did you hear or participate in, between the executive committee of the National Salt Co. prior to September 22nd, 1899, in regard to the acquisition of the United Salt Co.'s properties?

Q. If I can recall correctly, the matter of acquiring the United properties was presented in a general way at the meeting of the executive committee of the National Salt Co. held prior, or just prior, to the Board meeting at which action was taken on this subject.

Q. Now, you may state, Mr. Hunter, what was said in your presence, if anything, by that committee, or any of them, at that meeting, in regard to the United Salt Co.'s properties?

Defendants object to the form of question also the substance of the question.

A. I cannot recall exactly who were present, but the general desirability of acquiring that particular company was discussed, and, if I am—if I can recall correctly the price and other details was generally discussed.

Q. What, if anything, was said, at that meeting, as to the object of acquiring the property of the United Salt Co. of Ohio?

Defendants object to the form of question, and generally.

A. It was generally understood that the United Salt Co. property was the key to gaining control of the salt trade in that territory.

Q. Do you recall whether or not Mr. Squire was present at that meeting? A. I don't recall.

Q. You may state whether or not, at that meeting, or at any meeting at which Mr. Squire and Mr. White and the other officers of the National Salt Co. were present, there was, in your presence, any conversation as to the competition between the United Salt Co. and the National Salt Co., and the question of prices in the territory occupied by the National Salt Co.; and if there was any such conversation, state, as near as you can recall, what it was.

Defendants object to the form and substance of the question.

A. I cannot recall any specific conversations on this subject, I do remember that Mr. Squire was present in our offices, on several occasions when this subject was under discussion. But I would not attempt to give the outcome of those discussions or even attempt to repeat the conversations.

Q. Coming down, now, to the meeting of the executive committee on the 22nd day of September—meeting of directors of the National Salt Co., on the 22nd day of September, 1899, you may state, if you recollect, who were present at that meeting? A. As to that I would have to refer you to the records of the company; I do recall, however, that there was a goodly number of the Board present.

Q. Just what number? A. Mr. White, the President; Mr. Beardslee, Mr. Samuel T. Kerr; Mr. W. W. Hawley, Mr. W. C. Gouinlock; Mr. John Alvin Young, Mr. O. L. Gubelman—and I think Mr. M. W. Maclay. The latter part of the meeting I believe Mr. W. S. Eddy and Mr. Joy Morton were present

Q. At that meeting, did the subject of the acquisition of the United Salt Co.'s properties come up for discussion? A. Yes; Mr. White, as President of the

Company, presented a certain proposition from the holders of a majority of the stock of the United Salt Co.

Q. You may state that you recollect, and all that you recollect, of the discussion, at that meeting, in regard to the acquisition of the United Salt Co.'s properties?

Defendants object to the form of the question and also generally.

A. The proposition, as presented, proposed an exchange of stock of the United Co. for stock of the National Salt Co., on the basis of the share and a quarter of preferred and a share and a quarter of common of the National, together with guaranty of a sum equal to $106.25 for every share of stock of the United Co. so exchanged; considerable discussion was had, first, as to the necessity for paying so high a price, and next as to the manner in which the cash guaranty was to be paid, after a considerable general discussion a resolution was adopted by unanimous vote, as near as I can recall, authorizing the exchange on the basis named, and to be completed according to advice of counsel.

Q. What did this sum of $106.25 for each share of stock of the United Salt Co. proposed to be exchanged represent?

Defendants object to form and substance of question.

A. When the proposition was presented to the National Co., those representing the United interests claimed that they were turning over stock of an established company for stock of a company yet in its initial condition, and therefore, they demanded some guaranty that for a certain period, at least, they would receive some return on the stock which they were to

receive in exchange for their United holdings. The amount of $106.25 was made up on the basis of seven per cent. dividends on the preferred and ten per cent. dividends on the common stock so issued to them, for a period of five years.

Q. What, if any discussion was there, in that meeting, in regard to this sum of $106.25 per share that you have just referred to?

Defendant objects to form and substance of question.

A. It was generally understood, as evidenced by the discussion held at that time, that it was unlawful to guarantee dividends on any portion of the company's stock, in preference to the balance of the stock outstanding.

Q. State what discussion there was in regard to that?

Defendants object to the form and substance of question.

A. Different members of the Board expressed this opinion and it was finally decided to refer the matter to the attorneys for the different interests to arrange for the carrying out of the contract, in some way as to be lawful.

Q. Then, as I understand—at what time did you first hear of this proposed payment of $106.25—or guaranty of $106.25 per share of the common stock of the United Salt Co. From what source did you hear of it? A. Some time during the month of September, 1899, just prior to the presentation of this matter to the Board. I do not recall from what source I first learned of the amount decided upon.

Q. Can you recall by whom you heard this question of a guaranteed payment first discussed?

Receivers' Exhibit 6

Defendants object to form of question and generally.

A. I believe the first knowledge I had of the discussion of the amount to be named in the guaranty was from a conversation held between Mr. White and Mr. Cornell, of Davies, Stone & Auerbach, who were, at that time acting as attorneys for the National Salt Co.

Q. When, if you can recall, did you first hear any conversation in regard to this question of guaranteeing dividends upon the stock to be exchanged by the National for the stock of the United Co., and by and between them were such discussions held?

Defendants objects to the form of question, and generally.

A. I believe it was at the same time and same conversation I have just referred to.

Q. Can you give the substance of that conversation, or what was said by either party, at the time? A. I can not.

At this point the hearing of testimony was adjourned, to be resumed at 2:30 o'clock.

Hearing resumed at 2:30.

At the date of this meeting, on the 22nd of September, 1899, you were Secretary of the executive committee of the National Salt Co.? A. Yes.

Q. Did you keep the minutes of that meeting? A. I did.

Q. What if anything was said in the minutes of that meeting, in regard to the question as to the legality of guaranteed dividend? A. I don't recall

that anything was mentioned in the minutes of the executive committee of that subject.

Q. Did you, at that time, keep the minutes of the directors of the National Salt Co.? A. I did.

Q. Did you keep the minutes of that directors meeting held on the 22nd day of September, 1899? A. I did.

Q. What, if anything, was put in the minutes of the directors meeting of that date, in regard to the legality of guaranteed dividends? A. I don't think the minutes of the directors' meeting made any reference to that question.

Q. When was the arrangement between the National Salt Co. and the United Salt Co. finally consummated? A. On the delivery of the first block of United stock which I believe was on October 2nd, 1899.

Q. How much stock was delivered on that day? A. I cannot remember exactly; the greater part, however, of the stock of the United Salt Co.

Q. Can you tell from recollection about how many shares were delivered on that day? A. I think in the neighborhood of 9,000 shares; but I can't recall any better than that.

Q. By whom were those shares delivered? A. By Mr. Goff, of the firm of Kline, Carr, Tolles & Goff, Cleveland, Ohio.

Q. To whom were they delivered? A. They were tendered and delivered to Mr. Cornell, I believe, and re-delivered to Mr. Goff who in turn delivered them to the American Trust Co. of Cleveland.

Q. Were you present at the time that delivery was made? A. I was.

Q. Who was Mr. Cornell? A. Mr. Cornell is a member of the firm of Davies, Stone & Auerbach, of New York, who were then acting as attorneys for the National Salt Co.

Receivers' Exhibit 6

Q. For whom did Mr. Goff profess to be acting, at that time?

Defendants object to form of question and generally.

A. For the stockholders of the United Salt Co.

Q. What, if any, conversation did you have, at that time, with Mr. Goff, or did Mr. Goff have with Mr. Cornell, in your presence, in regard to the arrangement between the United Salt Co. and the National Salt Co.?

Defendants object to the form and substance of the question.

A. I was present with Mr. Goff in Mr. Cornell's office, at the time they were deciding as the advisability of issuing these certificates of indebtedness, and Mr. Goff, if I recall correctly, expressed his satisfaction at their form and execution.

Q. What, at that time, was said by Mr. Goff, if anything, in regard to the question of guaranteed dividends? A. I do not recall that.

Q. What was said by Mr. Cornell, at that time, in that respect? A. Mr. Cornell, I believe, expressed himself as of the opinion that the form decided upon was the only form that guaranty could take.

Q. When, if you know, was the balance of the certificates of stock of the United Salt Co. delivered? A. I believe some were delivered on the 26th of October, some possibly in December and the last the first part of January. I may be wrong as to those dates.

Q. By whom were the remainder of those certificates delivered, if you know? A. The second lot was brought on by Mr. Goff. The others, I think, came by registered mail from him.

Q. How were these certificates of stock of the United Salt Co. transferred? A. When they were

brought to New York they were in the name of the National Salt Co. The National Salt Co. endorsed them either in blank or to the American Trust Co., as trustee.

Q. Were you present at the time those endorsements were made? A. I was.

Q. Now you may state, Mr. Hunter, what conversations, if any, you had at either of these times when Mr. Goff was in New York delivering certificates of stock, in regard to the general arrangement or deal between the United Salt Co. and the National Salt Co.

Defendants object to the form of question and generally.

Q. On the occasion of the first visit of Mr. Goff to New York, on this matter, we had a friendly talk, while the matter of endorsing certificates was progressing, on the general subject of the two companies getting together. It was simply a general conversation in which we both seemed to be satisfied that by this deal the National Co. had practically gained control of the salt trade throughout the Middle West; the details of the conversation beyond that I cannot recall.

Q. What, if anything, was said between you and Mr. Goff, in regard to the effect of the arrangement upon prices of salt? A. I don't recall that that was touched upon, at all.

Q. What, if anything, was said about the effect of that arrangement upon competition between the two companies? A. I do not recall any more than what I have given.

Q. Going back, now, Mr. Hunter, a while, you said, I believe that Mr. Squire, of the United Salt Co., was in New York, at various times, prior to October, 1899, in regard to the proposed arrangement between the

United Salt Co. and the National Salt Co.? I will ask you now to state, as near as you recollect, how many times, to your knowledge, he was here upon that business?

Defendants object to form of question and generally.

A. Mr. Squire visited our offices half a dozen or more times prior to the date that has been mentioned, but I could not say that he was there on the business of these negotiations entirely; I was not always present when he was at the office of our company.

Q. You may state generally, Mr. Hunter, what conversation you did hear, at any of these visits, between Mr. Squire and the officers of the National Salt Co., in regard to the arrangement proposed between the United Salt Co., and the National Salt Co.

Defendants object to form of question and also generally.

A. I could not answer that very definitely; I simply remember being present when Mr. Squire was explaining the advantages of the location of the United plant, and its extreme value on account of the Frasch patents.

Q. What was the object and purpose of the arrangements that was finally consummated between the United Salt Co., and the National Salt Co., as expressed by the officers and directors of the National Salt Co. or by any of the officers of the United Salt Co., or by either of them?

Each of the defendants objects to the form of the question, and also to its competency, relevancy and materiality.

A. I could not say.

Receivers' Exhibit 6

Q. Was that question talked over, at all, in your presence, by these gentlemen, or either of them, and if so, what was said? A. Well, naturally, this question was very exhaustively discussed by the members of the Board, when this proposition was first presented; it was pretty generally understood by all hands present that the acquisition of the United Salt plant would almost, if not entirely, eliminate competition in that section.

Q. What statements were made, if any, to that effect, in the meetings of the Board?

Defendants object to the form of the question and also generally.

A. I cannot recall the exact statements made by anybody at that time.

Q. You remained as secretary of the National Co. until what date—I mean assistant secretary? A. Until March 1st of this year.

Q. After the arrangement was finally completed between the National Salt Co. and the United Salt Co., in what manner was the business of the United Salt Co. carried on, if you know? A. For a while, it was carried on under the old Board and officers of that company.

Q. For how long a period did that state of affairs continue? A. I think about three to six months.

Q. Who were the managing officers of the United Salt Co. during that period? A. Mr. F. B. Squire was President, and Mr. Elmer Turner was the secretary and treasurer, I believe; they were the managing officers.

Q. Will you state whether or not correspondence with regard to the business of the two companies with each other was carried on, during this period, between the respective officers of the company? A. I believe that such was the case, but as to the actual running

of business affairs of that company I am not in a position to testify.

Q. In your capacity as assistant secretary of the National Salt Co. did you see correspondence, after this arrangement between the two companies had been made, between Mr. Squire, as President of the United Salt Co. and the officers of the National Salt Co., in regard to the business of the United Salt Co.? A. I did.

Q. Up to until about what period, if you recollect, was the business of the United Salt Co. continued under its old Board of officers; after the arrangement with which you say was consummated in October, 1899? A. I do not recall that; I think it was in the spring of 1900.

Q. During the time of negotiations between the United Salt Co. and the National Salt Co., what negotiations, if any, were carried on looking toward the acquisition of other salt properties by the National Co.? I mean, what negotiations came under your observation and within your knowledge, in your capacity of assistant secretary of the National Salt Co. and secretary of the executive committee? A. About that time negotiations were under way for controlling the out-put of the Michigan Salt Association, and a number of outside manufacturers.

Q. what was the general object and purpose of the National Salt Co. in acquiring these properties?

Defendants object to the form of the question and generally.

A. As near as I could gather to have a company strong enough to regulate the output of salt and the prices for same.

Q. What effect, if any, did the arrangement between the National Salt Co. and the United Salt Co. have upon the price of salt in the State of Ohio?

Receivers' Exhibit 6

Defendants object to the form of question and generally.

A. I do not recall.

Q. Do you recollect any conversation with Mr. Squire prior to the final consummation of the arrangement between the United Salt Co. and the National Salt Co., in regard to the question of guaranteeing dividends upon the stock of the United Salt Co. proposed to be exchanged; and if so, state when and where those conversations were and what was said upon that subject?

Defendants object to the form of the question and generally.

A. I do not recall.

CROSS-EXAMINATION by Mr. Clarke:

Q. Mr. Hunter, have you any present connection with the National or International Salt Co.? A. None whatever.

Q. Were you assistant secretary of the National Salt Co. at the time of and after the organization of the International Salt Co? A. I was.

Q. You have spoken of the National Salt Co. making contracts with the Michigan Salt Association, under which the National Salt Co. controlled the output of the Michigan Association. State whether or not that contract continued in effect and was acted upon by the National Salt Co. up to the time that you left the employ of the National Co. on March 1st? A. To the best of my knowledge, the contract was still in force on that date.

Q. And up to that time the National Co. continued, did it not, to sell the output of the Michigan Salt Association? A. It continued in control of the sale of the output.

Q. What percentage of the total output of salt of this county did the Michigan Salt Association control; if you know? A. I think it was estimated about fifty per cent.

Q. Is that a correct estimate? A. From 40 to 50, I think is correct.

Q. What officer of the National Co. had special charge of the sales of the salt of the Michigan Salt Association? A. I should think the manager of the Michigan Department had the legal jurisdiction over that matter; Mr. W. S. Eddy.

Q. Did Mr. Eddy have the control of the prices of that salt? A. Under the advisement of the executive committee of the company.

Q. Is he still in control? A. He was, at the time I left the company.

Q. What is the fact, Mr. Hunter, as to Michigan salt coming into competition, with Ohio salt, in the years 1899, 1900, 1901, and, if you know, 1902? A. In the year 1899, competition was very keen, in 1900 and 1901 a good deal of that had been eliminated; in 1900 it had been eliminated; in 1901, there was competition again.

Q. Then, there is a natural competition in the market between the salt produced in Michigan and that produced in Ohio? A. To a large extent, yes.

Q. Now, the National Salt Co., I believe, acquired, by purchase or otherwise, the control of a number of salt producing plants in Ohio, other than that of the United Salt Co., did it not? A. Yes, it purchased outright the Akron—I mean the Loomis Salt Plant, of Akron, Ohio, and entered into purchase contracts with the various salt plants on the Ohio River; I think there were five or six of them.

Q. Precisely what do you mean by "purchase contracts"? A. Contracts for the purchase of their output.

Receivers' Exhibit 6

Q. How long, so far as you know, were those purchase contracts carried out by the National Salt Co.? A. I think but a very short time, when new contracts were made by Mr. Squire, of the United Salt Co., to take place of the former contracts made by the National.

Q. Did the National Salt Co. operate any salt producing plants in Ohio, other than that of the United Co. at Cleveland? A. I do not recall that it did.

Q. What became of those Ohio River plants? A. I really don't know.

Q. Were they operated, at all, after the contracts were made for their control? A. I think in one or two instances they were operated, and the salt taken by the United Salt Co.

Q. That was while the United Co. was being run by the—operated by the National Co.? A. That was just subsequent to the exchange of stock and while Mr. Squire was still President of the United.

Q. The fact is, is it not, that immediately after the purchase of the stock of the United Co. by the National Co., the committee having charge of the manufacture of salt, on behalf of the National Co., took charge of the direction and operation of the works of the United Co. of Cleveland? A. I think that it was some three or six months before the manufacturing committee really took charge of that plant.

Q. Do you remember that with any distinctness or is that merely an impression? A. I remember as an actual fact that the manufacturing committee did take charge; but as to the time I am not sure; it was not immediately.

Q. The National Co. purchased the stock, or in some manner controlled the output of certain salt works in Kansas, did it not? A. At a subsequent date; January, 1900, it acquired the Hutchinson, Kansas, Salt Co.

Receivers' Exhibit 6

Q. Did the National Company operate this plant at Hutchinson, Kansas, up until the time you left the employ of the company? A. Yes.

Q. State whether or not the National Co. acquired the stock of any salt manufacturing company other than the Kansas Co. and the United Co? A. Do you mean in any particular place?

Q. Anywhere? A. It acquired the stock or the major portion of the stock of the Lone Star Salt Co. at Grand Saline, Texas.

Q. Any other stocks of other companies? A. Well, since that date it acquired the stock of the Anchor Salt Co. of Michigan. I don't recall any other.

Q. When did the National Co. acquire the stock of the Lone Star Co.? A. I don't recall just when that was.

Q. Can you recall about year? A. I think in 1900.

Q. Did the National Co. continue to operate the Lone Star Co. up to the time you left the employ of the company? A. It continued to own the stock; and govern the control of the company.

Q. By governing the control of the company you mean governing the output of the works? A. Naturally.

Q. About what date did the National Co. acquire the capital stock of the Anchor Salt Co.? A. I think that was last fall.

Q. 1901? A. Yes, it formerly controlled the output of the salt of that plant under purchase contract.

Q. Where is the plant of the Anchor Salt Co. located? A. Ludington, Michigan.

Q. Is that a large plant? A. A plant of considerable size; about an average sized plant.

Q. Did the National Salt Co. continue to control the business and output of the Anchor Salt Co. up to the time you left its employ? A. To the best of my knowledge.

Q. I suppose the National Co. continued to manage the various plants owned or controlled by it in the State of New York, during the year 1901 and up until the time you left the employ of the company in 1902, in substantially the same manner as it had done prior to 1901? A. In what way do you mean; I don't know of any change.

Q. You spoke, Mr. Hunter, of Mr. Squire speaking of the great value of what were called the Frasch patents; what was said about those? A. It was their claim that those patents would reduce the cost of the production of salt so enormously that it would drive out all competition.

Q. That is, they regarded them as of very great value? A. Extreme value.

Q. You spoke, I think, of Mr. Squire being a member of the executive committee; is it not a fact that he did not attend any meetings of that committee or participate in its action until after the National acquired the stock of the United Co.? A. I do not recall that I named Mr. Squire as a member of that committee.

Q. I thought you did; but whether you did or not, what is the fact in respect to his participation in the action of that committee prior to the acquiring of the stock of the United Co. by the National? A. Mr. Squire was a member of the Board of Directors and as such I believe he was present at some meetings that the Board held prior to the acquirement of the United stock.

Q. You speak now from mere recollection? A. Simply surmise; I am not quite clear on that.

Q. The National Salt Co. controlled or owned certain salt producing plants in West Virginia, did it not? A. It owned the—It took over the business of the old National Salt Co. of West Virginia, a company that was formed under the laws of that State a year or

New Jersey State Library

so prior to the New Jersey corporation, and which was formed for the purpose of marketing the salt produced by the various New York plants.

Q. You speak of the National controlling the output of the salt producing plant in Virginia; where was that located? A. Saltville.

Q. Did the National Co. continue to control the output of that plant until the time you left its employ? A. No; there was some change in the contract, during the latter part of 1901, by which the owners of that plant assumed the control of their output after that time.

RE-DIRECT EXAMINATION by Mr. Linn:

Q. In answer to a question by Mr. Clarke, you said that competition between the Ohio and Michigan salt was eliminated during the year 1900; please explain how this happened? A. I think I said "to a large extent;" it happened by getting control of the United Salt Co. and the greater part of the production of the State of Michigan.

Q. The Loomis plant, of which you have spoken, was situated at Akron, Ohio, was it not? A. It was.

Q. Is it not a fact that the title to that property was taken by the United Salt Co. after the arrangement which was consummated in October, 1899? A. It was.

Q. Was or was not that the fact as to the other plants in Ohio which you have spoken of as being controlled by the National? A. The contracts that were formerly made by the National Salt Co. with the Ohio River plants so named because of their location on the Ohio River or adjacent to it, were superseded by contracts made subsequently by the United Salt Co.

Q. These contracts, I understood you to say, were made during the administration of Mr. Squire as Presi-

dent of the United Salt Co. Is that correct? A. They were.

Q. In what other instance, if any, were dividends upon the stock of companies whose stocks were exchanged for stock of the National Salt Co., guaranteed, as they were—as was the case in the United?

Defendants object to the form of question and generally.

A. There were no other instances, whatever, of guarantees of this nature, or any other, in fact.

Q. You may state, as a matter of fact, whether or not Mr. Squire took part in the directors' meetings of the National Salt Co. after his election as such director, and prior to the consummation of the arrangement between the United Salt Co. and the National Salt Co.?

Defendants object to the form of question and generally.

A. I was under the impression that Mr. Squire attended one or more meetings of the Board, prior to that time; I may be wrong as to that.

Q. You spoke about Mr. Squire withdrawing his resignation as a director of the National Co. When was that done?

Defendants object to the form of question and generally.

A. I believe it was some time during 1899; but I am not positive.

Q. I hand you a letter, which I ask you to examine and see if you can identify it (handing witness letter)? A. I do.

Q. By whom was that letter written? A. Apparently by Mr. Cole, Mr. Squire's secretary.

Receivers' Exhibit 6

Q. What is the date of the letter? A. November 4, 1899.

Q. To whom is it addressed? A. To me.

Q. State whether or not that letter was received by you? A. It was; by me, direct.

Plaintiff offers letter in evidence and asks notary to attach the same to deposition and mark it Plaintiff's Exhibit 1.

RE-CROSS EXAMINATION by Mr. Morley:

Q. Do you remember, Mr. Hunter, of a letter written by Mr. Squire to the Board of Directors of the National Salt Co. prior to April, 1901, criticising the policy of the company, the management of its business?

Plaintiff objects to question.

A. I remember a letter of that character having been received and read to the Board in which he criticised the management.

Q. Do you know whether that letter was preserved, at the time, and placed on the file? A. It was in preservation, when I left the employ of the company.

Taking of testimony adjourned to Tuesday, July 15, 1902, at 10 o'clock.

(Signed) WILLIAM T. HUNTER.
LOUIS H. HALL.

Receivers' Exhibit 6

Hearing resumed at 10:30 A. M., July 16, 1902.

Same counsel present, except T. K. Hogsett, representing the American Trust Co. and E. F. Sandford.

Plaintiff produces and offers certified copy of the articles of incorporation of the National Salt Co., dated the 18th day of March, 1899, which the notary is asked to mark Exhibit 2 and attach to the deposition.

W. B. PUTNEY, JR., called for cross-examination.

By Mr. Snyder:

Q. Do you know whether the charter which I hand you of the National Salt Co. (handing paper), which has just been handed to the notary, has ever been amended? A. I don't think I can say I know.

Q. To your knowledge, then? A. Not as far as my knowledge is concerned. There is one thing in there that might have been changed; that is, the office of the company; it should be, if it hasn't been.

Taking of testimony adjourned to 1:30 P. M.

Taking of testimony resumed at 1:30 P. M.

Same parties present.

CROSS-EXAMINATION by F. A. Quail:

Q. Mr. Putney, what is the International Salt Co.? A. I don't understand what you mean by that.

Q. It is a corporation organized under the New Jersey law, is it not? A. It is.

Q. Will you explain in what way it is connected with the National Salt Co.? A. Holds some stock of the National Salt Co.

Q. About how much stock? A. A little over a majority; pretty nearly 60%.

Q. When was it organized? A. Along in the early fall of 1901, I believe.

Q. It has its offices in the same quarters with the National Salt Co. has it? A. I think so.

Q. Does it practically control the business of the National Salt Co.? A. In what way do you mean? It controls a majority of the stock. It votes a majority of the stock and in that way is able to elect the Board of Directors.

Q. Are you the secretary of the International Salt Co.? A. I am.

Q. Who are its other officers? A. E. L. Fuller, President; M. B. Fuller, Vice President; M. M. Belding, Jr., Treasurer; N. S. Beardslee, Assistant Treasurer. A. S. White is Chairman of the Board of Directors.

Q. Messrs. Beardslee and White, whom you have mentioned, are the same men who were directors and officers of the National Salt Co.? A. They are the same men who were directors.

Q. Were the Messrs. Fuller, whom you have named, large stockholders of the National Salt Co. before the organization of the International? A. I am quite sure they were not.

Q. What salt plants, or fields, does the International Co. control or operate, aside from those of the National Salt Co.? A. It don't operate any plants or fields.

Q. What, if any, companies does it control beside the National Salt Co.? A. It has a similar control of the Retsof Mining Co.; also the International Salt Co. of Illinois.

Q. Any other concerns? A. No.

Q. Will you tell us what resolution, if any, was passed by the Board of Directors of the National Salt

Co., at its meeting held July 15th, 1901, with reference to the proposed organization of another company, as shown by its records? A. "The President presented for the consideration of the Board the matter of a company proposed to be organized for the purpose of owning or controlling the stock of the National and various other salt companies for the purpose of more thoroughly controlling the salt trade, particularly in this country and Canada; after some discussion, Mr. F. F. Culver moved, seconded by Mr. W. C. Gouinlock, that this matter be laid over for a later meeting of the Board. The motion was put and carried, all voting Aye."

Q. What action by the Board of Directors of the National Salt Co. do these records show to have been taken at the meeting of the Board held October 9th, 1901, with reference to the organization of the International Salt Co.? A. "Mr. F. F. Culver moved, seconded by Mr. W. S. Eddy, Resolved that the President of this company be sustained by this Board of Directors, so far as they have power to do so, in arranging the details connected with the organization of the International Salt Co., respecting the Board of Directors and officers and their powers and duties. The motion was put and carried unanimously, all voting Aye."

Q. Will you state what directors appear to have been present at that meeting, as shown by these records? A. S. White, S. T. Kerr, N. S. Beardslee, F. R. Blount, J. H. Flagler, Edwin Hansen, M. W. Maclay, F. F. Culver, O L. Gubelman, W. S. Eddy."

Q. What directors appear by the records to have been present at the meeting of July 15th, 1901, about which you have testified? A. N. S. Beardslee, F. R. Blount, F. F. Culver, J. H. Flagler, S. T. Kerr, Joy Morton, W. C. Gouinlock, O. L. Gubelman, W. W. Hawley, A. S. White, John Alvin Young, G. W. Young."

Receivers' Exhibit 6

Q. What action was taken by the Board of Directors of the National Salt Co., at a meeting held October 30th, 1901, as appears by the record, with reference to an exchange of stock of the National Salt Co. for securities of the International Salt Co.? A. "The President reported that up to October 25th, 1901, there had been deposited with the North American Trust Co. of New York more than a majority of the stock of the National Salt Co., to be exchanged for securities of the International Salt Co."

Q. What directors appear to have been present at that meeting? A. "A. S. White, F. F. Culver, O. L. Gubelman, F. R. Blount, J. H. Flagler, S. T. Kerr, Joy Morton, W. S. Eddy, John Alvin Young."

Q. Have you access to the records of either one of the companies you have named, showing what stockholders of the National Salt Co. deposited stock in that company in exchange for securities of the International Salt Co.? A. I have.

Q. Will you produce them, please?

Mr. Snyder: Until Mr. W. B. Putney says they shall be produced, I will instruct the witness not to produce them.

Q. Mr. Putney, can you tell us whether or not George K. Paige and E. O. McNair, or either of them, surrendered their holdings of National Salt Co. stock in exchange for securities of the International Salt Co.? A. I can't say offhand; I think not.

Q. Will you refer to the records of these companies and secure that information for us? A. I will do so.

Q. Have you a list of the present stockholders of the National Salt Co.? A. Yes; I have a list.

Q. At what time was that list made? A. It is the list that is kept up to date all the time.

Q. Is the list you refer to the one I hold in my hand? A. It is not.

Receivers' Exhibit 6

Q. Will you please produce the one about which you are testifying? A. That list contains information about the International, and I should like to consult my father, first.

Q. When was this list prepared; the one which I show you (handing witness paper)? A. May 29, 1902. It was given to me by the Corporation Trust Co., the Transfer Agent for the National Salt Co., as representing the stockholders of record at that time.

Q. It was correct, at that time, so far as you know? A. It was.

Q. I will ask you whether or not the name of George K. Paige and E. O. McNair appear upon that list? A. They do not.

By Mr. Snyder:

Q. Is that a correct list as of that date? A. I have no doubt it is.

By Mr. Quail:

Q. What record of the stockholders of the National Salt Co. is and has been kept by you? A. The Registers of transfers of stock are, and have been, kept by me, since some time in April, 1902.

Q. Will you examine those registry records and tell us what, if anything, appears thereon, with reference to the transfer of the stock of the National Salt Co., formerly owned by George K. Paige and E. O. McNair, or either of them? A. Yes.

W. B. PUTNEY, JR.
LOUIS H. HALL.

Receivers' Exhibit 6

JOHN ALVIN YOUNG, being first duly sworn, deposes and says:

Direct-examination by Mr. Linn:

Q. What is your full name and your age? A. John Alvin Young, 33 years old.

Q. What is your residence and your present occupation? A. Glen Cove, Long Island; I have been in the banking business, and am now organizing a trust company.

Q. Were you ever an officer or employee of the National Salt Co. of New Jersey, and if so, at what time and in what capacity? A. I was secretary and treasurer, and a director of the company, from its organization until some time last March, at which time my resignation was accepted.

Q. About what time was the National Salt Co. of New Jersey organized? A. I don't know exactly, I think it was '98.

Q. Were you secretary and a director of that company, during the period when certain negotiations were in progress between that company and the United Salt Co. of Ohio? A. I was.

Q. You may state what time these negotiations commenced? A. I can't say that; the letter books ought to show all dates of those transactions.

Q. By and between whom were these negotiations conducted? A. Archibald S. White, as President of the National Salt Co., and F. B. Squire, acting for the United Salt Co. of Ohio.

Defendants object to the form and substance of the answer.

Q. Are you personally acquainted with Mr. F. B. Squire? A. I am.

Q. When did you first know him? A. About a year prior to the organization of the National Salt Co. of New Jersey.

Q. How did you first become acquainted with him? A. Business relations between himself and myself in the Naitonal Salt Co. of West Virginia.

Q. State whether or not Mr. Squire held any official position in the National Salt Co. of West Virginia? A. He was a director and one of the largest stockholders.

Q. What connection, if any, did Mr. A. S. White have with that company? A. He was President and one of its—one of the owners of the company.

Q. Were you connected with the organization of the National Salt Co. of New Jersey? A. I was.

Q. You may state what were the objects of the formation of that company and the purposes of its organization?

Defendants object to the form of the question, and also generally.

A. The consolidation of the manufacturers of salt, in order that we might bring about economies in the manufacture and sale of salt and in order that we might raise the prices of salt to consumers, in order to make money.

Q. What connection, if any, did Mr. F. B. Squire have with that company at the time of its organization, and prior thereto?

Defendants object to the form of question and also generally.

A. He was one of the promoters of the company, a director and one of its largest stockholders.

Q. What was the business of the National Salt Co. of New Jersey, after its organization; I mean of what did its business consist? A. Sale of salt.

Q. What properties for the manufacture of salt, if any, did it own—or control? A. Since its organization?

Q. At the time of its organization and during the few months following? A. It owned or controlled properties in New York State and subsequently acquired properties in Ohio.

Q. What properties in Ohio? A. The United Salt Co. and other outlying properties; I don't know their names.

Q. Prior to any arrangement between the National Salt Co. and the United Salt Co. of Ohio, what business, if any, did the National Salt Co. of New Jersey do in Ohio? A. None whatever, to my knowledge; it may possibly have owned a few outlying properties, and I think it had a contract with the Cleveland Salt Co., for its product.

Q. Was it or was it not selling salt in Ohio, prior to that time? A. It may have, but I think it confined most of its operations to New York State.

Q. By whom were negotiations between the National Salt Co. of New Jersey and the United Salt Co. of Ohio commenced, if you know? A. The sale of the United Salt Co. property was brought about, I believe, through the instigation of Mr. Squire.

Q. Now, you may state, Mr. Young, what, of your own knowledge, you know of the negotiations between the United Salt Co. of Ohio and the National Salt Co. of New Jersey, prior to the final consummation of the arrangement between those companies about October 1st, 1899?

Defendants object to form of question and also generally.

A. The National Salt Co. was organized to control 90% of the evaporated salt manufactured east of the Rocky Mountains; New York State manufactures had been acquired in fee simple and it was necessary, in order to control the product of Michigan, and also that of Kansas and Texas, to acquire the United Salt

Co. of Ohio, this being the keystone to the whole situation in the West. Mr. Squire, who had been associated with us in the West Virginia Company, was a large owner and controlled the United Salt Co. of Ohio and he agreed, on his part, to turn in the situation, provided we could acquire the other properties in the West; the Michigan and Kansas people and Texas were agreeable to come into the combination, provided we could acquire the Ohio Company. It was necessary for us to acquire this Ohio situation, in order that we might raise our price on salt and maintain it. Negotiations went on, from time to time, between Mr. White and Mr. Squire, until it was finally consummated to the effect that we should give them $1,250,000.00 of preferred and common stock, for the capitalization of their company, both of these stocks to be deposited in the Trust Company for a period, I think, of five years, when they should be deliverable, provided we lived up to a contract to pay them guaranteed dividends of seven per cent on the preferred and ten per cent on the common stock. I think that answers the question.

Defendants object to the answer on the ground of incompetency.

Q. During these negotiations, did you have any talk with Mr. F. B. Squire, concerning them, and, if so, state, as near as you can, that conversation or conversations, if you had more than one? A. I had several conversations with Mr. Squire on the subject; one in particular that I recall at this time, in which I asked him what was the justification for the National Salt Co. to pay such a large sum for the United property, in the way of preferred and common stock and in the form of guaranteed dividends; he stated, at that time, that the United Company had very advantageous contracts with Chicago packers; had a system of making

salt by exhaust steam that would make it practically impossible for any company to compete with it; had also very advantageous contracts with the American Steel and Wire for their exhaust steam; that if such a contract was made with the United Co. it would unquestionably enhance the value of the preferred and common stock quite considerable; would enable us to control the western market and raise prices.

Q. Can you state where this conversation took place, Mr. Young? A. In the board room of the National Salt Co.

Q. Now, Mr. Young, you may state what other conversations you had with Mr. Squire, if you had any such, and remember them? A. I don't at this time recall any other conversations.

Q. During the pendency of these negotiations, how frequently was the subject of this arrangement of the United Salt Co. with the National the subject of conversation between you and Mr. Squire or Mr. Squire and any other members of the Board of Directors of the National Salt Co., to your knowledge? A. I had several conversations with him, from time to time, and I know of Mr. White being in conference with him.

Q. Do you know, Mr. Young, what was the general price of salt in the State of Ohio, prior to October 1st, 1899? A. I do not; I had very little to do with the merchandizing part of the company; I had to do mostly with its finances.

Q. Did you, during the progress of these negotiations, have any conversations with Mr. White or with any of the other directors of the National Salt Co. with regard to the arrangement with the United? If so, state what those conversations were, as nearly as you can recollect.

Defendants object to the form of question and also generally.

Receivers' Exhibit 6

A. I talked with most all of the board of directors on the subject, from time to time, both in and out of the board meetings; of course, with Mr. White; I was supposed to be associated with him and confering with him every day on the subject, until the deal was finally consummated. Mr. White's idea, as he stated it to me, was to the effect that it was necessary for us to acquire this United Salt Co. into our general combination, in order that we might raise and maintain the price of salt and acquire other properties in the west that we thought desirable.

CROSS-EXAMINATION by Mr. Clarke:

Q. Mr. Young, you have spoken of the contracts by which the National Co. purchased the stock of the United Salt Co. I suppose you refer when so speaking, to the written contracts between the two companies—between the parties, I mean; between the National Co. and the stockholders of the United Co. A. I referred, at that time, to the certificates of indebtedness that were issued to the stockholders to insure the guaranteed dividends.

Q. Those certificates were in writing or printed? A. They were.

JNO. ALVIN YOUNG.
LOUIS H. HALL.

Cross-examination of W. B. PUTNEY, JR., resumed:

By Mr. Quail:

Q. Are you not able to tell us, Mr. Putney, when the stock of George K. Paige and E. O. McNair, in the National Salt Co., was transferred? A. Yes.

Receivers' Exhibit 6

Q. Please state what stock was held by each of these men and when it was transferred? A. George K. Paige, May 31, 1899, held 15 shares common stock, which was transferred from his name September 5th, 1901; May 31st, 1899, he held 57 shares of preferred, which was transferred July 24th, 1901; June 14th, 1899, he held 100 shares of preferred stock, which was transferred in two lots of 50 shares each on July 24th and November 1st, 1901, respectively. E. O. McNair; on May 23rd, 1899, held 81 shares of preferred stock, transferred from his name on May 23rd, 1901; June 12th, 1899, he held 250 shares of preferred, which were transferred 100 shares October 4th, 1899, 10 shares August 15, 1901, and 140 shares May 23rd, 1901. On June 5th, 1901, he transferred 21 shares of preferred stock. Regarding the transfer of 81 shares on May 23rd, 1901, 21 shares of this he transferred to himself; the remaining 60 to another party. This 21 shares is what he transferred to some other person on June 5th, 1901.

Q. Then, when do your records show that E. O. McNair ceased to be a stockholder of the National Salt Co.? A. August 15th, 1901.

Q. And when do they show that George K. Paige ceased to be a stockholder of the company? A. November 1st, 1901.

Taking of testimony adjourned to Wednesday, July 16, 1902, at 10 o'clock. A. M.

L. H. H.

Receivers' Exhibit 6

Taking of testimony resumed, Wednesday, July 16th, 1902, at 10 o'clock A. M.

Same parties present.

WILLIAM B. PUTNEY, JR., continued as follows:

By Mr. Quail:

Q. Please state what action appears by the records of the National Salt Co. to have been taken by its board of directors, on January 30th, 1902, with reference to the Michigan Salt Association contract. A. "Mr. Joy Morton, vice president, reported having entered into an agreement with the Michigan Salt Association, by which their prices to the National Salt Co. were reduced to the following figures, f. o. b. boats. Medium barrels, 45 cents; granulated 40 cents; medium bulk $1.75 per ton; granulated bulk $1.40 per ton; and stated that this was made for the year 1902 on the personal agreement of Mr. Joy Morton that the International Salt Co. would send to the Michigan Salt Association a letter guaranteeing that the provisions of the contract between the National Salt Co. and the Michigan Salt Association, during that period, should be strictly adhered to and carried out subject to the above concession of prices. Mr. Morton further stated that the foregoing instrument was subject to the following conditions, viz: that all salt taken by the National Salt Co. at the reduced prices should be sold at 65 cents per barrel, the present market price, and in the event of a higher price being secured by the National Salt Co. for this salt not exceeding 75 cents per barrel one-half of the additional amount so secured should accrue to the Michigan Salt Association, providing, however, that the price to be paid the Michigan Salt Association by such an arrangement should not, at any time,

amount to more than the price named in the original contract with that Association."

Q. What resolution follows that? A. "Resolved that the action of Mr. Joy Morton, vice president, as reported above, be and the same is hereby ratified, confirmed and approved, and that the president of this company be and he is hereby requested to communicate with the president of the International Salt Co., stating the facts and requesting that he send to the Michigan Salt Association a letter guaranteeing that the National Salt Co. would carry out the provisions of the arrangement so effected. The motion was put to vote and carried unanimously, all voting aye."

Q. That motion was made by Mr. A. S. White, the president of the Company? A. That's what the record shows.

Q. What action by the executive committee of the National Salt Co. is shown by the records of the company to have been taken at a meeting of the committee held May 1st, 1901, with reference to the purchase of the stock of the Lone Star Salt Co.? A. "Mr. F. R. Blount for the committee appointed to conclude the purchase of the outstanding shares of the Lone Star Salt Co., reported having purchased 606 shares of the stock of the said company and delivered, in consideration therefor, 610 shares of common stock and 154 shares of preferred stock National Salt Co., utilizing the company's treasury stock for this purpose, together with the sum of $36,000.00 in cash, and that negotiations were about concluded for the transfer of the remaining 18 shares of the Lone Star Salt Co. to National Salt Co., giving to National Salt Co. ownership of all the capital stock of the Lone Star Salt Company, with the right to all the accumulated earnings of said Lone Star Salt Co."

Q. What action, if any, do the records of the company show to have been taken by the board of direc-

tors, in the way of approving the resolution just read? A. "The secretary also read a synopsis of the transactions of the executive committee at its meetings held from April 10th to and including July 15, 1901." "Mr. F. F. Culver moved, seconded by Mr. O. L. Gubelman, resolved that the minutes of transactions of the executive committee as recorded and their acts as therein set forth be and they are hereby adopted, ratified and confirmed. The motion was put and carried, the following gentlemen voting in the affirmative: Messrs. Joy Morton, W. W. Hawley, Samuel T. Kerr, F. R. Blount, N. S. Beardslee, F. F. Culver, O. L. Gubelman, John Alvin Young. Mr. W. C. Gouinlock's vote was recorded in the negative." The foregoing is quoted from the records of the directors meeting held July 15th, 1901.

Q. Please read from the records of the meeting of the executive committee of the same company the action taken by it on July 31st, 1901, with reference to the securities of the International Salt Co. A. "Mr. Eddy moved, seconded by Mr. White, Resolved that the executive committee recommend to the board of directors that they instruct the president to issue a circular letter to all the stockholders recommending an exchange of ten shares of National Salt Company's preferred stock for one $1,000.00 bond of the International Salt Co., and one share of the stock of the International Salt Co. for one share of common stock of the National Salt Company, providing Retsof Mining Company recommend to their bond holders and their stockholders an exchange for such securities on the basis of one Retsof bond for one International bond and one share of Retsof stock for one share of International stock. The motion was duly put and carried, all voting aye."

At this point it was stipulated between the counsel present, as hereinbefore stated, that the

facts set forth in the affidavit of which the following is a copy, are true. (Said affidavit being as follows):

"I, John Alvin Young, Secretary of the National Salt Company, do hereby certify that notice of this annual meeting was mailed to each stockholder of record at least ten days prior to the date of meeting, and a notice substantially similar has been published in the 'Journal of Commerce' and 'Commercial Bulletin of New York,' and the 'Evening Journal' of Jersey City, Hudson County, New Jersey, on the 28th day of February, and the 8th, 15th and 22nd days of March; also in the 'New York Times' on the 8th, 13th and 22nd days of March, as per certificates hereto attached.

JOHN ALVIN YOUNG, Secretary.

Subscribed and sworn to before me
this 27th day of March, 1900:
Jas. F. MacNamara,
Notary Public,
(Seal) Queens Co.
Certificate filed in New York Co."

A copy of the notice above referred to and annexed to said affidavit is as follows:

"National Salt Company,

Jersey City, N. J., February 28, 1900.

To the Stockholders of National Salt Co.

The annual meeting of stockholders of the National Salt Co. for the election of directors and inspectors of election, and for the transaction of such other business as may properly come before such meeting, will be held at noon on Wednesday, the 28th day of March, 1900, at the principal office of the company, No. 55 Montgomery Street, Jersey City, N. J.

Receivers' Exhibit 6

Three directors are to be elected to hold office for a term commencing with the date of their election and ending on the fourth Wednesday of March, 1905.

Three inspectors of election are to be elected to serve at the next succeeding annual meeting.

The polls will be open from 12.15 o'clock to 1.15 o'clock P. M.

And you are further notified that at said meeting a resolution will be offered to amend sections 1 and 2 of article 2 of the by-laws of this company, so that the board of directors shall thenceforth consist of fifteen directors, divided into five classes, each class consisting of three directors.

If you will be unable to attend the meeting in person we would be pleased to have you forward the enclosed proxy, duly signed and witnessed.

Very truly yours,

JOHN ALVIN YOUNG, Secretary."

Q. Mr. Putney, how much stock of the National Salt Co. appears by the list of stockholders of the National Salt Co. to have been held by the International Salt Co. May 29th, 1902? A. "Preferred stock 29,709 shares; common stock 43,512 shares." That is according to the list of the Corporation Trust Co.

Q. Please state how many shares of stock of the National Salt Company are held by the directors of that Company? A. The list of the Corporation Trust Co. of May 29th, 1902, shows that George F. Dominick, Jr., holds 10 shares of preferred; W. S. Eddy 10 shares of common; N. S. Beardslee 5 shares of common; Joy Morton, 8 shares of common; the remaining five directors one share each.

Q. Does the International Salt Co. now own the stock of the National Salt Co. formerly held by George K. Paige and E. O. McNair? A. I can't answer that question.

Q. Will you examine the books of the National Salt Co. and get that information for us? A. No.

Q. Have you access to those books? A. I don't know that any books would show that.

Q. Have you access to the books of the National Salt Co. showing the transfers of its stock, and containing the lists of its stockholders? A. I have.

Q. Why do you refuse to examine those records and secure the information above requested? A. I have furnished such books as I have at hand and I think you can find it for yourself as well as I.

Q. Why do you refuse to make that examination for us? A. Well, I have considerable else to do and it would take a long time.

Q. Have you given your only reasons for this refusal? Have you any other reasons? A. No.

Q. You mean you have no other reasons? A. That is what I mean.

W. B. PUTNEY, JR.
LOUIS H. HALL.

ARCHIBALD S. WHITE, being first duly sworn, deposes and says:

Direct-examination by Mr. Linn:

Q. What is your full name and your age? A. Archibald S. White; 35 years old.

Q. What is your present occupation and place of residence? A. I am not engaged in active business, at present; my residence is the Borough of Manhattan.

Q. Were you at any time, connected with the National Salt Co. of New Jersey, and, if so, at what time, for how long and in what capacity? A. I was director and president of the National Salt Co. from about May, 1899, to December, 1901.

Receivers' Exhibit 6

Q. What had been your business prior to your connection with that Company? A. I was engaged in the manufacture of salt.

Q. How long had you been engaged in the manufacture of salt, and with what firms or companies had you been engaged in that business prior to your connection with the National Salt Co. of New Jersey? A. I went into the salt business about 1883, in the employ of F. B. Moulton & Co.; subsequently I was connected with the Bradley Salt Co., the Cayuga Lake Salt Co., the National Salt Co., of West Virginia.

Q. When was the National Salt Co. of West Virginia organized? A. I think it was in 1898.

Q. Who were the officers and directors of that company? A. The directors were George W. Young, John Alvin Young, G. B. M. Harvey, F. B. Squire and A. S. White. I was president of the company; I think that Squire was vice president and John Alvin Young was secretary and treasurer.

Q. What F. B. Squire is that? A. F. B. Squire of Cleveland, Ohio.

Q. Is that the same F. B. Squire, if you know, who was president of the United Salt Co. of Cleveland, Ohio? A. Yes.

Q. How long have you known Mr. Squire? A. I think I met him in 1897 or 1898.

Q. What was the business of the National Salt Co. of West Virginia? A. Buying and selling salt.

Q. At the time of the organization of the National Salt Co. of New Jersey what relation, if any, did F. B. Squire hold to that company?

Defendants object to the form of the question and generally.

A. He was a director.

Q. After the formation of the National Salt Co. of New Jersey, were any negotiations entered into be-

tween that company or its officers and the United Salt Co. of Ohio, or its officers; and if so, at what time did those negotiations commence?

Defendants object to the form of the question and also generally.

A. Yes; immediately after the organization.

Q. You may state, Mr. White, what those negotiations were, by whom conducted, and give briefly the history of the negotiations, confining yourself to the conversation and facts within your personal knowledge?

Defendants object to the form and substance of the question.

A. Negotiations were conducted on behalf of the National Salt Co. by myself, principally, acting as president of that corporation, and by the following directors; Samuel T. Kerr, N. S. Beardslee, W. W. Hawley, George C. Otis, W. C. Gouinlock, and perhaps other directors; on the part of the United Salt Co., by Mr. Squire, their president, principally, and also by Mr. Frasch and Mr. Frank Rockefeller, and I think Mr. Dangler was also present at one or two interviews. I have an impression that the matter was also discussed with Mr. Severance, one of the stockholders of the United Salt Co. These negotiations were commenced with a view of determining a basis upon which the stock of the United Salt Co. might be exchanged for stock of the National Salt Co., for the purpose of acquiring the stock of the United Salt Co. This subject was discussed by Mr. Squire and myself while the National Salt Co. of New Jersey was being conceived, and it was the intention, in these early discussions of the subject, that the stock of the United Salt Co. should be acquired at the same time that other salt producing properties were acquired

which were located in the State of New York. Subsequently, however, Mr. Squire stated that he could not conclude negotiations until after the National Salt Co. had acquired properties in the State of New York. These negotiations were resumed immediately after the organization of the National Salt Co. and were concluded in the summer of 1899. During these negotiations, the subject was most exhaustively canvassed and was concluded by an agreement whereby for each share of the capital stock of the United Salt Co. there was given one and one quarter shares of preferred stock and one and one quarter shares of common stock of the National Salt Co. There were also executed certain agreements, one in connection with the use of a patented process for the manufacture of salt owned by the United Salt Co., the invention of Mr. Frasch, and the other agreement contemplated the carrying out of an understanding whereby the National Salt Co. practically guaranteed the payment of dividends at the rate of 7 per cent on the preferred stock and 10 per cent on the common stock, given in exchange for the stock of the United Salt Co., for a period of five years.

Q. You state that a portion of this agreement was in reference to guaranteed dividends on the stock of the National Salt Co., in exchange for stock of the United Salt Co. Will you please state in what manner this question of guaranteed dividends first came up and by whom it was proposed or suggested and what was said about it?

Defendants object to the form of question and also generally.

A. The subject was first introduced by Mr. Squire, who claimed that some of the United Salt Co. stockholders were disinclined to exchange their securities for those of the National Salt Co. That while the

National Salt Co. was a large corporation, the control of it was not established, and that they, as stockholders of the National Co., might not have a voice in its management. That while the earnings of the National Salt Co., might be large, there was no assurance that dividends would be paid by them; that the United Salt Co., had a considerable earning capacity. After much discussion as to the prospective profits of the National Salt Co., it was finally settled that the National Salt Co., would guarantee dividends at seven per cent on the preferred stock and ten per cent on the common stock given in exchange, as heretofore described, and thereupon the entire subject was presented to counsel to formulate it in legal shape. Davies, Stone & Auerbach, of New York, represented the National's interests, and Kline, Clarke, Tolles & Goff, of Cleveland represented the United.

Q. During the pendency of these negotiations with the United Salt Co. of Ohio, what negotiations, if any, were being carried on with other salt producing properties in Ohio, by the National Salt Co. of New Jersey?

Defendants object to the form of question and also generally.

A. Negotiations with Mr. W. R. Shields, of Columbus, Ohio, for the control of the Ohio River properties, negotiations with the Wadsworth Salt Co., of Wadsworth, Ohio, for the purchase of their plant; with the Loomis Salt Co. of Ohio, for the purchase of their plant; and with the Cleveland Salt Co. of Cleveland, Ohio, for the purchase of their plant or product.

Q. What portion of the salt business and trade of Ohio did the United Salt Co., and these other companies, to which you have just referred, represent at that time?

Receivers' Exhibit 6

Defendants object to the form of the question and generally.

A. Represented very largely the entire production of the State of Ohio.

Q. What portion of the productions of salt of the State of Ohio was represented, at that time by the United Salt Co. of Ohio?

Defendants object to the form and substance of the question.

A. It was understood that the United Salt Co., had the capacity for producing about 75 per cent of the products of Ohio.

Q. At the time these negotiations were pending, and up to the time of their consummation, what business, if any, was the National Salt Co. of New Jersey doing in the State of Ohio? A. Very little.

Q. Well, state what they were doing, if any? A. They were selling some salt; what quantity I could not say; they were not selling at any particular place or through any particular channel.

Q. During these negotiations, what was said, by Mr. Squire or Mr. Frasch or Mr. Rockefeller, or Mr. Dangler, or Mr. Severance, or either of them, in regard to the desirability of the exchange of securities —or stock, rather—of the two companies to which you have referred?

Defendants object to the form and substance of the question.

A. It would be very difficult to give you an idea of the desires expressed by all parties in interest, as to the wisdom of this transaction.

Q. What was said, during the pendency of these negotiations, by Mr. Squire, or by either of these gentlemen connected with the United Salt Co. with reference to this exchange?

Receivers' Exhibit 6

Defendants object to the form and substance of this question.

A. These negotiations covered several months, and to chronicle the conversation would require several volumes. In a nut shell it was considered by all in interest that the proposed deal subserved the interests of the stockholders of the National Salt Co., and the United Salt Co. That economies might be perfected and the business regulated in such a manner as to produce remunerative profits. It was the anticipation of these results which caused the United Salt Company's stockholders to demand a guarantee of dividends on the stock of the National Salt Co., received by them for their United Salt Company stock.

Q. This arrangement was finally consummated at what time? A. I think the latter part of September, 1899.

Q. What change, if any, took place, at that time, in the management of the United Salt Co.? A. There was no change, directly or in their officers.

Taking of testimony adjourned until 1:30 o'clock P. M.

L. H. H.

Taking of testimony resumed, at 1:30 P. M.

Same parties present.

By Mr. Linn:

Q. In answer to a question just before adjournment, you said there was no change in the management or in the officers of the United Salt Co., at the time of the consummation of this arrangement between the two companies. How long did the old officers of the

United Salt Co., occupy their respective positions, if you know?

Defendants object to the form and substance of the question.

A. For some months—I should say about six months.

Q. Who were those officers? A. Mr. Squire was president; Mr. Turner, I think, was treasurer or secretary.

Q. During this period, what relations existed between the officers of the United and the officers of the National? A. Mr. Squire was a member of the Board of Directors and the executive committee of the National Co., I believe; in that capacity, he knew the policy; in fact, helped to formulate the policy of the National Salt Co., and, as president of the United Salt Co., he administered the affairs of the United Salt Co., in harmony with the policy of the National Salt Co.

Q. What was the price of salt, in the State of Ohio, prior to October 1st, 1899, if you know? A. Nominally, I think, about fifty cents a barrel.

Q. What was the price of salt, in the State of Ohio, after the 1st of October, 1899, if you know? A. The prices fluctuate; I should say they would average perhaps 75 cents per barrel.

Q. How soon after the 1st of October, 1899, was there any change in the price of salt in the State of Ohio? A. My recollection is within a month; I should refer you, however, to the records.

Q. By whom was the price of salt fixed, in the State of Ohio, after the 1st of October, 1899? A. The price of the United Salt Co's product was fixed by their management. By "their management" I mean the president, Mr. Squire.

Receivers' Exhibit 6

Q. What discussion, if any, did you have with Mr. Squire, in regard to the price of salt, in Ohio, after this date? A. The price of salt in Ohio, as well as elsewhere, was generally discussed at the meetings of the executive committee of the National Salt Co. of which committee Mr. Squire was a member.

Q. What relation existed, after the 1st of October, 1899, between the price of salt in the State of Ohio and the price of salt in the State of New York?

Defendants object to the form and substance of the question.

A. They were substantially uniform.

Q. Can you give the dates, after October 1st, 1899, or approximately the dates, at which changes in the price of salt in Ohio were made, and what those changes were; if you can, please do so? A. As I before stated, the price of salt in Ohio, some time in October, 1899, I think, advanced; again in November; I am not positive; I have had no occasion to refer to the records since that time.

Q. After October 1st, 1899, what competitors, if any, did the National Salt Co. have, in the salt business in Ohio? A. The National Salt Co. practically did no business in Ohio, after October 1st, 1899.

Q. What competitors in Ohio, after October 1st, 1899, did the United Salt Co. of Ohio have, if you know?

Defendants object to the form and substance of the question.

A. The Wadsworth Salt Co., at Wadsworth, Ohio; the Ohio Salt Co., whose works were at Ritman, Ohio —both of whom were making one special grade of salt by the Vacuum process.

Q. What others, if any? A. That's all.

Q. What proportion of the salt output, or salt used in Ohio, did these two companies make?

Defendants object to the form and substance of the question.

A. I should say the Wadsworth Salt Co., and the Ohio Salt Co. productions (capacity) might have been fifteen or twenty per cent of the total productions of salt in the State of Ohio.

Q. Mr. White, during the pendency of the negotiations between the United Salt Co., and the National Salt Co. of New Jersey, state what conversations, if any, you had with Mr. Frank Rockefeller, on the subject of those negotiations?

Defendants object to the form and substance of the question.

A. It was a general discussion as to desirability of this amalgamation of the two interests; and as to how that could be best brought about; also the results that might flow from such action. In a general way we discussed the condition of the salt business and the abnormally low prices that had been prevailing; the wasteful and demoralizing competition and ways and means to better the condition of business and secure more remunerative prices. Mr. Rockefeller also expressed a liberal opinion concerning some of his associates in the United Salt Co.

Q. What was said, in that conversation, in reference to negotiations then pending between the United Salt Co., and the National Salt Co., if anything?

Defendants object to the form of question; also generally.

A. Substantially that the National Salt Co., should own the capital stock of the United Salt Co., and that the basis of exchange of securities that had been pro-

posed in his opinion, was advantageous to the National Salt Co., notwithstanding that some might consider the basis inequitable.

Q. What reasons, if any, did Mr. Rockefeller give for this—what did he say upon that subject?

Defendants object to the form and substance of the question.

A. That through the ownership of the capital stock of the United Salt Co., the two properties could work in harmony and realize remunerative prices.

Q. What, if anything, was said, in that conversation, in regard to the guaranty of dividends by the National, upon its stock proposed to be exchanged for the United stock.

Defendants object to the form of question and generally.

A. In a general way, the profits of the National Salt Co., would be so large as to justify payment of large dividends.

Q. What, if anything, was said, in that conversation, by Mr. Rockefeller, as to the source of these large profits of the National Salt Co.?

Defendants object to the form and substance of the question.

A. I don't remember that Mr. Rockefeller went into the details of the subject, as to how the National Salt Co. would make large profits; that part of the negotiations was more fully discussed with Mr. Squire, president of the United Salt Co., who was familiar with the conditions and prevailing prices and possibility of profit if the properties were owned by one common interest.

Q. What did Mr. Squire say on that subject?

Receivers' Exhibit 6

Defendants object to the form of the question, also generally.

A. In substance he said that he believed that if the product was controlled it would be as easy to get one dollar per barrel as fifty cents per barrel; that salt was too cheap, any way, being an article of universal consumption, the quantity consumed by each person being insignificant; that a higher price for salt would not prove a burden. He made reference to the fact that the government statistics showed the consumption of salt in the United States was about fifty pounds per *capita* per annum. And at an advance of one or two dollars per ton, the selling price of salt would scarcely be felt by the consumer, and at such an advance would yield a large profit to manufacturers.

Q. During the pendency of these negotiations, state what particular conversations you had, if you had any, with Mr. Herman Frasch, upon the subject of negotiations? A. Various features of the negotiations were discussed with him in a general way; but as he was not familiar with the market price of salt, that feature was not discussed in detail.

Q. Who had charge, for the National Salt Co., of negotiations concerning Ohio properties?

Defendants object to the form of the question, and also generally.

A. The president, under instructions of the Board of Directors, I was the president of the National Salt Co., at that time.

Q. I will ask you whether or not you made a report upon that subject, at any time, to the National Salt Co., or its Board of Directors? A. Yes.

Q. (Handing witness paper.) Please examine the paper I hand to you and state whether or not that is

a true copy of the report made by you to the directors of the National Salt Co., upon that subject? A. It appears to be.

Plaintiffs ask to have paper attached and marked Plaintiff's Exhibit 3. Same marked by notary and offered in evidence. The same is printed at page .

Q. You said something about negotiations for certain properties in Ohio which, I believe, you designated as Ohio River properties; please state what those negotiations were? A. W. R. Shields, of Columbus, Ohio, had contracts with parties located in and about Pomeroy, Ohio, for the purchase of bromine, which is a by-product of plants located in that vicinity for the manufacture of salt. At the suggestion of Mr. Squire, Mr. Shield's services were engaged by the National Salt Co., to negotiate and conclude contracts between these various Ohio River manufacturers and himself, for the control of that property; in some cases, the product was purchased for a term of years; in other cases, the properties were leased; and I think in one or two cases the properties were purchased; all of these contracts were made assignable by Mr. Shields and were subsequently assigned to the National Salt Co. When the National Salt Co. acquired the stock of the United Salt Co., the manufacturers of salt on the Ohio River were requested to meet at Cincinnati, where they were told that it was desirable that the contracts they had made with Mr. Shields and which had been assigned to the National Salt Co., should be cancelled and destroyed and contracts identical to those made with Mr. Shields and assigned to the National Salt Co., be made between these various Ohio River manufacturers and the United Salt Co.

Q. Who were present, at that meeting in Cincinnati? A. I don't know all that were present; Mr. Shields and Mr. Squire were there.

Q. What were these contracts that you speak of for? A. They were for salt. For the purchase of plants and the leasing of plants for the manufacture of salt.

Q. What was done, if anything, in regard to the acquisition of the Loomis Salt Work, at Akron, Ohio? A. They were purchased by E. P. Henderson, of Windsor, Ontario, who acted as an agent of the National Salt Co. The property was conveyed by deed to him and by Henderson to the National, I think, although it may have been conveyed direct to the United Salt Co. If it was ever conveyed to the National Salt Co., it was in turn, reconveyed by them to the United Co. I have forgotten the exact terms of the purchase, but my impression is that about one-half of the purchase price was paid in cash and the other half was paid on first mortgage. The National Salt Co. gave Henderson the cash required by the transaction, and when the property passed into the hands of the National Salt Co., the United Co. gave the National Salt Co. the notes for an amount representing the cash paid; I think these notes matured in four or six months after date; they were subsequently renewed by the United Salt Co., and up to the time that I resigned as president of the National Salt Co. they had not been paid.

Q. What other salt properties, if any, in Ohio—or contracts with other salt properties, in Ohio, were made by the National? A. The contract made between the Cleveland Salt Co., of Cleveland, Ohio, and the United Salt Co. for the purchase of the product of the Cleveland Co. This contract was negotiated by the National Salt Co.

Q. Why were these contracts, particularly the Ohio River contracts, which you say were made in the primary instance with the National Salt Co., assigned

to the United Salt Co., or afterwards taken in the name of the United Co., as you describe?

Defendants object to the form of the question and also generally.

A. An action was brought by the Attorney General of the State of Ohio, against the National Salt Co., to oust the National Salt Co., from the State of Ohio, on the ground, I believe, that it was a trust, and to prevent the National Salt Co., from doing any business in the State of Ohio; therefore, acting on the advice of counsel, the National Salt Co., turned over its contract, &c., to the United Salt Co., and the United Salt Co., took the National Company's place in carrying out these contracts.

Q. I hand you a letter, dated April 19th, 1899, and ask you by whom that letter was signed and by whom it was received? A. The letter is signed by F. B. Squire and addressed "Dear Mr. White" and received by me.

Letter offered in evidence; plaintiff asks that it be attached to the deposition and marked Plaintiff's Exhibit 4, by the notary. So marked.

Q. I hand you what purports to be a telegram, dated April 24, 1899, and ask you whether that telegram was received by you and from whom it came?

Defendants object to form of question.

A. Signed F. B. S. (F. B. Squires); addressed to me and received by me.

Telegram offered in evidence; plaintiff asks that it be attached to the deposition and marked Plaintiff's Exhibit 5, by the notary. So marked.

Receivers' Exhibit 6

Q. I hand you a letter dated July 12th, 1899, and ask you from whom that letter came and by whom it was received? A. From F. B. Squire; received by me.

Letter offered in evidence; plaintiff asks that it be attached to the deposition and marked Plaintiff's Exhibit 6, by the note. So marked.

Q. Is Mr. Squire's signature attached to that letter? A. No.

Q. Whose signature is? A. Signed F. B. Squire, H. E. C.

Q. If you know, who is H. E. C.? A. Howard E. Cole.

Q. Who is Howard E. Cole and what relation did he bear to Mr. Squire, at the date that letter was written? A. Mr. Squire's secretary.

Q. I hand you a letter, dated July 22nd, 1899, and ask you by whom it was written? A. By myself.

Q. State whether or not a reply to that letter was received, and if so, what the reply is? A. The reply is contained on the back of the letter.

Q. To whom was the letter signed by you written? A. My letter was written to F. B. Squire.

Q. By whom was the reply written? A. I believe—it seems to be signed by F. B. Squire, H. E. C.

Letter offered in evidence; plaintiff asks that it be attached to the deposition and marked Plaintiff's Exhibit 7, by the notary. So marked.

CROSS-EXAMINATION by Mr. Clarke:

Q. How long were you in the sale business, prior to 1899? A. Substantially about fifteen years.

Q. Where were the works located that you were interested in prior to the organization of the National

Salt Co. of West Virginia? A. Located at Ludlowville, N. Y., and Cleveland, Ohio.

Q. How long have you known George K. Paige? A. Since about 1897 or 1898.

Q. Where did he live, when you first knew him? A. Perry, N. Y.

Q. Was he engaged in the salt business then? A. He was.

Q. Did he continue in the business until 1899? A. Yes.

Q. What plant or plants was he interested in, in 1899, and before? A. In 1899 he was interested in the Silver Lake Salt Co. whose works were located at Perry, N. Y. I do not know what interests he may have had in any salt works prior to that time.

Q. Was this Silver Lake Salt Co. property purchased by the National Salt Co.? A. It was.

Q. And did Mr. Paige become, at the time of the purchase, a stockholder in the National Salt Co.? A. Yes, sir.

Q. Did he continue to be interested in the manufacture of salt or in the business, in any capacity, after the forming of the National Co.? And, if he did, please state what he did either in the employ of the National Co. or in any other employ or capacity in connection with the salt business? A. I do not remember that he was ever employed by the National Co., although he may have been for a short time after its organization; say, not exceeding two or three months.

Q. When did Mr. Paige first make his home at Warsaw, N. Y.? A. I do not know.

Q. Was he a large holder in the property of the Silver Lake Salt Co.? A. I do not know; my impression is that he and his brother and his mother owned a majority of the stock of the Silver Lake Salt Co.

Q. Do you remember his attending the meetings that were held prior to and that led up to the sale of the

Silver Lake Salt Company's property to the National Salt Co.? A. Yes, sir.

Q. Do you remember that Mr. Paige also participated in the arrangements and negotiations preliminary to the organization of the National Salt Co.? A. What do you mean by "arrangements"?

Q. I mean the preliminary meetings at which the policy of organizing the company was discussed, at which the purposes were discussed, and at which the basis upon which the various plants were to be taken over by the company were discussed? A. Yes, sir.

Q. Was Mr. N. S. Beardslee, now President of the National Salt Co., generally present at the meetings just referred to at which you said Mr. Paige was present? A. Yes, sir.

Q. How long have you known Mr. E. O. McNair? A. Since about 1898.

Q. Where were the salt producing plants located in which he was interested prior to the organization of the National Co.? A. The works of the Warsaw Salt Co. were located near Warsaw, N. Y.

Q. He was a large holder in those works, I believe? A. I do not know.

Q. He participated in the preliminary discussions and arrangements that led up to the organization of the National Salt Co., did he not? A. No, sir, never had any conversation with him on the subject.

Q. His plant was purchased by the National Salt Co. of New Jersey, was it not? A. Yes.

Q. The property of his company was one of the properties that was taken over at the time of the organization of the National Salt Co. of New Jersey, was it not? A. Yes.

Q. Mr. McNair was an officer of that company? A. I don't know whether he was or not.

Q. Do you remember meeting him before and at the time the negotiations leading up to the taking over of

the property in which he was interested were in progress? A. I remember meeting him some time before that event, but I do not recall meeting him at least six months prior to the sale of the Warsaw Salt Co.'s property.

Q. You discussed with him, at this meeting to which you have referred, the desirability of his joining in the scheme of the organization of the National Salt Co., did you not? A. No, sir.

Q. Where was it you met him? A. I think it was in Warsaw. I met him in a social way, he was engaged in the banking business in Warsaw and was not active in the management of the Warsaw Salt Co.

Q. Who was President of the Warsaw Co., at the time of the taking over of its plant by the National Salt Co.? A. Mr. John D. Wing.

Q. The negotiations that led up to the taking over of that plant extended over how long a period? A. Perhaps three months.

Q. And they were partly conducted at Warsaw, I suppose, and partly here in New York? A. Yes.

Q. And there were a number of conferences, I suppose? A. Yes.

Q. Mr. McNair was present at some of those conferences was he not? A. No, sir.

Q. Not any of them? A. No, sir.

Q. Who represented the Warsaw plant, in those preliminary negotiations? A. Their General Manager, Mr. W. C. Fowler.

Q. Was Mr. Fowler, or was any other person representing that plant or company, present at the conferences that led up to the organization of the National Salt Company? A. Yes. Mr. Fowler was present.

Q. Where did Mr. Fowler live, at that time? A. At Warsaw, N. Y.

Q. In what manner did the National Salt Co. pay for the property of the Warsaw Co.? A. I think in stock and cash.

Receivers' Exhibit 6

Q. By that you mean, I suppose, stock of the National Co.? A. Yes, sir.

Q. What proportion was paid in cash, if you remember? A. I do not remember.

Q. Did Mr. Paige—Mr. George K. Paige and Mr. E. O. McNair, continue stockholders in the company until the year 1901? A. Yes, sir; I think they did.

Q. When did you first talk with either Mr. Paige or Mr. McNair about the purchase or the ownership of stock in the United Salt Co.? A. I never had any conversation with either of them on that subject.

Q. What officer or agent of your company first talked with them on that subject; with them or either of them, on that subject? A. I don't know.

Q. When did you or your associates first discuss among themselves the instituting of this suit in which you are now called as a witness? A. I think it was at a meeting of the Board of Directors of the National Salt Co., the date of which I do not recall.

Q. About when was it, with reference to January, 1901? A. I couldn't attempt to answer that question without referring to some records to refresh my memory.

Q. Do you recall the time that demand was made by Paige and McNair upon the directors of the National Salt Co., which was dated February 19, 1901, requesting that this suit be brought? A. Yes, sir.

Q. How long a time prior to that date was it that your Board of Directors discussed first the instituting of this suit? A. I don't remember that it was ever discussed by the Board in a formal way; the records will show, however.

Q. How long prior to that date did the directors discuss it in an informal way? A. I don't remember it's being discussed at all.

Q. Do you undertake to say Mr. White, that the subject was not discussed, formally or informally, by

the Board of Directors or among the members of that Board, individually, with your knowledge, prior to Feb. 19, 1901? A. No, I could not swear with absolute accuracy that it was not; but I do not recall any particular conversation.

Q. Which of the lawyers of your company prepared the demand signed by Paige & McNair, on the date of Feb. 19, 1901, requesting the institution of this suit? A. I don't know who prepared it; the counsel, at that time, were Clarke & Culver.

Q. The matter was discussed with them, before this paper was presented, and in your presence? A. No, sir.

Q. You discussed it with either Clarke or Culver, or a representative of their firm? A. No, sir.

Q. How long before this date did you know that such a demand was going to be made? A. I didn't know that such a demand was going to be made.

Q. You knew that it was under discussion before that date, did you not? A. I had been told by Mr. Beardslee, I think, it was, that there was much dissatisfaction among some of the National Salt Company's stockholders residing in Warsaw, and that they were threatening suits, injunctions, &c.

Q. And thereupon your Board or executive committee requested Paige and McNair to file some such demand, didn't it? A. No, sir.

Q. You have said that there was no change in the Board of Directors or in the officials of the United Salt Co., for some months after the National Co. acquired a majority of its capital stock; as a matter of fact, however, the business operations of that company were carried on under the supervision or direction of the officers of the National Co., from the time a majority of the stock of the United Co. was acquired? A. Yes.

Receivers' Exhibit 6

Q. When and where did you have a conversation Mr. L. H. Severance, relative to the purchase of his stock in the United Salt Co., if you had any? A. I don't remember whether I had any conversation with Mr. Severance or not; I do not remember meeting him one time in Cleveland; I do not recall the subject of our conversation.

Q. Mr. White, I suppose whatever you did, as President of the National Salt Co., in connection with the purchase of capital stock of the United Salt Co., was done by you with full authority conferred by the Board of Directors of the National Salt Co., was it not? A. All negotiations were conducted by me under general instructions of the Board of Directors.

Q. And what you did was within your instructions or authority from the Board of Directors, and was reported back to the Board, I suppose? A. Yes, sir.

Q. And approved by the Board? A. Yes, sir.

Q. You have spoken, Mr. White, of the transactions by which capital stock of the United Salt Co. was acquired by the National Salt Co., consisting in the purchase of the United stock and payment with a number of shares of common stock and a number of shares of preferred stock of the National Salt Co., and in addition certain cash payments to be made by the National Salt Co. The contract with respect to the cash payments referred to was reduced to writing, was it not, and has been known among persons connected with the business of the company as National Salt Co. certificate of indebtedness? A. The contract was reduced to writing, and these payments were represented by a piece of paper which was called a certificate of indebtedness, the purport of which was to carry out the intention of dividends guaranteed on the stock of the National Salt Co. so given in exchange for stock of the United Salt Co.

Taking of testimony adjourned to 1:30 P. M.

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Taking of testimony resumed at 1:30 P. M.

Same parties present.

By Mr. Quail:

Q. Mr. White, you mentioned the conversation you had with Mr. Frank Rockefeller; where and when did that take place? A. In his office in the Standard Union, at Cleveland, some time in the—May, June or July, 1899.

Q. Who was present? A. I don't think anyone was present, most of the conversation; I think Mr. Frasch was there some of the time.

Q. Who else? A. No one else.

Q. You talked about his selling his stock in the United Salt Co., did you? A. Talked about all the stockholders exchanging their stock for the National; all the United Salt Co. holders, for stock of the National.

Q. The basis of the exchange, or sale, was mentioned, was it? A. Yes, sir.

Q. Did you tell him that your people thought that the United Salt Company's stockholders were asking more for their stock than was fair and equitable? A. I don't remember making that direct statement.

