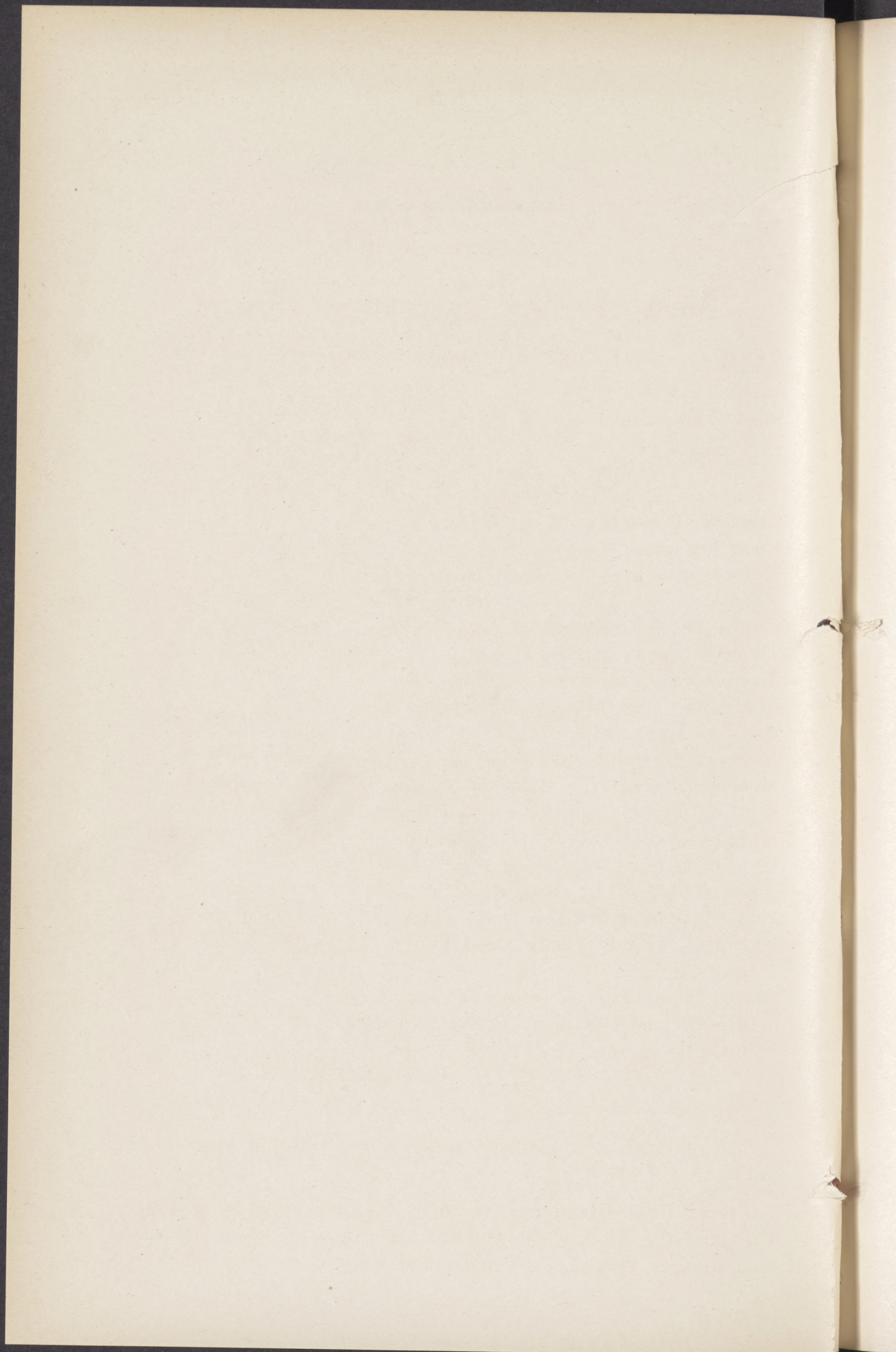


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Amended Complaint.

Amended Complaint.

Filed October 25, 1919.

New Jersey Supreme Court

HUDSON COUNTY CIRCUIT.

10

SETH B. ROBINSON,

Plaintiff,

vs.

LINCOLN TRUST COMPANY OF NEW JERSEY,
FIRST NATIONAL BANK OF JERSEY CITY,
HUDSON COUNTY NATIONAL BANK, JERSEY
CITY,

20

UNION TRUST COMPANY OF JERSEY CITY,
TRUST COMPANY OF NEW JERSEY,
SECOND NATIONAL BANK OF HOBOKEN,
ESSEX NATIONAL BANK OF MONTCLAIR,
BANK OF MONTCLAIR.

BOONTON NATIONAL BANK OF BOONTON,
MERCHANTS NATIONAL BANK OF NEWARK,
LINCOLN TRUST COMPANY OF NEW YORK,
METROPOLITAN BANK OF NEW YORK,
HUDSON TRUST COMPANY OF NEW YORK,
ATLANTIC NATIONAL BANK OF NEW YORK,
FIFTH NATIONAL BANK OF NEW YORK,
CHEMUNG CANAL TRUST COMPANY OF EL-
MIRA, N. Y.,

ADAM GROBHOLZ, as executor under the
last will and testament of BERNARD GROB-
HOLZ, deceased,

Defendants.

Action at Law.

*Amended
Complaint.*

30

The plaintiff, a resident of Jersey City, State of New Jersey,
says:

40

FIRST. The defendants, the First National Bank of Jersey
City and the Hudson County National Bank of Jersey City are
corporations incorporated under the laws of the United States

Amended Complaint.

of America, and have their respective principal offices in Jersey City, in the State of New Jersey; the defendants, Lincoln Trust Company of New Jersey and Union Trust Company of Jersey City are corporations incorporated under the laws of the State of New Jersey and have their respective principal offices in Jersey City in said State; the defendant, Trust Company of New Jersey, is a corporation incorporated under the laws of the State of New Jersey, and has its principal office in the City of Hoboken, in said State; the defendant, Second National Bank of Hoboken, is a corporation incorporated under the laws of the United States of America and has its principal office in the City of Hoboken, in the State of New Jersey; the defendant, the Essex National Bank of Montclair, is a corporation incorporated under the laws of the United States of America, and has its principal office in Montclair, in the State of New Jersey; the defendant, the Bank of Montclair, is a corporation incorporated under the laws of the State of New Jersey and has its principal office in Montclair, in said State; the defendant, the Boonton National Bank, is a corporation incorporated under the laws of the United States of America and has its principal office in Boonton, in the State of New Jersey; the defendant, the Merchants' National Bank of Newark, is a corporation incorporated under the laws of the United States of America, and has its principal office in Newark, in the State of New Jersey; the defendants, the Lincoln Trust Company of New York, the Metropolitan Bank of New York and the Hudson Trust Company of New York, are corporations incorporated under the laws of the State of New York and have their respective principal offices in the City of New York, in said State; the defendants, the Atlantic National Bank of New York—whose name was formerly Merchants' Exchange National Bank—and the Fifth National Bank of New York, are corporations incorporated under the laws of the United States of America and have their principal offices in the City of New York, in the State of New York; the defendant, the Chemung Canal Trust Company of Elmira, N. Y., is a corporation incorporated under the laws of the State of New York and has its principal office in the City of Elmira, in said State; the defendant, Adam Grobholz, as executor under the last will and testament of Bernard Grobholz, deceased, was heretofore duly appointed executor of the estate of said Bernard Grobholz, deceased, by the Surrogate's Court of the County of Hudson, in

Amended Complaint.

the State of New Jersey, duly qualified as such, and is still so acting, and is a resident of Jersey City, in said State.

SECOND. In June, 1912, the defendants—except the Trust Company of New Jersey—together with the Bergen-Lafayette Trust Company, having certain claims against the Charles R. Partridge Lumber Co., a bankrupt, aggregating approximately three hundred and fifty thousand (\$350,000) dollars, duly appointed certain agents or representatives as a liquidating or re-organization committee, to acquire for the benefit of said defendants and such other creditors as might join therein, the assets of the said bankrupt; to use such assets in the re-organization or liquidation of the business of said bankrupt; to perform and carry out a certain agreement or agreements in connection with one Maynard A. Cheney, and the certain corporation known as the South Georgia Lumber Company; and otherwise to perform such services as might be necessary or proper to secure payment to the said defendants and others of their claims against said bankrupt, all upon the agreement of the said defendants to pay to the said agents or representatives the reasonable value of said services.

THIRD. At that time the said defendants and Bergen-Lafayette Trust Company duly appointed the plaintiff as one of such said agents or representatives, and requested him, as such, to perform such work, labor and services upon the promise to pay him the reasonable value thereof.

FOURTH. Shortly after the said employment of this plaintiff the defendant, Trust Company of New Jersey, acquired all the property and rights, and assumed all the obligations of said Bergen-Lafayette Trust Company.

FIFTH. From time to time thereafter the defendants, both orally and in writing, further requested the plaintiff to perform, in connection with the care, use and disposition of the above-mentioned assets, other and further services, upon like promise to pay the reasonable value thereof.

SIXTH. The plaintiff, upon his appointment aforesaid, duly entered upon the discharge of his duties, and from June, 1912, to and including December, 1914, assisted in the acquisition and administration of the above-mentioned assets; the negotiation, preparation and execution of the various agreements, between

Amended Complaint.

the defendants and other persons and corporations, dated, respectively, June , 1912; April 11, 1914, and December 12, 1914, as well as certain other supplemental agreement or agreements of date not known to the plaintiff; the negotiations and work leading to, and in the formation of, the Southern Seaboard
 10 Lumber Corporation; the negotiations and transactions with McArthur Brothers; the removal from office of the above-mentioned Maynard A. Cheney, and one, Jackson, as officers of the Interstate Lumber Company; and the attachment and bankruptcy proceedings against the South Georgia Lumber Company, and in such and every other matter and thing covered by, or connected with the instructions of the defendants, the proper protection of their interests, and the duties of the plaintiff, as the agent or representative of the defendants, and a member of said committee, he duly and fully performed, upon his part, each
 20 and every of the terms and conditions of the agreement and agreements between the plaintiff and the said Bergen-Lafayette Trust Company and the defendants, and every of them, and duly and fully rendered each and every service required by said agreement or requested by said Trust Company and defendants, or any of them.

SEVENTH. All of said services and the substantial benefits accruing therefrom were approved and accepted by the defendants.

30 EIGHTH. The plaintiff's said services were of the reasonable value of five thousand (\$5,000) dollars; payment thereof has been duly demanded; no part thereof has been paid; and the whole thereof is now due and owing, with interest from January 1st, 1915.

SECOND COUNT.

40 FIRST. Upon information and belief, the defendants, First National Bank of Jersey City and Hudson County National Bank of Jersey City, are corporations incorporated under the laws of the United States of America, and have their respective principal offices in Jersey City, in the State of New Jersey; the defendants, Lincoln Trust Company of New Jersey and Union Trust Company of Jersey City, are corporations incorporated under the laws of the State of New Jersey, and have their principal offices

Amended Complaint.

in Jersey City, in said State; the defendant, Trust Company of New Jersey, is a corporation incorporated under the laws of the State of New Jersey, and has its principal office in the City of Hoboken, in said State; the defendant, Second National Bank of Hoboken, is a corporation incorporated under the laws of the United States of America and has its principal office in the City of Hoboken, in the State of New Jersey; the defendant, Essex National Bank of Montclair, is a corporation incorporated under the laws of the United States of America, and has its principal office in Montclair, in the State of New Jersey; the defendant, Bank of Montclair, is a corporation incorporated under the laws of the State of New Jersey and has its principal office in Montclair, in said State; the defendant, the Boonton National Bank, is a corporation incorporated under the laws of the United States of America and has its principal office in Boonton, in the State of New Jersey; the defendant, the Merchants' National Bank of Newark, is a corporation incorporated under the laws of the United States of America, and has its principal office in Newark, in the State of New Jersey; the defendants, the Lincoln Trust Company of New York, the Metropolitan Bank of New York and the Hudson Trust Company of New York, are corporations incorporated under the laws of the State of New York, and have their respective principal offices in the City of New York, in said State; the defendants, the Atlantic National Bank of New York—whose name was formerly Merchants' Exchange National Bank—and the Fifth National Bank of New York, are corporations incorporated under the laws of the United States of America and have their principal offices in the City of New York, in the State of New York; the defendant, the Chemung Canal Trust Company of Elmira, N. Y., is a corporation incorporated under the laws of the State of New York, and has its principal office in the City of Elmira, in said State; the defendant, Adam Grobholz, as executor under the last will and testament of Bernard Grobholz, deceased, was heretofore duly appointed executor of the estate of said Bernard Grobholz, deceased, by the Surrogate's Court of the County of Hudson, in the State of New Jersey, duly qualified as such, and is still so acting, and is a resident of Jersey City, in said State.

SECOND. In June, 1912, the defendants—except the Trust Company of New Jersey—together with the Bergen-Lafayette

Amended Complaint.

Trust Company, having certain claims against the Charles R. Partridge Lumber Company, a bankrupt, aggregating approximately three hundred and fifty thousand (\$350,000) dollars, duly appointed certain agents or representatives as a liquidating or re-organization committee, to acquire for the benefit of said
 10 defendants and such other creditors as might join therein the assets of the said bankrupt; to use such assets in the re-organization or liquidation of the business of said bankrupt; to perform and carry out a certain agreement or agreements in connection with one Maynard A. Cheney, and the certain corporation known as the South Georgia Lumber Company; and otherwise to perform such services as might be necessary or proper to secure payment to the said defendants and others of their claims against said bankrupt, all upon the agreement of the said defendants to
 20 pay to the said agents or representatives the reasonable value of said services.

THIRD. At that time the said defendants and Bergen-Lafayette Trust Company duly appointed the plaintiff as one of such said agents or representatives, and requested him, as such, to perform such work, labor and services upon the promise to pay him the reasonable value thereof.

FOURTH. Shortly after the said employment of this plaintiff, the defendant, Trust Company of New Jersey, acquired all the property and rights, and assumed all the obligations of said
 30 Bergen-Lafayette Trust Company.

FIFTH. From time to time thereafter, the defendants, both orally and in writing, further requested the plaintiff to perform, in connection with the care, use and disposition of the above-mentioned assets, other and further services, upon like promise to pay the reasonable value thereof.

SIXTH. The plaintiff, upon his appointment aforesaid, duly entered upon the discharge of his duties, and from June, 1912, to and including December, 1914, assisted in the acquisition and administration of the above-mentioned assets; the negotiations,
 40 preparation and execution of the various agreements, between the defendants and other persons and corporations, dated, respectively, June , 1912; April 11, 1914, and December 12, 1914, as well as certain other supplemental agreement or agreements of date not known to the plaintiff, the negotiations and work

Amended Complaint.

leading to, and in the formation of, the Southern Seaboard Lumber Corporation; the negotiations and transactions with MacArthur Brothers; the removal from office of the above-mentioned Maynard A. Cheney, and one, Jackson, as officers of the Interstate Lumber Company; and the attachment and bankruptcy proceedings against the South Georgia Lumber Company; and in such and every other matter and thing covered by or connected with the instructions of the defendants, the proper protection of their interests, and the duties of the plaintiff, as the agent or representative of the defendants, and a member of said committee, he duly and fully performed, upon his part, each and every of the terms and conditions of the agreement and agreements between the plaintiff and the said Bergen-Lafayette Trust Company and the defendants, and every of them, and duly and fully rendered each and every service required by said agreement or requested by said trust company and defendants, or any of them.

10

20

SEVENTH. All of said services and the substantial benefits accruing therefrom were approved and accepted by the defendants.

EIGHTH. Many of the most important services above-mentioned were and were known by said defendants to be such as should only be performed by an attorney or counselor at law. The plaintiff, as was known to said defendants, was at all the times mentioned an attorney and counselor at law, having special knowledge, experience and skill in matters of similar nature with those in connection with which said services were requested and performed, and was duly licensed to and practicing in the State of New York. The said services were requested of and performed by him as such an attorney and counselor at law; and his knowledge, skill and experience as such were given thereto and accepted by said defendants.

30

NINTH. The plaintiff's said services were of the reasonable value of five thousand (\$5,000) dollars; payment thereof has been duly demanded; no part thereof has been paid; and the whole thereof is now due and owing, with interest from January 1st, 1915.

40

WHEREFORE, the plaintiff demands as damages the sum of five thousand (\$5,000) dollars, with interest thereon from January

Answer of Lincoln Trust Company and Others.

1st, 1915, together with the costs and disbursements of this action.

McCARTER & ENGLISH,
HENRY CROFUT WHITE,
Plaintiff's Attorneys,
Prudential Building, Newark, N. J.

10

Filed October 25, 1919.

Answer of Lincoln Trust Company of New Jersey, First National Bank of Jersey City, Union Trust Company of New Jersey, Second National Bank of Hoboken, Boonton National Bank of Boonton and Merchants National Bank of Newark to Amended Complaint.

20

Filed October 22, 1919.

Defendants, Lincoln Trust Company of New Jersey, First National Bank of Jersey City, and Union Trust Company of New Jersey, corporations having their principal offices in Jersey City; Second National Bank of Hoboken, having its principal office in Hoboken; Boonton National Bank of Boonton, having its principal office in Boonton, and Merchants' National Bank of Newark, having its principal office in Newark, answering, say:

30

FIRST DEFENSE TO FIRST COUNT.

1. They deny the allegations of the second paragraph.
2. They deny the allegations of the third paragraph.
3. They have no knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth paragraph.
4. They deny the allegations of the fifth paragraph.
5. They deny the allegations of the sixth paragraph.
6. They deny the allegations of the seventh paragraph.
7. They deny the allegations of the eighth paragraph.

40

Answer of Lincoln Trust Company and Others.

SECOND DEFENSE TO FIRST COUNT.

They severally deny that they ever employed the plaintiff as their agent or representative or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered.

10

FIRST DEFENSE TO SECOND COUNT.

1. They deny the allegations of the second paragraph.
2. They deny the allegations of the third paragraph.
3. They have no knowledge or information sufficient to form a belief as to the truth of the allegations of the fourth paragraph.
4. They deny the allegations of the fifth paragraph.
5. They deny the allegations of the sixth paragraph.
6. They deny the allegations of the seventh paragraph.
7. They deny the allegations of the eighth paragraph.
8. They deny the allegations of the ninth paragraph.

20

SECOND DEFENSE TO SECOND COUNT.

They severally deny that they ever employed the plaintiff as their agent or representative or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered.

30

EDWARDS & SMITH,
CARRICK & WORTENDYKE,
Attorneys of Defendants.

40

*Answer of Trust Company of New Jersey.***Answer of the Trust Company of New Jersey to Amended Complaint.**

Filed October 22, 1919.

- 10 The Trust Company of New Jersey, a corporation having its principal office in the City of Hoboken, says:

FIRST DEFENSE TO FIRST COUNT.

1. It has no knowledge as to the matters set forth in paragraph 1, save that it admits that this defendant is a corporation organized under the laws of the State of New Jersey and has its principal office in the City of Hoboken, in the State of New Jersey.
- 20 2. It denies paragraphs 2, 3, 4, 5, 6, 7 and 8 of said count.

SECOND DEFENSE TO FIRST COUNT.

1. It denies that it, or the Bergen and Lafayette Trust Company, ever employed plaintiff as its agent or representative or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered.

THIRD DEFENSE TO FIRST COUNT.

- 30 1. This defendant made no agreement in writing, or any memorandum or note thereof, signed by it or by any other person thereunto by it lawfully authorized, to answer for the debt, default or miscarriage of the Bergen and Lafayette Trust Company.

FIRST DEFENSE TO SECOND COUNT.

1. It has no knowledge, information or belief as to the matters set forth in paragraph 1 of the second count, save that it admits that it is a corporation organized under the laws of the State of New Jersey and has its principal office in the City of Hoboken, in the State of New Jersey.
- 40 2. It denies the allegations of paragraphs 2, 3, 4, 5, 6, 7, 8 and 9 of said count.

Answer of Essex National Bank of Montclair.

SECOND DEFENSE TO SECOND COUNT.

1. It denies that it, or The Bergen and Lafayette Trust Company, ever employed plaintiff as its agent, representative or otherwise, or ever promised or agreed alone or jointly with others, to pay him for services rendered or to be rendered.

10

THIRD DEFENSE TO SECOND COUNT.

1. This defendant made no agreement in writing or any memorandum or note thereof, signed by it or by any other person thereunto by it lawfully authorized, to answer for the debt, default or miscarriage of The Bergen and Lafayette Trust Company.

JAMES F. FIELDER,
Attorney for the Defendant,
The Trust Company of New Jersey.

20

Answer of Essex National Bank of Montclair to Amended Complaint.

Filed October 27, 1919.

The defendant, Essex National Bank of Montclair, a corporation of New Jersey, having its principal office in the Town of Montclair in the County of Essex in said State, says:

30

FIRST DEFENSE TO FIRST COUNT.

1. It admits the allegations of the 1st paragraph, so far as the said paragraph applies to itself, but says that so far as it applies to the other defendants this defendant has no knowledge.

2. It denies the allegations of the 2nd paragraph.

3. It denies the allegations of the 3rd paragraph.

4. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the 4th paragraph.

40

5. It denies the allegations of the 5th paragraph.

6. It denies the allegations of the 6th paragraph.

Answer of Essex National Bank of Montclair.

7. It denies the allegations of the 7th paragraph.

8. It denies the allegations of the 8th paragraph.

SECOND DEFENSE TO FIRST COUNT.

10 It denies that it ever employed the plaintiff as its agent or representative or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered, either by expressed or implied promise.

FIRST DEFENSE TO SECOND COUNT.

1. It admits the allegations of the 1st paragraph, so far as it applies to this defendant.

2. It denies the allegations of the 2nd paragraph.

20 3. It denies the allegations of the 3rd paragraph.

4. It has no knowledge or information sufficient to form a belief as to the truth of the allegations of the 4th paragraph.

5. It denies the allegations of the 5th paragraph.

6. It denies the allegations of the 6th paragraph.

7. It denies the allegations of the 7th paragraph.

8. It denies the allegations of the 8th paragraph.

30 9. It denies the allegations of the 9th paragraph.

SECOND DEFENSE TO SECOND COUNT.

It denies that it ever employed the plaintiff as its agent or representative or attorney or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered.

EDWIN B. & PHILIP GOODELL,
Attorneys for Defendant,
Essex National Bank of Montclair.

Answer of Bank of Montclair.

Answer of Bank of Montclair to Amended Complaint.

Filed October 27, 1919.

The defendant, Bank of Montclair, a corporation of New Jersey, having its principal office in the Town of Montclair in the County of Essex in said State, says: 10

FIRST DEFENSE TO FIRST COUNT.

1. It admits the allegations of the 1st paragraph so far as the said paragraph applies to itself, but says that so far as it applies to the other defendants this defendant has no knowledge.

2. It denies the allegations of the 2nd paragraph.

3. It denies the allegations of the 3rd paragraph. 20

4. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the 4th paragraph.

5. It denies the allegations of the 5th paragraph.

6. It denies the allegations of the 6th paragraph.

7. It denies the allegations of the 7th paragraph.

8. It denies the allegations of the 8th paragraph. 30

SECOND DEFENSE TO FIRST COUNT.

It denies that it ever employed the plaintiff as its agent or representative or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered, either by expressed or implied promise.

FIRST DEFENSE TO SECOND COUNT.

1. It admits the allegations of the 1st paragraph so far as it applies to this defendant. 40

2. It denies the allegations of the 2nd paragraph.

3. It denies the allegations of the 3rd paragraph.

4. It has no knowledge or information sufficient to form a belief as to the truth of the allegations of the 4th paragraph.

Answer of Hudson County National Bank.

5. It denies the allegations of the 5th paragraph.
6. It denies the allegations of the 6th paragraph.
7. It denies the allegations of the 7th paragraph.
8. It denies the allegations of the 8th paragraph.
- 10 9. It denies the allegations of the 9th paragraph.

SECOND DEFENSE TO SECOND COUNT.

It denies that it ever employed the plaintiff as its agent or representative or attorney or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered.

EDWIN B. & PHILIP GOODELL,
Attorneys for Defendant,
Bank of Montclair.

20

Answer of Hudson County National Bank to Amended Complaint.

Filed November 1, 1910.

30 The defendant, Hudson County National Bank, a corporation, incorporated under the Laws of the United States of America, having its principal office in the City of Jersey City, in the County of Hudson and State of New Jersey, says:

FIRST DEFENSE TO FIRST COUNT.

1. It admits the allegations of the 1st paragraph, so far as the said paragraph applies to itself, but says that so far as it applies to the other defendants this defendant has no knowledge.
2. It denies the allegations of the 2nd paragraph.
- 40 3. It denies the allegations of the 3rd paragraph.
4. It has no knowledge or information sufficient to form a belief as to the truth of the allegations contained in the 4th paragraph.
5. It denies the allegations of the 5th paragraph.

Answer of Hudson County National Bank.

6. It denies the allegations of the 6th paragraph.
7. It denies the allegations of the 7th paragraph.
8. It denies the allegations of the 8th paragraph.

SECOND DEFENSE TO FIRST COUNT.

10

It denies that it ever employed the plaintiff as its agent or representative or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered, either by expressed or implied promise.

FIRST DEFENSE TO SECOND COUNT.

1. It admits the allegations of the 1st paragraph, so far as the said paragraph applies to itself, but says that so far as it applies to the other defendants this defendant has no knowledge.

20

2. It denies the allegations of the 2nd paragraph.
3. It denies the allegations of the 3rd paragraph.
4. It has no knowledge or information sufficient to form a belief as to the truth of the allegations of the 4th paragraph.
5. It denies the allegations of the 5th paragraph.
6. It denies the allegations of the 6th paragraph.
7. It denies the allegations of the 7th paragraph.
8. It denies the allegations of the 8th paragraph.
9. It denies the allegations of the 9th paragraph.

30

SECOND DEFENSE TO SECOND COUNT.

It denies that it ever employed the plaintiff as its agent or representative or attorney or otherwise, or ever promised or agreed, alone or jointly with others, to pay him for services rendered or to be rendered.

THIRD DEFENSE TO FIRST AND SECOND COUNTS.

The services which plaintiff alleged he rendered to this defendant were of no value, but caused a loss to this defendant.

40

COLLINS & CORBIN,
Attorneys of Defendant,
Hudson County National Bank.

Reply—Postea.

We consent to the filing of the within answer of Hudson County National Bank to amended complaint as in time.

Dated, October 31, 1919.

McCARTER & ENGLISH,
Attorneys of Plaintiff.

10

Reply.

Filed November 20, 1919.

The plaintiff replying to the answer of the defendant, The Trust Company of New Jersey, to the amended complaint, says:

FIRST REPLY TO THIRD DEFENSE TO FIRST AND SECOND COUNTS.

20

It denies the truth of the matters in the said defence contained.

SECOND REPLY TO THIRD DEFENSE TO FIRST AND SECOND COUNTS.

30

The agreement by the defendant, The Trust Company of New Jersey, alleged in the complaint was based upon new consideration of substantial benefit to the said defendant, namely the receipt by the said defendant of all the property and rights of Bergen-Lafayette Trust Company, and also the receipt and enjoyment by the said defendant of the benefit of the services rendered by the plaintiff, as alleged in the complaint after the assumption by the said defendant of all the obligations of the said Bergen-Lafayette Trust Company.

McCARTER & ENGLISH,
Plaintiff's Attorneys.

Postea.

Filed January 9, 1920.

This case was tried before the Honorable William H. Speer, Circuit Court Judge, to whom the same had been referred for trial, with a jury at the Hudson Circuit on January 6th, 1920.

The plaintiff having submitted his evidence the Judge, upon motion, granted a non-suit as to all defendants served.

WILLIAM H. SPEER,
Judge.

40

Judgment of Non-Suit.

Judgment of Non-suit.

Entered February 18, 1920.

Carrick & Wortendyke, and Edwards & Smith, Attorneys.

Costs of Lincoln Trust Company of New Jersey, First National Bank of Jersey City, Union Trust Company of Jersey City, Second National Bank of Hoboken, Boonton National Bank of Boonton, and Merchants National Bank of Newark, for.....\$39.10

Costs of Hudson County National Bank, Jersey City

Costs of Essex National Bank of Montclair

Costs of Trust Company of New Jersey

Costs of Bank of Montclair

Costs of Adam Grobholz, as Executor, etc., of Bernard Grobholz, deceased

Judgment entered this ninth day of January, A. D. nineteen hundred and twenty, in favor of the defendants and against the plaintiff for the sum of thirty-nine dollars and ten cents costs in favor of Lincoln Trust Company of New Jersey, First National Bank of Jersey City, Union Trust Company of Jersey City, Second National Bank of Hoboken, Boonton National Bank of Boonton and Merchants' National Bank of Newark, and for the sum of costs in favor of Hudson County National Bank, Jersey City; and, also, for the sum of..... costs in favor of Essex National Bank of Montclair; and, also, for the sum of..... costs in favor of Trust Company of New Jersey; and, also, for the sum of..... costs in favor of Bank of Montclair; and, also, for the sum of costs in favor of Adam Grobholz, as Executor, etc., of Bernard Grobholz, deceased.

10

20

30

WM. S. GUMMERE,

C. J.

40

Judgment of Non-Suit.

I, ENOCH L. JOHNSON, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in above stated cause which said judgment is recorded in this office in Vol. 12 of Judgments, page 179.

10

(SEAL)

In testimony whereof I have set my hand and the seal of said Court at Trenton, this seventeenth day of February, A. D. nineteen hundred and twenty.

ENOCH L. JOHNSON,
Clerk.

20

30

40

William C. Heppenheimer, direct.

NEW JERSEY SUPREME COURT.

SETH B. ROBINSON,

vs.

LINCOLN TRUST Co., *et als.*

10

Transcript of shorthand notes of testimony taken on the 6th day of January, 1920, before Hon. William H. Speer, and a jury.

Appearances:

Henry C. White and McCarter & English, for the plaintiff.

Carrick & Wortendyke, Edwards & Smith, Collins & Corbin and Philip Goodell, for the defendants.

20

Mr. Carrick. In this case there are several answers filed. A general answer has been filed in behalf of the Lincoln Trust Company, the First National Bank of Jersey City, the Union Trust Company of New Jersey, the Second National Bank of Hoboken, the Boonton National Bank of Boonton and the Merchants' National Bank of Newark, to the amended complaint by Mr. Smith and myself jointly, he representing the First National Bank primarily and I the Lincoln Trust Company, but together for this purpose representing these various banks. An answer was filed in behalf of the Trust Company of New Jersey, succeeding to the rights of Bergen & Lafayette Trust Company, by Ex-Governor Fielder, and Mr. Clement Corbin of Collins & Corbin has been substituted for him since he is going upon the Chancery Bench. Mr. Corbin also represents the Hudson County National Bank and Mr. Philip Goodell of Montclair represents the two Montclair banks. I think that is all.

30

Mr. Goodell. I represent the Bank of Montclair, not the Essex National Bank.

WILLIAM C. HEPPEHEIMER, sworn.

40

Direct examination by Mr. McCarter.

Q General Heppenheimer, you of course, live in Jersey City?

A I do, sir.

William C. Heppenheimer, direct.

Q And what position do you hold in the Trust Company of New Jersey? A I am president of the Trust Company of New Jersey.

10 Q One of the banks that was interested in this estate of the Charles R. Partridge Lumber Company was a trust company known as the Bergen & Lafayette Trust Company. Has the Trust Company of New Jersey entered into any business relations with the Bergen & Lafayette Trust Company? A The Bergen & Lafayette Trust Company was taken over by the Trust Company of New Jersey and is now operated as one of the branches of the Trust Company of New Jersey.

Q About when was that? A In 1913.

20 Q Have you the papers here by which the Bergen & Lafayette Trust Company became merged or became part of the Trust Company of New Jersey? A I have the resolution of the Board of Directors of the Trust Company of New Jersey under which they were to take over the Bergen & Lafayette Trust Company.

Q Will you produce it? A Certified copies of the resolution. I also have the bill of sale. I have three copies here. That is the bill of sale and these are the resolutions.