Q. I was asking for the substance? A. I thought the price was high.

Q. Did you tell him so? A. Yes.

Q. And you told him that your people thought it was too high, didn't you? A. I don't remember making that statement.

Q. Covering about what period, during your connection with the National Salt Co., did it declare and pay dividends? A. As to the accurate dates, I refer you to the records. I think they paid dividends on preferred stock commencing within three or six months after the organization, and continued them as long as I was identified with the company.

Q. At what rate? A. 7 per cent per annum.

Q. They were declared and paid at what intervals? A. Quarterly.

Q. And what months of the year? A. I think May and each quarter thereafter.

Q. About when did the company commence to pay dividends on its common stock and how long did such payments continue? A. I should have to refer you to the records for those things. My impression is August of 1899 or 1900.

Q. Did the payments of dividends on the common stock continue as long as you were president? A. I think so.

Q. What was the rate of all the dividends on the common stock, and the intervals and times when they were declared and paid? A. I refer you to the record for the facts; my impression is the first dividend on the common stock was two per cent declared or payable on August 1st, 1900. On reference to the records, I infer that on April 16th, 1900, the directors declared a quarterly dividend of one and one-half per cent and an extra dividend of one-half of one per cent payable August 1st, 1900.

Q. What was the rate and time of payment of the dividends on common stock after that time? A. The rate was one and one-half per cent quarterly; and the time of payment was simultaneous with the payment of the preferred stock dividend, and they were declared at the same time.

Q. Mr. White, do you remember making a report, or, rather, two reports for use by the New York Stock Exchange, in the latter part of 1900, and the early part of 1901, with reference to the properties and business of the National Salt Co., and the securities issued by it in connection with its purchase of the stock of the United Salt Co.? A. I recollect an application was made to the New York Stock Exchange

for the placing in the unlisted department of the Exchange the stock of the National Salt Co., and, in that application, there was submitted certain statements concerning the company.

Q. By whom was that made? A. Application was signed by me, as president of the company.

Q. About what time was the first statement made? A. The time the application was filed; I don't know what date. I should say from this paper was Sept. 30, 1900.

Q. And when was your second statement to that Exchange made? A. It appears from this paper that on February 27, 1901, the Stock Exchange received a communication from the National Salt Co., signed by me as president.

Q. Was that about the date you made that communication? A. I suppose so.

Q. I will ask you whether the papers you are examining contain copies of the reports or portions of the reports made by you to the Stock Exchange, on the respective dates you have mentioned, or about those dates? A. Yes.

Q. Do they contain susbtantially all the reports made at those times? A. I do not know.

Q. Were those reports made by you with the full knowledge of your directors; I mean the directors of the National Salt Co.? A. Yes; I believe you will find, by reference to the records, that instructions were given by the Board of Directors that application should be made to the New York Stock Exchange to place the stock of the National Salt Co., in the unlisted department of the New York Stock Exchange.

Q. You recollect that such action was taken? A. That's my impression; I would refer you to the records for the facts.

Q. And the substance of those reports was—and their contents—was discussed by the directors, was it? A. I don't know.

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Q. They were made by you in pursuance of the action of the directors to which you have referred? A. Yes.

Q. Did the Stock Exchange furnish to your company a number of circulars such as those you are examining, after your statements were made to it? A. I don't remember whether they formally did so; I recall having seen these circulars before.

Q. Did you have some of them about the company's office? A. I remember seeing one of them there; how many more there may have been, I don't know.

Q. Do you know about how many of your directors were furnished with copies of them? A. No, sir.

Q. After these statements were prepared by the Stock Exchange and before they were made public, were they submitted to you for your approval? A. No, sir.

Mr. Quail: We ask that the two papers as to which the witness has just testified be marked respectively Defendants' Exhibits 1 and 2, and attached to the deposition of the witness, to be used in evidence at the trial of the case.

Plaintiff objects to the two papers in evidence, on the ground that they are incompetent and that they do not contain a correct statement of the statements furnished to the New York Stock Exchange, and that they are not original papers.

Papers marked by notary Defendants' Exhibits 1 and 2.

(Signed) ARCHIBALD S. WHITE.
LOUIS H. HALL.

Receivers' Exhibit 6

WILLIAM B. PUTNEY, JR., recalled:

Q. Mr. Putney, whom do the records of the National Salt Co., show were the directors of that company upon its organization? A. "Minutes of the first meeting of the stockholders of National Salt Co., held April 15th, 1899, the following men were elected directors: Samuel B. Lawrence, J. B. Summerfield, James Hunt, Henry C. Everdell, George E. Spencer, A. S. White."

Q. When, thereafter, was Mr. F. B. Squire elected a member of the board, as shown by the record? A. At a meeting held April 13, 1899; a meeting of directors.

Q. I notice that the record of a directors' meeting held April 28th, 1899, shows that the resignation of Mr. F. B. Squire as a director of the company was presented to the board; have you that letter of resignation? A. I have not.

Q. Do you know whether it is on file in the company's records or papers? A. I do not.

Q. Can you ascertain that fact? A. I can write to Scranton for information.

Q. I will ask you whether or not the records of the National Salt Co., show that Mr. F. B. Squire was ever present at a meeting either of the Board of Directors or of the executive committee, prior to October, 1899? A. I can't say whether it would show it or not.

Q. Will you examine the records and state whether or not they show that Mr. Squire was ever present at a meeting of the Board of Directors or of the executive committee, prior to that date? A. I don't see that the records show him to have been present at any meeting prior to that time, of the directors or executive committee.

Receivers' Exhibit 6

By Mr. Snyder:

Q. Have you the stock ledger showing the holdings of stock of the National Salt Co. in your possession,—as far as pertains to F. B. Squire? A. I have.

Q. Who keeps the record which you have? A. It is now kept by the Corporation Trust Co. The record as it appears there now was made up by the Registrar & Transfer Co., which was the transfer agent, up to April 1st, 1902.

Q. Will you turn to pages 370 and 371 and read the record?

Defendants object to the form of question and also generally.

A. The debit side shows:

1899	Certificate No.	"F. B. Squire Shares
July 20	T 27	1
Dec. 6	B553	400
8	C266	100
1900		
Jan. 19	B552	1137
27	B773	50
	C299	100
30	B870	37
Feb. 3	C301	100
	C300	100
8	C305	100
5	C302	100
	C303	100
8	C305	100
13	C306	100
19	C304	100
	B744	50
21	C309	100

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Mar. 6	C308	100
7	B775	50
	B776	50
Apr. 17	C307	100
1901		
Mar. 2	C267	100

The credit side shows:

1899	Certificate No.	Shares
Apr. 15	27	1
Aug. 1	B552	1137
	B553	400
Dec. 6	B773/B776	200
	C266/C267	200
1900		
Jan. 19	C299/C309	1100
	B870	37

Q. Have you also a record kept by yourself as to such holdings of stock? A. I have a record of the transfers that shows all holdings of stock.

Q. Have you also the stock certificates and the book containing the stubs of those stock certificates? A. I have.

Q. I will ask you whether or not the record found in the stock ledger has been compared, by you, with your record of registry of transfers, and also with the original certificates and stubs, and, if so, with what result?

Defendants object to the form of question and also generally.

A. They are all alike.

Q. What kind of stock was it? A. Common stock.

Plaintiff announced that it would take no further depositions.

W. B. PUTNEY, JR.
LOUIS H. HALL.

Receivers' Exhibit 6

CERTIFICATE OF INCORPORATION

and

BY-LAWS

of

NATIONAL SALT COMPANY.

We, the undersigned, Samuel B. Lawrence, Henry C. Everdell, George E. Spencer, John B. Summerfield, of New York City, New York, and James Hunt, of Jersey City, New Jersey, do hereby associate ourselves into a corporation under, and by virtue of, the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act concerning Corporations (Revision of 1896)," approved April 21st, 1896, and the several Supplements thereto and Acts Amendatory thereof, for the purposes hereinafter mentioned, and we do hereby assume to and for said corporation all the rights, powers and privileges granted to and conferred upon corporations by the Laws of the State of New Jersey, and do hereby certify and set forth as follows:

I. The name of the corporation is National Salt Company.

II. The location of its principal office in the State is No. 55 Montgomery Street, Jersey City, Hudson County, New Jersey. The name of the agent therein and in charge thereof upon whom processes against this corporation may be served is Registrar and Transfer Company.

III. The objects for which the corporation is formed are to carry on the trade or business of man-

ufacturing, mining, producing, preparing, refining adapting, buying and selling, and otherwise dealing in all varieties of salt and all ingredients thereof, and to manufacture, produce, purchase, prepare, use, sell or otherwise deal in any materials, machinery, apparatus, appliances, articles or things required for or used for or in connection with or incidental to the manufacture, mining, production, use, purchase, sale, preparation, working or refining of or other dealing in salt of all kinds and other articles of which salt is a component part, or which are used in connection with its manufacture, production and refinement, and generally to carry on any manufacturing business which can conveniently be carried on in connection with any of the matters aforesaid; also to purchase, acquire, hold and dispose of patent rights, letters patent, trade-marks, contracts and other rights, and also to purchase, hold, sell, assign, mortgage, pledge or otherwise dispose of shares of the Capital Stock for any bonds, securities or other evidences of indebtedness created by any other corporation or corporations of the State of New Jersey, or of any other State, and while the owner of such stock to exercise all the rights, powers and privileges of ownership, including the right to vote thereon; and also to do and transact all acts, business and things incident to or relating to or convenient in carrying out its business as aforesaid.

Said corporation may conduct business in other states or in foreign countries, and have one or more offices out of the State of New Jersey, and may hold, purchase, mortgage and convey real and personal property out of the State of New Jersey.

The Directors of the Company shall be classified in respect to the time for which they shall severally hold office. The Board of Directors may select, as may be provided by the By-Laws, an Executive Committee

which shall have the powers of the Board during the intervals between its meetings.

IV. The amount of the total authorized Capital Stock of the corporation is $12,000,000. The number of shares of stock into which the same is divided is 120,000, and the par value of each share of $100. The amount of Capital Stock with which it will commence business is $1,000.

The Capital Stock shall be of two classes, Preferred Stock and Common Stock, $5,000,000 of the Capital Stock may be Preferred Stock, but at no time shall the total amount of the Preferred Stock issued exceed two-thirds of the actual Capital paid in cash or property.

The power to fix the amount to be reserved as working capital for the corporation is hereby given to the Directors, and the right to dividends from profits shall be subject thereto.

The Preferred Stock shall receive dividends at the rate of, and not exceeding, seven per cent. in each year from April 15th, 1899, but such dividends shall not be cumulative, and if the net earnings of any year declarable as dividends shall not be sufficient to pay for such year seven per cent. upon said Preferred Stock, the same shall not be made up from any profits of any later period. The balance of the net profits of the Company declarable as dividends shall be distributed among the holders of the Common Stock.

The par value of the Preferred Stock, shall, in the event of the dissolution of the Company and division of its assets, be paid in full before any sum whatever shall be paid in liquidation on account of the Common Stock, and thereafter the Common Stock shall be entitled to the entire assets remaining.

No mortgage shall be credited or assumed by the Company unless there shall be first obtained the con-

sent in writing of the holders of seventy-five per cent. of the Preferred Stock outstanding at the time, and also the like consent of holders of seventy-five per cent of the outstanding Common Stock.

V. The names and post-office addresses of the incorporators and the number of shares subscribed for by each are as follows:

Name	Post Office Address	Number of Shares Subscribed for.
Samuel B. Lawrence,	13 Astor Place, Borough of Manhattan, N. Y. City.	2 Shares
Henry C. Everdell,	154 Nassau Street, Borough of Manhattan, N. Y. City.	2 Shares
George E. Spencer,	137 Amity Street, Borough of Brooklyn, N. Y. City.	2 shares
John B. Summerfield,	62 Wall Street, Borough of Manhattan, N. Y. City.	2 Shares
James Hunt,	266 Bergen Avenue, Jersey City, N. J.	2 Shares

The period of the duration of the Company shall be unlimited.

In Witness Whereof, we have hereunto set our hands and seals respectively the 18 day of March, 1899.

Signed, Sealed and Delivered in presence of:
R. H. Lee Martin.

JOHN B. SUMMERFIELD, (Seal)
HENRY C. EVERDELL, (Seal)
GEORGE E. SPENCER, (Seal)
JAMES HUNT, (Seal)
SAMUEL B. LAWRENCE, (Seal)

Receivers' Exhibit 6

State of New York, }
County of New York, } ss.:

Be It Remembered, that on this 18th day of March, 1899, before me, the Subscriber, a Master in Chancery of the State of New Jersey, personally appeared R. H. Lee Martin, who being by me duly sworn, on his oath did depose and say that he saw Samuel B. Lawrence, Henry C. Everdell, George E. Spencer, John B. Summerfield, and James Hunt, the persons named in the foregoing certificate, sign, seal, and deliver the same as their voluntary act and deed, and that the deponent at the same time subscribed his name thereto as a witness of the execution thereof.

R. H. LEE MARTIN.

Sworn to and subscribed
before me at New York City,
the day and year aforesaid.
Randolph Parmly,
Master in Chancery of New Jersey.
(10¢ I. R. Stamp cancelled.)

(Endorsed): "Received in the Hudson Co., N. J. Clerk's Office, Mar. 18th, A. D., 1899, and recorded in Clerk's Record No. on Page . John G. Fisher, Clerk, Filed Mar. 18, 1899. George Wurts, Secretary of State."

State of New Jersey, }
Department of State. } ss.:

I, S. D. Dickinson, Secretary of State of the State of New Jersey, do hereby certify that the foregoing is a true copy of the Certificate of Incorporation of National Salt Company, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the 18th day of March, A. D. 1899, and now remaining on file therein.

Receivers' Exhibit 6

In testimony whereof, I have hereunto set my hand and affixed my Official Seal, at Trenton, this Eleventh day of July, A. D. 1904.

S. D. DICKINSON,
Secretary of State.

(Seal.)

BY-LAWS

OF

NATIONAL SALT COMPANY.

ARTICLE I.

Meetings of Stockholders.

Sec. 1. The annual meeting of the Stockholders shall be held at the principal office of the Company, in the State of New Jersey, on the fourth Wednesday of March in each year, after the year 1899, at 12 o'clock. The polls shall be open from 12:15 to 1:15 P. M., under the supervision of two or more Inspectors (no one of whom shall be a candidate for the office of Director), to be appointed by vote of the stock present or represented at the meeting.

Sec. 2. Special meetings of the Stockholders may be called by order of the Board of Directors, and shall be called whenever stockholders of record owning one-fifth of the Capital Stock of the Company issued and outstanding at the time, shall in writing make application therefor to the Directors, stating the object of such meeting. The business transacted at special meetings shall be confined to the objects stated in the call.

Receivers' Exhibit 6

Sec. 3. Notice of the time, place and object of each annual or special meeting of stockholders shall be mailed to each stockholder at least ten days before the date specified for the meeting, addressed to his place of residence or business, as the same appears in the list of addresses which shall be kept by the Secretary of the Company.

Sec. 4. At all meetings of stockholders, each share of stock shall entitle the owner thereof of record, or his proxy, to one vote.

Sec. 5. At all meetings of stockholders, a majority of the shares of stock issued and outstanding at the time, represented either in person or by proxy, shall constitute a quorum. Meetings at which less than a majority of stock is represented may, however, be adjourned to a future date by those who attend.

ARTICLE II.

Directors.

Sec. 1. The Board of Directors shall consist of 13 stockholders.

The first Board shall be elected by ballot at the first meeting of the Company, and the members thereof shall hold office, as herein provided, and until their successors are elected by ballot by the stockholders.

Sec. 2. The Directors shall be divided into five classes; the first class to consist of three Directors to hold office for one year; the second class to consist of three Directors to hold office for two years; the third class to consist of three Directors to hold office for three years; the fourth class to consist of three Directors to hold office for four years; the fifth class to consist of one Director to hold office for five years.

Such Directors shall hold office until their successors are chosen and qualified in their stead.

For the purposes of this Article, the first year, constituting the term of office for the first class of Directors, shall be deemed to have expired on the fourth Wednesday of March, 1900, which is the day fixed for the first annual meeting of the stockholders. At such annual meeting, and at each annual meeting thereafter, Directors shall be elected for a term of five years to succeed those whose term of office expires at the time of such annual meeting.

As Amended March 28th, 1900:

Sec. 1. The Board of Directors shall be increased so as to consist of fifteen (15) persons who shall all be stockholders and said Board of Directors shall be divided into five (5) classes, each class consisting of three Directors.

The two (2) additional Directors provided for in this By-Law shall in the first instance be elected by the Board of Directors as provided in Article II, Section 6, and shall become members of the Class of Directors now consisting of one (1) Director only, being the five year class elected March 20, 1899, now having a four term, and said additional two Directors, when elected by the Board of Directors, shall hold office for and during the term of the Director now constituting said class, or four (4) years from and after the date of this annual meeting.

Sec. 2. At each annual meeting hereafter three (3) Directors shall be elected constituting one class who shall hold office for five (5) years from the date of their election and until their successors are elected and qualified in their stead.

Receivers' Exhibit 6

Sec. 3. A majority of the Directors shall constitute a quorum for the transaction of business. A less number may adjourn from time to time.

The Board of Directors shall meet, for the election of officers and transaction of business, without unnecessary delay after each annual meeting of the stockholders.

Sec. 4. The directors may hold their meetings, and have an office, and keep the books of the Company, except the Stock and Transfer books, at such place outside of the State of New Jersey as may be fixed by them.

Sec. 5. The Directors shall elect by ballot from among their number a President and one or more Vice-Presidents, to hold office for one year. A Secretary and a Treasurer shall be elected or appointed by the Board of Directors, either from their own number, or not, as the Board in each case elects, likewise to hold office for one year.

The Secretary shall be sworn to the faithful discharge of his duties. The offices of Secretary and Treasurer may be united in one person, if, and whenever the Directors so elect.

The Treasurer shall give bonds for the faithful discharge of his duties, in such sums and with such sureties as the Directors may from time to time require.

The Board of Directors may also, from time to time, by resolution appoint such other officer or officers with such powers as may by resolution be determined.

Sec. 6. The Board of Directors shall have the power to fill any vacancy occurring in their number, whether created by death, resignation, removal or otherwise, or by increase of the number of Directors, and to fill any vacancy in any office.

Sec. 7. Meetings of the Board of Directors may be called at any time by the President of the Company.

Directors shall be notified in writing of the time and place of all meetings of the Board, at least two days prior thereto. Any Director may, however, in any instance, waive such notice in so far as he is concerned.

ARTICLE III.

Executive Committee.

Sec. 1. The Board of Directors shall appoint not less than two of their number, who, with the President, shall constitute an Executive Committee, to hold office for one year, which Committee shall have and exercise the powers of the Board in the intervals between the meetings of the Board. A majority of said Committee shall constitute a quorum.

Sec. 2. The Committee shall keep full and complete minutes and records of all its meetings, proceedings and acts held and taken in the intervals between the meetings of the Board of Directors and the same shall be open to the inspection of the Board of Directors.

ARTICLE IV.

The President and Vice-President.

Sec. 1. The President shall sign all bonds and obligations of the Company. He shall prepare a report for the annual meetings of the stockholders, which shall be submitted to the Board for approval. He shall have and exercise general supervision over all the business affairs of the Company, and shall have authority to negotiate trade contracts, and engage and discharge and fix the salaries of all employees other

than those appointed and employed by the Board of Directors, or by the Executive Committee. He shall report, from time to time. to the Board and Executive Committee, and keep them advised of all business of the Company.

Sec. 2. In case of the absence or inability of the President, the duties of his office shall be performed by the Vice-President, subject, however, to direction and approval of the Executive Committee.

ARTICLE V.

Secretary.

Sec. 1. The Secretary shall keep the minutes of the proceedings of the meetings of the stockholders and of the Board of Directors and with the President shall be the custodian of the same. He shall also record all the votes of the Directors and stockholders in a book to be kept for that purpose.

Sec. 2. He shall have charge of the corporate seal of the Company, and when authorized by the Board of Directors or by the Executive Committee so to do, he shall affix the seal to contracts and other instruments.

Sec. 3. He shall, under the direction of the Directors give all notices required for the election of Directors and meetings of the Directors and Stockholders.

Sec. 4. In the absence of the Secretary, the Board may appoint a Secretary *pro tem* to make records of its meetings and to do whatever else pertaining to such office it may direct.

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ARTICLE VI.

Treasurer.

Sec. 1. The Treasurer shall receive and have charge of all funds belonging to the Company, and shall deposit the same to the credit of the Company in such place or places as the Executive Committee may direct, and shall disburse the same under their direction. He shall sign all checks of the Company, which shall also be countersigned by such other officer or employee of the Company as may, from time to time, be empowered in that regard by the Executive Committee.

ARTICLE VII.

Transfer and Registration of Stock.

Sec. 1. All transfers of stock shall be signed by the stockholder in person or by attorney, in a book to be provided for that purpose. At the time of transfer the old certificate of the shares transferred shall, in each case, be surrendered and be canceled and a new certificate issued in lieu thereof. All certificates of stock issued shall bear the seal of the Company, and be signed by the President or the Vice-President and the Treasurer. The Board of Directors may make, and from time to time, alter or amend suitable regulations providing for the registration of certificates of stock.

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ARTICLE VIII.

Dividends.

Sec. 1. All dividends on the Preferred Stock shall be declared quarterly on the 15th days of July, October, January and April of each year, and dividends on the Common stock shall be declared annually on the 15th day of April in each year, or, in the discretion of the Board, may be declared either semi-annually or quarterly on the days fixed for declaring dividends upon Preferred stock.

Sec. 2. The power to fix the amount to be reserved as working capital for the corporation is vested in the Directors, and the right to dividends from profits shall be subject thereto.

Sec. 3. The Preferred stock shall receive dividends at the rate of and not exceeding seven per cent. in each year from April 15th, 1899, but such dividends shall not be cumulative, and if the net earnings of any year declarable as dividends shall not be sufficient to pay for such year seven per cent. upon said Preferred stock, the same shall not be made up from any profits of any later period. The balance of the net profits of the Company declarable as dividends shall be distributed among the holders of the Common stock.

The par value of the Preferred stock shall, in the event of the dissolution of the Company and division of its assets, be paid in full before any sum whatever shall be paid in liquidation on account of the Common stock, and thereafter the Common stock shall be entitled to the entire assets remaining.

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ARTICLE IX.

Limitations.

Sec. 1. No mortgage shall be created or assumed by the Company unless there shall be first obtained the consent in writing of the holders of seventy-five per cent. of the Preferred stock outstanding at the time, and also the like consent of holders of seventy-five per cent. of the outstanding Common stock.

Sec. 2. At no time shall the total amount of the outstanding Preferred stock exceed two-thirds of the actual capital paid in cash or property.

ARTICLE X.

Order of Business.

The order of busines at meetings of the Directors shall be as follows:

1. Reading unapproved minutes of previous meetings of the Board and the Executive Committee.
2. Reports of officers.
3. Reports of Committees.
4. Unsatisfied Business.
5. Miscellaneous Business.

ARTICLE XI.

Seal.

The corporate seal shall contain the word "National Salt Company" surrounding the date "1899."

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ARTICLE XII.

AMENDMENTS.

Sec. 1. Any one or more of these By-Laws may be altered, amended, added to or repealed at any annual or special meeting of the stockholders by a vote of the holders of a majority of the stock, or at any meeting of the Board of Directors by a vote of two-thirds of the Directors except that Article IX shall not be amended, and sections 1 and 2 of Article II, may be amended by increasing the number of Directors to 11, and properly classifying them at any meeting of the Board of Directors by a vote of two-thirds of the Board, but shall be altered, amended, added to or repealed in any other respect only at any annual or special meeting of the stockholders by the vote of the holders of seventy-five per cent. of all the outstanding Common stock of the Company, and seventy-five per cent. of all the outstanding Preferred stock of the Company and provided, further, that notice of each proposed alteration, amendment, addition or repeal shall have been given with the notice of such meeting.

White Report to Directors.

(Letter-head National Salt Company.)

New York, Sept. 22, 1899.

To the Directors of the National Salt Co.,

Gentlemen:

I beg to hand you herewith contracts and a snyopsis of same, recently made by me subject to ratification

of the Board of Directors of this Company, which contracts contemplate the control of about 95% of the product of the State of Michigan, by purchase of the salt, or the lease of plants, or purchase of plants, as indicated. Also the control of about 60% of the product of Kansas. Also the control of about 80% of the product of Ohio. The remaining 5% of the product of Michigan we can probably acquire, and negotiations to that end are now in progress. The remainder of the product in Kansas is produced by the Hutchinson Kansas Salt Co., which is largely controlled by Goulds, and negotiations are now in progress with Mr. Gould, looking to the acquirement of that property or the control of its product, by purchase or by leasing of the plant. The remainder of the product of Ohio is manufactured by the Wadsworth Salt Co. of Wadsworth, Ohio, who have a capacity of about 150,000 barrels per annum, and the Ohio Salt Co. of Rittman, Ohio, who have a capacity of about 100,000 barrels per annum.

The Wadsworth Salt Co. are now considering a tentative proposition from us to sell their product to us on a basis of $2.30 per ton for Undried Vacuum salt, and $3.00 per ton for Kiln Dried Vacuum salt, f. o. b. cars Wadsworth. The Ohio Salt Co. decline to sell or lease their plant, or to sell their output, but say that they will enter into any dealings with us which are fair and reasonable for the maintenance of a profitable price.

The Ohio Salt Co. are in financial difficulty and it is possible that we may acquire an interest in that Company through the purchase of some of its stock.

The product now that we can absolutely control, consists of:

Receivers' Exhibit 6

Michigan,	2,000,000 bbl.		
Ohio,	2,000,000 "		
Kansas,	1,200,000 "	7,200,000 bbls.	
We may secure the remainder of the product amounting to:			
Michigan,	250,000 "		
Kansas,	800,000 "		
Ohio,	250,000 "	1,300,000 "	
		8,500,000 "	

The prevailing prices of salt in the west to-day are abnormally low, indeed, as low as they have ever averaged in the history of the business. It is my judgment, confirmed by the opinion of manufacturers and handlers of salt in the west, that a profit of 15¢ per bbl. can be realized by us on this production of 8,500,000 bbls. which would yield us revenue, $1,275,000

The sale of salt in the State of New York, according to our last statement, was yielding us a profit of 25¢ per bbl. which on a minimum output of 2,000,000 " will yield a revenue of 500,000

Total prospective profits, 1,775,000

Respectfully submitted,

A. S. WHITE.

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Synopsis of Contracts.

TECUMSEH SALT COMPANY:

Capacity,

300,000 bbls. annually.

Equipment,

2 Direct Heat Vacuum Pans, 6 Grainers, necessary Boilers, etc.

Rental,

$25,000 per annum, payable quarterly, commencing January 1st, next.

MICHIGAN SALT ASS'N.:

Contract for their product up to March 1st, 1904, estimated at 2,893,590 bbls. annually.

Price for 280 lbs. of salt,
#1 Grainer Salt, 26¢
#1 Vacuum, 25¢
#1 Packers, 35¢
#2 Grainer 20¢
#2 Vacuum 15¢

Barrels,

15¢ each until March 1st, 1904; thereafter price to be adjusted as the increase or decrease in the price of cooperage stocks compares with the average price during 1899.

Terms,

Payments the 3d of the third month next succeeding the month of manufacture. Final settlement to be determined by actual deliveries.

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Liability,

Failure on their part to deliver salt, to be settled by liquidated damages of 15¢ for each and every barrel not delivered.

Lease of Warehouses situated at Columbus, Ohio; Toledo, Ohio; Detroit, Mich; So. Chicago, Ill.; St. Louis, Mo.; Michigan City, Ind. for a consideration of the payment of the organization expenses of the Michigan Salt Association, which consists of the salaries of its officers, clerks, agents, etc., estimated at not exceeding $20,000 per year.

J. S. STEARNS:

Quantity,

His capacity up to 300,000 bbls., at 48¢ per barrel for Grainer salt at works.

Terms,

Payment not latter than the 15th day of month for preceding month's shipments.

Quantity on Hand,

Any quantity of salt on hand in excess of 40,000 barrels is subject to an advance on such excess at the rate of 30¢ per 280 lbs. salt.

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BUTTERS & PETERS SALT & LUMBER CO:

Quantity,

180,000 bbls. of salt at 25¢ per 280 lbs. and barrels at 20¢ each.

Payments,

Not later than the 15th of month next succeeding shipments. Any salt remaining in warehouse three months after manufacture is subject to an advance at the rate of 25¢ per 280 lbs. of salt.

THOMSON BROTHERS:

Lease of their plant at St. Clair, Mich. (which has made about 125,000 bbls. salt annually for some years past) for $12,000 per annum, payable quarterly.

BROWNLEE & COMPANY:

Purchase of their product up to 90,000 barrels, 32¢ for 280 lbs. in bulk, or 50¢ for 280 lbs. including barrel.

Excess above 90,000 bbls. 5¢ per barrel less than the above prices.

Payments,

Not later than the 15th of month for preceding month's shipments.

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DETROIT SALT CO:

Lease of their plant, near Detroit, Mich. of capacity of about 275,000 bbls. per annum for $35,000, or for the capacity of less than 275,000 bbls., then rental to be paid at the rate of twelve and seventy-two one hundredths cents (12 72/100) per barrel of output.

Rental,

Payable quarterly.

Supplementary contract whereby the Detroit Salt Co. agree to manufacture salt for us at not exceeding 18¢, we to have the benefit of same.

ANCHOR SALT CO:

Lease to their two plants at Ludington, Mich.; one plant consisting of a Vacuum Pan of capacity of about 1000 bbls. of salt per day, and the other plant consisting of six Grainers of capacity of about 350 bbls. per day.

Rental,

12¢ per barrel on output, as determined by test.

Rental,

Payable quarterly at the rate of $54,000 per annum, adjustment to be made at the end of the year.

Supplementary Contract giving us the option of cancellation of this lease, and we purchasing salt from them at the rate of 25¢ for 280 lbs. of Vacuum salt, and 32¢ for 280 lbs. of Grainer salt in bulk on warehouse floor.

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Quantity,

To be the capacity of their works.
Privilege of curtailment of production at the rate of 12¢ for each and every barrel short shipped.

Synopsis of Contracts.

STATE OF OHIO:

Leases are now being procured by W. R. Shields of Columbus, Ohio, acting for us, contracts to be taken in his name, but assignable to us or to such party or parties as we may select.

Plant of the Syracuse Coal & Salt Co., capacity	40,000 bbl. per year;
Plant of the White Rock Salt Works, capacity	70,000 " " "
Plant A. E. Smith, Minersville, Ohio, capacity	50,000 " " "
Plant of B. Koehler, capacity	70,000 " " "
Plant of Ebersbach, Schaefer & Co., Pomeroy, O., capacity	60,000 " " "
Total,	290,000

Rental at these plants is at the rate of 7¢ per barrel, which would be the equivalent of $20,300.00.

Mr. Shields is also making contracts for the purchase of the product of the following works:

Hope Salt & Coal Co.,	capacity	60,000 bbl. per year;
Hartford City Salt Co.,	"	50,000 " " "
Coal Ridge Coal Co.,	"	50,000 " " "
Buckeye Salt Co.,	"	80,000 " " "
Total,		240,000 " " "

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This salt is purchased at 35¢ per 280 lbs. of salt in bulk.

All the above plants are located on the Ohio River and include all those in operation today, with the exception of the Liverpool Salt & Coal Co. of a capacity of 70,000 bbls. per year, which is the property of A. E. Smith, of Cincinnati, of whom we propose to lease the Minersville plant which has a capacity of 50,000 barrels per year. Mr. Smith has a pride in commanding the operation of the Liverpool Salt & Coal Co. and negotiations are now in progress looking to securing the product of that works.

This product of the Ohio River is to be contracted for a period of five years, with the privilege of cancellation on our part at any time upon six months notice. Contracts will also probably contain an option to purchase plants.

Loomis Salt Company, Akron, Ohio.

These parties have agreed to sell their plant to E. G. Henderson, of Detroit, Mich., who acts as our agent in the transaction, for $27,500 cash, and a five year mortgage for $22,500 at 5% interest; interest commencing January 1st next.

This plant consists of 2 wells, 2 direct heat Vacuum Pans of a capacity of 300 or 400 bbls. per day each; upon which is located plant, building, copper shop, sidings tanks, etc. This works has a complete dairy mill consisting of a Hersey drier, etc.

The transfer of this property is to be made free of incumbrances on Saturday, Sept. 23d.

United Salt Company, Cleveland, Ohio.

The #1 plant located at the foot of Madison Ave., and between the Lake Shore R. R. and Lake Erie, in

the City of Cleveland, embraces about 9 acres with 5 or 6 salt wells, 52 grainers, boilers, 1 vacuum pan of capacity of 500 bbls. per day, warehouses, tanks, etc.; the whole plant capable of producing about 1,000,000 bbls. of salt per year.

The United Salt Co. have contracts with various mills in Cleveland continuing for a period of from 10 to 15 years for the exhaust steam from said mills, copy of said contracts are herewith submitted. These contracts aggregate 33,500 h. p. at a total annual cost of $15,500.

The Backus Mill of the American Steel & Wire Co. is located next to the United Salt Company's #1 plant and at the present time exhaust steam is being taken from the engines of the Backus Mill, transmitted through an 18 in. pipe, a distance of about 550 ft., to the Vacuum pan of the United Salt Co., and from the heat contained in that steam brine is being evaporated in this Vacuum pan, and about 80 tons of salt produced per day of 24 hours.

Mr. Turner, Manager of the United Salt Co., informs me that he has carefully computed the cost of manufacturing this 80 tons of salt, which he estimates to be 35¢ per ton, laid down in warehouse, which includes cost of steam and the cost of labor operating the Vacuum pan and conveying the salt from the Vacuum pan bins to the warehouse.

The United Salt Co. have about finished the completion of a plant located at the foot of Marquette St. between the Lake Shore tracks and Lake Erie, in the City of Cleveland, which has estimated about 150 tons of salt per day, proposed to be produced by a new process, the invention of Mr. Frasch of the United Salt Co.

In this process brine is heated from the exhaust steam of the American Steel & Wire Co., located about 400 ft. from the new salt plant. The brine is

then sprayed and the salt which is precipitated, is carried to a central point, from whence it is elevated into a screen in which the various grains of salt are separated and thence carried by elevator to centrifugal machines, where the brine is purged from the salt, which salt is then passed through Hersey driers and is ready for shipment.

This process is the result of an experimental plant constructed by the United Salt Co. which operated about two months, and upon the result of this experiment, this new construction was commenced, and it is the opinion of all those who have inspected the plant, that the new process produces a grain of salt which is merchantable at market prices, and the cost of productions of the salt is said to be at not exceeding 35¢ per ton, delivered on warehouse floor.

The United Salt Co. are now completing 2 wells located on a plot of land situated near the H. P. Nail Company's works. Their purpose was to put up a plant upon these premises, similar to the one at Marquette Street, using the exhaust steam from the H. P. Nail Company's works for the heating of brine.

The consideration wanted by the United Salt Co. is that for each and every share of the capital stock of the United Salt Co., (which consists of 9500 or 10,000 shares of the par value of $100 each,) they shall obtain 1-1/4 share of preferred and 1-1/4 share of common stock of the National Salt Co. of New Jersey. They further require that we shall pay them an additional sum of money, the equivalent of $17.00, for each share of preferred and common stock of the National Salt Co. exchange for United stock, for a period of 5 years, they agreeing that during said period of 5 years, they will return to the National Salt Co. any dividends which may be declared and paid upon any National Salt stock given them by this exchange.

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Cleveland Salt Company.

This Company is now constructing, and expects to have in operation in about sixty days, a salt works located at the corner of Central & Second Aves. and the Cleveland & Pittsburgh R. R. crossing in the City of Cleveland. The land and buildings thereon are the property of the Cleveland Electric R. R. Co.

The Cleveland Salt Co. have a contract with the Cleveland Electric R. R. Co. to take from the Railroad Company for a period of five years, 2,400,000 lbs. of exhaust steam per day, the consideration being one-half of the cost of the coal in the cars which is burned by the Railroad Co. in the production of the aforesaid steam.

This and the eight letters following were introduced in evidence in the Ohio suit.

Warsaw, N. Y., Feb. 19, 1901.

To the Directors of the National Salt Company:
#26 Broadway, New York City, N. Y.

Gentlemen:

We, the undersigned, stockholders of the National Salt Company, hereby demand and request that you forthwith take steps to annul the contract heretofore entered into on or about the 22nd day of September, A. D., 1899, by and between the National Salt Company, and certain stockholders of the United Salt Company of Cleveland, Ohio, whereby the National Salt Company acquired all the outstanding capital stock of said United Salt Company. The grounds among others, upon which we ask that said contract be annulled are:

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1. That we have never consented to or ratified the same in any way, and upon learning the terms and conditions of said transaction have taken immediate steps to repudiate said contract, which is a fraud upon the stockholders and works an injury to them.

2. That the terms of said contract were *ultra vires* of both the National Salt Company and the United Salt Company.

3. That certain stock of the par value of $1,250,000.00 of both the preferred and common stock of the National Salt Company has been by said agreement or transaction preferred to the remaining stock of said National Salt Company, and to the injury of the undersigned stockholders as well as others.

4. That said contract was secured by the stockholders of the United Salt Company from the National Salt Company by fraud and fraudulent representation, and if said contract or agreement should be fully carried out, the same would result in squandering the property and assets of the National Salt Company and the spoliation of the stockholders of the National Salt Company.

5. That said contract or agreement between National Salt Company and the stockholders of the United Salt Company is in violation of the Anti-Trust Laws of the State of Ohio, and is void under the laws of said State.

In view of the magnitude of the interests involved and the importance of this matter to the stockholders of National Salt Company, we request prompt action by you upon this communication, and that you will immediately, upon taking action, inform the undersigned of the decision at which you have arrived; for should you determine not to take the action above requested, we, the undersigned, shall institute proceed-

ings on behalf of ourselves and all stockholders of the National Salt Company, for the purpose of annulling said contract agreement between National Salt Company and the former stockholders of the United Salt Company, having the same declared null and void, and obtaining restitution of such consideration as National Salt Company has parted with in partial fulfillment of said contract.

GEORGE K. PAGE,
E. O. McNAIR.

Pennsylvania Limited, En Route,

July 22nd, 1899.

Dear Mr. Squires:

If you can get 51 or 67% of the United Stock to accept the proposition which we agreed upon the other day, that is all we want. It would be much easier work for me to get our people to accept the proposition on 67% of your stock than all of it, principally because of the guarantee.

Yours truly,

Over. A. S. WHITE.

(On other side)

Mr. A. S. White,
National Salt Co., New York.

Dear Mr. White:

Mr. Frasch and I must be perfectly candid with our people, and give each and all an opportunity to do as well as we do. If they do not accept it is their privilege, but the opportunity must be given them.

Yours truly,

F. B. SQUIRE,
H. E. C.

7-24-99.

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Cleveland, O., Sept. 30th, 1899.

My dear Mr. White:

The following message just received from Mr. Shields: "Have everything closed except Liverpool. Will take Smith to New York Monday. Could you be there Monday, or Tuesday?"

Our Treasurer has gone to New York to see the Parade and take in the Yacht Races, consequently I am alone here and cannot get away on account of being compelled to sign checks, therefore, it will be impossible for me to be with you as suggested by Mr. Shields. However, I have not the slightest doubt but that you can make a trade with Smith by taking him into your service, and have him take charge of the Ohio River plants, looking after the operation of such as you will continue to run. My impression is that you can engage Smith for this purpose, by dead renting his Liverpool plant a little higher than the rest, or possibly by running it, and securing the product at a little higher price. By pursuing one of these courses, I feel you can engage Smith for $2,000.00 to give such time as the business may require, but not his undivided attention.

I have not as yet heard from Elmer or the Rittman people, but expect to today, and will write you again if I do. As I wired you last night, I have possession of more than a majority of the stock of the United Salt Company.

Respectfully,

F. B. SQUIRE,
H. E. C.

Salt.

Receivers' Exhibit 6

Sept. 15, 1899.

To F. B. Squire, N. Y.:

In place of option we should have contract to exchange stocks agreed bases October first. Guarantee clause should provide payment by us of amount the equivalent of seven on preferred and ten on common in consideration of all dividends paid you being paid back to us. Contract should also provide United States assets consisting of accounts receivable stock and supplies on hand at cost should exceed liabilities and pledge United stockholders not engage salt business five years.

A. S. W.

Cleveland, O., Sept. 28, 1899.

Mr. A. S. White,
254 Garfield Place, Brooklyn, N. Y.

Dear Mr. White:

I have had an interview this afternoon with Dr. Eberhard and Mr. Young, who is vice president of the Rittman Salt Co. Dr. Eberhard is president. It is quite a problem to solve. They are evidently very serious in their theory of manufacturing three or four staple products sold to wholesale grocers, believing that in this way they could control trade better, and further cheapen their cost of manufacture by having one set of people in charge of all.

Elmer is going down tomorrow to look over their plant, for the purpose of advising me what it is worth. I fancied I saw a little inclination on their part to sell their plant outright, which seemed to be the only idea they would entertain. I asked them whether they

would like to join us and take stock, and this suggestion met with quite a little favor. As a result of my talk, which lasted nearly two hours—they are going home tonight. Elmer will visit them tomorrow and one of them will see me on Saturday, when I will write you again.

It is now too late for me to give you the substance of what I have just telegraphed concerning the stock. However, I have 4,400 shares and J. D. wires me that he mailed his this afternoon, which will give us 1,800 more, which will be more than the controlling interest. As soon as I receive his stock tomorrow, I will wire you at your house. But, as I stated in my telegram, the Trust Company here has not as yet accepted.

Yours very truly,

F. B. Squire,
H. E. C.

Cleveland, O., Sept. 29, 1899.

To A. S. White,
254 Garfield Pl., Brooklyn, N. Y.

I now have Mr. J. D. Rockefeller's stock.

F. B. SQUIRE.

Cleveland, O., Oct. 4, 1899. S.

Mr. A. S. White,
National Salt Co.,
26 Broadway, New York.

Dear Mr. White:

Mr. Young and Mr. Everhard called upon me this morning, and I have secured an extension of the op-

tion for ten days, making it the 12th before it expires. In the meantime I shall see you. It is one of the hardest nuts I have ever had to crack. They are as independent as men possibly can be, and apparently as indifferent as a person could be in making a trade. I am satisfied now that they are looking for $75,000.00 profit instead of $25,000.00. As they deceived me in one respect, I feel as though I am right in assuming that they will deceive me in other ways, and so conclude that their figure is not final.

What have you done with Wadsworth? Finding I could not be with you tomorrow I wired, realizing that you had probably held Mr. Smith over. Why not have him come here and look over our new plant? It might open his eyes. There can be no objection to it, and if it does not do any good it cannot do any harm. I would not be in a hurry in making a trade with him. If the worst comes to the worst, it is not a large quantity at the outside, and the character of his product will not permit of its being sold promiscuously. It can only be disposed of to the poorer class of trade, and at a reduced price. If you have Michigan and Kansas settled, why not advance the west another 5c or 10c and bulk 50c., and we could do the same, except Cincinnati, and leave the table prices alone for the present, at least, or until next week.

Yours very truly,

F. B. SQUIRE.

HOT SPRINGS, VA., April 19, 1899.

DEAR MR. WHITE:

I have your valued favor of the 17th. Glad to know that you have everything cleaned up. I trust that in working out the details of your organization you will find no difficulty beyond those of ordinary character. I infer from your letter that $360,000 of your working capital is absorbed in stocks, salt, bags, cooper stock and other supplies. This is a large amount of money to be locked up in stocks for an output of 300,000 tons, and I shall be very much surprised if you are not able to reduce it at least $150,000. I imagine that all hands have carried a very full stock of everything, especially salt, and yet $1.40 a ton would mean a tremendous stock. However, I suppose such is the case. If I were you I should look into it carefully, and exhaust the stock at such plants as you do not intend to run before making the shipments from other points, even though it were necessary to temporarily shut down all the blocks. If you will pardon a few suggestions, I would recommend that you map out in memo. form all such subjects to be laid before the executive committee as promptly as you can get them together, and if I can serve you in any way don't hesitate to command. I will run over any time, if my services are required, still I trust that you will not infer from this statement that I have changed my ideas conveyed to you in my letter of the 14th concerning the United Co. The original programme contemplated, as outlined in your former letter, was your plan, not mine. You will recall that whenever you spoke to me about combining New York and Ohio, I never hesitated to advise you that Ohio could not be brought into the combination as you suggested. Further, I said to you that there were reasons which I could not explain, but which later I would make known to you, but felt that the New York people could not make any mistake by getting together,

which you agreed to; that unless they combined there would be no hope for them on account of the competition which would naturally exist between them and the cheap salt which would be made at Cleveland (by yourself and the United), which would make it impossible for them to make any money; but with the New York interests controlled by one company there might be a way to amalgamate the two elements, but which would have to be on an entirely different basis than the New York plan. I believe that you will recall some of my remarks on these lines, a little ambiguous, perhaps, at the time, but I felt that you understood what I meant without going into details, which I could not do at that time. It was my idea that if the New York people got together the United Co. would develop the process which I had in mind at the time, and secure the ratification of our contracts (with the combination of iron interests which had changed hands), so that we might have something tangible to present to the Ohio people, with whom we might endeavor to make some trade arrangement. You and I talked over the subject concerning your own Company, and we both agreed that it was entitled to a better consideration for its output than the New York plants, by reason of its economical fuel arrangements. I had in mind at that time the still further economics which the United Co. would make by reason of its fuel contracts, and the processes which we would develop, which would greatly lessen the costs of construction; all of which would have a very important bearing in any conference that we might have in Ohio for the purpose of uniting Wadsworth, Ritman and Cleveland. This was a feature which I said to you should be handled entirely independent of the New York field, and which I had not discussed with my people, for reasons which are undoubtedly apparent to you to-day, but not at that time. I repeatedly advised you that there was something in the United situation which would prevent their combining with the

New York people at the time you had the subject under consideration. I had in mind what you now know, and what I have alluded to above. In view of all my statements, knowing the situation as I did, I was mystified by your persistence in insisting that Ohio go into the general combination, and it was with no little trouble that I secured the options in your favor for the purchase of at least three-quarters of United stock. I realized that when the Ohio situation became well known to the New York people it would have made them more persistent in forcing you to include Ohio before they agreed to accept your proposition. I think I told you this in almost this language. You must admit that the prerogative to sell is equal to the privilege to buy. If one does not see fit to sell there is no power that I know of can force him; nor, if a man wants to sell, is there any law to force a man to buy. I have a letter from Mr. Frasch explaining the situation. It is practically this: at my earnest solicitation he went to work and secured options which, from the executive committee's standpoint, was a fair basis of value when taking into consideration the advantages which the United Co. had over all others, that it would be useless to attempt a trade on any basis of comparative values, there being nothing to compare with. The cost of construction being approximately one-twentieth of the present cost, and the utilization of heat almost theoretical, and the grade of salt varying from fine table to ordinary common, the value could not be estimated; nothing but absolute experience could tell.

As the United people were indifferent about disposing of their stock, even at the price named, you can imagine that they were not disappointed when no action was taken. Mr. Frasch advises me further that they are going ahead with his process, which is proving itself every day. The position which the executive committee take is, that they have nothing to sell, but you have an intimation as to what possibly

a majority of the stock, or the whole of it, can be bought for, still I am candid enough to admit to you that unless action is taken very soon it will be useless to undertake its purchase at any such figure. Herein comes my difficulty, being identified with both organizations, wishing success to each, one or the other must be sacrificed, consequently I feel that I ought not to desert my old business associates; therefore, after carefully considering the subject, I felt there was only one thing for me to do, namely, to make a candid statement to you and offer my resignation, dispose of my stock, and devote my time and experience to the United interests. I assure you that it will always be my aim, and I know it is their policy, to work in perfect harmony with our competitors, as far as it is consistent with business principles. If you have any proposition to offer I would be only too glad to perform the good office of submitting it, but I can assure you that negotiations in the way of arguments are simply out of the question. I am glad that you feel that the United Co. is not essential to the success of your new enterprise, and I now confirm my telegram to you of this morning, to sell 1,000 shares at 60, or 100 shares on the market and a hundred shares at each advance of one point until 1,000 shares had been sold. I will go further, and say, that if you desire for the welfare of your new Company that I should dispose of all my holdings you may continue selling until all my stock has been disposed of, selling it in 100-share blocks at 1 point advance, or I will sell 1,000 shares at 60, and the other 1,000 in hundred-share lots with each advance of one point. This will be an average for the second thousand of 65, or I will take 60 for 1,000 and 65 for the other thousand, or whatever the balance may be.

Please wire me on receipt of this letter to-morrow whether there is any prospect of disposing of a part or the whole of my stock.

Yours truly,

F. B. SQUIRE.

Receivers' Exhibit 6

Cleveland, O., Oct. 20, 1899. S.

Mr. A. S. White,
National Salt Co.,
No. 26 Broadway, New York.

My dear Mr. White:

Don't forget at our meeting Tuesday to call up the subject of chartering various oirganizations in the different States, not only for the purpose of overcoming any vicious legislation in the way of Anti-Trust bills, but also for the purpose of protecting ourselves on the Tax question. This letter is an extremely important feature.

Yours very truly,

F. B. SQUIRE.

Cleveland, O., Sept. 30, 1899.

A. S. White,
254 Garfield Place, Brooklyn, N. Y.

Despatch received. Yes, I have about sixty-three hundred shares now in my possession ready to deliver which will be taken to New York by Goff Sunday night, telegram from Shields states he has everything closed but Liverpool, intends taking Smith to New York, have written you fully this morning my views concerning Smith, no information as yet from Rittman, will advise you as soon as I have any, would it not be advisable for Turner to advance all grades on Monday ten cents per barrel outside of Cincinnati? We are full of orders and have large stock.

F. B. SQUIRE.

New Jersey State Library

Receivers' Exhibit 6

Decree in Ohio Suit.

State of Ohio, }
Cuyahoga County, } ss.:

IN THE COURT OF COMMON PLEAS.

NATIONAL SALT COMPANY, Plaintiff, vs. THE UNITED SALT COMPANY, *et al.*, Defendants.	No. 74054 Journal Entry.

December 12, 1903.

Plaintiff dismissing herefrom without prejudice the defendants George S. Ingraham, Frances T. Ingraham, Robert S. Ingraham and William M. Ingraham, and said defendants withdrawing all pleadings filed by them, this cause came on to be heard on December 9, 1903, between the plaintiff and defendants, The Citizen's Savings and Trust Company Trustee (the latter company having, by consolidation of The Savings and Trust Company with The American Trust Company, defendant herein, succeeded to the rights and obligations of the said The American Trust Company as trustee under the trust agreements referred to in the petition and cross petitions herein filed), The United Salt Company, F. F. Sanford, I. C. Alden, Percy S. Balkwill, W. W. Balkwill, W. W. Benham and C. C. Young, executors of the estate of Elizabeth A. Benham, Charles Baird, William H. Burger, Lucy V. Baird, Bessie C. Baird, Mrs. Florence H. Benjamin, C. C. Barber, Edward A. Brion, John Bensinger, Anna B. Bevan, James Corrigan, Mary J. Crain, S. T. Curtis, W. P. Cowan, Paul Calvi, Trus-

tee; L. A. Crandall, William Chisholm, J. H. Cooper, Trustee; Edward Calm, Dwight H. Cady, D. A. Dangler, W. A. Dutton, H. J. Doolittle, Charles I. Dangler, D. Edward Dangler, H. C. Ellison, William H. Eaton, W. H. Foster, Stephen L. Folger, Clarence M. Flack, J. M. Henderson, Marietta L. Huntington, H. H. Hodell, Augustus M. Hodge, T. R. Hoffman, E. S. Harkness, C. W. Harkness, E. R. Huddleston, Ophelia T. Jones, W. E. Judd, Virgil P. Kline, F. W. Lothman, Charles G. Little, D. W. Lothman, Charles M. Lines, Ferederick J. Lovatt, B. A. Mathews, Mrs. Francis P. Mathews, A. E. Overton, James C. Parrish, Eva L. Page, Frank Rockefeller, John D. Rockefeller, Mrs. Henrietta L. Robinson, J. K. Robinson, W. C. Spaulding, L. H. Severance, Freeman C. Sherman, A. V. Tiedemann, Newton J. Morley, C. E. Waite, Mary H. Tuckerman, Erickson Perkins, Sarah A. Perkins, Charles W. Prescott, Ledyard H. Bailey, F. B. Squire, Herman Frasch, John Hartness Brown, Elmer Turner, O. B. Hoover, Dr. George Lunge, Kate Balkwell, Mrs. George Predmore, Lucy E. Britton, H. A. Hutchins, Joy Morton & Company, W. T. Kirk, L. O. Sherman, George W. Underhill, Margaret R. Underhill, Joe W. Swaine, Stewart, Barr & Company, Flower & Company, Harold J. C. Brown, Sarah W. Carpenter, Samuel R. Underhill and S. R. Underhill, J., upon the pleadings and the evidence, and was argued by counsel and the Court being fully advised in the premises do find that all defendants excepting H. A. Hutchins, Joy Morton & Co., W. T. Kirk, L. O. Sherman, George W. Underhill, Margaret R. Underhill, Joe W. Swaine, Stewart, Barr & Co., Flower & Company, Harold J. C. Brown, Sarah W. Carpenter, Samuel R. Underhill and S. R. Underhill, Jr., were duly served with summons or have entered their appearance herein; that the defendants Elmer Turner, O. B. Hoover, Dr. George Gunge, Kate Balk-

well, Mrs. George Predmore and Lucy E. Britton are in default for answer or other pleading; that the defendants H. A. Hutchins, Joy Morton & Company, W. T. Kirk, L. O. Sherman, George W. Underhill, Margaret R. Underhill, Joe W. Swaine, Stewart, Barr & Company, Flower & Company, Harold J. C. Brown, Sarah W. Carpenter, Samuel R. Underhill and S. R. Underhill, Jr., have been duly served with summons herein by publication in accordance with the provisions of the Statutes of Ohio, proper publication having been made in a newspaper of general circulation within the said County and State a copy of which publication was duly mailed by the Clerk of this Court to the address of each of the said defendants, the postage on such copies having been properly prepaid, and are in default of answer or other pleading; that prior to the commencement of this action the said defendants, other than the said companies, were respectively owners and holders of the certificates of indebtedness issued by the said plaintiff, and by the said The American Trust Company, Trustee, in the amounts hereinafter set forth; that prior to receiving such certificates of indebtedness the said defendants, or their assignors, were respectively the owners and holders of certain shares of the capital stock of the defendant The United Salt Company, as set forth in the respective cross petitions of said defendants, which shares were by them, or their assignors, severally transferred to the plaintiff and delivered in trust to the said The American Trust Company at the time and under the agreements named in the said cross petition, new certificates for the stock so deposited having also been issued in the plaintiff's name and its nominees, and delivered in trust to said Trustee; that the plaintiff paid to the holders of the said certificates of indebtedness the first three payments therein stipulated to be paid, and that no further amounts have been paid thereon.

Receivers' Exhibit 6

The court further finds that the agreements set forth in the plaintiff's petition, and in the said cross petitions, are null and void, and that said plaintiff is entitled to a cancellation and return of said certificates of indebtedness, and the return to it of the certificates of its capital stock deposited with said Trustees, as hereinafter set forth, and that plaintiff is not entitled to recover from any of the defendants herein named or from the Trust Company any portion of the three instalments paid by plaintiff upon the certificates of indebtedness issued by it.

The court further finds that each of the said defendants, other than the said companies, is entitled to and is, in equity, the owner of the stock of the said The United Salt Company so transferred, and by him or his assignor delivered to said The American Trust Company, and that the new stock certificates issued therefor in plaintiffs name, and any further stock certificates thereafter issued at the instance of the plaintiff in addition to the said 9,934 shares so transferred, are void and said defendants are entitled to a cancellation thereof; that at the time of the commencement of this action there remained in the hands of the said The American Trust Company, as such Trustee, the sum of $39,609.38, which amount, together with the interest accumulated thereon in the sum of $3,237.38, the said The Citizen's Savings and Trust Company, as such Trustee, now holds; that the said Trustee is entitled to and has a lien upon such funds for compensation for its services and the services of the said The American Trust Company in connection with the administration of such trust, including the services rendered by its attorneys in this action and in the administration of the trust prior to the commencement of this action, and the services and expenses of itself and its agents in completing the same, which compen-

sation the said Trustee is now entitled to receive, and the amount of which is now, upon the application of said Trustee, fixed at $10,900.00.

It is therefore, on said December 9, 1903, ordered, adjudged and decreed that the said The Citizen's Savings Trust Company, Trustee as aforesaid, upon the application of said defendants, other than said companies, and of persons holding and owning any of said certificates of indebtedness who are not parties hereto, deliver to such defendants and certificate holders the certificates of the capital stock of the said The United Salt Company so held by it in trust, and which were so delivered to it by the said stockholders of The United Salt Company, being in all certificates for nine thousand nine hundred and thirty-four (9,934) shares of said capital stock, which stock is to be received, held and owned by the said defendants and other certificate holders severally in the proportions which their respective holdings of the said certificates of indebtedness bear to the entire amount of such certificates of indebtedness now remaining unpaid, amounting to $725,156.40, and that the said Trust Company strike from the assignments upon such certificates the name of the plaintiff and apportion such certificates among the persons so entitled to receive them, and indicate upon each the name of the person or persons to whom it is apportioned, together with such division as may be made of the stock represented thereby, and that the defendant The United Salt Company, by its president and secretary, upon presentation to it of such certificates of stock, or any of them, shall cause the same to be cancelled and shall issue new certificates therefor to the said defendants and other owners of said certificates of indebtedness in proportion to their said interests therein, which amounts, in the cases of the following named defendants are found to be as follows, to wit:

Receivers' Exhibit 6

Isaac C. Alden	42	shares
Edward A. Brion	4	"
John Bensinger	28.8	"
Anna B. Bevan	277	"
William H. Burger	80	"
Florence H. Benjamin	10	"
Percy S. Balkwill	40	"
W. W. Balkwill	30	"
W. W. Benham and C. C. Young, Executors of the Estate of Elizabeth A. Benham	5	"
Ohio C. Barber	1,034	"
Charles Baird	26	"
Lucy V. Baird	2	"
Bessie C. Baird	1	"
Ledyard M. Bailey	1	"
J. H. Cooper, Trustee	2	"
W. B. Cowan	50	"
Dwight H. Cady	4	"
L. A. Crandall	75	"
James Corrigan	25	"
Mary J. Crain	25	"
William Chisholm	900	"
Edward Calm	16	"
S. T. Curtis	3	"
Paul Calvi, Trustee	3	"
H. J. Doolittle	80	"
D. Edward Dangler	33	"
Charles I. Dangler	33	"
D. A. Dangler	344	"
William A. Dutton	15	"
William H. Eaton	4	"
Henry C. Ellison	3	"
G. S. Eldred	80	"
W. H. Foster	10	"
Clarence W. Flack	40	"
Marietta L. Huntington	60	"

Receivers' Exhibit 6

	A. M. Hodge	8	"
	E. R. Huddleston	40	"
	T. R. Hoffman	15	"
	John M. Henderson	90	"
	H. H. Hodell	15	"
	E. S. Harkness	146	"
	C. W. Harkness	414	"
10	W. E. Judd	5	"
	Ophelia T. Jones	24	"
	Virgil P. Kline	30	"
	F. A. Kilmer	15	"
	D. W. Lothman	12	"
	C. M. Lines	4	"
	F. W. Lothman	15	"
	Charles G. Little	2	"
	B. A. Mathews	10	"
	Francis P. Mathews	8	"
20	James C. Parrish	640	"
	Eva L. Page	50	"
	Charles W. Prescott	52	"
	Erickson Perkins	150	"
	Sarah A. Perkins	50	"
	John D. Rockfeller	1,809	"
	Frank Rockefeller	693	"
	Freeman C. Sherman	12	"
	L. H. Severance	602	"
30	W. C. Spalding	3	"
	A. V. Tiedeman	5	"
	Mary H. Tuckerman	8	"
	Newton J. Worley	5	"
	C. E. Waite	5	"
	John K. Robinson	10	"
	Henrietta E. Robinson	201	"

That all of the certificates of stock of said The United Salt Company issued by it in the name of the
40 plaintiff are hereby declared to be void, and shall be

stamped by the said Trust Company as cancelled and delivered by it to the officers of said The United Salt Company, and all other stock certificates issued by said The United Salt Company subsequent to the making of the agreements set forth in plaintiff's petition, to wit: Such certificates as were issued to W. S. Kerr, Frederick Roberts, George W. Stage, Douglas F. Wallace, N. S. Beardslee and W. L. Moore, and any other person or persons, are hereby declared and adjudged to be void, and the officers of said The United Salt Company shall cause the cancellation of all such certificates to be noted upon the stock records kept by said Company.

That the capital stock of the plaintiff National Salt Company, issued by it and delivered to the said Trustee pursuant to the provisions of the said contracts, to wit: Twelve thousand four hundred and seventeen and one-half (12,417½) shares of the preferred stock and twelve thousand four hundred and seventeen and one-half (12,417½) shares of the common stock of the said National Salt Company, certificates for which were issued in the name of defendant Frank F. Sanford, be reassigned and delivered by said defendant Sanford to the said plaintiff proportionately with the surrender of the said certificates of stock of the United Salt Company to be disposed of in such manner as the plaintiff may think best; that each of the said defendants and other owners of said certificates of indebtedness at the time of receiving from the said Trustee the said certificates of the stock of The United Salt Company so directed to be delivered to him, shall surrender and deliver to the said The Citizens' Savings and Trust Company as such Trustee such certificates as were issued by the said The American Trust Company, Trustee, to him or his assignors, or pursuant to his order, or that of his assignor, on account of his original holdings of the stock of the said The United

Salt Company, or the proportionate holdings of his assignor, all of which certificates, when so surrendered, shall be cancelled by the said Trustee; that each of the said defendants and other owners of said certificates of indebtedness shall also, at the same time surrender and deliver to said The Citizens' Savings and Trust Company all such of the said certificates of indebtedness issued by the plaintiff as are held by him, all of which certificates, when so surrendered, shall be cancelled by said Trust Company and said certificates so cancelled, returned and delivered by said Trust Company to the plaintiff, the unpaid amount of such certificates of indebtedness to be surrendered by the following named defendants, respectively, being as follows:

Isaac C. Alden	$3,123.75
Edward A. Brion	297.50
John Bensinger	2,142.00
Anna B. Bevan	20,601.88
William H. Burger	5,950.00
Florence H. Benjamin	743.75
Percy S. Balkwill	2,975.00
W. W. Balkwill	2,231.25
W. W. Benham and C. C. Young, Executors of the Estate of Elizabeth A. Benham	371.88
Ohio C. Barber	76,903.75
Charles Baird	1,933.75
Lucy V. Baird	148.75
Bessie C. Baird	74.38
Ledyard M. Bailey	74.39
J. H. Cooper, Trustee	148.75
W. P. Cowan	3,718.75
Dwight H. Cady	297.50
L. A. Crandall	5,578.13
James Corrigan	1,859.39

Receivers' Exhibit 6

Mary J. Crain	1,859.38
William Chrisholm	66,937.50
Edward Calm	1,190.00
S. T. Curtis	223.13
Paul Calvi, Trustee	223.13
H. J. Doolittle	5,950.00
D. Edward Dangler	2,454.38
Charles I. Dangler	2,455.38
D. A. Dangler	25,585.00
William A. Dutton	1,115.63
William H. Eaton	297.50
Henry C. Eillson	223.13
G. S. Eldred	5,950.00
W. H. Foster	743.75
Clarence W. Flack	2,975.00
Marrietta L. Huntington	4,462.50
A. M. Hodge	595.00
E. R. Huddleton	2,975.00
T. R. Hoffman	1,115.63
John M. Henderson	6,693.75
H. H. Hodell	1,115.63
E. S. Harkness	10,858.75
C. W. Harkness	30,791.25
W. E. Judd	371.88
Ophelia T. Jones	1,785.00
Virgil P. Kline	2,331.25
F. A. Kilmer	1,115.63
D. W. Lothman	892.50
C. M. Lines	297.50
F. W. Lothman	1,115.63
Charles G. Little	148.75
B. A. Mathews	743.75
Frances P. Mathews	595.00
James C. Parrish	47,600.00
Eva L. Page	3,718.75
Charles W. Prescott	3,867.50
Erickson Perkins	8,925.00

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Sarah A. Perkins	2,975.00
John D. Rockefeller	134,544.38
Frank Rockefeller	51,541.88
Freeman C. Sherman	892.50
L. H. Severance	44,773.75
W. C. Spaulding	223.13
A. V. Tiedemann	371.88
Mary H. Tuckerman	595.00
Newton J. Worley	371.88
C. E. Waite	371.88
John K. Robinson	743.75
Henrietta E. Robinson	14,949.38

That the receipt of the respective certificates of the stock of said The United Salt Company so ordered to be delivered to each of the said defendants and the owners of said certificates of indebtedness shall be in full discharge of all liability to each of said persons respectively on the part of the said National Salt Company and of the said The American Trust Company, as such Trustee, and of the said The Citizens' Savings and Trust Company, as such Trustee, under the said certificate so issued to or held by each of them and under said contracts and trust agreements set forth in said pleadings; that the receipt by the said National Salt Company of such certificates of the stock of said National Salt Company so to be surrendered on account of each of said defendants and other owners of said certificates of indebtedness, and the cancellation of such certificates of indebtedness issued by it and so to be surrendered by and on account of each of said defendants and certificate holders shall be in full discharge of all liabilities and obligations of every character on his part in favor of said plaintiff, and in favor of either of the said Trustees, in any way arising from the said contracts and other transactions and transfers referred to in the pleadings herein; that

all obligations of whatsoever character heretofore existing between the plaintiff and The United Salt Company, or its receivers, in favor of either as against the other, shall be by the proper parties, and are hereby declared to be, satisfied and discharged and all evidence of such obligations shall be at once surrendered to the party liable thereunder; that the defendants shall present their certificates of indebtedness for cancellation and exchange, as herein provided, within ninety days from the entering of this decree, and if any defendant herein shall neglect or fail within said ninety days to present any certificate of indebtednes held by him the same shall be deemed cancelled, and the Trust Company shall forthwith deliver to the plaintiff the proportionate share of the capital stock of plaintiff held by it, the Trust Company, represented by the certificates cancelled; and shall likewise deliver to said defendant his proportionate share of the capital stock of The United Salt Company, and upon any delivery made by the Trust Company in pursuance of this provision it shall be released from any further liability to such defendant; and the certificate or certificates issued by the American Trust Company representing the same shall likewise be deemed and held to be cancelled. The effect of such cancellation and deliveries shall be the same as if the certificates of indebtedness had been presented by the defendant for cancellation and exchange as hereinbefore provided.

That from the said fund of $42,846.76 remaining in the hands of the said Trustee there shall be paid—

1. The costs of this action accruing to this time, other than such costs as have accrued on account of or in connection with the receivership of the property of The United Salt Company.

Receivers' Exhibit 6

2. To the Citizens' Savings and Trust Company $10,900, fixed as aforesaid, in full discharge of all its claims and of the claims of The American Trust Company, and of the attorneys of both of the said Companies, for compensation in connection with the trust administered by the said Companies under the contracts referred to in the pleadings herein, and for services rendered in this action, and in all other litigation connected with the administration of such trust, and in the full payment of all the charges and expenses of such Trustees.

3. To Virgil P. Kline and J. M. Henderson one-half the amount then remaining in its hands as Trustee, on account of services rendered herein on behalf of said defendants, and to Alonzo M. Snyder, the other half thereof, on account of services rendered herein on behalf of the plaintiff.

That the receiver of the property of the defendant The United Salt Company, heretofore appointed in this action, file at once a full and final account of his proceedings as such Receiver, all questions in connection with said receivership and the disposition of said property not already passed upon to be disposed of as the Court may hereafter order.

(Endorsed): No. 74054—Journal Entry—Eq. Relief —Entered Dec. 12, 1903.

THE EVENING POST JOB PRINTING OFFICE, 156 FULTON ST., N. Y.

New Jersey Court of Errors and Appeals.

BETWEEN—

CHAUNCEY H. STRICKLAND,
Complainant,

AND

NATIONAL SALT COMPANY *et al.*,
Defendants.

IN THE MATTER OF THE CLAIMS

OF

UNION TRUST COMPANY, EDWARD G. MINER, MORTON C. NICHOLS, C. WALTER SMITH, J. N. BECKLEY, FRANK TAYLOR, F. A. WHITNEY, GERTRUDE P. POWERS, HENRY D. QUIMBY, OTIS WILSON & CO., EDMOND L. BROWN, CHARLES H. WILCOX and HENRY W. WICK,
Appellants.

Brief for Claimants-Appellants.

William J. Wallace
Of Counsel.

POINT I.

If the certificates of indebtedness issued by the National Salt Company are negotiable instruments, or obligations having the essential qualities of com-

mercial paper, and if the claimants are the *bona fide* holders of these certificates, we submit that a recovery by the claimants can only be defeated by giving the effect of an estoppel to the decree of the Ohio court. That decree was made in a suit to which none of the above named appellants were parties, unless they were parties by representation. The American Trust Company of Cleveland, Ohio, was a party defendant in that suit. It was for certain purposes a trustee for all the certificate holders, but we think your Honors will conclude that it was not in any sense their representative except to bind their interests in the fund it held for their security.

The learned Vice-Chancellor decided that this trustee had no title or standing in court to litigate the right of the claimants to recover upon the certificates. And the United States Circuit Court of Appeals for the Second Circuit decided in the case of Ingraham that the decree against the Trust Company did not "impair in the slighest degree" the rights of certificate holders, not made parties personally to the suit, to recover the amount due upon the instruments from the National Salt Company.

If the certificates are negotiable paper, and the claimants are bona fide holders, it is no defense that they were issued upon an illegal consideration; and whether or not they were created ultra vires is an immaterial issue.

I.--Illegality of consideration is not a defense against a *bona fide* holder of negotiable paper unless the statute forbidding the transaction, out of which the security arose, provides that such paper shall be void or that no action shall be maintained upon it, as is common in statutes relating to usury or gaming.

The Ohio Anti-Trust Act describes certain combinations as trusts and declares them to be unlawful and void (pp. 361-366). It enumerates among these combinations the "contracts, obligations or

agreements" mentioned in Section 5, and declares that any "contract or agreement in violation of the provisions of this act shall be absolutely void and not enforceable in law or equity."

The contract which is void under these provisions is the option agreement between the stockholders of the National Salt Company and the stockholders of the United Salt Company (pp. 270-273), and that is void only if it be found that it was made to effect one of the illegal purposes mentioned in the act.

The certificates of indebtedness are "evidence" (p. 272) of a contract contained in the option agreement whereby the National Salt Company undertakes to pay the sum of $106.25 for each share of United Salt Company transferred to it. The original contract may be void, but the certificate, subsequently created or issued, is not void in the hands of a *bona fide* holder in the absence of a declaration in the statute that any note, negotiable instrument, or security, founded upon the contract, or given as a consideration therefor, shall be void.

A precisely analagous case is cited by Chitty. He states:

> "The statute, 7 Geo. 2, c. 8, enacts, 'That all wagers and contracts in the nature of wagers, and all contracts in the nature of puts and refusals relating to the price or value of any stock or securities as therein mentioned, shall be null and void to all intents and purposes whatsoever.' A bill of exchange, given in respect of such a transaction, is invalid in the hands of the original parties, and of a person who received it after it was due, or with notice of the circumstances. But as this act does not, like the statute against gaming, avoid bills, notes and securities, but only the contracts, it follows, that a bill or note, though founded on a stock-jobbing transaction, is valid in the hands of a *bona fide* holder, who received it without knowledge of the circumstances before it was due." Chitty on Bills and Notes (12th Am. Ed.), 112.

The cases where negotiable paper has been held unenforceable by a *bona fide* holder are those in which the statute has declared that any note, assurance or security for the prohibited act shall be void, or any note or security founded upon it, or given as a consideration, shall be void or not enforceable.

The doctrine rests upon the necessity of giving exceptional protection to commercial paper, and the implied intention of the Legislature not to injure innocent third persons.

> "Negotiable instruments having their origin in a transaction forbidden by statute are not void in the hands of a *bona fide* holder for value without notice unless the statute expressly declares them to be void."
>
> Taft, *J.*, in Farmers Bank *vs.* Sutton, 52 Fed. Rep. (C. C. A), 196.
>
> Nelson, *Ch. J.*, in Rockwell *v.* Charles (2 Hill, 499).
>
> Story on Promissory Notes, 104, 205.

II.—*Ultra vires* is not a defense against a *bona fide* holder of negotiable paper unless the corporation is without power to issue such paper (Green's Brice on Ultra Vires, 272, note).

> "Where the corporation has, under any circumstances, power to issue negotiable paper the *bona fide* holder has the right to presume that it was issued under the circumstances which give the requisite authority."
>
> Nat. Bank of the Republic *vs.* Young, 41 N. J. Eq., 531.
>
> Louisville R. Co. *vs.* Louisville Trust Co., 174 U. S., 552.
>
> Farmers Bank *vs.* Butchers Bank, 16 N. Y., 125.
>
> Genesee Savings Bank *vs.* Michigan Barge Co., 52 Mich., 438.

It is not disputed that the National Salt Company had power to issue negotiable paper for proper business purposes.

For the foregoing reasons, and because the other questions have been so fully presented in the briefs of associate counsel, this brief will be mainly confined to the discussion of the question whether the certificates are negotiable paper.

POINT II.

The certificates are negotiable paper. They have all the essential qualities of such paper irrespective of the Negotiable Instrument Law, and they meet all the requirements of that enactment.

We suppose the nature and effect of the instruments are to be ascertained by the law of New Jersey. If the law of Ohio governs, this Court will assume in the absence of proof that the law of Ohio is the same as the law of New Jersey. In fact both States have enacted substantially the same "Negotiable Instruments Law."

Briefly defined, a negotiable instrument is a "writing containing a promise to pay, unconditionally, at a determinable future time, a certain sum of money to a person determined by the instrument." It may be payable in installments, may provide that the whole shall be due on default in any part, and may provide for payment before maturity at the option of the maker. The authorities for these statements are collected in Vol. 7, Cyclopedia of Law and Procedure, 599, 600.

A promise is unconditional, notwithstanding it is contingent upon the performance of some merely formal act by the promisee and which is within his control. Thus the fact that the instrument is "pay-

able on the return of this receipt," or "the return of this certificate," does not make it conditional.

Frank *vs.* Wessels, 64 N. Y., 155.
Miller *vs.* Austin, 13 Howe (U. S.), 218.
Kilgore *vs* Bulkley, 14 Con., 362.
Hunt *vs.* Devine, 37 Ill., 137.
Smilie *vs.* Stevens, 38 Vt., 315.
Richer *vs.* Voyer (L. R. 5 P. C., 475).