Mr. McCarter. I think two copies of each will do. I will have marked, if I may, the extract from the minutes of the directors of the Trust Company of New Jersey of a meeting Monday, August 4, 1913. (Marked P. 1.)

30 *Mr. McCarter.* Bill of sale from the Bergen & Lafayette Trust Company to the Trust Company of New Jersey dated the 20th of September, 1913. (Marked P. 2.)

Q I notice that you signed the bill of sale to which I have just referred, as president; were you president of the Bergen & Lafayette Trust Company? A I was president of the Bergen & Lafayette Trust Company.

Q Then you had some familiarity with the fact that the Bergen & Lafayette Trust Company was a creditor of the Charles R. Partridge Lumber Company? A I did.

40 Q I show you, General, an agreement dated June, blank, 1912. I think that was signed by the Bergen & Lafayette—yes—I show you the agreement and call your attention to the signature “The Bergen & Lafayette Trust Company, by William C. Heppenheimer, President.” A That is my signature.

John F. Hefferman, direct.

Q I also show you attached to that document a paper "We, the undersigned banks, being parties," etc.—dated April 11, 1912, and I see that this was signed by the Trust Company of New Jersey, Joseph Harrison, 4th Vice-president. A Correct.

Q That is signed by your company through Mr. Harrison's signature? A What is the date of that?

Q April 16, 1912, it seems to be. A No; it must be later than that. 10

Q 1914. It is blurred. That is right, is it? A Yes.

Q Mr. Harrison signed for your company? A Yes; that is his signature.

Q Now, did the Trust Company of New Jersey receive some percentages or dividends from this estate? A I think they did.

Q About when, General? A I could not recollect that. It was after the Interstate Lumber Company, I believe, was formed that we received some dividends. 20

Q As successor to the Morgan Engineering Company? A I am talking about the Interstate Lumber Company. Now, the Trust Company of New Jersey received the dividends, I believe, after the Interstate Lumber Company was formed and, I believe, went into bankruptcy. We got some dividend out of it, I believe; I cannot recollect, it is so long ago.

Q The interest that the Trust Company of New Jersey had was the interest that it acquired by virtue of the resolution and bill of sale that you have produced? A Exactly.

Mr. Corbin. I object to that as calling for a conclusion of law. The bill of sale speaks for itself. 30

The Court. I will overrule the objection because it came in after the answer had been stated by the witness.

Q That is all, General.

(No cross examination.)

JOHN F. HEFFERMAN, sworn.

Direct examination by Mr. McCarter. 40

Q Your profession is what, Mr. Hefferman? A Lawyer.

Q And where is your office? A The Havemeyer Building, New York City.

Q How long have you been admitted to the bar? A 1904, I believe.

John F. Hefferman, direct.

Q Since 1904? A 1904.

Q Did you have any acquaintance, professionally or otherwise, with the affairs of the Charles R. Partridge Lumber Company? A Not until after the concern went into bankruptcy.

10 Q How did you then acquire any information with reference to the details of the assets of that company? A A client of mine, Mr. Cheney, of the South Georgia Lumber Company, had business relations with Charles R. Partridge and the Charles R. Partridge Lumber Company and I was called into the matter, I think, after they went into bankruptcy.

Q Was Mr. Cheney or any of his enterprises a creditor of the Charles R. Partridge Lumber Company? A Yes, to quite a large extent.

20 Q Did you have occasion to become familiar with the names and amounts of debts—with the names of the creditors and the amounts of the debts that the Charles R. Partridge Lumber Company owed? A Yes, I did.

Q There were numerous banks among those creditors, were there not? A Yes; a large number.

Q Were you familiar with a getting together of the banks? A Yes; I was partly instrumental in that.

Q Won't you describe briefly what led up to the organization of the banks and what followed after they got organized?

30 *Mr. Carrick.* I think we ought to object to this. There was a meeting of these banks and any action that was taken at that meeting by the banks of course was binding on the banks, but what Mr. Hefferman, who represented Mr. Cheney, may have done preliminary to the meeting of the banks I think is immaterial.

The Court. I do not think that is admissible. I think any historical narrative of the preliminary facts is utterly irrelevant. If you have any specific facts that you wish to elicit you may do so by questions bringing those facts out, but otherwise the historical narrative would be out of place and irrelevant.

40 *Mr. McCarter.* All right, sir.

Q Was a meeting of the several banks interested in the Charles R. Partridge Lumber Company called, Mr. Hefferman?

A Yes.

Q To your knowledge? A Yes.

John F. Hefferman, direct.

Q And did you attend that meeting? A I did.

Q Where was that first meeting held? A It was held in the board of directors' room of the First National Bank of Jersey City at Exchange Place.

Q I will show you in a moment the contract that has been recognized here—in fact, if I may I will now offer in evidence without further proof of the other signatures the three contracts—

10

Mr. Carrick. No objection.

Mr. McCarter. (Continuing)—that were shown to General Heppenheimer, and have them marked as three exhibits, three different contracts the execution of which by the several parties signatory is admitted by counsel for the defendant. (Marked P. 3, P. 4 and P. 5.)

Q You may, if you desire, refresh your recollection by referring to the agreement marked P. 3, dated June blank, 1912, and tell us—

20

Mr. Carrick. It is my understanding that this paper was prepared a considerable time after the meeting. I understand he is directing the witness' attention now to what took place between the banks at the First National Bank. I do not think he ought to refresh his recollection by a paper which was executed some days or weeks after, if that is what his purpose is.

The Court. It does not yet appear that he desires to have his recollection refreshed or needs to have it refreshed.

30

Q Can you recall without referring first to this paper the banks that were represented at the meeting at Mr. Edwards' office down town in Exchange Place? A I think I can recollect a great many of them.

Q Please do so. A First National Bank of Jersey City; Union Trust Company of Jersey City—oh, they were represented at the meeting?

40

Q Yes. A I do not believe that I could be sure as to who was there. I can recollect some that were there, but not all.

Q Tell as many as you can. A The First National Bank of Jersey City, the Lincoln Trust Company of Jersey City; the Chemung Canal Trust Company of Elmira; the Fifth National

John F. Hefferman, direct.

Bank of New York; the Merchants National Bank of New York; the Essex County National Bank, I feel pretty positive, of Montclair, New Jersey; the Bergen & Lafayette Trust Company of Jersey City.

- Q I show you Exhibit P. 3, which is the agreement dated the
 10 blank day of June, 1912, and is signed by the First National
 Bank of Jersey City, Mr. Edwards, cashier; the Lincoln Trust
 Company, by Farrier, president; the Lincoln Trust Company of
 New York, by Ward, vice-president; the Merchants Exchange
 National Bank, by some man named Cheenie, I believe; the
 Bergen & Lafayette Trust Company, by William C. Heppen-
 heimer, president; the Merchants Exchange National Bank of
 Newark, by J. S. Treat, vice-president and cashier; the Fifth
 National Bank of New York; the Hudson County National Bank;
 20 the Second National Bank of Hoboken; the Essex National Bank
 of Montclair; the Union Trust Company of New Jersey; the
 Metropolitan Bank; the Boonton National Bank; Hudson County
 Trust Company, and the Bank of Montclair, which agreement
 recites the fact that Edward J. Dunne of the Chemung Canal
 Trust Company of Elmira, New York, Edward M. Farrier, of the
 said Lincoln Trust Company of Jersey City, Seth B. Robinson,
 attorney for the said Merchants Exchange National Bank of
 New York, and Edward I. Edwards of the said First National
 Bank of Jersey City, hereinafter called the committee—and also
 30 in the course of the agreement speaks of their having been ap-
 pointed a committee representative of the banks signatory—can
 you recall now any others that were present at this meeting than
 those you have named? You may refer to the agreement to
 see. A I will look at the signatures; perhaps I might remember
 from seeing the signatures, the individuals that were present. I
 believe Mr. Edge of the Hudson County Trust Company of Jer-
 sey City was present.

The Court. You mean the Hudson County National Bank of Jersey City?

- 40 A Yes. I think Mr. McGuire of the Federal Trust Company of Newark was present.

The Court. Is this Mr. Cheney who signed that agreement as representing one of the New York banks the Mr. Cheney who is your client?

John F. Hefferman, direct.

A I do not think the name was Cheney. I think it was Charel.

The Court. It was read Cheenie by Mr. McCarter.

A Charel was the name. It was not Cheney. I do not remember any of the others.

Q I do not think I will tax your memory further, Mr. Hefferman. Were you present at that meeting? A I was. 10

Q And was Mr. Cheney, your client there? A Yes.

Q What occurred at the meeting? Was Mr. Robinson there? A No.

Q Now, just what occurred at that meeting? A Mr. Dunne of the Chemung Canal Trust Company of Elmira took the chair and called the meeting to order and outlined a plan of organization, that is a plan of co-operation of the banks; and my recollection is that we had previously agreed on the individuals that Mr. Dunne, Mr. Farrier and Mr. Edwards would prefer to have as members of the committee. 20

Q What committee? A The committee that was to be formed to represent all the banks in the handling of this proposition in case they—

Q Won't you tell us what the proposition was? A That is the purchase of the assets of the bankrupt estate of Charles R. Partridge Lumber Company.

Q What relation had these banks to the estate of Charles R. Partridge? A They were all creditors of the Charles R. Partridge Lumber Company and some of Charles R. Partridge. 30

Q And the plan that was before the committee and which Mr. Dunne outlined at the meeting of the representatives of the banks in brief was what? A That a committee should be appointed representing the banks and the assets of the Charles R. Partridge Lumber Company should be purchased by money advanced by contributions *pro rata* by the different banks who would join in the agreement to purchase; then a corporation would be formed to which these assets would be transferred and it would carry on the business, the lumber business, and liquidate the indebtedness, that is the Interstate Lumber Company would assume and promise to pay to the banks who would join in the agreement the amount that was owed them, principal and interest, by the Charles R. Partridge Lumber Company; then when the banks were entirely paid by the corporation, the Interstate 40

John F. Hefferman, direct.

Lumber Company, with whatever assets would remain, would belong to my clients.

Q Your clients being—? A The South Georgia Lumber Company and Mr. M. A. Cheney.

10 Q Now, it was suggested that a committee should be appointed, you say? A Yes; Mr. Dunne outlined the whole plan as chairman of the committee. Then the gentlemen who had previously been agreed upon between us as perhaps the best members for the committee were nominated, suggested to the meeting.

Q They were who? A Mr. Edwards, at that time cashier of the First National Bank, now governor—

20 Q Do you remember who nominated them? A I think I did. I read out the names. We had previously agreed on them. So that there would be order at the meeting we followed a pre-conceived plan.

Q Mr. Edwards was one. Go on. A Mr. Farrier, president of the Lincoln Trust Company, was another. Mr. Dunne of the Chemung Canal Trust Company was a third, and then we had expected that Governor Lounsbury of the Merchants Exchange National Bank of New York would be a member of the committee; he had said that he thought he would be able to serve; and I asked the meeting if there was any representative of the bank there.

30 Q What bank? A The Merchants Exchange National Bank; a young man sitting opposite me stood up and answered me and said that he was from Mr. Robinson's office, who was attorney for the bank, and that he represented the bank at the meeting, and I asked him if Governor Lounsbury was going to be a member of the committee, and he said his understanding was that Governor Lounsbury could not serve. That rather upset our plan, so I asked him if Mr. Robinson, the attorney for the bank, would be willing to serve on the committee, and he said he did not know. So tentatively Mr. Robinson was named as a member of the committee, and I believe I was asked there to call on Mr. Robinson and see whether he would be willing to serve. I am not
40 positive as to that.

Q Did you know Mr. Robinson at that time? A No.

Q What conclusion was reached with reference to going ahead and carrying out the plan as outlined? A It was voted that the committee be appointed to co-operate with us in seeing what

John F. Hefferman, direct.

could be done towards the purchase of the assets of the Charles R. Partridge Lumber Company and the carrying out of the plan that was outlined at the meeting.

By the Court.

Q All through your testimony you keep saying "we had agreed," "we had determined" that such and such men should be members of the committee and "we had understood that Mr. Lounsbury would serve." Who are "we"? A Mr. Edwards, Mr. Dunne, Mr. Farrier, Mr. Cheney, a Mr. G. G. Jackson, who is an associate of Mr. Cheney, and myself. 10

Q By that you mean that you gentlemen whom you have just named held a preliminary meeting? A A great many of them.

Q And entered into a preliminary understanding and then sought to put that through the general meeting of the representatives of the banks when they were gathered together? A Yes, sir. 20

Q That is what you mean by "we"? A Previous to the meeting Mr. Jackson and myself and sometimes Mr. Cheney with us had visited all the banks that were accessible and had had a great many meetings with Mr. Farrier, Mr. Dunne and quite frequently with Governor Edwards.

Q Well, you did that in the interest of the South Georgia Lumber Company and Mr. Cheney, your client? A Yes, sir.

By Mr. McCarter.

Q That finally led up to this meeting? A Yes, sir. 30

Q Now, was there anything said as to the desirability of the localities to be represented by the members of this committee? A Oh, yes. I am not sure that it was stated at the meeting, but, using again the word "we," we thought that it was desirable and that we had better try to arrange that the committee would consist of one member representing New Jersey and a member representing the New York district, the banks in New York City, and a member representing the upstate banks. Mr. Farrier was an extra member of the committee. 40

By the Court.

Q Well, was that idea carried into effect at this meeting? A Yes, sir.

John F. Hefferman, direct.

Q Then as I understand you the representation was that this man from the Elmira Canal bank represented the upstate banks?

A Yes, sir.

Q Mr. Edwards represented the Jersey City— A And Mr. Farrier.

10 Q Well, Mr. Farrier was the extra member, you say? A He was, as I remember it, made a member of the committee at the request of Governor Edwards.

Q Then they represented the New Jersey banks? A Yes.

Q That was the understanding? A Yes.

Q And was that made known to the committee of banks when they met again? A Yes; that was stated at the meeting, yes, sir; and the reason for it.

By Mr. McCarter.

20 Q Do I understand that all the parties who were appointed on that committee at that meeting were present except Mr. Robinson? A Yes.

Q Mr. Farrier? A It was held in the board room of the First National Bank.

Q And Mr. Edwards, of course, was there? A Yes.

Q Did Mr. Edwards give any reason why he wanted Mr. Farrier, an additional man from New Jersey, in the committee? A Yes; my recollection is that he said that he was going to be—that he was very busy and that Mr. Farrier was largely interested by being a large creditor and that he would like if Mr. Farrier would be made a member of the committee.

30

Q Did you subsequently call upon Mr. Robinson? A My recollection is that Mr. Jackson and I called at his office the next day.

Q For what purpose? A For the purpose of ascertaining whether he would be willing to serve as a member of the committee.

Q Did you apprise him of the fact of his appointment? A Yes.

40 Q You had never seen him previous to that visit? A No, sir.

Q Did he accept? A My recollection is that he did not; that he said he would have to talk with the—

Mr. Carrick. I object to what he said.

John F. Hefferman, direct.

The Court. I think I will sustain the objection to what he said.

Mr. McCarter. I understand that he was authorized by the meeting to go and interview Mr. Robinson and find out if he would accept the appointment.

The Court. I did not hear that evidence.

10

Q I got that impression. Am I right? A I got that impression, that that was the reason for my call there.

The Court. All right; I will permit the question.

Mr. McCarter. It really is not very material.

The Court. Well, it does not amount to anything more, no matter what he said, than that he made an answer. He could not bind anybody.

A I am not sure that he did at that meeting, when I went to call at his office—Mr. Jackson and myself—I am not sure that he consented then.

20

Q Jackson was interested with Cheney? A Yes, sir.

Q He had no reference to the banks? A No.

By the Court.

Q Well, did you at that time state to Mr. Robinson the scheme of territorial representation that had been agreed upon and suggested to the committee representing all the banks? A I cannot say that positively. My recollection is that we went over the plan in skeleton with him, but I cannot say positively.

30

Q You do not know, then, whether you said to him that the committee was to be selected so that he would represent the New York City banks, the man from Chemung would represent the up-state banks and Mr. Edwards and Mr. Farrier the Jersey City banks? A I cannot say positively, but I fell pretty sure that I did, because that was rather an important feature of the plan.

By Mr. McCarter.

Q Did you outline to Mr. Robinson the scheme as had been outlined by Mr. Dunne at the meeting, tell him all the whole plan? A I feel pretty sure that we did, Mr. Jackson and myself.

40

Q Did you know of the execution, at or about the time that they were executed, of these three agreements that have been shown you, respectively P. 3, 4 and 5, by the several banks? A

John F. Hefferman, direct.

I remember P. 3 and P. 4. I do not remember ever having seen this top one.

Q That is P. 5. A I do not remember ever having seen that top one, P. 5.

10 Q Was the Interstate Lumber Company, the corporation provided for in the agreement P. 3, later organized? A Yes, sir.

Q And was the proposition as outlined in the agreement of the blank day of June, 1912, marked P. 3, namely, the acquisition of the assets from the trustee in bankruptcy of Charles R. Partridge Lumber Company and the formation of the Interstate Lumber Company and a subsequent transfer to it of those assets, carried out? A Yes, sir.

20 Q I notice that the Merchants Exchange National Bank of New York signed the agreement P. 3 for \$10,000. Do you recall whether that was the extent of its claim against the Charles R. Partridge Lumber Company? A My recollection is that the amount of its claim was considerably in excess of that.

Q How long did you continue your acquaintance and connection with this plan, namely of the acquisition of the assets of the Charles R. Partridge Lumber Company and the carrying out of the programme outlined in the agreement; how long did you personally have acquaintance with— A For a considerable time after the formation of the corporation.

30 Q Did you have occasion to ascertain and observe the activities of Mr. Robinson, the gentleman named as one of the committee? A I did, yes, sir.

Q Did you confer with him from time to time?

40 *Mr. Carrick.* I think at this stage that we ought to interpose an objection to any evidence of Mr. Robinson's activities or what he did until some basis exists for the formation of a contract. It may be a convenient method of using this witness here—perhaps it may be a convenient way to take his testimony, but I think I ought to interpose my objection to it because it does not appear as yet that there exists any basis for a contractual relation between the defendants here and Mr. Robinson which would justify going into the evidence of what he did.

The Court. It is only a matter of order of proof, and that is entirely within the discretion of the Trial Judge, and I think I shall permit them while they have a witness

John F. Hefferman, cross.

on the stand to exhaust his testimony and not be required to put it in piece-meal. If there is not any authorization subsequently shown there is nothing to go to the jury and I will handle it then.

Mr. McCarter. In view of the objection, if your Honor does not seriously object to it, I will not undertake now—
Mr. Hefferman will be here during the day—to go into his
knowledge of what the activities were of Mr. Robinson,
but I will reserve the right to recall him. 10

The Court. I am perfectly placid about it. You can try the case whatever way you please. I simply am willing to facilitate the trial this way if you want to go into it in that manner.

Mr. McCarter. Cross examine.

Cross examination by Mr. Carrick. 20

Q Your connection with this matter grew out of your being the legal representative of Mr. Cheney and Mr. Jackson and the South Georgia Lumber Company? A Entirely, Judge, yes.

Q And preliminary to this meeting in the First National Bank board room to which you have testified, which as I understand was in May, 1912, about? A I cannot be positive. It was in 1912, but I cannot be positive of the date.

Q Preliminary to that, you had taken this matter up, that is the question of the conservation of these assets and the manner in which the creditors could be paid, with your immediate clients?
A Yes, sir. 30

Q And the plan of arranging for the purchase in behalf of the banks and the organization of a company which should administer the assets when purchased was the plan which you in conjunction with your clients had arrived at, was it not? A And Mr. Dunne and Mr. Farrier and Mr. Edwards.

Q Your plan, as I understand it, was submitted to them and perhaps somewhat modified, but the plan originally came from you, did it not, from your side? A I cannot be positive about that. I had the idea when I first met Mr. Dunne; he stated to Mr. Jackson and myself that he had the same idea, and that is why we got together. 40

Q Now, this agreement which has been marked in this case P. 3, that is the agreement of the blank day of June, 1912, do you know by whom that was prepared? A I think the draft was

Harry Lane, direct.

prepared by me and criticised by Mr. Dunne and Mr. Farrier and Mr. Edwards, and then I think Senator Edwards—that is the late Senator Edwards—

Q William D. Edwards? A Yes. He also went over it and made certain suggestions and modifications.

10 Q He was acting as counsel for the First National Bank? A Yes—Edwards & Smith.

Q On looking at the paper can you say by whom that draft as it was finally executed was prepared? A I say it was prepared jointly, the rough draft. You mean by whom this was written?

Q Yes. A My recollection is this was written by the stenographer of the South Georgia Lumber Company.

20 Q Have you in mind the approximate amount of the indebtedness of the Partridge Company at this time to Cheney and the South Georgia Lumber Company? A My recollection was that it was in the neighborhood of \$100,000, perhaps more than that; about \$100,000, I think. That is my recollection. I do not have in mind the exact figures. I believe they are stated in the bankruptcy proceedings, Judge.

HARRY LANE, sworn.

Direct examination by Mr. McCarter.

30 Q You are a lawyer here in Jersey City, as we all know. A I am.

Q Were you the receiver of the Interstate Lumber Company—trustee in bankruptcy? A I was, sir; I was appointed in place of the first receiver.

Q That was your brother? A Yes.

Q Have you, in obedience to the subpoena, produced some books here? A I have.

40 Q What have you got? A I have the minute book of the Interstate Lumber Company. I was also directed to produce copy of the charter. The only one that I have is a copy which is written into the minutes at the head of the minutes. I was subpoenaed to produce the stock certificate book, which I produce. I have not the original bill of sale from Edward M. Farrier to the Interstate Lumber Company recorded in or about September, 1912. That I have not produced; I haven't got it.

Seth B. Robinson, direct.

Q You have never had it? A No, sir. It is recorded though, I assume.

Mr. McCarter. I do not want to keep Mr. Lane. May these books be marked and used later—left in the custody of the clerk?

Mr. Carrick. Yes, if they are relevant. 10

(Books marked P. 6, P. 7 and P. 8.)

SETH B. ROBINSON, sworn.

Direct examination by Mr. McCarter.

Q Where do you live? A In Jersey City.

Q You are the plaintiff in this suit? A I am.

Q What is your occupation? A Lawyer.

Q How long have you practised? A Since 1892. 20

Q In 1912 where were you practising? A New York City.

Q Are you a member of the New Jersey bar? A I am not.

Q A member of the New York bar? A New York bar.

Q Are you still practising? A No; just once in a while, but not generally.

Q Not actively? A Not actively.

Q But in 1912, at the time of this transaction, you were in active practise? A Not very. I had been ill in 1910 and I have not practised very actively since that.

Q But you had an office and clerical force in New York? A I had an office at that time. 30

Q What was the first information you received of the fact that the Charles R. Partridge Lumber Company had gone into bankruptcy and that you had been chosen as one of the committee to represent the bank creditors of that institution? A The first that I received any word that I had been chosen as a member of the committee was then my clerk returned from a meeting held at the First National Bank of Jersey City on June 1, 1912. The first time that I heard of that meeting was, I think, the morning of that day, I was told that there was to be a meeting, that the bank, a client of mine, the Merchants Exchange National Bank, was interested and to go there and see what was done. 40

Q You did not go, but your clerk went? A I did not have time; I sent my clerk.

Seth B. Robinson, direct.

Q And your clerk reported the fact that you had been made a member of the committee, when he returned? A Subject to my approval.

10 Q Did you later have a talk with Mr. Hefferman, who has just left the stand? A He and Mr. Jackson called the next day and told me in a general way the plan which had been selected and said to me that they wanted some person to represent the New York banks, that they had someone to represent the upstate banks and someone to represent the New Jersey banks, but they wanted somebody to represent the New York banks, of which there were several.

20 Q You say that Mr. Hefferman and Mr. Jackson called upon you and outlined the plan. You may not recall that we do not know what that plan was except as I have gotten some of it from Mr. Hefferman and outlined it to the jury. What plan was it; what was the idea? A He told me that the Charles R. Partridge Lumber Company had failed and had a large amount of lumber on hand, valued at that time at about \$450,000; that Mr. Dunne had had an appraisal made by someone that he knew and they thought there was that full value there, but they thought that they could get that probably for about \$125,000, and that by buying that probably the banks could sell it over again and make enough to reimburse themselves in part or in whole for their indebtedness.

30 Q Did you learn about that time of the extent of the combined indebtedness or claims of the banks against the Charles R. Partridge Lumber Company? A I think Mr. Farrier told me that a few days later, but it was, I think, about \$350,000.

Q Did you assent at once, or what happened about the proposition when it was laid before you by Mr. Hefferman and Mr. Jackson? A I did not accept at once. I said I would like to see the other members of the committee, at least Mr. Edwards, and talk it over with him before I decided it.

Q Did you at that time know Mr. Edwards personally? A I did not.

40 Q What then did you do? A An adjourned date was given to me at which they intended to have a meeting of the committee. I called up Mr. Edwards on that date and it was arranged that the meeting should be adjourned, and at a subsequent date, I think it was about the 10th of June, 1912, we had a meeting of the committee, and prior to that time I went over to Jersey City

Seth B. Robinson, direct.

and saw Mr. Edwards, and Mr. Edwards told me that he knew very little about it, that he was a very busy man and could give very little time to it, but that Mr. Farrier would be the active one on the committee and suggested that I see him, that he was nearby. He told me where he was. I went to the Hudson Trust Company and saw Mr. Farrier.

10

Q Did you know him before that? A I had never seen him before; and he told me in detail as far as he could, or more in a general way, of the same thing that Mr. Hefferman had told me about the plan, except that he said that these assets from what he had learned would be very valuable and would be a very good thing for the banks, but that they needed a committee and they wanted some representative from the New York banks to be on the committee, and asked me if I wouldn't serve; he said he would like to have me serve on that committee, and said it was quite a large proposition, there were half a million dollars involved, and that they needed some good man to represent those banks; and then I went with him down to the meeting where I met the other three members, and they again said that they would like to have me act as a member of the committee, and I then decided that I would and told them so.

20

Q So that the conclusion that you finally announced to these gentlemen to collaborate with them as a member of that committee was reached about what date? A The 10th of June, 1912, as I recollect it.

Q I show you Exhibit P. 3, dated blank day of June, 1912. I see that the Merchants Exchange National Bank signed that agreement with an indebtedness expressed of \$10,000. You had been counsel of the Merchants Exchange National Bank, had you? A I was employed from time to time by that bank.

30

Q Do you remember the extent of their claim against the Charles R. Partridge Lumber Company? A I do.

Q What was it? A \$30,000.

Q So they only signed for \$10,000? A That is all.

Q And under the agreement became bound to pay the proportion arising from that signed amount— A Yes.

40

Q —of the required sum to buy these assets? A That is right.

Q Did you ever see this agreement, P. 3, of June blank, 1912? A I did; I helped to prepare it.

Seth B. Robinson, direct.

Q I show you what purports to be a draft of it; look at that and tell us if you ever saw that before. A I have.

Q Do you remember where you got it? A My recollection is that that was given to me the first meeting that I attended of the committee.

10 Q By whom, one of the committee? A One of the committee, I think Mr. Dunne or possibly Mr. Edwards' brother.

Q Senator Edwards, W. D. Edwards? A Yes.

Q We will call him William D. Edwards because both of these gentlemen have been senators. You say you helped to prepare the final agreement? A I did.

Q I notice on the draft which you say was handed to you by William D. Edwards or some other person at the first meeting of the committee that you attended, that there are some lead pencil annotations; whose annotations are they? A They are in
20 my handwriting.

Q Were they subsequently adopted in the final agreement? A My recollection is that they were.

Mr. Smith. May I see the draft?

Q So that you did participate in the preparation of the agreement, P. 3, agreement of June blank, 1912? A I did. There were several meetings and there were various objections to various parts of the agreement, and we finally decided on the final
30 draft which was signed by all the banks.

Q I notice that this agreement recites, names as parties of the second part, Edward J. Dunne and Edward M. Farrier, Seth B. Robinson and Edward I. Edwards, and recites that whereas the parties of the second part were at a meeting of the duly accredited representatives of all said banks, held in the office of the First National Bank of Jersey City, N. J., on the first of June, 1912, unanimously constituted a committee in behalf of the banks to assist said Cheney and said lumber company in carrying out their said proposal, to do such other acts and things
40 in and about the premises as will protect the interests of the banks—was that clause I have just read in the original draft or did you put that in? A That was in the original draft.

Q As handed to you? A Yes.

Q Well, this agreement as it already appears was finally signed? A It was.

Seth B. Robinson, direct.

Q Now, won't you go on and just tell us what followed, in the briefest way you can, without, of course, omitting anything important that you can recall in connection with your activities as a member of this committee? A Well, in brief, we had about six conferences in connection with the preparation and deciding upon this agreement, and finally signing it. That was in the month of June, 1912. From that time—

10

Q Of course the agreement speaks for itself, for it may be helpful and perhaps counsel will not object if you very briefly explain the purposes and object of that agreement, what it did.

Mr. Smith. I object. I think the agreement speaks for itself.

The Court. There is no question about that, and I sustain the objection.

Mr. McCarter. The only object was to have the jury, without taking time to read a long-winded ten or twelve page typewritten paper, understand what it is.

20

Mr. Smith. I think the jury will get it better from the paper, which contains it all, than from Mr. Robinson's understanding.

Mr. McCarter. Then I will read the paper.

(Mr. McCarter read P. 3 to the jury.)

Mr. McCarter. I offer in evidence the draft of the agreement that was submitted to the witness, which bears in lead pencil several annotations of his.

30

(Marked P. 9.)

Q How long a time elapsed, or how many meetings were, if you recall, devoted to the consideration by the committee of the details of that agreement I have just read? A I think about four.

Q Where were they held? A At the directors' room in the First National Bank in Jersey City.

Q Well, the agreement was finally put in its present form? A It was signed.

40

Q And signed by the several parties? A Prior to July 1st, 1912.

Q Now, I notice that considerable discretion by the agreement was left with the committee. Did the committee meet from time to time after this agreement was signed? A It did. The

Seth B. Robinson, direct.

10 next work we had was negotiations leading up to the purchase of these assets of the Charles R. Partridge Lumber Company, and those were purchased finally in August, I think, 1912; and after that the Interstate Lumber Company was incorporated and the committee took up the by-laws of that corporation and passed on various matters of that kind, and in starting the corporation; and after that there was very little work that I did until February, 1914.

Q One minute—

Mr. Smith. May I hear that answer?

(Answer repeated.)

Q With whom were the negotiations for the purchase of the assets of the Charles R. Partridge Lumber Company conducted?

20 A The first negotiations were with the receiver of the Charles R. Partridge Lumber Company.

Q Mr. Merritt Lane? A No.

Q Who was that? A I have forgotten his name.

Q Go on. A But after that the company was declared bankrupt and our negotiations were with the trustee in bankruptcy.

Q And who was that? A I do not remember his name.

Q A Jersey City gentleman? A A Jersey City lawyer.

Q Did you participate in those negotiations? A I did, in all of them, and finally the property was purchased for about \$127,000, which was more than this agreement recited.

30 Q Did that lead up to the execution of the next agreement that is attached to this batch of papers? A It did.

Q Marked P. 4? A That agreement authorized us to—

Q Now, I will read that. Counsel would prefer me to read it rather than to state its contents.

(Mr. McCarter reads P. 4 to the jury.)

Q What sum was finally agreed to be paid? A My recollection is \$126,500—nearly \$127,000.

40 Q Proceed. A From July 1st, 1912, to February 1st, 1914, I spent work on about twenty-five days. Mr. Cheney had made various offers at various times and made various attempts to take over the Interstate Lumber Company and pay off the banks, but all his efforts had failed, and about February, 1914, another proposition came in from Mr. Cheney, stated by him to be from McArthur Brothers, to take over the Interstate corpora-

Seth B. Robinson, direct.

tion, to consolidate the assets of the South Georgia Lumber Company, of which Mr. Cheney was president, with certain corporations belonging to McArthur Brothers, and the forming of the Southern Seaboard Corporation, and I attended a number of conferences with a Mr. Goodrich and with—mostly with Mr. Farrier and Mr. Cheney and Mr. Jackson and Mr. Hefferman, in reference to that proposition, and finally on April 10, 1914, they had a meeting, the committee, Mr. Dunne, Mr. Edwards, Mr. Farrier and Mr. Cheney, I think—I am not sure of the others—and Mr. Goodrich—at my house in New York City, and at that meeting they prepared an agreement, prepared a letter to be sent to the banks outlining the plan offered by McArthur Brothers—

10

Q One moment. That meeting was at your house? A At my house.