There are decisions that a promise to pay a sum named to one of two or more persons in the alternative is not a valid note, because neither of them can enforce it.

In Blankbagen *vs.* Blundell (2B. & Ald., 417) such an instrument was held not to be a note within the statute of Anne, and the promise was treated as conditional to pay one upon the contingency of not paying the other.

Although the promise is in the alternative it is not in any true sense contingent. The real objection to such an instrument is because of the uncertainty of the payee, and the consequent doubt as to which party can enforce the promise. When, notwithstanding the alternative promise, there is no uncertainty as to the party who can enforce the promise it is a good promissory note.

Holmes *vs.* Jacques (L. R., 1 Q. B., 376).
Noxon *vs.* Smith, 127 Mass., 485.
Atlantic Mut. Ins. Co. *vs.* Young, 38 N. H., 451.

Holmes *vs.* Jacques, *supra*, was decided by a court composed of some of the ablest judges of England. The action was upon an instrument promising "to pay to the trustee of the W. Chapel, or their treasurer for the time being." Held, "a good promissory note, for there is no uncertainty in the payee, as the trustees are to be alone taken as the payees and the treasurer as their agent only to receive payment."

In Noxon *vs.* Smith, *supra*, the promise ran to the trustees of a certain church "or their collector."

The court said: "The instrument does not come within the class in which instruments, otherwise in the form of promissory notes, are held not to be promissory notes because made payable in the alternative to either of two persons named. That rule applies to cases in which, so far as the instrument shows, the two persons named as alternative payees are strangers to each other. It does not apply when the instrument discloses the fact that one of the two persons named is named as agent for the other."

In many of the States the courts treat instruments containing promises to pay to one or more of several persons, although there is no community of interest between them, as valid promissory notes and enforceable by an action by the promisees jointly.

Willoughby *vs.* Willoughby, 5 N. H., 244.

Fort *vs.* Delee, 22 La. Ann., 180,

Westgate *vs.* Healey, 4 R. I., 523.

Samuels *vs.* Evans, 1 McLean (U. S.), 475.

Spaulding *vs.* Evans, 2 McLean (U. S.) 139.

POINT III.

The provision in the certificates permitting the National Salt Company to pay the amount thereof before maturity by paying the same "to the American Trust Company of Cleveland, Ohio, in trust to pay the registered holder hereof on demand" does not withdraw them from the class of negotiable instruments.

The certificates contain an unconditional promise to pay a certain sum of money. The promise is

unqualified by any contingency, and the money must be paid in any and every event. They contain it is true in effect an alternative promise running to the certificate owner or to the Trust Company for his use. Is there in this promise any uncertainty as to the payee, or any doubt as to the right of the certificate owner to enforce it?

Here was a large issue of the obligations of a corporation of the class that pass from hand to hand and are bought and sold in the financial markets of the country, and which, as is usual with such obligations, were to be registered with and paid through a trustee. The corporation desired the option of paying them before maturity. It would have been impracticable to pay them to the owners personally, as it could not be known who they might be or where they could be found. It was necessary, therefore, to constitute an agent for those owners, with whom they could register their certificate, and to whom payment could be made with the same effect as if made to the owners themselves. Read in the light of the surroundings, the meaning of the provision for payment to the Trust Company is plain. The meaning is that in case of payment before maturity the Trust Company shall be the agent of the certificate holders to receive the money, and that payment to the Trust Company shall be payment to them in discharge of the National Salt Company. Except for the words "registered holder" in the provision, there could not be the slightest doubt that the certifiicates contain a promise to pay the holder, or his named agent in the alternative, and would conform to all the requirements of a valid promissory note according to the authorities which have been cited.

The word "registered" was used for the purpose of identifying the real owner and for the protection of the Trust Company. Certainly it was not used with any purpose of permitting the money to be paid to a person not entitled to it, or to be paid to a registered holder who was no longer the owner of

the certificate. It was used undoubtedly in the expectation that the Trust Company would not pay the money without the production and surrender of the certificate, and that at that time the Trust Company would register it in the name of the then holder if it had not been previously registered in his name, and thus preserve complete evidence that the money had been paid to the real owner of the certificate. The term "registered holder" is the equivalent of "real owner at the time of payment."

Notwithstanding this provision the certificates satisfy all the requirements of a negotiable instrument. They are much less open to criticism than were an issue of bonds which were recently decided by the Supreme Court of the United States to be valid negotiable instruments. In Dickerman *vs.* Northern Trust Company (176 U. S., 181), that Court held to be valid negotiable instruments the bonds (of a manufacturing corporation) part of an issue of 1,000 of $1,000 each, payable "to the bearer or when registered to the registered owner," and by their terms providing that the company would redeem annually on a stated day one hundred of them, "to be ascertained by drawings made under the direction of the Northern Trust Company in the month of November each year."

Can there be any doubt that if the National Salt Company had elected to pay these certificates before their maturity and had for that purpose paid in the money to the Trust Company, and an owner of one of the certificates had presented it to the Trust Company bearing the proper endorsement of the original payee and demanded payment, and the Trust Company had refused payment, he could maintain an action against the Trust Company and recover the money?

POINT IV.

If there is any departure in the certificates from the requirements of the Negotiable Instruments Law they, nevertheless, belong to a class of obligations which, like commercial paper, is not, in the hands of bona fide holders, subject to defenses which may exist between the original parties.

The rule that subjects assignees of non-negotiable obligations to the equities existing between the original parties must yield when a contrary intention appears from the nature of the obligation and the circumstances attending its origin. This intention does appear when a corporation creates a large issue of obligations of a uniform tenor, transferable by endorsement or delivery, and of a class generally designed to be negotiated among strangers. Such obligations are quasi public investment securities.

The later English decisions adopt the rule that whenever an issue of bonds, debentures, or other promises to pay money, are by their terms transferable by endorsement or by delivery and appear intended to be marketed with the public, they pass to a *bona fide* purchaser free of the equities between the original parties. This was decided by the Lord Chancellor and the Court of Appeals, sitting with the Lord Chancellor, in Chancery, *in Re* General Estates Company, L. R. (1867-1868), 3 Ch. App., 758. To the same effect are also *Re* Blakely Ordinance Company L. R., 3 Ch. App. (1867-1868), 154, 160; *Re* Agra & Masterman's Bank, L. R., 2 Ch. App. (1866-1867), 391; *Re* Imperial Land Company, L. R. Eq. Cas. (1870-1871), 477.

The courts of New Jersey have recognized the same rule.

Morris Canal Company *vs.* Lewis, 12 N. J. Eq., 323;
Morris Canal Company *vs.* Morris, 9 N. J. Eq., 667.

In Morris Canal Company *vs.* Lewis, *supra*, the Court referred to the bonds in question "as instruments of a peculiar character, expressly designed to be passed from hand to hand and by a common usage known to all so transferred." And the Court said: "If in point of fact they are of such a character that a full title was intended to be conferred on any person who became the *bona fide* possessor of them, and this intention was not in contravention of law, the original maker has no equity against the assignee."

These certificates were intended to be treated as negotiable instruments. They are designated as "said notes or certificates" in the accompanying documents referred to in the certificates.

POINT V.

For the foregoing reasons it should be held that the certificates are negotiable promises, and that the claimants as bona fide holders take them free from any defenses which may exist between the National Salt Company and the original holders.

WM. J. WALLACE,
Of Counsel for Appellants.

New Jersey Court of Errors and Appeals.

Between
CHAUNCEY H. STRICKLAND,
Complainant,

and

NATIONAL SALT COMPANY, *et al.*,
Defendants.

Brief on behalf of Edmond L. Brown, Charles H. Wilcox, Henry W. Wick, and Otis, Wilson & Company, claimants and appellants.

This is an appeal (Petition of Appeal Case, p. 3) by the claimants above named, and certain other claimants, from decrees (Case, p. 73), dated June 3rd, 1910, made by Chancellor Pitney after a hearing before Vice Chancellor Stevenson disallowing claims filed with the Receivers of the National Salt Company, defendant above referred to.

Preliminary Statement.

The claims which were disallowed were filed pursuant to order of the Chancellor (Case, pp.

36-38), after a hearing on petitions for leave to file the same (Case, pp. 7-16). They are based on certain so-called certificates of indebtedness of the National Salt Company (Case, pp. 14-15), held by these claimants in the following amounts (Case, p. 16):

Edmond L. Brown	$6,800.	
Henry Wick	6,800.	
C. H. Wilcox	3,400.	
Otis, Wilson & Co.	5,950.	$22,950.

The claims having been filed with the Receivers of the National Salt Company (Case, pp. 40-50), a notice was given by such Receivers requiring the claimants to submit to an examination in relation to their claims (Case, p. 39).

Such notice was given pursuant to Sections 71 and 76 of "An Act Concerning Corporations (Revision of 1896)" being Chapter 185 of such Revised Laws.

Immediately thereafter on July 8, 1904, formal hearings were commenced before the Receivers, N. S. Beardslee and Frank P. McDermott, sitting as Judges of the claims (Case, p. 74), and were continued from time to time until February 26, 1907 (Case, p. 225). Less than a week later, March 4th, 1907, the Receivers disallowed the claims (Case, pp. 50-51), assigning certain reasons (Case, pp. 51-54). An appeal was promptly taken from the Receivers' decision (Case, pp. 55-57) and refered to, argued and submitted to Hon. Eugene Stevenson, Vice Chancellor (Case, p. 58), in April, 1907.

Over three years later, May 23, 1910, the decision of the Receivers was affirmed (Case, pp. 59-72), and from the decrees of affirmance (Case, p. 73), the present appeals are taken.

The four claimants here represented, as well as the eleven claimants who are represented independently, have no interest or relationship in common beyond their being in the same class of creditors of National Salt Company.

These four claimants had their attention called to these particular securities of National Salt Company being offered for sale through the New York Stock Exchange firm of Stewart Barr & Co., by their own brokerage firm of Toby & Lamarche (Case, p. 76) and they each purchased what is referred to in the case as a certain number of shares or units, which included the debt certificates above referred to (Case, p. 76), their respective shares and the payments made by them being as follows:

Edmond L. Brown	100 shares	$11,500.
Otis, Wilson & Co.	100 "	
Henry Wick	100 "	
C. H. Wilcox	50 "	28,750.
Total payment		$40,250.

The first of the above amounts being paid on March 27, 1901 and the second on March 29, 1901 (Case p. 93).

Their investments were made upon the recommendation of their broker, who had based his recommendation upon his interview with still another broker (Case p. 76), upon his interview with Stewart Barr & Co., brokers who represented the vendors (Case p. 76), and his interview with the President and Secretary of National Salt Co. (Case p. 77).

None of these claimants ever had been a stockholder of United Salt Co. (Case p. 84), and their only connection with either of the companies arose from the purchase above referred to.

They have none of them ever received anything from their investment, but on the contrary have been endeavoring ever since their purchase to recoup some part of their loss, and are now before this Court asking that their claim for about one-half their principal investment, viz., the amount of $22,950 of the debt certificates of National Salt Company shall be decreed to be due to them, and payment directed by the Receivers.

On the hearing before the Receivers all the claimants-appellants made more or less common cause, their situation, with the exception of the claim of Erickson Perkins, being substantially identical; and on the hearing before Mr. Vice Chancellor Stevenson the matter was similarly treated.

On this appeal counsel for such other claimants have elaborately discussed in their brief the various questions of fact and law in support of the claims which are involved, and such brief is adopted so far as may be on behalf of these appellants.

Reply to Arguments of Receivers in Lower Court.

The Receivers on the hearing below raised certain objections to the claims which we briefly answer as follows:

First: That the certificates lack consideration.

They base this claim upon the fact that debt certificates were issued to the amount of $1,062,500. and capital stock of National Salt Company $2,500,000 for which there was received in round numbers $1,000,000 stock of United Salt Co. which was not worth the consideration paid. Our answer to this is:

a. That as concededly there was given property in exchange for the consideration, this consideration cannot be split up. Under the contract of purchase, one share of stock of United Salt Company received two and a quarter shares of stock of National Salt Company and the certificate, and there is no attribution of any part of the consideration to any part of the property purchased. That being so, there was actual consideration given for the debt certificates as well as for the capital stock.

If the bargain was a fraud upon stockholders of National Salt Company for inadequacy of consideration it may be repudiated, but as a contract it cannot be split up into parts.

b. That even if the consideration can be apportioned, a certain property having undoubtedly been conveyed, it must first be applied so as to support the *obligations* given. Of the three forms of securities issued by National Salt Company, the certificates, preferred stock, and common stock, the certificate was the highest order, as it purported to be a debt of the company, and if any of the securities is to be invalidated it should be the junior security.

c. A further answer is that these certificates being negotiable instruments, and the present holders having given valuable consideration for them (and it is undoubted that they paid full value to Stewart Barr & Co. on their purchase), such payment establishes the consideration.

The question of negotiability is elaborately argued on the brief of the other appellants and such argument is not here repeated.

SECOND: THE RECEIVERS FURTHER CONTENDED THAT THE CERTIFICATES WERE ISSUED TO GUARANTEE DIVIDENDS OF THE STOCK OF NATIONAL SALT COMPANY AND THAT THE CONTRACT UNDER WHICH THEY WERE ISSUED WAS ILLEGAL AND *ultra vires.*

If the certificates were *ultra vires* neither the corporation nor its receivers is in a position to urge that as a defense. These certificate holders paid the consideration in full, and unless the whole transaction was illegal the company cannot raise the defense of *ultra vires.*

It has now been well settled in all courts that this defense cannot be used against a person dealing in good faith with the corporation and who has advanced the full consideration of the bargain. Therefore, the defense to be valid must go to the extent of asserting that the transaction was positively prohibited by law. An authoritative case to the contrary is the case of *Ingraham* v. *National Salt Company* 130 Fed. Rep., upon these very certificates.

The statutory provision is that the corporation shall not pay out any dividends except from surplus earnings or net profits. It may be conceded that if the corporation law forbids the payment of dividends it would also forbid the contract to make that payment. The purpose of the statute is obvious and has been many times construed by the Courts: it is to preserve the capital intact for the benefit of the creditors of the company. In regard to this particular contract, the persons with whom it was made were not stockholders. The National Salt Company obligations were given to the United Salt Company stockholders because they insisted upon them, the debt certificates were

flat contracts to pay certain instalments of money. What the statute aims at is to prevent the corporation from distributing its capital fund among its stockholders. If the contract had been made with stockholders of the National Salt Company it might have been illegal. It was in fact made as part of a contract by which third persons were to deliver property to the corporation. These third persons were not stockholders, the obligation being made to them as outsiders. It is true that at the same time certain stock of the company was provided to be delivered to them, but the contract had its valid inception before they were stockholders. As is stated by the Circuit Court of Appeals in the *Ingraham* case, it does not follow that because the contract could have been made illegally that the way it was made was illegal. The Court in order to construe the statute cannot consider the intent of the parties to the transaction, which is irrelevant; it must consider simply what the actual transaction was. If the transaction withdrew for the stockholders some of the capital it was illegal. If it was an agreement with outsiders to pay certain sums of money equal to its guaranteed dividends it was not illegal because the corporation did not become bound to pay the sums of money to stockholders. It did not make the contract illegal that the persons with whom the contract was made intended also to become stockholders because, again, the purpose of the statute was only to prevent present stockholders from withdrawing any of the capital fund. The payments which would be made under the certificates after the transaction had been consummated were to be payments made in the performance of a contract which had a valid inception at the time the stock was issued. If the contract was legal in its origin, it did not become illegal later because the payments were

made to persons who had then become stockholders. Their rights arose from the contract made before they were stockholders and were therefore not obnoxious to the injunction of the statute.

THIRD: THE RECEIVERS FURTHER CONTENDED THAT THE COMPLAINANTS HAD KNOWLEDGE OR MEANS OF KNOWLEDGE THAT THE CERTIFICATES OF INDEBTEDNESS WERE ILLEGAL AND ISSUED WITHOUT CONSIDERATION.

These certificate holders had no knowledge of anything except the contract of July 20th, 1899. They did not know anything about the consideration for which the certificates were issued, if by this, the Receivers mean the adequacy of the consideration. They did have means of knowledge that the certificates were issued together with two and a quarter shares of stock of the National Salt Company for one share of stock of United Salt Company, but they had no reason to know that this was illegal nor had they any means of knowing that it was a bad bargain.

All evidence relating to the intention of the original parties or the form in which the United Salt Company stockholders prepared their contract was irrelevant because these holders could not be charged with knowledge of such undisclosed intention assuming the knowledge was relevant, nor had they, of course, any knowledge as to whether there had been an appraisal of the stock of the United Salt Company at the time the bargain was made.

FOURTH: THE RECEIVERS FURTHER CONTENDED THAT THE CERTIFICATES OF INDEBTEDNESS WERE ISSUED IN PERFORMANCE OF CONTRACTS WHICH WERE ILLEGAL UNDER THE COMMON LAW, UNDER THE SHERMAN ACT, AND UNDER THE OHIO TRUST LAW.

a. *The contracts were not illegal under the common law.*

Under the common law there were two kinds of contract which were illegal; those by which a party promised not to engage again in a calling which he had practised, and those between two persons in the restraint of competition. The former, of course, is clearly not applicable here, and in regard to the latter it may be that the motives of the National Salt Company in the contract transaction were to get out of the way a competitor, but there clearly was no contract between two corporations to maintain prices, which is all the common law aims at.

b. *The contracts were not void under the Sherman Act.*

The best answer to this contention is to be found in the position of the Circuit Court of Appeals, a Federal Court, which has held, in the *Ingraham* case that there is nothing in this contention.

In any event, the Sherman Act has never been construed as going further than it did in the Northern Securities case, in which two corporations were merged by a common holding of their stock into a third. It has never been held that when one corporation bought the stock of its competitor it became a combination in restraint of trade.

c. *The contracts did not offend against the Anti-Trust Law of Ohio.*

The preliminary answer to this contention is that the National Salt Company was a corporation of the State of New Jersey; that the securities were made and dated in New Jersey, purchased by the present holders in the State of New York, and as the contract is to be judged by the law of the *locus contractus,* the Ohio State law has nothing to do with the case.

As a specification under this argument, they submitted certain authorities in support of their contention that negotiable instruments, even in the hands of a bona fide purchaser, which had been given for an illegal purpose, are illegal.

(1) The New Jersey cases referred to deal with the contracts of a *feme covert,* which at common law were absolutely void.

At common law, therefore, it made no difference whether the note of a *feme covert* was in the hands of a bona fide purchaser or not. It was a nullity in any event, for she had no legal capacity to make any contract whatever, and the declaration of the Statutes of New Jersey, General Statute, Sec. 26, merely provides that contracts within the bar of the statute were void, as they always had been.

(2) The Ohio statute against gaming, which provides that every contract shall be void when the consideration is money lost at gaming. Of course, a note to pay a gambling debt must be void under such a statute, no matter in whose hands it may come.

We make no claim that a statute cannot make void any contract, by note or otherwise, however innocent the holder. There are certain real, as distinct from personal defenses which follow a note into everyone's hands; one of these is that

the statute expressly declares the obligation void. The question here is whether the Ohio statute, assuming that it applies at all, is such a statute.

The same comments as apply to the Ohio case apply to the Connecticut and Kentucky cases, both statutes making void all contracts whose consideration was gaming money.

(3) As to the liquor cases, of which the Vermont case is a type, the same thing may be said, *i. e.*, that the statute forbids any action for "the value" of any liquor sold. An action on a note given for a liquor purchase is certainly an action for the value of the liquor. The same is true of the Louisiana slave case. The Court would not enforce the contract in either case except in the very teeth of the statute.

The quotation from text books applies only to cases where the statute declares a contract founded on such a consideration to be absolutely void.

Our understanding of the law is that if a note be given as part of a transaction which is corrupt or forbidden by statute, it is unenforceable in the hands of the party to the corrupt or illegal contract, but it is not void in such sense that a bona fide purchaser may not enforce it. That such a result should occur the statute must make the very obligation itself void, and it is not enough that the parties are concerned in an illegal undertaking.

The Negotiable Instruments Law, which is referred to at length in the brief of the other appellants, provides that a "holder in due course"—meaning a bona fide holder—is protected, though the note be given "for an illegal consideration."

The law is well settled that the statute must directly and expressly impose its mandate upon the note in order to make it void; that if the note

be only given for an illegal consideration it is only void in the hands of one who is a party to the illegal transaction.

(4) The Ohio statute leaves it hard to determine whether it proscribes only contracts which by their terms create obligations to do the acts forbidden in subdivisions 1, 2, 3, 4 and 5 of Section I, or whether if the unexpressed purpose of the parties to the combination includes such acts, though none of the parties is bound to commit them, the contract is still illegal. For example, it is clear that a contract between two corporations to regulate the price of any commodity would be bad, but it is not clear that the contract would be illegal by which the stockholders of one corporation, like the United Salt Company, sold all its stock to another with the common but unexpressed purpose in the minds of both the stockholders and the buying company that the result would be to destroy competition between the two. Even assuming that such a combination be a trust and therefore illegal and criminal, a note given as part of the transaction is not illegal in the hands of a bona fide purchaser either at common law or under Section 8 of the Act, for if the combination be a trust at all it is not such by virtue of the obligations imposed upon the parties by the terms of the contract to do some illegal thing, but by virtue only of the common, but unexpressed "purpose" of in the future doing something illegal after being put in a position to do so by the change in the ownership of the stock. The act which was prescribed by the contract of which the note was a part is a quite harmless act in itself. No one can pretend that of and by itself and without the common purpose subsequently to suppress competition the sale of the United Salt Com-

pany stock was illegal, because the statute does not forbid acts which may be subsequently used to suppress competition but at the most only those "for the purpose" of suppressing competition. In the case at bar the illegality of the "combination" did not then depend upon the contract of purchase at all, but upon the objects contemplated by the parties. Section 8 says that "any contract * * * in violation of the provisions of this act shall be absolutely void." The question is whether the validity of the contract is to be determined by the acts which are prescribed by its terms or by the use which the parties meant to make of the rights acquired under it.

The claimants' answer is in short this:

The contract of which the debt certificate was a part was not in violation of the statute except by reason of the *purpose* to which the contracting parties meant to put the stock of the United Salt Company. As the contract did not by its terms bind the parties to any act proscribed by the statute, the note did not come within the terms of the prohibition of Section 8. Its illegality, if any, therefore arose from the use to which the parties proposed to put the stock of the United Salt Company, that is, to use it as a means of illegally restraining trade. At most, therefore, the sale of that stock for that purpose was an illegal consideration for the note, but as the statute did not expressly make illegal any note made for such a purchase, and as the purchase was not in and of itself a violation of the Act, the purchaser was not charged with the illegal intention of the persons who bought and sold the stock of the United Salt Company and gave and received the notes in payment.

In regard to all this argument, we say again that as bona fide purchasers, we are not affected

by any illegality which existed in the original contract.

FIFTH: THE RECEIVERS FURTHER CONTENDED THAT THE CERTIFICATES OF INDEBTEDNESS WERE NOT NEGOTIABLE.

They laid particular stress in this argument on the provision in the instrument that the American Trust Company might discharge the note by payment to the registered holder.

The general subject of negotiability has been so fully and elaborately discussed in the brief for the other appellants that it is not here repeated. As to this particular claim, we call attention to the fact that the terms "registered holder" to whom payment may be made in discharge of the obligation, must be construed in connection with the fact that the note was payable to "order." Can it be supposed that the provision was intended to mean that if the registered holder had parted with the instrument under valid endorsement the American Trust Company could safely make payment to the registered holder without presentation of the document? We do not think that any Court would so construe it. The purpose of the provision of the instrument in this regard was to permit the National Salt Company to discharge itself by a payment to the American Trust Company who was then to pay to the holder. The word "registered" was added simply as a means of identification because the registered holder would normally be the person entitled to the payment. It is a strain on natural construction to maintain that by the use of the word "registered" the endorsee of the registered holder ran the risk of the discharge of the instrument by the fraud of his endorser, nor is it believable that the American Trust Company would have in fact paid these notes to the registered holder without presentation

of the instrument, which could not be made if it had been endorsed and delivered to third persons. The clause in question being in that part of the instrument which affects the mode of payment by the National Salt Company we do not think it can be taken as having any such extended significance as must be put upon it in order to affect the negotiability of the note.

The only other provision in the note is the statement of the transaction under which the note was given. It is well settled that this does not affect the negotiability of the note although it affects the holder with notice of the transaction there stated. If this were not law there would be no such thing as a negotiable bond, because such a bond always recites the mortgage which secures it or at least some deed of trust which was made at the same time as the bond, and the bondholder always takes subject to that mortgage or deed of trust, but it has never been successfully contended that such a recital in a bond affects its negotiability

SIXTH: THE RECEIVERS FURTHER CONTENDED THAT THE DECREE OF THE OHIO COURT ENTERED DECEMBER 12, 1903, WAS A CONCLUSIVE ADJUDICATION AGAINST THE RIGHTS OF THESE CLAIMANTS.

Their argument is based partly upon the fact (1) that the American Trust Company was a party to the action and a party to the decree, and (2) that certain vague conversations were had with counsel for these claimants who were not parties to the Ohio action and were not served in any way nor brought into the litigation in any way. As to their first contention, the decision in the *Ingraham* case and the reasoning upon which it is based would seem to be conclusive. The only property within the jurisdiction of the Ohio court was the stock of the National Salt Company, and ever

since the decision in Penoyer *v.* Neff it has been well settled that the jurisdiction of the court, without personal service, is limited to such property.

As to the second contention which has been fully discussed on the main brief for appellants, it is sufficient here to say that the attempt to bind these claimants by the judgment of a foreign court in an action in which they were not parties, in which they had naturally never been served nor appeared, and as to which they concededly stated again and again that they would have no part or lot, by the mere talk of attorneys who were interested in putting through a consent decree by which they were to largely profit, seems to us absurd.

Conclusion.

The brief of the other appellants in this matter sets forth at length the reasons why we consider that the claims in these various appeals should be sustained both on the facts and on the law. We have here endeavored to answer the various arguments advanced in opposition.

There remains only this to be said in support of the general equities of these claimants.

Each of them made a *bona fide* investment in securities which were represented to him to be sound and secure. There was no question as to the execution of the instruments, and on examination they showed all the incidents of legality.

The defense now set up to them by the Receivers, who are the legal representatives of, and who stand in the shoes of the corporation which made them, is that the corporation acted illegally.

To sustain such a defense would be to permit a corporation to set up its own wrong doing in eva-

sion of the payment of the obligation which it issued in exhange for consideration. As is stated by the Circuit Court of Appeals in the Ingraham case in 130 Fed. Rep., the corporation is attempting to skulk behind the cover of its supposed illegalities. Such a position is always offensive to a court and is morally shameful. A court should in such a case use its power to the utmost to prevent such a result. It is submitted that this case presents no facts which should lead the court to relax its vigilance in support of the claims.

This is not even the case of claimants who bought up claims known to be discredited. When they purchased, the whole enterprise of the National Salt Co. was just realizing in popular belief and in stock exchange trading a full measure of market value, and every one supposed its securities to be a sure and promising investment.

If their claims are disallowed they will have been plundered of their money, and the parties who engineered and carried out the scheme by which this plunder is made possible, viz., the National Salt Company shareholders by their successors whether International Salt Company or others will be the gainers.

It is respectfully submitted that the decrees appealed from should be reversed, and the claims should be allowed.

George R Beach
Solicitor for and of Counsel
for Claimants above named.

John L Wilkie
Of Counsel.

New Jersey Court of Errors and Appeals.

BETWEEN

CHAUNCEY H. STRICKLAND,
Complainant,

AND

NATIONAL SALT COMPANY *et al.*,
Defendants.

IN THE MATTER OF THE CLAIMS
OF

UNION TRUST COMPANY, EDWARD G. MINER, MORTON C. NICHOLS, C. WALTER SMITH, J. N. BECKLEY, FRANK TAYLOR, F. A. WHITNEY, GERTRUDE P. POWERS, HENRY D. QUIMBY, ERICKSON PERKINS, individually, ERICKSON PERKINS, as Administrator of Sarah A. Perkins, deceased, OTIS WILSON & CO., EDMOND L. BROWN, CHARLES H. WILCOX and HENRY W. WICK,
Appellants.

Brief on Behalf of Union Trust Company and Ten Other Claimants, Appellants.

This record presents appeals by fifteen creditors of the National Salt Company from decrees ad-

vised by Vice-Chancellor Stevenson, affirming the rulings of Frank P. McDermott and Nathan S. Beardslee, as Receivers of the National Salt Company, in disallowing their claims (Case, pp. 3 and 4). This brief and argument is submitted on behalf of Union Trust Company, Edward G. Miner, Morton C. Nichols, C. Walter Smith, J. N. Beckley, Frank Taylor, F. A. Whitney, Gertrude P. Powers, Henry D. Quimby, Erickson Perkins, individually and Erickson Perkins, as administrator of Sarah A. Perkins, deceased, all of whom are holders, in varying amounts, of certain written evidences of indebtedness issued by the National Salt Company, these instruments being customarily inferred to in this proceeding as "certificates of indebtedness." With a single exception, which will be fully discussed hereafter, all of the claims stand upon the same footing and the argument which follows is made on behalf of all of the claimants represented by us, except where specifically otherwise noted.

Statement of Facts.

The National Salt Company was incorporated under the laws of the State of New Jersey on March 18th, 1899 (Case, p. 282). Its charter was in the familiar liberal form (Case, p. 523 *et seq.*) and authorized the Company to engage in the business of manufacturing and selling salt, and the conduct of allied enterprises, and specifically empowered it to purchase and hold the capital stock, bonds and other securities issued by any other corporation organized under the laws of the State of New Jersey or elsewhere (Case, p. 524). Within a short time after its organization, the Company had acquired the control or ownership of some fourteen salt manufacturing plants in the State of New York, and was also negotiating for the acquisition

of further plants in the States of Michigan, Kansas, Texas and Ohio (Case, p. 283).

At this time and for some years prior thereto, the United Salt Company, a corporation organized under the laws of the State of Ohio, and having a capital stock of $1,000,000., was engaged in the business of manufacturing and selling salt in that State, it being the owner of three plants located at Cleveland, another at Pomeroy, and another at Akron, and also the lessee of four plants in Meigs County, Ohio (Case, pp. 289 and 423-4). The United Salt Company was admittedly the largest producer of salt in the State of Ohio (Case, pp. 238 and 239).

The organizers of the National Salt Company speedily conceived the idea of acquiring control of the United Salt Company and negotiations looking to this end were set in motion soon after the incorporation of the former Company (Case, p. 235). At that time Mr. Frank B. Squire was the President of the United Salt Company and Mr. Archibald S. White was the President of the National Salt Company, and it was between these two men that all of the preliminary negotiations were had. Mr. Squire was the owner of a small minority of the outstanding capital stock of the United Salt Company, viz.: 1,027 shares out of a total of 10,000 issued and outstanding, and it does not appear that he was authorized to speak for or bind the holders of the balance of the stock of his Company (Case, p. 351). The negotiation took the form, therefore, of an effort on the part of Mr. White and his Company to make a proposition which would meet with the favor of Mr. Squire and the acceptance of which he would be willing to recommend to the stockholders of the United Company. The attitude of Mr. Squire from the outset was that the United Salt Company was an old and well established concern, with an assured market for its manufactured

product, with extensive plants and the owner of certain secret or patented processes for the economical manufacture of salt, whereas, the National Salt Company was a new organization without assured credit and financial standing, and he refused to entertain any proposal for the purchase of his stock, or to submit to his stockholders any similar proposal which would not make due allowance for these elements (Case, p. 229). The first and only proposition which Mr. Squire seems to have made was one whereby the National Salt Company should, for each share of the stock of the United Salt Company, deliver one and one-quarter shares of its preferred stock, one and one-quarter shares of its common stock and its certificate of indebtedness for $106.25, payable in ten equal semi-annual instalments. This proposition was finally put in the form of an option dated July 20th, 1899, and signed by the holders of a substantial majority of the outstanding stock of the United Salt Company (Case, pp. 248 to 351). After a personal inspection of the United Salt Company's plants by them, the directors of the National Salt Company at a meeting held in September, 1899, authorized the acceptance and performance of this option (Case, pp. 251-3, 248 and 441). Stripped of all legal verbiage, the arrangement thereupon consummated may be summarized as follows:

The National Salt Company acquired from the several holders of the capital stock of the United Salt Company 9,934 shares thereof and delivered in exchange therefor 12,417½ shares of its preferred stock, an equivalent amount of its common stock, and its certificates of indebtedness of the aggregate par value of $1,055,489.50, payable in ten equal semi-annual instalments (Case, pp. 340 to 342). For the purpose of securing the payment of these certificates of indebtedness, as well as for the purpose of assuring the performance of certain collat-

eral engagements, the National Salt Company deposited the 9,934 shares of the United Salt Company stock thus purchased by it with the American Trust Company under a declaration of trust. At the same time, the United Salt Company stockholders deposited the stock secured by them with the Trust Company, under a deposit agreement signed by them. These instruments provided, in substance, that the American Trust Company should be the medium through which payments of the semi-annual instalments on the certificates should be made, and that to that end, all dividends received by said Trust Company upon this stock, should be applied by it to such payment and the National Salt Company obligated itself to make up the difference. The instruments further provided that when the certificates of indebtedness had been fully paid, the American Trust Company would deliver to the National Salt Company, the 9,934 shares of the United Salt Company's stock purchased by it, and would, at the same time, release to the selling stockholders of the United Salt Company, their shares of the stock of the National Salt Company. The five instruments under which this somewhat involved arrangement was worked out, and by which it is to be interpreted, are printed at pages 348 to 359 of the record. It is sufficient at this point to note that the certificates of indebtedness issued by the National Salt Company were entirely separate and distinct instruments from the certificates of deposit issued to assenting shareholders by the American Trust Company, and that it was perfectly feasible for a United Salt Company stockholder to sell his certificate of indebtedness to one person and his certificate of deposit, representing an ultimate right to shares of the capital stock of the National Salt Company, to another person, and that there was no physical or

other connection, either direct or remote, between the two securities.

Upon the consummation of these transactions, the National Salt Company virtually took possession of the United Salt Company and thereafter operated it as one of the constituent elements of its organization. In the transaction of its business in the State of Ohio, the National Salt Company used the name and corporate entity of the United Salt Company and for a time, some of the former officers of the United Salt Company nominally retained their official positions (Case, p. 471). During the few months following, the National Salt Company acquired additional contracts and selling rights in the State of Ohio, and for purposes of convenience or otherwise, title to these was vested in the United Salt Company (Case, p. 507).

The certificates of indebtedness and trust certificates issued to the former holders of stock of the United Salt Company soon commenced to seek new owners and, within the course of a year or so, had come to be more or less advertised and dealt in by brokerage houses in the City of New York, and a very considerable quantity was sold to investors through these brokerage houses (Case, pp. 75-7, 99, 102, 111 and 321). During the month of March, the claimants for whom we appear, purchased and paid for various lots of these certificates at a cost of approximately $125,000. At this point it should be noted that the semi-annual instalments due upon these certificates on January 1st, 1900, July 1st, 1900, and January 1st, 1901, respectively, had been duly paid by the National Salt Company and there was no reason for apprehension that default would thereafter be made in such payment.

It was at this juncture that the final scenes in a very sordid drama of pseudo high finance began to be enacted. On February 19th, 1901, two small holders of the stock of the National Salt Company,

claiming to have then learned for the first time of its purchase of the stock of the United Salt Company some eighteen months before, served a written notice upon their company (Case, p. 549), wherein they claimed that the purchase of this stock was violative of the provisions of the Ohio Anti-Trust law; that the stock of the National Salt Company had been issued at an excessive valuation and that, in brief, the whole transaction was fraudulent, *ultra vires* and void, and demanded that the National Salt Company forthwith proceed to sue to annul it. Nothing could have been more opportune than the perspicacity of these two insignificant stockholders, located in an obscure hamlet in the upper part of New York State (Case, pp. 510 *et seq.*, and 549). Not only did they read the innermost thoughts and desires of the promoters of the National Salt Company aright, but they also, with rare skill and legal acumen, pointed out the course by which those desires might be achieved. The National Salt Company upon the receipt of this important communication, immediately experienced a moral awakening and filed a bill in equity in the Court of Common Pleas of Cuyahoga County, Ohio, praying the complete abrogation and annullment of the United Salt Company deal (Case, pp. 331 *et seq.*). There were named as parties defendant to this bill, The American Trust Company, the United Salt Company and its former stockholders and a number of the holders of the certificates of indebtedness. With the exception of Erickson Perkins, individually, and as administrator, none of the present claimants was before the Ohio court, or took any part in the proceedings there had.

The Ohio suit was pending for more than two years and a half, but during no part of that time was there any real contest made. Within a very few months after the filing of the bill, negotiations

were set on foot looking to the accomplishment, by agreement, of all that the bill demanded. An agreement was prepared and circulated for signature by the former stockholders of the United Salt Company, whereby they were to assent to the wiping out of all past transactions with the National Salt Company and to take back the shares of stock theretofore purchased by it from them, and in turn to surrender the certificates of deposit and certificates of indebtedness held by them (Case, pp. 152 and 153). A proposed decree, embodying this arrangement, was drafted and assented to by all parties to the Ohio suit with the exception of Perkins (Case, pp. 137-8, 152-3 and 163-5). At this time, frequent and ardent efforts were made by various parties to the Ohio suit to induce the present claimants to enter the proposed arrangement and assent to the entry of the decree which had been drafted (Case, pp. 149, 152, 167). The appellants, however, consistently maintained the position that they were not parties to the Ohio suit; that they had not been served with the process issued therein; that the Ohio court had no jurisdiction over them either directly or by representation and that no decree that could be made in the Ohio action would be binding upon them. Finding the appellants firm and despairing apparently of inducing them to change their position, the parties to the Ohio suit, with perfect unanimity, and without any attempt to acquire jurisdiction over the appellants by service of process or otherwise, entered their consent decree (Case, p. 165).

As a result of the control and management of the National Salt Company, the United Salt Company, after a successful business career of some fifteen years, passed into the hands of a receiver in April, 1901, almost immediately after the commencement of the Ohio suit (Case, p. 52). The National Salt Company was adjudged

insolvent and placed in the hands of its present Receivers by the New Jersey Court of Chancery on September 30th, 1902 (Case, p. 19). In February, 1903, and while the Ohio suit was still pending, the American Trust Company filed a claim with the Receivers of the National Salt Company on behalf of all of the holders of the certificates of indebtedness then issued and outstanding (Case, pp. 307 to 325). The Receivers disallowed this claim and upon appeal therefrom, Vice-Chancellor Stevenson, in an opinion reported 72 N. J. Eq., 170, affirmed the action of the Receivers and held that the American Trust Company had no standing in Court to file this claim, whatever the rights of the individual certificate holders might be. Thereupon the present appellants applied for and obtained leave to file the claims now under review.

In the present proceeding, the Receivers, after the protracted taking of testimony, disallowed the appellant's claims, a memorandum of their reasons therefor being found at pages 51 to 54 of the Case. The appeal from the Receivers' adverse ruling was argued, and submitted to Vice-Chancellor Stevenson in April, 1907. Decision was not rendered upon this appeal until May 23d, 1910.

On behalf of the Receivers, it is contended that the certificates of indebtedness are invalid, because they formed an integral part of a scheme to create a monopoly obnoxious to the laws of the State of Ohio, and that the alleged adjudication of their invalidity by the Court of Common Pleas of Cuyahoga County, Ohio, is binding upon the appellants by representation. The appellants contend, on the other hand, that the certificates of indebtedness are negotiable corporate obligations, acquired by them for value, and without notice of any taint of invalidity, and further, that the proceedings in the Ohio court are not binding upon them. These

questions, as well as many others collaterally involved, we discuss under the points which follow. On behalf of the eleven appellants for whom we appear, we beg leave to submit the following

POINTS.

I.

The law applicable to this case has been adjudicated by two decisions of the United States Circuit Court of Appeals in the First Circuit, in an identical case, and by the refusal of the United States Supreme Court to grant a writ of certiorari to review the final decision of the former Court.

The National Salt Company made its first default in the payment of an instalment upon its outstanding certificates of indebtedness on July 1st, 1901 (Case, p. 18). In that same month, one George S. Ingraham, a resident of Kings County in the State of New York, and the holder of twelve of these certificates of indebtedness, commenced an action in the New York Supreme Court of Kings County against the National Salt Company to recover the balance due upon his certificates, the whole principal sum having become due by reason of such default. At that time Ingraham was a party to the Ohio suit to have these certificates declared invalid, and had actually appeared and answered therein by attorney, although the final decree entered in that action dismissed him as such

party (Case, p. 556). Upon the application of the National Salt Company, the Ingraham suit was removed into the United States Circuit Court for the Eastern District of New York, upon the ground of diversity of citizenship. Three trials were thereupon had in the Circuit Court. Upon the first of these the plaintiff recovered judgment, which was reversed on appeal by the Circuit Court of Appeals (National Salt Company *vs.* Ingraham, 122 Fed. Rep., 40).

Upon the second trial the Circuit Court, following the decision of the Appellate Court, to the effect that the certificates of indebtedness were invalid, awarded judgment in favor of the defendant. The plaintiff thereupon appealed to the United States Circuit Court of Appeals, and that Court, recognizing error in its previous decision, reversed the judgment of the Court below and squarely and admittedly overthrew the authority of its own earlier decision. (Ingraham *vs.* National Salt Company, 130 Fed. Rep., 676.) Upon the third trial in the Circuit Court, Ingraham recovered judgment. This was affirmed by the Circuit Court of Appeals (National Salt Company *vs.* Ingraham, 143 Fed. Rep., 805). The National Salt Company thereupon applied to the United States Supreme Court for a writ of *certiorari* to review this last decision of the Circuit Court of Appeals and this was denied. (National Salt Company *vs.* Ingraham, 201 U. S., 644.) The present Receivers upon their appointment in September, 1902, took over the defense of the Ingraham suit, and, as may be seen from the record, contested it with great vigor to the highest court in the land. Upon the announcement of the adverse ruling of the United States Supreme Court, they submitted to and paid the judgment. We contend that we have here a decision which should be deemed authoritative upon the present appeal. The decision was rendered in a suit upon certificates of indebtedness

identical with and forming a part of the same issue as those held by the appellants here. The plaintiff in that suit stood upon precisely the same footing as these appellants; he was met by the same defenses that are sought to be interposed here, and his adversaries were the same Receivers, represented by the same counsel, who now oppose us. The correctness of the ultimate decision of the United States Circuit Court of Appeals is fortified by the fact that it involved a frank acknowledgment of its previous error, an extraordinary feature in itself, and by the further fact that the United States Supreme Court has declined, because of the absence of material error, to further review the cause. If the duty of Receivers to embroil their trust in unnecessary litigation ever ends, and if the principles of comity and *stare decisis* are ever to be upheld, we submit that the present case is an eminently proper one in which to apply these wholesome doctrines.

The last two decisions of the United States Circuit Court of Appeals in the Ingraham case are of such applicability and authority upon the questions now to be discussed, that we take the liberty of printing them here at length.

Ingraham v. *National Salt Co., 130 Fed. Rep., 676.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK.

JOSEPH A. BURR, for plaintiff in error.
H. B. TWOMBLY, for defendant in error.

Before WALLACE, LACOMBE and TOWNSEND, *Circuit Judges.*

WALLACE, *Circuit Judge.*

This is a writ of error by the plaintiff in the court below, brought to review a judgment for the

defendant. The assignments of error challenge the rulings of the trial Judge in withdrawing the case from the consideration of the jury and directing a verdict for the defendant.

The action was brought to recover the amount of 12 obligations, termed "certificates of indebtedness," created by the defendant, and countersigned and registered by the American Trust Company, evidencing the promise of the defendant to pay to the payee or order a specified sum of money in certain equal semi-annual installments. These certificates are substitutes for 12 purchased by the plaintiff in the spring of 1901, and which he surrendered to the American Trust Company for the purposes of registry, and were received by him in exchange for those surrendered.

The answer of the defendant is a voluminous document which is rather in the nature of a bill in equity than of any pleading known to a court of law. Two defenses can be spelled out of it. The first is that the certificates (the originals) are invalid because they were made as part of an agreement which the defendant was without corporate power to make, viz., as a cover for an agreement by the defendant to guaranty dividends upon certain shares of its preferred and common capital stock, and thereby give the holders of these shares an unauthorized preference over the other stockholders of the defendant. The second defense is that they were made on an illegal consideration, viz., to effect a scheme contravening the law of the State of Ohio declaring unlawful certain combinations in restraint of trade.

The action has been before this Court upon a previous writ of error which was brought by the defendant in the Court below to review a judgment for the plaintiff. The Court was then of the opinion that the facts established the first defense,

and that, although the plaintiff was a purchaser of the certificates for value, he took them subject to any infirmities which would have invalidated them in the hands of the original holders. We are satisfied that our decision was erroneous, and are glad to have an opportunity to correct it while the consequences are yet remediable.

Succinctly stated, the certificates originated as follows: The defendant, a New Jersey corporation organized to carry on the manufacture of salt, and having power, among other things, "to purchase, hold, sell, assign, mortgage, pledge, or otherwise dispose of, shares of the capital stock * * * of any corporation of the State of New Jersey or of any other State," decided to acquire the capital stock of the United Salt Company, a corporation of Ohio. Accordingly, in 1889, the defendant made an agreement with certain shareholders of the United Salt Company whereby they were to sell their shares to the defendant, and the defendant was to pay for each of their shares 1¼ shares of its preferred stock and 1¼ shares of its common stock, and also a money consideration of $106.25 in 10 equal semi-annual installments. This money consideration was equivalent to annual dividends for five years upon each share and a quarter of preferred stock of 7 per cent. per share ($43.75) and upon each share and a quarter of common stock of 10 per cent. per share ($62.50). The agreement provided that all the shares to be exchanged, those of the United Salt Company as well as those of the National Salt Company, should be deposited with the American Trust Company until the money consideration should be fully paid; that in the meantime all dividends declared upon the preferred and common stock of the National Salt Company thus deposited should be paid by the defendant to the American Trust Company; that the dividends so

paid should apply as payments *pro tanto* of the money consideration; that the defendant should make its certificates of indebtedness for the money consideration, and the same should be issued by the American Trust Company to the stockholders of the United Salt Company, or their assignees, in the amount due to them respectively; and that when the certificates were fully paid the trust should terminate, and the deposited stock be delivered to its owners. It further provided that, in case of failure of the defendant to pay the certificates according to their terms, the American Trust Company should sell the deposited shares of the United Salt Company, apply the proceeds to the payment of the certificates, and pay any surplus to the defendant. Pursuant to the agreement, the shares to be exchanged were deposited with the trustee, and the certificates of indebtedness were made by the defendant and issued by the trustee. The agreement thus referred to consisted of several documents, some executed by the shareholders of the United Salt Company, some executed by the defendant, and some executed by the American Trust Company, and which were intended to embody together the complete agreement.

The contention of the defendant in respect to this agreement is found in that part of its answer which avers as follows:

> "That, whereas said alleged agreements in writing provided for the cash payment of $106.25 per share for each share of the capital stock of the United Salt Company, and the issuing of certificates of indebtedness to the respective holders, in accordance with their holdings, to evidence the same, said provision for cash payment was in fact a mere subterfuge, and the real agreement was that the said the National Salt Company should make a guaranty of 7 per cent. upon the preferred stock and 10 per cent.

> upon the common stock, to the stockholders of the United Salt Company, upon the stock of the National Salt Company to be exchanged for the stock of the United Salt Company; that said guaranty extends over a period of five years, and until the sum of $106.25 per share has been paid; that thereby the stock which would be given by the National Salt Company to the stockholders of the United Salt Company was and is given a preference over and above the stock held by any of the other stockholders of said National Salt Company; that said guaranty of said dividends by the National Salt Company upon the stock exchanged by the stockholders of the United Salt Company was without power on the part of the said National Salt Company to make, and was therefore void and of no effect."

It will be observed that it is not contended by the defendant that the agreement was made without the consent of the majority of its stockholders, or without compliance in any other respect with the requisite formal proceedings to sanction the corporate act in making it. The defense rests solely upon the theory that the agreement was *ultra vires.*

It is plain that the agreement resulted in setting apart the deposited National Salt Company stock until the certificates should be paid, and denuding it in the meantime of the right to receive any dividends which might accrue upon it, and in appropriating such dividends to the payment of the certificates. The real question in the case is whether the agreement was *ultra vires* in the sense that it could not be made without the unanimous consent of the stockholders of the defendant. The only evidence of the intention of the parties to it is found in the agreement itself. Whether it was made as a cover or "subterfuge" for some other agreement which would have been *ultra vires* is merely an

academic question. If it was not *ultra vires,* it was one which the defendant could lawfully make, and the defendant's motive in making it could not affect the legal quality of the act. The doctrine that after the shares have been distributed, and the relations of corporation and stockholders have been fixed, the corporation cannot, in the absence of authority in its charter or articles of association, create shares which carry a preferred right to dividends, or a right to a fixed payment in lieu of dividends, without the unanimous consent of its stockholders, has been asserted by the authorities, and rests upon undoubted principle. The same principle would forbid the corporation to create a new class of stockholders having rights or privileges not common to all. The reason is that to permit this would impair the existing equality among the stockholders, and subvert the vested rights which every stockholder acquires upon the purchase of his shares. But these rights are not invaded by the exercise of any power which resides in the corporation by virtue of its charter or the law of its organization, because every stockholder assents in advance to the exercise of such powers. The stockholder also assents in advance to the exercise by the corporation of all the incidental powers necessary to carry into effect the express objects of its charter or articles of association, and these include all that are reasonable and adapted to the end in view. Thus, the power to borrow money is implied as incidental to the defined powers of ordinary private business corporations; and if, in order to borrow money, the corporation finds it expedient to create preferred stock, and the issue is not in excess of the authorized capitalization of the corporation, no stockholder has reason to complain. The adjudged cases have not always recognized the force of this original consent by stockholders to the exertion of the incidental powers of the cor-

poration. In Kent *v.* Quicksilver Mining Company, 78 N. Y. 159, the Court assumed that, if the preference stock has been created as an exertion of the incidental power of borrowing money, it would have been a valid act, notwithstanding the absence of unanimous consent by the stockholders. This proposition is consistent with good sense, because the power to borrow includes the authority to mortgage the corporate property as a security, in the absence of some restriction in the charter; and the creation of preferred shares in place of common shares is no more harmful to the rights and interests of existing stockholders than is the creation of a mortgage. 2 Redfield on Railways, § 237; Westchester R. Co. *v.* Jackson, 77 Pa. 321. If the defendant, in order to attain one of the authorized objects of its incorporation, the purchase of the shares of another corporation, had found it expedient to agree with the vendors that the shares of common stock which they were to receive in exchange should carry 10 per cent. annual dividends for five years, to be paid out of the general dividend fund before appropriating any of it to the payment of dividends upon the rest of the common stock, we are not prepared to say that the agreement would not have been valid, as to all the stockholders of the defendant, as an exercise of one of the incidental powers to which all had originally consented. Such a contract would have been valid if it had been an act which was directly and immediately appropriate to the exercise of the specific power granted. For much learning upon this subject, the well-known case of Curtis *v.* Leavitt, 15 N. Y. 9, may be profitably consulted.

The present agreement did not have the effect of creating any new preferred stock or guaranteeing dividends upon the new stock. The stock to be transferred to the new holders was

the existing preferred and common stock of the corporation, and the certificates were independent negotiable securities, which might or might not be transferred with the stock. If the new holders should remain the owners of the certificates, they would become creditors as well as stockholders of the defendant; if they should choose to dispose of the certificates and retain their stock, they would be stockholders on precisely the same footing as all the other preferred and common stockholders of the corporation. If they were willing to forego dividends for a longer or shorter period, that was no concern of the other stockholders. Certainly that feature of the agreement worked the latter no harm or wrong. The defendant was expressly authorized to purchase the stock of other corporations, and, as incidental to such a purchase, it had authority to contract to pay for the stock in such mode and upon such conditions as were deemed advantageous. It did agree to pay for the purchased stock, partly in its own stock and partly in money, and to issue its obligations for the payment of the money at such times as were mutually satisfactory to the vendors and itself. It doubtless expected that the dividends which would accrue upon its stock deposited with the trustee would meet these payments, and so did the vendors; but there was no agreement to that effect. The promise contained in the certificates may have been regarded by both as substantially equivalent to such an agreement; but, assuming this to be so, so long as it was not the agreement, and could not be enforced, it is quite immaterial what were the expectations which prompted it. It not infrequently happens that the same substantial results can be effected by proper means or by means which the law will not sanction. If the present case affords an instance, it is also one where the legitimate means were used. Because the defendant was

careful not to make any contract which would be obnoxious to any of the rules of the law of corporations, it seeks to evade the contract by asserting that it was intended as a substitute for one which it could not properly make. This position is without any other merit than its consistency with the conduct of the defendant in skulking behind a factitious wrong to stockholders in order to repudiate the contract while it retains the fruits.

Whether the purchase by the defendant of the shares of the United Salt Company was made to effect a combination of the two corporations in order to prevent competition in the salt trade, and, if so, whether the stockholders of the Ohio corporation were *particips criminis* or merely actuated by the motive of selling their shares advantageously, are inquiries which need not be pursued. The evidence in the present record does not throw any light upon them, the case having been decided in the court below in favor of the defendant, upon the first defense, conformably with the views which this Court had expressed. It is proper, however, to observe that it is no objection to the enforcement of a contract, in the consideration and performance of which nothing illegal inheres, that it may incidentally aid one of the parties in evading or violating a statute. Hanover National Bank *v.* First National Bank, 109 Fed., 421, 48 C. C. A., 482.

The judgment is reversed."

National Salt Co. v. *Ingraham, 143 Fed. Rep., 805.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK.

H. B. TWOMBLY, for plaintiff in error.
G. S. INGRAHAM, for defendant in error.

Before WALLACE, LACOMBE and TOWNSEND, *Circuit Judges.*

WALLACE, *Circuit Judge.*

In ordering judgment for the plaintiff, the Court below ruled that the certificates of indebtedness made by the defendant were not created *ultra vires;* that the plaintiff was a *bona fide* purchaser, and the defense that they were executed upon an illegal consideration was, therefore, not available to the defendant; and that the plaintiff was not estopped from asserting the validity of the certificates by a decree of the Ohio State Court declaring them void. The assignments of error challenge the correctness of this ruling.

The facts in this case, so far as they bear upon the defense of *ultra vires,* are fully stated in the opinion of this Court reported in 130 Fed. 676. We there decided that the agreement made by the defendant with the stockholders of the Ohio corporation upon the purchase of their shares, whereby the vendors exchanged their shares for certain shares of the preferred and certain shares of the common stock of the defendant, together with certain money payments to be made as provided in the certificates, was not an agreement whereby the common stock transferred to them was constituted preferred stock, nor one guaranteeing dividends to them upon the stock transferred, and consequently was not *ultra vires* on the part of the defendant; that it was an agreement by the defendant to pay

the vendors partly in its own stock and partly in money, and to issue its obligation for the payment of the money in such installments as the parties had agreed to; and that, although the agreement contemplated that the money payments would practically secure to the holders of the stock thus transferred all the benefits which they would have derived from an agreement by the defendant that the common stock should be preferred stock, and dividends be guaranteed upon both the preferred stock and the common stock, inasmuch as such an agreement was not prohibited by the organic law of the defendant, the expectation or intention of the parties was of no moment so long as they adopted legitimate means to effect their scheme. In other words, we held that whether a corporate act or agreement is *ultra vires* or not is not a question of purpose or intention, and does not in the least depend upon the state of mind of those who participate in it. We see no reason to change our views upon the subject. The corporation was authorized by its charter to purchase the stock of the Ohio corporation. It made the purchase upon terms which it was authorized to offer and fulfill, and which did not contravene any provision of its organic law, and pursuant to an agreement which was carefully devised so as not to be obnoxious to that law; and, although the vendors were by the agreement placed in a position where they would receive the same practical benefit under it as though it had been one which the defendant would have had no right to make, they could not be deprived of these benefits, and the defendant had not entered into an unauthorized obligation. It follows that the ruling of the court below adverse to the defendant upon the defense of *ultra vires* was correct.

If the certificates were negotiable paper, the court below properly ruled that the defense that

they were executed as part of a scheme in restraint of trade prohibited by the so-called anti-trust law of Ohio could not be raised as against a purchaser of the certificates who had bought them before maturity and without notice of the invalidating facts. The certificates were instruments containing a promise by the defendant to pay to the payee or order a specified sum of money in certain equal semi-annual installments. They also provided that at any time before any default in payment the defendant should be discharged from the payment of all further installments by paying the amount to the American Trust Company, of Cleveland, in trust to pay the same to the registered holder hereof upon demand. They also contained recitals respecting the terms of the agreement between the defendant and the Ohio corporation, and showing that the defendant, to secure the payment of the certificates, had deposited the stock in that corporation, acquired by it, with the American Trust Company as trustee, pursuant to the terms of the declaration of trust executed by the defendant and filed at the office of the trust company. The contract fulfills the usual requisites of negotiable paper. It provides for the unconditional payment to the payee therein or order of a certain sum of money at a time capable of exact ascertainment. Its negotiability is not impaired because it permits the maker to pay the principal before maturity. Riker *v.* Sprague Manufacturing Co., 14 R. I., 402, 51 Am. Rep., 413; Mattison *v.* Marks, 31 Mich., 421, 18 Am. Rep., 197. In Ackley School District *v.* Hall, 113 U. S., 135, 5 Sup. Ct., 371, 28 L. Ed., 954, it was held that a provision in a municipal bond, by which its amount was payable at the pleasure of the maker at any time before due, did not affect its complete negotiability. The recitals in the certificates did not qualify the obligation of the maker or the holder, or incorporate to any ex-

tent into the contract the terms of the trust agreement mentioned therein. If, as in cases like McClelland *v.* Norfork Southern Railroad Co., 110 N. Y., 469, 18 N. E., 237, 1 L. R. A., 299, 6 Am. St. Rep., 397, the recitals had made the principal or interest payable upon the terms mentioned in the deed of trust, those terms would, of course, have become a part of the promise, and the negotiable character of the instrument would have to be ascertained by reference to them. We have no doubt that the certificates were negotiable paper within the rule that protects an innocent holder who has purchased it before maturity from defenses which might exist between the original parties. It is not enough to defeat this protection that the purchaser may have had knowledge of circumstances which would excite suspicion in the mind of a prudent man, or was guilty of gross negligence in his failure to make inquiry about facts which could have been ascertained. His protection is complete unless he had actual knowledge, or notice which was equivalent to knowledge, of the invalidating facts. The recitals in the certificates, and in the advertisements offering them for sale, were sufficient to charge the plaintiff with notice that the certificates had been issued by the defendant as an incident of its purchase of the stock of the Ohio company; but they did not indicate that such purchase was part of any illegal scheme between the defendant and the Ohio corporation to prevent competition or effect any of the purposes prohibited by the statutes of Ohio. Unless the mere fact that one corporation has purchased the stock of another, or has acquired all the property and business of another, denotes that it has done so for the purpose of restraining trade or stifling competition, the recitals were not sufficient to charge the defendant with any knowledge of the illegality of the transaction, or to put him upon inquiry with respect thereto.

The proposition that such a purchase evinces illegality is hardly capable of serious discussion. A purchase which is perfectly consistent with a legitimate purpose raises no implication of a guilty one. Before the defendant was entitled to offer evidence for the purpose of establishing the illegitimate character of the transaction, it was incumbent upon it to satisfy the trial judge that the plaintiff had acquired the certificates *mala fides*. The trial judge was fully justified in ruling that the defendant had not done so. Therefore his ruling excluding evidence offered by the defendant to prove the illegal character of the purchase was correct.

The decree of the Ohio court, relied upon by the defendant as an estoppel precluding the plaintiff from asserting the validity of the certificates, was rendered in an action in equity, in which the present defendant was plaintiff, brought to have its purchase of the stock of the Ohio corporation and all its contracts arising therefrom, including the certificates, declared void, for the reason, among others, that they were part of a scheme restraining trade and to effect an unlawful combination between the two corporations. The defendants in that suit were the Ohio corporation, various stockholders of that corporation, the American Trust Company of Cleveland, and various holders of the certificates of indebtedness, including the present plaintiff. The present plaintiff appeared and answered the petition, and by his answer alleged the validity of the transaction assailed, and asked for an affirmative decree for the payment of his certificates. By the decree the cause was dismissed without prejudice to the present plaintiff, and as between all the other parties to the action the agreements were declared void, the stock which had been deposited with the trustee was ordered to be surrendered, and the purchase was in all respects rescinded.

It is now argued for the plaintiff in error that the present plaintiff as a defendant in the former action was bound by the decree because the American Trust Company was a party defendant, and as trustee represented all the certificate holders, including the present plaintiff. Upon this theory none of the certificate holders were necessary parties. They were needlessly made defendants in the action, and the dismissal of the cause as to the present plaintiff was of no effect. It is unnecessary for present purposes to consider whether this theory is sound or not, as we are of opinion that the decree against the trustee concluded the plaintiff only to the extent to which it determined his rights or interest in the trust property. The trust company was for certain purposes the agent and fiduciary of the certificate holders. By the terms of the trust agreement, it was its duty to hold, manage, and control the shares of stock which were deposited with it until the certificates should be fully paid, and until such time it was to collect the dividends accruing upon the shares and apply them towards the payment of the certificates; but it had no power to sell the shares or to enforce in any way the payment of the certificates. It was a necessary party to the Ohio suit, because in its absence there could have been no effectual decree annulling the trust agreement. Its powers as a trustee were more limited than those of the ordinary trustee for bondholders upon a trust deed or mortgage. The latter represents the bondholders in all legal proceedings affecting the trust property, and in a suit to foreclose the mortgage, or to annul it, the bondholders are not necessary parties, and whatever the trustee does, in the absence of fraud or bad faith on his part, concludes them in respect to their equitable title to the trust estate. We are aware, however, of no authority for the proposition that he represents them respecting matters as to which

he has no control and concerning which he has no voice. He is not a necessary or proper party in a suit at law by a bondholder to recover the principal or interest upon the bonds, because he has no title, legal or equitable, to the bonds, or to the moneys payable by the terms of the bonds. The decisions in which it has been held that the bondholder was concluded by the former adjudication against the trustee were made in cases in which the bondholder sought by a subsequent suit to subject the trust estate to the payment of his bonds. The principle of the decisions is stated in Kerrison *v.* Stewart, 93 U. S., 160, 23 L. Ed., 843, as follows:

> "It cannot be doubted that under some circumstances a trustee may represent his fiduciary in all things relating to their common interest in the trust property. He may be invested with such powers and subjected to such obligations that those for whom he holds will be bound by what is done against him as well as by what is done by him. * * * If he has been made such a representative, it is well settled that his beneficiaries are not necessary parties to a suit by him against a stranger to enforce the trust, or to one by a stranger against him to defeat it in whole or in part."

In Shaw *v.* Railroad Co., 100 U. S., 611, 25 L. Ed., 757, the doctrine is thus stated:

> "The trustee of the railroad mortgage represents the bondholders in all legal proceedings carried on by him affecting his trust, to which they are not actual parties, and whatever binds him, if he acts in good faith, binds them."

Again, in Richter *v.* Jerome, 123 U. S., 233, 246, 8 Sup. Ct., 106, 31 L. Ed., 132, the Court said:

> "As bondholders claiming under the mortgage, they can have no interest in the se-

> curity except that which the trustee holds and represents. If the trustee acts in good faith, whatever binds it in any legal proceedings it begins and carries on to enforce the trust, to which they are not actual parties, binds them."

Conceding for the sake of argument that the present trustee had as extensive a capacity as that of the ordinary mortgage trustee, he certainly had no power to represent the certificate holders for any purpose other than that of the management and protection of the trust estate. While the decree against him will effectually preclude the certificate holders from resorting to the trust fund for the collection of the moneys due them, it does not in our opinion impair in the slightest the rights of those not made defendants to the suit to recover at law the amount due thereon from the present defendant. We conclude that the trial judge properly ruled that the former decree was not an estoppel against the plaintiff.

The assignments of error are without merit, and the judgment is affirmed."

II.

The certificates of indebtedness are negotiable instruments.

We have heretofore referred to the instruments under consideration as "certificates of indebtedness" because that is the term which has customarily been used in this proceeding to identify them, and for the further reason that no more apt terminology has been suggested. We confess, however, to some difficulty in determining the precise

class of obligations into which they properly fall. To a certain extent, they partake of the character of promissory notes, and, in fact, the National Salt Company has assented to their description as such (Case, p. 276). On the other hand, they are sealed instruments, somewhat different in form from and much longer than the ordinary promissory note, and because of being under seal and containing provisions for countersignature and registration and further provisions referring to a trustee holding securities for the payment of the obligations expressed in them, they partake largely of the character of corporate bonds. If an apt definition of them were required, we should say that they were corporate obligations, containing words of negotiability and intended by the corporation issuing them to be traded in and passed from hand to hand with the usual attributes of such securities. Viewed either as promissory notes or as corporate bonds, their negotiability is clearly established by the cases which follow. We will discuss these certificates first as promissory notes.

I. THE CERTIFICATES OF INDEBTEDNESS MEET THE TESTS OF NEGOTIABILITY APPLIED TO PROMISSORY NOTES.

The negotiable quality of an instrument is thus defined by the Negotiable Instruments Law (Laws of New Jersey of 1902, Chap. 184, approved April 4, 1902):

"1. An instrument to be negotiable must conform to the following requirements:

I. It must be in writing and signed by the maker or drawer;

II. Must contain an unconditional promise or order to pay a sum certain in money;

III. Must be payable on demand, or at a fixed or determinable future time;

IV. Must be payable to order or to bearer; and

V. Where the instrument is addressed to a drawee, he must be named or otherwise indicated therein with reasonable certainty."

"2. The sum payable is a sum certain within the meaning of this act although it is to be paid:

I. With interest; or

II. By stated installments; or

III. By stated installments, with a provision that upon default in payment of any installment or of interest, the whole, shall become due; or

IV. With exchange, whether at a fixed rate or at the current rate; or

V. With costs of collection or an attorney's fee, in case payment shall not be made at maturity."

"3. An unqualified order or promise to pay is unconditional within the meaning of this act, though coupled with:

I. An indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount; or

II. A statement of the transaction which gives rise to the instrument.

But an order or promise to pay out of a particular fund is not unconditional."

"4. An instrument is payable at a determinable future time, within the meaning of this act, which is expressed to be payable:

1. At a fixed period after date or sight; or

II. On or before a fixed or determinable future time specified therein; or

III. On or at a fixed period after the occurrence of a specified event, which is certain to happen, though the time of happening be uncertain.

An instrument payable upon a contingency is not negotiable, and the happening of the event does not cure the defect."

"5. An instrument which contains an order or promise to do any act in additional to the payment of money is not negotiable, but the negotiable character of an instrument otherwise negotiable is not affected by a provision which:

I. Authorizes the sale of collateral securities in case the instrument be not paid at maturity; or

II. Authorizes a confession of judgment if the instrument be not paid at maturity; or

III. Waives the benefit of any law intended for the advantage or protection of the obligor; or

IV. Gives the holder an election to require something to be done in lieu of payment of money.

But nothing in this section shall validate any provision or stipulation otherwise illegal."

"6. The validity and negotiable character of an instrument are not affected by the fact that:

I. It is not dated; or

II. Does not specify the value given, or that any value has been given therefor; or

III. Does not specify the place where it is drawn or the place where it is payable; or

IV. Bears a seal; or

V. Designates a particular kind of current money in which payment is to be made.

But nothing in this section shall alter or repeal any statute requiring, in certain cases, the nature of the consideration to be stated in the instrument."

* * * * *

"8. The instrument is payable to order where it is drawn payable to the order of a specified person or to him or his order; it may be drawn payable to the order of:

I. A payee who is not maker, drawer or drawee; or

II. The drawer or maker; or

III. The drawee; or

IV. Two or more payees jointly; or

V. One or some of several payees; or

VI. The holder of an office for the time being.

Where the instrument is payable to order, the payee must be named or otherwise indicated therein with reasonable certainty."

This same Statute was enacted in New York in 1897 (Laws N. Y. of 1897, Chap. 612), or nearly four years before the appellants purchased their certificates of indebtedness. We show hereafter that these purchases were made in New York and that the certificates should be interpreted as New York contracts. As the two Statutes are identical, our argument based upon them, applies, whether it be decided that the law of New Jersey or that of New York governs.

It is important at this point to remember the origin and purpose of the uniform Negotiable Instruments Law, which has now been enacted into statute by a majority of the States. The purpose of the framers of the act was not to overturn busi-

ness custom and usage, but, on the contrary, merely to codify the existing common law and law merchant. From this, it follows that each provision of the Negotiable Instruments Law must be deemed to follow the common law of New Jersey prior to 1902 in the absence of a controlling decision by the Courts of New Jersey, enunciating a doctrine inconsistent with such provision. The circumstance that decisions may be found in other jurisdictions interpreting the common law in a manner inconsistent with the New Jersey Negotiable Instruments Law, does not lessen the force of the assertion that the Legislature of New Jersey has codified her common law, and that this codification is to be accepted as a statement of her common law prior to such codification, in the absence of a controlling decision to the contrary by her own Courts upon the express point.

The certificates of indebtedness answer every test prescribed by the provisions of the Negotiable Instruments Law quoted above. They are instruments in writing signed by the maker. They contain an unconditional promise to pay to the payee or order a fixed sum of money in instalments, on or before a fixed or determinable future time specified therein. Nothing remains to be added to make them complete and binding obligations and nothing has been added to defeat the purpose and intention of the maker that they should freely pass from hand to hand. We may now consider the grounds upon which the negotiability of these instruments has been attacked by the Receivers.

(*a*) *That the seal did not destroy negotiability.*

(NOTE.—It is a fact and will doubtless be conceded, that all of the certificates of indebtedness bear the impress of the seal of the National Salt Company [Case, p. 293]. Through a printer's error the word "seal" was omitted from Claimants' Exhibit 18, printed at page 295. The original cer-

tificates are in our possession, and should any question be raised as to the fact of their being sealed, we shall ask the permission of the Court to exhibit them upon the argument.)

Negotiable Instruments Law, Section 6, subdiv. IV.

Chase Nat. Bank *vs.* Faurot, 149 N. Y., 532.

7 Cyc. 616, and cases there cited.

(*b*) *That the certificates are not payable out of a particular fund.*

Counsel for the Receivers contended in the Court below that the negotiability of the certificates of indebtedness is destroyed by reason of the fact that they are payable out of a particular fund. It is difficult to understand upon what theory this argument is predicated. Certainly there is nothing in the language of the certificates to sustain it. They contain an absolute engagement upon the part of the National Salt Company to pay a specified sum to the holders, or order, at the office of the American Trust Company, on a day certain or sooner, and recite that certain securities have been deposited with the latter Company to secure the performance of this promise. The promise to pay is absolute and unconditional, and there is not a word nor an inference upon the face of these certificates indicating the source of the funds out of which payment is to be made, or qualifying the unequivocal engagement of the maker to pay in any event. The fact that the certificates are payable at the American Trust Company is without significance, as promissory notes have been made payable at banks from time immemorial. The further fact that the National Salt Company expected, or hoped, or believed that the dividends upon its deposited stock would be sufficient to pay the instalments is equally without significance,

first, because that hope or expectation is not expressed upon the face of the certificates, and, second, because the absolute promise to pay is not made in any way conditional upon the amount of dividends received by the American Trust Company. Finally, the Negotiable Instruments Law effectually brushes away all possible doubt on the subject by providing (Section 3) that an unqualified promise to pay is not rendered conditional by being coupled with "an indication of a particular fund out of which reimbursement is to be made, or a particular account to be debited with the amount, or by a statement of the transaction which gives rise to the instrument."

(c) *That the provision authorizing anticipatory payment to the American Trust Company does not destroy the negotiability of the certificates.*

The learned Vice Chancellor, in his oral opinion, seized hold of the following provision of the certificates of indebtedness and argued that it defeated their negotiable character, viz.:

> "Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to the American Trust Company, of Cleveland, Ohio, in trust, to pay the same to the registered holder hereof upon demand."

Two views are permissible of the legal relation established by this provision. One is that the registered holders and the American Trust Company are alternative payees of the obligation, and the other is that the language amounts to no more, in legal effect, than the designation of an agent who is authorized to receive payment on behalf of the registered holder.

Considering the instrument as designating alternative payees, we find that the Negotiable In-

struments Law provides (Sec. 8) that a negotiable instrument "may be drawn payable to the order of * * * one or some of several payees * * * ."

The provision just quoted is merely a legislative declaration of the common law as it previously existed.

Mandeville *vs.* Union Bank of Georgetown, 9 Cranch (U. S.), 9.
Willoughby *vs.* Willoughby, 5 N. H., 244.
Fort *vs.* Delee, 22 La. Ann., 180.
Knight *vs.* Jones, 21 Mich., 161.
Westgate *vs.* Healy, 4 R. I., 523.

The result is the same if we consider that the language imports the designation of the American Trust Company as the authorized agent of the payee to receive payment. The law that payment of a promisory note to the authorized agent of the payee or holder operates to discharge the maker and endorser, is too well settled to require the citation of authority, and this is true, although nothing appears upon the face of the instrument establishing the agent's authority. In this view the question resolves itself simply into one of proof. If the negotiability of a promissory note is not destroyed by proof *aliunde* that the payee, or holder, for the time being, has an agent, or bookkeeper, or cashier who is authorized to accept payment in his behalf, upon what possible ground can it be contended that the character of the instrument is in any wise changed by apt words upon the face of the note establishing the fact of such agency? The answer in the decided cases is clear.

Holmes *vs.* Jacques, L. R. 1 Q. B., 376.
Atlantic Mutual Life Ins. Co. *v.* Young, 38 N. H., 451.

Noxon *vs.* Smith, 127 Mass., 485.
Davis *vs.* Garr, 6 N. Y., 124.
Fisher *vs.* Ellis, 3 Pick (Mass.), 322.

Before leaving this topic, attention may properly be called to a further consideration. If, as we believe, these certificates of indebtedness are more accurately to be classified as corporate obligations intended by the National Salt Company to have a ready sale and to pass freely from hand to hand, then their negotiability is not to be tested by the rigid rules of the law merchant. Assuming that these obligations are properly denominated negotiable corporate bonds, then clearly the provision for discharge by payment to the American Trust Company does not impair their negotiability, for it is common knowledge that practically every corporate bond and mortgage contains clauses permitting the obligor or mortgagor to discharge its liability by payment of the amount of the indebtedness to the designated trustee for the benefit of the bondholders, and it has never been contended or decided, so far as we can learn, that such a provision lessened the negotiability of a corporate bond in the slightest degree. Were the law otherwise, a railroad company with a $50,000,000 mortgage upon its property, securing an outstanding bond issue of an equivalent amount, might find itself effectually precluded from redeeming the bond issue and obtaining a satisfaction of the mortgage, because of its inability to locate the holder of a single isolated bond. It is obviously for this reason that all corporate bonds and mortgages reserve an option of alternative payment to the maker, and if this destroys their negotiable character, then every decision rendered for the past fifty years, upholding the negotiability of such instruments, is founded in error.