Q In the evening? A In the evening.

20

Q On the 11th of April? A 10th of April, 1914.

Mr. McCarter. Have you a draft of that letter? We ask you to produce it.

Q I show you a document produced on our call by Mr. Farrier of the Union Trust Company. Please look at it and see if you recognize it and tell me in whose handwriting it is. A It is in my handwriting in part—most of it is in my handwriting. There are other handwritings, of Mr. Dunne and Mr. Edwards, I think.

30

Q All four were there? A Yes.

Mr. McCarter. I would like to offer in evidence this draft.

(Marked P. 10.)

Q Just tell us, if you can, before we come to the reading of this paper, which I will read in a moment, what the conference was about that night, what was stated in the meeting of the committee? A My recollection is we reported to the full committee—

40

Q Who reported? A Well, I do not recollect whether I made the statement or whether Mr. Farrier did, but it was a general meeting and general discussion, but at that meeting it was stated what had transpired at the various conferences prior

Seth B. Robinson, direct.

to that which had been held with Mr. Goodrich and Mr. Cheney and Mr. Hefferman and Mr. Jackson.

10 Q With reference to this McArthur proposition? A With reference to this McArthur proposition, and it was stated that the proposition was to take over the assets of the South Georgia Lumber Company, which were estimated at a quarter of a million dollars, and to consolidate that plant, which had lumber properties and stumpage and mills, with other lumber concerns in the South owned by McArthur Brothers, to form this large corporation known as the Southern Seaboard Corporation, that this new company was to obtain \$300,000 as a first mortgage from the Baltimore Trust Company, that there was to be issued a trust deed or trust mortgage of \$600,000 on this property, that this property combined at a stumpage of \$1.50 per thousand, which at that time—while the actual value 20 at that time was supposed to be \$3.00 a thousand—would show assets in the new corporation of over a million dollars, and that this trust deed was to be held as collateral for the issue of three hundred thousand dollar notes to the Baltimore Trust and three hundred thousand dollars in B. & C. notes, and part of those notes were to be given to the Interstate—or rather to the banks—to take up the obligations of the Interstate, so that the banks would come out whole; and this plan was approved by the committee, and this letter was prepared to be sent to the banks to receive their approval or authorization to go on and consummate this agreement.

30 Q Now, how many meetings had you had previous to the meeting of April 10, 1914, with representatives of this McArthur suggestion, negotiating this proposition? A I do not recollect just exactly, probably there were a dozen, but from February, 1914, until September, 1914, I worked on these matters—this particular matter—for about sixty-five different days.

Q Meantime, going back for a moment, the Interstate Lumber Company had been organized; did you become a director of that company? A I did.

Q At whose suggestion? A At Mr. Cheney's suggestion.

40 Q Did you have any work as a member of a committee in connection with the conduct of the Interstate Lumber Company? A Yes; I was chosen by Mr. Cheney under that agreement, where he had the right to choose them, as one of the members of the committee, and as such I acted on the board.

Seth B. Robinson, direct.

Q What supervision or oversight did you in that capacity give to the conduct of the Interstate Lumber Company? A Most of my work was in trying to prevent overdrafts by Mr. Cheney on the funds of the Interstate Lumber Company. The arrangement with him was that the new company, the Interstate Lumber Company, was to purchase no new lumber; that the lumber was to be purchased by the South Georgia Lumber Company and consigned to the Interstate Lumber Company; that as this new lumber was sold the Interstate Lumber Company would pay to the South Georgia for this lumber. In that way the Interstate Lumber Company would assume no new obligations and would quietly liquidate the assets which we had turned over to them and which had been purchased with the banks' money.

10

Q By the way, I want to follow that up now. We got the assets of the Partridge Company in Mr. Dunne, one of the committee. A Yes.

20

Q Did Mr. Dunne afterwards transfer them to the Interstate Company? A He afterwards assigned his bid to Mr. Farrier, and Mr. Farrier executed a bill of sale of that lumber to the Interstate Lumber Company and received from the Interstate Lumber Company notes representing that money and also the obligations of all the banks which they held against the Charles R. Partridge Lumber Company.

Q The banks put up about \$127,000, in round figures? A Yes.

Q And purchased the assets through their committeemen and those assets were in turn handed over to the Interstate Lumber Company and you were chosen as one of the representatives of this committee in connection with the Interstate that was going to carry on the business; is that right? A Yes.

30

Q Who were the officers of the Interstate Lumber Company? A Mr. Cheney was president, Mr. Jackson was vice-president and Mr. Farrier was made treasurer to represent the committee—to watch the finances of the concern.

Q You were not an officer of that company? A Not at that time; no.

Q You later became what? A President of it.

40

Q When? A I think it was in October, 1914.

Q During the time that you were serving as a representative of the committee in pursuance of the plan in connection with—to watch the proceedings of the Interstate Lumber Company—

Seth B. Robinson, direct.

did you receive any salary from the Interstate Lumber Company? A I did not.

Q Where was the office of the Interstate Lumber Company?
A It was at the Bowling Green Building, in New York.

10 Q And where was their yard? A It had three yards, one in Brooklyn, New York; one in Jersey City, New Jersey, and one at Newark, New Jersey.

Q Did the performance by you of the duties as a member of that committee require you at any time during the period I am speaking of anterior to the meeting of May 10, 1914, to go to any of these yards? A I did, several times.

Q For what purpose? A To see how the work was going on there and to see the lumber and the different matters pertaining to that.

20 Q In how close touch were you with Mr. Farrier during this period? I mean now before the meeting of May 10, 1914. A I saw him frequently, but most often it was at the committee meetings and board meetings.

Q How often did the committee meet; how many times did the committee meet, to your recollection, from the time of their appointment in 1912 down to May, 1914? A Well, that would be hard to tell exactly. I could look at the records and tell you exactly if it were material, but they met from time to time as required.

30 Q Where did they meet? A At various places.

Q That does not give us any information at all. A Sometimes they would meet at the office of the company; sometimes they would meet at the Waldorf; sometimes we would have a dinner and have our conference afterwards—meet at various restaurants and different places first and have our conference afterwards. These meetings had no special place.

Q You would meet in Jersey City sometimes? A Yes.

Q At Mr. Farrier's office or Mr. Edwards' office? A I think we have met there.

40 Q How active was Mr. Dunne, from Elmira? A Mr. Dunne was active at first in the negotiations leading up to the purchase of the assets; after that he took very little part in matters.

Q He was up in Elmira? A Yes.

Q How active was Mr. Edwards? A He took very little part in it; almost nothing.

Seth B. Robinson, direct.

Q Who shared with you in the active conduct as members of that committee? A Mr. Farrier.

Q You have, I think, a schedule which we will speak of later of the number of days which you devoted to this work. A I have all the items.

Mr. McCarter. Now, at this stage, if I may, I will read this Exhibit P. 10. 10

(Mr. McCarter reads P. 10 to the jury.)

Q At the meeting to which we have referred, which I believe you said was on the 10th of April, 1914, attended by—whom? A Representatives of the various banks.

Q No, no; I mean this meeting this evening. A Mr. Edwards was there; Mr. Dunne, Mr. Farrier, Mr. Cheney; I think Mr. Jackson, and Mr. Goodrich and myself.

Q Was anything said at that meeting in the presence of the other members of the committee with reference to compensating the committee? A There was. 20

Mr. Carrick. I object. Here it is attempted to bind the banks by a conference with this committee. This is not a meeting of the banks; it is a meeting of this committee with some outsiders whom they bring in, and it is attempted to hold that some conversation which took place among the committee as to their compensation—

The Court. I think I shall sustain the objection unless it appears that these parties who appeared at this meeting had authority from the banks to bind the banks to compensate. 30

Mr. McCarter. They were respectively the presidents of two of the defendant banks, and as against them at least I should think what they then stated would be binding. It might not be binding against the others, but as presidents of two of the banks, it would seem to me that a conversation that took place on that occasion would be competent, just as the document which they all participated in and which has been admitted in evidence and has been read before the jury is competent. 40

The Court. They were not meeting that night as presidents of banks; they were meeting as members of a committee representing all the banks and others, and I do

Seth B. Robinson, direct.

not think that unless you can show that they were authorized at such a meeting to bind the banks they would have any authority to do it.

10 *Mr. McCarter.* There is another aspect of it that presents itself to my mind that also I think would make that conversation competent, and that is that it would be indicative of the—this did not end the action of this committee—it would be in the nature of a demand on the part of both the plaintiff and of the other gentlemen for recognition of the fact that they were not working for nothing but that they expected to be paid, and the state of mind of those gentlemen, I take it, is important, and, as I understood Judge Carrick's opening, he intimated that the theory of these banks was that these gentlemen were doing all this work, particularly Mr. Robinson, for nothing.
20 Now, if at the meeting that they held on the 10th of April, 1914, not only was compensation spoken of, but, as I shall point out in a minute, provided for in the very agreement that was reached, it would seem to me it would be competent.

30 *The Court.* I think, Judge Carrick, that the authorities are quite clear on the proposition that in order for a contract to be implied between the parties there must be a reasonable expectation on one part to be paid and on the other part to pay, and therefore it seems to me that evidence going to indicate what the actual expectation of the party performing the services was is, to say the least of it, evidential.

Mr. Carrick. If that was made known to the defendants I can see that that might be so.

40 *The Court.* I do not think it makes any difference whether it was or not. *Disbrow vs. Durand*, 25 Vroom, and *Stone vs. Todd*, in 20 Vroom, if my recollection serves me correctly, are cases going to the point that the state of mind of each party is a relevant consideration for the jury, whether the one expects to be paid and the other expects to pay. Now, of course, one man may entertain a solitary expectation of payment when he is rendering service, but if the circumstances are not such that the other party should be apprised from the very nature of

Seth B. Robinson, direct.

the case that that is his state of mind his solitary expectation is a matter of inconsequence and he cannot be paid at all. If, on the other hand, the circumstances are not such as to warrant an expectation on his part that he should be paid, nevertheless, if he makes known to the other party that he expects to be paid and the other party accepts his services in the light of that expectation, then he has a right to be paid. So, it seems to me that what his actual state of mind was is a relevant fact for the jury to know in the application of that rule. Now, if he kept that to himself and the circumstances are not such as to lead the other party to believe that he expected to be paid his expectation is a matter of inconsequence as far as the jury is concerned. They will say, "unless the other party had reason to believe you expected to be paid you won't be paid and we won't give you a verdict." The only question that confronts me is whether or not this is a relevant piece of testimony on any fact in the case. Now, there is a fact in the case that it seems to me it is relevant on, and that fact is, what was the expectation of the party who did the work? On that theory I must admit it.

Mr. Carrick. It is open to inquiry as a relevant fact in the case whether or not he entertained any expectation that he would be paid for the services rendered, I assume, at the time he might make the statement that he himself entertained the expectation that he would be paid, but here they propose to introduce evidence to show that there was a conversation amongst these committeemen and something was said upon the subject of compensation, as to the amount or as to when it would be paid or some other suggestion affecting compensation which is receivable and evidential against these defendants.

The Court. I think that your construction of the situation goes way beyond the terms of the offer. I think that the only terms of the offer as they have been manifested to me were that this was to evidence the state of mind of this witness with respect to compensation. Very often evidence is admissible for one purpose which might possibly have a tendency to lead the jury to believe, unless they are controlled in the situation, that it is evidential for other purposes, and the rule of law that governs in a

Seth B. Robinson, direct.

10 case of that kind is this: Not that I rule the testimony out because the jury may misconceive that it may be applied to other purposes than that for which it is admitted, but if the Court is requested he charges the jury that the only effect of that testimony is as bearing upon the state of mind of the party from whom the evidence was ad-

(Exception noted by Mr. Carrick.)

Mr. Goodell. May we have the question read?

(Question repeated.)

20 *Mr. Goodell.* I think what Mr. Robinson said might possibly be relevant under your Honor's ruling, but I do not think what others may have said would be relevant under your Honor's own argument.

The Court. I think that you are wrong about that. I think it would be. I think it is perfectly clear it would be admissible, because it would tend to show if he did not object to what was said at the time or was in the conversation in apparent agreement with it, that it was an apparent manifestation of agreement on his part with the others.

30 Q What was said, Mr. Robinson, at this meeting on that subject? A I said that this matter, if it went through—

40 Q What matter? Just say all that was said with reference to compensation. A I brought up the question of compensation and stated that the committee should be compensated properly for their services, but that as Mr. Cheney was largely benefited by this result it was only fair to have the banks reimbursed as far as possible by him, and I said to Mr. Cheney that he ought to give additional stock to the committee, and he said he did not want to do that; that he considered that stock very valuable and he wanted to retain it. Then it was proposed that he could get that stock back provided he paid a certain amount, which was fixed at \$20,000; that is the stock referred to in that letter, which Mr. Cheney finally agreed to turn over to the committee for the benefit of the banks to reimburse it for any expense it was put to for the fees paid to the members of the committee,

Seth B. Robinson, direct.

and it was stated then that a fair compensation for each member of the committee would be \$5,000.

Q The clause that you refer to in the document that you have just read is the following: "In addition the committee will receive the amount of preferred stock of the new company equal to fifty per cent. In addition the committee will receive an amount of the preferred stock of the new company equal to fifty per cent. of the old indebtedness and an equal amount of the common stock, with the understanding that this will be returned to Mr. Cheney provided the Series C notes are paid within two years." That was put in the proposition you submitted in pursuance of this talk you have referred to? A That is my recollection. The final agreement about the \$20,000 was put in the agreement of December, 1914.

10

Q We will come to that in a moment. Was that letter later sent out to the banks? A A copy of that letter was sent to each bank.

20

Mr. McCarter. I assume it will be conceded by the counsel that the banks each received a copy of that communication.

Mr. Carrick. I do not really know; I assume so.

The Court. It ought not to be hard to prove who sent it out and let him show that it was sent to them.

Q Did you sign such a communication when it was engrossed? A Mr. Farrier signed it.

30

Mr. McCarter. We will prove it was sent out. Have you the agreement of December 12, 1914?

Q I show you an agreement, dated the 12th of December, 1914, purporting to be signed by the committee, Mr. Cheney, by the Interstate Lumber Company and the South Georgia Lumber Company. Will you look at that and see if you remember that agreement and if you signed it on behalf of the Interstate Lumber Company as president? A I did.

Q And the other signatures are correct there, are they? A Yes.

40

Q What relation did that agreement bear to the draft of a letter which has been read to the jury and is marked P. 10? A This was the final carrying out of that proposition.

Seth B. Robinson, direct.

Mr. McCarter. I offer this agreement in evidence.
(Marked P. 11.)

Mr. McCarter. I will read it.

The Court. Is there any special necessity to read every word in all the agreement?

10 Q Will you please refer in this agreement to the clause that is inserted in it bearing upon the proposition of compensation? I was only going to read it because I understood counsel insisted I should; that was all. I do not want to take time. A It is on page 5, folio 10. "If Mr. Cheney pays, or causes to be paid, within two years from December 1st, 1914, the \$120,000 of C notes and at the same time pays to the committee the sum of \$20,000 toward the expenses of the committee, the committee will deliver to Cheney the \$60,000 par value of the 6 per cent cumulative preferred stock and \$60,000 per value of the common stock of the Southern Seaboard Corporation," and it goes on, "If Mr. Cheney requests extension of time," etc.

20

Q What expenses of the committee towards which the \$20,000 that Mr. Cheney was to pay were to be devoted under this agreement were referred to? A Five thousand dollars to each member of the committee.

Mr. Carrick. I object. The agreement speaks for itself.

The Court. Can you tell me from the agreement which speaks for itself what he refers to?

30 *Mr. Carrick.* No.

The Court. Then how does it speak for itself?

Mr. Carrick. He is going into the contents of the written instrument. He may alter the effect of it.

The Court. He does not alter it; he makes plain what is obscure. You cannot vary a contract by parol evidence, but you can certainly explain an obscurity.

Mr. Carrick. Exception.

40 Q This agreement, P. 11, is signed by Messrs. Edwards, Dunne, Robinson and Farrier, designated "Committee," is it not? A It is.

Q It bears the genuine signature of each one of these gentlemen? A It does.

Seth B. Robinson, direct.

Q Now, previous to this time and before this McArthur proposition had become crystallized in the agreement that has just been put in evidence, had the committee for and on behalf of the banks received any dividends or refunds of money paid for the benefit of the banks? A They had.

Q Roughly speaking, how much? A I think that letter says 45 or 55 per cent. 10

Q Who acted as treasurer of the committee? A Mr. Farrier.

Q Did he receive the funds of the committee as treasurer? A Not at that time. I think those were paid direct by the Interstate Lumber Company to the banks.

Q Were any funds received by Farrier for and on behalf of the committee independently of anything else that was paid? A After that, yes; of course, the committee received the \$127,000, or approximately that amount, when they bought the assets, and those then were paid by him to the Trustee in Bankruptcy. 20

Q I understand that; that came in and went out again very shortly. When did Mr. Farrier as treasurer receive and has he yet on hand moneys of this committee? A He commenced to receive moneys as secretary of the committee about January 1, 1195, in compliance with the agreement of December 12, 1914.

Q That we have just offered in evidence? A Yes.

Q That is in addition to the 45 or 50 per cent. that the letter speaks of that the banks had already received? A Yes, and he still has, or should have, quite a substantial amount in his possession now as secretary of the committee. 30

Q Now, after the signing by the committee and the South Georgia Lumber Company and the other parties signatory to the agreement of December 12, 1914, what was the next step in the orderly course of events in which you as a member of the committee participated? Go right on with the story. A That is after this meeting of April, 1914?

Q How much work was done between the meeting and the signing of that agreement? A After the meeting of April 10, 1914, the banks authorized the committee to go ahead and consummate this agreement. We carried on negotiations— 40

The Court. Which agreement are you talking about? We have about twelve agreements here.

Seth B. Robinson, direct.

A After the meeting of April 10, 1914, and the authorization by the banks to carry out this project in accordance with a letter which was sent out and which has been referred to.

The Court. All right.

10 Q Did you attend that meeting of the banks? A I did.

Q Where was that held? A All those meetings were held at the board room of the First National Bank of Jersey City.

Q About how many representatives of the banks were present at that meeting? A Well, the room was generally crowded. I don't know, there were generally a dozen or more present.

Q How many meetings of the banks themselves, as opposed to the committee, did you attend? A I should say five or six.

Q During the period that we are speaking of, for which you are claiming compensation? A Yes.

20 Q So that the banks themselves met several times and you were present as a member of the committee? A Yes.

Q What occurred at these meetings by way of reports by you or anyone else as to what had been done on behalf of the banks? A At those meetings Mr. Dunne was usually spokesman or chairman and he would tell what the meeting had been called for and ask for some resolution by the banks, which they usually gave. After this meeting of April 10, 1914, we followed out the instructions of the banks and tried to consummate this arrangement. The new corporation, the Southern Seaboard Lumber Corporation, was formed, and the South Georgia Lumber Company transferred its assets to the Southern Seaboard Lumber Corporation, and I had various conferences in going over the various papers, the trust deed, the trust mortgage and trust agreements and all those various things.

30 Q With whom? A With Mr. Goodrich and with Mr. Jackson and Mr. Cheney.

Q Mr. Goodrich representing whom? A McArthur Brothers.

40 Q Yes? A And after the assets were transferred McArthur Brothers said that they had never authorized Mr. Goodrich to make this offer at all. Then I had various conferences with McArthur Brothers in connection with Mr. Farrier and myself, and they finally said that they would not carry it out, they had some controversy with Mr. Cheney and said they would not take over the Interstate and pay the banks, as they had agreed, or

Seth B. Robinson, direct.

as we understood they had agreed. Up to that period I spent about sixty-five days on this particular matter. Mr. Cheney not being able to—

Mr. Smith. May I understand what you mean by “this particular matter”?

The Witness. The McArthur Brothers’ offer. 10

Q Go on. A Mr. Cheney not making good, as he had agreed, and finding that Mr. Cheney had taken about \$2,000 of money out of the petty cash, which I discovered, we proceeded to remove him as an officer of the company and also Mr. Jackson, and I took active part in those matters. In order to bring things to a head we proceeded to attach whatever lumber the South Georgia Lumber Company had in the Interstate Lumber Company yards, and I took charge of that, not as attorney but in arranging the facts and looking up the law and getting an attorney to do it. 20

Q Where was that attachment commenced? A That attachment was issued in Jersey City and certain of the banks, I think it was the Lincoln Trust, the Hudson County Bank and one other appeared in that matter—I forget just who they were, but some of those appeared in the attachment proceedings; they were instituted indirectly because we did not want to have the banks appear on both sides. I arranged for an attorney to bring bankruptcy proceedings against the South Georgia Lumber Company and that was brought down in the South. The result of all that was—well, on those particular matters I spent, I think, thirty-three days, and we had meetings of the stockholders; there was a proceeding to stay us from proceeding on the ground that we did not own the stock and could not vote the stock of the Interstate Lumber Company, merely held it as collateral, and our friend Mr. McCarter was attorney against us and defeated us. 30

Q Go on. A As a result of all that, McArthur Brothers finally came around; Mr. Cheney got the McArthur Brothers to renew their offer. On that matter I spent about thirty-three days. Then Mr. McArthur renewed the offer and we finally made the agreement of December, 1914, on which I spent about seven days up to that time, which agreement provided for the giving of the C notes and for the transfer to the committee of the lumber assets and some of the accounts receivable of the Interstate Lumber Company for the benefit of the banks. I spent 40

Seth B. Robinson, direct.

10 about seven days on that. In addition to that I was appointed president of the company about October, 1914, and in connection with my duties there I went daily to the office of the lumber company and superintended all the sales, etc., and at those times in addition to that I went there about sixty different times, making about 196 days all told that I worked from two hours to the whole day, and sometimes part of the evening, on this work.

Q Between what dates? A That is between June 2, 1912, and January 1, 1915.

Q How many days or parts of days? A 196 days, and in addition to that on other days I worked writing letters, making it over 200 days in addition to the 29 days which I attended board meetings of the company and for which I received \$20 each time there.

20 Q The 196 and the 29 together are independent of the board meetings at which you received the regular board member's fee? A At each board meeting I received the \$20 fee.

Q You suggested that the banks had a meeting with respect to the prospectus or letter of April 12, 1914, at which action was taken authorizing the committee to make the proposed agreement that was finally made on the 12th of December, 1914. Was formal action taken, was there any written authorization that you know of? A My recollection is that there was.

Mr. McCarter. Have you that document, Mr. Farrier? I now will read Exhibit P. 5.

30 (Mr. McCarter reads P. 5 to the jury.)

Q That is the written authority that you had in mind? A Yes.

Q Now, did you ever have any other talk a little later with Mr. Farrier or any other member of the committee with reference to your compensation? A I did.

Mr. Carrick. I wish to enter the same objection as to that conversation.

40 *The Court.* Very well; I will rule as I did before and you may have an objection entered.

Q What was this conversation that you had with Mr. Farrier or any other member of the committee at any other time with reference to your compensation? A About March or April, 1915, there were indications that the Southern Seaboard would

Seth B. Robinson, direct.

not pay interest on its notes and at that time I took up the question with Mr. Farrier about the compensation and I said, "If there is any trouble it looks to me as though the banks ought to pay their compensation for the previous services up to January 1, 1915," and he said at that time, "Well, I would not take it up now; take it up when the whole thing is closed up, because then they would be more inclined to treat the question favorably." Later I had conferences with the members of the committee and they said that they thought the money—thought my compensation should be paid by my client. So I told them that I was not on a retainer, had no regular salary from them, and I did not see why my client should pay my compensation for that purpose.

10

Mr. Smith. When was that?

Q Mr. Smith wants to know when this talk was that you have just referred to when they suggested that your client ought to pay your expenses. A The particular time I recollect was perhaps six months or a year after the first of January; I do not remember the date.

20

Q What year? A Six months or a year after January 1st, 1915; and then when the question came up and we had various conferences with the committee to see whether this question could not be adjusted amicably one meeting was at the Waldorf.

The Court. Is this last conversation you are trying to give us a part of an effort to compromise this matter?

30

Mr. McCarter. No, sir.

The Court. As I understand it that is what he is trying to tell us now.

The Witness. He asked me when the time was.

The Court. But in answering when the time was you answered that it was a time when you and the committee got together in an effort to see whether this matter could not be compromised.

The Witness. I did say that.

40

The Court. That is a fact?

The Witness. Yes.

The Court. So you are trying to tell us now of a conversation that you and the other members of the committee had in an effort to compromise?

Seth B. Robinson, direct.

The Witness. Yes.

Mr. McCarter. I do not care anything about it. I would just as leave have it stricken out.

The Court. Do you want it out?

Mr. Smith. I want it in.

10

Q Did you take any part in the preparation of the agreement of December 12, 1914? A I took a large part in it, yes.

Q Describe it. A Well, the part that I took principally was to get Mr. Cheney and the different parties to agree upon a definite arrangement and I had various conferences with Mr. Cheney, and I had talks with Mr. Farrier and with Mr. Cheney's attorney—Mr. Clark, I think, was his attorney at that time—trying to get things in shape, and then Mr. Clark and I together agreed upon the terms of the written document.

20 Q Now, do you know whether or not Mr. Farrier, one of the committee, paid himself from committee funds for services rendered as a member of the committee? A I do.

Mr. Carrick. We object. I do not see how there is any relevancy at all in that to the issue.

The Court. What is the relevancy of that?

Mr. McCarter. That one member of the committee was in fact paid.

30

The Court. Suppose he was, if he paid himself as you have stated it, I do not see how that binds anybody else unless you show some concurrence in such payment or something of that sort. You ask now whether Mr. Farrier paid himself from the funds that arose from this transaction. If you can show that the payment was accepted by or approved by the banks it would be some evidence probably tending to show that the committee should be paid, provided you show the services were of the same character that Mr. Robinson rendered.

40 Q Do you know whether any of the banks had knowledge of these payments by Mr. Farrier that I refer to? A Yes. Mr. Edwards and Mr. Dunne knew about it.

Mr. McCarter. I certainly think it is admissible against them. They are two of the defendants here.

The Court. What do you say about that?

Seth B. Robinson, direct.

Mr. Carrick. There were certain payments made by treasurer of this committee. He was paid a certain amount for his services as treasurer and secretary in handling this voluminous correspondence and keeping the accounts. It was not the same service as was performed by Mr. Robinson.

10

The Court. If your objection is, as I take it to be, that it does not yet appear that a foundation has been paid for this answer by showing that the services that Mr. Farrier was paid for were of the same class and character rendered by the other members of the committee, of which Mr. Robinson was one, I will sustain the objection.

Mr. McCarter. Of course, there was a division of labor here and naturally two men were not doing exactly the same thing. Mr. Farrier was working on this committee, his bank was largely interested in it—in which he was an officer—and it would seem to me to be very germane and pertinent to indicate that for services that he rendered he was paid, and paid with the knowledge of two or three or four of the banks, but that this gentleman should not be paid for services that were just as important though not of an identical kind—suppose they pay their doctor, shouldn't they pay their lawyer?

20

The Court. Some of them think not; but apparently you have not apprehended the point of the ruling. The point of the ruling was that you have got to show as a foundation for the admission of the answer that you are now seeking to obtain that the services were the services that were rendered by Mr. Farrier as a member of this committee. There is nothing in the case yet to indicate that that was so, and the contention made by the other side now is that these were services that were specifically agreed to be paid for that were rendered as secretary and treasurer, services rendered by him in that way. If there was an express contract or an agreement or something of that sort between these parties or an express understanding, surely that cannot help this man, because that would rather militate against him as showing he did not have an express contract.

30

40

Mr. McCarter. There is not any evidence before your Honor except what counsel has stated, and I say that is

Seth B. Robinson, direct.

not so. There is not a word of evidence from the witness' mouth that this was either an express agreement or that it was done as secretary or treasurer. I think I asked him, "as a member of the committee," whether he paid himself.

10 (Question repeated.)

The Court. He answers, "I do know," but he does not say yet whether he paid himself for services as a member of the committee. He says he knows.

Q What do you know about that, Mr. Robinson? A Mr. Farrier was made treasurer of the Interstate Lumber Company, to look after the matters of the committee, to see that the moneys were properly applied, and for those services he received from the Interstate Lumber Company \$100 per month.

20 Q I am not talking about that. A When that Interstate Lumber Company went into the hands of a receiver he then paid himself out of the committee's funds the same amount, \$100 per month. That was—I think the receivership was in June, 1915.

Mr. McCarter. We call on Mr. Farrier to produce the checks covering the period that was last referred to by the witness.

30 *Mr. Goodell.* We object on the ground that it covers too late a period. Mr. Robinson's suit covers only the period to January 1, 1915. He is not suing for any compensation after that date. Mr. Robinson's testimony is that all payments until the receivership of the Interstate Lumber Company in June, 1915, made to Mr. Farrier were made as treasurer of the Interstate Lumber Company, and this minute book now in evidence, offered by Mr. McCarter, will show that that was authorized by the directors. Now, the payments to Mr. Farrier after January 1, 1915, do not come within the answers that Mr. Robinson made concerning payments to Mr. Farrier.

40

Mr. McCarter. We do not want to have included in our compensation later than January 1, 1915, but if the committee continued to serve and Mr. Farrier paid himself I cannot see why that is not—

Seth B. Robinson, direct.

The Court. I think I will hear the testimony. You may have the objection noted on the record.

Mr. McCarter. I ask for the checks, please.

RECESS.

Mr. McCarter. Have you those checks? 10

Mr. Carrick. Mr. Farrier has not come.

Q Mr. Robinson, I want to ask you two or three more questions. Now you are suing for the services that you rendered between the 12th of June, 1912, and the 1st of January, 1915, is that right? A Yes.

Q During that time how long a time were you president of the Interstate Lumber Company? A About two months and a half.

Q At whose suggestion did you become president? A At the request of Mr. Dunne and Mr. Farrier. 20

Q Did you receive any salary as president of the Interstate Lumber Company? A I did not.

Q While you were acting as president of the Interstate Lumber Company what services were required of you and what did you in fact do? A I went out to the yards every day, spent my time, a good part of my time, there looking after the sales and passing on the credits, looking after the receipts and collections of accounts and other items that would naturally come to a general manager or president of a company. 30

Q How large a representation on the board of directors did the committee representing the banks have? A Three out of the five.

Q Now, when you attended corporate meetings of the Interstate Lumber Company were those meetings in the evening? A Mostly in the evening, yes.

Q Where were they held, in New York? A At various places. They were sometimes in the office of the company in New Jersey, sometimes at some hotel or some restaurant, various places. 40

Q Now for attending those meetings you got a fee? A Twenty dollars.

Q How long would those meetings last? A From three to seven hours.

Seth B. Robinson, direct.

Q Did you have incidental expenses to these several matters that I have spoken of? A Yes, incidental carfares, of course, but generally when they were in the evening they would take turns in providing meals for the entire committee.

Q Out of the \$20? A Yes.

10 Q With the exception of the \$20 director's fee for these meetings that lasted for three to seven hours at night time did you have any reimbursement for disbursements you made at all during this two years and a half? A I did not.

Q How many days or parts of days did you devote to this service between June 12, 1912, and the 1st of January, 1915?

20 *Mr. Goodell.* I object. I think he ought to distinguish between the services as director of the Interstate Lumber Company and as a member of the committee. The suit is brought on the theory that he is entitled to compensation for acting as a member of the committee.

The Court. I will permit him to answer the question and you may get out on cross examination what the differentiation was between the manner of services rendered.

(Objection noted by Mr. Goodell.)

30 A I attended about twenty-nine different days at board meetings. In addition to that I performed services of at least two hours in a day and sometimes the entire day, and sometimes in the evening, on 196 days. In addition to that on some other days I wrote various letters and telegrams, etc., on some twenty-four days.

The Court. Why do we ask this again?

A I worked on some 200 days outside of the board meetings.

Q What were you accustomed to charge for a day's work at that time?