2. THAT THE CERTIFICATES OF INDEBTEDNESS ARE CORPORATE BONDS OR SECURITIES CONTAINING WORDS OF NEGOTIABILITY, AND NEGOTIABLE AS SUCH.

Reference has already been made to the fact that these certificates of indebtedness differ from the ordinary promissory note of commerce in important particulars. These differences are so substantial that we think the certificates may with better reason and authority be placed in the category of corporate bonds, than in that of true negotiable instruments known to the law merchant. Thus, as we have pointed out, the certificates are to be distinguished from promissory notes in that they are under seal; that they contain a provision for registration and counter-signature; that they refer to collateral engagements expressed in a declaration of trust executed by the National Salt Company; that they refer to a designated trustee and its holding of security for their payment; and, finally, that they provide for anticipatory payment to the trustee for the account of the several holders. All of these are very unusual provisions in a promissory note, and, on the other hand, are the customary features of a corporate bond. In a word, we may say, that these instruments in form and substance partake of every quality of a corporate bond with the single exception of the formal opening recital, and this we do not understand to be of the essence of such an instrument.

If these certificates are to be classified and interpreted as corporate bonds, then by the great weight of authority in New Jersey and elsewhere their negotiability is unquestionable.

Morris Canal & Banking Co. *vs.* Fisher, 9 N. J. Eq., 667.

Morris Canal & Banking Co. *vs.* Lewis, 12 N. J. Eq., 323.

City of Elizabeth *vs.* Force, 29 N. J. Eq., 587.

Mt. Holly, Lumberton & Medford Turnpike Co. *vs.* Ferree, 17 N. J. Eq., 117.

Boyd *vs.* Kennedy, 38 N. J. L., 146.

Hackensack Water Co. *vs.* DeKay, 36 N. J. Eq., 548.

Cook on Corporations, 6th Ed., §767, pp. 2651-2.

Lembeck *vs.* Jarvis Terminal Coal Storage Co., 70 N. J. Eq., 757.

Pittsburg, etc., Railway Co. *vs.* Loan & Trust Co., 172 U. S., 493.

Atlantic Trust Co. *vs.* Crystal Water Co., 72 App. Div., 539.

Hibbs *vs.* Brown, 190 N. Y., 167.

Indiana, etc., Railway *vs.* Sprague, 103 U. S., 756.

Ellsworth *vs.* St. L. A. & T. H. R. R. Co., 98 N. Y., 553.

Hotchkiss *vs.* National Banks, 21 Wallace (U. S.), 354.

Dickerman *vs.* Northern Trust Co., 176 U. S., 181.

In Morris Canal & Banking Co. *vs.* Fisher, *supra*, which was one of the earliest decisions by the courts of this State upholding the negotiability of corporate bonds, this Court said:

> "If the bonds in question are transferable by delivery, so as to confer a complete title in the possessor, it is not as instruments negotiable under the law of merchants, as bills and notes are, but as instruments of a peculiar character, expressly designed to be passed from hand to hand, and by a common usage known to all, actually so transferred. That they are, on their face, payable to bearer, is, of course, an important and per-

haps indispensable circumstance to show that this was, in fact, their design, and that they are so used. But the usage itself, and in a case like this, where the party issuing them is before the court denying the holder's title, the manner in which they were issued and used by the company itself, are the important facts which must have the principal influence in determining their true character. If, in point of fact, they are of such a character that a full title was intended to be conferred on any person who became the *bona fide* possessor of them, and this intention was not in contravention of the law, the original maker has no equity against the assignee. By the act of issuing a security, which, although in some respects like an ordinary bond, was, in its main characteristic of being designed to pass freely from hand to hand, and of being so held out to the world, essentially different, all such equities were designedly relinquished, and ought not to be regarded by courts of law or of equity.

That under ordinary circumstances, the property of bank notes and of bills and promissory notes payable on their face, or by a blank endorsement to a bearer, follows the possession, has been long settled. By analogy to this class of cases, the exigencies of business have from time to time introduced other securities into the same category. The Court of King's Bench seems to have hesitated to recognize India bonds as belonging to it. Glyn *v.* Baker. But parliament immediately interfered and declared them negotiable instruments. Exchequer bills were so regarded, in the case of Wookey *v.* Pole, 4 Barn. and Ad. 1. In the case of Gorgier *v.* Mieville 3 Bar. and Cress. 45, bonds of the King of Prussia, which were shown to be ordinarily passed from hand to hand by delivery, and so designed, were held to be like money or bills, so as to give a *bona fide* possessor the legal title. And in the case of Lang *v.* Smith, 7 Bing. 284, the same principle was applied to the case of instruments

> issued by the government of Naples, although in that case they were held not to be negotiable, because it was found that they did not usually circulate without a certificate, which did not accompany them. Parsons, in his recent work on contracts, vol. 1, page 240, expresses the opinion that the common bonds of railroads fall within the reasoning and authority of these cases."

And further in the same opinion the learned Justice writing for the Court, said:

> "Even as between third parties, we suppose the common usage to transfer them by delivery, without inquiry as to the title of the transferrer, would justify us in holding these securities to differ from common obligations, in being so far negotiable that the *bona fide* possessor shall be held to have a good title."

In Morris Canal & Banking Co. *vs.* Lewis, *supra,* where the facts were not dissimilar from those in the case just cited, this Court said:

> "It was held by this court, in the case of The Morris Canal and Banking Company *v.* Fisher, 1 Stock., 667, that the coupon bonds of the company are transferable by delivery, so that a *bona fide* holder has a good title to them, and this principle has since been recognized as correct by other courts. It rests upon the faith that such bonds are expressly designed to be thus circulated, and to be sold in the stock market like public securities, and that they are universally so used."

In City of Elizabeth *vs.* Force, *supra,* the plaintiff sued to recover the amount of a negotiable bond stolen from him. The defense was, that the bond had reached the hands of an innocent holder for value. In sustaining this defense the Court said:

> "Any decision in this case exploding the defense here interposed, would, it appears to

> me, be greatly inconsistent with the legal principle that gives untrammeled negotiability to instruments of this kind."

A footnote to the case just cited gives a valuable collection of cases upholding the negotiability of corporate obligations.

In Hackensack Water Co. *vs* DeKay, *supra*, the Court of Errors and Appeals said:

> "In this State, coupon bonds of a corporation, issued under special legislative authority, and designed for the purpose of raising money on credit, if they contain words of negotiability, are negotiable instruments the same as ordinary commercial paper; and the same immunity from defenses in the hands of *bona fide* holders applies to mortgages securing such bonds as to the bonds themselves."

In Cook on Corporations, 6th Ed., § 767, pp. 2652-3, the rule is thus stated, being there fortified by an extended list of authorities from all jurisdictions, viz:

> "The law is well settled that the bonds of a corporation are negotiable although the seal of the corporation is attached. The negotiability of a bond is not destroyed by the fact that the corporate seal is attached, or that the company retains the right to pay the bond before maturity, or that registration is provided for, or that the payee's name is left blank, or that it is convertible into stock, or that it is payable on or before a specified date, or that there is a provision against personal liability on the part of the stockholders, or that overdue coupons are attached to the bonds, or by the fact that the interest has been due and unpaid for a period sufficient, if the interest had been demanded, to make the bonds due, no demand having been made."

Some of the authorities cited above are of peculiar interest because of their bearing upon questions already discussed in this brief. We have adverted to the contention of the Receivers, that the certificates of indebtedness are non-negotiable because they may be construed as payable to alternative payees. While, as we have shown, this is not the law even in the case of promissory notes, the rule clearly has no applicability to corporate bonds.

Thus in Boyd *vs.* Kennedy, 38 N. J. L., 146, *supra*, it appeared that the County of Hudson had issued bonds payable "to..... or....." The plaintiff purchased a bond in which these blanks had not been filled up. The bond was stolen from the plaintiff and afterwards came into the hands of the defendant, who was a *bona fide* purchaser for value. The plaintiff sued to replevy the bond from the defendant. At the time of the trial the blanks in the bond were still unfilled. In holding that the plaintiff had no cause of action and that the defendant's title was good the Court said:

> "Corporations have been authorized to issue bonds for large amounts, whereon to procure loans and provide funds for present use, to be repaid on long credits. To accomplish this purpose, it is necessary to put these bonds on the market. A ready negotiation of such securities is needed to promote their circulation, and thereby give them increased value, for the purpose of the investment of money. Consequently, such securities by common usage, sanctioned by the courts, have obtained the qualities and attributes of negotiable paper in respect to their transfer."

The effect of this decision is to go further than any possible requirement of the case at bar, and to hold, not only that a bond to alternative payees

is negotiable, but also that a bond to *unnamed* alternative payees is equally negotiable.

In Hotchkiss *vs.* National Banks, 21 Wallace, 354, the United States Supreme Court held that the bonds then under consideration were negotiable, notwithstanding an accompanying agreement to make attached scrip stock, full paid after any dividend was paid, the Court holding that this agreement was independent of any pecuniary obligation of the bond. To the same effect see

Welch *vs.* Sage, 47 N. Y., 143.
Lisman *vs.* Milwaukee, L. S. & W. Ry. Co., 161 Fed. Rep., 472.

3. AS TO THE EFFECT UPON THE NEGOTIABILITY OF THE CERTIFICATES OF INDEBTEDNESS OF THE CONFLICT OF LAWS OF THE SEVERAL JURISDICTIONS THROUGH WHICH THE CERTIFICATES PASSED.

The certificates of indebtedness were issued by a New Jersey corporation and dated in New Jersey. They are payable in Ohio, and were given in payment for the stock of an Ohio corporation, but the place of their delivery to the original payees does not appear.

Many of the certificates were subsequently negotiated and sold in New York, and all of the present claimants purchased and paid for their certificates in the latter State.

Under these circumstances, the certificates are to be interpreted by the laws of New York.

Watson *vs.* Lane, 52 N. J. L., 550.
Brook, Oliphant *vs.* Vannest, 58 N. J. L., 162.
Freese *ads.* Brownell, 35 N. J. L., 285.

If the certificates are held to be bonds, the New York authorities cited above are decisive upon the question of their negotiability. If they are promissory notes, then it will be remembered that the uniform Negotiable Instruments Law was enacted in New York two years before the certificates of indebtedness were issued, and nearly four years before they were purchased by the appellants (Laws of New York of 1897, Chap. 612). The Negotiable Instruments Law has also been enacted into the statutes of Ohio (Ohio Laws of 1902, p. 162; Revised Stat. 3171-3178g, in effect Jan. 1, 1903).

If the law of Ohio be deemed relevant, it also will be found to sustain the negotiability of corporate bonds.

Railway Co. *vs.* Lynde, 55 Ohio State, 23.

III.

The appellants are bona fide holders of the certificates of indebtedness for value, without notice of any fact affecting their validity.

Counsel for the Receivers in the Court below endeavored to argue that the appellants, at the time of their purchase of the certificates of indebtedness now held by them, had knowledge of facts calculated to place them on their guard, and from this the deduction was sought to be made that any original invalidity in these certificates adhered to them in the hands of the appellants. There is no substantial basis of fact, disclosed by the present record, upon which such an argument can be founded.

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The certificates of indebtedness were originally issued in October, 1899. The purchases of them by the claimants were not made until March, 1901. During the intervening time there had not been the faintest suggestion of illegality in the transactions between the National Salt Company and the stockholders of the United Salt Company. The National Salt Company had openly advertised its ownership and control of the United Salt Company (Case, pp. 282 to 291, 448 to 450 and 537 to 548), and had expressly conceded the validity of the certificates of indebtedness by paying three semi-annual instalments thereon. There was certainly nothing in this situation that was calculated to startle or alarm the most cautious investor.

On the part of the claimants it was shown that their attention was directed to the certificates of indebtedness as investments by advertisements appearing in the daily papers in the spring of 1901 (Case, p. 99). These advertisements led to correspondence with and finally to interviews with the brokers who had in hand the marketing of these securities (Case, p. 99), and it is not disputed that Mr. Perkins, who acted as the purchasing agent for the claimants represented by us, received and read the circulars issued by Messrs. Stewart, Barr & Co., the brokers in the transaction (Claimants' Exhibit 3, Case, p. 269), and also the statements prepared by the National Salt Company and filed with the authorities of the New York Stock Exchange for the purpose of having its securities entered in the Department of Unlisted Securities of that Exchange (Claimants' Exhibit 4, p. 282, and Claimants' Exhibit 5, p. 289). Furthermore, the claimants communicated with the officers of the National Salt Company upon the subject (Case, pp. 100 and 77). This testimony is not contradicted, and it passes equally without dispute that the nature of the information received by the claim-

ants, as a result of these investigations, was such that they invested over $125,000 in the certificates almost immediately (Case, p. 101).

But, the Receivers argue, there was language in the circulars of Stewart, Barr & Co., indicating that these certificates were intended as an unlawful guaranty of dividends. There are several sufficient answers to this contention. In the first place, as we shall hereafter show, the certificates of indebtedness were not an unlawful guaranty of dividends, notwithstanding the unselfish and disinterested efforts of the National Salt Company to prove the contrary, and thus establish its own participation in wrongdoing. In the second place, while the Stewart, Barr & Co. circular states that the certificates are in lieu of dividends, it nowhere appears, either by word or plain inference, that any taint of illegality inhered in them. On the contrary, the avowed purpose of this circular was to induce the purchase of these certificates, and the whole tone of it was purposely chosen to bring about that result. Finally, the claimants knew that the National Salt Company had expressly recognized the validity of these certificates by payment of the three semi-annual installments theretofore accrued upon them (Case, p. 291), and by public announcement of its ownership of the property which it had purchased with them, and their inquiries of the officers of the Company had disclosed nothing calculated to raise a doubt as to availability of the certificates for investment purposes. To permit the National Salt Company, under these circumstances, and after having by its own conduct lured these claimants into the purchase of its securities, to disclaim all liability thereon, would be violative of every principle of estoppel.

The law is well settled that the title of a purchaser of a negotiable instrument for value can be

defeated only by proof of actual fraud or bad faith, and that willful ignorance or carelessness or facts establishing suspicious circumstances, are not enough.

National Bank of Republic *vs.* Young, 41 N. J. Eq., 531.
Hamilton *vs.* Vought, 34 N. J. L., 187.
5th Ward Savings Bank *vs.* 1st Nat'l Bank, 48 N. J. L., 513.
Murray *vs.* Lardner, 2 Wallace, 110.
Hodges *vs.* Shuler, 22 N. Y., 114.
Welch *vs.* Sage, 47 N. Y., 143.
Cheever *vs.* Pittsburgh, &c. Ry. Co., 150 N. Y., 59.
Louisville, &c. Ry. Co. *vs.* Louisville Trust Co., 174 U. S., 552.
Buffalo L. T. & S. D. Co. *vs.* Medina Gas Co., 162 N. Y., 67.
Daniel on Negotiable Instruments, §§ 770-776 and 1503.

In Fifth Ward Savings Bank *vs.* First National Bank, *supra,* this Court held that proof that a person had taken securities under suspicious circumstances was not sufficient to defeat his title, and said:

> "That result can be produced only where he has taken title in bad faith."

In Hamilton *vs.* Vought, *supra,* a decision by the Supreme Court, which was afterwards cited with approval by the Court of Errors and Appeals in National Bank of Republic *vs.* Young, *supra,* the head-note is as follows:

> "A note fraudulent in its inception cannot be invalidated in the hands of a party taking it for value, before maturity, unless actual fraud can be shown in such party so taking it."

In National Bank of Republic *vs.* Young, *supra,* this Court said:

> "The general doctrine of the law is that where a corporation has power under any circumstances to issue negotiable paper, a *bona fide* holder has a right to presume that it was issued under circumstances which give the requisite authority, and such paper is no more liable to be impeached for any infirmity in the hands of such a holder than any other commercial paper."

In Buffalo L. T. & S. D. Co. *vs.* Medina Gas Co., *supra,* it appeared that a bank had accepted bonds of the defendant from the defendant's secretary, upon his representation that they were good and valid securities as against it, notwithstanding the fact that eight coupons for past due semi-annual installments of interests were attached, and the Court said: "It is difficult to see what further inquiry could have been made." If a false representation by the defendant's secretary in that case could validate apparently defaulted bonds in the hands of a purchaser for value, it would not seem difficult in the case at bar to give like effect to the statements submitted to the New York Stock Exchange by the National Salt Company and upon which the claimants concededly relied (Claimants' Exhibits 4 and 5, Case, pp. 282-291).

In Louisville etc. Ry. Co. *vs.* Louisville Trust Co., *supra,* the rule is well stated as follows:

> "One who takes from a railroad or business corporation, in good faith, and without actual notice of any inherent defect, a negotiable obligation issued by order of the board of directors, signed by the president and secretary in the name and under the seal of the corporation, and disclosing upon its face no want of authority, has the right to assume its validity, if the corporation could, by any action of its officers or stockholders,

or of both, have authorized the execution and issue of the obligation.

"In Merchants' Bank *v.* State Bank, 10 Wall., 604, this Court stated, as an axiomatic principle in the law of corporations, this proposition: 'Where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them.' 10 Wall., 644, 645. The proposition was supported by citations of many English and American cases, and among them Royal British Bank *v.* Turquand (1856), 6 El. & Bl., 327. And the justices of this Court, while differing among themselves in the application of the principle to municipal bonds, have always treated Royal British Bank *v.* Tarquand as well decided upon its facts. Knox County *v.* Aspinwall, 21 How., 539, 545; Moran *v.* Miami County, 2 Black, 722, 724; Gelpcke *v.* Dubuque, 1 Wall., 175, 203; St. Joseph *v.* Rogers, 16 Wall., 644, 666; Humboldt *v.* Long, 92 U. S., 642, 650. And see Zabriskie *v.* Cleveland, Columbus & Cincinnati Railroad, 23 How., 381, above cited."

It may be remarked in passing that the appellants in this case purchased their certificates of indebtedness before the institution of the Ohio suit and without knowledge that it was threatened. It is settled law, however, that the doctrine of *lis pendens* does not apply to negotiable instruments, and this is the rule even in Ohio.

21 Amer. & Eng. Ency. of Law, 2nd Ed., p. 628, and cases there cited.

Pittsburgh, etc., Ry. Co. *vs.* Lynde, 55 Ohio State, 23; affirmed 172 U. S., 493.

Stone *vs.* Elliott, 11 Ohio State, 252.

IV.

The decree rendered in the Court of Common Pleas of Cuyahoga County, Ohio, is not binding upon the appellants.

Reference has heretofore been made to the circumstances under which the Ohio suit was instituted and under which the decree was ultimately obtained therein, and further extended discussion of them is probably not required at this point.

In that suit the National Salt Company named as parties defendant the United Salt Company, the American Trust Company, the former holders of the stock of the United Salt Company, from whom it had made its purchases, and a number of the holders of National Salt Company certificates of indebtedness. With the exception of Erickson Perkins, none of the appellants represented by us was named in that suit at any stage of the proceeding, and none of them was ever served with process therein.

There is no averment in the petition or bill of complaint (Case, p. 331) that any of the certificate holders are unknown or so numerous that it is impracticable to join them, and it is undisputed that all parties to that suit were apprised long before it went to judgment of the existence and holdings of the appellants (Case, pp. 127, 132, 149, 167 and 191 to 193). It is also undisputed, that for

some months prior to the entry of that decree, strenuous efforts were made to induce the appellants to assent to the terms of it and the general plan of settlement embodied therein, and that the appellants firmly and consistently maintained the position that they were not parties to that litigation, and that nothing which could be done there would be binding upon them. The Receivers, however, draw a convenient veil of forgetfulness over the insistent efforts of their predecessor in interest, the National Salt Company, to secure the assent of the appellants to the entry of the Ohio decree, and now assert with great confidence that no assent was, in fact, necessary, and that the presence of the American Trust Company as a party defendant in that litigation was sufficient to bind all certificate holders by everything that was done therein. This contention naturally leads to the following inquiries:

1. *Could the American Trust Company bind the holders of certificates of indebtedness by representation?*

2. *Was the Ohio decree vitiated by the collusion and consent attending its procurement?*

3. *Did the Ohio court have jurisdiction in the premises?*

As the answer to each of these questions turns upon the consideration of a different group of authorities, we discuss them under the separate points following:

V.

The appearance and consent of the American Trust Company in the Ohio suit did not confer jurisdiction over the appellants by representation, mutuality or estoppel.

At the outset it is to be noted that the American Trust Company was named in the petition or bill of complaint in the Ohio suit in its individual, and not in its representative capacity (Case, p. 331).

It is also to be noted that the large majority of the certificate holders were joined as parties defendant therein, and that the National Salt Company and its privies are now estopped by its action in this regard, from claiming that the presence of the certificate holders was not necessary to the assertion of the Court's jurisdiction over them.

Notwithstanding these two obvious answers to the contention of the Receivers, they nevertheless argue, with at least an assumption of confidence, that the American Trust Company stood in that litigation as spokesman for all certificate holders, and that the decree entered therein is binding upon them by representation. We shall accordingly discuss the question as though the record justified this view of the matter.

The general rule is well settled that *cestuis que trustent* are necessary parties to a litigation affecting the trust fund or property.

Tyson *vs.* Applegate, 40 N. J. Eq., 305.
Butler *vs.* Farry, 68 N. J. Eq., 760.
Libby *vs.* Rennie, 28 N. J. Eq., 543.
Stilwell *vs.* McNeely, 2 N. J. Eq., 305.
Dunn *vs.* Seymour, 11 N. J. Eq., 220.

Thus in Tyson *vs.* Applegate, *supra,* this Court, after stating the general rule to be as given above, says:

> "So, if a mortgage has been made to a trustee in trust, all the *cestuis que trustent* should be made parties, as well as the trustee, to a bill to foreclose. Story's Eq. Pl. S., 201; 1 Dan. Chan. Pr., 213, 253."

It is equally well settled by the decisions of this Court, that where *cestuis que trustent* are very numerous, or are unknown, their presence may, under special circumstances, and for purposes of foreclosure, at least, be dispensed with.

Tyson *vs.* Applegate, 40 N. J. Eq., 305.
Butler *vs.* Farry, 68 N. J. Eq., 760.
Camden Safe Deposit & Trust Co. *vs.* Dialogue, 75 N. J. Eq., 600.

In Tyson *vs.* Applegate, *supra,* this Court, after stating the general rule to be that a trustee, in any action affecting the trust property, must have his *cestuis que trustent* joined with him, says:

> "Thus—to select the exception applicable to such cases as that now before us—when a mortgage is made to trustees in trust for numerous and unknown persons, such as holders of bonds issued by railroads, &c., whose names and consent it would be inconvenient or practically impossible to obtain, the trustees may maintain a bill without making the *cestuis que trustent* parties. In Willink *vs.* Morris C. & B. Co., 3 Gr. Ch., 377, the force of the general rule was admitted, but such an exception was allowed, because, unless allowed there would have been a practical denial of the relief to which the parties were entitled."

Again, in the very recent decision by this Court in Butler *vs.* Farry, *supra,* it is said:

> "It has been decided by this Court that to a bill to foreclose a mortgage made to a trus-

> tee the *cestuis que trustent,* as well as the trustee, should be made parties, when they are known, and are not so numerous as to make it impossible or highly inconvenient to include them as parties. Tyson *vs.* Applegate, 40 N. J. Eq. (13 Stew.), 305. In the present case there is the greater necessity for bringing in the *cestuis que trustent,* because the instrument sought to be foreclosed as a mortgage is upon its face an absolute deed. The trustee concedes that it is in the nature of a mortgage, but the *cestuis que trustent* may contend to the contrary, and they are entitled to be heard upon that point. They may be brought in by proper proceedings in the Court of Chancery."

It seems plain to the point of demonstration that the National Salt Company did not bring itself within the rule of these cases in the Ohio suit. The bill makes no reference whatsoever to absent or unknown certificate holders, nor is there any averment that these holders are so numerous that it would be "impossible" or "highly inconvenient" to join them as parties defendant. Quite to the contrary, the National Salt Company did join substantially all of the certificate holders, effecting service upon many of them by publication (Case, p. 558, lines 2 to 20), and it is undisputed that the names and respective holdings of the remaining certificate holders were known to it long before the Ohio suit passed to judgment. The National Salt Company vouchsafed no excuse in the Ohio proceedings for its failure to join these appellants, its Receivers attempt no excuse in the present record for this omission, and this Court should not now be acute to find one.

The Receivers seize hold, however, of a group of cases in the Federal courts and urge them as authority for the proposition that these appellants may be deprived of their rights and property with-

out due process of law. The cases cited by them in the court below, and upon which they will no doubt rely here, are the following:

Beals *vs.* Illinois M. & T. R. R. Co., 133 U. S., 290.
Elwell *vs.* Fosdick, 134 U. S., 500.
Richter *vs.* Jerome, 123 U. S., 233.
Kneeland *vs.* Luce & Co., 141 U. S., 491.
Shaw *vs.* Railroad Co., 100 U. S., 612.
Woods *vs.* Woodson, 100 Fed. Rep., 515.
Kerrison *vs.* Stewart, 93 U. S., 155.

The short and obvious answer to the doctrine enunciated in these cases is that it was right, but that it has no application to the case at bar. In each of the cases cited, the trustee, whose acts were held to bind its *cestuis que trustent,* was a real trustee, charged with responsible trust duties and operating under a trust agreement giving it wide authority and extended powers. The American Trust Company derived its authority from an instrument of totally different character. In legal effect the American Trust Company was a mere custodian or bailee of stock for the benefit of the certificate holders. Its sole and only right or authority under the declaration of trust was to sell the stock deposited with it in the event of default in the payment of an installment (Case, pp. 354 to 356). It had no right of action, either conjointly with, or to the exclusion of, the certificate holders to recover the amount of the principal debt, and it had no standing, either in or out of court, to speak for, bind or estop those certificate holders. We assert with confidence that the rights, powers and duties of the American Trust Company under the declaration of trust in this case, were totally dissimilar from those involved in the cases to which reference

has been made, and a most cursory examination of those cases will amply demonstrate the correctness of this assertion.

Kerrison *vs.* Stewart, 93 U. S., 155, was the first of the decisions by the United States Supreme Court in which the doctrine of estoppel by representation was expounded at length. In that case it appeared that a firm, in failing circumstances, conveyed certain of its property to designated trustees under a formal deed of trust for the benefit of its creditors. This deed of trust conferred ample powers of representation upon the trustees, who, it appeared, were selected by the creditors. In holding that the trustees bound the beneficiaries under the trust deed by representation, the Court said:

> "It cannot be doubted, that, under some circumstances, a trustee may represent his beneficiaries in all things relating to their common interest in the trust property. He may be invested with such powers and subject to such obligations that those for whom he holds will be bound by what is done against him, as well as by what is done by him. The difficulty lies in ascertaining whether he occupies such a position, not in determining its effect if he does. If he has been made such a representative, it is well settled that his beneficiaries are not necessary parties to a suit by him against a stranger to enforce the trust (Shaw *v.* Norfolk Co. R. R. Co., 5 Gray, 171; Bifield *v.* Taylor, 1 Beat., 91; Campbell *v.* R. R. Co., 1 Woods, 376; Ashton *v.* Atlantic Bank, 3 Allen, 220); or to one by a stranger against him to defeat it in whole or in part. Rogers *v.* Rogers, 3 Paige, 379; Wakeman *v.* Grover, 4 *id.*, 34; Winslow *v.* M. & P. R. R. Co., 4 Minn., 317; Campbell *v.* Watson, 8 Ohio, 500. In such cases, the trustee is in court for and on behalf of the beneficiaries; and they, though not parties, are bound by the judgment, unless it is impeached for fraud

or collusion between him and the adverse party.

The principle which underlies this rule has always been applied in proceedings relating to railway mortgages, where a trustee holds the security for the benefit of bondholders. It is not, as seems to be supposed by the counsel for the appellants, a new principle developed by the necessities of that class of cases, but an old one, long in use under analogous circumstances, and found to be well adapted to the protection of the rights of those interested in such securities, without subjecting litigants to unnecessary inconvenience.

Undoubtedly cases may arise in which it would be proper to have before the court the beneficiaries themselves, or some one other than the trustee to represent their interests. They then become proper parties, and may be brought in or not, as the court in the exercise of its judicial discretion may determine. But this was very clearly not a case in which such action was required; and so all the parties evidently thought, while the litigation was progressing. The trustee, as well as Kerrison & Leiding, appeared, and vigorously resisted the decree asked for. The report of the case in 3 Rich. (S. C.) N. S. 266, to which we have been referred, shows that they were represented by the same counsel who appear here for the creditors, that the argument was full, and the judgment carefully considered. In addition to this, Paton & Co. and Hutton, who are among the creditors now resisting the decree, were named as parties to the suit, and might have appeared to defend, if they had been so inclined. They seem, however, to have been then content to leave their interests in the hands of the trustee, who certainly could present their defence if he would, and against whom no charge of neglect even is now made."

Beals *vs.* Illinois, etc., R. R. Co., 133 U. S., 290, was a case where a single bondholder of an issue secured by a mortgage on railroad property, sought a decree adjudging the validity of the bonds and mortgage, and directing the application of the mortgaged property to the payment of the same. The mortgage was in the familiar form of railroad mortgages and conferred extensive rights and powers upon the trustee. The defendants pleaded in answer to the bill, a prior judgment declaring the invalidity of the bonds and mortgage upon which the plaintiff relied, and this answer was held sufficient to defeat the plaintiff's claim. The significant and distinguishing feature of this case is found at the foot of page 292 of the statement of facts, where the parties to the earlier action are thus enumerated:

> "All non-resident bondholders who could be named, together with all unknown bondholders, were duly served by publication."

In Elwell *vs.* Fosdick, 134 U. S., 500, was presented another case of a railroad mortgage conferring wide powers upon the trustee, and making its action, or the action of a majority of the bondholders, binding upon the remaining bondholders. In that case the mortgage provided that the trustee could foreclose only at the request of a majority of the bondholders, and further provisions of the same instrument gave such majority an authoritative voice in the conduct of the litigation. The trustee, at the request of a majority of the bondholders, executed a release of all errors committed concerning a decree and also released its right of appeal. The Court in that case rendered the only decision which was possible under the circumstances, and held that this release and waiver was binding upon the minority.

In Kneeland *vs.* Luce, 141 U. S., 491, was pre-

sented another case of a railroad mortgage with the usual powers and provisions. The trustee under that mortgage consented to an issue of receiver's certificates having priority over the lien of the mortgage, and such consent was held binding upon the bondholders. The decision was plainly right, as the trustee stood as the representative of the *res*, viz.: the mortgaged property, and any action taken by it with respect to that *res* was obviously binding upon its *cestuis que trustent.*

In Woods *vs.* Woodson, *supra,* the facts were substantially the same as in Beale *vs.* Illinois, etc., R. R. Co., *supra,* and the Court very properly said:

> "Indeed, the trustee, under the terms of the deed of trust, was expressly authorized to commence a suit to foreclose the same, and in such a proceeding the grantor in the deed of trust was clearly at liberty to challenge its validity, and litigate that question with the trustee."

The rule fairly deducible from the foregoing cases is, that in the Federal Courts, at least, a trustee acting under a deed of trust, conferring upon it powers sufficient for that purpose, may appear in legal proceedings and act for its *cestuis que trustent,* and that where such acts are done in good faith they will be binding upon the *cestuis que trustent,* in so far as the trust property is concerned.

In only one of these cases, viz., Beals *vs.* Illinois, etc., R. R. Co. (*supra*), did the Court undertake to decree the invalidity of the *obligations* secured by the mortgage, and in that case, as we have shown, all non-resident and unknown bondholders were served by publication.

The application of the rule we have just enunciated, distinguishes the case at bar from the line of Federal decisions from which that rule is deduced. Nor is this distinction in any degree fanciful or forced. On the contrary, it is amply sus-

tained by the cases to which reference will now be made.

At this point we will ask the Court to bear clearly in mind that in this proceeding we are seeking no relief under the declaration of trust to the American Trust Company, and claiming no interest in the securities deposited thereunder. For the sake of the present argument, but not otherwise, we may assume that the Ohio decree was sufficient to cut off any rights which the appellants may have had in those securities. Our claim here is based, not upon those securities, but upon the direct obligations of the National Salt Company to the appellants, viz.: the certificates of indebtedness, and we contend that those obligations were not, and could not, have been affected by anything the Ohio court might attempt to do, without first obtaining jurisdiction over the appellants by personal service of process upon them.

The proposition that a holder of a certificate of indebtedness had an independent right of action upon his certificate against the National Salt Company, which could not be cut off, prejudiced or affected by any proceeding to which he was not a party, is sustained by ample authority.

Lewis *vs.* Peck, 154 Fed. Rep., 273.
Appeal of Harrisburg & E. R. Co., 15 Atlantic Rep., 459.
Bardstown & Louisville R. R. Co. *vs.* Metcalfe, 4 Metcalfe (Ky.), 199.
Beach *vs.* Mosgrove, 16 Fed. Rep., 305.
Compton *vs.* Jesup, 68 Fed. Rep., 263.
Nat. Water Works Co. *vs.* Kansas City, 78 Fed. Rep., 428.
10 Cyc., 1181.

In Lewis *vs.* Peck, *supra,* which was a decision by the Circuit Court of Appeals for the Seventh Cir-

cuit, it appeared that a trust mortgage had been foreclosed in the Federal Court, that the case had gone to judgment, and that the property had been sold. Upon the confirmation of the sale, the Court made an injunctional order restraining all persons from disturbing the quiet possession of the purchaser. The bondholders secured by the mortgage were not parties to the foreclosure proceedings. Thereafter one of the bondholders, being dissatisfied with the outcome of the foreclosure in the Federal Court, filed a suit in his own name, in a State court, to foreclose the mortgage. He was cited into the Federal Court for contempt in violating the injunctional order, upon the theory that the presence of the mortgage trustee in the foreclosure in the Federal Court bound him by representation. In denying the motion to punish this bondholder for contempt, the Circuit Court of Appeals said:

> "Laying aside, however, the question whether such injunction can be granted as against parties who are personally served, the plaintiff in error and bondholders represented by him were not parties in any sense which would authorize jurisdiction over their persons to make such order binding upon them. Assuming that the foreclosure suit and decree bound the holders of all bonds, through the substituted service upon the trustee, it was thus effectual only as a proceeding *in rem* and to the extent of their interest in the *res,* and authorized no procedure or relief *in personam* against the individual bondholders, constructively bound by such decree. Pennoyer *vs.* Neff, 95 U. S., 714, 727, 24 L. Ed., 565; 9 Notes U. S. Rep., 339. So, if the injunctional order were germane, authorized, and operative as against the trustee, it was not operative against the individual bondholders, who were not served and not subject to jurisdiction *in personam.* Hawley *vs.* Fairbanks, 108 U. S., 543, 551, 2 Sup. Ct., 846, 27 L. Ed., 820; Parsons *vs.* Greenville, etc. R. Co. (per Mr. Chief Jus-

tice Waite), 1 Hughes, 279, Fed. Cas. No. 10,776; *In re* Reese (C. C.), 98 Fed., 984, 986; Fellows *vs.* Fellows, 4 Johns. Ch. (N. Y.), 25. Whatever the interests or rights of the bondholders may be under the terms of the trust deed—whether within the general rule and thus fully represented and foreclosed by the presence of the trustee, or exceptional as they contend—they are bound by the decree only to the extent authorized by the trust deed in such representation. If they have claims of independent right, not so represented, as they contend, they are neither within the terms of the order, as claimants under the trustee, nor subject to the jurisdiction of the trial court for any form of injunction against their exercise of independent right to sue upon such claim.

While the trust deed was before the trial court, as part of the subject-matter in the foreclosure suit, and (presumptively) construed otherwise in entering the final decree, the bondholders were not personally served and their contention was not heard in such interpretation and entry. Whatever be their actual right, or the effect to be given that adjudication, they cannot be restrained in that proceeding—to say the least, without personal service upon them—through any injunction against the trustee, from the common right of suit upon their alleged independent claim, which arises under their grantor, not under the trustee."

In Appeal of Harrisburg & E. R. Co., *supra*, a bill had been filed by the appellant against the trustees of a railway mortgage to declare it, and the bonds secured thereby, void. In holding that the bondholders were necessary parties to such an action the Court said:

"The proceeding is aimed directly against the bonds in question, and of course, assails necessarily the rights of the persons who hold them. The trustees hold their office for the benefit and protection of the bond-

holders, but cannot be regarded as their representatives for all purposes. Of course, if they were, if the relations between them were such as to constitute the trustees general agents or attorneys in fact in all matters relating to the bonds, so that service of process in adverse proceedings would be binding upon the bondholders, when made only upon the trustees, the contention of the appellant might be sustained. But there is nothing on the record showing the existence of such a relation. As trustees only, they are the mere custodians of the legal title to the bonds for the benefit and advantage of the persons who own them. There is nothing in that relation which makes them general agents for the bondholders as to all matters affecting the bonds. The right of the latter to own the bonds and to defend the validity of the bonds is a right which is personal to the owners of the bonds. Whenever that right is assailed, they have an undoubted right to protect themselves and their title in their own persons and by their own counsel. It may be conceded that for many purposes, the trustees do represent the bondholders; and, whenever they do, the latter are bound by their acts. The authorities cited for the appellant do not reach to the position that in a proceeding such as this, which attacks the very validity of the bonds, the trustees may be substituted as defendants, and process served on them, so as to obligate the bondholders by all the consequences of an adverse proceeding and judgment. In the absence of clear and satisfactory authority for a ruling to that effect, we are unwilling to take such a step. It is true the appellant may be subject to some inconvenience in ascertaining who are the holders of the bonds; but that difficulty is not insuperable. As against the consequences which might result from allowing an adverse judgment to be taken against persons who have had no notice and have

> never had a day in Court, it is not to be considered."

In Bardstown & Louisville R. R. Co. *vs.* Metcalf, *supra,* the Court denied the right of a trustee under a railroad mortgage to sue in foreclosure on behalf of the bondholders "because he failed to allege or otherwise to show that the bondholders are numerous and that it is impracticable to bring them all before the Court within a reasonable time," and further, in the same opinion, the learned Court says:

> "Even if he had shown himself entitled to maintain the action, without making the bondholders parties, it would have been erroneous to give him a judgment for the money. The Court should have retained control of it for the benefit of those entitled to it."

In Beach *vs.* Mosgrove, *supra,* a mortgage had been given to secure the payment of negotiable notes. In an action to cancel the notes on the ground that the debt represented by them had been paid, the Court held that the noteholders were necessary parties.

In Compton *vs.* Jesup, *supra,* which was a decision by the United States Circuit Court of Appeals for the Sixth Circuit, in which Judges Taft and Lurton presided at the argument, it appeared that one of a class of security holders had brought suit in Indiana on behalf of himself and all others similarly situated, to have their securities declared a lien upon certain property. Complainant failed in the Court of first instance, and this decision was ultimately affirmed in the United States Supreme Court. Another holder of the same securities brought suit in Ohio at the same time, and for the same relief, and was successful. The proceedings in the Indiana Court were urged as a

bar to the maintenance of the Ohio suit. Judge Taft, in an elaborate opinion, held that the Ohio suitor, not being a party to the Indiana litigation, was not estopped by the decree entered there. The doctrine of this case was expressly approved by the United States Supreme Court in Wabash R. R. Co. *vs.* Adelbert College, 208 U. S., 38, at pp. 48, 58.

In 10 Cyc., 1181, *supra,* the learned author of the article on "Corporations," referring to the doctrine that a mortgage trustee may bind his *cestuis* by representation, says:

> "It is suggested that this rule can have no just application except under mortgages which confer upon the trustees the power to represent the bondholders, so as to bind them in litigations, the reason being that the trustees in a corporate mortgage cannot be trustees of any larger powers than have been committed to them by the terms of the instrument."

We may now turn to the decisions of the Courts of New Jersey and consider how far they sustain the doctrine for which we contend. We have already adverted to the fact that the New Jersey decisions recognize the right of a trustee to foreclose in his own name and without joining his *cestuis que trustent,* where they are unknown, or so very numerous that it would be highly inconvenient to join them. We have also shown that those cases have no application to the case at bar, for the reason that the holders of the certificates of indebtedness were neither numerous nor unknown, and further, that the petition or bill of complaint of the National Salt Company in the Ohio litigation contains no averment bringing it within the principle of these cases. Furthermore, this doctrine of the New Jersey cases has never been extended beyond the point of allowing a trustee to foreclose in his own name where these specific facts ap-

peared. There is not a single decision by any Court in this State, that we have been able to find, holding that a trustee possessed powers more extensive than this, or that he was authorized to stand alone as the representative of the *cestuis que trustent* in an action or proceeding where their individual rights against the mortgagor might be affected or cut off. Quite to the contrary, the New Jersey decisions indicate very clearly, that under such circumstances the *cestuis* would be necessary parties.

Hackensack Water Co. *vs.* DeKay, 36 N. J. Eq., 548.
Smith *vs.* Gaines, 39 N. J. Eq., 545.
Dunn *vs.* Seymour, 11 N. J. Eq., 220.
Stillwell *vs.* McNeely, 2 N. J. Eq., 305.

In Hackensack Water Co. *vs.* DeKay, *supra,* which was a decision by this Court, it appeared that certain bondholders sued to foreclose a mortgage upon the refusal of their trustee to proceed. A defendant answered that certain of the bonds were invalid. This Court, after remarking that the case was a proper one for the trustee to sue in its own name, without joining the bondholders, stated that under such circumstances, the bondholders who were not parties might come in and prove their claims before the Master, citing Story's Equity Pleading and Jones on Mortgages as authorities for this procedure. This statement, in effect, amounts to a clear recognition of the individual bondholder's right to his day in court. Continuing the same thought, the Court, in its opinion, said:

> "The complainant's bill was designed to establish the mortgage for the benefit of the bondholders as a class, and a decree in conformity with it should establish the mort-

> gage as a valid mortgage for the benefit of all, leaving open for dispute before the Master, only, the title of the bondholders presenting their bonds for allowance, respectively, as *bona fide* holders for value."

In Smith *vs.* Gaines, *supra,* this Court, in considering whether the *cestuis que trustent* of certain trustees should be made parties to an action in partition, said:

> "The general rule as to parties in cases of trust is that, in suits respecting the trust property, brought either by or against the trustees, the *cestuis que trust* are necessary parties. Story's Eq. Pl., Sec. 207. Many exceptions have been made to this rule, some for convenience, some for the reason that, by the terms of the trust, or from the nature of the suit, the trustees themselves represented the *cestui que trust.* On this latter ground, it has been laid down that where the only object of the suit is to transfer the trust property into the hands of the trustees, the *cestui que trust* need not be parties; but if the existence or enjoyment of it is affected by the prayer of the suit, then they should be. Calvert on Parties, 212. Even to the rule, in this restricted form, there are numerous exceptions to be found in decided cases, nor does the subject seem capable of exact definition. Courts of equity exercise a large discretion in the matter, guided sometimes by slight circumstances, and taking care, on the one hand, that justice shall not be defeated through the impracticability of bringing in all persons interested in the issue, and, on the other hand, that the rights of individuals shall not be determined when they are neither heard nor represented. By the thirtieth general order of the English Court of Chancery (Cr. & Ph., 377), it was directed that in suits relating to real estate, vested in trustees by devise, where they are competent to sell and give discharges for the purchase-money, they should represent the

persons beneficially interested in the real estate in the same manner and to the same extent as executors and administrators, in suits concerning personal estate, represent the persons beneficially interested in such personal estate. But, notwithstanding this order, it was held in Lloyd *vs.* Smith, 13 Sim. 457, that where a bill seeks the sale of real estate, vested in trustees by devise, and they have not a present, absolute power of disposition over it, according to the terms of the trust, they do not fully represent the *cestuis que trust,* and the latter are necessary parties.

This doctrine governs the present case. The trustees have not a present power to sell either the life estate or the remainder, nor to consent to a sale thereof, and their prayer for such a sale is an attempt to override, or at least to modify, the terms of their trust. In such an effort, of course, they do not represent the *cestuis que trust,* and the latter are entitled to be heard on the question whether it shall succeed. They are, therefore, necessary parties."

In Dunn *vs.* Seymour, *supra,* it was held that it was quite essential that the general rule, that *cestuis que trustent* should be joined with their trustee, prevail in that case, for the reason that a merger and extinguishment of the mortgage security was threatened by the allegations in the defendant's plea.

Our argument that the American Trust Company was a mere naked or nominal trustee for the certificate holders, and that it could no more bind them by representation than it could proceed affirmatively in their behalf in a court of law, finds substantial support in an earlier New Jersey decision.

Stilwell *vs.* McNeely, 2 N. J. Eq., 305.

In the case just cited, the Court said:

"* * * a mere nominal trustee cannot bring a suit in his own name without joining

> his *cestui que trust* with him. There is sound reason for this rule. The persons interested should come before the Court and be heard on their own account, and the defendant should by the decree in the cause, be protected against all claims on their part."

The force of the cases cited above is recognized in the uniform current of practice in New Jersey. Thus in Baker *vs.* Guarantee Trust & Safe Deposit Company, 31 Atl. Rep., 174, which was an action by a receiver to have an issue of negotiable mortgage bonds declared invalid, *all* of the bondholders were joined as parties defendant. This case was affirmed on appeal as Physick *vs.* Baker, 53 N. J. Eq., 673. Similarly in See *vs.* Heppenheimer, 55 N. J. Eq., 240, which was an action of the same general character, all of the bondholders were made parties to the bill.

Before closing the discussion under this point, we desire to express one further thought. Concededly, the holders of the certificate of indebtedness had individual rights of action, upon their certificates, against the National Salt Company.

> Dickerman *vs.* Northern Trust Co., 176 U. S., 181.
> Fish *vs.* N. Y. Water Proof Paper Co., 29 N. J. Eq., 16.
> Reinhardt *vs.* Inter-State Telephone Co., 71 N. J. Eq., 70.
> Kimber *vs.* Gunnell Gold Mining & Milling Co., 126 Fed. Rep., 137.
> Morgan *vs.* Hedstrom, 164 N. Y., 224.
> Phila. & Balt. Cent. R. R. Co. *vs.* Johnson, 54 Pa. St., 127.

It is equally plain that the American Trust Company had no right of action against the National Salt Company, either upon the certificates of indebtedness or under the declaration of trust, to re-

cover the debts expressed by the certificates. Its duty began and ended with a sale of the collateral in the event that default should be made in the payment of instalments. If the contention of the Receivers should be sustained, and it should be held that the American Trust Company could so represent and bind the holders of the certificates of indebtedness, in the Ohio litigation, as to cut off their independent rights of action against the National Salt Company by representation, we would have presented the strange anomaly of an estoppel by judgment without mutuality.

Coney *vs.* Harney, 53 N. J. Law, 53.

In the case just cited, the Court says:

> "An estoppel, even by the judgment of a Court, must be mutual to be admissible in bar, and such a judgment will bind only those who are party or privy thereto."

In the case at bar, it requires no argument to show that the estoppel can be no broader than the remedy. If the American Trust Company had attempted to sue to enforce the certificates of indebtedness, it would have been thrown out of Court, as was, in fact, done when it filed a claim with the Receivers, on behalf of the certificate holders. If it could not enforce the remedy, the converse is equally true, that it could not by negation or inaction, destroy the remedy.

It is perhaps hardly necessary to add, that the attempt of the Ohio Court of Common Pleas to deprive the appellants of their individual rights of action against the National Salt Company, without due service of process, was violative of constitutional provisions and a nullity.

Brooklyn *vs.* Insurance Co., 99 U. S., 362.

Pennoyer *vs.* Neff, 95 U. S., 714.

VI.

The Ohio suit was collusive, and the decree rendered therein was on consent and not upon the merits.

No close examination of the circumstances surrounding the Ohio litigation is required to satisfy one that it lacked every element of a real contest. Assuming, for the sake of argument, that the Courts of one State will not disregard the judgment of a Court of another State for mere error in the proceedings leading to the entry of that judgment, we maintain that this rule has no application to the case at bar. We attack the Ohio decree, not upon the ground of mere error committed by the Ohio Court, but upon the more fundamental grounds that the plaintiff in that suit never had any cause of action and that the parties to that litigation sought, by collusion and consent to confer upon the Court a jurisdiction which it never possessed.

1. It seems altogether obvious that the National Salt Company had no standing in a Court of Chancery to rescind its purchase of the United Salt Company's stock. The Ohio Anti-Trust Law afforded it no such remedy, as we shall hereafter show, and there was clearly nothing in its proof entitling it to relief upon general equitable principles. The purchase of the United Salt Company's stock was consummated in September, 1899, and for a year and a half thereafter, the National Salt Company continued in the absolute control and management of that Company. It conducted its business in Ohio through the medium of that Company, saddled upon it new and improvident contracts and, as circumstances subsequently showed, brought that Company to the verge of bankruptcy. Moreover, the National Salt

Company openly advertised its ownership of the United Salt Company for the purpose of establishing its own financial status; it regularly paid three semi-annual installments accruing upon its certificates of indebtedness and by every word and act, placed the stamp of finality upon the transaction. By its own conduct, the National Salt Company lured a large number of innocent third parties into the purchase of the securities issued by it in the purchase of the United Salt Company's stock. In a word, new rights had been created and new relations established that rendered an annulment of the purchase legally and equitably impossible. No excuse was offered for the laches of the National Salt Company in asserting its alleged remedy and certainly none will be presumed, particularly as it was estopped by its own conduct from seeking rescission.

2. Nor is the position of the National Salt Company aided by the inspired protest of its two acute and serviceable little stockholders. The purchase of the United Salt Company stock was authorized and approved by the directors of the National Salt Company in September, 1899 (Case, p. 441). At the meeting of the stockholders held in March, 1900, the purchase was fully reported by the President in writing, and thereupon approved (Case, pp. 446 to 450). The protest of the stockholders at whose instance the Ohio suit is supposed to have been instituted, was not made until February, 1901, or nearly a year after this meeting. It is true that these stockholders state in their written protest that they had only then learned of the acquisition of the United Salt Company's stock, but as this protest was not under oath, the statement has no probative force. The Ohio record contains no evidence substantiating this claim of these stockholders, and they are therefore chargeable, presumptively, with

knowledge of what was done at the stockholders' meeting in March, 1900. From this it follows that, having slept upon their rights for a year, they are in no better position than the National Salt Company, and are barred by their own laches from enforcing any remedy.

Dana *vs.* American Tobacco Co., 73 N. J. Eq., 736.

3. The pretended zeal of the National Salt Company to be purged of its sins (in spots) through the medium of the Ohio suit, was a pitiable affectation of virtue that could deceive no one, and would have failed utterly, had it not been for the aid rendered by the defendants. As a sort of spotted fever of righteousness, the Ohio suit was amusing, but not symptomatic of a complete moral regeneration of the National Salt Company. Although it had combined all of the salt producing plants of New York and thereby infringed the provisions of another statute against unlawful monopolies, quite as stringent as that of Ohio, it sought no absolution for this sin. The record also shows that the Company had acquired control of the salt business in Texas, Kansas, Michigan and other rabid Western trust-baiting States, but no relief was sought from this criminality or unrighteousness. In fact, virtue never assumed a more practical and businesslike attitude and a moral uplift never proved more profitable. The National Salt Company had utilized the United Salt Company for its own selfish purposes for a year and a half, and had thereby converted it from a successful going enterprise into an insolvent concern that was thrown into a receivership within less than a month after the institution of the Ohio suit, and it was only natural, under these circumstances, that it should listen to the whisperings of its own conscience, particularly when it could do so with manifest profit to itself.

4. If the circumstances attending the inception and conduct of the Ohio litigation were strongly suggestive of fraud and collusion, those that marked its final stages were not different. Notwithstanding the highly penal provisions of the Ohio Anti-Trust Law, the officers and directors of the National Salt Company, with naive indifference to possible fines and imprisonment, testified cheerfully and freely to their own participation in its alleged criminality. In a real controversy between real litigants, men hesitate to bring themselves within the pale of the criminal law, and it is that very absence of hesitation here, that convinces one of the unreality of the whole proceeding. No evidence whatsoever was offered on behalf of any of the hundred and odd defendants, and this further confirms the view that the case from start to finish was a mere travesty upon a judicial proceeding.

5. We doubt if any serious attempt will be made to dispute the fact that the Ohio decree was entered by consent and not upon the merits. Months before the decree was signed, all parties to the suit had agreed to a settlement of the character expressed in the decree, and the proposed decree had been drawn and approved. It was at this juncture that repeated efforts were made to induce the present appellants to become parties to the settlement and assent to the decree. With little thought that the American Trust Company could bind the appellants by representation or otherwise, and with frank avowal that the co-operation of the appellants was deemed essential to the success of the plan, first one emissary and then another came out of Ohio seeking that co-operation. The appellants stood firm, however, and the decree that was finally entered not only lacked their consent, but was made in spite of their protest. The circumstances attending the entry of the decree are fully dis-

closed in the evidence offered on behalf of the Receivers. Thus Alonzo M. Snyder, the attorney for the National Salt Company in the Ohio suit, testified as follows:

> "Q. The decree as entered carried out the terms of the settlement agreed upon by the various parties?
>
> A. Yes, sir.
>
> Q. There was no opposition on the part of the defendants?
>
> A. There was no opposition by any one" (Case, p. 128).

On the same subject, Frank A. Quail, the attorney for a number of the defendants in the Ohio suit, testified as follows:

> "Q. Was there any testimony offered at this hearing before Judge Stone on behalf of any of the defendants?
>
> A. As I recollect it, the only testimony that was offered was the statement of attorneys in connection with the papers in the case, and Judge Lamson I should say also, while he was attorney, yet he was acting then as receiver, that is true. It was stated to the Court that we all realized that Judge Stone knew the situation as well as we did; he had been familiar with the case from the start, and that we felt it wasn't necessary to offer formal evidence of the facts that he already was cognizant of * * *" (Case, p. 165).

At pages 149 to 151 of the record is printed a letter from Messrs. Kline, Carr, Tolles & Goff, the attorneys for another group of defendants, in which are contained the following significant passages:

> "You are doubtless aware that a settlement of this matter has been negotiated between the holders of the certificates of indebtedness and the National Salt Company on the terms of a proposed settlement as stated in a circular letter, which we sent to

the various certificate holders some time ago, asking for their consent to such settlement. About ninety per cent. in interest of the holders of such certificates have consented to the terms of this settlement, and are desirous that it be carried out.

As we represented a large number of these consenting certificate holders, whose interests are, in this respect, of course, adverse to those who are still unwilling to settle, we will be unable to represent your clients for whom we have filed answers and cross-petitions, should the case go to a hearing, and they insist upon an *actual trial* upon such answers and cross-petitions."

6. One further fact may properly be alluded to as showing the collusive nature of the final proceedings in the Ohio suit. It will be recalled that by the terms of the declaration of trust, the dividends upon the National Salt Company stock on deposit with the American Trust Company, were to be collected by the latter and held against future semi-annual installments upon the certificates of indebtedness. At the time the Ohio decree was entered, the American Trust Company had on hand a balance of such collections amounting to $42,846.76. It, of course, requires no argument to show that this money belonged to the holders of the certificates of indebtedness, but this consideration proved to be no obstacle to the perfect unanimity of the Ohio litigants. With a fine disdain for such trifles as vested rights, the attorneys for these litigants appropriated and divided this fund among themselves, and thus did virtue receive its own reward in the sum of $42,846.76. In other words, the Ohio decree directs the American Trust Company to pay to itself from this fund, the sum of $10,900, for its services which consisted of nothing except permitting the balance to be distributed without protest. The same decree directs the payment of the further sum of $15,973.38 from this

fund to Alonzo M. Snyder, the attorney for the plaintiff for his drollery in instituting the suit, and apportions the balance of $15,973.38 between Virgil P. Kline and J. M. Henderson, the attorneys for the defendants, doubtless as a suitable reward for aiding the National Salt Company in escaping its just obligations (Case, p. 568).

We repeat that the bare recital of the foregoing facts is sufficient to convince the most cautious mind, that the whole Ohio proceeding was polluted with collusion to such an extent that it is extremely doubtful whether the judgment entered therein would be binding even in that State.

The law that a judgment of a foreign state has no binding force or effect in another state, when procured by fraud or collusion, is too well settled to require the citation of authority. The requisites of a conclusive decree are well summarized by Vice Chancellor Green in

> Willoughby *vs.* Chicago Junction Rys., &c., Co., 58 N. J. Eq., 656.

In that case the learned Court defines such a decree in the comprehensive language of the famous case of Earl of Brandon *vs.* Becher, 3 Cl. & F., 479-512, as follows:

> "A real interest, a real argument, a real prosecution, a real defense, as the foundation of a real decision."

It is also established doctrine, that the courts of one State are not, by any principles of comity, bound by the consent decrees of the courts of another State, but may hold that the questions assumed to have been decided were not in fact passed upon.

> Laurence Mfg. Co. *vs.* Janesville Mills, 138 U. S., 552.
>
> Texas & Pacific Ry. Co. *v.* Southern Pacific Co., 137 U. S., 48.

Finally, there is evidence to show that the American Trust Company was induced to refrain from opposing the Ohio decree, by being indemnified against any claim by the present appellants (Case, pp. 214 and 215). A judgment thus procured is manifestly collusive and a nullity.

Andes *v.* Ely, 158 U. S., 312.

VII.

The Ohio court was without jurisdiction in the premises and its decree is a nullity.

It is a familiar rule that a judgment of a Court of a sister State will not be enforced where it is apparent that the Court was without jurisdiction. Such, we maintain, is the situation disclosed by the present record.

Two views are permissible of the theory of the cause of action sought to be pleaded in the bill of complaint of the National Salt Company in the Ohio suit. One is that the action is based upon some provision of the Ohio Anti-Trust Law, authorizing it to be maintained, and the other is that it is based upon purely equitable principles, and that the Anti-Trust Law is merely the reason for equitable interference and not the source of the remedy. The bill is denominated a "Petition for Equitable Relief" (Case, p. 332), and to the extent that its name is of any significance, it would seem to imply that the action rested upon equitable rather than statutory principles.

We think it is plain that the provisions of the Ohio Anti-Trust Law gave the National Salt Company no statutory right of action upon the facts disclosed upon the face of its bill. An examination

of the Act shows that the Attorney General of Ohio was the responsible officer charged with the enforcement of its provisions (Case, p. 361, *et seq.*) and, being highly penal in its nature, the remedies therein pointed out for its non-observance are exclusive. From this it follows that the Ohio suit must be regarded as one deriving its authority and vitality from purely equitable principles, and consequently that the Ohio statute affords the excuse and not the remedy for the action.

Willoughby *vs.* Chicago Junct. Rys. Co., 58 N. J. Eq., 656.

It seems clear upon both reason and authority that the National Salt Company was not entitled to seek the interposition of a Court of Chancery upon any facts disclosed by its bill of complaint. This bill avers in substance that the National Salt Company and the stockholders of the United Salt Company knowingly entered into an illegal scheme or conspiracy to form a monopoly and evade the Ohio Anti-Trust Law; that the plan of the conspirators had been carried out and the combination effected, and prays the annulment of this completed transaction. No principle is better settled than that one who comes into a court of equity must do so with clean hands, unless it be the corollary to this salutary rule, that equity will not set aside a consummated transaction between wrongdoers, where they are *in pari delicto*. The National Salt Company's bill in the Ohio suit did not, and in the nature of things could not, state a cause of action entitling it to any equitable relief whatsoever, and the defendants were powerless, by their consent or submission, to confer upon the Ohio court a jurisdiction which it never acquired.

St. Louis Railroad *vs.* Terre Haute Railroad, 145 U. S., 393.

15 Am. & Eng. Enc. of Law (2nd Ed.), 999.

In St. Louis Railroad *vs.* Terre Haute Railroad, *supra,* the plaintiff sued to annul a contract by which it transferred its railroad, equipment and franchises to the defendant for a long term of years, upon the ground that both parties had exceeded their chartered powers and violated the law. In holding that the parties were *in pari delicto,* and that equity would not intervene to aid either of them, the United States Supreme Court said:

> "In the case at bar, the contract by which the plaintiff conveyed its railroad and franchise to the defendant for a term of nine hundred and ninety-nine years was beyond the defendant's corporate powers, and, therefore, unlawful and void, of which the plaintiff was bound to take notice. The plaintiff stood in the position of alienating the powers which it had received from the State, and the duties which it owed to the public, to another corporation, which it knew had no lawful capacity to exercise those powers or to perform those duties. If, as the plaintiff contends, the contract was also beyond its own corporate powers, it is certainly in no better position. In either aspect of the case, the plaintiff was *in pari delicto* with the defendant. The invalidity of the contract, in view of the laws of which both parties were bound to take notice, was apparent on its face. The contract has been fully executed on the part of the plaintiff by the actual transfer of its railroad and franchise to the defendant; and the defendant has held the property, and paid the stipulated consideration from time to time, for seventeen years, and has taken no steps to rescind or repudiate the contract.
>
> Upon this state of facts, for the reasons above stated, the plaintiff, considered as a party to the unlawful contract, has no right to invoke the assistance of a court of equity to set it aside. And so far as the plaintiff corporation can be considered as representing the stockholders, and seeking to protect

> their interests, it and they are barred by laches. Harwood *vs.* Railroad Co., 17 Wall., 78; Graham *vs.* Birkenhead, &c., Railway, 2 Hall & Twells, 450; s. c., 2 Macn. & Gord., 146; Ffooks *vs.* Southwestern Railway, 1 Sm. & Gif., 142, 164; Gregory *vs.* Patchett, 11 Law Times (N. S.), 357."

In 15 Am. & Eng. Enc. of Law (2nd Ed.), 999, the general rule, fortified by a collection of authorities from all jurisdictions, is thus stated:

> "Where illegal contracts are executed by the parties, then the same principle of public policy which leads courts to refuse to act when called upon to enforce them will prevent the court from acting to relieve either party from the consequences of the illegal transactions. In such cases, the defense of illegality prevails, not as a protection to the defendant, but as a disability in the plaintiff. The court does not give effect to the contract, but merely refuses its aid to undo what the parties have already done."

It follows from the foregoing that the National Salt Company's false confession of wrongdoing availed it nothing. Taking the averments of its bill of complaint at their face value, the Company was a knowing participant in a fully consummated wrong, and nothing was disclosed that would justify a court of equity in coming to its relief. In other words, the bill of complaint presented to the Ohio Court did not state a cause of action, and thus the first essential to its jurisdiction was lacking.

Consolidated Electric Storage Co. *vs.* Atlantic Trust Co., 50 N. J. Eq., 93.

Brownsville *vs.* Loague, 129 U. S., 493.

Reynolds *vs.* Stockton, 140 U. S., 254.

Kirkpatrick *vs.* Post, 53 N. J. Eq., 591.

Forman *vs.* Manley, 52 N. J. Eq., 512.

In Consolidated Electric Storage Co. *vs.* Atlantic Trust Co., *supra,* the Court said:

> "When the facts stated in a bill do not show, assuming them all to be true, that the complainant has a cause of action against the defendant, which is the proper subject of relief in equity, it is obvious that the bill contains nothing which can be made the foundation of a decree, and consequently no decree can be founded on it which will be equitable and just. And if a decree should be made on a bill thus fatally defective, it would, as it seems to me, stand, in point of legal efficacy, precisely where a decree stands which is founded on a cause of action not stated in the bill. The doctrine is firmly settled that such a decree, or any judgment which is entirely outside of the cause of action specified in the pleadings in the suit in which it is pronounced, is invalid, and will be treated, even in a collateral proceeding, as a nullity. Such a judicial sentence is absolutely void and will be held to be a nullity everywhere. Munday *vs.* Vail, 5 Vr., 418; Reynolds *vs.* Stockton, 140 U. S., 254. In my judgment, no distinction, founded on either reason or justice, can be made between a decree founded on a bill which discloses no ground of action and a decree founded on a cause of action which is not averred in the bill. In each case, it will be noticed, that the fundamental defect is, that there is nothing in the bill to support the decree, and hence each is, so far as the record shows, without the least foundation."

In Brownsville *vs.* Loague, *supra,* the United States Supreme Court said:

> "*Res judicata* may render straight that which is crooked, and black that which is white, *facit ex curvo rectum, ex albo nigrum* (Jeter *vs.* Hewitt, 22 How., 352, 364); but where application is made to collect judgments by process not contained in them-

> selves, and requiring, to be sustained, reference to the alleged cause of action upon which they are founded, the aid of the court should not be granted when upon the face of the record it appears, not that mere error supervened in the rendition of such judgments, but that they rest upon no cause of action whatever."

In Kirkpatrick *vs.* Post, *supra,* the Court said:

> "That a judgment or decree, void for want of jurisdiction appearing on the record, may be set aside on direct application or ignored in collateral proceedings, is recognized in this State both at law and in equity."

Lastly, the decree in Ohio was rendered by a court of equity. The Receivers here are asking a court of equity in New Jersey to uphold and give vitality to that decree. The decisions are plain, that a court of equity, which is thus called upon to enforce an earlier chancery decree, has the right to determine for itself whether it will grant such relief.

Lawrence Mfg. Co. *vs.* Janesville Mills, 138 U. S., 552.
Brownsville *vs.* Loague, 129 U. S., 493.
Texas & Pac. Ry. Co. *vs.* Southern Pac. Co., 137 U. S., 48.
Davis *vs.* Headley, 22 N. J. Eq., 115.

VIII.

The Ohio Anti-Trust Law is penal in its nature and neither it, nor a decree founded upon it, can have any extra-territorial effect.

It may be accepted as settled law that a penal statute of a State has no extra-territorial effect,

and that a judgment of the Courts of one State enforcing such a law, is not binding upon the Courts of another State, by any rule of comity.

The Antelope, 10 Wheat., 66, 123.
Huntington *vs.* Attrill, 146 U. S., 657.
Derrickson *vs.* Smith, 27 N. J. Law, 166.
Marshall *vs.* Sherman, 148 N. Y., 9.
Ellsworth *vs.* St. L., A. & T. H. R. R. Co., 98 N. Y., 553.
Wisconsin *vs.* Pelican Ins. Co., 127 U. S., 265.

In *The Antelope, supra,* Chief Justice Marshall tersely stated the rule as a maxim, which has since become famous, viz.:

> "The Courts of no country execute the penal laws of another."

In Huntington *vs.* Attrill, *supra,* the United States Supreme Court thus laid down the test to be applied in determining whether or not a statute was penal:

> "The test whether a law is penal, in the strict and primary sense, is whether the wrong sought to be redressed is a wrong to the public, or a wrong to the individual, according to the familiar classification of Blackstone: 'Wrongs are divisible into two sorts or species: private wrongs and public wrongs. The former are an infringement or privation of the private or civil rights belonging to individuals, considered as individuals; and are thereupon frequently termed civil injuries: the latter are a breach and violation of public rights and duties, which affect the whole community, considered as a community; and are distinguished by the harsher appellation of crimes and misdemeanors.' "

That the Courts of New Jersey have the right to go behind the Ohio decree, and ascertain whether it is founded upon a statute which would be enforceable in the State of New Jersey, is clearly recognized in Wisconsin *vs.* Pelican Insurance Co., *supra,* where the Court says:

> "The essential nature and real foundation of a cause of action are not changed by recovering judgment upon it; and the technical rules, which regard the original claim as merged in the judgment, and the judgment as implying a promise by the defendant to pay it, do not preclude a court to which a judgment is presented for affirmative action (while it cannot go behind the judgment for the purpose of examining into the validity of the claim), from ascertaining whether the claim is really one of such a nature that the Court is authorized to enforce it."

It would seem that there could be no possible controversy as to the penal nature of the Ohio statute. It is described in the preamble as (Case, p. 361):

> "An act to define trusts and to provide for criminal penalties and civil damages, and punishments of corporations, persons, firms and associations, or persons connected with them, and to promote free competition in commerce and all classes of business in the State."

In Section 4 of the Act, it is provided that any person guilty of violating any of its provisions, shall be punishable by a fine not exceeding $5,000, and by imprisonment of not less than six months, nor more than one year. In Sections 7, 10 and 11 still further penalties and punishments are prescribed, and in Section 9 it is provided that all provisions of the Act are "*cumulative of each*

other." The Act, in Ohio, as in other States, was undoubtedly framed to meet a widespread and insistent public demand, and was made as drastic and penal as language would allow. It was passed in 1898, at a time when the anti-trust agitation was at its height, and the plain spirit and purpose of the act was to stamp out trusts and monoplies by the most rigid kind of legislation. Recognizing the state of the public mind that demanded this legislation and the nature of the evil it was intended to correct, there should be no hesitancy in affirming its obviously penal character.

IX.

The purchase of the stock of the United Salt Company by the National Salt Company was a lawful exercise of corporate power.

The learned Vice Chancellor has injected an element into this case which even the ingenuity of counsel for the Receivers had not suggested. If we interpret the Vice Chancellor's opinion correctly, he detects some illegality in the purchase of the United Salt Company's stock, which affects the validity of the securities issued by the National Salt Company in exchange therefor, even in the hands of innocent purchasers for value. Although he cites Volney *vs.* Nixon, 68 N. J. Eq., 605, as authority for his holding, it is difficult to see where that case has any application to the case at bar.

In Volney *vs.* Nixon it appeared that the complainant, being the owner of some assets of doubtful value, consisting in the main of sixty per cent.

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of the capital stock of a defunct corporation and several patents for the manufacture of gunpowder, agreed with the defendant to assign these to a corporation to be organized by them in exchange for $350,000 of its capital stock. Of this stock $50,000 was to be distributed among newspaper men and other persons, presumptively for the purpose of aiding the company through illicit influences. The balance was to be divided equally between the complainant and defendant. It further appeared that the company did not have tangible property exceeding $5,000 in value; that it had received no income; that it had no established business; that the value of the patents and processes had not been demonstrated, and that not over $32,000 had been expended upon the whole enterprise. Upon these facts this Court very properly held, that an agreement to issue this amount of stock for property of such questionable value was illegal, and that equity would not aid one of the parties to such an arrangement in compelling performance by the other. In other words, Volney *vs.* Nixon presented the familiar case of a partially performed illegal contract, which the Court refused to lend its aid in carrying out. It is plainly distinguishable from the present case upon the ground, first, that there was no initial illegality or gross or intentional overvaluation in the sale of the United Salt Company stock, and second, that the United Salt Company purchase is a consummated transaction with the rights of innocent third parties intervening.

Brief reference to the facts here will show that they bear not a particle of analogy to those disclosed by the case under discussion. The National Salt Company was officered and controlled by a group of men entirely separate from those in control of the United Salt Company. The former Company was concededly anxious to acquire the stock

of the latter, and the only question was one of terms. Each party to the negotiation was a free agent, in all respects competent to make or reject an agreement. At the very outset of the negotiations between the National Salt Company and Frank B. Squire, the President of the United Salt Company, the latter made a firm offer of the terms upon which he was willing to sell, and from this he never receded. For a period of four or five months the National Salt Company negotiated in an effort to secure more favorable terms. Becoming satisfied that a better offer could not be obtained, the matter was submitted to the board of directors of the National Salt Company and they authorized a purchase upon the terms proposed by the United Salt Company stockholders, after first examining the plant of the latter company.

There is not a scintilla of evidence in this record to show that any fraud was practiced upon the National Salt Company or its officers. On the contrary, it appears over the signature of the President of the National Salt Company that the earnings of the United Salt Company during the first year of its control and management by the National Salt Company amounted to over $125,000 (Case, p. 268). Furthermore, the National Salt Company had ample opportunity, within less than eighteen months, to determine whether or not it had been defrauded, and if defrauded, to rescind the transaction.

At the time of the United Salt Company purchase the law of New Jersey relative to issuing stock for property was the same as it is now. Section 49 of the Corporation Act provides that where stock has been issued for property

> "* * * the stock so issued shall be full-paid stock and not liable to any further call, neither shall the holder thereof be liable for any further payment under any of the provisions of this Act; and in the absence of

> *actual fraud* in the transaction, the judgment of the directors as to the value of the property purchased shall be conclusive, &c."

As the United Salt Company purchase was a *consummated* transaction, a year and a half before any phase of it was even called into question, the learned Vice Chancellor has misapplied the doctrine of Volney *vs.* Nixon. The only possible question that could be raised is: Were the directors of the National Salt Company guilty of *actual fraud* in making the purchase of the United Salt Company stock? The Receivers have neither asserted nor attempted to prove that they were. On the contrary, their evidence shows very clearly that the purchase was made only after deliberation and investigation by these directors, and in the honest belief that it was beneficial to their Company. Thus, Mr. White, the President of the National Salt Company, testified as follows (Case, pp. 259 and 260):

> "Q. No, but you believed that it was a good trade for the National Salt Company, the acquiring of this stock? A. Yes, sir.
>
> Q. And you did not believe you were unloading any worthless property on them? A. No, sir.
>
> Q. And you did not believe that the National Salt Company was making a bad bargain? A. No, but I did not think they were making a very good bargain.
>
> Q. You had charge of it for the National Salt Company, didn't you? A. Not entirely.
>
> Q. You were the principal factor at that time? A. I was president of the company.
>
> Q. You could have probably defeated this sale, if you had tried to? A. Well, I would not say that I could.
>
> Q. The sale had your approval? A. Oh, yes, sir; it had.
>
> Q. And without making formal, definite appraisal of the property, item by item, you believed that there would be substantial equivalent for the stock you issued for the

purchase of this property, didn't you? A. I could not answer that question directly. I believed it was better for the National Salt Company to take the property at the price at which they offered it, than not to take it.

Q. That there was a substantial *quid pro quo?* A. Yes.

Q. You didn't think you needed any guardian in this trade, did you, Mr. White? A. No, but I can't—I did not require any guardian.

Q. You went into the trade with your eyes open? A. Oh, yes, absolutely. I knew the obligations imposed.

Q. After very careful deliberation of the pros and cons, you decided that it was for the best interests of your company to purchase the property of the United Salt Company at the price you agreed to give them? A. Yes, sir.

Q. And you did, therefore, actually pay the price by the issue of these certificates? A. Yes, sir."

Nathan S. Beardslee, who was a director of the National Salt Company at the time of this purchase, and subsequently became its President, and is now one of its Receivers, testified upon this same subject as follows (Case, pp. 410 and 411):

"The United Salt Company's position in Ohio was so strong and the trade which they controlled was so large that in order to obtain control of the entire output of that field and be able to control the prices, not only through Ohio, but throughout Western Illinois and also as far east as Washington, he deemed it advisable to accept their proposition and a resolution, as I remember, was passed authorizing Mr.—authorizing Mr. White to arrange the details."