Mr. Carrick. We object to that.

40 *The Court.* I sustain the objection. His custom is not the rule on which the compensation may be based. His custom might be extravagant.

Mr. McCarter. Now, if we may have those checks.

Mr. Farrier. A great many of the checks are missing.

Seth B. Robinson, cross.

Mr. McCarter. I have asked you to produce the checks to yourself as a member of the committee from June 12, 1912, to December, 1914.

Mr. Farrier. I cannot do it. I have the stubs.

Mr. McCarter. Counsel says he cannot produce the checks.

10

Q Do you know what amount was realized from the disposition of the assets that were obtained for \$127,000? A My recollection is that they brought over \$500,000.

Mr. McCarter. That is all.

Cross examination by Mr. Smith.

Q \$500,000, do you say? A That is my recollection.

Q Don't you know that even the amount of money due the banks for both contingent and new money has not yet been paid? You know that, don't you? A Yes; I know that.

20

Q Will you tell me how much was the full amount of contingent and new money? A Between \$350,000 and \$400,000.

Q Between \$350,000 and \$400,000? A Yes.

Q And you say that lumber brought around \$500,000? A My recollection is that at a board meeting in the records in the minute book Mr. Cheney stated that the lumber up to that time had realized either \$400,000 or \$450,000, and subsequent to that it must have realized at least \$50,000 or \$100,000.

Q You are speaking now of your recollection of what Mr. Cheney said? A My recollection of minutes of the meeting.

30

Q Can you tell me what meeting that was? A If you will give me the minute book I can find it. On page 82 of the minute book, that was at a meeting December 17, 1913, it shows there that they had sold \$222,000 at that date, and that they had on hand at that time one-third more unsold; but I do not find that other statement. My recollection is that it was about that. I know after January 1st personally I sold over \$80,000 of lumber.

Q Well, you were getting lumber all the time, weren't you? A We were not getting lumber all the time.

40

Q Mr. Robinson, isn't it true that you attempted to remove Mr. Cheney and Mr. Jackson because of the fact that they had purchased new lumber in the name of the Interstate Lumber Company when your agreement was that none should be pur-

Seth B. Robinson, cross.

chased in the name of that company? A That was not the reason—

Q Is that true? A That was not the reason, but it is true that they had so manipulated the books that we had bought about \$40,000 of lumber, but we did not sell it for as much as that.

10 Q That you had bought in the name of the Interstate Lumber Company \$40,000 worth of lumber? A No.

Q That you were not authorized to do, isn't that so? A I do not think it was that. I think they had transferred lumber from one yard to another and put it on the books as a sale—lumber that had been consigned by the South Georgia Lumber Company to the Interstate, and whenever anything appeared as sold of that consigned lumber cash was paid to the South Georgia and I think that is the way it was done.

20 Q You framed the resolution for the dismissal of Mr. Cheney and Mr. Jackson, did you not? A Yes.

Q You also framed the charges that were made against them and submitted to the board? A Yes.

Q And isn't it a fact that one of those reasons was that they had purchased lumber in the name of the Interstate Lumber Company in violation of the agreement not to do it? A It is very possible. I do not remember the wording, but that is the way it was done.

30 Q You said that your main function at the Interstate Lumber Company was to see that Cheney did not overdraw; is that right? A I said that was one of the things I did, yes.

Q Do you call that one of the things or your main function? A I was not appointed to do that, no. That was one of the things I did, though.

Q And did Cheney overdraw? A He did, yes.

Q And were you also a member of the board of directors of that concern at the time that you say he had been taking moneys out of the cash drawer? A I was.

40 Q And that is part of the services you say you were performing for the banks, too, isn't it, watching over the affairs of the Interstate Lumber Company? A I saw an item of petty cash \$2,000, and I insisted on knowing the details, and in that way I found out that Mr. Cheney had taken that money out of the cash and that Mr. Hetrick, the bookkeeper, had helped him to take it without my knowledge, and I insisted that that be returned.

Seth B. Robinson, cross.

Q And that was another one of the reasons you had for insisting on the removal of Mr. Cheney as director? A Yes.

Q Now, let us get down to your first acquaintance with the affairs of the Partridge Lumber Company. You first knew of it in June, 1912, did you, at the time you were telephoned to to your office from the bank? A That is the first I knew of it. 10

Q That was the first you had any acquaintance with the affairs of the Partridge Lumber Company at all? A Yes, sir.

Q And that day you did not go over? A I did not.

Q You sent a clerk over? A Yes, sir.

Q And after his report to you you then talked to Mr. Edwards and Mr. Farrier? A Yes.

Q Which one first? Mr. Edwards.

Q Where? A At the First National Bank in Jersey City.

Q And from him you went to Mr. Farrier? A I did.

Q It was after you had talked with Mr. Farrier and come back to the First National Bank that you decided you would become a member of that committee? A That is right. 20

Q Now, the first thing that was done by you, as you say relative to that committee, was your participation in the drawing up of this agreement of June, 1912, is that right? A That is right.

Q A draft of that agreement was presented to the meeting? A Yes.

Q That you had in the bank? A Yes.

Q And you knew that draft was drawn by Mr. Hefferman and a copy of it was given to you? A Yes. 30

Q And a copy of it given to the other members of the committee? A That is my recollection.

Q You took your copy away? A I think I did.

Q And you looked it over? A Yes.

Q Did you consult with the Merchants' Exchange National Bank at that time? A I do not think I did.

Q Did you consult with anybody from the bank? A At that time?

Q Yes. A I do not think I did.

Q Do you mean to say that you drafted this agreement, making suggestions of your own without consulting the bank? A I think I did. 40

Q And those suggestions are contained in the pencil memorandum that you put on this draft as you call it? A I think they are.

Seth B. Robinson, cross.

By the Court.

Q At that time for whom were you acting? A In what capacity?

Q In this matter with the committee. A I was acting, at their request, for all the banks in New York.

10 Q No, no; I say when this draft was first prepared and you had appeared there for the Merchants Exchange National Bank, for whom were you acting at that time?

Mr. McCarter. Your Honor is mistaken, I think, about the situation. He had accepted the position as a member of this committee as a representative of the New York bank before he ever saw the agreement.

The Court. All right.

20 *By Mr. Smith.*

Q Well, it was at the same meeting where you say you finally consented to become a member of this committee that this agreement was presented? A Yes.

Q Now, you took that agreement to New York, didn't you? A I think I did.

Q The draft I am speaking of? A Yes.

Q Did you have an office at that time? A Yes, at No. 1 Liberty street.

30 Q And did you then or immediately thereafter show that draft to anybody connected with the Merchants Exchange National Bank? A I do not think I did until the final draft, and then I went to the vice-president, I think he was then, and asked him whether he would sign it.

Q What is his name? A Mr. Cherol.

Q Did you at any time present your pencil notes on this draft to the committee? A I think as we discussed the matter we put down there the various suggestions that were made, that were finally accepted.

40 Q And they were made at the same meeting? A There were several meetings.

Q I am speaking of your first meeting. A I do not think those pencil marks were made at that first meeting.

Q When were the pencil marks made? A We had three or four meetings on it before the final draft was prepared, and

Seth B. Robinson, cross.

it was at one of those meetings—one of several of the meetings, I do not know which.

Q When was your first meeting, after, we will say, the 1st of June or the 12th of June? A I think the first meeting was on the 10th.

Q Where? A At the First National Bank in Jersey City. The second was on the 12th, the third on the 13th, and the fourth on the 27th. 10

Q What are you reading from? A A memorandum.

Q Made by you? A Yes.

Q When? A At the time.

Q You do not mean to say you made that memorandum at the time? A Not those memos. I made these other memoranda all except that first page at the time.

Q You made them at the time? A Yes.

Q You say you had several meetings. Can you give me the first meeting after the meeting at which this draft was presented? A The 12; the next the 13th, and the next the 27th of June, 1912. 20

Q 12th, 13th, and 27th? A Yes.

Q And can you tell me when that agreement was signed? A My recollection is the last signature on that agreement was prior to the first of July, 1912.

Q You have not told me when the first signature was made to it. A I think probably on the 27th of June. I think that is when the final draft was passed upon.

Q Not before that? A I do not think so. It is possible it was, but my recollection is it was one of those—either the 14th or 27th. It may have been on the 14th; and then we had a report from Mr. Jackson and Mr. Hefferman on the 27th; my recollection is not clear on that. 30

Q Did you take it to the Merchants Exchange National Bank? A My recollection is I did.

Q And had them sign it? A Yes.

Q Will you tell me when? A The latter part of June; I could not tell you the date.

Q And at that time you saw Mr. Cherol? A That is my recollection. 40

Q Will you tell me when next you met with the committee after the 27th of June? A On the 10th of July, the 11th of July, 19th of July, 22nd of July, 25th of July, August 12th.

Seth B. Robinson, cross.

Q You are going beyond. I said when next? A July 10th.

Q Can you tell me how long you spent at that meeting? A No, I cannot tell you.

Q How long did you spend at the meeting of June the 12th?

A Those meetings were quite long.

10 Q Can you tell me how long? A They were not less than two hours and sometimes they ran to three or four hours.

Q Not less than two hours and sometimes three or four hours?

A Yes.

Q In the daytime? A Yes.

Q And where did you have most of them? A Those were held at the office of the First National Bank in Jersey City.

Q And at those meetings you spent from two to three hours?

A Yes.

20 Q And you were present, Mr. Dunne, Mr. Edwards, and Mr. Farrier? A Yes; generally Mr. Edwards' brother; not always.

Q You mean W. D.? A Yes.

Q And he was the lawyer? A Yes.

Q You knew, of course, that the committee had counsel engaged, didn't you? A I did, certainly.

Q You say Mr. Hefferman first told you of the plan, didn't he? A Outside of what my clerk told me.

30 Q Outside of what your clerk told you? Now, Mr. Robinson, in relation to the amount of lumber that you say there was to be purchased from the Partridge Lumber Company, you know, do you not, that the referee in bankruptcy had three appraisers appraise that lumber? A I think I heard there were some appraisals.

Q You knew it, didn't you? A Only from what Mr. Dunne told me.

Q You had seen the appraisals? A I do not think I ever did.

Q Haven't you been to Mr. Hendrickson and seen the appraisal yourself? A No, I do not think so.

40 Q Don't you know, Mr. Robinson, that Mr. Cronin and Mr. Folsom and Mr. Clarence Meeks were the appraisers appointed by the referee in bankruptcy to appraise this lumber? A I do not question it, but I do not have any recollection about it.

Q Don't you know that Mr. Meeks—see if this refreshes your memory—that Mr. Meeks was a lumber dealer? A I do not recollect anything about that. I know the appraisals were made as required by law.

Seth B. Robinson, cross.

Q And, you know, don't you, that the appraisal of that lumber made by that committee, including all the yards, was two hundred and sixty-nine thousand? A Something like that, yes.

Q You knew that? A Yes.

Q After this agreement was drawn and you say signed, then there was some negotiation relative to the purchase of the assets of the Partridge Lumber Company? A There were, yes. 10

Q Did you personally have anything to do with those negotiations? A Yes.

Q Will you tell me what? A Why, we discussed the question of the purchase of those—

Q What did you do? A We discussed the question—

Q Not "we"; what did you do? A What did I do?

Q Yes, Seth B. Robinson, what did you do? A I attended the meeting at which the bid was made. I attended the discussions as to the amount to be offered, and I had discussions with the other members of the committee about the vote to be made at the meeting to carry it through. I urged them to insist on carrying through the vote at the first meeting when the offer was made, when we could have bought the property for less than they actually paid later. 20

Q Carrying through a vote at what meeting? A We had a majority in number and amount of the vote.

Q Vote of what? A Vote of the creditors to carry through the first offer which we got, which was less than \$126,500—

Q Don't you know as a matter of fact— 30

Mr. McCarter. Let him finish.

A I do not know whether you advised it, but I think it was your firm advised not pressing the vote at that time, and then we had to make another bid for this lumber which was much higher, and we finally got it for \$126,500 from the trustee; and we had discussions—

Q Don't you know—

Mr. McCarter. Let him finish. You asked him what he did. 40

A I had discussions with other members of the committee about the bid going to the receiver in bankruptcy, which failed afterwards. He could not sell it, for some reason or other, and I attended all the meetings where these discussions came up.

Seth B. Robinson, cross.

Q Now, as a matter of fact, what you did was this: When the committee had meetings you participated in the meetings; that is what you mean? A I did.

10 Q Did you know what the final bid was to be to the trustee in bankruptcy for this purpose of purchasing these assets until after the bid was made? A I think Mr. Dunne told us just before the meeting just what he had bid. He certainly told us he had made a higher bid than he was authorized to, and he said that he did not want it known to the other side; but my recollection—

Q So you did not know, did you? A My recollection is that he told us just before the meeting.

Q Just before the meeting at which the bid was submitted? A I think so.

20 Q What do you mean by just before? Five minutes? A I think we met just before the meeting.

Q How long before? A A short time.

Q A day or two or five minutes or what? A But he took the responsibility to make this higher bid which was beyond the authorized price.

Q What did you say? A I say he took the responsibility to make the bid higher than the amount authorized by the agreement of June, 1912.

Q He took the responsibility? A He did.

30 Q And it was made in his name? A Yes.

Q All you did in that, I understand, was to have a general talk with the rest of the members of the committee? A And I was present at all these meetings and when the bids were made to the trustee in bankruptcy.

Q After the bid was made that bid was accepted, wasn't it? A Yes.

Q That is the \$126,500? A Yes.

Q After that was made did you have anything to do with the transfers to Mr. Dunne or to Mr. Farrier? A I think not.

40 Q Well, after the purchase I understand the Interstate Lumber Company was formed? A Yes, it was.

Q That was done by Mr. Hefferman? A Yes.

Q And you took no part in that, did you? A I did in this way: The question came up about by-laws of that corporation and it was necessary to protect the interest of the banks. We made

Seth B. Robinson, cross.

those by-laws as stringent as possible to prevent the money getting away which was put into the lumber by the banks.

Q And were those by-laws submitted to you? A They were.

Q By whom? A By your partner, Mr. Edwards.

Q In other words, Mr. Edwards had these by-laws and you obtained a copy of them? A Yes. I do not know whether he made them; I think that Mr. Hefferman made the by-laws and submitted them. I think Mr. Edwards was there and we talked it over and made various changes in them.

10

Q And then you took a copy of them, did you? A I do not recollect.

Q Could you tell me when you made any changes in them? A At those meetings.

Q In other words, at the meeting that Mr. Hefferman submitted the copy of the by-laws they were discussed and you suggested certain changes, is that it? A Yes, that is right.

20

Q After the Interstate Lumber Company was formed you then had continual meetings, did you not, of the committee? A Not so many after that, no.

Q Is that right? A Not so many.

Q Not so many? A No.

Q Can you tell me about how many? A Well, I should think there were perhaps a dozen meetings after that time.

Q A dozen meetings between when and when? A After the Interstate was formed, which was in September, 1912, I think.

Q After that was formed about what time did you have that dozen meetings? A Up to January 1st, 1915, approximately.

30

Q In other words, the committee had about a dozen meetings between the formation of the Interstate Lumber Company and January 1st, 1915? A That is formal meetings I am speaking of.

Q Is that right? A Formal meetings, yes.

Q I am speaking about meetings and you were speaking about meetings. Now, that is what you have said, isn't it? A But Mr. Farrier and I, acting for the committee, had a number of meetings outside of that.

40

Q I did not ask you that. I asked you, when you said meetings you did not mean meetings? A I mean meetings of the whole committee.

Q And that whole committee were you four men? A Yes.

Seth B. Robinson, cross.

Q Now you and Mr. Farrier, you say, had various meetings, is that it? A Yes.

Q You and Mr. Farrier were meeting all the time, weren't you; you would go to his bank to talk over with him various things? A My recollection is that we were appointed a sub-committee to act in the absence of the regular committee, and we had a number of meetings for that purpose.

Q At what meeting were you and Mr. Farrier appointed a sub-committee? A I do not recollect, Mr. Smith.

Q Do you really mean that you were any such thing? A Why, yes, I do.

Q Don't you know, as a matter of fact, Mr. Robinson, that there never was any sub-committee appointed? A I know that there was. Mr. Farrier and I were the ones to act in the absence of the committee.

Q Who appointed you, the chairman of the big committee, Mr. Dunne? A I think it was with the consent of all four.

Q What do you mean by the consent of all four; was it an outside understanding, was it formal, or what? A I think it was formal.

Q You think there was a meeting of the large committee, as we will call it, that is, Mr. Dune, you, Farrier, and Mr. Edwards, at which you by the chairman of the meeting, were appointed with Mr. Farrier as a sub-committee? A Yes.

Q And can you give me the date? A I cannot.

Q Can you give me an approximate date? A I think it was in 1914.

Q What date in 1914? A The early part of 1914.

Q You say the early part? A Early part of 1914, when the McArthur proposition came up.

Q That was in April when the McArthur proposition came up, wasn't it? A I think the first proposition came up around February or March.

Q The first proposition came up in February or March? A That is my recollection, the latter part of February or the first of March. I think that is when Mr. Cheney first told us about this proposition.

Q At what meeting then was it; do you mean there was a meeting at that time of the large committee? A I think probably it was about April, 1914.

Seth B. Robinson, cross.

Q April, 1914? A Yes; I think it was when the—the time that they had that meeting of the banks which was held on April 16, 1914. Mr. Dunne was down there at that time and I think that we were asked at that time to act as a committee, a special committee in the absence of the regular committee.

Q That was in April, 1914? A Yes; that is my recollection. 10

Q Before that time there had been no special committee? A No; I think not.

Q Now, in April, 1914, that is the time you say that this McArthur proposition came up before you, that was the formation of the Southern Seaboard Lumber Company? Is that what you mean? A Yes; the proposition came before that. That was the time we submitted the proposal to the banks.

Q The proposition came from whom? A Mr. Cheney.

Q Mr. Cheney was the man who owned the South Georgia Lumber Company? A Yes. 20

Q And that proposition came to your committee? A To our committee.

Q And was there a meeting of the full committee on it? A I do not find any record of any meeting. I think we did that by correspondence and conference.

Q Between whom? A Correspondence with Mr. Dunne and conference with Mr. Edwards.

Q And the letters were written by whom to Mr. Dunne? A Those were written by Mr. Farrier. 30

Q Now, did you have any meetings of the full committee before April the 10th, 1914, relative to the Southern Seaboard matter? A I do not think we did.

Q Then this proposition that was submitted by Mr. Cheney was submitted to whom by Cheney, to you or to Mr. Farrier? A To both of us.

Q Who first? A I do not recollect.

Q Wasn't it first taken up with Mr. Farrier? A I do not recollect.

Q You do not recollect that? A No. 40

Q Well, anyhow, you got knowledge of it some way, in some manner? A Yes.

Q And you talked to Farrier about it? A I did.

Q And Mr. Farrier communicated with Mr. Dunne and Mr. Edwards? A That is my recollection.

Seth B. Robinson, cross.

Q That is your recollection. Now, then, there was a meeting in April, 1914, at your house? A Yes; that is right.

Q There was a request by you to the other members of the committee to come to your house? A No; I think we had dinner together and I suggested that it would be a convenient place to
10 adjourn to and we adjourned to my house.

Q Had there been a meeting of the committee that day? A Yes; we had attended a directors' meeting of the Interstate Lumber Company at Jersey City four hours that day.

Q I am speaking of a committee meeting. A And we continued the conference at my house in the evening. "Present: Messrs. Edwards, Farrier, Jackson, Dunne, Cheney and Goodrich; four and a half hours."

Q Will you listen to me, please? I ask you, had there been a meeting of the committee that day? Had there? A Not a formal
20 committee. There was a directors' meeting.

Q There was a directors' meeting of the Interstate Lumber Company? A At which Mr. Edwards was not present; so we had him meet us at my house that evening. While it was not a formal meeting of the committee it was a meeting of the committee.

Q At your house? A Yes.

Q And that is the time that you say you brought up the question as to compensation? A Yes.

Q Is that right? A That is right.

Q And that is the time of the sending out of this letter that you speak of relative to the Southern Seaboard Lumber Corporation matter? A That is when the letter was prepared. The
30 letter was sent out a day or two later, I think the next day.

Q That is the time you prepared the letter? A Yes.

Q And it was at that time that you spoke of compensation you say? A Yes.

Q That is right? A Yes.

Q And it was at that time determined you say that compensation should be paid to the committee to be paid by the Southern
40 Seaboard Corporation? A I did not say that.

Q Didn't you say that? A No.

Q Didn't you say that as the result of your talk that day there was embodied in the agreement of December, 1914 that clause relative to the payment of \$20,000 by the Southern Seaboard

Seth B. Robinson, cross.

Lumber Company for expenses of the committee which you say were \$5,000 to each man for services; isn't that so? A I did not say it that way. I said that Mr. Cheney was to deposit certain stock which he had a right to take back on payment of \$20,000, and that this money was to go to the committee for the benefit of the banks to reimburse them for the expenses of the committee. 10

Q Then we will say Cheney instead of the Southern. A But it was to reimburse the banks for expenses that they incurred in connection with the committee for their compensation.

Q Had there at that time, Mr. Robinson, to your knowledge, been any expenses incurred? A Why, the services of the committee, yes.

Q That is the first time that compensation was talked about? A No, it was not.

Q Isn't that what you said a little while ago? A No.

Q Do you mean there were other conversations at which compensation was spoken of? A Yes. 20

Q Will you tell me where and with whom? A Early in the negotiations for some reason unknown to me the Hudson County National Bank filed a power of attorney in the Charles R. Partridge Lumber Company bankruptcy and appointed me attorney for that bank. I was not their attorney but they appointed me attorney in fact.

Q The Hudson County National Bank? A The Hudson County. For that reason the check which was paid as a dividend in the Charles R. Partridge Lumber Company matter came to me, and when it came to me I collected it and turned it over to them and deducted as my fee one-half of one per cent, which was a very nominal, trivial thing. 30

Q From the Hudson County National Bank? A That made quite a stir, and Mr. Edge came back to Mr. Farrier and said "What is this? Robinson—"

Q Were you present? A No, I was not.

Q Now just state what you knew. A Mr. Farrier told me, he said "Mr. Robinson, Mr. Edge is complaining about your charging any fee. He said those services would be the services you would be paid for as a member of the committee"; and I said "No, those are entirely separate matters. My services as a member of the committee are done for all the banks. This is a special service and I charged a very nominal sum because I ex- 40

Seth B. Robinson, cross.

pect to get some compensation here, but," I said, "it is entirely separate, just as I charge my client for special services I do outside of my services as committee member."

10 Q Will you tell me when that was? A About, I can. It was just after the first dividend was declared by the trustee in bankruptcy.

Mr. McCarter. About when was that?

A I am trying to find that. My recollection is that that would be shortly after October 16, 1912. I have a memorandum here that on October 16, 1912, I attended a meeting of the creditors of the Charles R. Partridge Lumber Company and that a fifteen per cent. dividend was declared. It was shortly after that first dividend was declared.

Q And that is the time you spoke to Mr. Farrier? A Yes.

20 Q And you say that at that time Mr. Farrier said that your services as a committeeman were to be paid for? A I said that he said that this service would be included in the services I was rendering for the committee for which I would be compensated.

Q For which you would be compensated, is that right? A Yes.

Q And will you tell me where that conversation took place?

A At the Lincoln Trust Company in Jersey City.

Q You cannot give me the exact date, can you? A I cannot.

30 Q You say shortly after October 15? A Very shortly after that.

Q Now, about how often did you see Mr. Dunne? A I saw him at each meeting of the committee and at most of the meetings he was present.

Q Then you saw him practically once a week for some five or six months, didn't you? A No.

Q You did not? A No; perhaps I saw him thirty-five times or forty times during those two years and a half.

40 Q Now, Mr. Robinson, in the matter of the Southern Seaboard Lumber Company how many days was it you said you spent in that matter? A About sixty-five days.

Q About sixty-five days? A Yes.

Q You had nothing to do with the formation of the Southern Seaboard Lumber Company, did you? A I passed upon all those papers, yes.

Seth B. Robinson, cross.

Q What do you mean by passing upon all those papers? A The papers were submitted to me, that is the articles of incorporation and the various papers that were—agreements that were drawn up between the different parties and the trust deed, trust agreement and various things, and then various correspondence that came back and forth from the trust company.

10

Q Submitted to you by whom? A By Mr. Goodrich and by Mr. Jackson.

Q Do you mean to say that Mr. Goodrich, representing McArthur Brothers, sent them to you? A Yes. Most of the time I went to the office of the Interstate Lumber Company at 11 Broadway and saw them there, and sometimes I took the papers up and worked on them at the Bar Association in New York.

Q When you say worked on them, you looked over them? A Well, looked up—they were voluminous papers.

Q Yes, very voluminous, of course. And will you tell me what else you did besides looking over those papers? A We had conferences with these different parties.

20

Q Who is “we”? A Mr. Farrier and Mr. Jackson and Mr.—sometimes, I think, Mr. Hefferman, and Mr. Goodrich and myself, and we had considerable difficulty in getting Mr. Goodrich to agree to the terms we thought reasonable.

Q When you say “we” you are talking now about Mr. Farrier and yourself? A Yes.

Q Mr. Farrier took part in all of these conferences? A Not all of them, no.

30

Q Well, will you tell me how many you took part in that he did not? A Well, there were a great many conferences that I had with Mr. Jackson and Mr. Goodrich that he had nothing to do with, and then there was the Metropolitan Bank, we had some difficulty in getting them to sign.

Q Who is the Metropolitan Bank? A One of the defendants here.

Q I say who are they? A They are one of the defendants in this case.

Q Have they any other name? A I do not think they have any other name—in New York City, they are at 23rd street and 4th avenue.

40

Q Were they the Merchants Exchange? A No, indeed.

Q Were they separate banks? A Separate banks. I had to go up there and see the officers of that bank to see if they

Seth B. Robinson, cross.

would not come into this agreement, and I think I went up there two or three times.

Q And all that took you sixty-five days, did it? A On 65 separate days I worked.

10 Q Do you mean 65 full days? A No; separate days on which I worked not less than two hours on any one day, and sometimes I worked the entire day, and sometimes into the evening.

Q When you were working the entire day what were you doing, looking over these papers? A Well, different matters, just as I have explained.

Q Tell us what. A Conferences, looking over papers.

20 Q What do you mean by conferences? Talking to Mr. Farrier? A Sometimes I had to go and see Mr. Jackson. Then from there I had to go to Liberty street to see Mr. Goodrich, and from there I had to go to 23rd street to see the officers of the bank, then back to see Mr. Farrier or different ones.

Q How many times did you see the Metropolitan Bank? A I do not remember. I went at least three times; it was not just simply to go to the bank; I would have to wait around until the officer was disengaged; it took time.

Q Now, the rest of the conferences, will you tell me approximately what time was taken up? A "Conference on the 20th; conference with Mr. Jackson on the 21st; conference with Messrs. Goodrich—"

30 Q Give me the time, please. A February 20, 1914.

Q Give me the time taken by each conference. A As far as I can. "Conference with Messrs. Goodrich, Cheney, Jackson and Farrier at 11 Broadway, three hours." On the 28th the same thing, two and a half hours. On March 3rd the same, three hours, and again another conference with Mr. Goodrich. 6th, went to 11 Broadway and attended a meeting, which was not held, two hours. 6th, a conference with Mr. Farrier; and on the 9th attended directors' meeting, six and one-half hours.

40 Q Mr. Robinson, will you tell me when you put the hours in that list? A At the time, the very day.

Q Is that the list you kept? A This is the original entry.

Q That is the original list? A Yes.

Q You did not put it in a book of any kind? A Not at this time.

Seth B. Robinson, cross.

Q Did you keep a diary of any kind? A No, I did not.

Q But you kept no record at that time save that paper you have there? A No; that is the only one.

Q Is that the customary method you have of keeping track of your time in your various cases? A No; I had given up my office about that time, active practice, and this was all I kept of this matter. 10

Q When did you give up your office? A I gave up the office itself on the first of May, 1914, as I recollect.

Q So that is all you kept, that paper record? A That is all of this, yes.

Q Were those entries made in ink or in pencil? A In ink.

Q Go ahead. A March 9th, attended directors' meeting Interstate Lumber Company, at Jersey City, six and one-half hours. 10th, conference with Mr. Farrier. 20th, conference with Messrs. Jackson and Hefferman at 11 Broadway, and later with Mr. McKenzie at his office. Then, April 3, conference with Mr. Goodrich. On the 4th, conference with Mr. Jackson at 11 Broadway. 20

Q Are you giving the hours there? A I haven't the hours here. On the 11th, conference with Messrs. Jackson and Hefferman at 11 Broadway.

Mr. McCarter. Don't forget the date.

A On the 8th of April, 1914—

Q That was before you gave up your office? A I think it was. 30

Q Didn't you keep another record when you had your office? A Not of this matter.

Q Did you of the other matters? A I was practically out of practice at that time.

Q Did you? A I do not think I did; I think very likely my clerk did, yes.

Q Your clerk did? A Yes.

Q Do you know where it is? A Yes.

Q Then you did keep it? A I think very likely.

Q And these were made up in this fashion for this occasion? A No; they were made at that time. 40

Q Go ahead. A On the 8th of April, 1914, conference with Messrs. Farrier, Goodrich and Jackson at 11 Broadway, two hours; on the 10th, directors' meeting of the Interstate Lumber Company, four hours. Then they continued the conference at

Seth B. Robinson, cross.

115 69th street in the evening; present: Messrs. Edwards, Farrier, Jackson, Dunne, Cheney and Goodrich; four and one-half hours.

10 Q These conferences you speak of there, did they include the meetings of the board of directors of the Interstate Lumber Company? A The meeting was four hours, and in addition to that there was four and a half hours at my house.

Q That was April 10th? A Yes.

Q Any other meetings that had of the board of directors of the Interstate Lumber Company, have you got those down as conferences? A No.

Q You have not? A No.

20 Q So there is nothing in there of your meetings as a member of the board of directors of the Interstate Lumber Company, is there? A There are items here, yes, sir, but they are separate from the conferences.

Q Go ahead. A On the 13th there was a conference with Mr. Jackson at 11 Broadway. On the 15th a conference with Messrs. Goodrich and Jackson at 11 Broadway.

30 Q Have you got the hours? A Not unless I mention them. On the 16th attended meeting of the banks at the First National Bank of Jersey City; on the 17th, conference with Mr. Farrier at Jersey City; on the 20th, conference with Mr. Farrier and with Mr. Cobey, cashier of the Metropolitan Bank, at 23rd street and 4th avenue. On the 21st, conference with G. G. Jackson at 11 Broadway, and another conference with the president and cashier of the Metropolitan Bank at 23rd street and 4th avenue. On the 28th a conference with Goodrich, Jackson and Cheney at 11 Broadway; another conference the same day with Mr. Farrier. On May 1st there was a conference with Mr. Jackson and on the 5th with Mr. Goodrich. Another one on the 6th with Mr. Farrier and another conference with Messrs. Goodrich and Jackson at 11 Broadway, and another one with the president and cashier of the Metropolitan Bank and with Mr. Goodrich. He would not sign and we had to go up there and get him to come around. Then on the 7th of May, 1914, there was a conference with Mr. Goodrich at 11 Pine street. That is the office of McArthur Brothers. On the 8th, attended the directors' meeting of the Interstate Lumber Company at Jersey City, three hours. On the 12th, a conference at 11 Broadway with Mr. Jackson. On the 14th there was a conference with Mr. Jackson at

40

Seth B. Robinson, cross.

the same place. On the 16th—all of May—conference with Mr. Jackson at 11 Broadway. On the 18th, the same thing. On the 19th there was a conference with Mr. Cheney at 11 Broadway. On the 20th there was a conference with Mr. Jackson at 11 Broadway, and obtained a statement from them with reference to the company. The 22nd, attended the directors' meeting of the Interstate Lumber Company at Jersey City. On the 23rd there was a conference with Mr. Jackson at 11 Broadway; on the 25th, a conference with Mr. Jackson at 11 Broadway; on the 26th, a conference with Mr. Farrier. June 3, a conference with Mr. Jackson at 11 Broadway. On the 4th of June, conference with Messrs. Jackson and Cheney at 11 Broadway. On the 8th attended a directors' meeting of the Interstate Lumber Company, three hours. On June 9, 10, 11, conferences with Mr. Jackson at 11 Broadway, also on the 11th another conference with Mr. Goodrich at 11 Broadway. On the 13th, a conference with Mr. Jackson at 11 Broadway. On the 15th of June, conference with Mr. Jackson at 11 Broadway, obtained from him a draft of trust mortgage and collateral trust agreement. On that evening I worked on those agreements at the Bar Association. On the 16th, a conference with Mr. Jackson at 11 Broadway. On the 17th, worked on the draft agreements in the evening at the Bar Association.

Q Worked on what? A These draft agreements.

Q That is the Southern Seaboard matter? A Yes. All this pertains to the Southern Seaboard matter.

Q All this is the Southern Seaboard? A All the Southern Seaboard; and there is still more here.

Q Will you tell me about how long these conferences took? For instance, when you conferred with Mr. Jackson about how long did you confer with him? A I did not put down any item here unless it took at least two hours.

Q Unless what? A I did not put any item in this list unless it took two hours; that is going, coming and the conference.

Q In other words, in all these conferences you were conferring two or more hours, is that it? A No; sometimes I had to go to Jersey City. It took half an hour to get from my office to Jersey City alone, and half an hour back; there is an hour gone.

Q And so you put down the traveling time? A Yes, I did.

Seth B. Robinson, cross.

Q Now, you were at that time working for the Merchants Exchange National Bank, weren't you? A Only as they sent me cases from time to time. I had no yearly salary.

Q They sent you this matter, didn't they? A Well, if you refer to the committee's work, no. If you refer to the claim, yes.

10 Q They sent you the claim? A They sent me a claim for \$30,000, yes.

Q And did you make up the claim in bankruptcy? A I did, or my clerk did.

Q You had it filed? A Yes.

Q And is that all the work you did for the Merchants Exchange National Bank? A No. I collected about \$20,000, I think; \$16,000 or \$20,000 was collected for them.

20 Q From where? A Most of what we collected was from the South Georgia Lumber Company. My clients signed this agreement for \$10,000. They had \$30,000, and we considered we could collect the balance of it from the South Georgia, whose paper we had, and I was instrumental in collecting that money, outside of this matter.

Q What do you mean, you were instrumental? A We collected it.

Q What did you do? It came in in this matter, didn't it? A Not as to that \$20,000, no.

Q How did you collect it? A We made the South Georgia pay it.

30 Q How? Did you start a suit? A No.

Q What did you do; write them a letter? A Pressing Mr. Cheney, who was president of the company.

Q How many letters did you write? A I do not recollect.

Q How many conferences did you have with Mr. Cheney and Mr. Jackson relative to these claims of the Merchants Exchange National Bank? A Quite a number.

Q And have you any of those conferences in this matter here? A Not in this list.

40 Q Nothing at all? A I have not referred to those.

Q Will you tell me how long it took you to collect that \$20,000.

Mr. McCarter. Does your Honor think that is material to this case?

The Court. I should think it would be quite material. It seems to me if he was acting also for his client against

Seth B. Robinson, cross.

the South Georgia Lumber Company, the other side would want to argue that it was to his interest, and to his client's interest, to see that Mr. Cheney and the South Georgia Lumber Company were kept good and sound and strong, and therefore that his activities in this matter might be considered as activities on behalf of his client, the Merchants Exchange National Bank. That is the way it would appeal to me. 10

Mr. McCarter. I do not see how it affects the question as to whether or not these banks owe him for services rendered as a member of this committee, how many times he saw Jackson and Cheney on an independent employment and for another obligation that is not involved in this at all. I cannot see how the fact, if he saw Cheney or Jackson a hundred times to collect the \$20,000 claim, how that bears upon this question. 20

The Court. He may want to argue when the time comes around that the charges here for visits and conferences with Cheney and the South Georgia Lumber Company were conferences that were at least partially in the interest of his sole client the Merchants Exchange National Bank.

Mr. McCarter. He said not.

The Court. It is a legitimate argument and he may want to make it, and if he does he has a right to produce the facts which will permit him to make it. 30

Q Will you tell me how much of that \$20,000 from the Southern Seaboard Lumber Company you collected? A I did not collect any of it from the Southern Seaboard.

Q South Georgia, I mean. A I think nearly all that paper was the South Georgia paper. The South Georgia represented that they were worth quarter of a million—

Q I did not ask you that. I asked you how much you collected. A I think it was about \$16,000 that I collected personally. 40

Q You collected about \$16,000? A I think so.

Q And did it all come through your office? A I think it did.

Q Wasn't it paid directly to the bank in the ordinary course of business for these notes? A No.

Seth B. Robinson, cross.

Q The South Georgia at that time was not bankrupt? A No.

Q And these were its notes, weren't they? A Which notes?

Q The notes you are speaking of were the notes of the South Georgia Lumber Company? A That is my recollection.

10 Q And these notes were presented for payment? A Yes.

Q And they were paid, weren't they? A After some considerable trouble, yes.

Q Yes, but they were paid and some of them extended? A Yes.

Q And they were paid in the ordinary course of business to the bank? A No.

Q Were those notes made payable at your office? A My recollection is the first payment was something like \$3,500 Mr. Cheney gave me personally.

20 Q And you gave it to the bank? A I did.

Q Will you tell me how the other notes were paid? A Why, the South Georgia gave me \$5,000 at the time that they—let's see—I think some time in 1914.

Q In 1914 when? A I think it was \$5,000 they paid, and then I think that they paid other instalments from time to time. Some of those were paid direct to the bank, I think.

Q Most of them were paid direct to the bank, weren't they? A I do not recollect that. I know I had the conferences with him and kept prodding him along to get the money.

30 Q Isn't it a fact that you rendered a bill to the bank for services in this Charles R. Partridge Lumber Company matter, and isn't it true that you received from them the sum of \$1,655.74 in payment for services rendered that bank in the Charles R. Partridge Lumber Company matter?

Mr. McCarter. You mean this \$20,000 part?

Mr. Smith. I am asking him if he did not get that money.

Mr. McCarter. With reference to the \$20,000 claim?

40 *Mr. Smith.* You may say whatever you please. I am asking him.

Mr. McCarter. I think it should be designated. You have two things here. Now, which do you mean?

Q Isn't it true that you received from the Merchants Exchange National Bank, charged against account of Charles R.

Seth B. Robinson, cross.

Partridge Lumber Company, \$1,655.74? A I certainly did. I charged them 10 per cent. of what I collected in the Charles R. Partridge Lumber Company bankruptcy.

Q That is in the bankruptcy matter? A Yes.

Q That had absolutely nothing to do with this committee matter, had it? A Nothing at all.

10

Q Were you placed on this committee as a representative of the Merchants Exchange National Bank? A I was not.

Q I show you a copy of an affidavit and ask you if you remember making that affidavit? A I do.

Q I call you attention to paragraph 3 of the affidavit, which is an affidavit made in the chancery matter between Maynard A. Cheney, complainant, and Edward L. Dunne, *et als.*, in the matter in which you say Mr. McCarter represented Mr. Cheney, and I call your attention to the third paragraph of that affidavit and ask you if you did not therein say as follows: "That he (speaking of yourself) is the attorney for the Merchants Exchange National Bank of the City of New York, and was placed on said committee as its representative, and that said Merchants Exchange National Bank still holds about \$12,000 of the notes of the Interstate Lumber Company endorsed by South Georgia Lumber Company and Maynard A. Cheney, the complainant herein." You swore to that affidavit containing that clause, did you not? A I did.

20

Q And that affidavit was sworn to October 5, 1914? A That is right.

30

Q Now, as a matter of fact, Mr. Robinson, you were placed on this committee as the representative of the Merchants Exchange National Bank, is that true? A It is not.

Q It is not true? A I will explain that.

Q I ask you if it is true. A It is not.

Q Then this affidavit that you swore to in the chancery proceedings as to that clause is absolutely false, isn't it? A I will explain it.

Mr. McCarter. Won't you let him look at it?

Mr. Smith. I am asking him a question.

40

Q That is absolutely false so far as that clause is concerned, is it not? A It is false in that way.

Q It is false so far as that clause is concerned? A In one way it is. I will explain it in this way—

Seth B. Robinson, cross.

Q I did not ask you to explain it. You can do that for Mr. McCarter. Now, do you want to look at the affidavit? A Shall I explain it?

The Court. Not yet.

Mr. Smith. I offer the affidavit in evidence.

10

Mr. McCarter. I object.

The Court. I sustain the objection to the affidavit. You have already had him admit that he swore to that particular part and you have had him admit it was false.

Q Now, Mr. Robinson, you represented the Merchants Exchange National Bank at the time of the formation of the Southern Seaboard Lumber Company, didn't you? A I think I did.

Q And that was in April, 1914, wasn't it? A I think so, yes.

20

Q Were you still in business then? A Well, not actively. I have not been active since 1910, but I still had an office at that time, as I recollect.

Q Did you represent them at that time? A Yes, I think I did.

Q Then you were practising, weren't you? A Yes, not actively, though.

Q And you had the Merchants Exchange National Bank as a client at that time, didn't you? A Yes.

30

Q And can you tell me when you ceased doing business for the Merchants Exchange National Bank? A I think it was some time in the fall of 1914.

Q Well, it was in the fall of 1914 when you went in to work for the Interstate Lumber Company, wasn't it? A Yes.

Q And working for the Interstate Lumber Company you received \$500 a month, didn't you? A Not until 1915.

Q Well, under the agreement of December 12, 1914, that was provided for in that agreement, wasn't it? A Yes.

40

Q That a representative of the committee should be at the yard of the Interstate Lumber Company representing the committee? A That is right.

Q And that the Interstate Lumber Company should pay that representative—yourself—\$500 a month? A That is right.

Q Now, will you tell me how much money you got out of that from the time you went in in December, 1914, up to the time you say you stopped getting paid?

Seth B. Robinson, re-direct.

Mr. McCarter. I object as utterly immaterial. How can the question as to whether he is entitled to be paid for his services from June, 1912, to December, 1915, be in any way affected by what under the provisions of a special agreement which was made and signed by everybody they agreed to pay him thereafter?

10

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

Mr. Smith. I think Mr. McCarter is right on that. I think that is all.

Re-direct examination by Mr. McCarter.

Q Mr. Robinson, your attention has been directed to some affidavit and you said you wanted to make an explanation. Look at the affidavit and make it. A This is an action brought by Mr. Cheney to restrain the committee from—

20

The Court. We do not want that. We do not want you to explain what the affidavit is. We can all read. What Mr. McCarter wants you to do is to explain what you have to explain about that portion of the affidavit which you said was false, but which you wished to explain.

A Mr. Cudlip, the attorney who represented the committee in this matter, said that he needed an additional affidavit in which it would show that there was some—the persons, the defendants there—in some way had some personal financial interest in it, and he said, “You are attorney for the Merchants Exchange?” “Yes,” I said. “And they still have a money interest in it?” And I said, “Yes”; and I told him he could put that in if he wanted to, and I do not recollect reading it, outside of that affidavit, that is all; and he put that in. He says here I was put on a committee as a representative. I do not recollect that at all. I certainly would have said no, if I had seen it; but I told him to put in the statement that I was attorney for the Merchants Exchange National Bank and that they had financial interest in it. That is what I recollect.

30

Q Now, during the course of your cross examination, Mr. Smith very discreetly stopped in the details of your work—

40

The Court. I think I will overrule that question without it going any farther, and on my own motion, because I do not think that your statement that Mr. Smith dis-

Seth B. Robinson, re-direct.

cretely stopped is evidence and I do not think I will permit it to go into the case as if it were.

Mr. McCarter. Your Honor is quite right; I will withdraw it.

10 Q Will you go on and give the details of your further services in this matter that we are talking about here in this suit, after June 9, 1914? A June 9, 1914, conference with Mr. Jackson at 11 Broadway. On the 10th and 11th the same, and also conference on the 11th with Mr. Goodrich at 11 Broadway. On the 13th there was a conference with Mr. Jackson at 11 Broadway. On the 15th there was a conference with Mr. Jackson at 11 Broadway—I think I went into this, down beyond there—I obtained from him a draft of the trust mortgage and collateral trust agreement, and in the evening I worked on those agreements at the Bar Association. On the 16th, a conference with Mr. Jackson at 11 Broadway. On the 17th, worked on the draft of the agreements in the evening at the Bar Association. On the 18th, called at 11 Broadway to see Mr. Jackson and had a conference with him. On the 19th there was a conference with Mr. Jackson and Mr. Hefferman at 11 Broadway. On the 22nd, a conference with Mr. Jackson at 11 Broadway. On the 24th, a conference with Mr. Jackson and returned the agreements to him at 11 Broadway. On the 29th, attended directors' meeting of the Interstate Lumber Company at Jersey City. On the 30th, a conference with Mr. Jackson at 11 Broadway. On July 2nd, conference with Mr. Jackson at 11 Broadway. On the 13th, conference with Mr. Jackson and Mr. Hefferman at 11 Broadway, and another conference with Mr. Goodrich, and another conference with Mr. Goodrich at 55 Liberty street. On the 15th, conference with Mr. Goodrich and Mr. Farrier at 11 Broadway. On the 17th, attended directors' meeting of the Interstate Lumber Company at Jersey City. On the 18th, conference with Messrs. Dunne and Hefferman at 11 Broadway. On the 19th, conferences with Mr. Goodrich, Cheney, Jackson and Hefferman at 11 Broadway. On the 21st, conference with Mr. Farrier, and on the same day conferences with Messrs. Goodrich and Jackson at 11 Broadway. On the 24th—no, that is the 29th—conference with Mr. Jackson at 11 Broadway.

Mr. Goodell. What month?

Seth B. Robinson, re-direct.

A July. On the 30th attended a directors' meeting of the Interstate Lumber Company at Jersey City.

The Court. Is there any entry there for the 24th of July?

A Yes; there is an entry here. 10

The Court. Tell us about it.

A I am trying to find out where it was.

The Court. It is right up there by your thumb.

A Yes, I know; there was a conference with Mr. Cherol at the bank, and obtained from him a letter dated July 20, agreeing to apply a dividend of \$1,900 received on South Georgia Lumber Company notes on Interstate Lumber Company note of \$10,000 held by the Merchants Exchange National Bank; delivered above letter to Mr. Cheney at 11 Broadway and received from him a letter providing for delivery to the committee. The Merchants Exchange refused to credit a certain amount on notes held and Mr. Cheney wanted that credit, and I went up to the bank and told them that they ought to give credit to Mr. Cheney on account of those South Georgia notes, and obtained that for him. 20

The Court. Then this account that you are reading from does contain items other than work done for the committee? 30

A No. Mr. Cheney refused to go into this Southern Seaboard Lumber Corporation unless he obtained that from the Merchants Exchange National Bank.

The Court. I understand, but those were notes of the South Georgia Lumber Company that the Merchants Exchange National Bank did not put into the general pool for collection under the committee?

A Yes, but Mr. Cheney said unless they did do that he would not go into this Southern Seaboard deal, and I had to get the consent of the bank to give him credit for that in order to carry through the Southern Seaboard deal. 40

The Court. I understand that, but that has nothing whatever to do with this committee work?

Seth B. Robinson, re-cross.

A Yes, because the committee wanted the Southern Seaboard matter to go through and I had to get its consent in order to put it through.

Q If that is so, then this is one of the items that you charge for in this suit? A Yes, sir.

10 *By Mr. McCarter.*

Q At whose request did you see Mr. Cherol, at Mr. Farrier's?

A I think I did. I think I talked with Mr. Farrier about that and he told me I would better see Mr. Cherol, I would have more influence with him. 29th, conference with Mr. Jackson—I gave that—30th I gave. August 11th, attended directors' meeting of the Interstate Lumber Company. On the same day had a conference with Mr. Farrier, and my recollection is that after that there were other matters.

20 Q That ends it? A That ends it.

Q Did you apprise any of the committee of the fact that you were holding these conferences from time to time with Mr. Jackson and Mr. Goodrich and these other gentlemen? A Yes; I spoke to Mr. Edwards, and Mr. Farrier, of course, knew of it, and I talked with him about it, and when Mr. Dunne was on I told him about it.

Q You say Mr. Farrier, of course, knew about it. How did he know? A I saw him nearly every day about these matters.

Q Now, Mr. Dunne lived where? A Elmira, New York.

30 Q And you said, I think, this morning, that after the sale of the assets of the Partridge Lumber Company had been consummated Mr. Dunne's activities largely ceased because of the fact that he was so far away? A Yes.

Q I think that is all.

Re-cross examination by Mr. Smith.

Q Mr. Robinson, this affidavit—you read that affidavit over before you signed it, didn't you? A I do not recollect, Mr. Smith.

40 Q Well, you are a lawyer; you do not mean to say that you affixed your signature to an affidavit to go in a court proceeding, you a lawyer, and not read it over, did you? A I think I did not read that over. It is my recollection we were in a very great hurry that morning.

Q You think you did not read it over? A I think I did not.

Seth B. Robinson, re-cross.

Q Who was Mr. Cudlip? A He was the attorney for the Lincoln Trust Company and has an office upstairs in the Lincoln Trust Company building, and he asked me about it—

Q I did not ask you what he said at all. I only asked who he was. And you went into his office? A Yes.

Q Who dictated the affidavit? A Mr. Cudlip. 10

Q Who was there when it was dictated? A I do not know.

Q Weren't you there? A I do not think so.

Q When did you first see it? A About that time that we tried to put Mr. Cheney and Mr. Jackson out.

Q Where were you when you first saw the paper? A The first time I saw that paper was probably in his office.

Q In whose office? A Cudlip's office.

Q And you signed it, didn't you? A I must have signed it.

Q And you swore to it, didn't you? A I certainly did.

Q In other words, you took an oath before Sidney Jacobs, Notary Public of the State of New York? A I certainly did. 20

Q Subscribed and sworn to on the 5th day of October?

Mr. McCarter. It is a mistake. I did not read it. I regret it if it is—

Q I do not ask you what you regret; I only want to know whether or not you took the oath as shown by that affidavit? A I certainly did.

Q Now, you say this paper was made from day to day, do you? A Yes; except the first sheet.

Q This is the record you have been using? A I think it is the first sheet that was not made from day to day. 30

Q The first sheet says, "Work done as member of the committee in re Charles R. Partridge Lumber Company"? A Yes.

Q Was that put on there when the first entry was made? A No.

Q It was not? A Do you mean—

Q Up here it says "work done." A This was not written until—

Mr. McCarter. What was not written? 40

The Witness. This first page was not written until 1913.

Q The first sheet was not written until 1913? Where did you get the entries from? A From my register.

Q What register? A Regular office register.

Seth B. Robinson, re-cross.

Q Then you did keep a memorandum in your regular office register of this Partridge Company work, didn't you? A Yes; that early part I did.

Q You said a little while ago that you did not, didn't you? A You asked me about the subsequent ones, and I did not.

10 Q I asked you about the Partridge Company matter.

Mr. McCarter. You were speaking about those dates at that time.

Mr. Smith. No, I was not anything of the kind.

Q Then, as I understand you now, you did have a register in your office, and you did in that register have accounts against the Charles R. Partridge Lumber Company matter, didn't you? A I did.

20 Q And as to work that you had done under this committee as a member of this committee? A Some of it, yes.

Q You did have that register? A Part of it.

Q Where is that register? A It is home, I think.

Q You have still got it? A I think so.

Q You can produce it by tomorrow morning? A I think so.

Mr. McCarter. We will do so.

30 Q The rest of it was written, you say, from day to day, was it? A My recollection is it starts the second page, November, 1913; part of the second page.

Q Part of the second page also made in 1913? A Yes; that was made in 1913.

Q That was all made in 1913? A Yes.

Q Then after that you start from day to day, do you? A Yes; that is my recollection.

Q So that that was all made as each day went along? A Yes.

Q Same ink, isn't it? A Probably.

Q And where was it made, in your office? A I think probably; yes.

40 Q Right up to what date? A December 12, 1914.

Q I thought you said you gave up your office before December, 1914, didn't you? A My recollection is I gave up the office in the spring of 1914.

Q Then that part of it was not made in your office, was it? A No, I suppose not.

Seth B. Robinson, re-cross.

Q How did you make it? Fountain pen, did you have? A No; just a regular pen.

Q All the same ink, isn't it? A Why, it is all black ink.

Q Same color? A Yes.

Q Is that right? A Yes.

Q You do not think, do you, that you made this up after you started this suit? A I did not. 10

Q You do not think that, do you? A No; except the—no, no.

Q Except what? A That page was written from my register, but not after the suit was commenced.

Q You do not mind that going into evidence, do you?

Mr. McCarter. What?

A There are some additions to that—the last sheets.

Q You can take the last sheets off, if you want to? A That has nothing to do with it. 20

Q Now, Mr. Robinson, you never sent a bill to any bank in this matter outside of the Merchants Exchange, did you?

Mr. McCarter. He did not send a bill to the Merchants Exchange. I object.

The Court. I sustain the objection as containing an unwarranted assumption of fact.

Q Did you send any bill to any bank involved in this matter except the Merchants Exchange National Bank? 30

Mr. McCarter. I object to the question.

The Court. I sustain the objection, because it does not yet appear that he sent any to the Merchants Exchange National Bank.

Mr. Smith. He said he did.

The Court. I do not remember any such evidence.

Q Did you not send a bill to the Merchants Exchange National Bank for work done in the Partridge matter? A I did.

Q Did you send a bill to any other bank except the Hudson County Bank for your one-half of one per cent. for any work done in the Partridge matter, the Interstate Lumber Company, the Southern Seaboard matter, the South Georgia matter or any matter that had any connection with the Interstate Lumber Company or the Partridge Lumber Company? A The only bill I 40

Seth B. Robinson, re-cross.

sent was the bill to Mr. Farrier as secretary representing the banks.

Q When did you send that? A I do not remember the date. Mr. Farrier has the bill.

10 Q Can you tell me about when? A Why, it was January—
was it 1917?

Q January, 1917? A I think it was.

Q Can you tell me how long— A 1917 or 1918; I cannot tell.

Q How long before you commenced the first suit in this matter? A This suit?

Q Yes; before you filed your first complaint, we will say. A I do not know what date that was. I have nothing to refresh my memory.

Q You have not any objection to this paper going in evidence, have you? A Wait a minute.

20 Q Unless you have something else there you do not want to go in. A There are some items in here that I eliminated. I have not testified to all of those.

Q What do you mean by you have not testified to all of them? A Because some of the items do not pertain to this work here.

Q Do you mean that there are things in that matter that do not pertain to your services as a member of the committee? A Yes.

30 Q In other words, there are items in this paper which you have been reading from and referring to and which is headed "Work done as member of the committee in re Charles R. Partridge Lumber Company, Bankrupt," which do not pertain to the services as a committeeman? A Yes.

Q Will you tell us what they are? A There were some items here in which I mailed some reports to the Merchants Exchange National Bank, which I have not referred to at all.

Q But they are in that list? A Yes.

Q And they are figured up in your number of days? A They are not figured in. I have not included those at all.

40 Q What did you put them in for then? A At the time I just put down things that I did right along.

Q As a member of the committee, you have that headed. Will you tell me what you put them in there for?

Mr. McCarter. That was put in there in 1913.

Mr. Smith. I do not care when it was put on.

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A Those might be treated as items of work for the committee, but I did not so treat them.

Q What did you put them in there for? A Any bank could ask you to send a report of the financial condition of the concern. The Merchants Exchange did ask me from time to time and I sent that as I got it from the directors and sent it on, but I did not consider that that necessarily would be a matter that would be for the committee, and I did not include it in my items here.

10

Q And yet you have got it in this memorandum to which you have been referring all the time. A I have it among these items; I think that is right.

Q You haven't any objection to this being marked? A No.

(Marked D. 1.)

The Court. Mr. Robinson, I note that you have not sued the Merchants Exchange National Bank in this suit. I do not know that it appears or not.

20

Mr. McCarter. They were sued and not served.

The Witness. It has changed its name; the Atlantic National is now the name.

The Court. Then you have sued them?

A Yes, and they are willing to pay their share. They changed the control.

By Mr. McCarter.

Q Was there any other bank in this series of banks for whom you had any other work to do or any money to collect than what was then known as the Merchants Exchange Bank? A No.

30

Q Mr. Smith asked you if you rendered a bill to any other bank except to the Merchants Exchange Bank, and you said you did render them a bill for the services you did on the twenty thousand dollar matter. Now, I ask you if there was any other bank of those for whom you had done any outside services than in connection with this committee? A Except that small item.

Q Oh, I know that. That is all.

PLAINTIFF RESTS.

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Mr. Carrick. In behalf of all the defendants I ask for a non-suit. Of course, it is very evident that the allegation in the complaint of an agreement, if by that is meant an express agreement, is not sustained.

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The Court. You need not argue about that. Counsel, in opening the case, distinctly stated he did not intend to prove any express agreement.

10 *Mr. Carrick.* There are no facts in evidence here which would justify the jury in finding an implied agreement made by the banks, which are the defendants here, and Mr. Robinson, to pay him compensation for services rendered as a member of the committee. Of course, these defendants are all corporations. They only act through their agents, who are authorized to bind them in any particular transaction. In the first meeting, so far as the evidence now is before the Court, nothing was said with regard to compensation. It appeared in Mr. Robinson's testimony in the first place that the earliest reference to any compensation was made not at a meeting when the banks were represented by their officers, but a statement was made by him to the
20 other members of the committee and in the presence of Mr. Cheney and Mr. Jackson and Mr. Goodrich, in which it was stated that some arrangement should be made by Mr. Cheney so that the expenses incurred by the banks to this committee might be paid, and the result of that in accordance with the plaintiff's testimony was that some months later when the proposition which was discussed in the April meeting was carried into effect in December, 1914, there was a provision by which \$20,000 of stock was to be turned over by Cheney for the purpose of defraying the expenses of the committee. Now, later on, the witness referred to a claim for compensation made by him or suggestion for compensation made by him, and he refers to the date
30 when a collection was made in behalf of the Hudson County National Bank, and when some controversy arose and he talked to Mr. Farrier—again, not to the representatives of the banks at all, but to his fellow-committeeman, and when it was said to him he might as well defer his claim for compensation until the matter was closed and the banks would be in a position to take up the question of allowance; but there is nothing in the conversation, as I take it, that would justify the inference that there was any implied contract made by the banks to pay for
40 the services of these gentlemen who acted as members of the committee. The reasonable inference, borne out by all of the evidence is that Mr. Robinson was appointed as a representative of the Merchants Exchange National Bank, they being prejudiced to the extent of \$30,000, and also as a repre-

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sentative of the banks of his district, and the other gentlemen being appointed as representing certain localities in which the banks were, and there is nothing to show that these men were in any different position from any other prejudiced committee which acts in behalf of creditors. It would be very violent inference to draw from the circumstances which have been detailed here by the plaintiff that there was any idea in the minds of the banks, whatever may have been the idea which Mr. Robinson himself had in mind, that these members of the committee were to be compensated for the services which they rendered as members of the committee. I therefore ask your Honor for a non-suit. 10

Mr. McCarter. The situation, as I understand the testimony, is this: The Partridge Lumber Company had failed, and the banks had a large claim against them, and the project was proposed of saving the equity in their assets, which could be secured at a reasonable sum, but that the banks were all to contribute, and were to have a committee who should be active in carrying out the plan and do everything necessary to execute the plan. Mr. Robinson knew nothing whatever of that plan until he was directed by his bank, which had been notified of the meeting, to go. He did not go, and his name was proposed at that meeting, when all the banks, defendants here, were represented by their executive officers, as a member of the committee. He was approached and asked to serve, and he did serve, and undertook to act and to serve, so far as the evidence shows, without any particular further direction or employment or sanction by or on behalf of the Merchants Exchange National Bank, which had been asked to join in the enterprise. 20 30

The Court. Now, Mr. McCarter, right there: Suppose he had gone, instead of having sent his clerk to this meeting, and the representatives of the various banks who were present at that meeting had done, as usually is done at meetings of that kind, meetings of creditors, and appointed him on a committee of the general scope and outline that was adopted in his absence, or in the presence of his clerk, and suppose that, either expressly or by not objecting, he had accepted a position on that committee, do you say that at that point, having accepted that appointment—and I see no difference whatever between that situation and the situation that some of the members who were present at the committee meeting wandered around to his house and told him 40

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what was done, and said, "Will you accept?"—they had no more authority to do that than the members of the committee who were gathered together at the meeting itself would have had—now, I say, do you say that at that point he, having accepted, either expressly or impliedly, an assignment on that committee, that he would have had any reason or right to suppose or expect that he was to be paid for the service that he was going to render on that committee?

10 *Mr. McCarter.* I should think so, most decidedly, but I am not compelled to stop there.

The Court. No; but I thought it was wise to stop there, because there must be some point at which the contract is to be implied, and it might be well to find out the point—the point of time.

20 *Mr. McCarter.* If you will only let me get there, I ought to reach there.

The Court. I did not stop you; I simply interrupted you.

30 *Mr. McCarter.* Yes. So a short time after that took place and after he had consented to serve, an agreement is drawn up and signed by all the banks, including the bank known as the Merchants Exchange, which signs regularly, and which presumptively knows the contents of the paper, and all the other banks sign it also, which, in so many words, referring to this committee, says, "The parties of the second part were, at a meeting of the duly accredited representatives of said banks, held in the office of the First National Bank of Jersey City on the first of June, 1912, unanimously constituted a committee in behalf of the banks to assist said Cheney and said lumber company in carrying out their said proposal, and to do such other acts and things in and about the premises as will protect the interests of the banks." And that paper is signed by all the banks, including the particular bank that your Honor has referred to. Now, I say that after those two steps took place not only this gentleman, but the other members of the committee had a right when they were asked to undertake the duties that were scheduled in that contract, and ratified by the banks that signed it, to expect that they would be paid for it, and that the law will imply an agreement when there is nothing said one way or the other, nothing said to show that they would not be paid, that they should be paid; and we have the fact that one of the committee was paid

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for work done by him as a member of the committee, indicating that the practical operation of the thing was along the same line as I have contended. Now, I understand the law to be—

The Court. Now, if it does not disconcert you to interrupt you—I rather gathered you thought it did, from your previous remark—that contract had other provisions in it, of course, beside the one that you have just read, which seem to militate quite as strongly the other way. For instance, in the second paragraph of that contract it says, “the banks executing this agreement promise and agree to contribute the money necessary to carry into effect such purchase and to pay for the same a sum not exceeding \$125,000.” That was what apparently they agreed in a financial way to become responsible for and the purpose for which the payment was to be made. 10

Mr. McCarter. They agreed undoubtedly to be responsible for the purchase money of not more than \$125,000, and when it was necessary, in order to get it, to contribute more to this purchase money they expressly were asked to, and did approve of a further expenditure. But you will observe that what this committee was to do was not only to purchase the property as it was proposed and to procure the organization of this company, but they were to do such other acts and things in and about the premises as would protect the interests of the banks; and the banks received moneys, the banks got dividends, and they hoped to get every dollar back; and to say that this committee were to act in the execution of this work, the doing of “such other acts and things— as well as the performance of this particular thing—in and about the premises as will protect the interests of the banks,” and to do it for nothing, when this gentleman was not even a regular paid attorney of a bank, had no retainer— 20 30

The Court. How did the members of the committee know that?

Mr. McCarter. I don't care whether they knew it or not; he knew it.

The Court. It would make a vast difference whether they knew it, because the implication must be that the facts in their knowledge were such as to warrant them in believing that he had a right to expect, and did expect, to be paid by them, and if they did not know he was the paid representative of another bank who was paid to procure this money it would be a solemn 40

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circumstance to be taken into consideration to determine whether or not they were expected to pay him when they could reasonably expect the bank that employed him would pay him.

10 *Mr. McCarter.* He was not only a representative of that bank; he was a representative of all the banks, and designated as such. Why should a bank that has a claim of \$30,000 and only puts in a claim for \$10,000 of it be expected to bear their share of the brunt of all this work?

The Court. There was not anything to indicate, that I can see, that this man was to perform any more service than any other member of the committee.