"A. The Board discussed the whole situation as to the location of the United Salt Co., the necessity of getting control of that output to maintain prices, because the vital point—the success of the whole scheme—de-

pended upon being able to control a very large percentage of the output of the State of Ohio; and whatever the price was the Board felt it was absolutely necessary to control that output and to control their product, in order to maintain the prices.

Q. That was the discussion that took place in the Board of Directors?

A. Yes, sir."

As a witness in the Ohio suit, Mr. White testified (Case, p. 500) as follows:

"These negotiations covered several months, and to chronicle the conversation would require several volumes. In a nutshell, it was considered by all in interest that the proposed deal subserved the interests of the stockholders of the National Salt Co. and the United Salt Co. That economies might be perfected and the business regulated in such a manner as to produce remunerative profits."

It is plain from the foregoing that the doctrine of Volney *vs.* Nixon has no application to the present case. The stock and certificates of indebtedness of the National Salt Company were issued in good faith, and cannot be impeached in the hands of either the original parties or their transferees.

Donald *vs.* Am. Smelting & Refining Co., 62 N. J. Eq., 729.

Bickley *vs.* Schlag, 46 N. J. Eq., 533.

Trenton Potteries Co. *vs.* Oliphant, 58 N. J. Eq., 507.

Camden & Atlantic R. R. Co. *vs.* Mays Landing, etc., R. R. Co., 48 N. J. Law, 530.

Arnold *vs.* Searing, 67 At. Rep., 831.

Pomeroy *vs.* N. Y. Smelting & Refining Co., 48 At. Rep., 395.

Hebberd *vs.* South Western Land & Cattle Co., 55 N. J. Eq., 18.

Goodnow *vs.* Am. Writing Paper Co., 66, At. Rep. 607.

Hoskins *vs.* Seaside, etc., Co., 68 N. J. Eq., 476.

See *vs.* Heppenheimer, 55 N. J. Eq., 240; affirmed without opinion, 56 N. J. Eq., 453.

Baker *vs.* Guarantee Trust & Safe Deposit Co., 31 At. Rep., 174.

Physick *vs.* Baker, 53 N. J. Eq., 673.

In Donald *vs.* Am. Smelting & Refining Co., *supra,* the Court of Errors and Appeals said:

> "When corporate stock has once been issued for property purchased, then the Legislature has directed the application of a different rule. In the words of the same section 49
>
> > 'the stock so issued shall be full-paid stock, and not liable to any further call, neither shall the holder thereof be liable for any further payment under the provisions of this Act; and in the absence of actual fraud in the transaction the judgment of the directors as to the value of the property purchased shall be conclusive.'
>
> Under these provisions, after the property has been purchased and the stock issued therefor, nothing short of actual fraud in the transaction can impair the right of the holder to hold his stock as full-paid stock, free from further call.
>
> The cases of Bickley *vs.* Schlag, 1 Dick. Rep., 533, and Rural Homestead Co. *vs.* Wildes, 9 Dick. Rep., 668, indicate that the complete transaction was equally secure, even before the statute received its present decisive form."

In Bickley *vs.* Schlag, *supra,* this Court said:

> "If we were to assume that this procedure had any legal foundation whatever, the fact would still remain, that the real question presented by it has neither been considered nor decided. In view of the proofs in the case, it was not and could not be disputed that the stock in question, as between these stockholders and the corporation, had been paid for in full; for they had transferrred to the Company, in satisfaction for it, certain steamboats and other property, each share so purchased being marked with the words 'issued for property purchased.' Consequently, so long as this contract of sale subsisted, an indisputable title to the stock existed in the stockholders, and it was also thereby conclusively established that they were in no wise indebted to the company by reason of their purchase. The inquiry, therefore, in the Court below, should have been, whether the agreement in question was fraudulent or not; for if the transaction was an honest one, the difference in value between the property constituting the consideration of the sale and the stock had no legal significance. The charter of this company authorizes the corporation to exchange its capital stock for property, and, under that condition of things, a court of equity cannot set aside a transaction of that kind simply on the ground that the bargain, on the side of the corporation, is a disadvantageous one. In such affairs the company and the purchaser stand on the common footing of buyer and seller; the valuations of property in making the exchange, either on the one side or the other, cannot be supervised or controlled by the Court of Chancery, for, in the absence of deceit, or some other corrupt constituent, the bargain between the parties cannot be disturbed. In the present instance fraud was not found, and the vice-chancellor ordered these stockholders to pay more than they had agreed to pay for the stock, on the ground that, in his opinion, the steam-

boats and other things they had exchanged were not worth as much as the stock was worth. Conspicuously the substance of the true issue has been overlooked.

The real inquiry in this class of cases is not in doubt or obscurity, for it has been elucidated in many decisions. One example will suffice. In the case of Coit *vs.* The Gold Amalgamating Co., 119 U. S., 345, Mr. Justice Field, in the course of an investigation similar to the present one, said: 'Where the charter authorizes capital stock to be paid in property, and the shareholders honestly and in good faith put in property instead of money in payment of their subscriptions, third parties have no ground of complaint. The case is very different from that in which subscription to stock are payable in cash, and where only a part of the installments has been paid. In that case there is still a debt due to the corporation, which, if it become insolvent, may be sequestered in equity by the creditors as a trust fund liable to the payment of their debts. But where full-paid stock is issued for property received, there must be actual fraud in the transaction to enable creditors of the corporation to call the stockholders to account.' "

X.

The certificates of indebtedness were not illegal upon the theory that they constituted an attempted guarantee of dividends, nor upon the theory that the consideration for them was immoral or unlawful.

The Receivers urge with great insistence that the certificates of indebtednes were intended as an illegal guarantee of dividends and that for that

reason they cannot be enforced. The Receivers, of course, stand in the shoes of the National Salt Company, and the situation presented is, therefore, that of a corporation which has received the fruits of a bargain, resisting an action to compel performance on its part upon the ground that it is a wrongdoer. The Courts, from very early times, have looked with disfavor upon defences of this character, and this record discloses nothing justifying a different attitude. The National Salt Company received what it agreed to buy. The rights of innocent third parties have intervened and rescission with justice cannot be decreed.

Camden & Atlantic R. R. Co. *vs.* Mays Landing, etc., R. R. Co., 48 N. J. Law, 530.

In the case just cited, this Court said:

> "In my judgment, the true rule is that when the transaction is complete, and the party seeking relief has performed on his part the plea of *ultra vires* by the corporation which has acquiesced in it, is inadmissible in an action brought against it for not performing its side of the contract, in all those instances where the party who has performed, cannot upon rescission be restored to his former status."

While it is doubtless true that a corporation cannot prefer one group of stockholders over another without due observance of the statutory formalities, or bind itself to pay dividends which it may not earn, we do not understand that any restriction is placed upon the power of a corporation, in good faith, to purchase property upon such terms as it deems advisable. If, for example, the National Salt Company had agreed to purchase the United Salt Company's stock for $200 a share, in cash, and had actually carried out the agreement

and paid the price, no one would question the legality of the transaction, in the absence of actual fraud. Again, if the National Salt Company had agreed, in lieu of cash, to give two shares of its stock and $100 in cash the purchase, when completed, would be equally unassailable. To carry the analogy a point further, if the Company had agreed to pay the $100, not all in cash, but in ten equal semi-annual cash instalments, the agreement would have been good. But, the Receivers argue the certificates of indebtedness are the precise equivalent of dividends at certain specified rates upon the common and preferred stock of the National Salt Company and this quibble may prove sufficient to defeat an honest debt. There are several complete answers to this. In the first place, a contract capable of two constructions, should receive the one upholding its validity.

Pitney *vs.* Bolton, 45 N. J. Eq., 639.
Ormes *vs.* Dauchy, 82 N. Y., 443.
Louisville, etc., Ry. Co. *vs.* Louisville Trust Co., 174 U. S., 552.
Trenton Potteries Co. *vs.* Oliphant, 58 N. J. Eq., 507.

In Pitney *vs.* Bolton, *supra,* the Court said:

> "If the transaction be equally capable of two constructions—one innocent and the other unlawful—the familiar rule is, that the innocent one will be adopted, especially as against a person who stands, on his own confession without the least merit, and who seeks to make gain by a fraudulent transaction in which he knowingly participated."

In Louisville, etc., Ry. Co. *vs.* Louisville Trust Company, *supra,* which was an action to cancel an illegal guarantee of an issue of bonds, the United States Supreme Court said:

> "One who takes from a railroad or business corporation, in good faith, and without

> actual notice of any inherent defect, a negotiable obligation issued by order of the board of directors, signed by the president and secretary in the name and under the seal of the corporation, and disclosing upon its face no want of authority, has the right to assume its validity, if the corporation could, by any action of its officers or stockholders, or of both, have authorized the execution and issue of the obligation.
>
> In Merchants Bank *vs.* State Bank, 10 Wall., 604, this Court stated, as an axiomatic principle in the law of corporations, this proposition: 'Where a party deals with a corporation in good faith—the transaction is not *ultra vires*—and he is unaware of any defect of authority or other irregularity on the part of those acting for the corporation, and there is nothing to excite suspicion of such defect or irregularity, the corporation is bound by the contract, although such defect or irregularity in fact exists. If the contract can be valid under any circumstances, an innocent party in such a case has a right to presume their existence, and the corporation is estopped to deny them (10 Wall., 644, 645).' "

In Trenton Potteries Co. *vs.* Oliphant, *supra,* at page 517, this Court says:

> "The contracts are to be construed so as to give them validity, if such construction does no violence to their language, and the subject matter of the contracts is to be considered and their terms are to be construed in reference thereto."

The National Salt Company has received value for the certificates of indebtedness, it has led innocent purchasers to give value for them and as they are susceptible of interpretation sustaining their validity, they should, upon the authority of the foregoing cases, be so interpreted.

Moreover, there are additional answers to this

contention of the Receivers. A guarantee of dividends may be obnoxious to the statute, because dividends are payable only from earnings, and such a guarantee might compel the corporation to impair its capital in the payment of such dividends if there were no surplus earnings. In the case at bar, there was no such impairment of capital, either actual or threatened. On the contrary, there was a mere conversion of corporate capital from one form into another. In other words, the National Salt Company entered into a single and entire contract with the holders of the stock of the United Salt Company to purchase their stock and to pay therefor partly in money and partly in its own stock. In no conceivable view did this transaction, in the absence of fraud, take anything away from the stockholders or creditors of the National Salt Company, which they had a legal or moral right to claim. If the actual cash value of the ten semi-annual instalments payable *in futuro* had been computed and paid to the holders of the stock of the United Salt Company, no one could be found who would question the absolute legality of that arrangement, and yet, in legal effect, what was actually done was the precise equivalent of this.

Finally, it is to be remembered that the possible legal pitfalls incident to the arrangement, were recognized by the parties at the time and that they cautiously sought the advice of counsel and were assured that the certificates of indebtedness would be legal. (Case, p. 464). It is not suggested that the parties did not stand upon an equal footing, or that any fraud was practised or undue advantage taken, and neither equity nor good morals would seem to require an adverse ruling by this Court.

It is contended further that the National Salt Company purchased the stock of the United Salt Company with the motive or intention of monopolizing the salt business in Ohio, and that, therefore,

the whole arrangement was illegal in its inception. There are many conclusive answers to this argument. In the first place, a contract is not rendered illegal because of the wrongful purpose of one of the contracting parties, unless it is shown that the other party had knowledge of this purpose. There is not a shadow of evidence to show that any of the stockholders of the United Salt Company knew what motive impelled the National Salt Company to purchase their holdings, with the possible exception of Frank B. Squire, and he was the owner of but 1027 of the 9934 shares outstanding (Case, p. 351). Furthermore, a desire to buy out a competitor is not so heinous offense that the Courts have found it necessary to place the stamp of illegality upon a contract having that purpose in view, and thereby enable the purchaser to retain the benefits of the contract and disaffirm its obligations.

Trenton Potteries Co. *vs.* Oliphant, 58 N. J. Eq., 507.

Dickerman *vs.* Northern Trust Co., 176 U. S., 181.

Tracy *vs.* Talmage, 14 N. Y., 162.

In Trenton Potteries Co. *vs.* Oliphant, *supra,* this Court said:

> "Under our liberal corporation laws, corporate authority may be acquired by aggregations of individuals, organized as prescribed to engage in and carry on almost every conceivable manufacture or trade. Such corporations are empowered to purchase, hold and use property appropriate to their business. They may also purchase and hold the stock of other corporations. Under such powers it is obvious that a corporation may purchase the plant and business of competing individuals and concerns. The legislature might have withheld such powers or imposed limitations upon their use. In the absence of prohibition or limitation on their powers in this respect, it is impossible

for the courts to pronounce acts done under legislative grant to be inimical to public policy. The grant of the legislature authorizing and permitting such acts must fix for the courts the character and limit of public policy in that regard. It follows that a corporation empowered to carry on a particular business may lawfully purchase the plant and business of competitors, although such purchases may diminish or, for a time at least, destroy competition. Contracts for such purchases cannot be refused enforcement. Since contracts by individuals and by corporations having legislative authority, for the purchase of competing plants and business, may be made and are enforceable, although as a result thereof competition is diminished or temporarily destroyed, it further follows that contracts reasonably required to make such purchases effective by protecting the purchaser in the use and enjoyment of the thing purchased, cannot be declared by the courts to be repugnant to public policy. The interference with competition resulting from such purchases under legislative permission, being found not to invalidate contracts for such purchases, the like interference by contracts reasonably required for the protection of the purchaser cannot be held to invalidate them."

At page 522, in the same opinion, this Court said:

"Although the control of the voting majority of the association may have been one of appellant's motives for making its simultaneous purchases, it is inconceivable that any one of the five vendors could have repudiated his contract to sell to appellant on the ground that such sale, if consummated, would enable appellant to obtain such control. The public interest would be amply protected by invalidating the agreement of the association for the control of prices and the disconnected agreement of sale would be enforced as other contracts."

The language just quoted puts an end to the whole argument of the Receivers on this branch of the case. If a vendor to a monopoly cannot rescind the contract because of some illegal motive entertained by the monopoly, then clearly it does not lie in the mouth of the monopoly when the conditions are reversed, to plead a defense which was not equally available to the vendor.

What has been said above is, we believe, sufficient to show that the certificates of indebtedness are not illegal as an attempted guarantee of dividends, and, further, that any defense of illegality or *ultra vires* is now no longer available to the National Salt Company. If additional authority on either of these propositions be required, it is found in the recent decision of the Appellate Division of the Supreme Court of New York, in Windmuller *vs.* Standard Distilling Co., 106 App. Div., 246, affirmed by the Court of Appeals, without opinion, in 186 N. Y., 572. In that case, it appeared that the defendant, a New Jersey corporation, purchased 31,500 shares of the stock of the Spirits Distributing Company, and as a part of the consideration guaranteed the payment of stated dividends upon the stock of the latter Company. Default was made in the payment of these guaranteed dividends and the plaintiff sued to recover the amount of the defaulted payments. In sustaining the plaintiff's right to recovery, the Court, in a unanimous decision, said:

> "In this Court, the plaintiff insists (1) that the contract sued upon is not *ultra vires* and (2) that even if it be *ultra vires,* that defense is not available where the consideration for the contract has been fully paid to and received by the corporation seeking to avoid liability by means of such defense—as is conceded to be the case here. On the other hand, it is contended on behalf of the defendant (1) that a contract of the character of that under consideration here, is clearly ille-

gal and void as being outside the scope of corporate power and (2) that where a contract is illegal, immoral or against public policy, the fact that it has been executed will not create an estoppel against the corporation by which it was made.

The defense of *ultra vires* plainly must rest upon a construction of the so-called guaranty which interprets it as an undertaking to pay dividends whether any profits are actually earned or not. Such a construction, however, does not seem to us to be necessarily required by the terms of the agreement. Although the word "guarantee" is used, it is followed by the phrase "and agrees to pay;" and when we look at the general nature and the details of the whole transaction whereby the Standard Company acquired a controlling interest in the Spirits Company, the execution of the agreement thus to pay certain so-called dividends is seen to be in reality only a method of paying a part of the price which the Standard Company was willing to expend for the acquisition of the controlling interest which it sought. We think that this is the true character of the contract, notwithstanding the use of the word "dividend" therein; that the agreement is to be regarded as an absolute agreement to pay stated sums at stated periods representing deferred payments on account of the purchase price of the stock in one corporation purchased by the other; that an agreement of this nature is not illegal, inasmuch as the acquisition by one corporation of the stock of another is expressly sanctioned by the law of New Jersey (N. J. Corp. Law—[Laws of N. J. of 1896, Chap. 185]—Section 51); that it is not immoral or against public policy, and hence that it is an enforcible contract and was properly enforced by the judgment in this action."

The foregoing case, as we have already stated, was affirmed by the Court of Appeals, without opin-

ion, and is the unquestioned law of that State today. Its doctrine is based upon reason and sound morals, and there is nothing in this record that would justify a different result.

XI.

Some observations upon the equitable aspects of this case.

We feel confident that the authorities and argument already advanced are sufficient to sustain the right of the appellants to a reversal of the decrees of the Court below, upon strict legal principles. Although mindful of the undue length to which this brief has been extended, we would be remiss in the performance of our duty to our clients if we failed to show that their claims are supported by equities of equal merit. We will, therefore, allude briefly to a few of the equitable considerations entitling them to the favorable decision of this Court.

1. In the light of subsequent developments it is now perfectly apparent that the appellants were lured into the purchase of the National Salt Company securities, either by that Company, or by persons sufficiently high in its councils, to be able to forecast future events with accuracy. The attention of the appellants was first called to these securities by newspaper advertisements appearing during the latter part of February or the early part of March, 1901 (Case, p. 99). At that time Messrs. Stewart Barr & Co., brokers in New York City, were apparently engaged in an inspired effort to market these securities by a campaign of newspaper advertising and by the distribution of suitable literature (Case,

pp. 99 to 101, and Claimants' Exhibit 3, pp. 269 *et seq.*). It is significant, to say the least, that the alleged protest of the National Salt Company stockholders against the United Salt Company purchase is dated February 19th, 1901 (Case, p. 336), and undoubtedly the plans for the disruption of that deal were then well matured. The appellants made their purchases at the end of March, 1901, and the Ohio suit was commenced on April 3rd, 1901 (Case, p. 119). Further comment is probably unnecessary, other than to say that these strange coincidences are entirely in harmony with the policies of the interests that have controlled the destinies of the salt business for the past dozen years.

2. One cannot read this record without being convinced that the purchase of the stock of the United Salt Company was a real and *bona fide* transaction, dictated by the desire of the National Salt Company to acquire and control its plants and trade, and that the subsequent pretense that it was unreal, and that illegality inhered in it, was indulged in solely for the purpose of feigning an issue upon which a suit could be brought. Thus at pages 259, 260 and 500 of the case Mr. White, the former President of the National Salt Company, gave testimony showing clearly that this was an actual purchase conceived in good faith. He also reported it in writing to the New York Stock Exchange and to his directors and to his stockholders as a real and not as a fictitious purchase (Case, pp. 282, 537 and 446). Receiver Beardslee's testimony confirms the *bona fides* of the purchase (Case, p. 410). Yet, when the necessities of the Ohio suit seemed to demand it, this same President White made oath to the bill of complaint of the National Salt Company, in which it was averred in substance that there was no actual purchase and sale, and

that the whole arrangement was a pretense and sham designed to evade the provisions of the Ohio Anti-Trust Law (Case, pp. 331, *et seq.*).

3. We have already shown that the presence of the American Trust Company as a party defendant in the Ohio litigation could not, upon well settled principles, bind the appellants by representation. The facts here disclose additional reasons why this should be the rule of decision in this case. The principle that every suitor is entitled to his day in Court is not modified by the doctrine of estoppel by representation. The day in Court accorded the representative is binding in its results, only as that representative has been diligent in the defense of the interests committed into his keeping. It certainly will not be contended that the American Trust Company displayed any diligence on behalf of the holders of the certificates of indebtedness in the Ohio suit. By its own admissions, it did no more than maintain a spineless neutrality that was quite in keeping with its submission to a decree, by which the attorneys in the case were allowed to filch and carve up the large sum of money it was holding for its beneficiaries. It served an answer and cross-petition to the bill in the Ohio suit, in which it denied upon oath, all of the equities in the plaintiff's bill and prayed an accounting of the defaulted installments upon the certificates of indebtedness (Case, pp. 367 to 376). Had it persisted in this course, no one could be found to complain of the adequacy of its representation, but when the projected settlement had reached its final stages, and the opportunity of participating advantageously in the division of the spoils was presented, the Trust Company permitted the withdrawal of its answer and the entry of the decree. Mr. Johnson, the attorney for the American Trust Company in that

suit, variously defines its attitude as "simply a stakeholder" (Case, p. 185), "passive in the entering of the decree" (Case, p. 190) and maintaining "a perfectly neutral position" (Case, p. 186). If *cestuis que trustent* can be bound by indifference and inactivity of this character, a new and hidden danger in trusts will have been unearthed. We submit that in no possible view have the appellants had their day in Court.

4. Nominally, the questions presented for decision in this case are those that have been discussed under the preceding points. Actually and fundamentally, the question in the case is, as we shall show in a moment, whether the funds now in the hands of the Receivers shall be paid to these appellants or to the malign interests, whose control of the salt business for the last ten or a dozen years has written a disgraceful page in the history of American finance. A bare recital of the facts is sufficient to show that the appellants have the superior equities and that there is nothing in the position of the interests that oppose them to commend the favor of a Court of Chancery. The National Salt Company was first organized under the laws of West Virginia in 1898. After a brief career of high financing, it was supplanted by the National Salt Company of New Jersey, organized in March, 1899. The operations of the latter Company are pretty well disclosed by the present record, but are of importance here only as they resulted in the wrecking of the United Salt Company in the short period of eighteen months. The present Receivers of the National Salt Company were appointed in September, 1902. Their identity with the controlling interests, and the further developments in this tangled skein of finance are well stated by Mr. Justice Leventritt of the New York Supreme Court in Strickland *vs.* National Salt Company, 43 Misc. (N. Y.) 172. That

decision was rendered upon a motion by minority stockholders of the National Salt Company to prevent the confirmation of a sale of its plants, made at a ruinously low price with the connivance of the present Receivers. A most casual reading of the decision suffices to disclose the identity of the real influences that work in this case. We quote from the decision in part, as follows:

> "The defendant, The National Salt Company, is a New Jersey corporation, organized on March 18, 1899, for the purpose of manufacturing, mining and producing salt. Its authorized capital stock, of which substantially all was issued, was divided into $5,000,000. prefered and $7,000,000. common stock. Of this, within a month after its organization, about $5,500,000. of both classes of stock, having then a market value of approximately $2,600,000., was applied to the purchase of the plants which were the subject matter of this sale. Ruinous contracts were either entered into or assumed, so that despite the payments declared to be dividends, and roseate report of the Company's condition on January 1st, 1901, showing a large surplus, the defendant was so heavily involved in the spring of that year that a new corporation, the International Salt Company, was projected and organized in August, 1901, for the purpose in part of taking over the stock of the defendant, of carrying and liquidating its indebtedness and restoring it to a sound, financial condition. A majority of the defendant's stockholders exchanged their securities, and thus the International Company became the majority stockholder of the defendant. The opposition to the present motion to confirm comes from a minority of the defendant's stockholders who refused to exchange their securities."
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> "Further, the papers warrant the conclusion, in fact, no other inference is possible,

that, though bid in by a third party, the real purchaser at the sale was the International Company, which had theretofore filed with the Receiver the reassigned Belding claim already referred to, which, as a judgment, had in part precipitated the Receivership, and the bankruptcy, and which, being vacated as a judgment, helped to nullify the bankruptcy proceedings.

This serviceable claim has been the only substantial one allowed by the Receiver, and its real owner, the International Company, therefore, the only creditor which could avail itself of eighty per cent. application clause in the order."

* * * * * *

"Without going to the length of holding on the conflicting affidavits that Receiver Beardslee refused to furnish the terms, the inference is nevertheless warranted that no great willingness to communicate was manifested, and that intending bidders were discouraged rather than facilitated in their efforts to put themselves in full possession of the facts."

While the foregoing is perhaps not sufficient to wholly discredit the testimony given by Receiver Beardslee in the Ohio suit, it at least reveals the very peculiar conception of his duties as a Receiver, entertained by this one-time director and President of the National Salt Company.

The Receivers will doubtless say, in answer to the foregoing decision by Justice Leventritt, that the plants, upon resale, brought, from the same purchaser, less than the amount previously bid for them. To this we cheerfully assent, not as an acknowledgment of any error committed by the learned Justice, but rather as further proof of the infinite capacity of the International Salt Company in certain directions.

5. The appellants have now reached the goal of a long chase. For their outlay of over $165,000. in

1901, they have never received the return of a single dollar, but have been compelled to endure the hardship and expense of long protracted and discouraging litigation. They now stand before this Court asking that measure of relief, to which they are entitled upon settled principles of law, and in all equity and good conscience. It is not within the power of this Court to restore to them all that they have lost, or suitably to reward their long suffering patience. This Court can, however, grant the relief they now seek and thus effectually admonish those who have sought to defraud them.

The Receivers have now fully administered their trust, and with all debts paid, have a cash balance on hand of $154,629.43. Shall this money be paid to the defrauded appellants upon their certificates of indebtedness or to the International Salt Company as the holder of the preferred stock of the National Salt Company?

We are seeking relief through the aid of a Court of Chancery, and that Court has ample power to grant relief in accordance with the exigencies of the case.

Buckingham *vs.* Ludlum, 37 N. J. Eq., 137.

Rodgers *vs.* Insurance Company, 148 N. Y., 34.

XII.

The appellant Erickson Perkins is not barred by the decree in the Ohio suit.

Mr. Perkins, individually, and as administrator, was the only one of the appellants who was a party to the Ohio proceedings. He served an answer and cross-petition, denying the

substantial equities of the bill of complaint, but upon the entry of the final decree, his pleading was withdrawn surreptitiously and without his knowledge. He never consented to the settlement embodied in that decree, but on the contrary, protested vigorously against it (Case, pp. 193 to 196).

The argument which we have heretofore adduced on behalf of all of the appellants, applies with equal force to the contention of Mr. Perkins. If this Court shall find (*a*) that the Ohio decree was obtained by collusion and consent, or (*b*) that the Ohio court was without jurisdiction, or (*c*) that the Ohio anti-trust law is a penal statute and can have no extra-territorial effect, then the Ohio decree can no more be urged in bar of the Perkins claim, than it can in the case of the other claims.

The presence of Mr. Perkins in the Ohio suit is without significance for a further reason. At the outset of that litigation he retained Messrs. Kline, Carr, Tolles & Goff as his attorneys, and through them, interposed an answer and cross-petition denying the equities of the complainant's bill (Receiver's Ex. 4, Case, pp. 388 to 394). After the suit had progressed to the point where it became evident that it was to be disposed of by agreement and not by trial, these attorneys advised Mr. Perkins, through his local counsel in Rochester, that they represented adverse interests (Case, pp. 149 to 151), and that if he insisted upon a trial, they would be unable to represent him, and therefore requested him to relieve them of further obligations to him in the case. Without hearing from him further on the subject than by a mere acknowledgment of the receipt of their letter, they proceeded to withdraw his answer and consent to the entry of the decree. Allusion has already been made to the fact that this decree rewarded them rather handsomely for their participation in the matter (Case, p. 568).

XIII.

The decrees appealed from should be reversed, with costs, and the Receivers directed to allow and pay the claims under review.

Respectfully submitted,

GEORGE R. BEACH,
Solicitor for and of Counsel with Union Trust Company and ten other claimants, Appellants.

HENRY WILLARD BEAN, and
PAUL BONYNGE,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between—

CHAUNCEY H. STRICKLAND,
Complainant.

AND

NATIONAL SALT COMPANY *et al.*,
Defendants.

EDMOND L. BROWN and others,
Claimants and Appellants.

Brief on Behalf of the Receivers of the National Salt Company, Respondents.

This is an appeal from the decree of the Chancellor, confirming the adjudication of the Receivers of the National Salt Company disallowing the claim of the appellants against the National Salt Company.

The claims of all the appellants are the same in origin, and present the same questions upon this appeal (except the claims of Erickson Perkins, and Erickson Perkins, administrator of Sarah A. Perkins, deceased, which will be treated separately).

The claimants claim to be owners of certain so-called "certificates of indebtedness" of the National Salt Company, as follows: F. A. Whitney, certificates amounting to $2,975; M. C. Nichols, $21,825; Gertrude Bowers, $297.50; Walter Smith, $2,975; Frank Taylor, $2,975; E. D. Quimby, $5,950; Union Trust Company, $5,950; J. N. Beckley, $2,975; E. G. Miner, $2,975; Edmund L. Brown, $5,950;

Henry Wick, $5,950; Otis Wilson & Co., $5,950; and Charles H. Wilcox, $2,975; making a total of $68,722.50; also Erickson Perkins, $8,295; and Erickson Perkins, as administrator of Sarah A. Perkins, $2,975; making a total of $11,900.

Theretofore the American Trust Company, Limited, acting as Trustee and agent for the above claimants and other holders of "certificates of indebtedness" (p. 10, fol. 20), at the express instance and request of these appellants and on their behalf (p. 212), filed a claim for $725,156.40 with interest, with the Receivers, including the above-mentioned claims. The aforesaid claimants-appellants relied upon this claim "for the enforcement of their rights against the National Salt Company upon said certificates of indebtedness held by them" [see petitions of claimants (p. 11, fol. 30)], but after the introduction in evidence of the decree of the Ohio court annulling and cancelling all the agreements in question hereinafter set forth, the claimants obtained leave of the Court of Chancery to file with the Receivers proofs of claim based upon their individual ownership of said "certificates of indebtedness."

The claim of the American Trust Company was disallowed by the Receivers, and their adjudication affirmed by the Chancellor, on the advice of Vice-Chancellor Stevenson. No appeal has been taken from the decree of disallowance. (See opinion of Vice-Chancellor Stevenson, 72 N. J. Eq., 170.)

The orders allowing the claimants to file their several proofs of claim provided that the evidence in the matter of claim of the American Trust Company might be offered in evidence by the Receivers in this present proceeding (p. 38), which was done. Other evidence, both on the part of the claimants and of the Receivers, was also taken; the Receivers disallowed the several claims, and their disallowance was affirmed by the Chancellor.

Statement of Facts.

The National Salt Company was a corporation organized under the laws of the State of New Jersey, with an authorized capital stock of $12,000,000, of which $5,000,000 was preferred stock and $7,000,000 common stock; the United Salt Company was a corporation organized and existing under the laws of the State of Ohio, with a capital stock of $1,000,000.

The business of the National Salt Company, as also stated in its charter, was the manufacturing, mining, producing, preparing, refining, adapting, buying and selling and otherwise dealing in all its varieties of evaporated salt. It had acquired the salt plants of some fourteen Salt companies operating in New York. It was also engaged in the salt business in the State of Ohio, that is to say, it manufactured its salt in the State of New York, shipped it to Ohio, and was selling it there; it was a competitor in Ohio and elsewhere of the United Salt Company, of Cleveland, Ohio, which company was also engaged in the business of manufacturing and selling evaporated salt. The proportion of salt produced in Ohio by the United Salt Company was about eighty per cent., so that the chief competitor of the National Salt Company in Ohio was the United Salt Company.

At the time of the organization of the National Salt Company it had been the intention and agreement (p. 262, fols. 20, 30) that the United Salt Company should go in the combination on the same basis as the New York companies, viz.: share for share, or in other words that the United Salt Company should take $1,000,000 of the stock of the National Salt Company for the total issue of $1,000,000 stock of the United Salt Company (p. 401, fol. 30).

But apparently, with malice aforethought, the sale of the United Salt Company was postponed until after the National Salt Company had acquired the New York properties (p. 497, fols. 1 and 10), and then F. B. Squire, representing the United Salt Company, demanded in exchange for the stock of the United Salt Company, for each share of stock of the United Salt Company, one and one-quarter shares of the preferred and one and one-quarter shares of the common stock of the National Salt Company, with a five-year guarantee of seven per cent. dividend on the said preferred stock, and a ten per cent. dividend on the said common stock (p. 497, fols. 10 and 20).

The negotiations for the sale of the United Salt Company showed beyond any doubt that the purpose of all parties was to effect a combination whereby competition in the salt trade could be controlled, and the price of salt raised.

Mr. Squire, President of the United Salt Company, was most eager for the combination for the purpose of controlling competition and raising the price of salt (pp. 400, 401); "he believed that if the product was controlled it would be as easy to get one dollar per barrel as fifty cents per barrel" (p. 505, fol. 1).

Mr. White, President of the National Salt Company, in the purchase of the United Salt Company had in mind the control of competition (p. 234, fol. 20), and that they "might raise and maintain the price of salt" (p. 487). In fact, he thought the price asked for the United Salt Company "terrifically high," and only decided to buy it because they wanted to control the salt trade (p. 263, fol. 1).

The Board of Directors of the National Salt Company were astounded at the price asked for the United Salt Company, and claimed that the *amount of stock* demanded was excessive and out of all pro-

portion to the value of the property of the United Salt Company (p. 407).

The price demanded was finally consented to, but only because of the prospective profits which the Directors thought they might make, if the competition could be controlled, and prices raised (p. 234, fol. 20).

As to the actual value of the United Salt Company, the Directors of the National Salt Company relied almost entirely upon the representations of the President of the United Salt Company; they did not examine the books of the Company to ascertain the accounts receivable or payable, or the profits of the Company; they did not examine the merchandise on hand; they did not examine the books at all; they made no appraisal of the physical property of the Company, except the impression that the Directors got who visited the premises of the United Salt Co. in Cleveland (pp. 227, 228); they made no examination of the secret process of making salt, alleged to be very valuable, but which turned out worthless (p. 230), a veritable "gold brick," a fake "pure and simple" (p. 263, fol. 30). No balance sheet was submitted to them, only an informal memorandum of the President, but no statement showing any assets over liabilities.

What they bought was actually simply a speculation based on prospective and contingent profits, which did not turn out as they expected. The representations of the President of the United Salt Company turned out to be false, and the property was found to be worth much less than even the Directors thought.

The patented process and secret process for making salt at a very small figure turned out to be worthless, and that part of the plant was abandoned (pp. 245 and 246). The United Salt people had justified their high price by claiming that this patented process would bring large profits, but would

not allow an examination thereof by the National Salt Company.

When the National Salt Company bought the stock, in October, 1899, the United Salt Company had no cash on hand, and had overdrawn its account $2,532.04, and there was a large amount of notes outstanding (Letter of White of Jan. 15, 1901, p. 268).

The physical property of the Company, exclusive of land, was estimated by White at $300,000 (p. 230); while said property, *including* the land, sold on Receivers' sale at $105,000 (Exh. 1 of Feby. 26, 1907). It wasn't for lack of wealthy backers that the property brought so little, for the Rockefellers, F. B. Squire and H. L. Severance (p. 553, fol. 10; p. 562, fol. 20) were certainly wealthy enough to have protected their property, had they thought it worth while.

White said that at the time of making the deal he did not consider that the property of the United Salt Company was worth within $750,000 of the par value of the stock exchanged therefor.

It is true that in White's letter of January 15, 1901, he says that the profits of the business of United Salt Company for the fourteen months between October 1, 1899, and November 30, 1900, were $125,752.42, but the National Salt Company had turned over all of its Western contracts for salt to the United Salt Company, and had bought salt properties and had them conveyed to the United Salt Company (pp. 507-508); it had furnished over $89,000 of money to the United Salt Company (p. 446, fol. 1), and had practically turned over all its Western business to the United Salt Company. Also it will be remembered that immediately after the sale of the United Salt Company, the price of salt was advanced by the National Salt Company from 75 to 300 per cent. (p. 414, fols. 1, 10). In spite of which facts, on

April 1, 1901, the United Salt Company went into the hands of a receiver, and was subsequently sold out as aforesaid.

It is perfectly evident that the stock of the United Salt Company was not worth the face value of its stock, viz.: $1,000,000. In fact, Mr. Squire, the President of the Company, offered to sell one thousand shares for sixty dollars, another thousand for sixty-five dollars, and all his holdings (of which he apparently had 4,400 shares (p. 553, fol. 10) for sixty-five dollars, and it is in evidence that the market price of said stock some time before had been $40 or $50 per share (p. 239, fol. 20).

Not one of the directors of the National Salt Company believed that the purchase was on a cash basis. As one director said (p. 423, fol. 10): "I don't understand that the National purchased the stock; it exchanged the stock." As the President of the National Salt Company said (p. 25, fol. 20): "There was just the plain proposition, as I remember it, for $1,000,000 capital stock of the United Salt Company, par value, they wanted $1,250,000 of the National Salt Company stock, preferred, and $1,250,000 of the National Salt Company, common * * * with this guaranteed dividend."

The stock of the National Salt Company was selling in the market for $40 for the common stock, and $75 for the preferred stock, with the full right to receive dividends.

The preferred stock had already received dividends at the rate of 7 per cent. per annum (p. 438, fol. 1).

The market price of the 1¼ preferred and 1¼ common stock to be paid for each share of the stock of the United Salt Company would be $143.75, less a substantial sum, because this particular stock was stripped of all power to receive dividends for five years.

The certificates of indebtedness which went with the stock were the exact equivalent in amount with seven per cent. dividends on the preferred and ten per cent. on the common stock, and "were absolutely intended as a guarantee of dividends, nothing else" (Statement of President White, p. 233, fol. 30). In the negotiations with the United Salt Company, the United Salt Company people "insisted upon an arrangement whereby they could be assured of their receiving seven per cent. on the preferred stock and ten per cent. on the common stock" (p. 229, fol. 30). Mr. Squire demanded that dividends on the stock of the National Salt Company delivered in exchange for the stock of the United Salt Company should be guaranteed (p. 233, fol. 10).

The directors thought that such a guarantee would be illegal (p. 426, fol. 30 and p. 427, fol. 1; p. 461), but finally agreed to it (p. 498, fol. 10). Mr. White said that "so far as he understood the matter he thought it was illegal; but, if the United Salt Company was willing to take chances in the matter perhaps we ought" (p. 411, fol. 10).

All of these negotiations for this combination resulted in the agreements dated July 20, 1899, accepted on September 16, 1899 by the National Salt Co. (pp. 270-281).

The agreements in form provided for the sale by the stockholders of the United Salt Company of their stock in said Company, for each share of which they were to receive 1.25 of the seven per cent. preferred stock and 1.25 of the common stock of the National Salt Company, and in addition the sum of $106.25, payable in ten equal semi-annual instalments on the 1st days of January and July of each year, beginning January 1, 1900. To evidence the agreement for such payments, the National Salt Company agreed to issue "its agreement" (p. 291) in form of the certificate of indebtedness, the said "agreements" to be registered and countersigned by

the American Trust Company of Cleveland, Ohio, which said trust company was required to "keep a record of all agreements so registered and countersigned."

New agreements of like tenor were to be issued in lieu of said original or any reissued *agreements*, upon their surrender and cancellation, for such amounts as the holder may desire, not exceeding in the aggregate the amount then unpaid upon the *agreement* so surrendered and canceled, and before such original or reissued *agreements* shall become binding upon said National Salt Company, they must be registered and countersigned by the American Trust Company of Cleveland, Ohio, and the said Trust Company shall be required to keep a record of all agreements so registered and countersigned.

These agreements or certificates of indebtedness were as follows:

$.....

JERSEY CITY, N. J., October....1899

National Salt Company (of New Jersey) hereby agrees to pay at the office of the American Trust Company, Cleveland, Ohio, to .....or order..... .....dollars in ten equal semi-annual instalments, beginning January 1st, 1900. The failure to pay any instalment when due shall make all future instalments become at once due and payable. Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future instalments hereby secured to the American Trust Company of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand.

Said National Salt Company has agreed that no contract for the purchase of exhaust steam entered into by the United Salt Com-

pany prior to October 1st, 1899, and that no improvements erected or to be erected by the United Salt Company for utilizing said steam in the manufacture of salt shall be mortgaged, encumbered or in any manner disposed of until this obligation is paid or discharged, and that until such time no money borrowed or advanced by the National Salt Company for extending, improving or operating any property of the United Salt Company shall be made a charge upon or a lien against the property or assets of the United Salt Company. And until such payment or discharge shall be made, said United Salt Company has further agreed that the United Salt Company shall not otherwise than by licenses sell or dispose of any interest in any patented process for the manufacture of salt, now owned by the United Salt Company or for which it shall have applied for Letters Patent prior to November 15th, 1899, and that upon all licenses issued by said Salt Company there shall be paid to it a royalty of at least twenty-five cents per ton, settlement for which shall be made quarterly. To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreement, said National Salt Company has indorsed in blank and deposited with the American Trust Company of Cleveland, Ohio, as trustee, all stock of the United Salt Company acquired by it under an option given by certain stockholders of said Company bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company, dated October 2nd, 1899, and filed at the office of said Trust Company.

Upon surrender and cancellation of this obligation the National Salt Company will from time to time upon demand issue new agreements of like tenor for such amounts as the holder may desire, not exceeding, how-

ever, in the aggregate the amount then remaining unpaid hereon.

This instrument shall not be valid until countersigned and registered by the said Trust Company.

NATIONAL SALT COMPANY,

By.....,
President.

Attest:

.....,
Secretary.

Countersigned and Registered:
THE AMERICAN TRUST COMPANY,

By .....

The trust agreement of October 2, 1899, referred to in said certificate of indebtedness, set forth the terms of the deposit of the stock of the United Salt Company with the American Trust Company, and further provided that in case of default in any of the conditions thereof, or of payment of the instalments, as set forth in said *agreements* or *certificates of indebtedness,* the said trust company was to sell the stock of the United Salt Company so deposited with it, apply the proceeds to the payment of said agreements, and turn over the balance to the National Salt Company (pp. 276-278).

Each person depositing his stock of the United Salt Company gave to the American Trust Company a trust agreement (p. 270), by which it was provided that the corresponding amount of shares of the National Salt Company was "to be held, managed and controlled by the American Trust Company" until the certificates of indebtedness should be fully paid, upon trust to collect dividends and apply the same on the said certificates of indebtedness; and such person received from the trust company a trust receipt (p. 280) for such stock

of the National Salt Company, in which it was agreed to apply the dividends as provided in said agreement of July 20, 1899, and to vote on said stock in accordance with the written request of such person to whom the trust receipt was issued.

The contracts were signed by the United Salt Company's stockholders in Ohio (p. 270, fol. 30); the certificates of indebtedness were not to be valid till signed by the American Trust Company of Cleveland, Ohio; the stock of the United Salt Company and of the National Salt Company were held by the Trust Company in Cleveland, Ohio, the stock trust certificates were issued in Ohio; the payment of the certificates of indebtedness was, and was to be, made in Ohio (p. 330).

The law of Ohio, "An Act to define Trusts" &c. (pp. 361-366), called the Valentine Act, absolutely prohibited all combinations of persons, partnerships, associations or corporations, or agents, directors *or stockholders* thereof to enter into any agreement for trade restriction, or to limit or reduce the production, or increase the price of any commodity, or to prevent competition, or to do anything so as to directly or indirectly preclude free and unrestricted competition between themselves or any purchasers or consumers of any commodity (p. 362). It made such combination a criminal offense, and a cause for the forfeiture of the charter of any such corporation, and further provided "that any contract or agreement in violation of the provisions of this Act shall be absolutely void and not enforceable either in law or equity (Sec. 8, p. 365).

On April 3, 1901 (p. 119, fol. 20), at the instance of certain of the stockholders of the National Salt Company, a suit was begun in the Court of Common Pleas of the County of Cuyahoga, by the National Salt Company against the United Salt Company and other defendants, including all of the

registered holders of the certificates of indebtedness (p. 124) for the purpose of having it adjudged that said agreements (including the certificates of indebtedness) were null and void (p. 347, fols. 20 and 30). The declaration in said suit set out the facts of the combination, also that to conceal the real object and purpose of the transaction, and to avoid the said Anti-Trust Law of Ohio, the combination took the form of a purchase and sale as between the individual stockholders of the United Salt Company and the National Salt Company; that thereafter the combination became effective, and competition in the State of Ohio ceased (p. 344, fol. 20).

The defendants at first demurred to the complaint, but (p. 128, fol. 1; p. 134, fols. 1 and 10), the demurrer was overruled by Judge Stone, who in an able opinion held that the provisions of the Valentine Act applied to this case, and said (12 Ohio Decisions, 386):

> "As stated by the Supreme Court in the case just considered (Buckeye Pipe Line case, 61 O. S., 520), the anti-trust laws of the United States and of various states are not materially different in their provisions. The anti-trust law of Illinois varies in no essential particular from the Valentine act; indeed they may be said to be almost identical in arrangement and phraseology, and the Supreme Court of Illinois, in the American Glucose Co. case, 182 Ill., 551, had occasion to consider the character of the anti-trust law in that state, in an action brought by individual stockholders to prevent a combination and a consolidation of competing corporations. Six different companies or partnerships, for the purpose of combining the business of manufacturing glucose into one company, entered into agreements or gave options for the sale of their respective properties to the company to be organized under the laws of New Jersey, I believe,

with a capital of forty million dollars. These contracts and agreements made provisions as to how compensation should be made, either in money or in stocks, common and preferred, of the consolidated company. All these contracts, agreements and options were deposited with the Illinois Trust Company as trustee, as incidental to the carrying out of the scheme and plan proposed. The plaintiffs, who were dissenting in one of the constituent companies owning and operating a glucose plant at Peoria, Illinois, brought an action to enjoin the carrying out of the proposed consolidation. The bill contained the usual averments to be found in this class of actions involving anti-trust laws. The Court, upon full hearing, sustained the petition and granted the relief sought. The Court, among other things, held as follows (I read from the 5th Subdivision of the syllabus):

> 'A trust is created where a majority of the stockholders in competing corporations consolidate their interests by conveying all their property to a corporation organized for the purpose of taking their property, when the necessary consequence of the combination is to control prices, limit production or suppress competition in such a way as to create a monopoly.'

("Further quoting from the syllabus):

> 'The public policy of the State of Illinois has always been against trusts and combinations organized for the purpose of suppressing competition and creating monopoly.'

"Undoubtedly the public policy of Ohio has been against trusts and combinations in restraint of trade. This public policy has found expression judicially in the case of

Central Ohio Salt Co. *v.* Guthrie, 35 O. S., 66;
Emory *v.* Ohio Candle Co., 47 O. S., 620;
The Standard Oil case, 49 O. S., 167;

and other cases that might be cited. It has found *legislative expression* and *sanction* in the passage of the so-called Valentine act."

Answers were then interposed by the American Trust Company, by the claimants herein, Erickson Perkins and Sarah A. Perkins (Estate of), and by F. B. Squire, Herman Frasch and John Harkness Brown, who were the Registered Holders and immediate assignors of the Certificates of Indebtedness of claimants herein (see Claimant's Exhibits 6-51, pp. 292-306), the list being furnished by the American Trust Company (pp. 123, 124). (See also list of Registered Holders attached to the proof of claim of American Trust Company Claimants (p. 321, fol. 30; pp. 323-325.)

The Registered Holder of Exhibits 6-9, H. A. Hutchins, was duly served and made a party to the suit (p. 121), but defaulted in pleading (p. 558, fols. 1 and 10).

The various answers (pp. 367-394) deny the allegations of the complaint as to illegal combinations, claim estoppel against the National Salt Company by reason of representations made to the Stock Exchange, and so brought to the attention of the investing public so that the certificates of indebtedness were bought by the public (pp. 391-393).

Thereafter a great deal of evidence was taken, in July, 1902, amply sufficient to sustain the allegations of an illegal combination under the Ohio law, and an illegal guarantee of dividends (pp. 395-568).

The National Salt Company went into the hands of Receivers in October, 1902, and then negotiations were begun by the defendants looking to a settlement of the action apparently in the line of the opinion of Judge Stone.

The American Trust Company refused to consent to any decree, so a regular trial was had, be-

fore Judge Stone; witnesses were sworn, the evidence was heard, and Judge Stone rendered the decree of December 12, 1903 (pp. 128, 129).

The decree was entered by consent of all the parties to the action except the American Trust Company, and with the knowledge, if not the tacit consent, of all the claimants hereto (pp. 126, 127).

The decree adjudged the agreements (including the certificates of indebtedness) *null and void,* and ordered the cancellation and return of the certificates of indebtedness (p. 551, fol. 1), the cancellation of the certificates of stock of the United Salt Company issued to the National Salt Company, the distribution of the stock of the United Salt Company to the former owners or their transferees (p. 560); the capital stock of the National Salt Company, deposited with the American Trust Company, to be reassigned to the National Salt Company.

No appeal from this decree was ever taken by any defendant, and the time therefor has long since expired.

The claimants purchased their certificates of indebtedness in the early part of 1901, but (with the exception of the Perkins) never had them exchanged for new certificates, which under the terms thereof were to be countersigned and registered by the American Trust Company.

They bought under circumstances which charged them with actual notice of the illegality of the certificates, as the Receivers held.

In this connection, in respect to the equities of the case, this Court is particularly requested to note that the evidence shows that the National Salt Co. paid on account of these certificates of indebtedness to the owners of the stock the sum of $314,736.10; while the total value of its physical property outside of the real estate was but $300,000, and that with the real estate it brought at Receiver's sale $105,000, all of which (after the pay-

ment of debts) went to the original stockholders or their transferees, to whom their original stockholdings were to be returned under the decree of Dec. 12, 1903; that it furnished money to the amount of $89,000 to the United Salt Co.; that the National Salt Co. never received one cent from the United Salt Co. (White's letter of Jan. 16, 1901), and that its purchase of the United Salt Company was caused by false statements on the part of the officers of the United Salt Co., acting on behalf of the stockholders.

Further, the records of this Court will show that the National Salt Co. was forced into the hands of Receivers by reason of its alleged purchase of this property, among other things.

The questions presented on this appeal are, in brief, as follows:

I.—The certificates of indebtedness, whether negotiable or not, were absolutely void, the Ohio Statute declaring that such a contract is "absolutely void and not enforceable either in law or equity," as a matter of public policy.

II.—The certificates of indebtedness were not negotiable instruments and therefore subject to the infirmities hereinafter set forth.

III.—Whether the certificates of indebtedness were negotiable or not is of no moment, as the claimants took with knowledge, or means of knowledge, of their infirmities.

IV.—The contracts and agreements in question were against public policy, and illegal and void, for the following reasons:

(*a*) They violated the New Jersey Statutes which prohibit an overissue of stock.

(*b*) The certificates of indebtedness represented a guarantee of dividends of seven per cent. on the preferred stock and ten per cent. on the common stock of the National Salt Company, and were therefore illegal as a guarantee of dividends, whether earned or not, also as violative of the charter of the National Salt Company, which prohibits dividends on preferred stock at a greater rate than seven per cent., and also prohibits cumulative dividends (p. 525, fol. 20), and illegal as also violative of the New Jersey corporation laws (see Sections 18 and 27 of the New Jersey Corporations Act).

(*c*) The contracts and agreements, including the certificates of indebtedness, were illegal, as against the Anti-Trust laws of Ohio, the United States Anti-Trust Law, and the common law against illegal combinations to advance the price of necessaries of life.

V.—The decree of December 12, 1903, of the Ohio Court adjudging the certificates of indebtedness null and void, was binding on the claimants, for the reasons:

(*a*) The American Trust Company represented the holders of certificates of indebtedness, and a decree against said Trust Company was binding on the claimants.

(*b*) The registered holders of all the certificates of indebtedness on which the claimants base their claims herein were parties to the decree, and the decree against them was binding on their unregistered transferees.

VI.—The decree of the Court of Chancery of New Jersey against the claim of the American Trust

Company, which claim included all the claims of the claimants herein, and which claim was presented to the Receivers on behalf of, and at the express instance and request of the claimants herein, is binding on the claimants.

VII.—The claims of Erickson Perkins and of Erickson Perkins as administrator of Sarah A. Perkins, deceased, were passed upon specifically in the Ohio suit, in which both Erickson Perkins and Sarah A. Perkins were parties, and the decision in the Ohio suit is therefore *res adjudicata* as to both of said claims.

POINT I.

The certificates of indebtedness, whether negotiable or not, were absolutely void, and unenforcible herein.

The agreements in question, including the certificates of indebtedness, were to be performed in Ohio; the property of the United Salt Company was in Ohio; the stock of both the United Salt Company and of the National Salt Company was held in Ohio by the American Trust Company, an Ohio corporation; moreover the certificates of indebtedness themselves were not valid until countersigned and registered by the American Trust Company, which said countersignature and registry was done in Ohio, and the said certificates were made expressly payable in Cleveland, Ohio. There can be no doubt, therefore, that these contracts were both made, and

to be performed, in Ohio, and are governed by the laws of Ohio.

Watson *v.* Lane, 52 N. J. L., 550.
Bull & Hill *v.* Consolidated Franklinite Co., 32 N. J. L., 102, 104.
Orient Ins. Co. *v.* Rudolph, 69 N. J. Eq., 570.

Watson *v.* Lane, 52 N. J. R. (23 Vr.), 550, held where it appeared that the seal of the maker, a corporation, was affixed to the paper in New Jersey, and the endorsements were written thereon in the same State, the note was thereafter transmitted to New York, and there delivered to plaintiffs; the note *was made payable in New York City;*

> "the contract was therefore one which by delivery became complete in New York, and it was to be performed in that State. The intent of the contracting parties was, that it was to become a contract of that State. It was properly held that the note was a New York contract amenable to the laws of that State."

Ball & Hill *v.* Consolidated Franklinite Co., 32 N. J. L., 102, 104, held:

> "The clearly settled and unquestionable rule is that where a note is made payable at a particular place, it is, in all respects, to be treated as if made there, without regard to the place where it is dated or delivered."

In Orient Insurance Co. *v.* Rudolph, 69 N. J. Eq., 570, a policy of insurance issued by a Connecticut corporation covering property in New York, belonging to a resident of New Jersey, contained a clause: "It shall not be valid until countersigned by the duly authorized agent of the company at Mannet, New York", it was so counter-

signed and mailed to the insured at Jersey City. The Court said:

> "Under the decisions, this insurance contract was therefore a New York contract, and governed by its laws, both as to validity, costruction and discharge. Pennsylvania Lumbermen's Mutual Fire Insurance Company *v.* Meyer, 197 U. S., 407."

There further can be no doubt that the uncontradicted evidence shows that the contracts in question were violative of the Anti-Trust Act of Ohio (Receiver's Exh. 1, pp. 361-366); as is discussed fully under Point VII hereof. Moreover, the Ohio Court having full and competent jurisdiction has so held, first upon demurrer (p. 134, fols. 1 and 10) and again upon the trial with the proved facts before it, substantiating each and all of the allegations of the complaint (p. 128, fol. 1). See testimony, pp. 395-568.

The evidence shows a combination made for the express purpose of controlling the production and price of salt; also that the effect of the combination actually was to increase the price of salt from 75 per cent. to 300 per cent., and to drive out competition from the State of Ohio.

The Valentine Act declares every such combination "to be unlawful, against public policy and void" (p. 363, fol. 1); also to be a criminal offense to be punished by fine or imprisonment (p. 364, fols. 1 and 10). The Act further provides: "Sec. 8. That any contract or agreement in violation of the provisions of this Act, shall be *absolutely* void, and not enforceable either in law or equity" (p. 365, fol. 10).

The decree of December 12, 1903, of the Ohio Court has held the certificates to be null and void, and has ordered the return and cancellation thereof. This decree is conclusive as far as its interpretation of this law is concerned. Such con-

tracts at those in question are absolutely void and unenforceable under the Ohio Law, as a matter of public policy.

So also under Vice-Chancellor Stevenson's opinion, these certificates of indebtedness being a part of an illegal original issue of stock were unlawful *in se,* and therefore unenforceable in New Jersey (Point V, *infra*).

These contracts are therefore against public policy and unlawful, not merely in the sense of being *malum prohibitum,* but in the sense of being *malum in se,* and no right thereunder can be enforced in any court; they are as much unlawful and as much against public policy as a contract for the maintenance of a lottery or a gambling house.

Such contracts or obligations thereunder are void and unenforceable, even in the hands of an innocent holder.

The law on this subject has been stated as follows:

> "Where the statute, making the consideration illegal, declares a contract founded on such a consideration to be absolutely void, the language of the statute must be given its proper effect, and so the courts have held that the commercial paper founded on such consideration is void, even in the hands of *bona fide* holders."
>
> Tiedeman on Commercial Paper, Sec. 178.

> "Where a statute expressly declares the contract which forms the consideration of the note or bill to be void, the note or bill is illegal and void even in the hands of a *bona fide* holder for value."
>
> Randolph on Commercial Paper, Sec. 517.

> "If the statute law pronounces the contract evidenced by the bill or note to be void, because made upon a gambling, usurious,

> or other illegal consideration, it is an absolute nullity; and, although in form negotiable, no currency in the market, and no degree of ignorance or innocence on the part of the holder can impart any validity to it."
>
> Daniel on Negotiable Instruments, Sec. 807.

New Jersey Cases:

Gen. Stat. page 2017, section 26, which provides:

> "That any married woman shall after the passing of this Act have the right to bind herself by contract with any person in the same manner and to the same extent as though she were unmarried, which contract shall be legal and obligatory, and may be enforced at law or in equity, by or against such married woman, in her own name, apart from her husband; *provided* that nothing herein shall enable such married woman to become an accommodation endorser, guarantor or surety, nor shall she be liable on any promise to pay the debt, or answer for the default or liability of any other person,"

makes a note executed by a married woman as surety unenforceable by a holder in due course.

Collins, *J.*, in *Vliet* v. *Eastburn,* 34 Vroom, 450 (35 Vroom, 627), page 454:

> "There remains to consider whether the Plaintiff's position of *bona fide* purchaser of the note in suit, without knowledge of its invalidity, will give him any advantage he otherwise would not have. We think not. A void note is no better in the hands of a *bona fide* endorsee for value than in the hands of the payee."

Pitney, *J.*, in *Bank* v. *Schepflin,* 44 Vroom, 29, page 35:

> "Save for the law merchant, the real character of a note might be shown even as

against a holder in due course. But if a contract, although made in fact by a married woman, is one which she is disabled by law from making, it never becomes her promissory note and the rules of the law merchant can have no applicancy to it."

National Bank *v.* Brewster, 20 Vroom, 231.

Thompson *v.* Taylor, 36 Vroom, 107.

In Flagg *v.* Baldwin, 38 N. J. Eq., 219, where the validity of a contract for speculation in stocks was involved, the contract, though legal in New York, where the contract was made, was held unenforceable in New Jersey, where the Statute to prevent gaming (Rev. Statutes, p. 458), declared such contracts were unlawful. The Court said:

"But our law against gaming goes further than to merely prohibit the vice or avoid contracts tainted with it. It declares it unlawful, and so puts the contracts beyond the protection of the laws or the right of appeal to the courts. The reason and object of the law are obvious. The vice aimed at is not only injurious to the person who games, but wastes his property, to the injury of those dependent on him, or who are to succeed to him. It has its more public aspect, for if it be announced that a trustee has been false to his trust, or a public officer has embezzled public funds, by common consent the first inquiry is whether the defaulter has been wasting his property in gambling.

"In my judgment, our law against gaming is of such a character, and is designed for the prevention of a vice, producing injury so widespread in its effect, the policy evinced thereby is of such public interest that comity does not require us to here enforce a contract which, by that law, is stigmatized as unlawful, and so prohibited."

This case was approved and followed in

Minzesheimer *v.* Doolittle, 60 N. J. Eq., 394, at 396,

where the Court said, in a case involving a stock wagering contract of New York sought to be enforced in New Jersey:

> "But the complete answer to the complainants is that the Court's refusal to act does not rest upon regard for the defendants. It is based on the unwillingness of the Court to use the powers which were granted for the furtherance of lawful ends, in aiding schemes the nature of which is condemned by the public policy of the state, a policy which holds a prominent place even in our constitution" (Hope *v.* Linden Park Association, 29 Vr., 627).

The Rule in Ohio:

Rev. Stat. of Ohio, sec. 4269, provides:

> "All promises, agreements, notes, bills, bonds, or other contracts, * * * when the whole or any part of the consideration of such promise * * * is for money * * * won or lost * * * upon any game * * * whatsoever, * * * shall be absolutely void and of no effect."

Held: a check so given was unenforceable by a holder in due course.

Lagonda Nat. Bk. *v.* Portner, 46 Ohio St., 381 (1889).

Minshall, *C. J.*:

> "Notwithstanding the general tendency of courts to construe the word 'void' as 'voidable' only, when used in statutes that affect contracts made in disregard of their provisions, yet where a public policy is to be subserved, as the suppression of usury or gam-

> ing, the settled rule is to give to the language its full force and effect. * * * The individual hardships that may arise in the enforcement of the policy of statutes of this kind are regarded as less than the public inconvenience to be avoided by the suppression of the evils connected with the vice of gambling."

Cases in other States:

Vallett *v.* Parker, 6 Wendell, 615 (New York), held that where the statute declares a note absolutely void, as in the case of gaming, any man who takes an endorsed note does so at his peril, so far as those considerations may have entered into the original arrangement.

Ramsdell *v.* Morgan, 16 Wend., 574.

An Act of Congress for the allotment of land to Indians (approved Feb. 8, 1887) provided (Sec. 5), that: "if any conveyance shall be made of the lands set apart and allotted as herein provided, or any contract made touching the same, such conveyance and contract shall be absolutely null and void." The Indians made a lease of such land and the lessee executed a sub-lease. Held: a note given in payment for such sub-lease was part of a contract as to such land and therefore was made void by the statute and was unenforceable even by a holder in due course.

Larson *v.* First Nat. Bk., 87 N. W. (Neb., 1901), 18.

Sec. 32, ch. 94 of the Gen. Sts. of Vermont providing that "no action of any kind shall be had or maintained in any court of this state, for the recovery or possession of intoxicating liquor, or the value thereof, except such as is sold or purchased in accordance with the provisions of this chapter,"

renders a note given for illegally-sold liquor absolutely void, so that a holder in due course cannot enforce it.

Streit *v.* Sanborn, 47 Vt., 702 (1874).

Royce, *J.:*

> "It has been claimed in argument, that inasmuch as the statute does not in express terms make the securities given for intoxicating liquors illegally sold void, that they are not to be held as void or voidable, except as between the parties to the illegal sale. But we understand that where the language employed in a statute is equivalent to an express declaration that such securities are void, it is all that is required. By enacting that no action should be had or maintained * * * it is clear that the legislature intended, and have in effect rendered, such securities worthless to the possessor, for the reason that no court in the state can entertain any suit to enforce the obligation of any such security. And we hold that the obvious and natural import of the language made use of in the statute, without resorting to any forced or subtle construction, is, to make all such securities absolutely void."

Cobb's Dig., 91 (Georgia), provides: "all contracts made and entered into between party or parties plaintiff or defendant and attorney or attorneys at law, in writing or otherwise, shall be held and deemed null and void, whenever the said attorney or attorneys shall fail to attend in person, or by some competent attorney, to the suit or suits, which he or they contracted to do, until the rendition of a judgment." Held: a note given to an attorney in advance was void where the attorney did not prosecute the suit and could not be enforced by the endorsee.

Weed *v.* Bond, 21 Georgia, 195.

Constitution of Louisiana, Sec. 128, provided: "Contracts for the sale of persons are null and void, and shall not be enforced by the courts of this state." Held: a promissory note, given for the price of a slave, could not be enforced by a holder in due course.

Groves *v.* Clark, 21 La. Ann., 567.
(Also Armstrong *v.* Lecompte, 21 La. Ann., 527.)

Taliaferro, *J.*:

> "If an obligation for the payment of the price of slaves in the hands of a third holder before maturity can be enforced, then there are some contracts for the sale of persons that are not null and void."

Section 1955, Kentucky Statutes, providing that "every contract, conveyance, transfer or assurance, for the consideration, in whole or in part of money, property, or other thing won, lost or bet in any game, sport, pastime, wager, or for the consideration of money, property, or other thing lent or advanced for the purpose of gaming, or lent or advanced at the time of any betting, gaming, or wagering to a person then actually engaged in betting, gaming or wagering, shall be void," makes a note given for a gambling debt unenforceable in the hands of a holder in due course.

Geo. Alexander & Co. *v.* Hazelrigg, 97 S. W. (Ky., 1906), 353; 29 Ky. L. R., 1212.

General Statutes of Connecticut (1866), 484, provides: "That all contracts and securities, whereof the whole, or any part of the consideration, shall be money or other valuable thing, won, laid, or betted, at cards, dice, tables, tennis, bowls, or at any other

game or games, or at any horse-race, or other sport or pastime, or any wager, or the reimbursing or repaying any money, knowingly lent or advanced, at the time and place of such play, horse-racing, or other sport or pastime, to any person or persons so gaming, betting, or wagering, or that shall at such time and place so play, bet or wager, shall be utterly void." Held: a negotiable check given by the stakeholder to the winner for the amount waged was unenforceable by a *bona fide* holder.

Conklin *v.* Roberts, 36 Conn., 461.

In Town of Eagle *v.* Kohn, 84 Ill., 292, where a statute provided that instruments otherwise negotiable, when given under certain circumstances, should be void, the Court said: "Courts are wont "to allow to such peremptory language of a statute "full force and effect, and where a statute expressly "declares that negotiable securities given under cer- "tain circumstances shall be void, to hold them void "even in the hands of a *bona fide* endorsee."

See also

Western Nat. Bk. *v.* State Bank of Rocky Ford, 70 Pac. R. (Colo. App., 1902), 439;

Morris *v.* White, 83 Mo. App., 194 (1900);

Swenney *v.* Edwards, 55 Pac. R. (Wyo. 1898), 306;

Irwin *v.* Marquett, 59 N. E. (Ind. App. 1901), 38;

Alabama Nat. Bk. *v.* Parker & Co., 40 So. R. (1906), 987; 146 Ala., 513;

Hanover Nat. Bk. *v.* Johnson, 90 Ala., 549 (1890);

Wyatt *v.* Wallace, 67 Ark. (1900), 575;

Nunn *v.* Citizens Bk., 53 S. W. (Ky. 1899), 665;

Kuhl *v.* M. Gally Co., 123 Ala., 452; 26 So. R., 535;
Gray *v.* Robinson, 48 So. R. (Miss., 1909), 226;
Lawson *v.* First Nat. Bank of Fulton, 102 S. W. (Ky.), 324.

POINT II.

The certificates of indebtedness were not negotiable instruments.

(1) The original agreements (pp. 348-361) with the United Salt Company's stockholders and the National Salt Company provided in form for certain cash payments by installments, and to evidence such agreement it was provided that the National Salt Company should "execute and deliver to each owner *its agreement*" in the form of the so-called certificate of indebtedness, and that "new *agreements* of like tenor shall be issued in lieu of said original or any reissued *agreements* upon their surrender and cancellation," (p. 350, fols. 10 and 20). It will be evident that these *agreements* or certificates of indebtedness were not considered or intended to be negotiable promissory notes.

The certificates of indebtedness cannot be called "independent obligations," for they were issued as a part of a "Unit"; they were secured by the deposit of the stock of the United Salt Company. They were bought by the claimants as "Units" and considered by them as Units (p. 79, fols. 20 and 30, and p. 80, fol. 1). The agreements were all interdependent.

Moreover, the certificates of indebtedness were secured by the stock of the United Salt Company, and in some measure by the stock of the National

Salt Company, *in the hands of the Trustee,* The American Trust Company. There was no such thing as a sale of the certificates separate and apart from the stock; the sale of the certificates carried the stock security with it until the certificates were paid.

Daniel on Negotiable Instruments, Sec. 834; New Orleans C. & B. Co. *v.* Montgomery, 95 U. S., 16; Merritt *v.* Bartholick, 36 N. Y., 44; Manne *v.* Carlson, 49 A. D. (N. Y.), 276.

The certificates of indebtedness were not bought separately, *but* as a part of a "Unit"; they referred to the other agreements of which all these claimants had full knowledge.

(2) THE CERTIFICATES OF INDEBTEDNESS WERE NOT NEGOTIABLE, BECAUSE NOT MADE PAYABLE TO BEARER OR ORDER SIMPLY, BUT COULD HAVE BEEN PAID OFF BY THE NATIONAL SALT COMPANY BY PAYMENT TO THE AMERICAN TRUST CO., WHICH IN TURN COULD HAVE LEGALLY PAID THE REGISTERED HOLDER WITHOUT REGARD TO THE ACTUAL HOLDER OF THE CERTIFICATE.

To be negotiable, an instrument must have the quality of "a circulating credit like the currency of the country." It must provide for payment, *to bearer or to order,* of a specified sum of money absolutely and at all events (Dan. Neg. Inst., S. 28).

McClelland *v.* So. Ry. Co., 110 N. Y., 469, 475, held that to constitute a negotiable paper, it is essential by established rules "that such paper should provide for the unconditional payment to a person or order or bearer of a certain sum of money at a time capable of exact ascertainment."

The element of certainty is taken away from an instrument which can be paid to one or other of two parties.

As is said in Daniel on Negotiable Instruments, Sec. 103: "And it may be considered as settled that a bill or note payable in the alternative is not negotiable."

In Blauckenhagan *v.* Blundell, 4 B. & Ald., 418, the Court said, "For if a note is made payable to one or other of two persons, it is payable to either of them only on the contingency of its not having been paid to the other, and is not a good promissory note within the Statute."

Walrad *v.* Petrie, 4 Wend. (N. Y.), 576, in acc.

Osgood *v.* Pearsons, 1 Gray, 455.

Carpenter *v.* Farnsworth, 106 Mass., 561.

In these certificates it is provided that "the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured *to the American Trust Company of Cleveland,* Ohio, in trust to pay the same to the *registered* holder hereof upon demand;" and that the "instrument shall not be valid until countersigned and registered by the said Trust Co." It also provides for the registration of assignments and the issuance of new agreements.

Under these provisions no unregistered holder could ever know whether or not the certificates had been paid off. The Trust Company could pay the *"registered"* holder without regard to the *actual* holder; its trust duty was solely to the *registered* holder.

While as between the registered holder and his transferee, a transfer by endorsement and delivery might be good, yet as to the American Trust Company, the transfer was not effective till the surrender of the old certificate, and the issuance of a new

certificate countersigned and registered by the Trust Company.

The instrument has not the quality of currency, for at any moment it might have been legally paid off to someone not the holder of the paper instrument.

As was said by Vice-Chancellor Stevenson (p. 60):

> "I shall not take up the question whether the reference in this instrument to other papers affects this question of negotiability. There were some other objections to the finding in favor of the negotiability presented by counsel which I do not stop to recall. In my judgment it is sufficient, to establish the fact that this instrument is not negotiable, to point out the condition which, at the start, confronts the purchaser of this piece of paper. The certificate starts out with an agreement on the part of the National Salt Company to pay to a party named, or to his order, a sum of money, at the office of the American Trust Company of Cleveland, Ohio, in ten equal semi-annual installments, beginning January 1, 1900. The paper then provides that "the failure to pay any installment when due shall make all future installments become at once due and payable." It may be conceded that that provision does not affect the negotiability of the paper. The certificate then proceeds as follows:
>
> "Until such default shall have occurred the National Salt Company may at any time cause its liability under this instrument to be discharged by paying the amount of all future installments hereby secured to the American Trust Company, of Cleveland, Ohio, in trust to pay the same to the registered holder hereof upon demand."
>
> Now, who is the "registered holder" of this piece of paper? I confess that I have no difficulty—I do not see how there can be room for argument as to what person is intended by that phrase. The original option

agreement, dated July 20, 1899, signed by all these stockholders, under which they disposed of their holdings to the National Salt Company and took its stock, and took these certificates, provides for the form of certificate which the United Stockholders are to receive in case this option is acted upon. The form of certificate is attached to this option agreement, and the agreement provides as follows:

"To evidence the agreement of the National Salt Company to make such payments, it shall execute and deliver to each owner its agreement substantially in the form shown in Exhibit 'A,' attached hereto and made part hereof. New agreements of like tenor shall be issued in lieu of said original or any reissued agreements, upon their surrender and cancellation, for such amounts as the holder may desire"— ('the holder may desire,'—the man who presents the certificate)—

> 'not exceeding in the aggregate the amount then unpaid upon the agreements so surrendered and cancelled, and before such original or re-issued agreements shall become binding upon said National Salt Company they shall be registered and countersigned by The American Trust Company of Cleveland, Ohio, and the said Trust Company shall be required to keep a record of all agreement so registered and countersigned.'

"The certificate at the end contains this paragraph:

> 'This instrument shall not be valid until countersigned and registered by the said Trust Company.'

"Then follow the blank places for the signatures, and then we have these words: 'Countersigned and registered' and then a blank place for the signature of the officer of the American Trust Company, which is required to countersign and register these papers.

"Now, isn't that scheme perfectly plain? Every one of these certificates, when it was delivered, was countersigned and registered and a record thereof kept by The American Trust Company. It was a promise on its face to pay the amount mentioned to the party named in the certificate, or his order. The party receiving that certificate could transfer it by endorsement, by delivery—could sell it to anybody; but the party who received this paper, it was expected would come to the Trust Company, the registrar, and get his own certificate in his own name and that would be countersigned and registered.

"Of course, the paper would pass from hand to hand. It might go through the hands of a dozen owners, no one of whom might deem it worth while to go or to send out to Cleveland, Ohio (I think the Trust Company was located there), and surrender the certificate thus bought in the market and get a new one countersigned and registered in its place.

"But during that period perhaps, while one of these papers was going from hand to hand in New York, on the street, there seems to be nothing to prevent the National Salt Company, under the terms of this express provision, from discharging itself from all liability by paying the amount of all future installments secured by this certificate to the American Trust Company of Cleveland, Ohio, "in trust to pay the same to the registered holder hereof upon demand." "Hereof"—that means that paper. Who is the registered owner of one of these certificates after it has been sold perhaps four or five times and passed through four or five hands? Why, the registered holder is the party who appears upon the books of the Trust Company as the holder of that paper. There cannot be any other registered holder, according to this scheme, until the purchaser —owner of the paper—deriving title perhaps through half a dozen individuals, his predecessors, has surrendered the certificate

and obtained a new one which will be countersigned and registered and will show on its face that it belongs to him.

"Now that is an exposition which I am forced to make of the meaning of this agreement, and it seems to me that it is impossible to attribute negotiability to such a paper as that. The paper does not on its face bear a promise to pay the amount named to the holder or owner absolutely and at all events. As it passes from hand to hand every man who gets it by a title from the original registered holders knows right well—is warned—that no promise is made to him that is absolute. The only promise that is made to him is that the money will be paid if the National Salt Company has not seen fit to avail itself of the privilege which it reserves to itself in that paper of paying the entire amount to the Trust Company in trust for the registered holder, to be paid over to the registered holder on demand. All parties are acquitted is the money is paid by the National Salt Company to the Trust Company, and then is paid by the Trust Company to the registered holder on demand."