Mr. McCarter. Except, according to the testimony, that, Mr. Dunne being up in Elmira and Mr. Edwards being rather busy, they were made a sub-committee to do the humdrum, day in and day out work, and they did it; that is all.

20 *The Court.* I meant to mention a moment ago that the other fact that you pointed to as conspicuously favorable to your contention, to wit: that one of the committee had been paid, seems to me to make rather the other way. The evidence, as I gather it, is that this other man was paid not for service extending over a period for which Mr. Robinson seeks to recover payment, but for a period subsequent thereto, and only for a partial service, not for a complete service as a member of the committee; and, therefore, it would seem to follow that if they paid him for a particular thing only it would follow, as a matter of logic and
30 of reason, that they did not intend to pay him, and did not expect to pay him, and he did not expect to be paid for the service he had previously rendered.

Mr. McCarter. The proof shows that during the period previous to the time he got payment from the committee he was paid by the Interstate Lumber Company. He got his pay—

The Court. I am not speaking of a payment by the Interstate Lumber Company.

40 *Mr. McCarter.* But I say for the work as a member of the committee, after he ceased being paid by the Interstate Lumber Company for his work in this connection, he was paid. To be sure, it was not concurrent with the time that Mr. Robinson is here seeking compensation for, but it was not concurrent, because at the time that Mr. Robinson was not getting any pay Mr. Farrier was getting pay as an officer of the Interstate Lumber

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Company, and, therefore, they did not pay him twice; but Mr. Robinson was not getting any pay, and he was doing twice as much work as Mr. Farrier. But I say, when Mr. Farrier, after the Interstate Lumber Company failed and ceased to have a reservoir from which he could be paid for this work—and, of course, the Interstate was the machine, the tool of this committee—after that ceased, then—taking care of the money again—taking care of the money—he is paid. I say that indicates that so far as he was concerned there was no expectation or presumption that he should do the work for nothing. Now, I say that when a lawyer whose direction from his client is to attend a meeting does not go to the meeting, cannot go, is busy, sends his representative, and he is told by his clerk that he has been appointed on a committee to do a lot of work, he is told by a gentleman who was present at the meeting exactly what is proposed for him to do, and an outline of the necessary work is laid before him, and he is asked, “Will you accept?”—

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The Court. What difference does it make whether he is a lawyer or not? I do not see anything in that point.

Mr. McCarter. I am not saying—

The Court. You said “when a lawyer.”

Mr. McCarter. I mean he is not a member of the bank; he is not a bank officer.

The Court. If you say “an outsider”—

Mr. McCarter. An outsider; I mean a lawyer as opposed to a regular officer of the bank under salary from the bank; he then goes over and consults the members of the committee, the active men, gentlemen of high standing in this town, Mr. Edwards—and Mr. Edwards says, “I hope you will come along with us.” “You are to represent the Merchants Exchange National Bank?” Not a word. “You are to get your pay, of course, from the Merchants Bank?” Not a word. No one has suggested any such thing. Then he goes over to see Mr. Farrier, and Mr. Farrier says, “Come along.” And so he concludes to do it, and the next thing that happens is this agreement in which he is given certain specified duties as the representative of all the banks, not of this one particular bank at whose instance he went into this thing, and who only put \$10,000 in the deal out of a claim of \$30,000, and he is by the officer not only of that bank, but the officers of all the banks, constituted a member of a committee of all the

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banks to put through this particular thing and to do such other acts and things in and by the premises as will protect the interests of the banks—now, I ask you, where does any presumption arise from those facts and circumstances that this man is to do all this work for nothing?

10 *The Court.* The presumption, of course, must be the other way, that he is not doing it for nothing.

Mr. McCarter. Yes; very good. And where is the presumption that he is to be paid by anybody except the people for whom he is to do the work? And who are the people for whom he is to do the work? Why, they are the defendants in this suit who have signed this document, and who particularly designate him as their agent to do the particular piece of work and everything else that is necessary in order to carry it into effect. To be sure, they agree to contribute so much for the purchase money,
20 but there is not a word to indicate that they will not pay the expenses, that they will not bear any expense. They had counsel. They had Edwards and Smith. Who paid them? Did they work for nothing? They had to have lawyers, and they had good lawyers, and would the Court say that if counsel worked for this committee they were not entitled to compensation, when they were hired by the committee who were empowered to do anything necessary—

The Court. I do not see any likeness between the picture you are painting and the one that exists in fact in the evidence. Your
30 very statement of the case shows its non-applicability. You say if counsel are *hired* would it be supposed they are not to be paid? Of course, they are to be paid. That is the very definition of “hire.”

Mr. McCarter. I was not apt in my phrase. Suppose they were retained, asked to do work, asked to draw agreements and all that sort of business?

The Court. If they were asked to come in and do that work in the ordinary way that those things are done, naturally the
40 presumption of law would arise they are to be paid, but the thing that is sticking in my mind just a bit—I am arguing with you because I want to get your viewpoint; I may be entirely with you—but my idea was this, that when a committee of creditors get together and appoint from its own number persons who are to put forward the object of the meeting, ordinarily they

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are not paid for doing that kind of work, and it is not expected they are to be paid for doing that kind of work. It is not an inference that ordinarily arises that when they are appointed a committee from amongst themselves they are to be paid for it.

Mr. McCarter. This first meeting was a meeting of principals. The banks got together. 10

The Court. They were not principals; they were representatives of the principals, if you want to be entirely accurate about it, because the principals were all corporations.

Mr. McCarter. But they were not a committee; they were the official representatives, the executive officers of the several principal creditors.

The Court. I suppose if we want to quarrel over that we can get to the fact that I am right about that. They were a committee; they were the ones sent to get together by their principals. 20

Mr. McCarter. They were a number of corporate creditors.

The Court. That is what they were.

Mr. McCarter. They got together and they convened and organized—as an organized body; and they had a programme all laid out, and part of their programme was the appointment of a committee to do certain things, and there was not a word said that this committee was to act or do all this work for nothing; not a suggestion.

The Court. I would think there—if I may interrupt you again—I would suggest that the burden is just the other way, that ordinarily when creditors meet the presumption is that if a committee is appointed it is not to be paid and there must be something brought forward by the plaintiff to show that something different was expected than what ordinarily arises out of a transaction of that kind. 30

Mr. McCarter. I perhaps cannot follow your Honor quite to that extent. I know, as a matter of fact, that in all bankruptcy cases allowances are made to the reorganization committees; I know that I should be intensely surprised if all these committees that we see advertised every day in the New York newspapers, consisting of Mr. Davison and Mr. Savin and all the financiers who reorganize, representative of creditors, worked for nothing. I know, as a matter of fact, that provision is always made for their compensation. 40

Motion for Non-Suit.

The Court. That is just where I agree with you, that if there were a provision made for it—

10 *Mr. McCarter.* I mean in the end. They do not expect to work for nothing. It is not expected that they shall. They have not got the time or the money or anything else to arrange it at once. They form a depositors' committee and that committee works and evolves a scheme of reorganization and when the final windup comes you always find a provision for compensation of that committee.

The Court. In the contract?

20 *Mr. McCarter.* No, sir. Sometimes, and sometimes not. So I know of no principle of law, particularly in the case of Mr. Robinson, the plaintiff here, that gives an inference or any justification to the idea that he was to work for nothing. I would like to know why he was to be the representative of all these banks for nothing. The only bank he knew in the whole crowd was the Merchants Exchange Bank.

30 *The Court.* The way you state it is rather crude and not quite in accordance with the situation. The situation is not that we would infer that he was to work for nothing. The situation, as I gather it, is that they had a right to expect that he was to work for the person who originally sent him there, and in so doing, or rather in working for the combined banks, he was accomplishing the object of his original employment. Now, there are cases upon that point, and it was in that aspect of the case that I wanted to find out the state of your mind and why you would infer when a man is sent to a meeting of creditors to protect a client's interest, and be there as a lawyer, people would have a right to suppose he was coming there under a retainer.

Mr. McCarter. But he did not come.

40 *The Court.* I know he didn't, but he sent somebody representing himself, and in contemplation of law he was there and indicated his willingness and his intention to take part in what was being done, and the mere fact that later they went around and asked him to serve on the committee does not change the situation from what would have existed if he had been personally present. The point I am making has nothing to do with that phase of it. The point I am making is that the fact that he was represented there by his clerk indicated that his office had been employed for the purpose of protecting the interests

Motion for Non-Suit.

of the Merchants Exchange Bank, and when they appointed a creditors' committee it would seem to me to be perfectly plain that the men who were gathered together there representing the other banks would have a right to suppose that he was interested on behalf of his client just as they were interested on behalf of their principals in getting the money collected so that all might share and have their debts paid so far as the assets would go to pay them; and therefore when they asked him to act they did a thing which was in furtherance of the very purpose of his original employment by the Merchants Bank. Now, I say there are cases on the subject. For instance, I point to the case of *Harrison v. Jones*, 6 Ill. Appeals, page 89, where the Court says that one may accept the services of another without incurring any implied liability to pay for them, when he knows at the outset that the services are rendered because of an employment by a third person and but for such knowledge would not have accepted such services. I grant you quite freely that that is not on all fours with the present case, but it is no far-fetched inference to say that you might add these words as being what the Court would have said if the facts of this case had been before them, and the opinion would have said that "one may accept the services of another without incurring any implied liability to pay for them when he knows, *or has reason to know*, at the outset, that the services are rendered because of an employment by a third person and but for such knowledge would not have accepted such services." Now, it seems to me, that unless there were some facts which would lead the representatives of these numerous banks to believe that this man expected them to reimburse him from the general fund or from their own private exchequers for services rendered by him and did not intend to allow him to rely upon what appeared to them to be, and so far as he was concerned, what he never informed them otherwise, an original employment by the Merchants Exchange National Bank—

Mr. McCarter. Your Honor seems to ignore altogether the terms of the agreement.

The Court. I have found nothing in the agreement which seemed to indicate that there was a recognition of an employment with even an implication of an agreement to pay.

Mr. McCarter. My point, succinctly, is that this gentleman had just as much right to expect to be paid as Edwards & Smith had a right to expect to be paid. These men were asked by this

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Motion for Non-Suit.

committee, in furtherance of their power, to do such other acts and things in and about the premises as would protect the interests of the banks—were authorized to employ Edwards and Smith; and it would not make the slightest difference if Edwards and Smith at that time were the counsel of the First National Bank of Jersey City, they were doing extra work, they were doing work for the benefit of the whole series of banks, and this gentleman was specifically by every defendant in this suit employed to represent them, not as the representative of the Merchants Exchange National Bank, but his services were enlisted, of a character that the agreement defines, for them all, and it would seem to me a most extravagant situation if from that situation and from that employment the bank, the employing bank, the Merchants Exchange National Bank, which signs this agreement, which on its face declares that the other signatories all make him their agent, that they were supposed or that there was any inference to be gathered either by Mr. Robinson or the Merchants Exchange National Bank that the Merchants Exchange National Bank was to pay him for all he did. And I have nothing more to say. My understanding of the law is that under those conditions a man who is asked to do work of this character is entitled to be paid and that in the absence of a statement that he is to work for nothing or that he is to get his compensation from somebody else, he, being brought into this enterprise in the manner that he was asked to do this work, was not a volunteer; he was simply asked to attend this meeting, and he could not do it, and his function as a representative of the bank thereupon ceased, and when he was interviewed again he was told that he was to be there as the representative not of the one bank but of all the banks in New York City locally, to represent them. How can it be supposed that a man who is told that the reason of selecting him to serve on this committee and to do all this elaborate work was because he was in New York and could be the local representative of the New York City banks—Mr. Dunne being the local representative of the upstate banks and Mr. Edwards, who could not do very much work and therefore got assistance out of Mr. Farrier, the representative of the Jersey Banks—that therefore all the work that he was to do either as the local representative of the New York banks or, as the agreement puts it when they come to sign that, representing them all, that he was to get his pay out of the institution that

Motion for Non-Suit.

signs the paper with those words in it, and who had up to that time done nothing with him except to ask him to attend a meeting, which he did not do?

The Court. I think, gentlemen—while I admit all that has been said with great ability, I do not think that anything that has been said by counsel for the plaintiff has changed my impression in the matter—I think in this case there should be a non-suit, and I think it would be mere supererogation for me, after having kept up a running argument with counsel for plaintiff throughout all his argument and stated in that way briefly what my reasons are, to elaborate those reasons. I rest my decision entirely upon what I conceive to be general rules of the law that are without any dispute. The dispute, of course, arises in my application of them. The rule of law is perfectly settled that a contract will be implied where from all the facts and circumstances the circumstances and the dealings of the parties the jury might as reasonable men infer that the party on one side expected to be paid and the party on the other side expected to make payment. Now, in this case all that appears so far as I have listened to the evidence—and I have listened very intently—is that a lot of creditors got together, and representatives of those creditors were present, dealing with respect to realizing on assets, and in the ordinary method with which most people are familiar with appointed a committee, which is what creditors ordinarily do, for the purpose if possible of realizing upon the assets; and that committee it is true in this case did a considerable amount of work, but that there was any expectation on the part of these creditor banks to make payment for those services or that there were any facts from which such an inference can be drawn seems to me to be perfectly plain—that there are no such facts. I cannot find any point at which it may be said that the relation which Mr. Robinson bore to the matter that was going forward when he first sent his representative there was changed. When his representative went there he went there as the agent of Mr. Robinson, who clearly and indubitably was engaged by and represented the Merchants Exchange National Bank of New York, and I find no point in the evidence at which a mere design of having a committee appointed in the ordinary fashion to carry out the realization of the assets was ever changed to an employment. The likeness which has been said to exist between the engagement of Edwards &

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Motion for Non-Suit.

Smith and the appointment of a committee seems to me to be conspicuously without any foundation whatever. Edwards & Smith were lawyers, they were called in as lawyers to do law work, and the only inference that it seems to me is possible to be drawn from the calling in of those men, not at the creditors' meeting but calling them in in the clear position of hired attorneys—how that can be likened in any way to the appointment of a set of representatives of the creditors who have voluntarily got together—I say how such a likeness can be drawn, I do not see. I find no possible similarity between the employment of Edwards & Smith and the appointment by the creditors themselves, by a vote, when they were meeting, of a committee of themselves and of their own number to carry out this proposed project, and if at any time Mr. Robinson or anyone who had been appointed on that committee found that the duties were becoming to onerous or too burdensome or that they were of such a character as to entail more than the ordinary work that a committee would be likely to perform in realizing assets, it was his right, and he had the clear opportunity to have said right, then and there to the men who held in their hands the disposition of pay for services, "I want to insist that I shall be paid for what I am doing by these banks for whom as their committee representative I am doing it; I am no longer a mere committeeman appointed at a voluntary meeting, but I am the hired servant of these people and expect to be paid for what I have done." And I reach this conclusion with the greater readiness because if this inference is drawable from the facts in this case, why, any committee that is appointed by creditors to do work, no matter how slight, in realizing upon assets, as the representatives of creditors other than themselves who have gotten together as a committee to realize upon assets, would be entitled to charge for it, and I think it is against the whole trend of ordinary observation and experience that such a liability will be inferred from the mere fact that they are appointed by the general body of creditors to do work in realizing upon assets. One of the most pertinent facts to be borne in mind in support of the position which I take in this matter is that when this committee was first appointed to do this work on behalf of the creditors it did not appear that the amount of work to be done was to be very considerable. The great amount of labor to which the plaintiff has testified was entirely unexpected and grew

Notice of Appeal.

out of circumstances which were utterly unknown and unexpected at the time of his appointment.

For the reasons that I have just briefly indicated, I grant the non-suit and, of course, will allow the counsel for plaintiff an objection in the nature of an exception to that proceeding.

(Objection noted by Mr. McCarter.)

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Notice of Appeal.

Filed March 20, 1919.

To Messrs. Edwards & Smith, and Carrick & Wortendyke, attorneys of defendants, Lincoln Trust Company of New Jersey, First National Bank of Jersey City, Union Trust Company of New Jersey, Second National Bank of Hoboken, Boonton National Bank of Boonton and Merchants National Bank of Newark.

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Messrs. Collins & Corbin, attorneys of defendants, The Trust Company of New Jersey and Hudson County National Bank.

Messrs. Goodell & Goodell, attorneys of defendants, Essex National Bank of Montclair and Bank of Montclair.

Sirs:

TAKE NOTICE that the plaintiff appeals from the whole of the judgment entered in this cause (judgment of non-suit) in the New Jersey Supreme Court, Hudson Circuit, to the Court of Errors and Appeals.

30

McCARTER & ENGLISH,
HENRY CROFUT WHITE,
Attorneys of Plaintiff.

Dated March 5, 1920.

Due and legal service acknowledged this 6th day of March, 1920.

EDWARDS & SMITH,
CARRICK & WORTENDYKE,
Attorneys of Defendants, Lincoln Trust Company of New Jersey, First National Bank of Jersey City, Union Trust Company of New Jersey, Second National Bank of Hoboken, Boonton National Bank of Boonton and Merchants National Bank of Newark.

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Notice of Appeal.

Due and legal service acknowledged this 6th day of March, 1920.

COLLINS & CORBIN,
Attorneys of Defendants, The Trust Company of New
Jersey and Hudson County National Bank.

10

Due and legal service acknowledged this 11th day of March, 1920.

GOODELL & GOODELL,
Attorneys of Defendants, Essex National Bank of Mont-
clair and Bank of Montclair.

Filed March 20, 1920.

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Grounds of Appeal.

Grounds of Appeal.

Filed March 20, 1919.

New Jersey Court of Errors and Appeals

SETH B. ROBINSON,

Plaintiff-Appellant,

vs.

LINCOLN TRUST COMPANY OF NEW JERSEY,
FIRST NATIONAL BANK OF JERSEY CITY,
HUDSON COUNTY NATIONAL BANK, JERSEY
CITY,

UNION TRUST COMPANY OF JERSEY CITY,
TRUST COMPANY OF NEW JERSEY,
SECOND NATIONAL BANK OF HOBOKEN,
ESSEX NATIONAL BANK OF MONTCLAIR,
BANK OF MONTCLAIR.

BOONTON NATIONAL BANK OF BOONTON,
MERCHANTS NATIONAL BANK OF NEWARK,
LINCOLN TRUST COMPANY OF NEW YORK,
METROPOLITAN BANK OF NEW YORK,
HUDSON TRUST COMPANY OF NEW YORK,
ATLANTIC NATIONAL BANK OF NEW YORK,
FIFTH NATIONAL BANK OF NEW YORK,
CHEMUNG CANAL TRUST COMPANY OF EL-
MIRA, N. Y.,

ADAM GROBHZ, as executor under the
last will and testament of BERNARD GROB-
HOLZ, deceased,

Defendants-Respondents.

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Action at Law.

*Grounds of
Appeal.*

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The appellant states the following grounds of appeal.

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That the evidence disclosed a cause of action and the Court erred in directing a non-suit.

McCARTER & ENGLISH,
HENRY CROFUT WHITE,
Attorneys of Plaintiff-Appellant.

Grounds of Appeal.

Due and legal service acknowledged this 6th day of March, 1920.

EDWARDS & SMITH,
CARRICK & WORTENDYKE,

10 Attorneys of Defendants, Lincoln Trust Company of New Jersey, First National Bank of Jersey City, Union Trust Company of New Jersey, Second National Bank of Hoboken, Boonton National Bank of Boonton and Merchants National Bank of Newark.

Due and legal service acknowledged this 6th day of March, 1920.

COLLINS & CORBIN,

20 Attorneys of Defendants, The Trust Company of New Jersey and Hudson County National Bank.

Due and legal service acknowledged this 11th day of March, 1920.

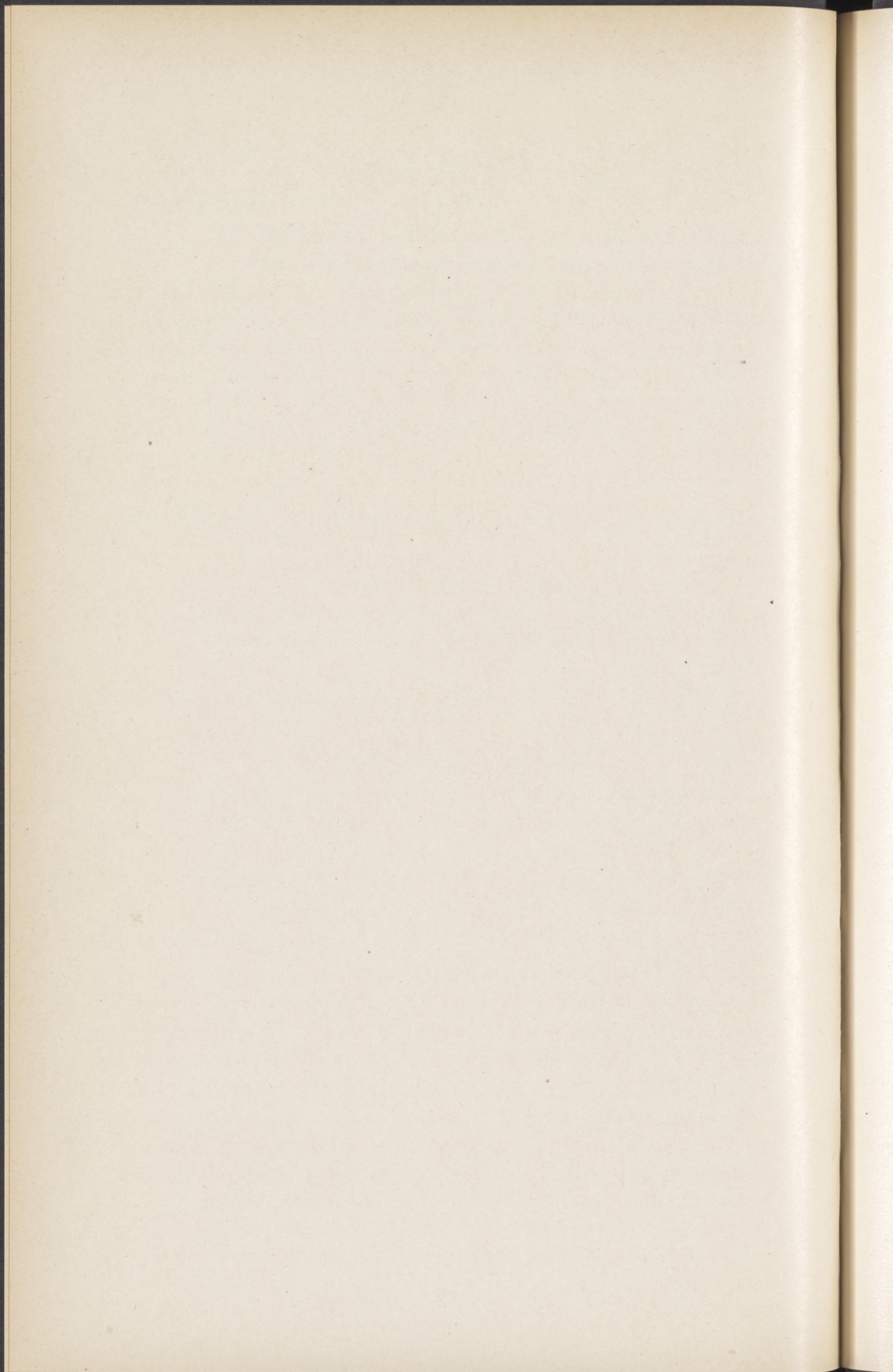
GOODELL & GOODELL,

Attorneys of Defendants, Essex National Bank of Montclair and Bank of Montclair.

30 Filed March 20, 1920.

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Plaintiff's Exhibit No. 3.

PLAINTIFF'S EXHIBIT NO. 3.

AGREEMENT made this ——— day of June, 1912, by and between The Merchants Exchange National Bank of New York, German Exchange Bank of New York, The Fifth National Bank of New York, Lincoln Trust Company of New York, Metropolitan Bank of New York, West Side Bank of New York, The Boonton National Bank of Boonton, N. J., The Bergen-Lafayette Trust Company of Jersey City, N. J., Lincoln Trust Company of Jersey City, N. J., The Hudson National Bank of Jersey City, N. J., The Essex National Bank of Montclair, Montclair, N. J., The Second National Bank of Hoboken, N. J., Bank of Montclair, Montclair, N. J., The First National Bank of Jersey City, N. J., and such other financial corporations as may become parties hereto by executing this agreement (for the sake of brevity hereinafter called the "Banks"), parties of the first part; and Edward J. Dunn of the Chemung Canal Trust Company of Elmira, New York, Edwin M. Farrier of the said Lincoln Trust Company of Jersey City, N. J., Seth B. Robinson, attorney for the said The Merchants Exchange Bank of New York, and Edward I. Edwards of the said The First National Bank of Jersey City, N. J. (hereinafter called "The Committee"), parties of the second part; The South Georgia Lumber Company, a corporation of the State of Georgia (hereinafter called the "Lumber Company"), party of the third part; and Maynard A. Cheney, individually and as president of said Lumber Company, party of the fourth part.

WHEREAS said Banks and said Lumber Company are creditors in a large amount of the Chas. R. Partridge Lumber Company, a New Jersey corporation, now in the hands of a receiver in Bankruptcy (hereinafter called the "Bankrupt"); and

WHEREAS it appears from the peculiar nature of the assets of said bankrupt, that if said assets be sold at forced sale by a Receiver or Trustee in Bankruptcy a great and unnecessary loss and damage will be suffered by said Banks and Lumber Company and the other creditors of said Bankrupt and much less will be realized therefrom than if the same be taken over by a going concern and disposed of in the regular course of business; and

Plaintiff's Exhibit No. 3.

WHEREAS the said Banks and Their Committee propose to purchase from said receiver or trustee of said Bankrupt all the assets and property of said Bankrupt; and

10 WHEREAS said Lumber Company and said Cheney propose to purchase from the Banks or from the Committee all of such assets and property according to the terms hereinafter set forth; and

WHEREAS it appears to be for the best interests of all concerned that said offer of said Lumber Company and said Cheney be accepted; and

20 WHEREAS the parties of the second part were at a meeting of the duly accredited representatives of all said Banks held in the office of The First National Bank of Jersey City, N. J. on the 1st day of June, 1912, unanimously constituted a committee in behalf of the Banks to assist said Cheney and said Lumber Company in carrying out their said proposal and to do such other acts and things in and about the premises as will protect the interests of the Banks;

30 NOW, THEREFORE, in consideration of the premises and of the benefits to accrue to each and all of the parties hereto through the faithful performance of this agreement, and in further consideration of the separate execution hereof by all the said corporations and individuals who shall join herein on or before June 22d, 1912, as parties as aforesaid, all of the said parties executing this agreement have agreed and do hereby jointly and severally agree, each with the other as follows:

40 FIRST: The Banks will immediately commence negotiations for the purchase of the assets and property of the Bankrupt at the best prices for which the same may be obtained and, upon making with the receiver or trustee a contract for such purpose, to be approved by the Court, will at once notify said Cheney, who will thereupon immediately cause to be organized under the laws of the State of New Jersey a new corporation to take over said assets and property. The Board of Directors of said new corporation, at all times until the notes or obligations given hereunder are paid in full with interest as herein provided, shall consist of at least five members, two-fifths of whom shall be named by said Cheney and three-fifths of whom shall be chosen by said Cheney from a list of ten names proposed for

Plaintiff's Exhibit No. 3.

that purpose by the Committee. In case said Cheney shall neglect or refuse to name said two-fifths or to choose three members from the list submitted, then the Committee shall have full power to select the same. To insure the faithful performance of this agreement and until the fulfillment thereof fifty-five per cent. of the stock of the said new corporation shall be deposited with the Committee or the voting power of the same shall be placed in the hands of three voting trustees approved by the Committee.

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SECOND: The Banks executing this agreement promise and agree, each for itself and not one bank for any other bank, to contribute the money necessary to carry into effect such purchase of said bankrupt's assets and property and to pay for the same a sum not exceeding \$125,000., each of said banks to contribute pro rata such proportionate amount of said purchase money as the amount of its claims against said Bankrupt to be paid or guaranteed hereunder bears to the aggregate amount of the claims of the Bankrupt's so to be paid or guaranteed, but any bank executing this agreement may withdraw therefrom before the Committee shall have contracted to purchase said assets and property, unless banks holding at least seventy-five per cent. of the direct and at least twenty-five per cent. of the contingent obligations of the Bankrupt held by all the banks named herein shall have joined in the execution hereof.

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THIRD: The Lumber Company and said Cheney agree that the said new corporation will receive said assets and property from the Committee and will pay therefor in the following manner:

30

(a) By making and delivering to each of the contributing banks its promissory notes for the full amount of the unpaid notes of the Bankrupt now held by each of the contributing banks and hereinafter set forth by them, respectively, in the list of direct and contingent liabilities of said Bankrupt;

(b) By guaranteeing to each of the contributing banks the payment of such commercial paper endorsed by the Bankrupt as it shall be impossible for said Banks to enforce payment of from the respective makers thereof, such guarantee to be limited to the amount stated by said Bank in said list of contingent liabilities, said new corporation to make and deliver to each of said contributing

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Plaintiff's Exhibit No. 3.

banks, as security for such uncollectible commercial paper held by each contributing bank, respectively, as set forth under the head of contingent liabilities in said list of direct and contingent liabilities of said Bankrupt.

10 (c) By making and delivering to each contributing bank its promissory notes for the amount of money contributed by said bank toward the said purchase of the assets and property of the Bankrupt.

All said notes described under (a), (b) and (c) shall be made for periods of not exceeding 4 months each and shall bear interest at the rate of 6 per cent. per annum, which interest shall be paid at the time of each renewal. Said notes to be endorsed by said South Georgia Lumber Company and said Maynard A. Cheney, respectively, and secured by a mortgage or deed of trust in the ordinary form to be approved by the
20 Committee, to a trustee satisfactory to the Committee, pledging all the assets and property so to be purchased of the Bankrupt's estate as herein provided and all replacements and substitutions thereof, which mortgage or deed of trust shall in apt language insure to said new corporation the extension from time to time of the date of maturity of said promissory notes until the same shall be fully paid and for the payment thereof from time to time by the liquidation of said assets and property purchased as aforesaid, provided, however, that such renewals shall not
30 extend the date of final payment of said notes for more than two years from the date hereof without the written consent of the banks then holding such notes secured under said mortgage or deed of trust. Said mortgage or deed of trust shall further provide that the moneys received by such new corporation from the sale of any assets or property purchased as aforesaid and from replacements and substitutions shall be applied to the reduction of its promissory notes without preference or priority in payment of the claim of one bank over any other bank, and each bank agrees that all dividends or payments on account of
40 indebtedness or on account of the notes specified under (a), (b) and (c), of this agreement, from whatever source received (except interest) shall be applied to the reduction of the indebtedness of said new corporation on said notes. Each of the banks joining in this agreement shall prove its claim upon the notes now held by it against said bankrupt and all endorsers and

Plaintiff's Exhibit No. 3.

guarantors thereof, and the amounts so collected by said Banks shall by them be credited upon the notes of the said new corporation given to them for their direct liabilities and after the payment of the portion of the contingent liability treated by them as collectible, to credit the balance to the notes of said new corporation given to guarantee their contingent liability. Each of said banks parties hereto states and represents that the direct and contingent liabilities to it of the Bankrupt which it expects such proposed new corporation to assume or guarantee and which it uses as a basis for calculating its proportionate contribution to the purchase of the assets and property of the Bankrupt from the said received as provided hereunder is as follows:

| Banks | Liabilities of the Bankrupt | | |
|--|-----------------------------|----------------------|-------------------------|
| | Direct | Contingent | |
| The Merchants Exchange | | | (Struck out 20 |
| National Bank of New York | \$ None | \$10,000.00 | in pencil) |
| German Exchange Bank of New York | | | |
| The Fifth National Bank of New York | 5,000. | \$4490.47 | |
| Lincoln Trust Company of New York | 1,978.75 | 440. | |
| Metropolitan Bank of New York | 1,500. | 700. | (in pencil) |
| West Side Bank of New York | | 5800. | " " 30 |
| The Boonton National Bank of Boonton, N. J. | | 7641.99 | (Struck out in pencil) |
| The Bergen-Lafayette Trust Company of Jersey City, N. J. | \$3500. | | |
| Lincoln Trust Company of Jersey City, N. J. | 18600. | \$2440.00 | |
| The Hudson County National Bank of Jersey City, N. J. | | | |
| The Essex National Bank of Montclair, N. J. | 4900. | | 40 |
| Bank of Montclair, N. J. | 8503.16 | | |
| The Second National Bank of Hoboken, N. J. | 4000.00 | 3641.29 | |
| | | (5063.18) | } pencil (approximate)} |
| | | (approximate) | |

Plaintiff's Exhibit No. 3.

| | | | |
|----|---|------------|----------|
| | The First National Bank of Jersey City, N. J. | 7070. | 20000.00 |
| | Union Trust Company of Jersey City, N. J. | None | 2500.00 |
| | W. S. McCord | | |
| 10 | Chemung Can. T. Co. | struck out | 2475. |
| | | in pencil | 500. |
| | | 25000. | |
| | | 1000. | |
| | Hudson County National Bank of Jersey City, N. J. | | 34000. |
| | Hudson Trust Company New York City ink | | 4000. |
| | E. F. Maguire (Federal Trust) | | 4250. |
| 20 | Bank of Montclair T. W. Stephens Prest | | 8503.16 |
| | B. Grobholz | | 7300. |

and no bank party hereto shall be compelled to contribute or shall receive in return for its contribution a greater proportion than the amount of its claim herein listed bears to the claims of all said banks against the Bankrupt so listed.