It was very strange that the feature of the paper affecting so vitally the question of its negotiability was not discussed by Judge Wallace in the Federal Court decisions (as was pointed out by Vice-Chancellor Stevenson, p. 64, fols. 10 and 20), as well as the absolute knowledge of the illegal character of the paper which the uncontradicted evidence in the case in the United States Court showed was possessed by the plaintiff Ingraham, but we believe that Judge Wallace was too greatly swayed by what he called the unmeritorious conduct of the Salt Company in "skulking behind a factitious wrong to stockholders in order to repudiate the contract while it retains its fruits" (130 Fed. Rep., 676).

It now appears that whatever wrong was done, was done by the United Salt Company, that its

property was not worth the amount of its own capital stock, that its much vaunted process of making salt was worthless, that it was in such shape that in April, 1901, it went into the hands of a Receiver, and was sold for less than the amount of money actually paid by the National Salt Company to the stockholders of the United Salt Company, viz.: $314,736.10, which the decree of December 12, 1903, left, with all the stock of the United Salt Company, in the hands of such stockholders (p. 559, fols. 1 and 10), and that the value of its property was grossly misrepresented by the President of the United Salt Company, who acted as agent for all the stockholders in making the sale.

The United States Court had prior thereto (122 Fed. Rep., 40, 44) held the certificates of indebtedness to be not negotiable, on their very face, and it is a fact that these questions were not again discussed by the attorneys for the National Salt Company on the second appeal, but only the questions raised by the second appeal, namely, whether certain questions should have been left to the Jury.

(3) The certificates of indebtedness refer to and practically incorporate therein the agreements of July 20, 1899, and the trust agreement of October 2, 1899, to which reference must be had to determine the conditions under which the instrument may or may not be payable. The character of non-completeness on their face destroys their negotiability.

Judge Lacombe, in his opinion in 122 Fed., 40, at page 45, said:

> "The only remaining question is whether the plaintiff, who bought the certificates from the original holders, or from some intermediate transferees, has acquired any better title by the transaction. The authorities seem to require a negative answer to this question. In McClelland *v.* Norfolk South-

ern R. Co., 110 N. Y., 469; 18 N. E., 237; 1 L. R. A., 299; 6 Am. St. Rep., 397, the coupons sued upon read as follows:

> "'On the first day of (blank month and year) the Elizabeth City and Norfolk R. R. Company will pay to the bearer at its financial agency in the City of New York, thirty dollars in gold ($30), being six months' interest then due upon its first mortgage bond No....
>
> "'W. S. DOMINICK, Treasurer.'

"The Court held that:

> "'The reference in the coupons to the mortgage and bonds, and in the bonds to the terms and conditions of the mortgage, clearly, we think, charges the holders of both coupons and bonds with notice of the provisions contained in each of such instruments.'

"McClure *v.* Township of Oxford, 94 U. S., 429, 24 L. Ed., 129, was an action upon coupons detached from the bonds of a municipal corporation, and purchased by the plaintiff in error before maturity. The coupon was in the usual form—promising to pay to bearer the sum of $25 at the American Exchange National Bank, 'being the semi-annual interest due on bond No. 1, issued April 15, 1872.' Referring to the coupons, the Court says:

> "'Upon their face, they refer to the bonds, and purport to be for the semi-annual interest accruing thereon. This puts the purchaser upon inquiry for the bonds, and charges him with notice of all they contain.'

"The documents referred to in the certificate in this case indicate that the agreement was to guarantee dividends, as above described. The transfer of the certificates of indebtedness to the plaintiff for value did not relieve them from any infirmity which made them unenforceable in the hands of the original holders."

Though his decision was reversed on the second appeal, yet his reasoning appears unanswerable, and we think that Judge Wallace must have misread the facts in McClelland *v.* Norfolk Southern R. R. Co. (110 N. Y., 469) when he said, "If, *as in cases like McClelland* v. *Norfolk Southern Railroad Company (110 N. Y., 469)*, the recitals had made the principal or interest payable upon the terms mentioned in the deed of trust, those terms would, of course, have become a part of the promise, and the negotiable character of the instrument would have to be ascertained by reference to them."

The cause of action in the McClelland case was based solely upon the *coupons,* as recited above by Judge Lacombe, and the only reference to the bonds or the terms thereof contained in said coupon was with reference to the "interest then due *upon its first mortgage bond No.....*" There was nothing in the coupons making their payment conditioned upon any terms mentioned in the bond, or any conditions whatever, yet the Court held that the reference made to the mortgage bond charged the holder with notice of the provisions contained in both the mortgage and the bond, and that if the provisions of the mortgage contained provisions which would allow the majority of the bondholders to waive defaults in the payment of moneys secured by the mortgage, the coupons could not be held to be negotiable instruments.

The Court held (p. 474):

> "In determining the character of the coupons, in respect to their negotiability, the Court is required, we think, to examine each of the securities simultaneously executed by the defendant, viz.: the mortgage, the bonds and coupons, for the purpose of discovering the intent and meaning of the contract thereby made. The reference in the coupons to the mortgage and bonds, and in the bonds

to the terms and conditions of the mortgage, clearly, we think, charges the holders of both coupons and bonds with notice of the provisions contained in each of such instruments. If, therefore, according to the plain intent and meaning of the provisions in the mortgage, it was designed to invest a majority of the bondholders thereunder with power, at their option, to waive defaults in the payments of moneys secured by said mortgage, we do not see how the claim that these coupons were negotiable instruments can be supported. If such coupons were negotiable instruments invested with the qualities pertaining to such securities, the mortgage and bonds to which they were attached when issued cannot be resorted to to qualify, limit or explain the agreement therein expressed. In that event their holders, having purchased them in good faith for value and without notice of any defense existing thereto, would be entitled to maintain an action thereon and recover according to well settled principles of commercial law.

"If, however, these coupons contained notice to the holders of any facts or circumstances showing that the time of their payment was subject to a contingency over which the holder had no control, and which might postpone their payment indefinitely, then they could not be said to be *bona fide* holders thereof, as the negotiability of the paper would be thereby destroyed. It is undoubtedly the general rule that the bonds of railroad, manufacturing, municipal and other like corporations, payable to bearer, issued for the purpose of securing loans of money, are, in this country, deemed negotiable, and coupons thereto attached partake of the same character [Rorer on Railroads, 250; Everson *v.* Bank of Newport, 66 N. Y., 14; Thompson *v.* Lee County, 3 Wall., 327; Commissioners *v.* Aspinwall, 21 How. (U. S.), 539]. But when such instruments contain special stipulations and their payment is subject to contingencies not within

the control of their holders, they are, by established rules, deprived of the character of negotiable instruments, and become exposed to any defense existing thereto, as between the original parties to the instrument. It is essential by such rules that such paper should provide for the unconditional payment to a person, or order, or bearer, of a certain sum of money at a time capable of exact ascertainment [3 R. S. (7th Ed.), 2243; Daniel Negotiable Instruments, Secs. 27-104; Evertson *v.* Bank of Newport, *supra;* Frank *v.* Wessels, 64 N. Y., 155; Dinsmore *v.* Duncan, 57 *Id.,* 580]. It would seem therefore, if these coupons were subject to the condition that the time of their payment could be changed, altered and postponed from time to time at the option of a majority of the holders of the series of bonds simultaneously issued therewith, it would deprive them of one of the essential characteristics of negotiable paper.

"It was held in McClure *v.* Township of Oxford (94 U. S., 429), in an action upon coupons detached from the bonds of a municipal corporation, which were substantially similar in form to the coupons under consideration, that the bonds carried upon their face unmistakable evidence that the forms of law under which they purported to have been issued had not been complied with. * * * This suit was brought upon coupons detached from the bonds purchased by the plaintiff in error, before maturity, but, upon their face, they refer to the bonds, and purport to be for the semi-annual interest accruing thereon. This puts the purchaser upon inquiry for the bonds, and charges him with notice of all they contain."

Batchelder *v.* C. W. G. Co., 131 N. Y., 42.

United States M. Col. *v.* Sperry, 138 U. S., 313.

Ketchum *v.* Duncan, 96 U. S., 659.

In Coffin *v.* Spencer, 39 Fed. Rep., 262, the instrument in question contained a clause that practically allowed the payee and endorser to extend the time of payment.

The Court held:

> "Every successive taker of the paper is, of course, bound to take notice of this stipulation, and, instead of looking only to the face of the instrument for the time of its maturity, as in case of commercial paper he must, is put upon inquiry whether or not any agreement for a renewal or extension of time has been made by his proposed assignor or by any previous holder. 'A bill of exchange always implies a personal general credit, not limited or applicable to particular circumstances and events, which cannot be known to the holder of the bill in the general course of negotiation' (Story, Bills, S. 46). And in Hartley *v.* Wilkinson, 4 Maule & S., 25, Lord Ellenborough says: 'How can it be said that this note is a negotiable instrument for the payment of money absolutely, when it is apparent that the party taking it must inquire into an extrinsic fact in order to ascertain if it be payable.' See, also, Insurance Co. *v.* Bill, 31 Conn., 534. The note in suit, it seems clear enough, cannot be deemed negotiable."

The certificates of indebtedness refer directly to the contracts in question, and these contracts, as was said by Judge Lacombe (120 Fed. Rep., 45), "indicate that the agreement was to guarantee dividends."

(4) The certificates are not negotiable because payable out of a particular fund.

Daniel Neg. Insts., Sec. 50.

The agreements read together provide for the payment of dividends to the Trust Company, creating a fund which the Trust Company shall apply

to the payment of the instalments as they come due. And it is only in case this fund did not equal the instalments that the National Salt Company had to pay anything on these certificates.

These dividends were to be paid to the Trust Company as declared, the Trust Company was to pay three per cent. thereon from the date of receipt till they were disbursed, and if the fund so created was sufficient to pay the instalments provided for by the certificates of indebtedness, the National Salt Company had nothing further to do in the matter (p. 357, fols. 20, 30). The Salt Company paid these moneys as dividends only, and not on account of the certificates of indebtedness, and the Trust Company, the holder of the stock of the National Salt Company, took them as dividends, but by agreement applied them to reduce *pro tanto* the amount of the certificates of indebtedness before the National Salt Company had any duty whatsoever as to the payment of the certificates. The payments were made out of this *fund* in the hands of the Trust Company.

It is in evidence that at the time of making the decree of Dec. 12, 1903, the sum of $42,840.76 was in the hands of the Trust Company applicable to the payment of these certificates (see Ohio Decree of December 12, 1903). There was therefore still a fund out of which at least a part of these certificates might have been paid.

The National Salt Company might never have had to pay anything on these notes outside of its regular dividends. In effect this is an instrument payable out of a particular fund, made by the declaration of dividends, which in itself makes the certificates non-negotiable.

(5) Further, the Trust Company held the stock of the United Salt Co. upon trust, not simply as collateral to the certificates of indebtedness, but to

secure the performance of the various covenants of all the agreements on the part of the National Salt Company. In case of any default upon proper demand the Trust Company was to sell the stock and apply against the certificates of indebtedness. This could be done in case of any default other than the payment of the instalments, in advance of the maturity of the certificates of indebtedness, or any of the instalments thereof (p. 353, fols. 20-30). In other words, if the National Salt Company should permit a contract for the purchase of exhaust steam, or should mortgage improvements for utilizing such exhaust steam, or otherwise fail to perform any covenant other than default in payment of the certificates of indebtedness, the Trust Company could sell the stock of the United Salt Company, and pay off *pro tanto* the certificates of indebtedness. (Agreement of Oct. 2, 1899, pp. 354-356.)

Daniel, Neg. Insts., S. 50.

It will be particularly also noted that this payment could have been made to the *Registered Holder,* thus further depleting the amount which an unregistered holder might find was all he could get upon an ultimate settlement.

The case of Lincoln Nat. Bank *v.* Perry, 66 Fed. Rep., 887, is in point where the question of the negotiability of a similar agreement was involved. The Court held:

> "It will be observed that there is embodied in the note an agreement to the effect that if there shall be any depreciation, prior to the maturity of the note, in the collateral deposited to secure its payment, then the payee or any holder may call for such further security, as he deems satisfactory, and if the same is not furnished within two days, may proceed at once to sell the collateral. It is undoubtedly true, we think, that it would be the duty of the holder of the paper

to make an immediate application of the proceeds of the collateral, if, under the aforesaid stipulation, he elected to sell the collateral in advance of maturity. While the agreement is silent as to the application of the proceeds in case of the sale of the collateral before maturity, yet it is fair to infer that the parties intended an immediate application of the proceeds towards the extinguishment of the maker's liability. Any other interpretation of the agreement would authorize the holder of the paper to sell the collateral before maturity, retain the proceeds, and thereafter dispose of the paper to a third party without indorsing the amount that had been received from the sale of the collateral. It is not probable, we think, that the makers of the note intended to enter into an agreement that would authorize the payee to thus deal with the note and the security. Wherefore, it must be held that the agreement, rightly interpreted, contemplated an immediate application of the proceeds to the payment of the note, in case of a sale of the collateral either before or at maturity. Is a note which contains such a stipulation in the body thereof a negotiable instrument? One of the chief requisites of a negotiable note or bill is that it shall show with certainty the amount payable thereon at maturity, and that it shall not be cumbered with conditions which render the amount then payable uncertain. As was said in Costello *v.* Crowell, 127 Mass., 293 (and the language was quoted with approval in the case of Bank *v.* McCord, 139 Pa. St., 52, 59; 21 Atl., 143), 'it is settled by an uninterrupted series of decisions that any language put upon any portion of the face or back of a promissory note, which has relation to the subject matter of the note, by the maker of it, before delivery, is a part of the contract, and that if, by such language, the payment of the amount is not necessarily to be made at all events, and of the full sum, in lawful money, and at a time certain to arrive, and subject to no contin-

gency, the note is not negotiable. See also Daniel, Neg. Inst., §§ 51, 52.' The last rule stated is too familiar to justify further citations.' * * *

"It is manifest, however, that an important element of uncertainty is destroyed by a collateral agreement appended to a note which may cause a payment to be made thereon of an uncertain sum at an uncertain time before maturity, and thus render the amount payable at maturity somewhat less than the amount specified on the face of the paper. A note of that description, which carries with it the probability, or even the possibility, that it may be partially or wholly extinguished before maturity, differs essentially from bank bills and other forms of currency which negotiable paper is supposed to resemble, and whose functions it has intended to perform. It has accordingly been held in several well considered cases that stipulations of that nature embodied in a promissory note will impair its negotiability. Thus, in the case of Bank *v.* Wells, 73 Wis., 332; 41 N. W., 409, a note contained a collateral agreement authorizing the holder to sell, at the maturity of the paper, certain warehouse receipts for provisions that had been deposited as collateral security, 'or (to sell the same) before (maturity) in the event of said security depreciating in value. * * * and to apply so much of the proceeds to the payment of this note as may be necessary to pay the same.' It also contained this further provision: 'And in case the proceeds of the sale of said collateral * * * shall not cover the principal, interest and expenses, we promise to pay the deficiency forthwith after such sale.' It was held that such a stipulation appended to the note destroyed its negotiability, by introducing into the instrument an element of uncertainty as to the amount payable in case any sum was paid before maturity, and as to the time when it would be paid. It was also said that it was probable that, had no ex-

press authority been given to sell the collateral before maturity, there would still have remained an element of uncertainty that would have been fatal to negotiability. In the case of Smith *v.* Marland, 59 Iowa, 645; 13 N. W., 852, the note sued on contained a stipulation, in substance, that if the payees, at any time, considered themselves insecure, they or their indorsers might declare the note due, and take possession of certain personal property for which the note had been drawn, and sell the same on five days' notice. It was held that the note in question was not negotiable because the amount which might be payable thereon at maturity was uncertain. In a later case decided by the same court (Bank *v.* Taylor, 67 Iowa, 572; 25 N. W., 810) the note in suit contained a collateral stipulation authorizing the payee, whenever he deemed himself insecure, to take possession of certain personal property for which the note had been given; but, inasmuch as the stipulation did not authorize a sale of the property before the maturity of the paper, it was held that it did not render the amount payable at maturity uncertain, and on that ground alone the case was distinguished from Smith *v.* Marland. A note containing a similar provision to the one found in Smith *v.* Marland, *supra,* was also held to be non-negotiable by the Supreme Court of Kansas. Iron Works *v.* Paddock, 37 Kan., 510; 15 Pac., 574. See, also, Killam *v.* Scheeps, 26 Kan., 310; Bank *v.* Armstrong, 25 Minn., 530.

"We are forced to concur in the view taken by these cases, that the negotiability of a promissory note ought not be upheld when it contains an agreement authorizing the holder in a certain contingency to demand such further collateral security as he deems satisfactory, and if it is not furnished, to sell the original collateral and to apply the proceeds in payment of the paper before it has become due. Under existing decisions permitting negotiable notes to contain a stipula-

tion authorizing the sale at maturity of collateral securities, and, in some States, authorizing the insertion of an agreement to pay exchange and attorney's fees, as well as a warrant to confess judgment, such instruments have already been burdened with all the luggage which they can conveniently carry. Furthermore, as notes and bills are designed to circulate freely, and to take the place of money in commercial transactions, sound policy would seem to dictate that they should be in form as concise as possible, and that the obligation assumed by the maker or makers should be expressed in plain and simple language. Woods *v.* North, 84 Pa. St., 407; Johnston *v.* Speer, 92 Pa. St., 227; Bank *v.* Bynum, 84 N. C., 24. It is easy to foresee that, if parties are permitted to burden negotiable notes with all sorts of collateral engagements, they will frequently be used for the purpose of entrapping the inexperienced and the unwary into agreements which they had no intention of making against which the law will afford them no redress. We hold, therefore, that the note in suit was a non-negotiable instrument."

POINT III.

The claimants had knowledge or means of knowledge that the certificates of indebtedness were illegal.

The Receivers claim that the certificates of indebtedness were not negotiable instruments, and that the rights of the claimants are therefore subject to all defenses.

But the evidence further shows that the claimants had actual knowledge or means of knowledge that the certificates were in truth an illegal guarantee of dividends and a part of a general scheme

in restraint of trade, and further, that the original issue of the stock of the National Salt Company was illegal.

Each of the claimants or their purchasing agents had knowledge of the pamphlet issued by Stewart Barr & Co. (Exh. 3, pp. 269-282), prior to the purchase of said certificates, and also the Stock Exchange statements (Exhibits C4, p. 282, and C5, p. 289).

The Stewart Barr pamphlet contained copies of all the documents under which the purchase was made, and, in addition, the following:

"NATIONAL SALT COMPANY.

WHAT ARE THE NATIONAL SALT CO. TRUST CERTIFICATES WHICH WE WERE OFFERING TO INVESTORS AT $115.00?

"They represent one share of the National Salt Co.'s preferred stock;

"One share of the National Salt Co.'s common stock;

"And a certificate of indebtedness given by the National Salt Co., amount still due, $59.50, payable in seven semi-annual payments, July 1st and January 1st each year; these payments are *in lieu of dividends* on the National Salt Co. stock for 3½ years from January 1st, 1901. After 3½ years the holder will become a regular stock owner and receive whatever dividends the Company may declare.

"Consequently for 3½ years from January 1st, 1901, the holder of American Trust certificates will receive the equivalent of 3½% semi-annually on the National Salt Co.'s preferred stock and 5% semi-annually on the common stock.

"These *dividends* are protected by collateral security, consisting of all The United Salt Company stock—three-tenths of the original obligation having been paid, the security is now that much better for the remainder.

> "This insures the owners of these trust certificates 7% per annum on the National Salt Co.'s preferred stock and 10% on its common stock per annum during the early period of the National Salt Co.'s existence, which is always the trying time of corporations."

Here was explicit notice that the agreements were intended to and did guarantee dividends.

The agreements themselves, providing for the payment of dividends to the American Trust Company on the stock of the National Salt Company held by the said American Trust Co. as trustee for the holders of certificates of indebtedness, and then for the payment by the American Trust Co. of these dividends to the holders of the certificates of indebtedness, as instalments thereon, each instalment being at the rate of 3½% on the preferred stock and 5% on the common stock, were certainly (as was said by Judge Lacombe in his opinion in 122 Fed. Rep., 40, 44) "a very transparent device "to guarantee, to such of its stockholders as bought "their stock with that of the United Salt Company, "the payment of dividends for five years to come at "7 and 10% on preferred and common stock, irre-"spective of whether there were any earnings or "profits available to pay dividends or not."

How any ordinary man could fail to understand that this was anything but a guarantee of dividends, is hard to see.

Mr. Tobey, the agent, who purchased the certificates for the claimants Brown, Wick, Otis Wilson & Co. and Wilcox, testified (p. 89) as follows (and it must be remembered that the parties were well aware, at the time of this examination, that the guarantee of dividends was the question at issue):

> "Q. Didn't you understand that they (the certificates of indebtedness) represented dividends on the stock of the National Salt Co.?

"A. Yes and no. You can't declare dividends in advance of earning them.

"Q. Take it as yes: what do I understand (did you understand)?

"A. The equivalent of dividends for the payments that were made. There was a note for the balance."

Tobey also testified to having seen the Stock Exchange Reports (p. 91, fols. 1, 10) prior to the said purchases.

The report (Claimants' Exh. C5) stated:

"STATEMENT OF NATIONAL SALT COMPANY supplemental to Statement dated September 12th, 1900, made by it on application to have securities placed on Unlisted Department of the New York Stock Exchange. * * *

"During the period of trusteeship, and pending the delivery of such shares of National Salt Company stock, any and all dividends declared by National Salt Company on such stock were to be paid to The American Trust Company to be placed to the credit of National Salt Company, to be applied towards the payment of the *semi-annual dividend* next due thereafter to the holders of The American Trust Company's certificate as set forth in the above mentioned agreement, dated July 20th, 1899.

"This agreement of July 20th, 1899, contemplated the payment semi-annually, for a period of five years, of a sum of money which would be the equivalent of 7% per annum on preferred and 10% per annum on common stock of National Salt Company so deposited with the American Trust Company. The agreement provides that if the amount of dividends declared by National Salt Company on such stock held by The American Trust Company are not equal to the sum above referred to, then National Salt Company is to remit to The American Trust Company whatever deficit might exist. The total amount of the *dividend* so assured was evidenced by an instrument which is best

> described as a detached interest coupon, but which, for want of a better name, was at the time inappropriately called 'Certificate of Indebtedness' *representing semi-annual dividends* on the said stock of National Salt Company for the said period of five (5) years."

Tobey further testified that he told the parties for whom he purchased these various certificates all that he knew about the certificates, and handed them the printed circular of Stewart Barr & Company (p. 90, fol. 30).

Erickson Perkins, who acted as purchasing agent for the other claimants, testified that he had received the Stewart Barr pamphlet prior to the purchase of these certificates of indebtedness, and that he had seen the second report of the Stock Exchange above quoted—and was familiar with the contents thereof.

All the claimants bought what is called "Units," viz.: one share of preferred and one share of common stock, with $59.50 of certificates of indebtedness. There was no purchase of the certificates separate from the stock trust certificates issued by the American Trust Co.

The claimants did not buy these certificates of indebtedness as independent negotiable instruments but as part of the purchase of stock of the National Salt Company.

Further, it appears that at the time of the purchase of these "Units," the stock of the National Salt Co. was selling on the Stock Exchange at about $45 for preferred and $75 for the preferred, or a total of $120, while the claimants purchased their Units, viz.: one share of common and one share of preferred *plus* the certificate for $59.50, for $115.

This was plain notice to the claimants that the certificates were without consideration, or a guarantee of dividends.

Further, each purchaser knew from the Stewart Barr pamphlet just what the stock and certificates had been issued for, and they must have known that when the stock of the National Salt Co. was selling on the market at $120, there must have been something to be investigated in the sale of the same stock at $115, with a certificate of $59.50 thrown in.

As Judge Lacombe first said (122 Fed. Rep., 45), the agreements themselves "indicate that the agreement was to guarantee dividends."

But it is claimed that it is not equitable as against these purchasers for the National Salt Company to resist these claims. The evidence shows that the National Salt Company paid on account of these certificates of indebtedness to the owners of the stock the sum of $314,736.10; while the total value of its physical property outside of the real estate was but $300,000; that it furnished money to the United Salt Company (Receivers' Min., p. 145); that the National Salt Company never received one cent from the United Salt Company (White's letter of Jan. 16, 1901), and that its purchase of the United Salt Company was caused by false statements on the part of the officers of the United Salt Company.

Further, the records of this Court will show that the National Salt Company was forced into the hands of Receivers by reason of its alleged purchase of this property, among other things.

It is the stockholders and creditors of the National Salt Company who are to be protected from further loss, and not those who took the securities with notice of their apparent invalidity.

Irrespective of the presumption that the claimants must have known the provisions of the New Jersey law as to preferred stock, and the maximum dividends allowed thereby, the statement of the Stock Exchange itself (Claimant's Ex. 4, at p. 287) gave them notice that the by-laws of the Na-

tional Salt Company expressly prohibited dividends on preferred stock to seven per cent., and to be non-accumulative.

(2) The statement of the Stock Exchange (Claimant's Ex. 4, p. 282), also gave plain notice to every purchaser that the purchase of the Ohio plant was to create, and did actually create a monopoly in the salt business. The statement shows that by the control of the Ohio field, and others, a monopoly in the salt business to the amount of ninety per cent. of the total production of the country east of the Rocky Mountains, had been effected (p. 283, fols. 1 and 10).

If any claimant had enquired further, he would undoubtedly have discovered the increase in market price of salt immediately upon this purchase of from 75 per cent to 300 per cent. This information could have been gained from the market reports, or from any officer of the National Salt Company.

(3) Assuming that every purchaser should have known that the New Jersey law required an original issue of stock at its full face value, such purchaser knew that securities of the National Salt Company to the face value of $356.25, being 1¼ shares of preferred and 1½ shares of common stock, and $106.25 represented by the certificates of indebtedness, had been issued for each share of stock of the United Salt Company of par value of $100.00; he further knew that the stock of the National Salt Company was selling at $40.00 for the common and $75.00 for the preferred, or at $143.75 for 1½ shares of preferred and 1½ shares of common, *with all dividend rights.*

The actual value of said stock *without* the dividends would of course be very much less. The present worth of the certificate of indebtedness would be about $90.00. Any such purchaser would therefore know that the National Salt Company was purchasing stock of the United Salt Company that

was not worth the face value of the stock of the National Salt Company given in exchange, viz.: $250.00, not to say $356.25, and that therefore the transaction was illegal.

This subject is fully treated in the opinion of Vice-Chancellor Stevenson (pp. 68-72) and will be referred to later under Point V.

POINT IV.

Further, the claimants by the purchase of the trust certificates and the certificates of indebtedness, forming one "unit," voluntarily made themselves parties to the scheme represented by the various agreements in question. If this scheme is illegal as providing for a monopoly or for an illegal guarantee of dividends, or otherwise, then the claimants cannot claim the benefit of the scheme, and at the same time claim to be bona fide holders of the certificates of indebtedness without notice of the illegality of the whole scheme.

Unckles *c.* Colgate, 148 N. Y., 529, 536.

Their rights spring out of these agreements *as a whole*, and they are bound by the agreement *as a whole*, and by all their infirmities. They have no better rights than any of the other parties to these agreements.

In Unckles *v.* Colgate, *supra,* the plaintiff bought trust certificates in the Lead Trust formed for the purpose of creating a monopoly. The Court said:

> "The plaintiff here, voluntarily, became a participant in a scheme, which he alleges to have been illegal, by acquiring the trust certificates subsequently to the formation of the trust. In equity there might be a distinction, of some substance, between his case and the other case suggested. In the former, property would have been surrendered to be administered in the owner's behalf and his certificate of trust would represent it and his interest in the trust property. In the present case, the plaintiff has not the excuse of the stockholder; who, influenced to effect an increase of corporate business and of consequent profits, by consenting to the plausible scheme of a combination of rival interests, in good faith parts with his property to the trustees under the provision of an agreement and entrusts them with its control. What interest has the plaintiff, other than that which this certificate suggests, namely: a proportionate interest as a beneficiary in the trust scheme? He could not well lay claim to the ownership of any stocks or property originally surrendered to the trustees. He acquired certificates, which represented the amount of his interest in the trust and which contained a stipulation binding him as their holder to all the terms of the trust agreement. He thus, voluntarily, made himself a party to a scheme under an executed agreement which he alleges to have been illegal, and how can he now say that it is one which he can disaffirm and as to which, upon the plea of disaffirming, he can ask a court of equity to intervene and to compel in his favor an accounting and distribution by the trustees?"

These claimants now seek to recover on these certificates of indebtedness which they admit to be, and designate, as parts of a "Unit" (p. 79, fols. 20

and 30; p. 80, fol. 1; p. 93, fol. 30; p. 101, fol. 1). They must stand or fall according as the agreements constituting the "Unit" are valid or invalid.

In no sense are they holders of independent securities, separable from the other parts of the "Unit." They bought a "Unit," with knowledge of all the agreements; we fail to see under those circumstances how the question of the negotiability of the certificates of indebtedness can be controlling.

There can be no doubt but that the agreements as a whole created an illegal monopoly (see Point VII), and were intended to and did constitute an illegal guarantee of dividends. These illegalities extended to and affected the whole scheme, and every part thereof, including these certificates of indebtedness.

POINT V.

The contracts including the certificates of indebtedness were against public policy, and illegal and void for the reason that they violated the New Jersey statutes which prohibit an overissue of stock.

This infirmity of the transaction in question was discussed at length in the opinion of Vice-Chancellor Stevenson. He said that he was satisfied that these certificates are not enforceable contracts, and that, without discussing the other defects or defenses on behalf of the National Salt Company, there was one additional defense which he thought conclusive, viz: the illegality of an over-issue of stock by the National Salt Company under the rule laid down in Volney *v.* Nixon, 68 N. J. Eq., 605, that an over-issue of stock by a corporation in New

Jersey—an original issue of stock—in violation of the distinct mandates of our Statutes, is against public policy and is therefore unlawful, not merely in the sense of its being *malum prohibitum,* but in the sense of its being *malum in se,* and that no right under a contract for such an over-issue of stock is enforceable by any New Jersey Court, and that any contract or agreement between parties for such a violation of the Statute is as unlawful and as much against public policy as a contract for the maintenance of a lottery or a gambling house. * * *

He said,—"The case of Volney *v.* Nixon has been cited several times, and it is perhaps worth while to take note of the citations of it. Reference may be had to the citation of the case by Mr. Justice Swayze in the Court of Errors and Appeals, in the case of the Ecuadorian Association, L't'd *v.* Ecuador Company (71 N. J. Eq., 757). It is also cited by Vice-Chancellor Pitney in the case of See *v.* Teppenheimer (69 N. J. Eq., 36), the citation being on page 50. It may be worth while to read a portion of pages 50 and 51; 'so far from approving these transactions' (that is to say, over-issues of stock) 'our Court of Errors and Appeals has recently, in a case not yet reported, made a decision and rendered an opinion, in which it disapproves of these inflated transactions in the most emphatic and practical manner.' I allude to the case of Volney *v.* Nixon, since reported (68 N. J. Eq., 605), the opinion in which I have had opportunity to examine, the head note of which is as follows: 'A contract between two persons that, in exchange for their joint property, one of them shall procure from a corporation of this State an original issue of stock to an amount known by all parties to be in excess of the value of the property, and shall divide the stock thus procured from the other person, is illegal; and the Courts of this State will not aid in its enforcement, even although the objectional fea-

ture has been accomplished by the actual issue of the stock.' "

* * * * * * *

"Now, then, with that doctrine before us, what sort of a transaction is this that these parties went into? It seems to me very clear that the whole transaction by which the National Salt Company undertook to issue two million and a half dollars, par value of its stock and give its obligation to pay in cash over a million dollars more in cash for one million dollars, par value of the United Salt Company's stock was a direct, bold violation of our statute. The proof is ample that no appraisement was ever made of the value of the United Salt Company's stock. First of all, we have the option agreement signed by all the stockholders, or most of them, of the United Salt Company, by which they gave the National Salt Company an option to take their stock at a certain price, the price which was afterwards paid. For every one share of United Salt stock the holder was to have one and one-quarter shares preferred stock and one and one-quarter common stock of the National Salt Company, and then he was to have the certificate which entitled him to five annual payments amounting to $106.25. Why it is perfectly plain—must be plain to everyone of common sense, upon perusing these papers—that all parties knew that this was an agreement for the exchange of stock in order to affect a consolidation. There isn't a suggestion that anybody had in view the actual value of the United Salt Company's stock, or the relation of that actual value to the two and one-half shares of the National stock and this peculiar obligation which accompanied it. The stockholders of the United Salt Company who signed this paper knew perfectly well that there was no appraisal of their stock and that a share of their stock, the stock of the United Salt Company of Ohio, was not worth even the par

value of the two and one-half shares of National stock which they were to receive, disregarding the additional cash payment of $106.25.

It appears from the testimony that the stock of the National Company was selling at the rate of $40 for the common stock and $75 for the preferred stock. Now, if you take one and one-quarter shares of each—I made a rough calculation—if you take one and one-quarter shares of each kind of stock, at those prices, the total market value of the whole—one and one-quarter shares of common and one and one-quarter shares of preferred stock, with the full right to receive dividends thereon, was $143.75. The United stockholder, according to this agreement, was to hand over his share, one share of the United stock and receive stock that was less by a very substantial sum in the market than $143.75, because that stock was stripped of all power to receive any dividend for five years. There is no evidence on the subject, but it is perfectly safe to infer that the actual value of that stock, thus denuded of all possible dividends for five years, as determined by the market value of the stock in its natural condition, should be put down very far below $143.75; it might safely be placed, perhaps, at something like $100.

What else did the United Salt stockholder get? Why, he received this obligation of the National Salt Company to make ten semi-annual instalments aggregating $106.25, and if we make allowance—if we discount these payments so as to find out what the real value of that obligation was when that transaction occurred—I did not have time to make a calculation on here in pencil, but I made a rough calculation that the present worth of that obligation at the time this stock was exchanged would be about $90; I think not much more, if any.

And thus we have the United stockholder delivering his one share of the United Salt Company's stock and receiving therefor money and stock which was not worth more than about $190 to $200 at the most. Can there be any doubt about it that every holder of the stock of the United Salt Company knew right well that his stock was not worth $250, not to say $356.25?

I spent some time last night in trying again to go through the very voluminous testimony in this case, to discover every particle of direct testimony in regard to the value of the United Salt Company stock. I may have overlooked something, and I should be very glad if counsel would correct any errors in which I may say on this subject. I only found one piece of testimony and that is contained in the letter from Mr. Squire, the President of the United Salt Company and a large stockholder evidently, and the man who conducted this transaction on the part of the Ohio Company to a very large extent, and he must have been fully informed in regard to all values so far as anybody knew anything about them.

He offered for sale a thousand shares of his stock (which I understand is the stock of the United Salt Company of Ohio) for sixty, and he offered to sell another thousand shares for sixty-five, and he offered to sell out all his holdings, I think, for about sixty-five. Well, it is not shown that all of these certificate holders knew of that fact. But, here we have stock which the President of the Company, and a man who is perhaps more largely engaged in operating it than anybody else, offers to sell for from sixty to sixty-five. We have an agreement which, right on its face, shows that it is an exchange of stock and does not suggest an appraisement of the stock of the United Salt Company of any kind whatever. When we look at what the stockholders of the United Salt Company got and presumably must

have known they were getting, we find that they were taking an original issue of stock from the National Salt Company of the par value of $250 which would not sell in the market for $143.75, stripped of all right to dividends as it was for a period of five years.

It is incredible to my mind that any stockholder of the United Salt Company of Ohio could have supposed that his stock was worth even $250. If the new issue of two million and a half of dollars, par value, of the National stock was to be honestly issued in accordance with the laws of New Jersey, the million dollars of stock, par value, of the United Company had to be worth $3,562,500 less the allowance or discounts to which I have heretofore referred.

It may be worth while to note that this Ohio scheme if lawful suggests a very simple means for evading the statutes of New Jersey which limit an original issue of stock for property purchased to the actual value of such property.

In my judgment this is a plain case where all parties to this transaction—to this complicated agreement—for the exchange of stock of these two companies in order to effect this consolidation are charged with notice that an issue of stock would be made, and was to be made, in pursuance of their agreement, in direct violation of the laws of New Jersey and that therefore, under the ruling in Volney *v.* Nixon, no agreement, no contract, which is a part of that agreement, is enforceable against the National Salt Company."

POINT VI.

The certificates of indebtedness were illegal in that they were intended to and did represent solely a guarantee of dividends on the stock of the National Salt Company.

That the purpose and intent of all the parties to the agreements was to guarantee dividends, is shown:

1. By the fact that the property of the United Salt Co. bought by the National Salt Company was not worth in cash anywhere near the amount paid for it by the issue of $1,250,000 par value preferred and $1,250,000 par value common stock of the National Salt Co., or a total valuation of $2,500,000, and was never considered by the Board of Directors of the National Salt Company as worth $2,500,000 in cash;

2. By the uncontradicted testimony of the witnesses Beardslee, Young and White, and others, to that effect;

3. By the printed statements issued by the National Salt Company, and by the brokers Stewart Barr & Co., known to the claimants.

To recapitulate the evidence:

It appears that the National Salt Company was organized in 1899 for the purpose of acquiring the salt plants of some fourteen other salt companies operating in New York State, *and* the plant of the United Salt Company in Ohio (p. 400, fol. 30; p. 401, fols. 20, 30); Mr. Squire, the President of the United Salt Co., agreed that his Company would go in on the same basis as the New York Companies, viz., share for share, or in other words, his

Company would take $1,000,000 of the stock of the National Salt Company for the total issue of $1,000,000 stock of the United Salt Co.

The New York Companies were sold to the National Salt Company on that basis, but when the final arrangement was to be made with the United Salt Company, Mr. Squire and Mr. Frasch demanded $2,500,000 of the stock of the National Salt Company.

The directors of the National Salt Company told Squire and Frasch that the amount was excessive, out of all proportion to its value; but after months of negotiation they decided to buy it, though they thought the price "terrifically high" (Receivers' Min., p. 144).

In order to make the issue of $2,500,000 stock of the National Salt Company lawful, the Directors of the National Salt Company must have made a *bona fide* appraisal of the actual cash value of the stock of the United Salt Co. at a sum not less than $250 per share—or a total valuation for the United Salt Company property and business of $2,500,000.

The Directors of the National Salt Company relied almost entirely upon the representations of the President of the United Salt Company; they did not examine the books of the Company to ascertain the accounts receivable or payable, or the profits of the Company; they did not examine the merchandise on hand; they did not examine the books at all; they made no appraisal of the physical property of the Company, except the impression that the Directors got who visited the premises of the United Salt Co. in Cleveland (pp. 227, 288); they made no examination of the secret process of making salt, alleged to be very valuable, but which turned out worthless (p. 230). No balance sheet was submitted to them, only an informal memorandum of the President, but no statement showing any assets over liabilities.

What they bought was actually simply a speculation based on prospective and contingent profits, which did not turn out as they expected. The representations of the President of the United Salt Company turned out to be false, and the property was found to be worth much less than even the Directors thought.

The patented process and secret process for making salt at a very small figure turned out to be worthless, and that part of the plant was abandoned (pp. 245 and 246).

When the National Salt Company bought the stock, in October, 1899, the United Salt Company had no cash on hand, and had overdrawn its account $2,532.04, and there was a large amount of notes outstanding (Letter of White of Jan. 15, 1901, p. 268).

The physical property of the Company, exclusive of land, was estimated by White at $300,000 (p. 230); while said property, *including* the land, sold on Receivers' sale at $105,000 (Exh. 1 of Feby. 26, 1907).

White said that at the time of making the deal he did not consider that the property of the United Salt Company was worth within $750,000 of the par value of the stock exchanged therefor.

It is true that in White's letter of January 15, 1901, he says that the profits of the business of United Salt Company for the fourteen months between October 1, 1899, and November 30, 1900, were $125,752.42, but the National Salt Company had turned over all of its Western contracts for salt to the United Salt Company, and had bought salt properties and had them conveyed to the United Salt Company (pp. 507-508); it had furnished over $89,000 of money to the United Salt Company (p. 446, fol. 1); and had practically turned over all its western business to the United Salt Company. Also it will be remembered that immediately after

the sale of the United Salt Company, the price of salt was advanced by the National Salt Company from 75 to 300 per cent. (p. 414, fols. 1, 10). In spite of which facts, on April 1, 1901, the United Salt Company went into the hands of a Receiver, and was subsequently sold out as aforesaid.

The conclusion is inevitable that the Directors of the National Salt Co. did not make a *bona fide* appraisal of the actual cash value of the stock of the United Salt Company at a sum not less than $356.25 per share, nor at any sum over the market value of the stock at that time, viz.: $40 for common and $75 for preferred, or a total of $1,437.50; in fact, that there was no appraisal at all. On the contrary, the evidence is that they considered the purchase price that they had to pay in the stock of the National Salt Company was "terrifically high."

It is perfectly evident from the evidence, therefore, that in any valuation placed on this property by the Directors of the National Salt Company, they never considered the property, including good will and everything else, worth the cash value of $2,500,000; in fact, they never discussed any cash consideration at all, but only an exchange of stock (p. 423, fol. 10). It is also perfectly evident that the property was worth very much less than $1,000,000—the amount of the capital stock of the United Salt Company.

This forces the further conclusion that the issuance of the certificates of indebtedness was without consideration, and for the purpose of guaranteeing dividends, viz., the $106.25, "which exactly "supplied the equivalent of the guaranteed divi- "dends, which in accordance with the terms of the "deal the stockholders of the United Salt Co. were "to have" (Opinion of Vice-Chancellor Stevenson on American Trust Company claim) .

The intention of all the parties was that these certificates should be a guarantee of dividends.

Mr. White testified without qualification and without any contradiction that Mr. Squire, the President of the United Salt Company, further demanded that dividends on the stock of the National Salt Company should be guaranteed, and that these certificates of indebtedness "were absolutely intended as a guarantee of dividends, nothing else" (p. 233, fols. 20 and 30; p. 515, fol. 30); and that he and the Directors knew that the certificates of indebtedness were subject to question as to their legality (p. 261, fols. 20, 21).

Mr. Beardslee corroborates Mr. White in every particular (pp. 410, 415, fols. 20, 30).

So also Mr. John Alvin Young, another Director of the National Salt Co. (p. 485, fols. 10, 20; p. 487, fol. 20).

There is not a particle of testimony to contradict these unequivocal statements of parties to the transaction.

Moreover, the published statements made by the Company, and by the brokers who sold the certificates, set forth the same thing in very plain English (Stewart Barr & Co.'s pamphlet Ex. 3, p. 270, and Nat. Salt Co.'s statements to the Stock Exchange, Exs. C4, p. 254, and C5, p. 289).

It is true that a transaction is not to be condemned as unlawful simply because it accomplished the same object, which was attempted to be accomplished by unlawful means; nor is a transaction to be held lawful, simply because on its face it shows no illegality.

But, admitting that the object of the transaction was to guarantee dividends, we claim that the means taken to accomplish this object were in themselves unlawful.

It is admitted even in the opinion of the United States Circuit Court of Appeals that a guarantee of dividends to a part of the stockholders of the Naional Salt Co. was illegal. The New Jersey corporation law fixes the method of creating preferred stock (Sec. 18 and Sec. 27), and there was no such method pursued in this case. Said law (Sec. 18) forbids the issuance of stock preferred in excess of 8 per cent. per annum, while a part of the stock in question was to be preferred to 10 per cent.

The Charter of the National Salt Company provided that dividends should not be paid unless earned in each year, and should not exceed seven per cent.

We take grave exception to the reasoning of Judge Wallace (130 Fed. Rep., 676, at 679), which would allow the Board of Directors of a New Jersey corporation to issue at will preferred stock not expressly authorized by its charter, or by its stockholders for the purpose of borrowing money or in payment for property purchased.

Now, what were the means used to enable the former stockholders of the United Salt Co. to get the "equivalent" of guaranteed dividends on their stock in the National Salt Co.?

The Directors of the National Salt Company, without any *bona fide* appraisal, and even without any appraisal at all, of the property of the United Salt Company, made an original issue of stock of the National Salt Company to the amount of $2,500,000 for the property of the United Salt Co., although they knew that the owners of the property had originally agreed to take $1,000,000 of the said stock for their property; although they knew that the physical property outside of the real estate was worth not over $300,000; and although they knew that the property was not worth at the most within $750,000 of the par value of said stock;

they further agreed to issue certificates of indebtedness to the amount of $1,062,500. That any fair appraisal of the property and business of the United Salt Company would have shown that the property was not worth even $1,000,000 is sure, when it is considered that the United Salt Co. had no bank account and many debts, when the sale was made; that the secret process turned out valueless; that it went into the hands of a Receiver; and that the physical property brought only $105,000 at Receivers' sale.

This "original" issue of stock was therefore plainly illegal (Volney *v.* Nixon, 68 N. J. Eq., 605; Opinion of Vice-Chancellor Stevenson, *in re* claim of American Trust Co.). The issue of the certificates of indebtedness, as a part of this transaction was without consideration, and therefore beyond the power of any Board of Directors to make.

The certificates of indebtedness cannot be called "independent obligations," for they were issued as a part of a "Unit"; they were secured by the deposit of the stock of the United Salt Company. They were bought by the claimants as "Units" and considered by them as Units (p. 79, fols. 20 and 30, and p. 80, fol. 1). The agreements were all interdependent. The sale of any certificate of indebtedness carried with it the stock pledged to secure its payment.

As was said in Merritt *v.* Barthølick, 36 N. Y., 44: "As a mortgage is but an incident to the debt which it is intended to secure (Martin *v.* Mowlin, 2 Burr, 969; Green *v.* Hart, 1 Johns., 580; Jackson *v.* Blodget, 5 Cow., 202; Jackson *v.* Bronson, 19 Johns., 325; Wilson *v.* Troup, 2 Cow., 231; Cooper *v.* King, 17 Abb., 342), the logical conclusion is that a transfer of the mortgage without the debt is a nullity, and no interest is acquired by it. The security cannot be separated from the debt and exist independently of it. This is the necessary

legal conclusion, and recognized as the rule by a long course of judicial decisions (see cases above cited; also 4 Johns., 41; 5 Johns. Ch., 570; 9 Wend., 80)."

Manne *v.* Carlson, 49 A. D., 276.

It seems clear then that the means taken to effectuate the intention of the parties to guarantee dividends were not legal, but illegal.

The case of Windmuller *v.* Standard, &c., Co., 106 A. D., 246, is not an authority to the contrary, for that was a case where the question involved simply the guarantee of dividends on the stock of *another* corporation, as part of the purchase price, and not a guarantee of dividends on *its own* stock, by a corporation.

We think that Judge Wallace overlooked this whole question of the illegality of original issue of stock under the New Jersey law, and proceeded upon the theory that the Directors could pay for property at any price they saw fit, irrespective of the actual value of the property purchased (143 Fed. Rep., 805). Moreover, the Ingraham suit was a suit at law, and Judge Wallace apparently considered the *defenses* of the National Salt Company from the legal standpoint merely, and not as a Court of Chancery (130 Fed. Rep., 677).

Further, we contend that if this transaction was intended as a guarantee of dividends, the Court can look behind the outward form of the transaction for the true inwardness, and can declare the transaction void, whatever be its outward form.

In Flagg *v.* Baldwin, 38 N. J. Eq., 219, 231, the Court said, where a contract for sale of stocks was held on the evidence to be a mere wagering contract, and therefore void, "My conclusion is that "these transactions, so far as affected by our law "against gaming, are to be examined, to discover "their real nature, and if, however unobjectionable "their form may be, the real contract is merely in

"respect to differences, the contract is a wager, both "void and unlawful."

Field Cordage Co. v. *Nat. Cordage Co.,* 6 Ohio C. C., 615, held that a contract though in form a lease of machinery is contrary to public policy and void, if the parties execute it for the purpose of restraining trade and creating a monopoly; that on the trial evidence of contemporaneous acts and dealings of the parties is admissible as bearing upon the question of whether the real object of the transaction was the creation of a monopoly.

Pittsburg R. R. Co. *v.* Allegheny Co., 63 Pa. St., 126 (also 79 Pa. St., 210, 215), was a case where Allegheny County and the railroad company had entered into a contract, by which the county agreed to purchase stock of the railroad company and pay for the same in county bonds, and the railroad company agreed to pay the interest on the bonds to the holders thereof. The deal was consummated, and the railroad company received the bonds and then sold them to third persons, and afterwards refused to pay the interest. The county sued to recover interest which it was compelled to pay. The Court said that this was in substance a contract to guarantee dividends, whether there were any earnings or not, and it made no difference that it was called a *payment of interest,* and that under ordinary circumstances such a contract would be illegal and void. The Court said:

> "It is not necessary, however, to multiply words to prove what is most apparent, that a semi-annual payment of interest out of capital of a company before any earnings are made is the same injury as if paid as dividends—one is as much within the prohibition as the other, being both within the same mischief. Without express authority or beyond the limits of authority conferred, we think the company had no power to bind

> its stockholders, who constituted the company, to pay interest to the County of Allegheny for a period of thirty years or any other period."

So an insolvent assignment perfectly regular on its face can be shown to be made *with intent to defraud* (Loos *v.* Wilkinson, 110 N. Y., 195), and such intent and fraud can be shown from extrinsic circumstances, such as the acts and declarations of the parties leading up to the assignment as showing the illegal intent (First Nat. Bank *v.* Warner, 55 Hun, 120; Davis *v.* Harrington, 55 Hun, 109), concealment of the assignor's property and withdrawal of property in contemplation of insolvency (Feldstein *v.* Richardson, 27 App. Div., 3, 4; Coursey Morton, 132 N. Y., 556).

So in the case of stock transactions which on their face are perfectly regular as showing a purchase and sale, but which are controlled nevertheless by the *intent;* if the *intent* was that the stocks should be delivered, the contract would be legal, but if the *intent and understanding* was that the difference in the market price should be adjusted between the parties, then the contract would be illegal and void (Dwight *v.* Badgeley, 75 Hun, 174; 60 Hun, 144, 1460). In Cobb *v.* Prell, 15 Fed. Rep., 774, the Court held:

> "The case, therefore, turns upon the questions whether or not it was the intention of the parties that the corn should be delivered. If such was the *bona fide* intention, then the plaintiff is entitled to recover; but if, on the other hand, it was understood that the defendant was not required to deliver the corn, and that the transactions should be adjusted, and settled by the payment of differences, then the contracts were void and the plaintiff cannot recover. Upon this controlling element in the case, as might reasonably be expected, the testimony of the

> plaintiff and defendant is in conflict. Under such circumstances we are obliged to determine the controversy by reference to the actions of the parties in connection with the transactions and their contemporaneous declarations, especially those in writing, having a bearing upon the subject."

So a loan of money on a note of the borrower perfectly regular on its face can be shown to be usurious and void, because, for instance, coupled with an agreement to buy a piece of property at an exorbitant price (Knickerbocker Life Ins. Co. *v.* Nelson, 78 N. Y., 137); or coupled with an agreement to take uncurrent bills at more than their actual value (Cleveland *vs.* Loder, 7 Paige, 557), or with a sale of property with an agreement for purchase at a much advanced price (Chandler *v.* Powers, 9 St. Rep. N. Y., 169).

If, then, these certificates were in purpose and effect a guarantee of dividends to a part only of the stockholders of the National Salt Company, and were not a legal means of accomplishing the same object, then it is not disputed that the certificates themselves are illegal, and the Receivers' action in disallowing these claims was right.

Wilcox *v.* Trenton Potteries Co., 64 N. J. Eq., 173.

Promek *v.* Spirits Dis. Co., 58 N. J. Eq., 97.

POINT VII.

The contracts and agreements in question, including the certificates of indebtedness, were and are illegal and void as against the anti-trust laws of Ohio, the United States Anti-Trust Law and the common law, against illegal combinations to advance the price of necessaries of life.

If these agreements were illegal and void, for any reason, the certificates of indebtedness issued in pursuance thereof, and forming a part thereof, were affected by such illegality.

Branch *v.* Haas, 16 Fed. Rep., 53.

In any event, if we are right in the claim that the certificates of indebtedness were non-negotiable, or that the claimants took, with knowledge or means of knowledge of any infirmity therein, or that they took the certificates as part of a "Unit," then these certificates would also be subject to the further defense of illegality as being a part of a scheme for an illegal monopoly.

Cowdrey *v.* Vandenberg, 101 U. S., 572.

Owen *v.* Evans, 134 N. Y., 514, 519.

The evidence in this case as to restraint of trade is very full and complete.

The contracts in question, as executed, contemplated and actually made a combination such as is prohibited in the statute for the express purpose of controlling the production of salt and controlling the price at which it should be sold to

the public. That that was the purpose, intent and effect of the combination is scarcely disputed, and the evidence presented to the Court, being entirely uncontradicted, must be held to establish that this combination was made for an illegal purpose. The negotiations to bring it about were conducted mainly by Mr. A. S. White, the then President of the National Salt Company, by Mr. F. B. Squire, the then President of the United Salt Company, and by Mr. Frasch and Mr. Rockefeller, directors of the United Salt Company, on behalf of their Company, and of the stockholders thereof.

The testimony particularly shows that the negotiation started on the basis of having more than a majority of all the stockholders of the United Salt Company come into the agreement, and it shows that eventually substantially all of them did, and it does not clearly appear that any stock of the United Salt Company which had been issued remained out or failed to come into this arrangement.

Now, the action of the stockholders of a company are corporate acts. This was not the case of a separate sale by any individual stockholder of his stock. It was a case where the transaction depended upon a combination of a sufficient number of stockholders to carry over the control of the company and to carry over its business and the good will thereof, and the management of the company and the power to determine whether or not it should produce or should not produce salt, and what amount should be produced. They did not make individual sales, but the stock was gathered together by Squires, the President of the United Salt Company, who then completed the sale of the stock to the National Salt Company (p. 553, fols. 10 and 20; p. 555, fol. 20; p. 424, fols. 20 and 30). All this was involved in the combination of stockholders of the United Salt Company sufficient in amount to

turn over the full powers of the corporation of the United Salt Company; and the parties who exchanged their stock did so under conditions whereby they were to become benefited as stockholders of the National Company by the result of the combination. Parties connected with the National Salt Company were elected Directors of the United Salt Company, and the combination became complete. It appears in the testimony of Mr. Beardslee (p. 401), that in the early negotiation with Mr. Squire, representing the Cleveland people, it was stated that he urged a *combination* of the various companies, and it will be found all through the testimony that the parties discussed making a combination, and of course that combination was for a specific purpose. How it was to be made, was a matter of discussion. The reason for making the combination is referred to on page 410, folio 30. It was

> "in order to control the entire output of that field and be able to control the prices."

Again, on page 412, folio 20:

> "The success of the scheme depended "largely upon being able to control that prop- "erty in Ohio, to *raise the prices throughout* "*Ohio* and the territories where they were "able to ship; that was the only object of the "combination. It necessarily had *to double* "*the prices* in order to pay dividends on an "enormous capitalization."

The United Salt Company controlled 75 to 80 per cent. of the business in Ohio (p. 413, fol. 20). The price of salt in Ohio was from 45 to 48 cents a barrel before this combination was made. Immediately after it was made the price was advanced to 70 cents, then to 85 cents, and again to $1.00 a barrel afterwards (p. 414, fols. 1 and 10).

The purpose of the combination was to make it

possible to control competition and advance prices (p. 401, fol. 10; p. 467, fol. 1).

Mr. Young was the secretary and treasurer and also a director of the National organization. Mr. Squire, who was a director, also, of the company, was a director and the president of the United Salt Company, and was substantially the manager of that Company. Mr. Young was present at the interviews had between the representatives of the two companies, or a number of them, and was familiar with the scheme and the purposes to be accomplished by it. His testimony clearly shows that the purpose of the combination between the National Salt Company and the United Salt Company was for the purpose of raising the price of salt and maintaining it (p. 483, fol. 20; p. 485, fol. 10; p. 486, fol. 1); it was to prevent competition.

Mr. Archibald S. White, who was the President of the National Salt Company, was also examined, and his testimony is referred to particularly on the question of the purpose of the combination (pp. 501, 505), and shows that it was in contemplation of the parties who promoted this matter,—Mr. White, Mr. Squire, of the United Salt Company, Mr. Frasch, and others,—to make a combination, including not only the United Salt Company of Ohio, but certain other companies that would enable them to overcome competition and to control the price of salt, and particularly to raise the price. That such was the purpose and aim of the combination has not been contradicted. No witness has been called at any time to dispute the statements of facts we have referred to, or to contend that the combination was not made for the purposes above expressed. This purpose was one which made the combination illegal, and all contracts with reference to the making of such combination were absolutely illegal under the provisions of the Ohio Statute cited.

Under these facts the Receivers contend as follows:

1. SALT IS A COMMODITY HELD TO BE A NECESSITY OF LIFE AND CAPABLE OF BEING MONOPOLIZED.

Central Ohio Salt Co. *v.* Guthrie, 35 Ohio St., 606.
Clancy *v.* Onondaga Salt Co., 62 Barb., 395.

2. THE AGREEMENTS IN QUESTION STIFLED COMPETITION, CONTROLLED PRICES AND CREATED A MONOPOLY.

They were, therefore, illegal and void.

(A) AT COMMON LAW.

Am. & Eng. Enc. L., Vol. XX, p. 847.
Judd *v.* Harrington, 139 N. Y., 105.
Arnot *v.* P. & E. Co., 68 N. Y., 558.
Peo. *v.* Sheldon, 139 N. Y., 251.
Cummings *v.* Union Blue Stone Co., 164 N. Y., 401.

It makes no difference that the sale of the United Salt Company was made through the sale of the stock of the stockholders, the purpose to restrain trade being shown.

Peo. *v.* North River Sugar Refining Co., 22 Abb. N. C., 464; affirmed in 121 N. Y., 585.
Peo. *v.* Standard Oil Co., 49 Ohio State, 137, 179.

As was said in National Salt Company *v.* United Salt Company:

> "Furthermore, it is alleged that the United Salt Company, one of the parties to this consolidation or combination, before the consolidation, controlled more than seventy-five per cent. of the salt business within the

State of Ohio; that the parties made a combination by exchanging their stock, thereby combining the two enterprises into one and carrying on the business under the name of the United Salt Company; that the competition between the parties ceased and that the trade in said commodity was thereafter restricted. With these allegations in the petition, the truth of which is admitted by the demurrer, it cannot well be contended that the record presents a mere case of a sale of stock in one company to another company, a former competitor, whereby incidentally, the former competition ceased. The transaction set forth in the petition is an unlawful agreement to effect the trade in Ohio, carried out by an exchange of securities, and that the agreement has been carried out to the extent stated, and has had its effect on that trade."

Also quoting from American Glucose Co. case, 182 Ill., 551, with approval as follows:

"A trust is created where a majority of the stockholders in competing corporations consolidate their interests by conveying all their property to a corporation organized for the purpose of taking their property, when the necessary consequence of the combination is to control prices, limit production or suppress competition in such a way as to create a monopoly."

(B) Under the United States Anti-Trust Law.

U. S. *v.* Addystone Pipe & Steel Co., 175 U. S., 211.

U. S. *v.* Northern Securities Co., 193 U. S., 197.

(C) Under the Anti-Trust Law of Ohio.

It will be noted that the agreements were made, and were to be carried out, in Ohio; the plant of the United Salt Company is in Ohio; the said stock of

both companies is in Ohio in the hands of an Ohio Trust Company as trustee; the payments of the certificates of indebtedness were to be made in Ohio. The whole transaction is therefore subject to the Ohio State laws.

The whole public policy of the State of Ohio prior to this enactment had been against combinations in restraint of trade.

Central Ohio Salt Co. *v.* Guthrie, 35 Ohio St., 66.

Emory *v.* Ohio Candle Co., 47 Ohio, 620.

Standard Oil case, 49 Ohio St., 167.

This Anti-Trust Law found legislative expression and sanction in the passage of this act in question, known as the Valentine Act.

This law prohibits combinations of any and every kind which have for their purpose any or all of the following purposes:

To restrict trade, to limit production, to prevent competition and to control prices. It further provides (Sec. 10) that no corporation *or its directors or stockholders* shall enter into any such combination.

It cannot be doubted that the proof introduced into this case established the fact of a combination prohibited by the above law. The evidence shows that there was a combination between the National Salt Company and the people (viz: stockholders and directors) who had control of the United Salt Company, that the National Salt Company agreed to pay two and one-half millions of its stock and over a million dollars of cash to get control of its sole competitor in Ohio; that it guaranteed dividends for five years on its said stock; that as soon as the combination was made prices were at once raised over fifty per cent., and then one hundred per cent. in Ohio and elsewhere; that thereby the Na-

tional Salt Company obtained a monopoly in the sale of salt in Ohio; that the end accomplished was by means of trust agreements, and receipts, and an illegal guarantee of dividends.

In short, every element of the illegal conspiracy prohibited by the Ohio Statute is here present.

State *ex rel.* Monett *v.* Buckeye Pipe Line, 61 Ohio St., 520.

In the opinion of Judge Stone in National Salt Co. *v.* United Salt Co. (12 Ohio Dec., 386), is the following:

> "As stated by the Supreme Court in the case just considered (Buckeye Pipe Line Case 61 O. S., 520) the anti-trust laws of the United States and of various States are not materially different in their provisions. The anti-trust law of Illinois varies in no essential particular from the Valentine Act; indeed they may be said to be almost identical in arrangement and phraseology, and the Supreme Court of Illinois, in the American Glucose Case, 182 Ill., 551, had occasion to consider the character of the anti-trust law in that State, in an action brought by individual stockholders to prevent a combination and a consolidation of competing corporations. Six different companies or partnerships, for the purpose of combining the business of manufacturing glucose into one company, entered into agreements or gave options for the sale of their respective properties to the Company to be organized under the laws of New Jersey, I believe, with a capital of $40,000,000.00. These contracts and agreements made provisions as to how compensations should be made, either in money or in stocks, common and preferred, of the consolidated company. All these contracts, agreements and options were deposited with the Illinois Trust Company as Trustee, as incidental to the carrying out of the scheme and plan proposed. The plaintiffs who were dissenting in one of the constituent companies owning and operating a

glucose plant at Peoria, Ill., brought an action to enjoin the carrying out of the proposed consolidation. The bill contained the usual averments to be found in this class of actions involving anti-trust laws. The Court, upon full hearing, sustained the petition and granted the relief sought. The Court, among other things, held as follows (I read from the 5th Subdivision of the Syllabus);

> 'A trust is created where a majority of the stockholders in competing corporations consolidate their interests by conveying all their property to a corporation organized for the purpose of taking their property, when the necessary consequence of the combination is to control prices, limit production or suppress competition in such a way as to create a monopoly.'

(Further quoting from the syllabus):

> 'The public policy of the State of Illinois has always been against trusts and combinations in restraint of trade. This public policy has found expression judicially in the cases of
>
> Central Ohio Salt Co. *v.* Guthrie, 35 O. S., 66;
>
> Emery *v.* Ohio Candle Co., 47 O. S., 620.
>
> The Standard Oil case, 49 O. S., 167.'

and other cases that might be cited. It has found *legislative expression* and sanction in the passage of the so-called Valentine Act."

This law further provides that any contract or agreement for any of the purposes above stated *"shall be absolutely void and not enforceable either at law or equity."*

(D) THE RECEIVERS OF THE NATIONAL SALT COMPANY ARE NOT SEEKING AFFIRMATIVE RELIEF IN THIS ACTION, BUT SIMPLY DEFENDING AN ATTEMPT TO ENFORCE AN ILLEGAL CONTRACT.

Many of the stockholders of the National Salt Company did not assent to the execution of these contracts, and protested against them.

The agreements in the case were executory and remain in large measure still executory and unfinished.

Therefore the Receivers further claim:

FIRST.—If the contract between the parties was *ultra vires* or in violation of the Statute law of the State of Ohio, or of the common law in restraint of trade, and said contract remains unexecuted, either in whole or in part, then as to the unexecuted portions of said contract, non-assenting stockholders, or the corporation itself, of its own motion, without demand of any stockholder, can maintain an action to disaffirm said contract, and have the same rescinded, and require an accounting as to the property of the corporation parted with under the illegal contract, and beyond this may require restitution of such property so parted with.

SECOND.—If the contracts be found to be void, as in violation either of the Statute of Ohio, or the common law against contracts in restraint of trade, then no matter how far nor to what extent the contract had been executed, nor even if the contract had been fully completed on each side, and complete delivery of the properties agreed to be made had been made, at the suit of any stockholder of the National Salt Company, who was a stockholder at the time the contracts were made, who did not participate therein, had no knowledge of the same, and within reasonable time after discovery took proper steps, either through the corporation, or, upon its refusal, by independent action for himself for the benefit of the stockholders, the contract can be set aside, and restitution of all the property transferred under such illegal contract demanded, so long as the property, or any portion of it, re-

mains in the hands or under the control of the parties, or those having notice.

Central Transportation Co. *v.* Pullman Palace Car Co., 139 U. S., 24.

Pullman Palace Car Co. *v.* Central Trans. Co., 171 U. S., 138.

Spring Co. *v.* Knowlton, 103 U. S., 49.

De Neufville *v.* N. Y. & N. Ry. Co., 81 Fed. Rep., 10.

N. C. & N. Co. *v.* Stimson, 21 Fed. Rep., 533.

Merz Capsule Co. *v.* U. S. Capsule Co., 67 Fed. Rep., 414.

The Receivers stand in the place of the corporation, and of the non-assenting stockholders, and are in a position where they can insist upon the invalidity of these contracts.

As was said by Judge Stone in this very case:

> "This action is one brought, not to recover upon the contract, but for a rescission, and through rescission to bring about a surrender to the respective parties the property or securities that were the subject of the transaction. The petition alleges that the contract is executory although, in considering the averments of the petition in other respects, it is clear enough that the contract has been in part executed. Money has been paid on account of it to parties to this suit. The contention of the defendants is that it has been in the main, if not wholly, executed. We are of the opinion that the contract is in large measure executory. The stock of the National Salt Company designed ultimately for delivery to the defendant stockholders was issued in the name of Sanford, nominee of The American Trust Company, and is in possession of the Trust Company. The shares of stock in the United Salt Company, upon delivery to the Na-

tional Salt Company, were immediately endorsed in blank and delivered to The American Trust Company as security for the performance of certain features of the contract on the part of the National Salt Company, and it is alleged in the petition that the stock thus pledged as security is subject to sale by the trustee in case of default on the part of the National Salt Company in the payment of certain obligations arising under the contract. This is the language of the petition:

> 'Plaintiff further says that, by the terms of said alleged agreement for deposit of stock of the United Salt Company by the National Salt Company, said defendant, The American Trust Company, in case of default in the payment of the certification of indebtedness issued by it, or in case of the failure of the National Salt Company to carry out the terms of said alleged agreement, has power to sell any or all of said stock, at public auction, to the highest bidder, and make application of the proceeds derived from said sale.'

Neither party is in possession of the fruits of this contract. All of the securities which were the subject of sale, or exchange, are in the possession of the trustee, subject to be so held for a period of five years from the date of the contract.

But passing this question as to the extent to which this contract is executory, we may inquire, do the principles announced in the cases to which I have just called your attention apply in this case, or is there a clear distinction to be drawn between these cases and the case at bar? Is the plaintiff *in pari delicto?* The demurrer admits that the suit is brought on the demand of certain nonconsenting stockholders of the National Salt Company and that the suit is brought in the name of the National Salt Company because of such demand. It is alleged that these nonconsenting stockholders had no knowledge

of the transaction at the time the agreement was made; that they never assented thereto; that as soon as they learned of the existence of the agreement they demanded of the Company that it proceed forthwith to have the contract rescinded, and in the event of its refusal to take such action, they proposed to take legal steps on their own behalf. So it can be said with reason that the suit is brought in the name of the non-consenting and protesting stockholders, for the reason that the general rule is that a stockholder has no right to bring suit in a matter that affects the corporation. That is for the corporation to do. If the officers of the corporation, after demand by the stockholders, refuse to bring such action, then the stockholders may bring it. There was then no other way for the action to be brought except in the name of the corporation. Is it not, then, in legal contemplation, the action of the non-consenting stockholders? If so, and the authorities would seem to support this proposition, the principal of the cases to which I have referred would seem to have no application. The case has in it this feature not to be found in any of the cases to which I have referred, that is, the Hooker case and the Walton case. The property that is the subject of the controversy, and which was made the basis of the transaction, namely, the stock of the constituent companies, is all in the hands of a trustee and, therefore, the question is very naturally suggested, whether the rule that, while Courts will not enforce an illegal contract between the parties, if an agent of one of the parties has in the illegal enterprise received money or property belonging to its principal, he is bound to turn it over to him and cannot shield himself from liability on the ground of the illegality of the original transaction. 39 O. S., 145.

It seems to us that there is a clear distinction and difference between the case at bar and those in which the Courts of this State

have denied relief to parties *in pari delicto,* and that a different rule would best comport with the interests of the public and the rights of the parties in this action. The property involved, according to the averments of the petition, is in the hands of a third party, under an illegal and unlawful contract. Certainly the trustee has no right to retain and have the fruit of an unlawful enterprise, and I am unable to find any good and sufficient reason why this petition as against a demurrer does not state a cause of action."

POINT VIII.

The decree of the Ohio court adjudging these certificates of indebtedness null and void, made in an action to which not only the American Trust Company, Trustee for all the holders of certificates of indebtedness, including these claimants, but also the registered holders of the certificates of indebtedness held by these claimants, were parties, which decree was entered with the knowledge of these claimants and without their dissent, and without fraud on the part of the Trust Company, was binding and conclusive upon the claimants.

The certificates of indebtedness in question were founded on the consideration of the execution and delivery of the contract of July 20, 1899, accepted by the National Salt Company on November 16,

1899, the declaration of trust of October 2, 1899, as to the deposit of the stock of the United Salt Company with the American Trust Company *as trustee* for the holders of the certificates of indebtedness, and the declaration of trust as to the deposit of stock of the National Salt Company with the American Trust Company, *as trustee* for the benefit of the holders of the certificates of indebtedness.

The duties of the American Trust Company, as trustee, as defined by said contracts, were to register and countersign all certificates of indebtedness, and to keep a record thereof; to receive the stock of the United Salt Company, and to keep the same to secure the payment of the said certificates of indebtedness, and in case of default in such payments or of the other conditions of the agreements to sell said stock and apply the proceeds to such payment; to receive the shares of stock of the National Salt Company with which the certificates of indebtedness went, to issue trust receipts for the same, transferable only on the books of the trust company, to manage and control the same, to collect all dividends thereon and to create a fund on which it was to pay interest, and which it was to apply to the payment of the certificates of indebtedness; to receive all moneys deposited with it by the National Salt Company, in trust; to pay the same to the registered holder of the certificates of indebtedness upon demand; payment of the amount due thereon by the National Salt Company *to the American Trust Company,* discharged its liability under the certificates of indebtedness. It was not a mere passive trustee, simply holding the *res* as security for the certificates of indebtedness, but had active affirmative duties with reference, not only to the *res,* but to the certificates themselves.

The American Trust Company was, therefore, trustee for the holders of certificates of indebted-

ness in every sense of the word, and equally so and with as broad powers and duties as any trustee in the cases hereinafter referred to.

Furthermore, these claimants *accepted* the American Trust Company as their own trustee of these certificates of indebtedness.

In their petitions for leave to file their several claims herein they state that the American Trust Co. duly verified and filed a claim against the National Salt Company with the Receivers "as *trus-*
"*tees* for the holders of the certificates of indebted-
"ness before mentioned, among whom were your
"petitioners for the amount due on said certificates.
"That thereafter the said Receivers rejected the
"claim of the said American Trust Co. as trustee
"for the holders of said certificates of indebted-
"ness."

Said petitioners further stated that the said claimants "have relied upon the claim of the "American Trust Co. filed herein for the enforce-
"ment of their rights against the National Salt "Company upon said certificates of indebtedness "filed by them."

Mr. Wilkie, counsel for part of the claimants, testified that the claim of the American Trust Co. was put in in their behalf, and that he himself prepared the brief in that matter (pp. 205-208).

There is the further fact entitled to great weight in considering the effect of the Ohio decree, viz.: the vendors who sold the certificates of indebtedness to the claimants herein, and who were the *registered* holders of the certificates in question, were parties to the Ohio suit. They held the legal registered title to these certificates, and were the only parties known to the plaintiff in connection with these certificates, when the bill was filed (p. 123, fol. 30; p. 124, fol. 1, proof of claim of American Trust Co., pp. 323, 325).

The Ohio action was brought for the express

purpose of setting aside the agreements in question including these certificates of indebtedness, on the ground of illegality. Answers were interposed by the American Trust Company, and the registered holders of these certificates [Receivers' Exhibits 1, 2, 3, 4, 5, pp. 367-394 (except Hutchins, who was regularly served, but filed no answer, p. 121, Exs. 6 and 7)], in which the same claims were interposed that are now being made by these claimants.

The Ohio court had full and complete jurisdiction in the case, for the agreements were made, and were to be carried out in Ohio; the plant of the United Salt Company was in Ohio; and the stock of both Companies was in Ohio in the possession of the Ohio Trust Company.

This action was regularly brought on for trial, evidence taken, and on December 12, 1903, the Ohio court made and entered its decree, from which no appeal has been taken by any one.

This decree (pp. 556-568) found that the agreements in question were null and void; that the plaintiff was entitled to a cancellation and return of the certificates of indebtedness, and ordered, adjudged and decreed that the Citizens' Savings and Trust Company (the successor to the American Trust Co.) return the stock of the United Salt Company to its owners, and the stock of the National Salt Company to said company, and that each of the defendants and other owners of the certificates of indebtedness surrender and deliver the same to said Trust Company for cancellation.

Considerable testimony was taken in this proceeding as to whether these claimants through their attorneys knew that the trial was to be had, and the form of decree which was to be entered.

The Receivers have produced the direct testimony of the counsel for various parties to the litigation both for the plaintiff and for a large num-

ber of the defendants, viz.: Messrs. Morley, Quail, Johnson and Siddall, that they and each of them fully discussed the action with Messrs. Bean and Wilkie, that they told them the terms of the decree and that they were about to bring the case for trial for the purpose of entering such decree, and Mr. Siddall testified positively that he showed a copy of the decree to them both (pp. 198, 199); further, they testified that neither Mr. Bean nor Mr. Wilkie made any objection to their proposed course of action.

Mr. Wilkie denied this, and testified that the first knowledge he had of the decree was on June 4, 1904, the decree having been entered on December 13, 1903. But it will be noted that Mr. Wilkie did not at first remember that he had ever seen Mr. Morley, and didn't remember the interview with him (p. 209); that the letter of October 6, 1903 (Receivers' Ex. E, p. 167), received by Mr. Wilkie, referred in terms to the decree; that he was in frequent consultation with Mr. Bean, and probably saw the letter of November 6, 1903 (Receivers' Ex. I, p. 171), referring to the entry of the decree which letter Mr. Bean received and knew the contents of (p. 218, fols. 1, 10); and finally, Mr. Bean, who was in close touch with Wilkie, testified that Mr. Siddall did show him a copy of the decree, at the time of his interview in October, 1903 (p. 214, fol. 30); and that he (Mr. Bean) understood what the terms of the decree were (p. 219, fol. 1).

We believe that this Court will find that the attorneys for the claimants herein were informed of the trial in Ohio, knew of the proposed decree and its terms before its entry, that they made no objection to the entry of the decree, and took no steps to appeal therefrom.

No appeal from this decree has been taken by anyone, and the time to appeal has long since expired.

All of the registered holders of the certificates of indebtedness were parties to the said Ohio action, and a majority of the certificates of indebtedness have been turned in and cancelled.

The certificate holders were not necessary parties to the action, as will hereafter be shown, but were made parties as having some interest in the action as *cestui qui trusts.*

The Receivers claim that the decree against the American Trust Co., trustee for the claimants, and against the registered holders of all certificates, made and entered upon notice to, and without objection or appeal on the part of said claimants, and without fraud on the part of the trustee, was binding and conclusive upon the claimants.

This is not a new question, but the doctrine contended for has been repeatedly applied in the United States Supreme Court.

In Beale *v.* Illinois M. & F. R. R. Co., 133 U. S., 290, a decree in equity had been entered canceling, on the ground of fraud, bonds of one railroad corporation and a mortgage by a second railroad corporation to secure their payment, upon a bill filed by the latter against the former and *against the trustee* under the mortgage. A bill of foreclosure was afterwards filed by bondholders not personally made parties to that suit against those two corporations, and a third railroad corporation alleged to claim a right in the property by purchase or otherwise. The Court said, per Mr. Justice Gray:

> "Upon the facts thus established no ground is shown for maintaining the bill. The former judgment was rendered by a court of competent jurisdiction, to which not only the railroad company that issued the bonds, but the surviving trustee under the mortgage made in the name of another company to secure the payment of those bonds, were made parties. The bondhold-

ers were thus fully represented in that suit, and bound by the decree canceling and annulling *the bonds* and mortgage, unless the decree was fraudulently obtained. (Kerrison *v.* Stewart, 93 U. S., 155; Shaw *v.* Railroad Co., 100 U. S., 605; Richter *v.* Jerome, 123 U. S., 233; Knox County *v.* Hershman, *ante,* 152)."

Woods *v.* Woodson, 100 Fed Rep., 515, 519.

Lyman *v.* Kansas C. R. Co., 101 Fed. Rep., 636.

Elwell *v.* Fosdick, 134 U. S., 500, was a suit for the foreclosure of a first mortgage to which the trustee for the bondholders under a second mortgage was made a party. Certain of said bondholders, claiming that the trustee was not properly representing them, asked leave to prosecute an appeal from the judgment of foreclosure. It appeared that the trustee at the request of a majority of the bondholders executed a release of all errors committed concerning said decree and released all right of appeal. The Court said:

"It thus appears that the Court passed upon the question of collusion on the part of Elwell, and held that the Bank was bound by the acts of Elwell, representing it as trustee. No action was taken by the Bank to appeal for more than three months. By an order made August 3, 1885, it was allowed to appeal in the name of Elwell, trustee, but it failed to perfect any appeal under such allowance. Such appeal was reallowed on the 28th of June, 1886, and was perfected on the 30th of June, 1886, being exactly two years after the entry of the final decree and the last day on which the appeal could be taken. Meantime, by an instrument executed in October, 1884, and filed in the Circuit Court in November, 1884, at a time when no appeal was pending from

the decree, the release of errors was executed by Elwell, trustee.

"We are of opinion that this release bound all bondholders represented by Elwell. It appears by the release that only 955 of the convertible bonds were issued; that 58 were issued in exchange for coupons, all of which coupons had been paid out of the proceeds of the sale of the property; that of the remaining 897, the holders of 617 did not desire further litigation; and that the holders of the remaining 280 had hitherto declined to contribute to the cost of the litigation or to protect the trustee against loss or the payment of costs or counsel fees. No substantial reasons appear for permitting the bank, as the holder of only $14,000 of the bonds, to defeat the plainly expressed will of the holders of the remainder. Sage *v.* Central R. Co., 99 U. S., 334 (25; 394).

"The allegation of neglect or collusion on the part of Elwell as trustee was found by the Circuit Court to be untrue. The trustee represented the bondholders not only in the proceedings which resulted in the entry of the decree, so that the bondholders were not necessary parties, but he also bound them by his release of errors. His relations to them had not changed between the time of the entry of the decree and the time of the execution of the release. Shaw *v.* Little Rock & Ft. S. R. Co., 100 U. S., 605, 611, 612; First Nat'l. Bank *v.* Shedd, 121 U. S., 74, 86; Barnes *v.* Chicago, M. & St. P. R. Co., 122 U. S., 1. * * * The bank is bound by all the preceding acts of the trustee, done in good faith."

In Kent *v.* Lake Superior S. C. R. & I. Co., 144 U. S., 75, a minority bondholder in a suit in the Circuit Court in New York sought to attack a decree of foreclosure and sale in a suit in the United States Circuit Court in Michigan, wherein the trustee for the bondholders was a party. The Court held that for any error in the decree relief must be

sought in the Court which rendered the decree, and further said:

> "In Richter *v.* Jerome, 123 U. S., 233, 246, a bill was filed by Richter as the holder of two hundred and thirty of the bonds issued under the fourth trust deed, and it was charged that other bondholders had conspired to obtain the mortgaged premises, and that the solicitor who foreclosed was their attorney. This Court said, Mr. Chief Justice Waite delivering the opinion: 'All the rights the bondholders have or ever had in the mortgage, legal or equitable, they got through the Trust Company, to which the conveyance was made for their security. As bondholders claiming under the mortgage, they can have no interest in the security except that which the trustee holds and represents. If the trustee acts in good faith, whatever binds it in any legal proceedings, it begins and carries on to enforce the trust, to which they are not actual parties, binds them (Kerrison *v.* Stewart, 93 U. S., 155, 160; Corcoran *v.* Chesapeake, &c., Canal Co., 94 U. S., 741, 745; Shaw *v.* Railroad Co., 100 U. S., 605, 611). Whatever forecloses the trustee, in the absence of fraud or bad faith, forecloses them.' "

In *Pollitz* v. *Farmers Loan & Trust Co.* (53 Fed. Rep., 210), a former action of foreclosure had been brought in Oregon, wherein a reorganization agreement had been made and approved by a decree of the Court, whereby the old bonds were to be surrendered and exchanged for new bonds. The complainant herein as a non-assenting bondholder brought suit in equity to collect the full amount of his bonds, claiming that he had not been made a party to the Oregon suit and was not bound by the decree. The Court said:

> "At the threshold of this controversy stands the Oregon decree. It is admitted that if this decree be valid and binding the

bill must be dismissed. But the complainant argues that it is not binding because he was not a party, and, in any view, it was obtained by fraud, and is, therefore, a nullity. Was the complainant a necessary party to the Oregon suit?

In Shaw *v.* Railroad Co., 100 U. S., 605, the Supreme Court says:

> " 'The trustee of a railroad mortgage represents the bondholders in all legal proceedings carried on by him affecting his trust, to which they are not actual parties, and whatever binds him, if he acts in good faith, binds them. * * * The Trustee represents the mortgage, and in executing his trust may exercise his own discretion within the scope of his powers.'

"In Beals *v.* Railroad Co., 133 U. S., 290, 10 Sup. Ct. Rep., 314, the Court said:

> " 'The former judgment was rendered by a court of competent jurisdiction, to which not only the railroad company that issued the bonds but the surviving trustee under the mortgage made in the name of another company to secure the payment of those bonds, were made parties. The bondholders were thus fully represented in that suit, and bound by the decree cancelling and annulling the bonds and mortgage, unless the decree was fraudulently obtained.'

"See also, Kent *v.* Iron Co., 144 U. S., 75, 12 Sup. Ct. Rep., 650; Richter *v.* Jerome, 123 U. S., 233, 8 Sup. Ct. Rep., 106; Bank *v.* Shedd, 121 U. S., 74, 7 Sup. Ct. Rep., 807; Elwell *v.* Fosdick, 134 U. S., 500, 10 Sup. Ct. Rep., 598.

"These authorities are, in my judgment, conclusive. If the trustee represents the bondholders in all matters relating to his trust it surely must be immaterial what is the form of the action which draws the trust into controversy. Whether plaintiff or defendant, he stands sponsor for them. It can-

not be possible that he represents them in a foreclosure suit and fails to represent them in an action like this where the principle involved is precisely the same. All law should be, and generally is, based upon reason. For a distinction, like the one contended for, no plausible reason can be suggested."

The following is from Hornsby *v.* City National Bank, 60 S. W., 160:

"We have found the facts which are that precisely the same issues of fact involved were made in the former case in the suits brought by the defendants in this case against W. H. Hornsby, trustee; that that defense was made by W. H. Hornsby, as trustee, on behalf of the complainants in this case; that it was finally adjudicated against W. H. Hornsby and therefore against those he represented in that case; that the decree was final and is unappealed from; but the complainants in this case, one of them a married woman and two of them minors, were not parties in that case. As a rule, a suit prosecuted and defended in good faith by a trustee for the beneficiaries, with the knowledge and consent of the beneficiaries, is conclusive in its results on the beneficiaries."

The bill was dismissed.

Bracken *v.* Atlantic Trust Co., 167 N. Y., 510.

Fletcher *v.* Ann Arbor R. Co., 116 Fed. Rep., 479.

In Corcoran *v.* C. & O. C. Co., 94 U. S., 741, the trustee of certain bondholders had been a party to an action in which the question of whether or not the bondholders were entitled to compound interest upon the matured coupons had been decided; in the

case at bar certain bondholders who were not parties to the former action attempted to raise the question anew. The Court said:

> "It is also argued that in that suit Mr. Corcoran was only a party in his representative capacity of trustee, and he here sues in his individual capacity as owner of the bonds and coupons, and in this latter capacity is not bound by that decree.
>
> "But why is he not bound? It was his duty as trustee to represent and protect the holders of these bonds; and for that reason he was made a party, and he faithfully discharged that duty. It would be a new and very dangerous doctrine in the equity practice to hold that the *cestui que trust* is not bound by the decree against his trustee in the very matter of the trust for which he was appointed. If Mr. Corcoran owned any of these bonds and coupons, then he is bound, because he was representing himself. If he has bought them since, he is bound as a privy to the person who was represented. See Kerrison *v.* Stewart, decided at this Term (93 U. S., 155, XXIII, 843), and the authorities there collected."

In Farmers' Loan & Trust Co. *v.* K. C. W. & N. W. R. Co., 53 Fed. Rep., 182, 185, the Court said:

> "The trustee in a railroad mortgage represents the bondholders in all legal proceedings carried on by it to enforce the trust. The bondholders claiming under the mortgages have no interest in the security except that which the trustee holds and represents, and, if the trustee acts in good faith, whatever binds it in any legal proceedings it begins and carries on to enforce the trust, to which they are not actual parties, binds them (Kerrison *v.* Stewart, 93 U. S., 155; Corcoran *v.* Canal Co., 94 U. S., 741, 745; Shaw *v.* Railroad Co., 100 U. S., 605, 611; Richter *v.* Jerome, 123 U. S., 233, 8 Sup. Ct. Rep., 106). In the case last cited the Court

says: 'Whatever forecloses the trustee, in the absence of fraud or bad faith, forecloses them. This is the undoubted rule.' And where the trustee in good faith assents to terms imposed by the Court as a condition for appointing a receiver, the bondholders are bound by such assent as fully and absolutely as if it had been given by them in person. In Kneeland *v.* Luce, 141 U. S., 491, 509; 12 Sup. Ct. Rep., 32, the trustees consented that Receivers' certificates might be issued, and made a prior lien on the mortgaged property. Afterwards the bondholders denied the right of the trustees to give such consent, and contested the validity of the Receivers' certificates and the priority of lien given them, and the Supreme Court said: 'The consent of the trustees to the issue of the certificates bound every bondholder. There is nothing to show that the trustees acted corruptly or fraudulently.' And see, to the same effect, Kent *v.* Iron Co., 144 U. S., 75; 12 Sup. Ct. Rep., 650. In the case of Elwell *v.* Fosdick, 134 U. S., 500, 512; 10 Sup. Ct. Rep., 598, the trustees executed a release of errors, and, their authority to do so being questioned by the bondholders, the Supreme Court said: 'The trustee represented the bondholders, not only in the proceeding which resulted in the entry of the decree so that the bondholders were not necessary parties, but he also bound them by his release of errors.' "

In Kneeland *v.* Luce & Co., 141 U. S., 491, the trustee for bondholders had consented to the issuance of Receivers' certificates. The bondholders claimed that they were not parties and therefore not bound by the trustee's action. The Court said:

"The consent of the trustees to the issue of the certificates bound every bondholder. There is nothing to show that the trustees acted corruptly or fraudulently. Under all the circumstances of the case, the bondholders are precluded from claiming priority

> over the Receivers' certificates, which were issued for the purpose of preserving the mortgaged property."

In Shaw *v.* R. R. Co., 100 U. S., 612, the property of a railroad company was sold in a foreclosure suit to which the trustees for the bondholders were parties. A committee representing a majority of the bondholders bought in the property at a ridiculously low figure, but the sale was confirmed upon the understanding, which was incorporated in the decree, that a company should be formed to which the property should be transferred; all the original bondholders to have the right to stock in the new company equal to the amount of the bonds held by him. Certain minority bondholders protested and asked to have the decree set aside. The Court said:

> "We think it clear that the appellants are not entitled to the relief they ask. They were not parties to the original suits, except through their trustees, against whom they make no charges. Indeed, their counsel says in his brief: 'It is probable that they (the trustees) believed that they were doing the best possible for their beneficiaries.' The trustee of a railroad mortgage represents the bondholders in all legal proceedings carried on by him affecting his trust, to which they are not actual parties, and whatever binds him, if he acts in good faith, binds them. If a bondholder not a party to the suit can, under any circumstances, bring a bill of review, he can only have such relief as the trustee would be entitled to in the same form of proceeding. To avoid what the trustee has done in his behalf he must proceed in some other way than by bill of review. All the errors complained of in these bills of review, as occurring before the confirmation of the sale, are such as affect only the railroad company injuriously. If, in fact, they are errors at all, they were in favor of the trustees and those they represent, and not against them. Of these the trustees could

not complain. As no relief was granted, under the amendment to the bill in the foreclosure of the railroad mortgage, the Court clearly had jurisdiction of that case for the purpose of the decree as rendered.

"But if the bills, as filed, are original in their character, to set aside the decrees complained of and not for review only, the appellants are in no better condition. The trustees had an undoubted right to commence these suits when they did, and it is apparent from the whole record that all their proceedings, both before and after the sale, were in the interest of their beneficiaries generally, since one hundred and eighty in number, representing in the aggregate $8,000,000 out of the $8,500,000 of bonds outstanding, accepted the result and exchanged bonds for stock in the new corporation. To allow a small minority of bondholders, representing a comparatively insignificant amount of the mortgage debt, in the absence of any pretense even of fraud or unfairness, to defeat the wishes of such an overwhelming majority of those associated with them in the benefits of their common security, would be to ignore entirely the relation which bondholders, secured by a railroad mortgage, bear to each other. Railroad mortgages are a peculiar class of securities. The trustee represents the mortgage, and in executing his trust may exercise his own discretion within the scope of his powers. If there are differences of opinion among the bondholders as to what their interests require, it is not improper that he should be governed by the voice of the majority, acting in good faith and without collusion, if what they ask is not inconsistent with the provisions of his trust."

It is impossible to distinguish the above cases from the case at bar. The agreements under which the trustee acted, including the certificates of indebtedness, constituted one contract. No decree

could have been made adjudging the invalidity of part only of these contracts. The validity of the certificates of indebtedness was necessarily involved, and a decree against the trustee under the said certificates of indebtedness or "agreements," as they are called, must necessarily bind the holders thereof. It must also be noted that six-sevenths of the certificate holders apparently assented to this decree, and took no steps to appeal therefrom.

It is true that Judge Wallace said that in his opinion this decree concluded a holder of a certificate of indebtedness only to the extent to which it determined his rights or interests in the trust property, and did not preclude him from suing on the certificates of indebtedness.

But we think that the claim that the Ohio decree bound the collateral stock, but not the obligation secured by the stock, is not borne out by the facts. All these agreements, including the certificates of indebtedness, were a part of one single agreement; the stock and the certificates were bought as one "Unit"; the illegality of any material part of this single agreement affected all its material parts; the validity of all the agreements constituting one contract was expressly involved in the Ohio suit; and the nature of the agreements was such that no one of them could be declared illegal without affecting all of the others.

The certificates of indebtedness were issued under the terms of the contract of July 20, 1899, and were one of the considerations therefor, and the certificates of indebtedness cannot be considered as independent thereof.

The agreement of July 20, 1899, and the certificates of indebtedness could not be declared illegal as against the trustee without also affecting all things that had been done and were to be done by the trustee under the certificates of indebtedness, the decree declaring, in effect, that the countersign-

ing and registering of these certificates by the Trust Company were illegal, affected the validity of the whole instrument, as by its terms it was not to "be valid until countersigned and registered by the said Company." The certificates were to be paid by the American Trust Co. The Trust Company had money on hand to pay in part the next instalment. The decree, in effect, declared such payment illegal, thus nullifying the whole certificate. A decree against the Trust Company would affect the very instrument itself, its terms and conditions.

In other words the Trust Company was an active party in the execution of the certificates of indebtedness, and in carrying out their provisions. A decree annulling and cancelling all the acts done and to be done by the Trust Company in connection with these certificates could not but affect and bind all parties seeking to enforce the provisions of the certificates.

The Ohio decree of December 12, 1903, specifically found that all the agreements were null and void, and ordered the return and cancellation of the certificates of indebtedness.

This Court will note that many of the cases above cited were cases where the Courts held that the judgment of the Court against the trustee for bondholders was conclusive on the bondholders, not only as to the validity of the mortgage security, *but also as to the validity of the bonds themselves.* For instance:

In Beale *v.* I. M. & F. R. R. Co., 138 U. S., 290, the decree against the trustee annulled the *bonds* and mortgage, and was held conclusive on the bondholders.

In Corcoran *v.* C. & O. C. Co., 94 U. S., 741, the decree against the trustee as to the question of interest on matured *coupons* was held binding upon the bondholders.

In Kneeland *v.* Luce, 141 U. S., 491, the consent

of a trustee to receiver's certificates was held to bind the bondholders.

In Woods *v.* Woodson, 100 Fed. Rep., 515, a decree in a suit against the trustee that the *bonds* and deed of trust were void, was held to be binding on the bondholders, though not parties to the suit.

It will be noted in this connection that this decree was entered with the knowledge, and without the objection, of these claimants.

As was said in Hornsby *v.* City Nat. Bank, 60 S. W., 160:

> "As a rule, a suit prosecuted and defended in good faith by a trustee for the beneficiaries, with the knowledge and consent of the beneficiaries, is conclusive in its results on the beneficiaries."

Six-sevenths of the outstanding certificate holders and all of the registered holders were represented on the trial, and by not appealing assented to the provisions of the decree, which assured to them $316,582.50 already paid on the certificates of indebtedness, which amount of $316,582.50 was probably worth more than the whole property of the United Salt Company.

As was said in Shaw *v.* R. R. Co., 100 U. S., 612:

> "To allow a small minority of bondholders representing a comparatively insignificant amount of the mortgage debt, in the absence of fraud or unfairness, to defeat the wishes of such an overwhelming majority of those associated with them in the benefits of their common security, would be to ignore entirely the relation which bondholders secured by a railroad mortgage bear to each other."
>
> See also Elwell *v.* Fosdick, 134 U. S., 500.

Cook on Corporations, Vol. 3 (6th Ed.), page 2805, says: "But in a suit brought to have bonds "declared illegal and void, the bondholders whose

"bonds are attacked, need not be made parties de-"fendant, if the trustee is a party defendant."

UNDER THE NEW JERSEY LAW AND PRACTICE THE DECREE BOUND THE CERTIFICATE HOLDERS THOUGH NOT REGISTERED. The rule that *cestui qui trusts* must be made parties in suits by or against trustees, is only applicable when the "*cestui qui trusts* are known, and are not so numerous as to make it impossible, or highly inconvenient to include them as parties. Butler *v.* Farry, 68 N. J. Eq. (2 Robb.), 760."

Camden Safe Deposit Co. *v.* Dialogue, 75 N. J. Eq., 600, 601.
Hackensack Water Co. *v.* De Kay, 36 N. J. Eq., 548, 552.

In *Board* v. *Mineral Point R. R. Co.,* 24 Wis., 93, 127, the question at issue was the priority of lien of two mortgages, and the Trustees alone were made parties; the objection was made that the *cestui qui trusts* or holders of the bonds secured by said mortgage were necessary parties without whom there could be no decree affecting or barring their rights. The Court said:

> "The Trustee was a proper party to represent and defend the interests of his *cestui qui trusts;* and to have required the complainants at their peril to ascertain and bring in every person holding or beneficially interested in any one of the bonds, would have been to impose upon them a task most difficult, if not actually impossible to be performed. It would have been almost equivalent to denying them the aid of the Court in the enforcement or foreclosure of their mortgage. The holders of the bonds were not therefore necessary parties; and the proceedings and decree without them are as valid as if they had been brought in."

McElrath *v.* P. & S. R. R. Co., 68 Penns. St., 37.
Manhattan Trust Co. *v.* Seattle Coal & O. Co., 19 Wash., 493.

It is shown that over ninety certificate holders including *all* the registered holders, were made parties; in fact all the *known* certificate holders; it is shown that the plaintiff had made due diligence to discover all the parties in interest and had been unable to find any others at the time of suit being brought.

The thirteen claimants (other than the Perkins) apparently were the only ones left out, but their rights were represented by their registered assignees, and were exactly the same as the rights of the other defendants.

On this ground also the claimants were bound by this decree of December 12, 1903.

The judgment against the registered holders of the certificates in question bound not only the registered holders but their unregistered transferees.

The registered holders were the persons whom the National Salt Company had to consider in connection with these certificates; as far as either the National Salt Company and the American Trust Company were concerned, the registered holder was the actual holder; all the active duty of the American Trust Company was to the registered holder, the Trust Company held the stock, and collected the dividends for the benefit of the *registered* holder; payment to the registered holder satisfied the liability. By the terms of the agreements, the registered holder held the legal title to the certificate until the issuance by the Trust Company of another certificate in place thereof.

So a decree against the registered holder annulling the certificates, and thereby putting an end to the liability, should bind the unregistered transferee,

POINT IX.

The decree of the Court of Chancery in the matter of the claim of the American Trust Company herein was binding and conclusive on the claimants.

As has been shown, the claimants herein caused the American Trust Company to file its claim with the Receivers herein on their behalf and at their request; they relied upon said claim for the enforcement of their rights; the brief in said matter was prepared by the attorneys for the claimants.

The Trustee was in Court for the benefit of the claimants, and they are bound by the decree against the Trustee.

As was said in Kerrison *v.* Stewart, 93 U. S., 155, where a similar question arose,

> "Undoubtedly, cases may arise in which it would be proper to have before the Court the beneficiaries themselves, or someone other than the Trustee, to represent their interests. They then become proper parties and may be brought in or not, as the Court in the exercise of its judicial discretion may determine. But this was very clearly not a case in which such action was required, and so all the parties evidently thought, while the litigation was progressing. The Trustee, as well as Kerrison & Leiding, appeared, and vigorously resisted the decree asked for. The report of the case in Stewart *v.* Kerrison, 3 Rich. (NS), 266, to which we have been referred, shows that they were represented by the same counsel who appear here for the creditors. The argument was full and the judgment carefully considered. In addition to this Patton & Co. and Hutton, who are among the creditors now resisting

the decree, were named as parties to the suit, and might have appeared to defend, if they had been so inclined. They seem, however, to have been then content to leave their interests in the hands of the Trustee, who certainly could present their defense if he would, and against whom no charge of neglect even is now made.

"It remains to determine whether Charles Kerrison was authorized to represent the creditors in proceedings against him to defeat the title he held for their security. This depends upon the intention of the parties, as expressed in the deed creating the trust, and making him the Trustee. Looking to that, we find that he was the 'approved Trustee,' provided for in the arrangement between Kerrison & Leiding and a majority of their creditors, which was the foundation of the trust. He was to 'hold the premises' as security for the scheduled creditors who had already accepted the terms proposed, and also for such of certain other creditors named in the second schedule as should thereafter accept. If the debts so secured were not paid by Kerrison & Leiding, it was made his duty to provide the means for their payment, as well as the payment of all proper charges and expenses, either by a public or private sale of the property, or by mortgage, if practicable. If he should deem it best for the interests of all, he was authorized to sell the whole or any part of the property at any time for cash, or on such credit as would enable him to meet the debts at maturity; but if he did not sell before maturity, the cash received, after deducting all proper charges, &c., was to be divided amongst the creditors in proportion to the amounts due them respectively.

"From this it appears that he was not only invested with the legal title to the property, but that all parties relied on his judgment and discretion for the protection of their respective interests."

The Court held that the creditors were bound by the decree of the State Court adjudging the deed of trust to Kerrison void.

As was said in SOUFFRONT *v.* COMPAGNIE DES SUCRERIES, 217 U. S., 475, at page 486:

> The persons for whose benefit, to the knowledge of the court and of all the parties to the record, litigation is being conducted cannot, in a legal sense, be said to be strangers to the cause. The case is within the principle that one who prosecutes or defends a suit in the name of another to establish and protect his own right, or who assists in the prosecution or defense of an action in aid of some interest of his own, and who does this openly to the knowledge of the opposing party, is as much bound by the judgment and as fully entitled to avail himself of it as an estoppel against an adverse party, as he would be if he had been a party to the record. (Lovejoy *v.* Murray, 3 Wall., 1.)
>
> Plumb *v.* Crane, 123 U. S., 560, in accord.

POINT X.

The claims of Erickson Perkins and of Erickson Perkins as administrator of Sarah A. Perkins, deceased, were adjudicated in the Ohio action, to which they were parties, and they are bound by that decree.

The decree in the Ohio Court (p. 556) specifically held against said claimants that the certificates of indebtedness were null and void, and ordered their surrender and cancellation.

This Court is bound to give full faith and evidence to this decree, and to hold that the matter has been finally adjudicated by the Ohio Court.

POINT XI.

The National Salt Company has received not one cent from the United Salt Company, or its stockholders; it has paid out over $314,000 to the United Salt Company's stockholders; it has advanced to the United Salt Company over $89,000; the agreements sued on have been declared null and void by the Ohio court as illegal and contrary to public policy; the National Salt Company was forced into bankruptcy largely on account of these contracts.

We think the decree of the Court of Chancery is correct, and earnestly request its affirmance.

March 27, 1911.

Respectfully submitted,

CHARLES W. FULLER,
Solicitor for Receivers.

HENRY B. TWOMBLY,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between—

CHAUNCEY H. STRICKLAND,
Complainant,

AND

NATIONAL SALT COMPANY,
Defendant.

In the Matter of the Claims of EDMOND L. BROWN and others,
Appellants.

Brief of the Receivers of National Salt Company in Reply to Brief of Appellants.

The points made in the briefs of the appellants have largely been treated in the original brief of the Receivers, but the appellants have seen fit to raise certain questions involving the good faith of the Receivers and the International Salt Company, the largest stockholder of the National Salt Company, which ought to be answered.

I.

It is true that Mr. Justice Leventritt, in Strickland *v.* National Salt Company, 43 Misc. (N. Y.), 172, refused to confirm the sale of the property of the National Salt Company by the Receivers, for the reasons stated in his opinion, but his opinion was based upon statements made only in affidavits based in large measure upon information and belief. Prior to the second sale, which was made upon the order of Mr. Justice Leventritt himself, the questions in dispute were tried out before Mr. Justice Francis M. Scott at a Special Term of the New York Supreme Court in a trial lasting about two weeks, and the Court found as follows:

> "I find no evidence that any person who has been charged with dereliction of duty or morals has entertained any intention to injure the plaintiff, or to do anything more than was for the benefit of the National Salt Company as a corporation, and its stockholders in general, and its creditors."

The full text of his opinion we insert, as it was delivered orally, and has not been in any of the reports:

NEW YORK SUPREME COURT,

NEW YORK COUNTY.

HENRY K. POMROY and 89 other persons, holders of preferred stock of the National Salt Company, amounting to about three thousand five hundred shares,

Plaintiffs,

AGAINST

JOY MORTON, EDWARD L. FULLER, MILO M. BELDING, NATHAN S. BEARDSLEE, CHAUNCEY H. STRICKLAND, SAMUEL D. HALLIDAY, NATIONAL SALT COMPANY, NATHAN S. BEARDSLEE and FRANK P. MCDERMOTT, as Receivers of the National Salt Company, and the INTERNATIONAL SALT COMPANY.

CHARLES T. TERRY and WILLIAM A. KEENER, Counsel for Plaintiffs.

PUTNEY, TWOMBLY & PUTNEY, Attorneys for the Receivers, &c.

ELIHU ROOT, J. LANGDON WARD and HENRY B. TWOMBLY, Counsel for Defendants.

What has impressed me as the trial of this action has proceeded is that it is not apparently brought and prosecuted in good faith, and that is a serious objection to the maintenance of an action in Equity. I say it is not brought and prosecuted in good faith because I find in the complaint a number of serious allegations of fraud, specific allegations of fraud upon the part of the various persons, made recklessly, not even upon information and belief, but on the pleader's own knowledge; as to which the evidence has entirely nega-

tived the allegations or there has been no evidence offered at all. There is, for instance, the allegation made on the part of the plaintiffs, perhaps not material, but still an allegation which was made by way of inducement to the general cause of action, that $400,000 of this $800,000 of indebtedness had been borrowed by the previous Board of Directors of the National Salt Company to pay dividends which had not been earned. The evidence is directly to the contrary of that, and the $400,000 is abundantly accounted for in other ways. And there are these allegations respecting the manner in which the security underlying the $450,000 loan have been disposed of, which, as pleaded in the complaint, would amount almost to a charge of grand larceny against the person, which appears to be so entirely wide of the mark that they can only be characterized as a reckless disregard of the facts. That there should be such a discrepancy between the allegations and the proof is doubtless due to the fact that the plaintiffs, or that one of them who verified the complaint, overstated to the attorney who drew the pleadings the facts which the evidence would disclose.

The other ground on which I am forced to think that the action is not prosecuted in entire good faith arises from the very frank statement of counsel for the plaintiffs, made on two separate occasions, to the effect that what the plaintiffs really want is not the relief asked for in this action, but that they be allowed to come in and participate in the stock of the International Salt Company as though they had come in in the first place. Of course, if an action is brought in a Court of Equity ostensibly for one purpose but avowedly for the purpose of compelling the defendants to do something not prayed for in the complaint, the good faith of the action is at once called in question. In thus commenting upon what I have termed the lack of good faith underlying the action, I am not to be understood as reflecting in any way upon the counsel who have represented the plaintiffs. They have been called upon to present the case as their clients have desired, and must naturally have been obliged to rely upon their clients for information as to the provable facts.

Then as to the general charge that the defendants, the persons named in the bill, have conspired together for the purpose of injuring these plaintiffs, there are two considerations which appear to me to render that improbable upon its face. In the first place, there is the consideration which has been referred to, that ample opportunity was afforded to the stockholders of the National Salt Company to do that which the plaintiffs say they would now like to do; that is to say, to exchange their stock for International Salt Company stock. And so far as I can recall the evidence, and I have followed it with very considerable care, there is no evidence that anything was ever done by any person to deter any stockholder from taking advantage of that offer. So that it cannot be said upon the evidence in this case, that the plaintiffs were prevented from accepting that proposition of making that exchange by anything that was done in point of fact by any party here.

The other consideration arises from the tremendous disparity between the whole capital stock of the National Salt Company, or rather between that proportion of it now held by the International Salt Company and the proportion held by the plaintiffs which has been referred to as six per cent., and which I think as the evidence shows is about the right proportion. I do not mean to say—I am very far from saying that a minority holder, no matter how small his holdings may be, if it be only six per cent. of the whole amount of the capital stock, is not entitled to the protection of a Court of Equity if he can show that he is being oppressed or fraudulently dealt with. It is not upon that ground that the disparity of stock impresses me as important, but it is this: that it seems to me to be inconceivable that the owners of ninety-four per cent. of the capital stock of the National Salt Company should go into an elaborate conspiracy, an expensive conspiracy, to depreciate and injure the value of their own property, of which they own ninety-four per cent., for the purpose of doing a gratuitous injury to the holders of six per cent., an injury for which there appears to be, if they desire to do an injury, no conceivable reason.

Now I am asked in the first place to stay this

New Jersey State Library

sale. I do not think I should stay it and I doubt whether I have the right to stay the sale in this action. That sale has been ordered by this Court in another action now pending here. I was inclined to the view upon the motion to dismiss the complaint at the outset that I should take jurisdiction to inquire into the question whether or not the order of Judge Bischoff should be carried out; owing to the fact that it appeared that the plaintiffs here were not parties to the action in which that order was made, had had no opportunity to be heard in respect to the order, and had had no opportunity to appeal from it, if it was not satisfactory. By the amendment of the complaint it appears that that order has been superseded by another order made by Mr. Justice Leventritt upon which the plaintiffs were heard, as to which they were parties, from which they can or could have appealed if they had seen fit, and which so far as appears upon the face of the order was entered, if not upon their motion or consent, at least by their acquiescence because there is no recital that they objected to it and indeed they did not. And I think assuming the right of this Court in an Equity action to set aside an order of that character, it should only be exercised where it appears that the relief could not have been obtained in the action in which the order was made by means either of a motion to vacate, or an appeal. And inasmuch as the plaintiffs were parties to that case before Judge Leventritt, were admitted to be heard on the order and are recited in the order as parties being heard on it, undoubtedly they had a right to appeal and could have appealed if the order had been unsatisfactory to them. I do not understand that it was unsatisfactory, however. That is to say, I understand that their proposition is that if the property has to be sold at all, that is the kind of an order under which it should be sold; but that it should not be sold under any order at all. I see no reason for the Court to interfere in that. That is based upon the proposition, as I understand, that this company or the National Salt Company was not insolvent when the receivers were appointed, and at all events, if insolvent then, is not insolvent now. While I have no doubt that this Court might inquire

into the fact whether or not the company was insolvent when the receivers were appointed in New Jersey, when we are called upon to act in support of the judgment of the Court by appointing ancillary receivers, I clearly think we cannot set aside and should not lightly disregard the decree of a Court of a sister State.

Now I am by no means satisfied from the evidence here that this company was not practically insolvent when these receivers were appointed. I will not say that it was absolutely insolvent; I will not say that its property of all kinds was not sufficient to meet and pay its debts; but that it was insolvent in the sense that it could not meet its current obligations which were accruing, and it was liable to be subjected to vexatious and expensive and even ruinous litigations from that liability, I think is very fairly well established by the evidence. I cannot doubt that any responsible and competent counsel would have felt himself justified in advising the National Salt Company to go into the hands of a receiver at the time these receivers were appointed, for the purpose of protecting itself and its stockholders and its creditors generally, against the possibility of devastation at the hands of some other persons.

Then I am not at all satisfied as to the valuations which are sought to be put upon the property of the company. I mean these properties which have been discussed. As to those stocks which underlie the $450,000 loan, I suppose that it is difficult for any man to give an estimate, or any two men to agree upon an estimate of the value of stock of that character. While looked upon as an income producing property it may be of value equal to the capitalization of its income; while as a part of a great manufacturing organization extending throughout the country, it may have a special value to that organization, yet obviously it is not the kind of property which has any considerable value if attempted to be used as collateral, or if put up in the open market at a forced sale. I am not at all satisfied that the property can be fairly said to be worth any such sum as claimed for it. As to the plants in this State, I can only say from the evidence I have heard, I shall not be greatly surprised if on a

second sale they bring less than on the first sale. The evidence of Colonel McClure was very interesting as to value and what he said about market value and forced sale value was interesting as far as it went, until it appeared that what he meant by market value was the value of reproduction less an arbitrary percentage which he appears to have deducted, and that in point of fact he did not know where there were purchasers to be found for any of the plants. I do not suppose that a manufacturing plant, adapted to the purpose of one kind of manufacturing, can be said to be of any value at all, or of any definite value, unless it is not only adapted for that purpose but for the purpose of doing other work if the purchaser should want to use it for that purpose. And I am left in doubt here as to whether, certainly as to more than two or three of these plants, there would be found anybody at any price who cared to acquire them for the purpose of carrying on the salt business. I conceive they might have a value to the National Salt Company if it were going on, or to the International Salt Company, but I do not see that as a proposition of selling in the open market there is very much evidence upon which an estimate of value can be based.

Therefore I do not think I should enjoin the sale and prevent its going on.

As to the removal of the receivers, I see no ground on the evidence for that action. I am sorry that counsel has deemed it necessary to reflect upon Mr. Beardslee, as receiver. So far as the evidence discloses in this case, and I can go only by the evidence in the case, Mr. Beardslee appears to me to have proved himself to be an efficient, faithful, careful receiver and conservator of this property. I do not deem it to be a reflection upon him or an indication of partiality on his part, improper partiality, or an indication of any intention or spirit of wrong doing that both as president of the National Salt Company and as receiver of the National Salt Company he should have freely consulted and availed himself of the advice of Mr. Fuller, who was largely interested in the business of the International Salt Company and consequently interested in the business of the National

Salt Company. On the contrary, I consider that a receiver, particularly a receiver appointed upon the practical side of the receivership, who refused to consult with and avail himself of the advice of the real owners of the property and the practical men connected with it, would run a very great risk of committing errors which might be most detrimental to all interests. So far, I am bound to say, since the attack has been made upon Mr. Beardslee here, that if I were sitting to-day with what I know now and what has been disclosed in this case, upon an application to appoint receivers of this company, I should select Mr. Beardslee before any other person whom I know, as being a competent and proper person to be made receiver of the company.

Therefore the application so far as it applies to the removal of the receivers, is not granted.

There is only one other question, and that I think can be disposed of very shortly. That is the demand that the International Salt Company should be called upon to account for the value of these stocks and bonds. Of course the first question which presents itself is whether it is a matter which I have any right to take any jurisdiction of in this action. It is not a matter which the ancillary receivers appointed in this State have anything to do with. It is not an action, if an action of that kind should be brought, the venue of which should be laid in the State of New York. If there were any basis for an action of that character, it seems to me it should be brought in New Jersey where the corporation is situated, where its principal personal property is located and where its receivers were appointed. Further than that, the allegations in the complaint, which, as I say, amount almost to a charge of larceny, have not been sustained by the evidence. The complaint does not contain the appropriate allegations nor does the evidence disclose the appropriate facts justifying the assumption of jurisdiction at suit of these stockholders to call the International Salt Company to account for these bonds. The transaction by which the bonds have come into the possession of the International Salt Company has been thoroughly explained; a perfectly orderly and

perfectly proper transaction and the most that could be said would be that the National Salt Company or its receivers who now represent it, might have a right—I don't say they would have, if the International Salt Company chose to resist it—but the most that could possibly be claimed is that they might have a right to go to the International Salt Company and tender that $450,000 and whatever interest might be due, and to obtain a return of those securities. Now, there is no suggestion here that the receivers have $450,000 to pay. If the plaintiffs are prepared to advance that sum, or if there is any way that that amount of money could be returned to the International Salt Company or whoever now holds those bonds as collateral security, I suppose that if an application were made to a Court of Equity for an order instructing these receivers to bring an action under such circumstances that at the very least the parties making that application would be called upon to indemnify the receivers for the expenses to which they might be put and the costs which might be charged against them, if unsuccessful. It does not appear that there was any such suggestion or offer of anything of that sort made. Unless these stocks and bonds have a value considerably over $450,000, the question of the insolvency of the National Salt Company and its inability to pay its present debts would be solved beyond all doubt if they undertook in addition to the other obligations which the receivers have to meet, an advance of $450,000 to redeem those stocks.

Now there is only one other matter which I might say on the subject of a request for judgment, and that is the criticism which has been suggested in the evidence as to the action of the receivers in surrendering to Joy Morton & Company or their successors this large amount of salt which was in Chicago. As to that there is certainly no evidence on which I could form a judgment that the receivers have wilfully acted wrongfully and they have done anything which they did not believe, and were justified in believing, was for the best interests of all concerned. But even if they were inadvertent in that regard; if they should have attempted to market the salt in some other way, that

is a question which can only be raised and only properly raised, in my judgment, upon their accounting when the time comes that they shall be called upon to account for their acts. It is not a matter which requires me to take any action; and even if I should do so and find it against them, it would have no bearing upon any of the prayers for relief which are now finally asked for from the Court.

Now, of course this cause of action for the return of the stock or an accounting by the International Salt Company for the value of the stock is quite separate and distinct as to the law and as to the facts, from the other prayers for relief, as the removal of the receivers and stay of the sale. In reality there are two causes of action united in this complaint. But upon the whole case I do not see that I have any right or that I would be justified under the law or under the facts in granting any portion of the relief which the plaintiffs ask. I find no evidence of conspiracy; no evidence of fraud; no evidence that any person who has been charged here with dereliction of duty or morals has entertained any intention to injure the plaintiffs or to do anything more than was for the benefit of the National Salt Company as a corporation, and its stockholders in general and its creditors. If the plaintiffs will not receive the full benefit of what has been attempted to be done for the National Salt Company and its stockholders and creditors, that is because they have themselves refused to avail themselves of the opportunity that was offered them to benefit, not only from this property but from the acquisition of the other properties which were to be joined with it in the formation of the International Salt Company. For that error of judgment on their part, I fail to see any cause of action against any defendant here. So that the complaint will be dismissed upon the merits with costs to each party separately appearing by attorney.

Judgment was thereafter entered in favor of the Receivers and the International Salt Company, upon findings embodying the facts stated in Judge Scott's opinion.

II.

Counsel for appellants with equal candor have attacked the decree of December 12, 1903, of the Ohio Court as fraudulent and collusive.

In that connection, the opinion of Judge Stone of the Court of Common Pleas, Cuyahoga County, in National Salt Company *v.* United Salt Company, in 12 Ohio Decisions, 386, February 8, 1902, is instructive. The opinion in full is as follows:

THE STATE OF OHIO, } ss.:
Cuyahoga County. }

IN THE COURT OF COMMON PLEAS.

NATIONAL SALT COMPANY,
Plaintiff,

vs.

THE UNITED SALT COMPANY
et al.,
Defendants.

No. 74,054.
Decision.
Feb. 8, 1902.

Present—On behalf of the Plaintiff: FORD, SNYDER, HENRY & MCGRAW, OUTHWAITE, LINN & THURMAN, JOHN A. MCKAY, Esq., and CLARK & CULVER.

On behalf of the Defendants: KLINE, CARR, TOLLES & GOFF, HENDERSON, QUAIL & SIDDALL, WHITE, JOHNSON, MCCASLIN & CANNON, WILLIAMSON, CUSHING & CLARKE, C. A. BAIRD, Esq., CARPENTER, YOUNG & STOCKER, and J. F. WALSH, Esq.,

STONE, *J.*:

This case is before the Court on demurrer to the petition, the grounds of the demurrer being first,

that there is a misjoinder of parties defendant, second, that several causes of action are improperly joined, and third, that separate causes of action against several defendants are improperly joined, and fourth, that said petition does not state facts sufficient to constitute a cause of action.

A brief statement of the case is essential in consideration of the questions raised upon demurrer:

The petition alleges in substance that the National Salt Company is a corporation, organized under the laws of the State of New Jersey, to manufacture and sell salt, with power to act outside of that State, and was engaged in selling salt in the State of Ohio, and as such was a competitor to the defendant The United Salt Company; that the United Salt Company is an Ohio corporation and was under its charter engaged in the business of producing, manufacturing and selling salt in the State of Ohio, and was a competitor of the plaintiff in said business within the State of Ohio, and in so operating its business was able to and did control more than seventy-five per cent. of the salt business within the State of Ohio; that The American Trust Company is an Ohio corporation, and that the defendant stockholders were owners of the United Salt Company stock and received certain certificates of indebtedness issued by the National Salt Company, countersigned by the American Trust Company; that the plaintiff brings the action on request of certain of its stockholders who have never assented to the transaction, and on its own behalf; that the plaintiff the National Salt Company and defendant The United States Salt Company and defendant stockholders, desiring to combine their capital stock and acts, to create and carry out the restrictions in the trade of salt within the State of Ohio and to limit or reduce within the State of Ohio the production of salt, and to increase or reduce the price of said commodity within this State and to prevent competition within this State in manufacturing, making, producing, transporting, selling or purchasing salt, made and entered into in the manner and form hereinafter stated, certain alleged agreements, by which the plaintiff and the United Salt Company and the defendant stockholders agreed to pool, combine and

unite within the State of Ohio said interest which they and each of them had connected with the sale and transportation of said common article (salt), that its price in the State of Ohio might be affected; that, in order to carry out this intention and purpose, the plaintiff and defendant stockholders, on the 22d of September, 1899, executed the written documents, copies of which are annexed to the petition.

The plaintiff sets out the transaction in substance as follows: An agreement on the part of The National Salt Company and the stockholders of the United Salt Company whereby The United Salt Company stockholders agree to exchange the shares of stock held by them in the United Salt Company, for the shares of stock in the National Salt Company, together with a cash consideration or payment on the basis of one share of stock of The United Salt Company in exchange for one and one-fourth shares of the common and one and one-fourth shares of the preferred stock of The National Salt Company, the cash consideration being $106.25 per share.

The United Salt Company stockholders transferred their stock to the National Salt Company which latter Company indorsed in blank and deposited with The American Trust Company as trustee or depositary the par value of $993,400, to be delivered to The National Salt Company when The National Salt Company had performed certain other covenants and had paid $1,055,489.50 in cash in ten equal semi-annual installments represented by certain debt certificates issued by The National Salt Company to The United Salt Company stockholders. The stock certificates so deposited with the American Trust Company were endorsed in blank by The United Salt Company.

The National Salt Company deposited with The American Trust Company as trustee $1,250,000 par value of its preferred stock and $1,250,000 par value of its common stock, to be delivered to the former stockholders of The United Salt Company after the dividends declared thereon had been applied to reduce the cash payment agreed to be paid, which was to be paid in ten equal semi-annual installments beginning January 1, 1900, the agree-

ment and option being dated July 20, 1899, and the option exercised October 2, 1899. That pending the payment of this cash consideration The United Salt Company stock was deposited with The American Trust Company as trustee, to secure the due performance on the part of The National Salt Company of its agreement to pay the United Salt Company stockholders the $106.25 per share in money.

The stock of The National Salt Company to which the stockholders were entitled under this agreement was also deposited with The American Trust Company as trustee to hold until the full payment of the consideration, so as to secure to The National Salt Company the application of the dividends paid on such stock during the time of the running of the ten semi-annual installments.

It is alleged that The American Trust Company accepted the trust and is now acting thereunder.

It is also alleged that The National Salt Company issued its certificates of common and preferred stock to the amount of one and one-fourth shares of preferred stock and one and one-fourth shares of common stock for each share of the stock of The United Salt Company, to W. T. Hunter, the nominee of The American Trust Company, and such certificates were deposited with The American Trust Company as trustee. The American Trust Company then issued trust certificates to the defendant stockholders, certifying that after The National Salt Company had paid the cash consideration and after the dividend had been properly applied, they would be entitled to the stock from it. It is alleged that three installments have been paid on the certificates of indebtedness.

It is further alleged that while the transaction between plaintiff and defendants, The United Salt Company and the defendant stockholders, took the form of the alleged agreements set forth in the petition, the real transaction was as hereinbefore set forth, and that the pretended purchase and sale of all of the stock issued and outstanding of The United Salt Company in exchange for cash and stock of The National Salt Company was for the purpose of combining the business of The United Salt Company and The National Salt Company in the State of Ohio into one combination and under

one control, with a view and intent and for the purpose of restraining trade in said commodity in said State and preventing the competition theretofore existing between plaintiff and The United Salt Company in the purchase and sale of salt in the State of Ohio, so that they might be enabled to control, increase and decrease the price of salt in the State of Ohio at will; that in order to conceal the real object and purpose of the transaction, and for the purpose of avoiding the anti-trust law of the State of Ohio, and to avoid the appearance of corporate action on the part of both companies, the transaction took the form of a purchase and sale or exchange between the individual stockholders of The United Salt Company and plaintiff; that in order to further conceal the real object and purpose of the transaction, it was agreed that the business of the combination should be conducted in the name of United Salt Company, and thereafter said business of said combination was so conducted in the State of Ohio. That thereafter, and from the 22nd day of September, 1899, said combination between plaintiff and defendants became and was complete and effective, and thereafter and by reason of said combination competition in the sale of salt in the State of Ohio between plaintiff and The United Salt Company ceased and the trade in said commodity was thereafter restricted in the State of Ohio.

That the alleged agreement providing for a cash payment of $106.25 per share for each share of The United Salt Company and the issuing of certificates of indebtedness was a mere subterfuge, the real agreement being that the National Salt Company should make a guarantee of seven per cent. upon its preferred stock and ten per cent. upon its common stock to the stockholders of The United Salt Company who received that stock in exchange for the United Salt Company stock, and that thereby a preference was given to those stockholders over and above the stock in the National Salt Company held by the other stockholders therein, and that such making of preferred stock and guaranteeing of a dividend thereon was without power on plaintiff's part to make and that such action was void.

It is further alleged that under the terms of the

deposit of stock of the United Salt Company by the National Salt Company with the American Trust Company, such stock can be sold in case of default in payment of any of the installments of the cash consideration; and that the plaintiff's charter provided that no mortgage shall be created without first obtaining the consent in writing of the holders of seventy-five per cent. of the preferred stock outstanding at the time, and also the like consent of the holders of seventy-five per cent. of the common stock, and that no such consent was given to mortgage this stock, and this action is *ultra vires* and void.

It is averred that said alleged agreements were and are of no effect, are still executory and have not been executed, and being void and of no effect and being still executory, plaintiff, on behalf of said requesting stockholders, and on behalf of all of its stockholders as well as of itself, offers to release and relinquish to the defendants and each of them or their nominees or assigns, all interests or rights pretended to be transferred to it by said alleged agreements.

The plaintiff therefore prays that the alleged agreements may be declared null and void, that the parties be placed in their original position by a return of the United Salt stock to the United Salt Company stockholders, and by a return of The National Salt Company stock to The National Salt Company, and for other relief.

The first ground of demurrer is that there is a misjoinder of parties defendant.

Sec. 5006 of the Revised Statutes provides: "Any person being made a defendant who has or claims an interest in the controversy adverse to the plaintiff, or who is a necessary party to the complete determination or settlement of a question involved therein."

This is an action in equity, and relief is sought against the trustee, The American Trust Company, the defendant stockholders of The United Salt Company, as well as against all parties who had acquired interest in any of the property delivered under the agreement prior to the commencement of the action. If relief is had against the trustee the other defendants are interested in the nature and

extent of that relief, because it will affect each of them. If the plaintiff is entitled to relief against the stockholders, the trustee, who is in possession of the fruits of this contract, is an essential party to make it effective. If relief is granted against the certificate holders, both the trustees and the stockholders are necessary parties, that full relief may be had and a determination of their respective rights secured. It is reasonably clear that no defendant is enjoined who has not an interest in the controversy adverse to the plaintiff, and who is not necessary to a determination of the questions involved. We think the claim of misjoinder is not well taken.

Neither does it appear to the Court that there are several causes of action improperly joined in this petition. The petition states one cause of action only.

Under Sec. 1558 of the Revised Statutes, the plaintiff may unite several causes of action in the same petition, whether they are such as have heretofore been denominated legal or equitable or both, when they are included in either of the following classes: (1) The same transaction, (2) transactions connected with the same subject of action.

The petition, in our opinion, treats of one transaction, or one transaction is the subject of the action.

Neither does it appear to the Court that separate causes of action against several defendants are improperly joined. There is no separate cause of action against several defendants, and therefore there can be no improper joinder, in the opinion of the Court. There is but one cause of action, an action in equity that concerns a number of parties and against whom relief is sought, arising out of the same transactions, and, in a sense, may be regarded as an action for an accounting and for relief, as it affects all the parties to the transaction.

The subject is the alleged illegal contract entered into between the plaintiff and the defendants, and it is not perceivable to the Court that separate causes of action are here improperly joined, within the meaning of our statute.

This brings me to the consideration of the really important question presented by the de-

murrer; namely, does the petition state facts sufficient to constitute a cause of action? The defendants claim the petition does not, for the reasons (1) that the act entitled "An Act to Define Trusts," etc., 93 O. L., page 143—commonly called the Valentine Anti-Trust Law—is unconstitutional, and (2) that if the law is unconstitutional, the plaintiff is in *pari delicto* with the defendants and not entitled to relief, and that the Court must in this and in cases involving illegal contracts leave the parties where it finds them, by dismissing the petition.

The validity of this act was challenged in the Buckeye Pipe Line case, 61 O. S. 529, and was sustained. The language of the syllabus in that case is as follows:

> "The act is entitled 'An act to define trusts, etc.,' 93 O. L., page 143, in so far as it forbids independent corporations to enter into combinations to restrict competition in trade with a view to exacting from consumers higher prices than would prevail under the conditions of open competition, is an exercise of legislative power not repugnant to any limitation prescribed by either the state or federal constitution."

It is urged by counsel for the defendants that the case at bar is one involving a contract for the ordinary purchase and sale of property, and that this decision does not cover such a transaction as this. It will be observed the petition follows very closely the language in the Valentine Act and, so far as applicable, the precedent for such a petition in the Buckeye Pipe Line case, *supra,* as well as in the Standard Oil case, 49 O. S. The pleader has taken the language of the Valentine act to plead a combination and trust, but has inserted allegations to the effect that the whole transaction was for the purpose of combining the business of two parties and restraining trade and preventing competition so that they might be enabled to control and increase or decrease the price and production of salt within the State of Ohio at will. That "It was agreed among themselves that the business of the combination to be effected by them should be conducted in the name of the United Salt Company,

and thereafter said business of said combination was so conducted in the State of Ohio. Further, "thereafter by reason of said combination, competition in the sale of salt in the State of Ohio between plaintiff and said United Salt Company ceased, and the trade in said commodity was thereafter restricted in the State of Ohio."

Furthermore, it is alleged that the United Salt Company, one of the parties to this consolidation or combination, before the consolidation, controlled more than seventy-five per cent. of the salt business within the State of Ohio; that the parties made a combination by exchanging their stock, thereby combining the two enterprises into one and carrying on the business under the name of the United Salt Company; that the competition between the parties ceased and that the trade in said commodity was thereafter restricted. With these allegations in the petition, the truth of which is admitted by the demurrer, it cannot well be contended that the record presents a mere case of a sale of stock in one company to another company, a former competitor, whereby incidentally the former competition ceased. The transaction set forth in the petition is an unlawful agreement to effect the trade in Ohio, carried out by an exchange of securities, and that the agreement has been carried out to the extent stated, and has had its effect on that trade. To what extent the allegations of this petition can be sustained upon the trial of the case and to what extent the agreements referred to in the petition and which are annexed to the petition but not made a part of it, will sustain the averments of the petition, is not the question before the Court, but simply whether the admitted facts present a case that brings it within the Valentine act. Taking this petition as it stands, we cannot avoid the conclusion that the case is within the provisions of this law, and that the decision of the Supreme Court in the Buckeye Pipe Line case is decisive and controlling as to the constitutional question presented upon this demurrer.

Chief Justice Shauch, in announcing the opinion, says in part:

> "We do not, however, deem it necessary or prudent to pass upon all objections which

are urged against the act. It is quite familiar doctrine that in determining the constitutional validity of statutes their different provisions are not necessarily subject to the same conclusion. They are not, unless they constitute a single scheme, and are so interdependent that it could not be rationally presumed that any of them would have been made if it had not been supposed that all could be enforced. The application of this doctrine to the act before us is quite clear in view of the differences in the nature of the several combinations which are forbidden and in the character of those against whom the prohibition is directed.

"We are, therefore, to consider only those provisions of the act which are relevant to the cases before us. * * * The agreement, according to the allegations of the petition, has no purpose whatever except to prevent competition in the production, transportation and refining of petroleum, to the end that there may be received from the consumers of its products higher prices than would prevail under the condition of open competition. Counsel for the defendants admit that such a contract is within the inhibitions of the act, but deny the power of the legislature to inhibit it. * * * The definite proposition of counsel upon this point is that although the act is an exercise of legislative power, it transcends the provisions of the state and federal constitutions which render inviolable the rights of liberty and property, which include the right to make contracts. It would be difficult to place too high an estimate upon these guarantees, and they include the right to make contracts. But it is settled that these guarantees are themselves limited by the public welfare or the exercise of the police power. Although that power may not be conclusively defined, its nature and attributes have been the subject of much investigation. In all considerate discussions of the subject it is conceded that in the exercise of this power

> the legislature can prohibit only those uses of property which are hurtful to the public, and the inhibited use must be hurtful in a legal sense. That contracts like these are hurtful in that sense has been held in more cases than it would be practicable to cite. They abound throughout nearly three centuries of the development and administration of the common law in England and America. We cite, because of their full consideration of the subject and their direct application to legislation of this character, *United States* v. *The Trans-Missouri Freight Association*, 166 U. S., 290; *United States* v. *Joint Traffic Association*, 171 U. S., 505; *United States* v. *The Addyston Pipe and Steel Co.*, 54 U. S. App., 723. These cases, says the judge, 'are applicable, since the provisions of the Federal Anti-Trust Statute are not substantially different from those of the Ohio act which are brought under consideration in these cases, and there is no substantial difference between the contract or constitutional provisions involved. That the contracts there considered were in restraint of commerce between states, served only to bring the subject within federal jurisdiction. The considerations affecting the validity of the legislation are in all respects as applicable here as there. Since the contract alleged in these petitions is for the sole purpose of restraining trade or limiting competition, we find no decision which doubts that they are in a legal sense hurtful to the public. * * * Such contracts have been uniformly held to be unlawful."

The allegations of this petition contain the usual averments that are to be found in most of these contracts, which the Courts have so uniformly held to be unlawful. Whether these averments are sustained and justified by the written agreements which are annexed to the petition, it is not our province to inquire, for the agreements are not made a part of the petition, and we look to the

petition only in determining whether it states a cause of action.

As stated by the Supreme Court in the case just considered, the anti-trust laws of the United States and of various States, are not materially different in their provisions. The anti-trust law of Illinois varies in no essential particular from the Valentine act; indeed, they may be said to be almost identical in arrangement and phraseology, and the Supreme Court of Illinois, in the American Glucose Co. case, 182 Ill., 551, had occasion to consider the character of the anti-trust law in that State, in an action brought by individual stockholders to prevent a combination and a consolidation of competing corporations. Six different companies or partnerships, for the purpose of combining the business of manufacturing glucose into one company, entered into agreements or gave options for the sale of their respective properties to the company to be organized under the laws of New Jersey, I believe, with a capital of forty million dollars. These contracts and agreements made provisions as to how compensation should be made, either in money or in stocks, common and preferred, of the consolidated company. All these contracts, agreements and options were deposited with the Illinois Trust Company as trustee, as incidental to the carrying out of the scheme and plan proposed. The plaintiffs, who were dissenting in one of the constituent companies owning and operating a glucose plant at Peoria, Illinois, brought an action to enjoin the carrying out of the proposed consolidation. The bill contained the usual averments to be found in this class of actions involving anti-trust laws. The Court, upon full hearing, sustained the petition and granted the relief sought. The Court, among other things, held as follows: (I read from the 5th Subdivision of the syllabus.)

> "A trust is created where a majority of the stockholders in competing corporations consolidate their interests by conveying all their property to a corporation organized for the purpose of taking their property, when the necessary consequence of the combination is to control prices, limit production or sup-

press competition in such a way as to create a monopoly."

Further quoting from the syllabus:

"The public policy of the State of Illinois has always been against trusts and combinations organized for the purpose of suppressing competition and creating monopoly."

Undoubtedly the public policy of Ohio has been against trusts and combinations in restraint of trade. This public policy has found expression judicially in the cases of

Central Ohio Salt Co. *v.* Guthrie, 35 O. S., 66;
Emory *v.* Ohio Candle Co., 47 O. S., 620;
The Standard Oil case, 49 O. S., 167,

and other cases that might be cited. It has found *legislative expression* and *sanction* in the passage of the so-called Valentine act.

Counsel for the defendants, in support of their contention, have cited very many cases which they deem applicable to this case in which Courts in different jurisdictions have held certain combinations or consolidations of persons and partnerships to be perfectly valid and lawful. We think this case and the question involved in it must be determined and decided in view of the legislation of this State and the judicial interpretation made thereunder, or in other States upon similar laws.

This petition, in the judgment of the Court, sets up a state of facts, and has the important averments that are to be found in any of the cases to which my attention has been called, where judicial construction has been given to anti-trust laws, and the constitutionality of such laws has been considered, and, I believe, uniformly sustained. I see no ground for distinction between the allegations in this petition and those to be found in the cases to which I have referred. We are of the opinion that the decision of the Supreme Court sustaining the Valentine act is a decision binding and conclusive upon the question presented here. It would be presumptuous, probably, for an inferior Court, in

view of this decision and the facts as stated in this petition, to reach any other conclusion, especially so in the light of the well recommended rule that the Court will not declare laws unconstitutional unless they are manifestly and clearly so.

Is the plaintiff *in pari delicto* with the defendants and, therefore, not entitled to the relief prayed for? Counsel for defendants contend that the petition shows such a state of facts and contains such averments, that they are entitled to invoke in their behalf the principle announced in the Hooker case, 28 O. S., 251, and the Walton case, 46 O. S., 195, namely, that in regard to contracts that are entered into for fraudulent or illegal purposes, the law will aid neither party to enforce them, while they remain executory either in whole or in part, nor when executed will it aid either party to place himself *in statu quo* by a recision, but will, in both cases, leave the parties where it finds them.

In the Hooker case it is held that the law will not aid a party to such contract, that is, an illegal contract, either in its enforcement while it is executory or in its recision when it is executed. When such contract has been partially performed by both parties so that the evil purpose of the contract has been in part effected by the co-operation of both parties, then as to such part performance the condition of the parties is the same as though the contract had been fully executed. The parties are *in pari delicto,* and the law will aid neither of them in enforcing performance or in undoing what has been done, hence, under such circumstances, the vendee cannot maintain an action to recover from the vendor the money paid on the contract.

In the Walton case the holding is that a plaintiff who founds his cause of action on an illegal or immoral act has no standing in a Court of Equity, and where both parties have been engaged in an unlawful transaction, the Court will neither lend its active aid to the one party to get rid of the securities taken upon such transaction, nor assist the other party in retaining them, but will leave both to their strict legal rights. Other cases have been cited in support of this general doctrine, but these sufficiently illustrate the principle involved.

There is an exception to the general rule, which is

stated in the language of the Court in the Hooker case, namely, that so long as the illegal acts contemplated by such contracts remain wholly unexecuted, the party who has paid money to obtain their performance may repent of the wrongful purpose, abandon his contract and recover back the money so paid. The law will aid him in such a case in the furtherance of a policy which aims to prevent wrongdoing by encouraging such repentance and abandonment."

This action is one brought, not to recover upon the contract, but for a recision, and through recision to bring about a surrender to the respective parties the property or securities that were the subject of the transaction. The petition alleges that the contract is executory, although, in considering the averments of the petition in other respects, it is clear enough that the contract has been in part executed. Money has been paid on account of it to the parties to this suit. The contention of the defendants is that it has been in the main, if not wholly, executed. We are of the opinion that the contract is in large measure executory. The stock of the National Salt Company designed ultimately for delivery to the defendant stockholders was issued in the name of Sanford, nominee of The American Trust Company, and is in possession of the Trust Company. The shares of stock in the United Salt Company, upon delivery to the National Salt Company, were immediately endorsed in blank and delivered to The American Trust Company as security for the performance of certain features of the contract on the part of the National Salt Company, and it is alleged in the petition that the stock thus pledged as security is subject to sale by the trustee in case of default on the part of the National Salt Company in the payment of certain obligations arising under the contract. This is the language of the petition:

"Plaintiff further says that, by the terms of said alleged agreement for deposit of stock of The United Salt Company by the National Salt Company, said defendant, The American Trust Company, in case of default in the payment of the certification of indebtedness issued by it, or in case of the failure of the National Salt Company to carry

out the terms of said alleged agreement, has power to sell any or all of said stock, at public auction to the highest bidder, and make application of the proceeds derived from said sale." Neither party is in possession of the fruits of this contract. All of the securities which were the subject of sale, or exchange, are in the possession of the trustee, subject to be so held for a period of five years from the date of the contract.

But passing this question as to the extent to which this contract is executory, we may inquire, do the principles announced in the cases to which I have just called your attention apply in this case, or is there a clear distinction to be drawn between these cases and the case at bar? Is the plaintiff *in pari delicto?* The demurrer admits that the suit is brought on the demand of certain non-consenting stockholders of the National Salt Company and that the suit is brought in the name of the National Salt Company because of such demand. It is alleged that these non-consenting stockholders had no knowledge of the transaction at the time the agreement was made; that they never consented thereto; that as soon as they learned of the existence of the agreement they demanded of the Company that it proceed forthwith to have the contract rescinded, and in the event of its refusal to take such action, they proposed to take legal steps on their own behalf. So it can be said with reason that the suit is brought in the name of the non-consenting and protesting stockholders for the reason that the general rule is that a stockholder has no right to bring suit in a matter that affects the corporation. That is for the corporation to do. If the officers of the corporation, after demand by the stockholders, refuse to bring such action, then the stockholders may bring it. There was then no other way for the action to be brought except in the name of the corporation. Is it not then, in legal contemplation, the action of the non-consenting stockholders? If so, and the authorities would seem to support this proposition, the principal of the cases to which I have referred would seem to have no application. The case has in it this feature not to be found in any of the cases to which I have

referred, that is, the Hooker case and the Walton case. The property that is the subject of the controversy, and which was made the basis of the transaction, namely, the stock of the constituent companies, is all in the hands of a trustee and, therefore, the question is very naturally suggested, whether the rule that, while Courts will not enforce an illegal contract between the parties, if an agent of one of the parties has in the illegal enterprise received money or property belonging to its principal, he is bound to turn it over to him and cannot shield himself from liability on the ground of the illegality of the original transaction. 39 O. S., 145.

It seems to us that there is a clear distinction and difference between the case at bar and those in which the Courts of this State have denied relief to parties *in pari delicto,* and that a different rule would best comport with the interests of the public and the rights of the parties in this action. The property involved, according to the averments of the petition, is in the hands of a third party, under an illegal and unlawful contract. Certainly the trustee has no right to retain and have the fruit of an unlawful enterprise, and I am unable to find any good and sufficient reason why this petition as against a demurrer does not state a cause of action.

The demurrers are, therefore, overruled.

It will be noted that the questions of jurisdiction, estoppel, *in pari delicto,* and sufficiency of the cause of action (the same questions the appellants seek to raise on this appeal) were all raised and decided squarely against the defendants, and in favor of the plaintiff. The defendants were represented by able counsel, and voluminous briefs were submitted.

Counsel say (p. 7 of Appellants' Brief):

> "The Ohio suit was pending for more than two years and a half, but during no part of that time was there any real contest made."

We refer in reply to the said opinion of Judge Stone, of February 8, 1902, and to the mass of testi-

mony taken in July, 1902, on behalf of the National Salt Company, which by stipulation was read in evidence on the hearing in this case (pp. 395-555).

This evidence clearly showed that the so-called certificates of indebtedness were, as they were intended to be, simply a guarantee of dividends, and that the whole scheme was illegal and void under the Ohio Statute. Is it any wonder that the defendants sought to obtain an adjustment of the whole matter? The case was brought on regularly for trial, a regular trial was had, witnesses were sworn, and the Court, who decided the demurrer, heard the evidence and rendered a decree (testimony of Snyder, p. 128). Under the opinion of Judge Stone on the demurrer and the evidence taken, no other decree would have been possible.

The charge of fraud and collusion was apparently made recklessly and without due regard to the facts.

III.

Counsel for appellants have laid great stress upon the opinions of Judge Wallace in the Ingraham cases (130 Fed. Rep., 676; 143 Fed. Rep., 805) and the fact that an application for a writ of *certiorari* to the United States Supreme Court in April, 1906, was denied.

As to the latter fact, an examination of the Supreme Court Reports shows that, exclusive of government cases, out of ninety-eight applications for such writs between April 11, 1905, and April 16, 1906, only five were granted. We do not understand that the United States Supreme Court, in denying such applications, passes upon the correctness of the decisions at all.

The Circuit Court of Appeals on the first appeal unanimously decided in favor of the National Salt

Company; Judge Lacombe summarized the evidence and said (122 Fed. Rep., 40, 44):

> "The result of these transactions was this: Certain individuals became owners of common and of preferred stock of the National Salt. If that company should earn sufficient to declare at any semi-annual period a dividend at the rate of 7 per cent. per annum on its preferred and 10 per cent. per annum on its common stock, this particular class of stockholders would not receive such dividend, it would go to the Trust Company to be applied on a separate obligation of the Company, by which, independent of any declaration of dividend, it had bound itself to pay these amounts to each stockholder of that class. And if no dividend were earned or declared and none paid to any stockholder, this particular class of stockholders would nevertheless receive amounts equal to such dividends on the dividend dates, under this separate obligation of the Company. It was a very transparent device to guarantee, to such of its stockholders as bought their stock with that of the United Company, the payment of dividends for five years to come at seven, and ten per cent. on preferred and common stock irrespective of whether there were any earnings or profits available to pay dividends or not. In the hands of the stockholders to whom such an agreement to guarantee their dividends was given we have no doubt it was wholly void.
>
> "The only remaining question is whether the plaintiff, who bought the certificates from the original holders, or from some intermediate transferees, has acquired any better title by the transaction. The authorities seem to require a negative answer to this question.
>
> "In McClellan *v.* Norfolk Southern R. R. Co., 110 N. Y., 469, the coupons sued upon read as follows: 'On the first day of (blank month and year) the Elizabeth City and Norfolk R. R. Company will pay to the

bearer at its financial agency in the City of New York, thirty dollars in gold ($30), being six months' interest then due upon its first mortgage bond, No.

'W. S. DOMINICK,
'Treasurer.'

The Court held that 'the reference in the coupons to the mortgage and bonds, and in the bonds to the terms and conditions of the mortgage, clearly, we think, charges the holders of both coupons and bonds, with notice of the provisions contained in each of such instruments.'

"McClure *v.* Township of Oxford, 94 U. S., 429, was an action upon coupons detached from the bonds of a municipal corporation and purchased by the plaintiff in error before maturity. The coupon was in the usual form, promising to pay to bearer the sum of $25 at the American Exchange National Bank, 'being the semi-annual interest due on bond No. 1, issued April 15, 1872.' Referring to the coupons, the Court says: 'Upon their face they refer to the bonds and purport to be for the semi-annual interest accruing thereon. This puts the purchaser upon enquiry for the bonds and charges him with notice of all they contain.'

"The documents referred to in the certificate in this case indicate that the agreement was to guarantee dividends as above described.

"The transfer of the certificates of indebtedness to the plaintiff for value did not relieve them from any infirmity which made them unenforceable in the hands of the original holders.

"Plaintiff's counsel contends that defendant is estopped from raising the defense that the certificates were unenforceable by the original holders because it has accepted the original certificates and issued new ones direct to the plaintiff. The authorities cited do not sustain this contention; and we do not find any such change of position by the

> plaintiff, induced thereto by acts of the defendant, as would make out an estoppel. All that plaintiff did was to give up an old certificate in the name of John Doe, receiving therefor one in his own name, but in all other respects identical.
>
> "The judgment is reversed."

Relying upon this opinion that the certificates *on their face* showed their illegality, the counsel for the Salt Company put in very little evidence upon the retrial, and a verdict was directed by the Court in favor of the defendant. Upon the appeal, the original questions were not argued by the counsel for the Salt Company, but notwithstanding the Court reversed itself, largely, as we believe, because the Salt Company had not presented its side of the equities in the matter and because the Court was not favorable to the defence of *ultra vires*. The Court treated the case as one at law purely.

The action was then retried; the evidence of the defendant to show the illegality of the agreements and its own equities in the matter was ruled out, and judgment was directed for the plaintiff. On the third appeal before the same Judges, Judge Wallace evidently felt compelled to follow his former decision, but Judge Townsend this time dissented.

We do not think that this Court is at all bound to follow Judge Wallace's opinion, because, among other things, (1) the Ingraham case was treated wholly as an action at law, and not subject to equitable defences; (2) many of the facts upon which Vice-Chancellor Stevenson decided this matter were not before the United States Court at all, and therefore could not have been considered therein; (3) the Court failed to consider the statute of Ohio which made the certificates of indebtedness null and void, and also to give due weight to the decree in the Ohio case, as establishing the absolute

invalidity of the certificates of indebtedness in the hands of any holder, and as *res adjudicata;* (4) apparently the Court was not familiar with the New Jersey corporation laws and decisions; (5) the decree of the Court of Chancery against the American Trust Company as representing the certificate holders was not before it; and (6) the fact that the whole scheme, including the certificates of indebtedness, was the result of fraud on the part of the United Salt Company as against the National Salt Company was not before the United States Court, as all such testimony had been excluded by the trial Court.

It will be noted that Judge Wallaces's opinion nowhere discusses the effect of the Ohio statute as making the certificates of indebtedness absolutely void (see Point 1 of Receivers' original brief); it nowhere discusses the effect of the provision in the certificates of indebtedness with reference to the payment by the American Trust Company to the registered holder (as commented on by Vice-Chancellor Stevenson, p. 64); it ignores the provisions of the Charter of the Salt Company and of the New Jersey statutes as to the issuance of preferred stock; it apparently rests upon the presumed iniquity of the defence of *ultra vires,* without having the facts before it showing that the National Salt Company was more sinned against than sinning.

Judge Stone's opinion in the United Salt Company case (12 Ohio Dec., 386) is not even mentioned.

The question of the illegality of the original issue of the stock with guaranteed dividends, as held by Vice-Chancellor Stvenson, was not considered.

As to the equities of the case, the National Salt Company was absolutely deceived as to what it was buying; it was given no opportunity of making any

examination of the books or processes of the Company; the alleged valuable process of making salt turned out to be a fake "pure and simple"; instead of being in a flourishing condition, it had no funds on hand, and an overdraft of over $2,500 was outstanding, and so many notes that all the first year's profits caused at first by the combination were used in their liquidation, and the Salt Company had to advance a further sum over $89,000; there was nothing in all this to show any desire on the part of the National Salt Company "to wreck" the United Salt Company, but the contrary.