30 FOURTH: Nothing herein contained shall be construed as requiring The Committee to purchase the assets of the Bankrupt unless they deem it advisable so to do.

FIFTH: In case The Committee shall deem it advisable for business purposes not to demand a trust deed or mortgage but instead to take an assignment of fifty-five per cent. of the capital stock of the new corporation for the purpose of absolute control until the fulfillment of this agreement, the Committee is hereby authorized so to do.

40 SIXTH: In the participation of the proceeds of sale of the assets and property of the bankrupt to be purchased and disposed of by the new corporation as herein provided and in all matters pertaining to this agreement, any obligation which the South Georgia Lumber Company held against the Bankrupt's estate shall be subordinate to the rights of the banks joining in this agreement, and all dividends or payments received by the

Plaintiff's Exhibit No. 3.

said South Georgia Lumber Company from said Bankrupt's estate upon that portion of its claim against said estate in excess of \$34,500. shall be applied pro rata in payment of said notes of said new corporation and the Committee shall thereupon out of the property purchased, return to said South Georgia Lumber Company the \$50,000. of its capital stock and its promissory notes for \$13,500. now in possession of said receiver. In order to facilitate the execution of this agreement the same may be simultaneously executed in ten counterparts, each of which so executed shall be deemed to be an original and such counterparts shall together constitute but one and the same instrument.

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IN WITNESS WHEREOF the individual parties hereto, and the corporations parties hereto by their proper officers thereunto duly authorized have executed this agreement this.....day of June, 1912.

The First National Bank of Jersey
City, N. J.

20

By E. I. Edwards Cashier

Lincoln Trust Co. of New Jersey

By Ed. M. Farrier Prest.

Lincoln Trust Co. of New York

By Owen Ward Vice Pres't

Merchants Exchange National Bank
of the City of New York

Ed. Cheney V. Pres.

30

The Bergen Lafayette Trust Company

Wm. C. Heppenheimer President

Merchants National Bank, Newark, N. J.

J. S. Treat, Vice Pt. & Cashier

Fifth National Bank, N. Y.

Wm. S. Beckley Cashr.

Hudson County National Bank of
Jersey City, N. J.

N. J. H. Edge, Cashr.

40

The Second National Bank of Hoboken

A. N. Terbell Cashr

The Essex Nat. Bank of Montclair

H. R. Simonson Cashr.

Plaintiff's Exhibit No. 3.

W. S. McCord

Chemung Canal Trust Co. of Elmira, N. Y.
by E. J. Dunn Secy & Treasurer

South Georgia Lumber Co.
by M. A. Cheney Prt.

10

Maynard A. Cheney

E. F. Maguire

Bank of Montclair
T. W. Stephens Prest

B. Grobholz

Union Trust Co. of New Jersey, Jersey
City

I. G. Hasking, Tr. Secy

20

Metropolitan Bank
A. C. Corby Cashier

Boonton National Bank
E. A. Fisher Cashier

Hudson Trust Co. New York City
L. H. Holloway,
Vice President

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Whereas, under the terms of an agreement between certain Banks and Trust Companies, the party of the first part, Edward J. Dunn, of Elmira, New York, Edward I. Edwards of Jersey City, and Edwin M. Farrier of Jersey City, New Jersey, called "The Committee", party of the second part, the South Georgia Lumber Company, a corporation of the State of Georgia, party of the third part, and Maynard A. Cheney, party of the fourth part, the said party of the second part is limited to paying \$125,000. for the assets of the Charles R. Partridge Lumber Company in bankruptcy, and

40

Whereas, the said party of the second part offered through Mr. Edward J. Dunn the sum of \$126,150. for the assets of the said Charles R. Partridge Lumber Company which offer was accepted by the Referee in bankruptcy on August 19th, 1912, and

Whereas, the said Edward J. Dunn for good and sufficient reasons purchased the said assets in his own name and is willing to assign the purchase to certain parties for the protection of the parties of the first part.

Plaintiff's Exhibit No. 3.

Now, therefore, be it known that we, the Banks and Trust Companies, subscribers to the original agreement, hereby ratify and confirm the purchase by the said Edward J. Dunn and others the amount stated as a limit in Section 2, page 3, of said agreement to be increased to \$127,912.40.

| | |
|---|----|
| Essex Nat. Bank Montclair, N. J. H. R. Simonson Cshr. | 10 |
| Lincoln Trust Co. J. C. by Ed. M. Farrier Prest. | |
| Fifth National Bank N. Y. City by Geo. A. Lacas Pt? | |
| Lincoln Trust Company (N. Y.) Bowers & Sands | |
| South George Lumber Co. by M. A. Cheney Pt. Maynard A. Cheney (On Margin) | 20 |
| W. S. McCord | |
| Chemung Canal Trust Co. by E. J. Dunn Treas. | |
| First Natl Bank of Jersey City N J E. I. Edwards Cashier | |
| B. Grobholz | 30 |
| Union Trust Co. of New Jersey, Jersey City. by I. G. Hasking Treas. | |
| Bank of Montclair T. W. Stebbins Prest. | |
| Metropolitan Bank A. C. Corby Cashier. | |
| Hudson County N. Bank N. J. H. Edge Cashr. | 40 |
| The Second Nat. Bank of Hoboken by F. N. Eberhard Atty in fact E. J. Maguire | |
| Boonton National Bank E. A. Fisher Cash? | |

Plaintiff's Exhibit No. 4.

PLAINTIFF'S EXHIBIT NO. 4.

10 This memorandum of agreement entered into this 12th day of December, 1914, by and between Edward I. Edwards, Edward J. Dunn, Seth B. Robinson and Edwin M. Farrier, a committee representing certain creditors of the Interstate Lumber Company, under a certain agreement dated June, 1912, hereinafter called "The Committee", the Interstate Lumber Company (a corporation of the State of New Jersey), hereinafter called "The Interstate", M. A. Cheney, hereinafter called "Cheney", and the South Georgia Lumber Company (a corporation of the State of Georgia), hereinafter called "The South Georgia",

WITNESSETH,

20 1. The South Georgia will sell at invoice price to The Interstate all the lumber now in the yards of The Interstate consigned to The Interstate by The South Georgia, less freight charges and demurrage paid by The Interstate.

30 2. The Interstate will deliver to The South Georgia its notes in payment of said lumber and also for any balance that may be found to be due for consigned lumber already sold and not yet paid for, less any counter charges in favor of The Interstate, the amount and nature of such counter charges to be determined by The Committee; the said notes to be in such amounts as The South Georgia may request, but for a period of time not less than 125 days from their date.

3. The Interstate will convey to The Committee as trustees for the associated banks all the lumber now on hand in its yards owned by it or acquired as above from The South Georgia with insurance to cover the same, all cash on hand, all bills receivable and all other claims of whatever nature it now has except the above accounts which came to The Interstate among the assets of the Charles R. Partridge Lumber Company.

40 4. Cheney will deliver to The Committee \$120,000. par value of the series "C" notes of the Southern Seaboard Lumber Company payable \$24,000. annually on October 1st of each year for five years beginning October 1st, 1920, all of such notes to be endorsed by Cheney and to bear interest at the rate of 6% per annum, payable semi-annually on the 1st day of April and October. He will also deliver at the same time to the said

Plaintiff's Exhibit No. 4.

Committee \$60,000. par value of the 6% cumulative preferred stock and \$60,000. par value of the common stock of the Southern Seaboard Lumber Company.

5. The Committee on receipt of the above "C" notes and property, will deliver to Cheney 825 shares of the stock of The Interstate held by The Committee under the agreement of June, 1912, and will deliver to The Interstate for cancellation \$120,000. (including interest to October 1st, 1914), of the notes of the Company now held by the parties to such agreement for "direct" and "contingent" liability, amounting with interest, to about \$133,000., and the said notes shall be at once cancelled; and will deliver to The Interstate for cancellation as the same are paid out of the assets and conveyed to them the balance of said notes for "direct" and "contingent" liability, amounting to about \$13,000. and the notes (of) that company now held by the parties to such agreement for "new money" amounting, to about \$67,000. (the two amounting to about \$80,000.) and the said notes shall be at once cancelled. The Committee reserves the right to sell all or any part of said "C" notes; and if they sell any during the time Cheney has the right to redeem the said stock of the Southern Seaboard Lumber Company such notes so sold shall be treated as so many "C" notes paid by Cheney and he will comply with his part of the agreement by paying those still in the possession of The Committee and The Committee will comply with their part of the agreement by delivering those still in their possession. The Committee will also deliver to The Interstate the notes on which the Charles R. Partridge Lumber Company appear as maker or endorser and for which The Interstate notes for "direct" and "contingent" liability will (be?) given, and any collections received thereon after the date of this agreement shall be credited as received on the said \$80,000.

6. The Interstate will lease to The Committee the use of the portion of its yards now occupied by lumber on hand for a period of one year at a rental of \$1. for the storage of lumber so conveyed to the said Committee and on the completion of the payment of said \$80,000. said Committee shall cancel said lease. The Interstate agrees to sell said lumber and collect the accounts receivable at the earliest possible moment and turn over to said Committee all checks and other proceeds received in

Plaintiff's Exhibit No. 4.

10 payment thereof and for said services and all other services
necessary in connection with the sale and delivery of said lum-
ber and the collection of said accounts and bills to receive in
full payment 10% of the amount as collected on the present ac-
counts and bills receivable and 15% of the amount as collected
on the sales of lumber hereinafter made. The lumber is not to
be sold by The Interstate at a concession of more than 10%
below its current retail selling prices without the approval of
The Committee and The Committee reserves the right to pass
on the credit of purchasers, but without assuming any responsi-
bility therefor. The said Committee reserves the right to sell
the said lumber and to collect the said accounts whenever it
deems it advisable so to do, but the said Committee will not
sell said lumber during 90 days from the date of this agreement
at less than 10% below the current retail prices without the
20 approval of said Cheney. In case of all such sales, The Inter-
state agrees to make deliveries at cost.

7. The Committee will place a representative in the office of
The Interstate for the purpose of looking after and protecting
its interests, and that Company will pay his salary not to ex-
ceed \$500. per month and expenses until such time as the sales
of said lumber so conveyed to The Committee shall amount to
\$55,000. sale price, or said \$80,000. has been paid in full, such
payment to the Committee's representative to be at the expense
of The Interstate, but to be made by The Committee out of the
30 moneys received from the accounts and bills receivable and new
sales of lumber now on hand and is additional to \$80,000. to
be paid out of said accounts and bills receivable and lumber.

8. The Committee will deliver to Cheney the resignations
of Mr. Farrier, Mr. Dunn and Mr. Robinson as officers and
members of the Executive Committee of The Interstate and shall
cause them to vote for such officers and members as Cheney may
designate and as soon as the notes for the "new money" and
the balance of the "direct" and "contingent" notes over and
above the \$120,000. are paid, their resignations as Directors,
40 and Cheney will agree to retain them as Directors until said
"new money" notes and the "direct" and "contingent" notes as
above stated and the other items to be paid under this agreement
by The Committee out of the proceeds of the lumber and ac-
counts and bills receivable are paid in full.

Plaintiff's Exhibit No. 4.

9. The Committee, as soon as all the notes for "new money" and the balance of "direct" and "contingent" liability amounting in the aggregate to about \$80,000. have been paid in full and the other items to be paid under this agreement by The Committee out of the proceeds of the lumber and accounts and bills receivable agree to reconvey to The Interstate any and all lumber, uncollected accounts and bills receivable and all other claims referred to in paragraph "Three" hereof not yet collected at the time of such final payment. 10

10. If Cheney pays or causes to be paid within two years from December 1st, 1914, the \$120,000. of "C" notes and at the same time pays to The Committee the sum of \$20,000. (towards?) the expenses of The Committee, the Committee will deliver to Cheney the \$60,000. par value of common stock of the Southern Seaboard Lumber Company. If Cheney requests an extension of time for these payments, The Committee will agree to grant an extension for one year upon the payment to The Committee of the sum of \$2,000. for that privilege and if he asks a further extension The Committee will agree to extend the time of payment for another year upon a like payment for such privilege and if he asks for a third extension, The Committee will agree to a further extension for one year upon a like payment for the privilege, but if the above option to redeem said stock as herein provided is not exercised within two years from December 1st, 1914, or within any extension thereof as herein provided, the said stock shall become at once the absolute property of the Committee. 20 30

11. The Interstate may continue to carry on its business of buying and selling new lumber without interference or control on the part of the Committee.

12. The Interstate shall not make any mortgage on its property other than the mortgage of Real Estate referred to in the proposal by Cheney made to the Southern Seaboard Lumber corporation at a meeting of the Board of Directors of the Southern Seaboard Lumber Corporation held November 17th, 1914, until the payment in full of the "new money" obligations and balance of "direct" and "contingent" liabilities, over and above the \$120,000. 40

Plaintiff's Exhibit No. 4.

13. The litigation instituted by The Interstate against the South Georgia and against Mr. Cheney and Mr. Jackson shall be discontinued and The Committee agrees for itself and the Banks that all measures which are practicable shall be taken forthwith to bring about the termination of all litigation now
 10 pending against those parties and instituted by The Committee or any of the associated banks. All expenses of such litigation not to exceed \$500. shall be paid by The Committee out of moneys received on accounts and bills receivable and new sales of lumber now on hand and the amount thereof added to the total amounts to be paid out of said accounts and bills re-
 ceivable and lumber.

20 In Witness Whereof the parties hereto have hereunto set their hands and seals all as of the day and year first above written at Jersey City in the State of New Jersey. All the transfers herein provided for are to be made at the earliest possible date, but in no event later than December 31st, 1914.

(Sd.) E. J. Edwards
 Edward J. Dunn
 Seth B. Robinson
 Edwin M. Farrier } COMMITTEE

Interstate Lumber Co.
 by Seth B. Robinson President

30 (SEAL)

Attest

Edwin M. Farrier Secy.

Maynard A. Cheney
 South Georgia Lumber Co.
 by M. A. Cheney Pt.

(SEAL)

Attest

40 B. Cheeney
 Secy.

Witness to all of the above signatures

Edgar R. Alpaugh

Plaintiff's Exhibit No. 5.

PLAINTIFF'S EXHIBIT NO. 5.

We, the undersigned Banks being parties to a certain agreement dated June, 1912, hereby authorize the Committee to take all necessary steps to carry into effect the plan outlined in the letter of April 14, 1914, regarding the payment of the notes of The Interstate Lumber Company given for money furnished to purchase the assets of the Charles R. Partridge Lumber Company and for the indebtedness to the Banks by the said Charles R. Partridge Lumber Company.

Dated Jersey City April 16th, 1914.

Bank of Montclair

T. W. Stephens Prest.

The First National Bank of Jersey City

E. I. Edwards Cashier.

Lincoln Trust Co. New York

Owen Ward Vice Pt.

The Boonton National Bank of
Boonton, N. J.

E. A. Fisher (or Ficker) Cashr.

The Second Natl Bank of Hoboken, N. J.

A. N. Terbell Cashier.

Union Trust Co. of N. J., Jersey City, N. J.

B. F. Hendrickson Atty.

The Trust Company of New Jersey,

Joseph Harrison 4th Vice Pres.

Metropolitan Bank N. Y.,

Henry Misheimer Pres.

Essex Natl Bank, Montclair, N. J.

H. R. Simonson Cashr.

Fifth Natl Bank New York

E. E. Hall Pres.

Chemung Canal Trust Co. Elmira, N. Y.

by E. J. Dunn Treas.

Merchants Exchange National Bank
of New York City

by Seth B. Robinson

10

20

30

40

Plaintiff's Exhibit No. 5.

Hudson County National Bank of
Jersey City, N. J.

N. J. H. Edge Vice Prest.

Estate of B. Grobholz,
Adam Grobholz, Admr.

10

Merchants National Bank, Newark, N. J.
A. L. Phillips, Cashier.

Lincoln Trust Co. of New Jersey
by E. M. Farrier Prest.

Hudson Trust Co. N. Y.
by (L. H. Hull Secy
Vice Prest.)?

20

30

40

Exhibit P. 10.

EXHIBIT P. 10.

Jersey City, N. J., April 11, 1914.

Gentlemen:

It is now a year and a half since the Interstate Lumber Company was started to take over the assets of the Charles R. Partridge Lumber Company under the agreement dated June, 1912, to which you are a party. 10

Your Committee has kept in close touch with the business of this new concern and three of its members have acted as three of its five Directors.

At the start your Committee took the position that this new concern should incur no liabilities for new lumber and that all the moneys realized from the sale of lumber purchased from the Partridge Company should as far as the running expenses would allow, be paid at once to the Banks on account of the Partridge indebtedness. 20

To supply the new lumber necessary in carrying on the business of the new Company, the South Georgia Lumber Company agreed to procure all necessary new lumber and to place the same in the yards on consignment to be paid for when, and as sold. It was expected also, that the South Georgia Company would ship its product of soft lumber to the new Company for sale.

In other words, the South Georgia Lumber Company was really to finance the new Company and all net proceeds of the sale of old lumber and profits on new lumber were to be used to pay off the Bank's claims. 30

This and other needs of the South Georgia Lumber Company required a large amount of new capital and it was part of the original plan presented to your Committee when it took over the assets of the Partridge Lumber Company that the South Georgia Lumber Company would sell some \$200,000 of bonds for this purpose.

Conditions have been such that the South Georgia Lumber Company alone has been unable to raise the necessary new capital and has been unable to operate its mills so as to furnish large quantities of soft lumber to the new concern or properly finance the purchase of new hard lumber. 40

It became clear the early part of this year that unless some other arrangement could be made, the Banks could not hope to

Exhibit P. 10.

be paid out of the earnings of the Interstate Lumber Company, but would be forced to look for a large part of their indebtedness to the endorsers on their paper, namely: Maynard A. Cheney and the South Georgia Lumber Company.

10 In the statements of the estimated financial standing of these endorsers presented to your Committee at the time of the purchase of the Partridge assets, the South Georgia Lumber Company showed assets of \$340,637.26, and Mr. Cheney including his ownership of stock in that Company and money due him by that Company showed assets of \$482,500. Boiled down, these assets largely represent an estimated value of uncut timber, much of which is merely under contract subject to periodic payments and all of which is subject to prior liens of about \$150,000.

20 Your Committee is working with Mr. Cheney to bring about some arrangement which will insure the payment in full of the indebtedness due to the Banks without resorting to the drastic and possibly uncertain plan of collecting from such assets and in this communication outlines a plan which your Committee recommends to the Banks.

30 Before taking up this plan, your Committee wish to call to your attention that in addition to the 20% in dividends received from the Trustee in Bankruptcy by the Banks on the old indebtedness of Partridge, one year and eight months' interest has been paid on the old notes which would equal 10% additional already received, while there are still certain sums in the hands of the Trustee in Bankruptcy of the Partridge Company. The Committee is of the opinion that if the assets had not been purchased by the Banks as they were, that less than 10% in total dividends would have been realized from the Bankruptcy proceedings.

40 Forty-five per cent. of the money advanced to purchase the Partridge Assets has been repaid to the Banks together with 6% interest from the time that the new money was advanced up to the present time and there are ample assets in the hands of the Company to pay the remaining 55% of new money.

The new Company has been conducted at the lowest expense possible and Mr. Cheney has served as President and General Manager without any compensation. Notwithstanding this, the business is now running at a loss through lack of capital and unless some means of increasing the business can be devised,

Exhibit P. 10.

this loss will soon deplete the assets now held to provide for the payment of the indebtedness due to the Banks.

To meet the need of more capital and increase business, two concerns propose to consolidate with the South Georgia Lumber Company and form a corporation with capital of \$1,750,000, fully paid, and issue \$600,000 of ten year bonds secured by a mortgage on all their assets. These bonds are issued on the basis of \$2.00 per thousand on the Company's stumpage and a sinking fund is provided on the basis of \$3.00 per thousand. The Corporation will start with 300,000,000 feet of standing timber which it will own outright and will control about 50,000,000 feet additional, thus insuring a cut for its mills for a period of more than ten years. 10

These bonds are to be sold later, but to provide present cash, a Trust Company has agreed to take \$300,000 of Series A notes at 90%, secured by the above bonds. 20

A second issue of \$150,000 Series B notes is to be issued as part payment of prior liens now on the properties of the Companies going into the consolidation. The money received from the Trust Company is to be used to pay off prior liens and for working capital.

Series A and B notes are payable in 1, 2, 3, 4 and 5 years and the sinking fund more than provides for them.

It is now proposed to give to your Committee for the benefit of the Banks Series C notes equal in amount to the old indebtedness due to the Banks still unpaid payable 6, 7, 8, 9 and 10 years and provided for by the sinking fund; Series A, B and C notes are all secured by the mortgage. The bonds mentioned can only be sold en block and when sold must retire the A, B and C notes. 30

The balance of the money advanced to purchase the Partridge assets will be paid out of the assets of the Interstate Lumber Company.

In addition, the Committee will receive the amount of preferred stock of the new Company equal to 50% of the old indebtedness and an equal amount of common stock with the understanding that it will be returned to Mr. Cheney provided the Series C notes are paid within two years. 40

The present notes given for the money advanced to purchase the Partridge assets are to be exchanged for similar notes without the endorsement of the South Georgia Lumber Company, and these are to be paid in cash at an early date.

Exhibit P. 10.

The notes given for the old indebtedness are to be surrendered to your Committee who will cancel them and the banks will receive from the Committee certificates of equal amount representing participation in the Series C notes, the said Series C notes to be endorsed by Mr. Cheney.

10

SUMMARY.

\$600,000 mortgage to secure Series A, B and C notes.
 \$300,000 Series A notes for new money.
 \$150,000 Series B notes for prior liens.
 \$150,000 Series C notes or such portion thereof as may be necessary to take up the old indebtedness.

Balance due to the Banks for money advanced to purchase the assets of the Partridge Company to be paid in cash.

20

Your Committee firmly believe your past co-operation has netted to date at least 15% more than could have been obtained by any other method and in their judgment, if the foregoing proposition is ratified, all your claims will eventually be paid in full, and recommend the within as the only feasible plan for the payment of the indebtedness due to the Banks.

Your Committee request that you have a representative present and duly authorized to act on the above proposition at a meeting of the Banks which is hereby called at the office of the First National Bank, #1 Exchange Place, Jersey City, N. J., on Thursday, April 16th, 1914, at 3:30 P. M.

30

Very truly yours,

| | | |
|---|---|-------------------|
| EDWARD J. DUNN, EDWIN M. FARRIER, SETH B. ROBINSON, EDWARD I. EDWARDS, | } | <i>Committee.</i> |
|---|---|-------------------|

E. M. FARRIER, (signed)
Secy.

40

New Jersey Court of Errors and Appeals

SETH B. ROBINSON,

Plaintiff-Appellant,

vs.

LINCOLN TRUST COMPANY OF NEW JERSEY,
et al.,

Defendants-Respondents.

*On Appeal from
Judgment of the
Supreme Court
Non-suiting the
Plaintiff.*

BRIEF FOR APPELLANT.

This is an appeal from an order of non-suit entered in the cause pursuant to a determination of the Trial Judge, Judge Speer, at the close of the plaintiff's case.

The important facts surrounding the situation are as follows:

The plaintiff is a member of the New York Bar who resides in Jersey City. In the course of his practice he had, from time to time, represented the Merchants' Exchange National Bank of New York, although he was under no regular retainer from that institution. That bank, together with the defendant banks, located in New Jersey, upstate New York and in New York City, were creditors of the Charles R. Partridge Lumber Company. The latter company having failed, was put into bankruptcy, and a scheme was evolved by persons interested in that company, in view of the fact that its assets were worth a sum largely in excess of the value placed on them by the appraisers in bankruptcy that a new corporation should be formed in which its creditor banks should be interested; that the banks should supply the necessary capital to permit the new company to purchase the assets of the Partridge Lumber Company from the trustees in bankruptcy, the expectation being that by careful management these assets could be sold by the new company for a sum sufficient not only to reimburse the creditor banks for their proposed advancements, but also to clear up most if not all of the company's indebtedness to them. After the plan matured, a notice was sent to all the creditor banks of a proposed meeting in Jersey City to consider the subject of their claims against the Partridge Company. The Merchants' Exchange National Bank receiving notice of this meeting, requested the plaintiff to attend it. This he was unable to do, owing to other engagements, but he sent a clerk to ascertain what trans-

pired. At the meeting all of the defendants were represented, most of them by their executive officers. Mr. Hefferman, also a New York lawyer, but a stranger to the plaintiff, was largely concerned in devising the scheme in connection with his client, who was the principal stockholder of the Charles R. Partridge Lumber Company. This plan had been disclosed to Mr. Dunne (of the Chemung Canal Trust Company), and Messrs. Edwards and Farrier of the Jersey City banks, and they had, apparently, approved of it and expressed a preference as to who should serve on the proposed committee. (P. 25, l. 20.) Mr. Hefferman describes on page 25 what occurred at the meeting of the representatives of the bank. He states that after the meeting was organized, the chair was taken by a Mr. Dunne, representing the Chemung Canal Trust Company of Elmira, who outlined the plan of co-operation of the banks as follows (p. 25, l. 33):

“That a committee should be appointed representing the banks and the assets of the Charles R. Partridge Lumber Company should be purchased by money advanced by contributions *pro rata* by the different banks who would join in the agreement to purchase; then a corporation would be formed to which these assets would be transferred and it would carry on the business, the lumber business, and liquidate the indebtedness, that is the Interstate Lumber Company would assume and promise to pay to the banks who would join in the agreement the amount that was owed them, principal and interest, by the Charles R. Partridge Lumber Company; then when the banks were entirely paid by the corporation, the Interstate Lumber Company, with whatever assets would remain, would belong to my clients.

“Q Your clients being—? A The South Georgia Lumber Company and Mr. M. C. Cheney.”

He further shows that it had been intended that the committee should consist of Mr. (now Governor) Edward I. Edwards, President of the First National Bank of Jersey City; Mr. Edwin M. Farrier, President of the Lincoln Trust Company of Jersey City, Mr. Dunne and Governor Lounsbury of the Merchants' Exchange National Bank of New York. As the latter was not present Mr. Hefferman thus describes what occurred (p. 26, l. 28):

“I asked the meeting if there was any representative of the bank there.

“Q What bank? A The Merchants' Exchange National Bank; a young man sitting opposite me stood up and answered me and said that he was from Mr. Robin-

son's office, who was attorney for the bank, and that he represented the bank at the meeting, and I asked him if Governor Lounsbury was going to be a member of the Committee, and he said his understanding was that Governor Lounsbury could not serve. That rather upset our plan, so I asked him if Mr. Robinson, the attorney for the bank, would be willing to serve on the committee, and he said he did not know. So tentatively Mr. Robinson was named as a member of the committee, and I believe I was asked there to call on Mr. Robinson and see whether he would be willing to serve. I am not positive as to that.

“Q Did you know Mr. Robinson at that time? A No.

“Q What conclusion was reached with reference to going ahead and carrying out the plan as outlined? A It was voted that the committee be appointed to co-operate with us in seeing what could be done towards the purchase of the assets of the Charles R. Partridge Lumber Company and the carrying out of the plan that was outlined at the meeting.”

The day after the meeting the witness and a Mr. Jackson called upon the plaintiff at his New York office and apprised him of his appointment (p. 28), outlining the skeleton of the plan to him and requesting him to serve as one of the committee representing the banks in New York City (p. 29, l. 35; p. 34, l. 12; p. 35, l. 15). Mr. Robinson did not give an immediate answer, but after consideration called next day upon Governor Edwards, who, because of his business engagements, suggested that the plaintiff see Mr. Farrier. The latter explained in full (p. 35, l. 10), the plan, stating it was a large proposition, that there was a half million dollars involved and they needed some good man to represent the New York City banks. Later the plaintiff met the other members of the committee who urged him to act and he thereupon consented.

A short time thereafter an agreement was executed by the creditor banks, parties of the first part, the several members of the committee, parties of the second part, and another corporation and one Cheney, parties of the third and fourth part respectively. This agreement is known as plaintiff's Exhibit No. 3 and appears in the book of exhibits on page 109. This agreement, after reciting the proposition of Cheney and the lumber company hereinabove outlined, further recites:

“Whereas, the parties of the second part were at a meeting of the duly accredited representatives of all said banks held in the office of The First National Bank of Jersey City, N. J., on the 1st day of June, 1912, unanimously

constituted a committee in behalf of the banks to assist said Cheney and said lumber company in carrying out their said proposal *and to do such other acts and things in and about the premises as will protect the interests of the banks.*"

The plaintiff, of course, was familiar with this agreement and at once actively busied himself in the execution of his duties as a member of the committee. Mr. Edwards concededly was too busy to give much attention to the matter and Mr. Dunne living at Elmira, the performance of the bulk of the duties naturally fell upon Mr. Farrier and the plaintiff. It is important in passing to observe that while the claim of the Merchants' Exchange National Bank against the Partridge Lumber Company amounted to \$30,000 it only committed itself to the obligations of the agreement, including the contribution to the proposed fund, to the extent of \$10,000. Plaintiff devoted the larger part of the time from July 1st, 1912, to December, 1914, in the arduous duties in connection with this delicate matter. The nature, character and extent of these duties are described at length in his testimony in the case. The result of it all was that the banks contributed \$127,000, the assets were purchased, the proposed new company was formed taking title to the property purchased, and inasmuch as the purchase price was somewhat in excess of the amount originally authorized, the creditor banks (p. 116), signed a supplemental agreement ratifying this purchase. At one of the committee meetings held on the 10th of April, 1914, the question of compensating the committee was discussed and (p. 46, l. 35), the plaintiff suggested to Mr. Cheney, who was largely interested in having the project carried out:

"That he ought to give additional stock to the committee, and he said he did not want to do that; that he considered that stock very valuable and he wanted to retain it."

Cheney finally agreed to turn over to the committee for the benefit of the banks to reimburse them for any expense they were put to for the fees paid to the members of the committee, and it was stated that a fair compensation for each member of the committee would be \$5,000. At this meeting Messrs. Edwards, President of the First National Bank, and Farrier, President of the Lincoln Trust Company, as well as gentlemen interested in the lumber enterprise were present.

Exhibit P. 10 (p. 125), was a letter from the committee submitting to the banks the proposition, which contained the following:

“In addition the Committee will receive an amount of the preferred stock of the new company equal to 50% of the whole indebtedness and an equal amount of the common stock with the understanding that this will be returned to Mr. Cheney provided the Series C notes are paid within two years.”

Plaintiff's Exhibit No. 5 (p. 123), is an authorization to the committee to carry into effect the plan outlined in this letter (Exhibit P. 10), whereupon the committee executed the agreement dated the 12th of December, 1914 (plaintiff's Exhibit No. 4, p. 118). This agreement thus authorized, contains an important clause (p. 121, l. 13):

“If Cheney pays or causes to be paid within two years from December 1st, 1914, the \$120,000 of “C” notes and at the same time pays to the Committee the sum of \$20,000 (towards?) the expenses of the Committee, the Committee will deliver to Cheney the \$60,000 par value of common stock of the Southern Seaboard Lumber Company.”