In spite of this aid on the part of the National Salt Company, the United Salt Company went into the hands of a Receiver in April, 1901, and the property was sold out on Receiver's sale at $105,000.

The National Salt Company lost its $89,000 and also the $314,736.10 paid to the certificate holders. The stock of the United Salt Company was to be returned under the decree of December 12, 1903, to the former stockholders, and the National Salt Company received absolutely nothing in return.

IV.

A few further observations on the brief of the appellants may be in point.

As to Point II of appellants' brief, the Negotiable Instruments Law went into effect in New Jersey on April 4, 1902, and in Ohio on January 1, 1903, while the certificates in question were dated and issued prior thereto, the latest bearing date April 1, 1901. These laws therefore could not affect the rights of the parties which accrued prior to their enactment.

These statutes were passed, not to codify the existing law, but to procure uniformity between the States. The great weight of authority prior to their enactment was to the effect that an instrument payable in the alternative to one or some of several payees was not negotiable.

Daniel on Neg. Insts., Section 103, pp. 128-9 and cases cited.

None of the cases cited by the appellants on page 36 of the brief held to the contrary. The cases cited at the foot of page 36 and at the top of page 37 of appellants' brief all assume that a note payable to one of two persons is not negotiable. These cases were decided simply on the theory that in each of those cases one person was the agent of the other, so in effect they were not alternative payees. It may be admitted that a note payable to one of two persons, where one was the agent of the other, and where payment to one would be payment to the other, is valid and negotiable, but in the present case the American Trust Company was in no sense the agent of another payee mentioned in the certificate, but was simply the agent of the registered holder and was in no sense an agent for an unregistered holder, for, by the very terms of the instrument, a payment by the American Trust Company to the registered holder would absolve both the American Trust Company and the National Salt Company, irrespective of who was the actual holder of the instrument itself.

We do not find that the rule is any different in the case of negotiable bonds than that of negotiable paper, but it is also true that a registered bond is not negotiable.

Daniels on Neg. Insts., Section 1501-b;

Cronin *v.* Patrick Co., 4 Hughes, 529.

These instruments, if bonds at all, are registered bonds and therefore non-negotiable.

As to Point III, it is not our claim that the claimants might with reasonable diligence have discovered the invalidity of the certificates of indebtedness, but that they *did* actually know their invalidity, and therefore the cases cited by the appellants in Point III are not in point (See Point III of Receivers' Brief).

As to Point IV, the evidence shows that all the known holders of indebtedness, amounting to over ninety, were made parties to the Ohio action, and that inquiries were made at the Trust Company from time to time for additional certificate holders, and as soon as they were found they were made parties (Testimony of Snyder, pp. 104-5). It was not until 1902 that the attorneys for plaintiff in the United Salt Company suit knew that certain certificates were in other hands and then they were not furnished their names by their present attorneys, although they were in communication with said attorneys. In other words, the attorneys for the National Salt Company tried to get in all known certificate holders. To have required the complainant at its peril to ascertain and bring in every person holding or beneficially interested in every one of the certificates of indebtedness would have been to impose on it a task most difficult, if not actually impossible to be performed.

Moreover, as was said by Vice-Chancellor Greene in *Willoughby* v. *Chicago Junction Rwy. Co.* (50 N. J. Eq., 656-668), cited in appellants' brief:

> "It is urged that no party should be concluded without an opportunity to be heard; but this complaint does not lie in the mouth of Mr. Willoughby. He had an opportunity to be heard in the Ellerman suit. * * * He could at any time before decree have been made a party to the Ellerman suit and have then advised the Court of anything not be-

> fore brought to its attention. He had ample time to so apply after he actually knew of the pendency of the suit and his solicitor was thoroughly informed of all proceedings in the Ellerman case in time to have intervened."

So, in the present case, these claimants were thoroughly informed of all the proceedings in the Ohio suit in time to have intervened therein, as is shown by the statements on pages 8 and 52 of appellants' brief, and they could at any time before the decree have had themselves made parties and advised the Court of anything which they thought ought to have been brought to its attention. On the contrary, their attorneys refused to have anything to do with the suit, and it therefore does not lie with them to claim that they had no opportunity to appear and be heard in it.

As to Point IX, the statement that there is not a scintilla of evidence in the record to show that any fraud was practised upon the National Salt Company or its officers seems extremely incorrect in view of the manner in which the National Salt Company was held up by the officers of the United Salt Company and made to purchase property of a value of not over $300,000 at the most for $2,500,000 of stock with guaranteed dividends.

It will be noted that the transaction was incomplete, that only three instalments have been paid on certificates of indebtedness, the stock of the United Salt Company and of the National Salt Company still remained in the hands of the American Trust Company as Trustee, and the terms of the agreement had not been so far carried out as to entitle anyone to the possession of said certificates of stock in the hands of the American Trust Company. *Donald* v. *American Smelting & Refining Co.* is therefore not in point, as the contracts and agreements in that case had been executed.

Further, the transaction was not a purchase outright by the National Salt Company of the plant of the United Salt Company so that the stockholders of the United Salt Company might take the proceeds and go their way (as in *Trenton Potteries Co.* v. *Oliphant*, 58 N. J. Eq., 507); but the United Salt Company stockholders were to become also stockholders of the National Salt Company, and it therefore became a consolidation of competitive interests. This distinction is plainly pointed out in the *United States* v. *American Tobacco Co.* (164 Fed. Rep., 700) (subsequently affirmed by the United States Supreme Court), where the Court says as follows:

> "A consolidation of competitive interests in this form, when a combination, as distinguished from a sale, is a combination which, restraining interstate commerce, violates the federal anti-trust statutes. Whether a transaction amounts to a sale or to a combination depends upon whether the vendor parts with all interests in the business sold or merely changes the form of his investment. A *bona fide* sale of a plant for cash or its equivalent possesses none of the elements of combination. An exchange of one plant for an interest in united plants possesses all the elements of combination. See Davis *v.* A. Booth & Co., 131 Fed., 37; 65 C. C. A., 269; Bigelow *v.* Calumet, etc., Mining Co. (C. C.), 155 Fed., 869; also, upon the underlying principle involved, Shawnee Compress Co. *v.* Anderson, 209 U. S., 423, 28 Sup. Ct., 572; 52 L. Ed., 865, and the Northern Securities Case, *supra*.
>
> "The testimony in this case shows repeated instances where, upon the transfer of a competing business, the vendors merely changed the form of their investment. They transferred their property and received in exchange stock in the transferee corporation. They exchanged large interests in a small property for small interests in a large prop-

> erty. Instead of standing by themselves, they combined, and, in combining, violated the federal statute."

It makes no difference what the form of the transaction. As was said in the *United States* v. *American Tobacco Co.* (recently decided in the Supreme Court of the United States in October Term, 1910):

> "Coming then to apply to the case before us the act as interpreted in the Standard Oil and previous cases, all the difficulties suggested by the mere form in which the assailed transactions are clothed become of no moment. This follows because, although it was held in the Standard Oil case that, giving to the statute a reasonable construction, the words restraint of trade did not embrace all those normal and usual contracts essential to individual freedom and the right to make which were necessary in order that the course of trade might be free, yet, as a result of the reasonable construction which was affixed to the statute, it was pointed out that the generic designation of the first and second sections of the law, when taken together, embraced every conceivable act which could possibly come within the spirit or purpose of the prohibitions of the law, without regard to the garb in which such acts were clothed. That is to say, it was held that in view of the general language of the statute and the public policy which it manifested, there was no possibility of frustrating that policy by resorting to any disguise or subterfuge of form, since resort to reason rendered it impossible to escape by any indirection the prohibitions of the statute."

The purpose and intent of the National Salt Company and the United Salt Company to form a combination for the purpose of creating a monopoly in salt and of advancing prices and further of making the certificates of indebtedness stand for guaranteed dividends could be and were shown by

all the circumstances attending the transaction. As was said by the United States Supreme Court in *Shawnee Compress Co.* v. *Anderson* (209 U. S., 423-35):

> "As written, it was, no doubt, considered with other considerations by the court in concluding that 'the real, the veritable purpose actuating the officers of the Gulf Compress Company, as disclosed by its plan of operation, and as manifested by the circumstances surrounding the conduct of its business and the results of its management by them is, beyond a reasonable question, to place within their power the control of the compress industry, by purchasing or leasing those plants which are advantageously located in each of the hauling districts or territories established by the carriers (railroads) in their cotton tariffs. Within certain boundaries the hauling must be one way, and when the Gulf Company seizes the strategic point, under its lease, competition within that district is annihilated.'"

In *Embrey* v. *Jemison* (131 U. S., 436), the Court said, as to a similar point:

> "If this be not a wagering contract, under the guise of a contract of sale, it would be difficult to imagine one that would be of that character. The mere form of the transaction is of little consequence. If it were, the statute against wagers could easily be evaded. The essential inquiry in every case is as to the necessary effect of the contract and the real intention of the parties."

V.

We believe that the Ohio transaction was a fraud upon the National Salt Company, and we know that it hastened its bankruptcy. The National Salt Company paid out over $400,000 to and for the benefit of the stockholders of the United Salt Com-

pany without receiving one cent in return. Should these claimants succeed on this appeal, not one cent will be preserved for any of the stockholders of the National Salt Company. The claimants undoubtedly bought these peculiar units of stock and certificates of indebtedness as a speculation and in a measure took their chances, as they were notified in the original papers and advertisements that the certificates of indebtedness were intended to be simply a guarantee of dividends. The Court in Ohio has declared the illegality of the whole arrangement. The opinion of Judge Scott, after a full trial in New York, has negatived all wrong dealing on the part of the National Salt Company or its principal stockholders. We think the insinuations on the part of the appellants are totally unjustifiable, and the use thereof indicates the weakness of their argument.

We again refer to the discussion of the principal points in our principal brief, and confidently ask the Court to sustain the decree of the Court of Chancery.

June, 1911.

Respectfully submitted,

CHARLES W. FULLER,
Solicitor for and of Counsel for
Receivers.

HENRY B. TWOMBLY,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between—

CHAUNCEY H. STRICKLAND,
Complainant,

AND

NATIONAL SALT COMPANY *et al.*,
Defendants.

IN THE MATTER

OF

THE CLAIMS OF UNION TRUST COMPANY *et al.*,
Appellants.

Reply Brief on Behalf of Union Trust Company et al., Claimants and Appellants.

The argument submitted in behalf of the respondents may be summarized as follows:

1. That whether the instruments in suit be negotiable or not is immaterial inasmuch as they were not merely given for an illegal consideration, but

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were absolutely void by reason (Respondents' Brief, Point I)—

a. Of their being violative of the provisions of the Ohio Anti-Trust Act (Respondents' Brief, Point VII).

b. Of their being violative of the provisions of the New Jersey Statutes prohibiting an overissue of stock (Respondents' Brief, Point V).

c. Of their being an illegal guarantee of dividends on the stock of the National Salt Company (Respondents' Brief, Point VI).

2. That the instruments in suit are non-negotiable and hence subject to the defenses of illegality and inadequacy of consideration arising out of the claims stated in subdivisions *"a," "b"* and *"c," supra,* even though such matters do not go to the extent of rendering the instruments absolutely void (Respondents' Brief, pp. 17-8, Point II).

3. That even if the instruments in suit are negotiable the claimants had knowledge of their illegality arising out of the matters referred to in subdivisions *"a," "b"* and *"c," supra,* and hence do not stand in the position of *bona fide* purchasers for value as to any defenses arising out of such matters (Respondents' Brief, Points III and IV).

4. That in any event the claimants are bound by the decree entered in the Ohio suit, which is *res adjudicata* as to them (Respondents' Brief, Point VIII).

5. That the action of the respondents in rejecting the claim heretofore filed by the American Trust Company is *res adjudicata* as against the present claimants (Respondents' Brief, Point IX).

Quite obviously the entire argument summarized under Point 1 (*supra*) falls if either (1) the transaction complained of and in the course of which the instruments in suit were issued did not violate the provisions of the Ohio Anti-Trust Act or the New Jersey Statutes prohibiting an overissue of stock and did not constitute an illegal guarantee of dividends; or (2) if, even though the transaction complained of and in the course of which the instruments in suit were given did offend against the provisions of the Ohio Anti-Trust Act and did offend against the provisions of the New Jersey Statutes prohibiting an overissue of stock and even though a guarantee of dividends was intended, the instruments in suit were not tainted with such illegality to the extent that they may be said to be *mala in se* and void.

Upon this latter point, as an abstract proposition of law there will probably be no real dispute, for it is so well established in the law of negotiable instruments as to be almost axiomatic, that mere illegality of consideration is no defense as against a *bona fide* purchaser and that in order to be available as a defense the illegality must go to the extent of rendering the instruments absolutely void.

Quite obviously also the argument summarized under Point 2 (*supra*) falls if the instruments in suit are negotiable as does the argument summarized under Point 3 (*supra*) if the knowledge which the respondents claim was possessed by the appellants was lacking. As to the arguments stated under Points 4 and 5 (*supra*) they must stand or fall according as this Court shall decide that the decree of the Ohio Court and the action of the Receivers on the claim filed by the American Trust Company are or are not *res adjudicata* as against these appellants.

A complete answer to the argument submitted in

behalf of the respondents would seem to lie in the following propositions:

1. That the transaction in connection with which the instruments in suit were given did not violate the provisions of the Ohio Anti-Trust Act at all; and that, in any event, the instruments in suit were not tainted with any illegality arising from a violation of its provisions (if any illegality there was) to the extent of being absolutely void.

2. That the transaction in connection with which the instruments in suit were given did not violate the provisions of the New Jersey Statutes prohibiting an over issue of stock at all, or in any event not to the extent of rendering the instruments absolutely void.

3. That the instruments in suit are not illegal and void upon the theory that they constitute an attempt to guarantee dividends.

4. That the instruments in suit are negotiable.

5. That the appellants are *bona fide* holders of the certificates of indebtedness for value without notice of any fact affecting their validity.

6. That the decree of the Ohio court is not *res adjudicata* as to these appellants.

7. That the action of the receivers in rejecting the claim filed by the American Trust Company is of no force or effect so far as the present proceedings are concerned.

These propositions, if established, compel, we submit, a reversal of the decree appealed from and an allowance of the claims as filed. A number of the foregoing matters are fully and adequately dis-

cussed in the main briefs submitted in behalf of the various claimants, and as this brief is intended to be strictly in reply, such arguments will not be repeated *in extenso*. In the interest of clearness and continuity, however, it has seemed best to state the argument in reply in its entirety as above, merely referring in the discussion which follows to various portions of the main briefs for the argument as to such matters as are fully discussed therein.

POINT I.

The transaction in connection with which the instruments in suit were given did not violate the provisions of the Ohio Anti-Trust Act at all, and certainly not to the extent of rendering the instruments in suit void.

The respondents have proven in this case a statute of the State of Ohio claimed to be applicable, and which for convenience is referred to as the Ohio Anti-Trust Act. The Act is set forth in full in the printed record (Case, pp. 361-6). The portions which are material to the present inquiry are Sections 1 and 8, which for convenience we set forth in full in this place as follows:

> "SECTION 1. Be it enacted by the General Assembly of the State of Ohio, that a trust is a combination of capital, skill or acts by two or more persons, firms, partnerships, corporations or associations of persons or of any two or more of them for either, any or all of the following purposes:
>
> 1. To create or carry out restrictions in trade or commerce.

2. To limit or reduce the production, or increase, or reduce the price of merchandise or any commodity.

3. To prevent competition in manufacturing, making, transportation, sale or purchase of merchandise, produce or any commodity.

4. To fix at any standard figure, whereby its price to the public or consumer shall be in any manner controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, barter, use or consumption in this State.

5. To make or enter into or execute or carry out any contracts, obligations or agreements of any kind or description, by which they shall bind or have bound themselves not to sell, dispose of or transport any article or any commodity or any article of trade, use, merchandise, commerce or consumption below a common standard figure or fixed value, or by which they shall agree in any manner to keep the price of such article, commodity, or transportation at a fixed or graduated figure, or by which they shall in any manner establish or settle the price of any article, commodity or transportation between them or themselves and others, so as to directly or indirectly preclude a free and unrestricted competition among themselves, or any purchasers or consumers in the sale or transportation of any such article or commodity, or by which they shall agree to pool, combine or directly or indirectly unite any interest that they may have connected with the sale or transportation of any such article or commodity, that its price might in any manner be affected. Every such trust as is defined herein is declared to be unlawful, against public policy and void.

* * * * *

SECTION 8. That any contract or agreement in violation of the provisions of this act, shall be absolutely void and not enforceable either in law or equity."

It is contended that, by virtue of the provisions of this statute, not only was the transaction in connection with which the instruments in suit were given illegal, but that the instruments themselves were tainted with such illegality to the extent that *bona fide* purchasers thereof may not enforce them.

The present inquiry naturally resolves itself into five considerations:

1. What does the Ohio Anti-Trust Act forbid?
2. Do the facts disclosed by the record in the case at bar come within the prohibition of the statute, and if so, what is the effect on the instruments in suit?
3. What construction has been given to the Act by the courts of Ohio?
4. Is the decree rendered in the Court of Common Pleas of Cuyahoga County, Ohio, of any force or effect?
5. Are the instruments in suit absolutely void, even assuming that the transaction in connection with which they were given did offend against the provisions of the Act?

These matters will be considered very briefly in the order stated.

As to What Is Forbidden by the Act.

The Act is obviously directed against two classes of combinations; first, a combination of capital, skill or acts *by* two or more persons, etc., and, second, a combination of capital, skill or acts *of* two or more persons, etc. An example of the first class would be an express agreement by two or more persons to abolish competition between them. An example of the second class would be a monopoly. In other words, the statute apparently is aimed, not

only at the act of combining, but at the result of the combination. In order to form a combination of the first class there must be a conjoint act by two or more persons for a certain illegal purpose; but that is not so in order to form a combination of the second class, for there the illegal purpose may be had by only one party; the illegality then arising by way of result and not by way of agreement.

Assume the case of a company organized under the laws of the State of Ohio for the express purpose of purchasing the properties of all persons engaged in a particular line of manufacture, which thereupon proceeded to buy up such properties outright, one after the other, having in mind the idea of eventually acquiring a monopoly. The ultimate result might be an accumulation of capital *of* two or more persons, and being effected for one of the prohibited purposes, might be held violative of the Anti-Trust Act. That would not vitiate the separate sales so far as the vendors were concerned, however, since the illegality would not arise by virtue of the sales themselves, but by virtue of the use to which the properties were put by the vendees after they were acquired. The vendors thus could not be said to be parties to the illegal combination thus formed and their separate sales would be perfectly legal in and of themselves. The vendee alone would be responsible for the illegal combination. The vendors, having a right to dispose of their property, could recover for its price, and this would be so even if they knew that the vendee intended an improper use of the properties, so long as they themselves did nothing to aid in such improper use or in the illegal plan of the purchaser.

Trenton Potteries Co. v. *Oliphant, 56 N. J. Eq., 507.*

Dittman v. *Distilling Co., 64 N. J. Eq., 537;*

Arnot v. *Pittston and Elmira Coal Co., 68 N. Y., 558;*
Gates v. *Hooper, 39 S. W., 1079;*
State v. *Continental Tobacco Co., 177 Mo., 1, 32;*
Natl. Benefit Co. v. *Union Hospital Co., 45 Minn., 272;*
Hanover Natl. Bk. v. *First Natl. Bk., 109 Fed. Rep., 421.*
Noyes, Intercorporate Relations, § *370 et seq.*

Coming then to a consideration of a combination *by* two or more persons it should be noted in the first place that it is not every combination that is prohibited but only combinations for certain specifically enumerated purposes, and it necessarily follows from this that if two or more persons do not combine for one of these purposes the combination formed by them would not come within the ban of the statute. The formation of such a combination would not be illegal and contracts entered into in connection with its formation would not be vitiated simply because thereafter one or more of the prohibited acts had been committed or an agreement to do one or more of such acts had been made. In other words, there must be an intent on the part of the combining parties to form not merely a combination but a combination to do certain particular things.

A combination presupposes necessarily a joint act, and quite obviously if the formation of the combination is to be held illegal by reason of an intent to do one or more prohibited acts, the intent must be common to all of the combining parties and not merely an undisclosed intent on the part of one of them, for it is well established that the mere fact that one contracting party intends to do an illegal act with the property or power acquired

through the contract, does not vitiate the contract so far as the other party is concerned even though the latter has knowledge of such an illegal intent.

The Ohio Act in so far as it prohibits combinations *by* two or more persons in contradistinction to combinations of the capital, skill or acts *of* two or more, would seem to be directed toward the act of combining itself. This is further evidenced by the fact that it does not prohibit a combination the result of which will be to accomplish one of the prohibited acts but a combination the *purpose* of which is to do one or more of the prohibited acts.

In *Gates* v. *Hooper*, *supra*, the Court had before it for construction a statute precisely like the Ohio statute, except that it prohibited only combinations *by* two or more, and did not prohibit combinations of capital, skill or acts *of* two or more persons. In that case one competing merchant bought out another under an agreement that the latter would not engage in business within a certain specified time. In a suit brought by the plaintiff to enforce the contract, the defendant pleaded the Anti-Trust Law. It was held that the case did not come within the statute. The Court said:

> "In order to constitute a trust within the meaning of the statute there must be a 'combination' of capital, skill or acts by two or more. Combination, as here used, means union or association. If there be no union or association by two or more of their capital, skill or acts there can be no 'combination' and hence no 'trust.' When we consider the purposes for which the 'combination' must be formed to come within the statute, the essential meaning of the word 'combination' and the fact that a punishment is prescribed for each day that the trust continues in existence, we are led to the conclusion that the union or association of 'capital, skill or acts' denounced is where the parties designed the

> united co-operation of such agencies which might have been otherwise independent and competing for the accomplishment of one or more of such purposes."

The result of the foregoing is this: That before there can be said to be a combination of capital, skill or acts by two or more persons the Court must find (1) the formation in fact of a *combination,* (2) for one or more of certain specified purposes, and (3) an illegal intent on the part of all of the persons alleged to have formed such a combination. If any one of these elements is lacking, we submit that the case does not come within the statute.

Do the Facts in the Present Case Come within the Statute?

We submit that there is nothing in the case at bar beyond a simple sale of stock by the stockholders of the United Salt Company. Whether after having acquired this stock, the National Salt Company was in a position to stifle competition and raise prices and by combining the stock control of the United Salt Company with that of other companies did effect a monopoly in the manufacture and sale of salt, is not material here, for, as we have already pointed out, if in such a case it could be said that a combination of capital, skill or acts had been formed at all, it would be merely a combination of the capital, skill or acts *of* two or more persons and not *by* two or more persons. The National Salt Company would alone be responsible for the illegal combination and hence the individual sales of stock would not be vitiated.

The only question is, therefore, whether as a result of the transaction in suit the various stockholders of the United Salt Company may be said to have combined with the National Salt Company for one of the specified purposes.

It will not be seriously contended but that no matter how illegal the intent of the National Salt Company might have been, a single stockholder of the United Salt Company could have sold his few shares of stock in the latter company to the former, either for cash or for some equivalent of cash, such as stock of the National Salt Company, without being said to have formed a combination of capital, skill or acts in violation of the terms of the Ohio Anti-Trust Act. Yet, that is exactly what the case is here, the transaction differing perhaps in degree but not in kind. It was one perfectly legal in and of itself on the part of the vendors of this stock, and one which the National Salt Company was permitted to carry out not only by the laws of the State of its incorporation, but by the express provisions of its charter. This is not a case where a majority of the stockholders of the United Salt Company agreed with the National Salt Company to do an act which was in effect a corporate act, which would be rendered efficient by virtue of their stock control as, for example, if a controlling majority of the stockholders of the United Salt Company had entered into an agreement with the National Salt Company to fix prices at a certain level. In such a case the stockholders might be said to be acting for the corporation and to be doing in effect a corporate act, and if the purpose of their so acting was to form a combination in violation of the terms of the Ohio Anti-Trust Act, the stockholders might be said to be parties to a combination with the National Salt Company. But that is not the case here. The stockholders of the United Salt Company did not purport to act for the corporation, nor did they purport to make any agreement with respect to its property. They dealt only with their own individual property which they had the undisputable right to dispose of.

There is a good deal said in the respondent's briefs to the effect that a certain few of the stockholders of the United Salt Company had knowledge that the National Salt Company desired to secure stock control for the purpose of eliminating competition and fixing prices. Not only is there no evidence to the effect that such knowledge was possessed by any of the vendors, other than those few who had to do personally with the National Salt Company, but, if there were such knowledge it would not vitiate the transaction, unless there were a similar illegal intent on the part of the vendors of the stock.

An illegal intent cannot be presumed but must be proven, and there is nothing in the record in the case at bar to prove that the vendors of the stock intended to form a combination with the National Salt Company for one of the specified purposes or indeed intended to combine with the National Salt Company at all, unless it may be said that such an intent is proven by the fact that they took money and stock of the National Salt Company in payment rather than cash alone. Such a contention, we submit, is entirely unwarranted. The shares of stock of the National Salt Company were nothing more than the equivalent of cash. They were sold in the open market on the various exchanges and had a certain market value that was readily ascertainable. The only apparent intent on the part of the vendors of the stock of the United Salt Company was to dispose of their individual holdings at a good figure or to obtain a good price for their stock. The business of the United Salt Company was established and its stock had a certain market value. The National Salt Company desired to purchase that stock and the owners of the stock were in turn willing to sell if they got a sufficiently good price. There is no evidence that they were desirous of

combining with the National Salt Company nor desirous of becoming stockholders in that company. In other words, they were not concerned with what the National Salt Company intended to do with the stock after it got it, but were only concerned with the price that they got for their stock.

We submit that this learned Court may not find that a combination was entered into *by* stockholders of the United Salt Company and the National Salt Company unless it may be said that every stockholder who sells stock of one company to another is guilty of an act of combination in making the sale. If there is any combination at all disclosed by the present record, it is merely a combination of capital *of* two or more persons, for which the National Salt Company was alone responsible and to which the vendors of the stock of the United Salt Company were in no sense parties. If that be so, then the agreements for the sale of the stock of the United Salt Company were valid and enforceable agreements and the certificates of indebtedness issued in connection therewith are entirely unaffected by the provisions of the Anti-Trust Act.

AS TO THE CONSTRUCTION OF THE ACT BY THE OHIO COURTS.

The cases upon which the respondents rely to support their contentions as to the applicability of the statute are:

Central Ohio Salt Co. v. *Guthrie, 35 Ohio St., 666.*
Emery v. *Ohio Candle Co., 47 Ohio St., 320.*
Standard Oil Case, 49 Ohio St., 137.
State ex rel. Monett v. *Buckeye Pipe Line, 61 Ohio St., 520.*
National Salt Co. v. *United Salt Co., 12 Ohio Dec., 386.*

These cases if examined will be found to conflict in no way with the views heretofore expressed, and to have been based upon facts in no sense similar to the facts in the case at bar.

Thus in *Central Ohio Salt Co.* v. *Guthrie, supra,* a voluntary association of salt manufacturers was formed for the purpose of selling and transporting that commodity. By the articles of association all salt manufactured or owned by the members when packed in barrels become the property of the Company, whose committee was authorized and required to regulate the price and grade thereof, and also to control the manner and time of receiving salt from the members. Each member was prohibited from selling any salt during the continuance of the association except at retail at the factory and at prices fixed by the Company. *The case arose prior to the enactment of the Anti-Trust Act,* and it was held simply that the agreement was in restraint of trade under the common law and void as against public policy. The distinction between this case and the case at bar is obvious.

The case of *Emery* v. *Ohio Candle Co., supra,* was likewise decided before the enactment of the Ohio Anti-Trust Act. There an incorporated association of candle manufacturers was formed to continue for six years for the express purpose of increasing the price and decreasing the manufacture of candles in a certain territory. One of the parties to the association withdrew before the expiration of the six years and then sued to recover its share of the profits up to the time of its withdrawal. The Court denied the right to recover upon the ground, among others, that the agreement was illegal and void as against public policy.

In the *Standard Oil Case, supra,* the agreement before the Court went far beyond a simple sale of stock and provided that the property of various corporations would eventually be transferred to a

holding company. The facts in the case were considerably involved and need not be repeated here. It suffices to say that the intent to form a trust was apparent from a mere reading of the agreement. The case was decided before the enactment of the Anti-Trust Act and, we submit, is not at all applicable.

In *State ex rel. Monett* v. *Buckeye Pipe Line, supra,* there was no question as to whether the transaction complained of came within the inhibition of the statute. That was conceded by all parties. The only question was whether, if a statute prohibit such a transaction, it was constitutional. The agreement there before the Court was admitted to have no purpose whatever except to prevent competition in the production, transportation and refining of petroleum to the end that there might be received from the consumers higher prices than could prevail under the conditions of open competition. Surely such a case is of no force or effect in determining whether the facts in the case at bar comes within the statute.

The case of *National Salt Co.* v. *United Salt Co., supra,* is very largely relied on by the respondents. That case, it should be noted, arose upon a demurrer to the complaint which necessarily admitted all of its allegations. The complaint is printed in full in the present record (Case, pp. 331-48). Without reviewing its allegations in detail, we submit that they go far beyond the actual facts, particularly those allegations to the effect that the United Salt Company, as well as its stockholders, desired to combine their capital stock and acts to create and carry out restrictions in the trade of salt in Ohio, etc. It was apparently urged before Judge Stone, as we have urged above, that the case was one involving simply an ordinary purchase and sale of property and did not, therefore, come within the scope of the statute. That the

learned Judge who wrote the opinion did not attempt to decide whether the actual facts brought the case within the statute, but simply that the allegations of the complaint set forth a case within the statute, is apparent from his opinion when he said:

> "It is urged by counsel for the defendants that the case at bar is one involving a contract for the ordinary purchase and sale of property, and that this decision does not cover such a transaction as this. It will be observed the petition follows very closely the language in the Valentine Act and, so far as applicable, the precedent for such a petition in the Buckeye Pipe Line case, *supra,* as well as the Standard Oil case, 49 O. S. The pleader has taken the language of the Valentine act to plead a combination and trust, but has inserted allegations to the effect that the whole transaction was for the purpose of combining the business of two parties and restraining trade and preventing competition so that they might be enabled to control and increase or decrease the price and production of salt within the State of Ohio at will. That 'It was agreed among themselves that the business of the combination to be effected by them should be conducted in the name of the United Salt Company, and thereafter said business of said combination was so conducted in the State of Ohio.' Further, 'Thereafter by reason of said combination, competition in the sale of salt in the State of Ohio between plaintiff and said United Salt Company ceased, and the trade in said commodity was thereafter restricted in the State of Ohio.'
>
> Furthermore, it is alleged that the United Salt Company, one of the parties to this consolidation or combination, before the consolidation, controlled more than seventy-five per cent. of the salt business within the State of Ohio; that the parties made a combination by exchanging their stock, thereby combining the two enterprises into one and carrying

on the business under the name of the United Salt Company; that the competition between the parties ceased and that the trade in said commodity was thereafter restricted. With these allegations in the petition, the truth of which is admitted by the demurrer, it cannot well be contended that the record presents a mere case of a sale of stock in one company to another company a former competitor, whereby incidentally the former competition ceased. The transaction set forth in the petition is an unlawful agreement to effect the trade in Ohio, carried out by an exchange of securities, and that the agreement has been carried out to the extent stated, and has had its effect in that trade. To what extent the allegations of this petition can be sustained upon the trial of the case and to what extent the agreements referred to in the petition, and which are annexed to the petition, but not made a part of it, will sustain the averments of the petition, is not the question before the Court, but simply whether the admitted facts present a case that brings it within the Valentine act. Taking this petition as it stands, we cannot avoid the conclusion that the case is within the provisions of this law, and that the decision of the Supreme Court in the Buckeye Pipe Line case is decisive and controlling as to the constitutional question presented upon this demurrer. * * * The allegations of this petition contain the usual averments that are to be found in most of these contracts, which the courts have so uniformly held to be unlawful. *Whether these averments are sustained and justified by the written agreements which are annexed to the petition, it is not our province to inquire, for the agreements are not made a part of the petition, and we look to the petition only in determining whether it states a cause of action.*"

The case is not an authority therefore to the effect that the transaction in suit violated the Ohio

Anti-Trust Act, unless it can be said that the facts in evidence support the allegations of the complaint in the Ohio case. We have already attempted to point out that they do not.

AS TO THE DECREE RENDERED IN THE COURT OF COMMON PLEAS IN CUYAHOGA COUNTY, OHIO.

Upon this point it seems unnecessary to add anything beyond what is said in the main briefs. The decree was rendered *on consent of all parties after all of the answers had been withdrawn.* It cannot be regarded, therefore, as an authoritative construction of the statute by an Ohio court as applicable to any state of facts other than those alleged in the complaint and necessarily admitted *in toto* by the withdrawal of the answers. If the decree is of any force or effect at all, considering that it was rendered on consent, it is only of force and effect if the facts here shown can be said to be the same as the allegations there made.

AS TO WHETHER, ASSUMING THE TRANSACTION TO BE WITHIN THE STATUTE AND VOID, THE CERTIFICATES OF INDEBTEDNESS ARE VOID.

Negotiable instruments are not void in the hands of bona fide holders for value, unless the statute expressly declares these securities void as well as the contracts and agreements out of which they arise.

The statute against combinations will not be extended beyond its express terms. The framers of it intended to stop short of invading the law merchant and declined to avoid anything but the offensive "contracts to combine."

If the Ohio Legislature had intended by the Anti-Trust Law to make void bills, notes and other com-

mercial paper, it would have enacted provisions similar in phaseology to those of the gaming law. (See Revised Statutes of Ohio, Sec. 4269, cited at p. 25, Brief on behalf of Receivers, etc.).

The English courts do not question the validity of a negotiable instrument in the hands of a *bona fide* holder, even though the instrument grew out of a transaction declared absolutely void by statute.

The statute 7 Geo. 2, c. 8, enacts,

> "That all wagers and contracts in the nature of wagers, and all contracts in the nature of puts and refusals relating to the price or value of any stock or securities as therein mentioned, shall be null and void to all intents and purposes whatsoever."

In Greenland *v.* Dyer, 2 Man. & Ryl., page 422, the plaintiff, a *bona fide* holder for value without notice, sued the defendant on a promissory note given by him on a stock-jobbing transaction coming within the above statute. The decision of the Court is as follows:

> "Lord Tenterden, *C. J.*—In the hands of the drawer the bill would have been void. The distinction between securities void by statute and contracts void by statute is well known. The contract upon which this action is brought is not the contract for doing the illegal act. The contract mentioned in the statute is that by which the parties agree to pay and receive differences. The contract on the bill of exchange is a contract to repay the broker. The broker himself, who has made the illegal contract, cannot recover; but when the bill passes into the hands of an innocent person, no case has said, nor is there any principle to shew, that such a party cannot recover."
>
> "Bayley, *J.*, concurred.
>
> "Littledale, *J.*—It might as well be said that a bill was void for fraud between the original parties."

See also

Day v. *Stuart, 6 Bing., 109.*
Hay v. *Ayling, 16 Q. B., 423.*
Fitch v. *Jones, 5 El & Bl., 238.*
Goldsmid v. *Hampton, 5 C. B. (N. S.), 94.*
Parsons v. *Alexander, 5 El. & Bl., 263.*

The statutes 8 & 9 Vict., C. 109, Sec. 18, make the contract, but not the security, void. That statute, the Court says in *Hay* v. *Ayling, supra,* does not "expressly avoid securities given for a gaming debt; but statute 5 & 6 W., 4, C. 41, S. 1, does enact that such securities shall be deemed to have been made for an illegal consideration; and they are therefore void except in the hands of a *bona fide* holder without notice."

See

Byles on Bills, 16th Ed., 168.

The rule is upheld in the United States courts.

Lauter v. *Jarvis-Conkling Trust Co., 85 Fed., 894.*
Hatch vs. *Burroughs, 1 Woods, 438.*
Mercer County v. *Hackett, 1 Wall., 83.*
Farmers' Bank v. *Sutton, 52 Fed., 196.*

In *Lauter* v. *Jarvis-Conkling Trust Co.* (*supra*) Judge Lurton, in deciding that negotiable paper is enforceable in the hands of an innocent purchaser for value where the paper had been taken by a Missouri corporation without complying with the statute of Tennessee, which provides that it shall be unlawful "for any foreign corporation to do or attempt to do business, or to own or acquire any property in this State without having first complied with the provisions of this act," says: "The general

and well-settled rule in favor of negotiable paper is that an innocent purchaser for value, before maturity, is unaffected by the fact that the consideration was illegal and the note void and unenforceable by one having notice of the facts. If the illegality of the consideration results from a statute merely prohibiting business or imposing a penalty, or does not declare the note or bill based upon a prohibited transaction absolutely null and void, a *bona fide* holder of such paper will be protected."

Judge Lurton cited with approval the language in Converse *v.* Foster, 32 Vt., 828, where suit by an innocent purchaser for value was brought upon a note made for the purchase of liquor in violation of the statute prohibiting the business:

> "All the cases that have been cited, and all that can be, so far as we know, both English and American, upon this subject, turn upon this very distinction and difference between these statutes. In those cases in which the legislature have declared that the illegality of the contract or consideration shall make the security, whether bill or note, void, the defendant may insist on such illegality, though the plaintiff, or some other party between him and the defendant, took the bill or note *bona fide,* and gave a valuable consideration for it. But, unless it has been so expressly declared by the legislature, illegality of consideration will be no defense in an action at the suit of a *bona fide* holder for value, without notice of the illegality, unless he obtained the note or bill after it became due."

In Hatch *v.* Burroughs, *supra,* bills of a bank were held valid in the hands of a *bona fide* holder for value, although issued under acts of the Georgia Legislature which show on their face that they were passed in furtherance of the Rebellion and are void.

WOOD, *Circuit Judge,* at page 448, says:

> "The true rule is thus stated: In those cases in which the legislature has declared that the illegality of the contract of consideration shall make the security, whether bill or note, void, the defendant may insist on such illegality, though the plaintiff, or some other party between him and the defendant, took the bill *bona fide,* and gave a valuable consideration for it.
>
> But, unless the instrument has been expressly declared void by the legislature, illegality of consideration will be no defense in an action at the suit of a *bona fide* holder for value, without notice of the illegality, unless he obtained the bill after it became due.
>
> * * * * *
>
> The result of the authorities is that, no matter how illegal or immoral the consideration of the note or bill, it is valid in the hands of a *bona fide* holder for value, unless made absolutely void by statute."

In Massachusetts, Chief Justice Shaw, in allowing a plaintiff to recover on a note given for the price of liquors sold in violation of the law of the Commonwealth, after stating the law of negotiable instruments, says:

> "This general rule is taken with some exceptions. The provisions of some statutes against usury and gaming made notes given in violation of the statute void, even in the hands of an endorsee. Kendall *v.* Robertson, 12 Cush., 158; Bowyer *v.* Bampton, 2 Stra., 1155. But in those cases the statute declared that the note should be absolutely null and void, to all intents and purposes, or as is sometimes said, applied to the contract and not to the party. Without citing numerous authorities, the recent case of Williams *v.* Cheney, 3 Gray, 222, is precisely in point."
>
> *Cazet* v. *Field, 75 Mass., 329.*

The Supreme Court of Indiana, in Sondheim *v.* Gilbert, assignee, 117 Ind., p. 71, at page 76, said:

> "In order, therefore, to uphold the judgment which invalidates commercial paper in the hands of innocent holders, such as plaintiffs are conceded to be, it is essential that a statute should be shown governing the case, which in direct terms declares that transactions such as those here involved are unlawful and that notes given under the circumstances exhibited by the facts in this case are absolutely void.
>
> The principle may be considered as well established, that when a statute in express terms pronounces contracts, notes, bills, securities and the like, resulting from or growing out of wagering or gaming transactions, which are prohibited by statute, absolutely void, no recovery can be had thereon, and the doctrine that transactions which a statute in direct terms declares to be unlawful, cannot acquire validity by the transfer of commercial paper based thereon, which is also under direct legislative denunciation, is fully supported by authority. New *v.* Walker, 108 Ind., 365; Thompson *v.* Bowie, 4 Wall., 463; Vallett *v.* Parker, 6 Wend., 615; Daniel Neg. Inst., Sections 197, 807. In such a case the note will be declared void in the hands of an innocent holder, in pursuance of the peremptory words of the statute, which embraces in its terms the contract or obligation under consideration. Town of Eagle *v.* Kohn, 84 Ill., 292.
>
> The authorities justify the statement that a defendant may insist upon the illegality of the contract or consideration, notwithstanding the note is in the hands of an innocent holder for value, in all those cases in which he can point to an express declaration of the Legislature, that the illegality insisted upon shall make the security, whether bill or note, void. But, unless the Legislature has so declared, then, no matter how il-

legal or immoral the consideration may be, a commercial note in the hands of an innocent holder for value will be held valid and enforceable. Hatch *v.* Burroughs, 1 Wood., 439; Town of Eagle *v.* Kohn, *supra;* Third National Bank *v.* Tinsley, 11 Mo. App., 498; Third Nat. Bank *v.* Harrison, 3 McCrary, 316—10 Fed. Rep., 243; Edwards *v.* Dick, 4 B. & Ald., 212; Day *v.* Stuart, 6 Bing., 109; Chitty on Bills, Sec. 92; 2 Randolph Com. Paper, Sec. 511."

And again at page 79:

"The purpose of the Legislature in enacting the statute was to avoid securities, any part of the consideration of which was money won by playing at any game, etc. The words of a statute are not to be enlarged by intendment, so as to extend beyond the mischief contemplated, where such a construction would be injurious to innocent third persons. A statute ought not to be enlarged by mere construction, so as to permit the very persons guilty of the offense prohibited to retain money obtained contrary to the statute from third persons guilty of no violation of law whatever (Edwards *v.* Dick, *supra*).

"The statutes against gaming, which render all wagers, bets and stakes unlawful, and avoid all contracts for or on account of any money wagered or bet, or any notes or other securities, when the whole or any part of the consideration thereof shall be money won or lost on any game or wager, and statutes which make it criminal offense to bet upon any game or the like, also not applicable in terms of the purchase of options, are sufficiently indicative of the policy of the law, as respects mere wagering contracts, of whatever description or name, to require the courts to pronounce all such contracts and securities invalid in the hands of those who were implicated in violating public policy by specifically aiding or directly participat-

> ing in the furtherance of such transactions. They do not, however, go to the extent of destroying commercial securities in the hands of innocent holders for value, even though such securities may have had their inception in a transaction thus condemned."
>
> See Schmeckle *v.* Waters, 125 Ind., 265.

The case of Irwin *v.* Marquett, 59 N. E. (Ind. App.), p. 38 (cited by Mr. Twombly at p. 29, Brief on behalf of Respondents), points out the difference between notes expressly declared void by statute as having been issued for gaming considerations in violation of the express terms of a statute and those notes which are not so expressly declared void when given in consideration of a void contract as in the case of Sondheim *v.* Gilbert, 117 Ind., 71.

The Supreme Court of Ohio, in deciding that a note, assigned before maturity to a third party without notice of the manner in which the bank acquired the note in violation of the banking law of Ohio, was good, discuss the question at great length and say *inter alia:*

> "In Broughton *vs.* Manchester Water Works, 3 Barn and Ald, 10, the rule upon this subject is very clearly expressed by Holyroyd, J., in a suit by an indorsee against the maker of a note, and in these words: 'I take it to be clear, however, that where a statute prohibits a thing to be done, and does not expressly avoid the securities which fall within the prohibition, there, if the violation of the law does not appear on the face of the instrument, and the party taking it is ignorant that it was made in contravention of the statute, it is an available security in the hands of such person.' The cardinal principle of commercial law which protects commercial paper, regular upon its face and negotiated before its maturity, cannot other-

> wise be vindicated; and this is of much more importance, than that one who has received the benefits of the paper, or has been instrumental in imposing it upon the public, should be compelled to perform an engagement which he voluntarily made."
>
> Pickaway Co. Bank *vs.* Prather *et al.*,
> 12 Ohio St., 497, at p. 505.

Naturally, this same Court decided that, where the consideration of the check for $200 in suit was small pieces of celluloid called "checks" betted and lost in a game of cards, the absolute provisions of the statute against gaming, as quoted on page 25 of respondent's brief, applied, and no recovery could be had by the alleged innocent holder for value.

> See *Lagonda Nat. Bank* v. *Portner,*
> 48 Ohio St., 381.

The Supreme Court of Nebraska, in deciding that a note was good in the hands of a purchaser for value before maturity, although originally given on the promise that E. J. would not prosecute defendant for rape, says:

> "The Supreme Court of North Carolina states the rule correctly in the following words: 'If a statute declares a security void, it is void in whatsoever hands it may come. If, however, a negotiable security be founded on an illegal consideration (and it is immaterial whether it be illegal at common law or by statute), and no statute says it shall be void, the security is good in the hands of an innocent holder, or one claiming under such holder.' Glenn *v.* The Farmers' Bank of North Carolina, 70 N. C., 191. The rule is stated the same, in substance, in New York, Vallett *v.* Parker, 6 Wend., 615,

and in Virginia in the well-reasoned case of Taylor *v.* Beck, 3 Rand, 316."

Smith v. *The Columbus State Bank,* 9 Neb., 31.

See *Worthendyke* v. *Meeckan,* 9 Neb., 222, at page 228.

In *Haight* vs. *Joyce,* 2 Cal. Rep., 64, it was held that contracts for gaming were void under their decisions and by common law, but that commercial paper given for a gaming debt was not void in innocent hands unless expressly declared so by statute.

Jorne vs. *Yontz, 4 Cal., 321.*

The Court in *Lynchburg Nat'l Bank* v. *Scott,* 91 Va., 652, quoting from Kent's Com. (11 Ed.) said:

> "If a note is not declared void by statute, mere illegality in its consideration will not affect the rights of a *bona fide* holder for value."

In *Safford* v. *Wyckoff,* 4 Hill, 442, at page 445, the Court said:

> "But a bill, or any other negotiable security which is not upon its face illegal and unauthorized, is valid in the hands of a *bona fide* holder without notice, who has paid a valuable consideration therefor, except in those cases in which the security is made void by statute (*Vallett* v. *Parker,* 6 Wend., 615)."

It was held in *Hill* vs. *Northup,* 4 Thom. & C. (N. Y.), 120, that a note given to compound a felony is void in the hands of the original parties, but good in the hands of *bona fide* holders, citing

Safford vs. *Wyckoff*, 4 Hill., 422; *Lumus* vs. *Cline*, 4 Barbour, 453.

For other cases holding the same doctrine see

Dixon v. *Hubert, 1 Wis., 436.*
Clark v. *Ricker, 14 N. H., 44.*
First Nat. Bank v. *Bentley, 27 Minn., 87.*
Weith v. *City of Wilmington, 68 N. C., 24, 28.*
Young v. *Berkley, 2 N. H., 410.*

Mr. Twombly in the brief on behalf of the Receivers, respondents, cites, page 22, Tiedman on Commercial Paper, Sec. 178. A foot note to this section reads as follows:

> "In Vallett *v. Parker*, SAVAGE, *J.*, said:
> "Whenever the statutes declare notes void they are and must be so in the hands of every holder; but where they are adjudged by the court to be so for failure of or the illegality of the consideration, they are void only in the hands of the original parties or those who are chargeable with or have had notice of the consideration."

The learned author then cites a number of cases which either do not apply or sustain the distinction.

An example of the cases cited is Ramsdell & Brown *v.* Morgan, 16 Wend., 574, where, in an action of trover brought against an auctioneer who made an advance upon goods fraudulently obtained and charged 5% beside the usual commissions, the transaction was held usurious.

In Daniels on Negotiable Instruments, Sec. 808, the section immediately following the one from which the brief of the respondents quotes (pp. 22-3), it is said: "And in all cases where the statute does not declare the instrument void, the *bona fide*

ownership for value being proved, the holder is entitled to recovery." Citing

Williams v. Cheney, 3 Gray, 215.
Hubbard v. *Chapin, 2 Allen, 328.*
Story on Promissory Notes, Sec. 192.
Hart et al. v. *Livermore Co., 72 Mass., 809.*
First Nat'l Bank v. *Smith et al., 8 S. Dak., 7.*
Farmers' Bank v. *Sutton, 52 Fed., 191.*
Pope v. *Henky, 155 Ill., 617.*

Daniels on Negotiable Instruments, Sec. 197, reads as follows:

> "The *bona fide* holder for value who has received the paper in the usual course of business is unaffected by the fact that it originated in an illegal consideration without any distinction between cases of illegality founded in moral crime or turpitude, which are termed *mala in se*, and those founded in positive statutory prohibition, which are termed *mala prohibita*. The law extends this peculiar protection to negotiable instruments, because it would seriously embarrass mercantile transactions to expose the trader to the consequences of having the bill or note passed to him impeached for some covert defect."

The New Jersey cases cited at pages 23-24 of the respondent's brief are based on the statutory disability of the married woman to make such an obligation.

In Flagg *v.* Baldwin, 38 N. J. Eq., 219 (cited, p. 24, Respondent's Brief), the third section of the statute provides: "That all bonds, mortgages or other securities made or given upon the whole or any part of the consideration, or money laid or betted in violation of the First Section, or for re-

paying money knowingly to help or facilitate such violation, are declared to be utterly void," and is the statute governing the case.

The only cases cited by the learned counsel for the respondents which in any way support his contention are Streit *v.* Sanburn, 47 Vt., 102, where Royce, *J.*, reverses a former decision and holds that the statute against selling liquors was equivalent to an express declaration of the nullity of the securities, and the Louisiana cases where the Constitution prohibits the sale of a slave.

Every other case cited by the respondents' counsel goes off on the express wording of the statute applied.

It is, therefore, clear that notes, bills, bonds and other negotiable securities or assurances are not held to be void in the hands of innocent holders, unless those seeking to avoid them can point to some statute expressly declaring such securities void and showing a clear intention of the legislature to emasculate the law merchant.

It is undisputed that in some states there are statutes expressly avoiding bonds, mortgages, notes, bills, contracts and assurances of every kind and declaring them to be void when founded upon usury and gaming contracts. The cases cited by the receivers are decided under these statutes, or statutes prohibiting some transaction as offensive to the law, as gaming and usury, as the Alabama Statute which makes void the sale of fertilizers without a tax tag on the bags and avoids the notes given for such wickedness as an untagged bag of fertilizer.

Further, even though the certificates of indebtedness might be considered to have been issued in violation of the Ohio Anti-Trust Law and to constitute no legal liability in that State, yet, by the law merchant the certificate will constitute a legal liability in the State where the action is brought, if not in contravention of some statute there.

POINT II.

The transaction in connection with which the instruments in suit were given did not violate the provisions of the New Jersey Statutes prohibiting an overissue of stock at all, and certainly not to the extent of rendering the instruments absolutely void.

This matter is fully discussed in the main briefs, to which the Court is respectfully referred.

Brief on behalf of Union Trust Co. et al., Points I, IX and X.

Brief on behalf of Edmond L. Brown et al., pp. 4-8.

Ingraham v. *National Salt Co., 130 Fed. Rep., 676.*

Ingraham v. *National Salt Co., 143 Fed. Rep., 805.*

POINT III.

The instruments in suit are not illegal and void upon the theory that they constitute an attempted guarantee of dividends.

This matter is fully discussed in the main briefs, and there is nothing to add to what is there said.

Brief on behalf of Union Trust Co. et al., Points I and X.

Brief on behalf of Edmond L. Brown et al., pp. 6-8.

Ingraham v. *National Salt Co., 130 Fed. Rep., 676.*

Ingraham v. *National Salt Co., 143 Fed. Rep., 805.*

POINT IV.

The instruments in suit are negotiable.

Brief on behalf of Union Trust Co. et al., Points I and II.
Brief on behalf of Edmond L. Brown et al., pp. 14-5.
Ingraham v. *National Salt Co., 143 Fed. Rep., 805.*
Brief for Claimants-Appellants—Judge William J. Wallace.

The alleged non-negotiability of the certificates of indebtedness is urged by the respondents upon the grounds, among others:

1. That they refer to *"and practically incorporate therein"* the option of July 20th, 1899, and the trust agreement of October 2nd, 1899, to which reference must be had to determine the conditions under which the instruments may or may not be payable (Respondents' Brief, pp. 37-42).

2. That they are payable out of a particular fund (Respondents' Brief, pp. 42-3).

3. That the American Trust Company held the stock of the United Salt Company to secure the performance of various incidental agreements on the part of the National Salt Company, and in case of default could sell the stock, and by paying over the proceeds to the registered holders, reduce *pro tanto* the liability of the National Salt Company (Respondents' Brief, pp. 43-8).

These matters are not specifically considered in either of the main briefs of the appellants, and for that reason the following is submitted.

It should be observed at the outset that if the certificates may be said to be payable out of a particular fund at all, it is only by virtue of the provisions of the option of July 20th, 1899 (Case, pp. 270-3), and the declaration of trust of October 2nd, 1899 (Case, pp. 276-8), and not by virtue of the provisions of the certificates themselves. The same is true of the objection stated under subdivision 3 *supra*. The option and declaration of trust are referred to in the certificates of indebtedness in the following language (Case, p. 275):

> "To jointly and ratably secure the payment of this obligation and others of like tenor and also the performance of the foregoing agreements, said National Salt Company has indorsed in blank and deposited with The American Trust Company, of Cleveland, Ohio, as Trustee, all stock of the United Salt Company acquired by it under an option given by certain stockholders of said company bearing date July 20th, 1899. The terms upon which said stock has been deposited are set forth in a declaration of trust executed by said National Salt Company dated October 2nd, 1899, and filed at the office of said Trust Company."

It is apparent that the entire argument of the respondents falls if the reference in the certificates of indebtedness to the option and declaration of trust does not operate to incorporate their provisions into the certificates and to make them a part of them. It is submitted that it has no such effect, and that its only effect is to charge subsequent holders with *notice* of the terms of the collateral instruments. The question of notice is, however, vastly different from the question of negotiability, and, although by a reference on the face of a negotiable instrument to a collateral agreement containing terms affecting the certainty

of the promise to pay, a subsequent holder becomes charged with notice of the terms of such agreement and cannot in a suit upon the instrument avoid the qualifying effect of those particular terms upon the ground that the note is negotiable, nevertheless he is estopped in such a case not because of the non-negotiability of the instrument, but because of his notice of the qualifying terms of the collateral contract. But were some defense entirely independent of the collateral contract attempted to be set up he could, despite such notice, avoid the defense upon the ground that the instrument was negotiable and he was a *bona fide* purchaser for value before maturity.

To use a very simple and homely illustration, let us assume that one Jones gave to one Smith a note in the following form:

> "$300. JUNE 1ST, 1911.
>
> One month after date I promise to pay to the order of John Smith Three hundred Dollars ($300) with interest at 6%. Value received.
>
> This note is given as a result of a contract this day made between maker and payee.
>
> WILLIAM JONES."

And assume that the contract referred to read as follows:

> "Agreement made this 1st day of June, 1911, between John Smith, party of the first part, and William Jones, party of the second part,
>
> WITNESSETH:
>
> The party of the first part agrees to sell to the party of the second part his bay mare Jenny. The party of the second part agrees to give his note for $300 to the party of the first part in payment therefor it being expressly understood and agreed that the

> note is not to be paid unless the said mare is entirely satisfactory to the party of the second part at the expiration of one month from date. If not satisfactory the mare is to be returned and the note is to be cancelled.
>
> JOHN SMITH.
> WILLIAM JONES."

Assume further that the note was transferred before maturity in ordinary course by Smith to one Robinson, who, as a matter of law, would be chargeable, of course, with notice of the contract, and who brought suit on it against Jones knowing in addition that the mare had not proved satisfactory and had been returned by Jones to Smith. In such a case, Jones could defeat Robinson's recovery not, however, on the theory that the note was non-negotiable, thus entitling him to set up against Robinson any equities he might have against Smith, the maker of the note, but on the theory that Robinson took with *notice* of the contract and its breach and hence was bound by it. On the other hand, if the mare had proved entirely satisfactory and had been retained by Jones, but he and Smith had met together some time before the maturity of the note and agreed between themselves that the note should not be paid on account of some other and further indebtedness of Jones to Smith, of which latter agreement Robinson did not have knowledge, he, Robinson, could recover on the note upon the ground that it was negotiable and hence cut off any such equity as that arising out of the subsequent contract.

Coming then to the case at bar (and acquiescing for the moment only in the respondents' *assumptions* that the certificates are payable out of a particular fund and that the American Trust Company has the right to sell the collateral upon the happening of a breach of one of the incidental con-

tracts and pay over the proceeds at once to the registered holder in *pro tanto* reduction of the certificate indebtedness, irrespective of whether the registered holder was the actual holder or not) the present claimants perhaps would not be heard to complain in a case where there was a fund on hand sufficient to meet the certificates if the National Salt Company insisted on their resorting to that fund at least in the first instance; or, in a case where the collateral security had been sold by the American Trust Company upon a breach of one of the incidental contracts and the proceeds had been paid over by it to the registered holders, and the National Salt Company insisted that its liability was decreased to the extent of such payments, but that would be so only because the reference to the option and the declaration of trust charges subsequent holders with *notice* of their contents. They can be heard to complain, however, if all the terms of collateral agreements, as a result of which alone the certificates may, in any event, be said to be payable out of a particular fund, etc., are sought to be engrafted upon the certificates to such an extent as to destroy their negotiability and thereby permit the National Salt Company and its successors to avail themselves of entirely independent equities.

The promise to pay in the instruments in suit is upon its face absolute and unqualified. It is not made subject to the terms of either the option or the declaration of trust which are only incidentally referred to. While, therefore, the reference to these collateral agreements may be sufficient to charge any purchaser with notice of their contents, it is not sufficient to destroy negotiability.

In support of their contention that the question of negotiability is to be determined in the light, not only of the terms of the certificates, but also the

terms of the option ad declaration of trust, the respondents rely upon the following cases:

McClelland v. *Norfolk Southern R. R. Co., 110 N. Y., 469—*
As construed by Judge Lacombe in Ingraham *v.* National Salt Co., 122 Fed. Rep., 40;
Batchelder v. *C. W. G. Co., 131 N. Y., 42;*
U. S. Mortgage Co. v. *Sperry, 138 U. S., 313;*
Ketchum v. *Duncan, 96 U. S., 659;*
McClure v. *Township of Oxford, 94 U. S., 429;*
Coffin v. *Spencer, 39 Fed. Rep., 262.*

In *McClure* v. *Township of Oxford, supra,* there was no question of negotiability at all, but simply one of notice, and the plaintiff was not permitted to recover because, having notice of the facts constituting the defense relied on, he could not be said to be a *bona fide* purchaser. So in *Ketchum* v. *Duncan, supra,* there was no issue as to negotiability. The question there raised was simply whether the holders of coupons of corporate bonds had any equities with respect to the property mortgaged to secure the bonds than did the holders of the bonds themselves. That question was quite obviously answered in the negative. The case of *U. S. Mortgage Co.* v. *Sperry, supra,* has no bearing whatsoever on the case at bar. In *Coffin* v. *Spencer, supra,* the clause affecting the time of payment was contained in the instrument itself, and not in a collateral agreement only incidentally referred to. In *Batchelder* v. *C. W. G. Co., supra,* the suit was brought on the bonds as well as the coupons. There was no question of negotiability at all. The only question was whether, a default having been made in pay-

ment of interest, the principal became due and payable.

In *McClelland* v. *Norfolk Southern R. R. Co., supra,* suit was brought upon certain interest coupons, which upon their face purported to be "six months' interest then due upon its First Mortgage Bonds No. ——." The bonds thus referred to each contained a statement that "full payment of the principal and interest of * * * the said series of bonds is secured by a deed of trust or mortgage * * * upon the terms and conditions fully set forth in said mortgage or deed of trust * * *. In case default shall be made in the payment of any of the half-yearly instalments of interest on this bond * * * and if such interest shall remain unpaid for a period of six months * * * the principal of this bond shall, at the option of the holder * * * become forthwith due and payable immediately upon the terms and with the effect mentioned in said deed of trust or mortgage." The mortgage referred to contained a provision authorizing a majority in interest of outstanding bonds to waive any default in the payment of interest upon certain conditions. Prior to the institution of the suit a default had occurred and had been waived by four-fifths in interest of the bondholders, and the question arose as to whether this was available as a defense.

Thus what the Court of Appeals really had before it was a question of notice rather than negotiability. It was not necessary to arrive at the decision which it rendered to hold that the reference on the coupons to the bonds destroyed negotiability, but simply that such reference affected subsequent purchasers of the coupons with notice of the terms of the collateral instruments to the extent that such terms would be binding on the purchasers in any suit upon the coupons. Concededly, however, the language of the decision is broader than its effect, and

in the course of his argument the learned Judge who wrote the opinion quite obviously assumed that negotiability and notice were one and the same thing. What was said, however, is to be considered in the light of what was to be decided. If that is done the real purport of the decision becomes clear. If, however, the decision in that case is to be regarded as authority for the proposition that where, in an otherwise negotiable instrument, reference is made to a collateral agreement in terms which do not on their face affect or limit in any way the promise to pay, the certainty of the promise to pay is to be construed in the light of the terms of the collateral agreement, we submit it is an anomaly in the law of negotiable instruments and stands absolutely alone. Such a result cannot be arrived at unless it be said that every reference to a collateral agreement serves to make it a part of the note itself. It would necessarily follow from such a position that, given a promissory note containing a promise to pay in terms conditional but with an incidental reference to a collateral agreement, if the collateral agreement by its terms destroy the conditionality of the promise to pay expressed in the note, the note would be negotiable. It surely needs no citation of authorities to show that such a proposition is unsound.

And, lastly, if the learned Court will examine the option and the declaration of trust, it will find that the respondents' assumption as to the certificates being payable out of a particular fund, etc., are wholly unwarranted in point of fact. The statement in the option is simply that (Case, p. 272, fol. 30). "All dividends paid on the stock of the National Salt Company so to be given the undersigned in exchange for their stock in United Salt Company shall be applied toward the payment of the amounts so agreed to be paid."

The statement in the declaration of trust (Case,

p. 279, fol. 30) is that the Trust Company is "to retain all moneys so paid (that is by way of dividends on the National Salt Company stock) until the instalment next to become due upon the obligation referred to in Exhibit 'A' shall have become due and payable, and then to apply the same to the payment of such instalment."

An agreement that certain money will be applied toward the payment of the indebtedness represented by a negotiable instrument does not make the instrument payable out of a particular fund, and that is all that there is in this case. The obligation on the part of the National Salt Company to pay the certificates is not made dependent upon the absence of a fund arising from dividends declared upon its stock, but is absolute. It does not promise to pay any sum of money out of the fund arising from such dividends, but rather promises to pay the money absolutely and in any event, and agrees, further, that it will avail itself of the funds arising by way of dividends on its stock as one source, among others, from which to acquire the necessary moneys to make such payment.

As to the suggestion that upon the happening of a breach of one of the incidental agreements the Trust Company could sell the stock of the United Salt Company and forthwith pay over the proceeds to the registered holders of the certificates, thereby decreasing in advance of the maturity of the certificates the liability of the National Salt Company to the true owners to the extent of such payments, we submit that such a contention finds no force whatsoever in the language of the agreement. True, upon the happening of such a breach the trustee had the right to sell the stock collaterally pledged, and, having made the sale, was obligated to use the proceeds to satisfy the balance remaining unpaid on the certificates. There is no direction to the trustee herein to at

once pay over the proceeds on account of the certificate indebtedness and there surely is nothing authorizing it to make such payment to the registered holders. Rather was it the very obvious intent of the parties that the money realized from such a sale should be held against the various installments as they fell due, the same as the dividends declared on the National Salt Company stock. This is shown by the fact that all subsequent installments did not fall due upon the happening of a breach of any of the incidental contracts.

The case of *Lincoln National Bank* vs. *Perry* (66 Fed. Rep., 887) is distinguishable from the case at bar upon two grounds. In the first place, the agreement as to the sale of the collateral was there expressed upon the face of the note itself whereas here it is contained in a separate instrument only incidentally referred to. In the second place, the sale of the collateral was then to be made by the holder of the note, and by necessary inference the proceeds were to be applied immediately against the note. Such an inference is by no means necessary in the case at bar. It is quite apparent that here the United Salt Company stockholders were of the opinion that a failure on the part of the National Salt Company to comply with the terms of the incidental agreements would materially affect the company's operation and business and might decrease correspondingly the value of its stock. That being so, they were anxious that upon the happening of such a breach, the stock should be sold at once so as to bring a price which might not be possible later on when perhaps the company's business had been destroyed and the successful operation of its properties impaired or rendered impossible as a result of the National Salt Company's failure to comply with the terms of the incidental agreements. The United Salt Company stock was

pledged as collateral security for the payment of the certificates of indebtedness. If it was to be sold, it was important that it be sold at a time when the proceeds of the sale would be large and the collateral thereby become of some real value. That is all there was to the matter. It was not intended to advance the date of payment of the certificates upon the happening of a breach of the incidental contracts. Had that been the intent, it would have been expressly provided for the same as in case of a default in the payment of any installment. The only concern of the parties and the only evident intent of the various agreements was simply to give real value to the collateral and for that reason the case relied on by the respondents is, we submit, wholly inapplicable.

POINT V.

The appellants are bona fide holders of the certificates of indebtedness for value, without notice of any fact affecting their validity.

The supposed infirmities of the certificates, of which the appellants are claimed to have had knowledge at the time of their respective purchases, are:

1. Their alleged violation of the Ohio Anti-Trust Act;

2. Their alleged violation of the New Jersey Statutes, prohibiting an over-issue of stock;

3. Their alleged illegality on account of there being a guarantee of dividends.

It is pertinent to note at the outset that if, as we contend, there was no violation of the laws of either Ohio or New Jersey in respect of such matters, then the appellants could not have had the knowledge sought to be attributed to them, for, of course, a person cannot have knowledge of what does not exist.

The claim of *scienter,* so to speak, is based upon the fact that the appellants saw the circular letter issued by the stock exchange house of Stewart Barr & Co. (Case, pp. 269-82). As to some of the appellants the claim is made also that they saw the two statements issued by the New York Stock Exchange (Case, pp. 282-91). The information, if any, contained in these two statements is not attributable, however, to the appellants Brown, Wilcox Wick and Otis Wilson & Co., inasmuch as neither they nor their representative saw these statements until after the purchases had been made (Case, pp. 77-8). There is no suggestion that any of the appellants had any knowledge beyond what was contained in these several papers, so that the question of *notice* must be determined solely in the light of their terms.

Upon the question of the alleged violation of the Ohio Anti-Trust Act, the circular may be said to convey at the most no more information than that the National Salt Company had purchased from certain stockholders of the United Salt Company their stock in the latter company. If it is assumed that the transaction, by which this purchase was accomplished, did effect a "combination of capital, skill or acts" within the meaning of that phrase as used in the Ohio Anti-Trust Act at all, such a combination would by virtue of the Act be illegal only if formed for one of certain specified purposes (Case, pp. 361-2). The combination in and of itself was not illegal, and hence notice simply of the combination would not be notice of its

illegality. There is not a scintilla of evidence nor a suggestion that any one of the appellants ever knew of any illegal intent on the part of the National Salt Company or on the part of the vendors of the stock of the United Salt Company, or ever knew that the purchase of the stock of the latter company was designed for any purpose prohibited by the Ohio statute.

Upon the question of the alleged violation of the New Jersey Statutes prohibiting an over-issue of stock, the circular simply conveys the information that for every share of the United Salt Company stock there were given one and a quarter shares of the preferred stock and one and a quarter shares of the common stock of the National Salt Company and a certificate representing an ultimate cash payment of $106.25. If this transaction violated the New Jersey Statutes at all, it violated them only by virtue of the inadequacy of the consideration for the National Salt Company stock or fraud on the part of the National Salt Company's directors in issuing its stock knowing that the company was not obtaining a *quid pro quo* and without making any satisfactory appraisal or examination of the properties of the United Salt Company to determine the value of its stock. These matters being essential to the illegality of the transaction, notice of these matters is essential to notice of illegality of the transaction. It surely needs no argument to show that the circular conveys no information at all as to the value of the United Salt Company stock, or as to any fraud or violation of duty on the part of the directors of the National Salt Company. How, then, may it be said that the circular conveyed any information of the alleged illegality of the issue of the National Salt Company's stock, much less the issue of the certificates of indebtedness?

Upon the question of the alleged guarantee of

dividends it should be noted that the statement in the circular is simply that the amounts represented by the certificates were the equivalent of a certain return upon the common and preferred stock of the National Salt Company. The instruments involved were set forth at length in the circular, and the statement preceding them is obviously nothing more than a statement of what, in the mind of Stewart Barr & Co., the investments that they were offering meant in dollars and cents. If Stewart Barr & Co. misconstrued the force and effect of the transaction, their misconstruction is surely not binding upon the appellants as against a proper construction, and if the transaction was upon its face perfectly valid and legal, as is pointed out in the main briefs, it was not rendered illegal and the appellants were not chargeable with notice of any illegality as a result of what Stewart Barr & Company may have thought or said. The statement in the circular is that the payments represented by the certificates are "in lieu of dividends," and further that the holder of American Trust Company certificates would receive "the equivalent of" a certain per cent. semi-annually on the National Salt Company stock. There is no suggestion of a *guarantee* anywhere. The claimants had before them the very instruments themselves by which the transaction or purchase was consummated. These instruments showed the certificates of indebtedness to represent a payment in cash made to the United Salt Company stockholders as a part consideration for their stock. They disclosed an act upon its face entirely legal and entirely within the authority of both of the contracting parties. That being so, the claimants were not bound by Stewart Barr & Co.'s misconception of the transaction, nor in determining what the real transaction was, were they bound to follow the interpretation given to it by that broker-

age house, very obviously for the sole purpose of making the investments which they were offering, attractive to the purchasing public.

Coming, then, to the statements issued by the New York Stock Exchange, they will be found to contain absolutely nothing which could be said to bear upon the question of the alleged violation of the New Jersey Statutes or the alleged violation of the law against a guarantee of dividends beyond what is contained in the circular of Stewart Barr & Co. Upon the question of the alleged violation of the Ohio Anti-Trust Act, the statements contained the information that the National Salt Company controlled a certain large percentage of the manufacture of salt east of the Rocky Mountains and that it controlled the stock of the United Salt Company. They do not show what control of the latter company means so far as the manufacture and sale of salt in the State of Ohio is concerned; nor do they show that the stock control of that company was obtained for anything other than a perfectly legitimate purpose and, lastly, they do not show that if any *"combination"* at all was effected by the purchase of the United Salt Company stock, the combination so effected was for any of the purposes enumerated in the Ohio Anti-Trust Act. How, then, may it be said that knowledge on the part of any of the claimants of the matters contained in the statements issued by the New York Stock Exchange affects them with notice that the transaction in connection with which the certificates in suit were issued, violated the provisions of the Ohio Anti-Trust Act?

POINT VI.

The decree of the Ohio Court is not res adjudicata as to these appellants.

It is submitted that the argument for the respondents in this regard finds a complete answer in the propositions already discussed in the main briefs.

Brief on behalf of Union Trust Co. et al., Points I, IV, V, VI and VII.

Brief on behalf of Edmond L. Brown et al., pp. 15-6.

Ingraham v. *National Salt Co., 143 Fed. Rep., 805.*

A number of cases are cited by the respondents in support of their claim of *res adjudicata,* which are not specifically distinguished in the main briefs. All of these cases, if examined, however, will be found to come within the distinction there pointed out, and a further discussion of them seems unnecessary in this place.

POINT VII.

The action of the receivers in rejecting the claim filed by the American Trust Company is of no force or effect so far as the present proceedings are concerned.

The one complete answer to the contention that the present appellants are bound by the disallow-

ance of the claim heretofore filed by the American Trust Company is that the decree disallowing the claim is not in evidence. *Res adjudicata* to be availed of in the ordinary case must be pleaded. In a case such as the one at bar where there are no pleadings it surely is not going too far to say that at least it must be proven. The *claim* itself is in evidence, it is true (Case, pp. 307-23), but the decree entered on the claim is not, and, indeed, could not have been introduced, because it had not been rendered at the time.

Furthermore, the decree would not be binding in any event inasmuch as the action of the Chancellor in disallowing the claim was in terms without prejudice to the right of the present claimants to file their individual claims.

In *Strickland* v. *National Salt Company, 72 N. J. Equity, 170,* Vice-Chancellor Stevenson after discussing the question of the alleged illegality of the issue of stock and the alleged guarantee of dividends by the National Salt Company, said, at page 174:

> "I have left the questions of fact and law above indicated undecided because it seems to me beyond all question that the appellant, the American Trust Company, and its successors are bound by the decree of the Ohio Court, which has been put in evidence in this case. In an action in the Court of Common Pleas in Cuyahoga County, Ohio, which went to a decree after this appeal was taken, all the agreements upon which the appellant's claim is based were declared void and set aside. The National Salt Company was the complainant in this action, and the United Salt Company and this appellant, the American Trust Company, and large numbers of the certificate holders were defendants. The decree provided for the

cancellation of all the agreements which the parties had made and the exchanging back of the certificates of stock of the two salt companies. It is not suggested that this decree had ever been appealed from by anybody. It stands in full force to-day, and no way has been suggested by which its force and effect as a bar to the appellant's claim can be met. *The decision of the receivers in disallowing the appellant's claim will therefore be affirmed, upon the ground that the invalidity of the claim is res adjudicata.*

Whether any of the certificate holders not parties to the suit in the Ohio Court have valid claims which they are severally entitled to prove as debts before these receivers is a question which is not presented for consideration. It is the claim of the American Trust Company, acting on behalf of all the certificate holders under the instruments which have been set aside as illegal and void, that the receivers have properly disallowed."

If the Court will examine the memorandum of reasons given by the Receivers in support of their disallowance of the claims (Case, pp. 51-4), it will see that the objection now being considered was not relied on by them. Nor was it urged before the learned Vice-Chancellor in the lower court. The present argument is one apparently conceived in extremity, and it is difficult to believe that its application to the case at bar is seriously urged.

POINT VIII.

The decrees appealed from should be reversed, with costs, and the Receivers directed to allow and pay the claims under review to the following amounts, with interest from July 1st, 1901:

J. N. Beckley	$2,975.00
Gertrude Powers	297.50
Edmond L. Brown	5,950.00
E. G. Miner	2,975.00
M. C. Nichols	20,825.00
H. D. Quimby	5,950.00
Walter Smith	2,975.00
Frank Taylor	2,975.00
Union Trust Co	5,950.00
F. A. Whitney	2,975.00
Henry Wick	5,950.00
Charles H. Wilcox	2,975.00
Otis, Wilson & Co	5,950.00
Erickson Perkins	8,925.00
Erickson Perkins as adm., &c	2,975.00

Respectfully submitted,

GEORGE R. BEACH,
Solicitor for and of Counsel with
Claimants-Appellants.

HENRY W. BEAN,
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CHESTER A. JAYNE,
Of Counsel.