The plaintiff explains (p. 48, l. 22), that the expenses of the committee referred to in this clause of the agreement were \$5,000 to each of its members as compensation for their services. It appears (p. 52, l. 10), that the complainant was engaged in all, about 196 days or parts of days in this work. The project was so successful that the assets purchased for \$197,000 were sold for about \$500,000 (p. 59, l. 10), but when the plaintiff requested compensation for his services, the same was refused, although Mr. Farrier, his fellow member, paid himself (p. 54, l. 20), from committee funds, he being the treasurer of the committee, for his services as a member of the committee to the knowledge and with the approval of Mr. Edwards and Mr. Dunre the presidents of two of the defendants. The name of the Merchants' Exchange National Bank had, in the meantime, been changed to the Atlantic National Bank, and the institution, under that name, is one of the defendants to this action and is willing to bear its proportion of a reasonable fee to the plaintiff (p. 91).

The foregoing is, we believe, an accurate and fair statement of the facts and as the plaintiff had been requested to act upon this committee and perform these services as the particular representative thereon of the New York City banks, and by the

agreement signed by the defendants (plaintiff's Exhibit 3) this committee had been unanimously constituted a committee in behalf of the bank to assist, &c., he, believing himself entitled to be paid for the reasonable value of his services, thus rendered on behalf of all of these banks, commenced this action upon the implied assumpsit arising out of the situation.

The learned Trial Judge deeming that there was under the circumstances, no implied obligation on the part of the defendant to pay him, directed a non-suit from which this appeal is taken.

It is the appellant's contention that, in the situation above described, there arises an implied contract on the part of all the defendant banks to pay the plaintiff the reasonable value of the services that he was induced to render on their behalf, for their benefit under the circumstances above described.

The principle of law that governs is the familiar one, stated with clearness, and supported by abundance of authority, cited in the note to page 1081 of the 15th volume of A. & E. Encycl. of L. (2nd ed.). The rule is:

“It is well settled that where one performs services for another, at his request, but without any agreement or understanding as to wages or remuneration, the law implies a promise, on the part of the party requesting the services, to pay a just and reasonable compensation unless there is a family relation existing between the parties, and this remuneration is recoverable on a *quantum meruit*.”

As before stated, there are cases cited in the note from almost every state in the Union that support this familiar principle of the law, and it was adopted in our own Supreme Court in *Conklin v. Kruger*, 79 N. J. Law, 326. Indeed, the rule in New Jersey has been most liberal in favor of an implied obligation to pay for services requested to be rendered. A conspicuous example of this liberality is found in the well-known doctrine of *Gardner v. Butler*, 30 N. J. Equity, 702, where this Court held that while an express agreement between the directors of a corporation with one of their number to pay him a salary for services rendered was illegal and void, nevertheless, a recovery can be had on a *quantum meruit* for the reasonable value of the services so rendered.

On the general subject see also *Smith v. Long Island R. R. Co.*, 102 N. Y. 190, and *Merzback v. Mayor, &c., of New York*, 163 N. Y. 16. This case, and others that might be cited, all

unite in holding that where services are rendered by a person for the benefit and at the request of another, the law will not only imply a promise to pay therefor (unless a family relation exists between them), but also that the burden of proof, in an action for compensation, is upon the defendant to show that the services were rendered gratuitously. In the case at bar the Trial Judge, instead of adhering to this rule, for some reason found in the circumstances surrounding this transaction a state of facts creating a presumption that the plaintiff rendered his services gratuitously. The Trial Judge completely ignored both branches of the rule of law as above stated. Not only is the presumption in favor of the plaintiff in a case like the present but, in order to overcome that presumption, the burden of proof is upon the defendant. Here, without the slightest evidence to support the defendant, the Trial Judge made the presumption in favor of the defendant and utterly ignored the rule as to burden of proof.

It is to be noted that the plaintiff's employment was not created by the agreement (plaintiff's Exhibit No. 3, p. 109) to which we have referred above. That agreement set out the duties and responsibilities of the banks with reference to the contributions they were to make and the benefits they were to enjoy, and only incidentally referred to the fact that one of the parties to it, namely the committee, was to not only carry out the particular functions therein recited but also to do all other things necessary to carry the plan into successful effect. Hence, the silence of this document with reference to the committee's compensation is of no moment. But if this document were to be considered the origin of the committee's employment, its silence upon the subject of plaintiff's compensation would make no difference in the application of this rule. This was directly decided in the important case of *Hughes v. Dundee Mortgage & Trust Investment Co.*, 21 Fed. Rep. 169; affirmed 124 U. S. 157.

There a corporation, expecting to loan money in the West, employed by a written document, an attorney to represent them, specifying the duties he was to perform, including the following:

“(a) To prepare all mortgages, deeds, notes, coupons, and other documents in connection with the company's loans, and to be responsible for their due execution, publication, registration, and validity; (b) to be responsible that all mortgages taken are a clear and indisputable first lien upon the subjects mortgaged, and to grant certificates

to that effect; (c) to take charge of and to conduct such proceedings as may from time to time be instituted by the company, or in which the company may be interested, subject to such instructions as may be issued thereanent; (d) to advise the local board and directors of any point of legal or other interest to the company which may be developed or come under his or their notice from time to time, by legislative or judicial action, or otherwise; (e) and generally to give his best attention to all the matters connected with the legal department of the company's business, and to give such information and advice as may from time to time be requested or occur to him."

The attorney did act for the company as legal advisor from time to time covering a period of several years and when such employment ceased, he brought a *quantum meruit* for the value of such services. This was resisted, first, upon the ground that the above quoted schedule to which he assented at the time of his original employment, indicated that his compensation was to come out of the borrowers of the money, and, second, because the agreement was in other respects entirely silent with reference to the compensation he should receive for services other than those specially mentioned in the schedule. The Court however, held that he was entitled to recover the reasonable value of his general legal services rendered during the six years he acted for the company, notwithstanding that the borrowers of the money had paid him for services rendered provided by the schedule and notwithstanding the fact that during those six years neither he nor the company had once mentioned the question of compensating him for these other services.

This case is also a direct authority for the view that the plaintiff, under the circumstances, is entitled to recover for the services he rendered the defendants notwithstanding the fact that during the same period he was rendering independent services for the Merchants' Exchange National Bank, now the Atlantic National Bank, on an independent matter and for which he was compensated by that institution. It will be remembered that, as already shown, the Merchants' Exchange National Bank had a claim against the Charles R. Partridge Lumber Company aggregating \$30,000 and that it only entered this pool, which led up to the appointment of the committee, to the extent of \$10,000 of this indebtedness. As additional security for the balance of the \$30,000 it held the notes of the South Georgia Lumber Company, a distinct corporation (p. 78). The plaintiff successfully collected this \$20,000 from the South

Georgia Lumber Company for the Merchants' Exchange National Bank and was paid by it therefor. We submit that there is nothing in that fact to overcome or in any way affect the application of the principle of law here sought to be applied, creating a liability on the part of the employing and requesting defendants to pay the plaintiff for independent services rendered by him for their joint benefit.

In the case at bar not only was the plaintiff an utter stranger to the whole situation, requested to act, but the continuous and satisfactory performance by him of his duties was well known to the defendants on whose behalf he was acting. It certainly never occurred to him that he should perform these services gratuitously and the letter of April 10th (Exhibit P. 10, p. 125), together with the contract (p. 109), already referred to, indicated that the banks themselves were of the view that the committee was to be paid. Indeed the proofs show that Farrier, one of the committee, who was also treasurer of the committee, paid himself periodically for his services from funds belonging to the banks, not only with the express knowledge of Edwards, President of one of the defendants, but with the tacit knowledge of all the banks to whom, as treasurer, he was responsible.

The Trial Judge, while impressed with the argument, nevertheless, we think improperly, concluded that somehow or other the plaintiff should have sought his compensation from the Merchants' Exchange National Bank. It nowhere appears that when that bank requested Mr. Robinson to attend the proposed meeting in Jersey City it had the slightest information of what was there to be proposed, or that it learned thereafter what had transpired until it signed the agreement (p. 109), as one of the creditor banks in which the plaintiff was named as one of the committee to represent all of the banks. Surely the plaintiff had no right to suppose that the Merchants' Exchange National Bank, when it requested him to attend the meeting, had sanctioned the idea that it was to pay Mr. Robinson for serving as a member on this committee, practically devoting all of his time for 196 days to that work. All that the bank did was to request Mr. Robinson to attend the meeting and later to sign the agreement in which the committee was specially designated to represent all of the banks.

The Trial Judge seems to take judicial notice of some unproven and, to us unknown, custom that he thought prevailed to the effect that members of committees of this character should

be paid by the particular creditor they represent. For example, he says (p. 99, fol. 30), "Ordinarily when creditors meet the presumption is that if a committee is appointed it is not to be paid and there must be something brought forward by the plaintiff to show that something different was expected than what ordinarily arises out of a transaction of this kind." We think no such custom exists, certainly none was proven in this case, and it would be an obvious hardship upon the Merchants' Exchange National Bank, who only came into this agreement to the extent of one-third of its claim, that it should, personally, respond to the claim for services rendered by one of the members of the committee who, to their knowledge, as well as to the knowledge of the associate banks was employed in the interests of all, and who performed not only the usual functions of a member of a re-organization committee, but who carried out the plan outlined in the agreement (p. 109), which called for affirmative action and special work in purchasing and disposing of the lumber of the bankrupt, tending to the management of the corporation that was formed as part of the scheme, and other matters entirely outside of the usual functions of a simple re-organization committee. The learned Trial Judge in support of this view referred to the case of *Harrison v. Jones*, 6 Ill. App. 89. In that case there was *no request*. It was attempted to hold the defendant because, in an action in which there were persons interested alike in the result, he stood silently by and allowed the plaintiff to argue the case and in that way received the benefit of the plaintiff's services. It was also shown that he had his own attorney representing him in the case "with whose services he was content." "He had confidence in the ability of his attorney to take charge of and manage the suit, and had no intention of employing other counsel." On the other hand it was shown that the plaintiff had been employed to argue the case by a person in no way connected with the defendant. The case really appears to have been decided against the plaintiff because the services were rendered *without any request* on the part of the defendant.

The idea that the Merchants' Exchange National Bank should be responsible for the plaintiff's services suggests that a somewhat similar question was raised in *Davidson v. Westchester Gas Light Company*, 99 N. Y. 558, where Chief Judge Ruger, at p. 567, said:

"Neither could a several promise be inferred as against one of several persons at whose joint instigation and re-

quest such services were rendered. Reason and justice forbid the assumption that there could have been any expectation, or understanding, on the part of any of the parties to this transaction, that one of the associates intended to assume the sole liability for expenses, which necessarily inured to the benefit of many other persons.”

It is submitted that the whole theory upon which the Trial Judge proceeded in concluding that no implied assumpsit here existed in favor of compensating the plaintiff for the valuable services he rendered on behalf of all of these defendants, was erroneous and based upon an improper hypothesis. The rule is that when a person, as here, at the request of one or more defendants, renders services in their behalf and he is not a member of the same family with them, the law implies a promise on their part, jointly, to pay him the reasonable value of such services.

It is therefore submitted that the action of the Trial Judge in non-suiting the plaintiff was erroneous and that the judgment should be reversed.

ROBERT H. McCARTER,
HENRY CROFUT WHITE,
Of Counsel for Appellant.

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New Jersey Court of Errors and Appeals 10

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| SETH B. ROBINSON, Plaintiff, Appellant, vs. LINCOLN TRUST COMPANY OF NEW JERSEY and others, Defendants, Respondents. | } | On Appeal from Supreme Court. |
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BRIEF FOR RESPONDENTS.

This action was tried in the New Jersey Supreme Court before the Honorable William H. Speer, Judge of the Hudson County Circuit, to whom the same had been referred for trial, and a jury. It resulted in a non-suit. From such non-suit plaintiff appeals.

Statement.

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For some time prior to 1912, Charles R. Partridge Lumber Co., a corporation, was engaged in the selling of lumber and had a large yard in Jersey City and branch yards in Newark and New York. The company became involved in financial difficulties and in 1912 was declared a bankrupt and a trustee appointed. It owed large sums of money.

Among the creditors were a number of banks, some situate in New Jersey and some in New York.

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The South Georgia Lumber Co., a corporation, was also one of its creditors. The stock of that company was largely owned by one Maynard A. Cheney. Appraisers were appointed in bankruptcy and valued the assets of the bankrupt. The bankrupt was indebted to the South Georgia Lumber Co. in about the sum of \$100,000 and to the banks in a sum in excess of \$300,000.

10 Mr. Cheney of the South Georgia Lumber Co., believing the assets of the bankrupt to be very valuable, and that they could be sold in the regular course of business to great advantage, with his representative, a lawyer of New York named Heffernan, interviewed officers of several banks, particularly E. I. Edwards of the First National Bank of Jersey City, Edwin M. Farrier of the Lincoln Trust Company of New Jersey, Edward J. Dunn of
20 the Chemung Canal Trust Company of Elmira, New York, and placed before them a scheme whereby it was planned that (if the creditor banks would agree thereto) the banks should finance the purchasing of the assets of the Charles R. Partridge Lumber Co. from the trustee in bankruptcy; Cheney should form a new corporation; the assets so purchased should be sold to the new corporation by the banks, and the new corporation, under careful management, in which the banks should be interested, sell the assets in the regular course of business, and out of the proceeds pay the banks the moneys advanced to purchase the assets and the moneys owed them by the bankrupt, and if any surplus remained such was to become the property of the South Georgia Lumber Co.

30 The representatives of the banks consulted by Cheney and his lawyer, were impressed with the plan. During the interviews with said Cheney, the personnel of the committee to be appointed by the banks was discussed, and it was suggested that the
40 names of E. I. Edwards, E. M. Farrier and E. J.

Dunn and Governor Lounsbury of the Merchants Exchange National Bank of New York, be presented to a meeting of the banks interested in the bankruptcy, to be later called.

Notice of a meeting was sent out to the various banks and at the time and place set, all the defendant banks were represented.

Defendant, Atlantic National Bank of New York (then the Merchants Exchange National Bank of New York), requested plaintiff, a lawyer of New York, who represented the said bank, to be present at the meeting and represent it. He did not go but sent his clerk to the meeting to represent him. The plan was presented to the meeting and the names of E. I. Edwards, E. M. Farrier, E. J. Dunn and Governor Lounsbury presented, to act as a committee of the banks "to co-operate with us (Cheney and Heffernan) in seeing what could be done toward the purchase of the assets of the Charles R. Partridge Lumber Co., and the carrying out of the plan that was outlined at the meeting" (page 26). 10 20

Governor Lounsbury not being present, the following took place:

Mr. Heffernan (*Case*, page 26, line 28):

"I asked the meeting if there was any representative of the bank there. 30

Q. What bank?

A. The Merchants Exchange National Bank.

A young man sitting opposite me stood up and answered me and said that he was from Mr. Robinson's office, who was the attorney for the bank, and that he represented the bank at the meeting; and I asked him if Governor Lounsbury was going to be a member of the committee and he said that his understanding was that Governor Lounsbury could not serve. That rather upset our plan, so I asked him if 40

Mr. Robinson, the attorney of the bank, would be willing to serve on the committee and he said he did not know. So tentatively Mr. Robinson was named as a member of the committee, and I believe I was asked there to call on Mr. Robinson and see whether he would be willing to serve. I am not positive as to that.

10 Q. Did you know Mr. Robinson at that time?
A. No."

Subsequently plaintiff consented to act on the committee.

The banks employed as counsel, to take care of legal matters, Messrs. Edwards & Smith of Jersey City.

20 An agreement embodying the details of the plan outlined to the banks was subsequently entered into (Exhibit No. 3, page 109); the Banks purchased the lumber from the Trustee; the new corporation was formed, called "Interstate Lumber Co.," purchased the lumber from the Banks, giving its promissory notes in payment thereof, and business proceeded.

30 Trouble arose between the members of the committee and Mr. Cheney (he then being president of the new corporation) and the members of the committee, being members of the Board of Directors of the new corporation, attempted to remove Mr. Cheney from his office, whereupon he, through his counsel, Robert H. McCarter, instituted action in the Court of Chancery of New Jersey against them. In that action plaintiff swore to an affidavit under date of October 5th, 1914 (filed in the cause) wherein he states as follows:

40 "That he is the attorney for the Merchants Exchange National Bank of the City of New York and was placed on said committee as its representative, and that said Merchants Exchange National Bank still holds about \$12,000

of the notes of the Interstate Lumber Co., endorsed by the South Georgia Lumber Co. and Maynard A. Cheney, the complainant herein" (*Case*, page 81, line 16, etc.).

The plan did not result as favorably as was anticipated. The South Georgia Lumber Co. went into bankruptcy; the Interstate Lumber Co. became a bankrupt, and all the banks were at a considerable loss in the matter. 10

The associated banks, ~~had~~ five or six meetings (*Case* page 50, line 11) in the interval between the date of the first meeting on June 1, 1912 and December 31, 1914, the period covered by this action (which meetings were entirely distinct from the meetings of the committee appointed in the matter) but, never up to the filing of the complaint herein (or shortly prior thereto), had plaintiff ever demanded of defendant banks payment for services rendered, or claimed to them that he expected to be paid therefor. 20

In 1919 plaintiff filed his complaint, setting forth his appointment as a member of the committee above mentioned and alleging that defendants agreed to pay the reasonable value of his services as such committeeman; that he performed services during the period from June, 1912 to January 1st, 1915, of the reasonable value of \$5,000 and demands judgment for that amount. In a further count he sets forth the same allegations, and in addition alleges that he was an attorney and counsellor-at-law; that the services to be rendered were largely such as required the attention of an attorney and counsellor-at-law; that defendants had knowledge of this and agreed to pay him the reasonable value of such services is \$5,000. He demands judgment for that sum. 30

Defendants deny all the matters contained in the complaint. 40

The Argument.

10 The defendants are corporations, creditors of the Charles R. Partridge Lumber Company, a bankrupt. The plaintiff is one of a creditors' committee of four. By this action he seeks compensation for services rendered as a member of the committee, alleging an implied promise to pay. The period covered is from June, 1912 to January 1, 1915.

20 It was conceded at the trial that there was no express agreement by the defendants to pay the plaintiff, or any member of the creditors' committee, for services rendered. Reliance was placed by the plaintiff upon the rendition of services claimed to have been beneficial to the defendants, and statements made during the progress of the business to his fellow committeemen, who are respectively officers of certain of the defendant banks, indicating that he expected to be compensated by the banks for the time spent by him on the committee work. The evidence shows no claim for compensation made by the plaintiff to the banks direct, or to any of them, or to any creditors' meeting. Nor is there any evidence that the plaintiff's statement to his fellow comitteemen that he expected compensation was ever communicated to the banks, or to any of them, or to any meeting of creditors.

30 No compensation was paid to, or claimed by, any other member of the committee, for services rendered as such. Mr. Farrier had a salary for his services as treasurer of the Interstate Lumber Company (*Case*, page 56, line 15), just as later on Mr. Robinson himself (*Case*, page 82, line 33) was paid by the same company \$500.00 per month for services about marketing the lumber. After the Interstate Lumber Company went into the hands of a receiver, in June, 1915, Mr. Farrier was paid

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by the committee for services as its treasurer (*Case*, page 56, line 20). But no one received pay for services rendered as a member of the committee, nor has any such claim been made by any member save Mr. Robinson.

In the most favorable view of the evidence, had the plaintiff, when he rested, established a case upon which a jury could have based a finding of liability against the corporation defendants?

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I. No promise can be implied from notice of a claim to, or acquiescence by, one who is without authority to make an express contract.

The other three members of the committee of creditors—Edwards, Farrier and Dunn—who acted with the plaintiff, so far as the evidence discloses, were acting solely as delegates of the creditors' meeting held early in June 1912. To this committee were entrusted inquiries and decisions relating to the common interest, which could be made more conveniently and expeditiously by a small body than by the whole number of creditors who were represented at the first meeting. The scope of the committee's authority is defined in the agreement of June , 1912 (*Case*, page 110 lines 1 to 24). What the subscribing banks bound themselves to is set out in the same agreement (*Case*, page 111, lines 14, et seq.). The banks did not thereby agree to compensate the committee, nor did they delegate to the committee any authority to fix compensation for themselves, or for each other.

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There was no subsequent enlargement of the committee's authority. The agreement of December 12, 1914 (Ex. P. 4), is not signed by the

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banks, but by the committee only. No argument for an extension by the defendant banks of the committee's authority can be founded upon it, either as it appears upon the record (*Case*, pages 118-122), or as explained and amplified by the plaintiff in his testimony, admitted against the defendants' objection (*Case*, page 48, line 23, et seq). At most

10 it was the act of the committee alone, and could not, of course, bind the defendants to anything beyond what had already been authorized. The language used in the agreement P. 4 (*Case*, page 121, lines 15-19) by which *Cheney* agreed to pay \$20,000 "towards the *expenses* of the committee," is a long way from an acknowledgment, even had the instrument been signed by the banks, of an obligation to pay *compensation*, to the members of the committee. At all events the conclusive answer

20 to any such contention is that the provision in question is the product of the committee, not of the defendant banks, and is clearly outside of the business delegated to the committee.

Nor is the plaintiff's position helped by the papers of April 16, 1914, P. 5, (*Case*, page 123). While this instrument was signed by most of the banks, it is unintelligible unless read in connection with the letter of April 11, 1914, therein referred to, which is in evidence, P. 10 (*Case*, page 39, line

30 35; page 43, line 12; pages 125, 128). Read together, these papers contain absolutely no reference to compensation to the members of the committee, and thus could not aid him.

There is hence no enlargement of powers exhibited in the case beyond that conferred upon the committee by the agreement of June , 1912, P. 3.

Has the defendants' relation to the plaintiff's claim been changed by notice, acquiescence or rati-

40 fication?

II. Notice to the committee of plaintiff's claim to compensation is not notice to the defendant banks, unless actually communicated.

It is obvious that this committee represented the whole body of creditors who had participated in the agreement of June , 1912 (*Ex.*, P. 3). The individual members were not sitting in the committee as representatives, respectively, of the several banks of which they were officers. They were dealing—in so far as they could be said by silence or acquiescence to deal at all—with a matter in which their individual interests were in antagonism to the interests of the defendant banks. Whatever share of the bankrupt's assets ^{went} ~~when~~ as compensation for the committee's services, depleted the dividends to be paid to the banks. The effect of notice to a director or officer of a bank acting in a relation in which his personal interest is in conflict with that of the corporation has frequently been the subject of judicial examination in our state.

In speaking of the general principle that knowledge acquired by the agent is imputed to the principal, the Court of Chancery says:

“But the rule does not apply to a transaction such as that under consideration; for in such a transaction, the officer, in making the sale and conveyance stands as a stranger to the company. *Stratton vs. Allen*, 1 C. E. Green, 229. His interest is opposed to theirs, and the presumption is, not that he will communicate his knowledge of any secret infirmity of title to the corporation, but that he will conceal it. Where an officer of a corporation is thus dealing with them in his own interest opposed to theirs, he must be held not to represent them in the transaction, so as

to charge them with the knowledge he may possess, but which he has not communicated to them, and which they do not otherwise possess, of facts derogatory to the title he conveys" (*citing cases*).

Barnes vs. Trenton Gas Light Co., 27 N. J. Eq. (12 C. E. Gr.), 33, 36 (1876, Runyon, C.).

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So it has been held by the Supreme Court that a bank which discounts a note is not chargeable with the knowledge of one of its directors of illegality or want of consideration in the note, where the director having such knowledge is not present and acting with the board when the discount is made.

1st Nat. Bank of Hightstown vs. Christopher, 40 N. J. L. (11 Vr.), 435, 437 (1878, S. C., Depue, J.).

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So, where the payee of a note given, to his knowledge, to raise funds for an illegal purpose, was president of the bank which discounted the note, and with the cashier of the bank, constituted the discount committee, his knowledge is not imputable to the bank.

Graham vs. Orange Co. Nat. Bank, 59, N. J. L. (30 Vr.), 225 (1896, E. & A., Garrison, J.).

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It is apparent that any notice to his fellow committeemen, communicated by Mr. Robinson of his claim to compensation, related to a subject matter as to which their own personal conflicting interest disabled them from representing their principals.

Was there any direct notice?

III. The case is void of evidence that the plaintiff's claim to compensation was ever communicated to the banks.

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Unless the plaintiff's discussion with his fellow committeemen on the subject of compensation to

the committee for services was of itself notice to the defendant corporations, there is no shred of testimony to show that they ever knew that the plaintiff entertained the expectation of reward from the creditors generally, and did not look for his fees to his client, as the other members of the committee thought he should (*Case*, page 53, line 12 *et seq.*)

It is incumbent on the plaintiff to show that his services were rendered under such circumstances as raised an inference that both parties entertained a reasonable expectation that he should be paid. 10

It is significant that after discussing with his committeemen the subject of compensation, and formulating and stating his idea as to the value of the services, he never suggested the matter at any of the frequent subsequent meetings of the bank creditors held to deal with the plans outlined in the letter *Ex. P. 10*. 20

Mr. Robinson testified, on examination of his own counsel, who had been inquiring as to the committee meeting of April, 1914, at which he had raised the question of the compensation of the members of the committee, as follows: (*Case*, p. 49, line 39)

“Q. How much work was done between the meeting and the signing of that agreement? A. After the meeting of April 10, 1914, the banks authorized the committee to go ahead and consummate this agreement. We carried on negotiations— 30

The Court: Which agreement are you talking about? We have about twelve agreements here.

A. After the meeting of April 10, 1914, the authorization by the banks to carry out this project in accordance with a letter which was sent out and which has been referred to.

The Court: All right.

Q. Did you attend that meeting of the banks? 40
A. I did.

Q. Where was that held? A. All those meetings were held at the board room of the First National Bank of Jersey City.

10 Q. About how many representatives of the banks were present at that meeting? A. Well, the room was generally crowded. I don't know, there were generally a dozen or more present.

Q. How many meetings of the banks themselves, as opposed to the committee, did you attend? A. I should say five or six.

Q. During the period that we are speaking of, for which you are claiming compensation? A. Yes.

20 Q. So that the banks themselves met several times and you were present as a member of the committee? A. Yes.

Q. What occurred at these meetings by way of reports by you or anyone else as to what had been done on behalf of the banks? A. At those meetings Mr. Dunn was usually spokesman or chairman and he would tell what the meeting had been called for and ask for some resolution by the banks, which they usually gave."

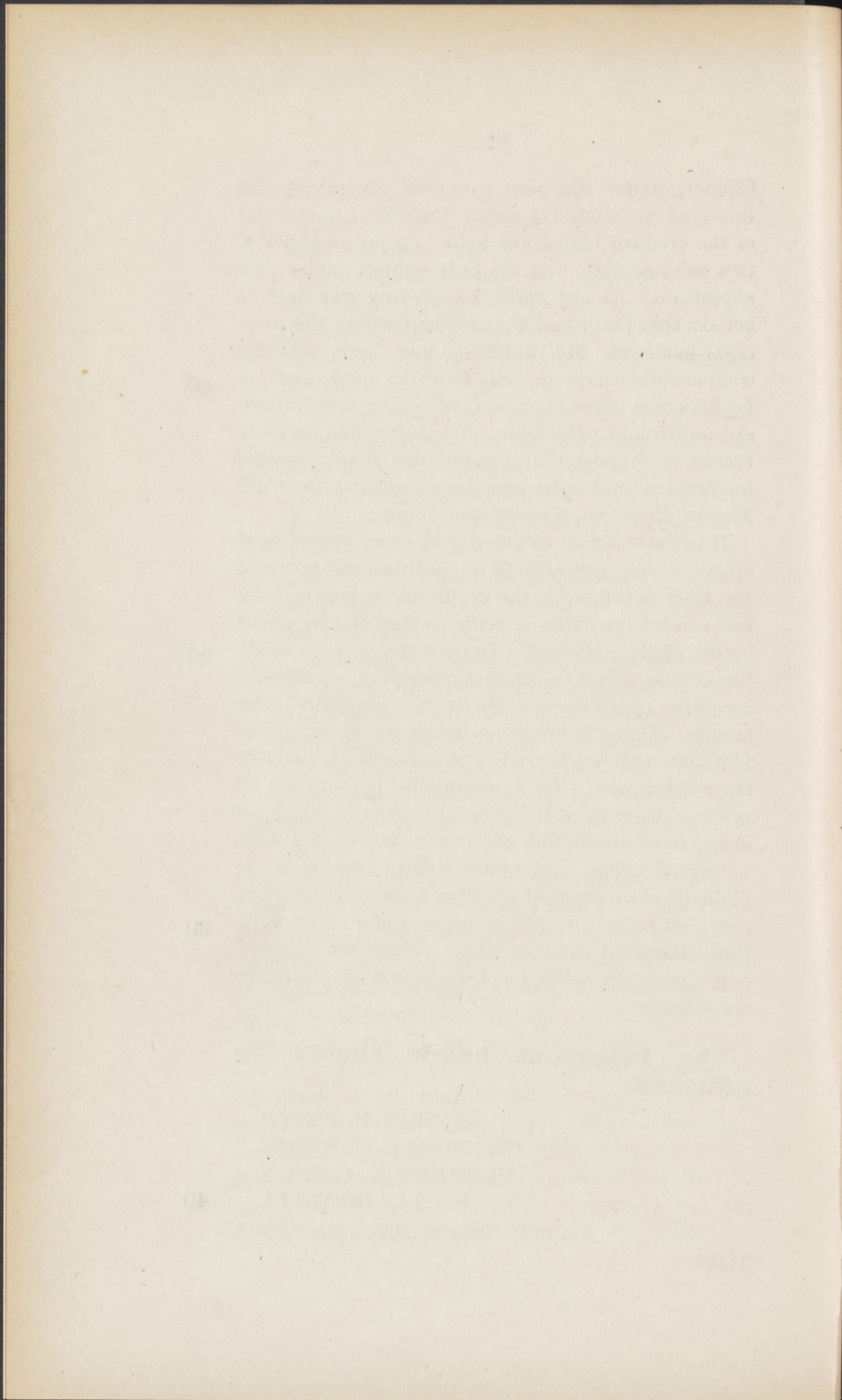
30 Apparently the plaintiff was diligent in his attendance upon the frequent meetings of the creditor banks, as he certainly was at the committee meetings. And yet at none of these meetings of the banks does he claim to have broached the subject of compensation to the committee members,—not even at the meeting of April 16, 1914 (*Case*, page 123) when the banks authorized the execution of the plan of salvage set out in the letter P. 10 (*Case*, page 125). Within less than
40 a week after the question of compensation to the four members of the committee had been raised by the plaintiff in the committee meeting, and the compensation had been arranged for with Mr.

Cheney, under the plan proposed for saving the tottering Interstate Lumber Company, a meeting of the creditor banks was held. So far as appears, this salvage plan was the only subject under consideration. At any rate, the meeting was held to act on this plan, and that evidently was the principal business. Mr. Robinson was there, with his compensation arrangement fresh in mind, and yet he does not place that feature before this important meeting of principals. The banks had no more reason to suppose that the plaintiff sought reward for service rendered upon the committee, than did Messrs. Edwards, Farrier and Dunn. 10

It is the common knowledge of every experienced attorney, that committees of creditors are not paid for their services by the creditors in general, unless special provision is made to that end by direct action of the creditors. The interest of each creditor in conserving the debtors resources is sufficient incentive to induce service upon a creditors' committee. There is hence no necessary or usual implication that such creditors' committees perform their functions with a reasonable expectation of reward, other than the general benefit in which all share from successful administration of the debtors assets. The trial Court rightly cast upon the plaintiff the burden of showing notice to the creditors that he performed his duties under an expectation of special compensation. When the plaintiff rested, no such notice has been brought home to the defendants. 20 30

The judgment below should be affirmed.

EDWIN F. SMITH,
CHARLES L. CARRICK,
CLEMENT K. CORBIN,
PHILIP GOODELL, 40
Of Counsel with respondents.



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