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In Chancery of New Jersey

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

The complainants, Edward Beam, John C. Beam, Carrie S. Beam and William B. Beam, of the City of Paterson, County of Passaic and State of New Jersey, respectfully show, that,

1. On May 1, 1905, Sarah A. Cooke departed this life at Paterson, in the County of Passaic and State of New Jersey, having first made, published and declared her last will and testament, in writing, which was duly admitted to probate by the Surrogate of the County of Passaic on May 15, 1905, and letters testamentary thereon were duly issued to John S. Cooke, Frederick W. Cooke, Charles D. Cooke, Lavinia Fayerweather and Carrie S. Beam, executors and executrices respectively, who thereupon took upon themselves the burden of its execution.

2. Complainants are sons of Carrie S. Beam, who is the daughter of the testatrix, Sarah A. Cooke, and are ~~two~~ three of the beneficiaries and remaindermen under said last will and testament, subject to the life estate of their mother, Carrie S. Beam, created as hereinafter set forth.

3. In said last will and testament, after sundry gifts and bequests thereinbefore made, are the following provisions:

"Eleventh: I direct that all the rest, residue and remainder of the estate which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son, John S. Cooke, another of which parts I give to my son, Frederick W. Cooke, another of which parts I give to my son, Charles D. Cooke, another of which parts I give to my daughter, Lavinia Fayerweather, and another of which parts I give to my daughter, Carrie S. Beam."

"Twelfth: The other five parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows; one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarterly yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

"Thirteenth: If at the time of my death any of my said children shall be dead, I direct that then the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate."

As by certified copy of said will and probate thereof now in the custody of the complainants and ready to be produced and proved when and where this honorable court may direct or the record thereof now remaining in the Surrogate's

Office of the County of Passaic, reference being thereunto had may fully appear, a copy of which last will and testament is hereto annexed, forming a part hereof, and marked Exhibit A. (See pages 359-362).

4. Complainants further show that Paterson Safe Deposit and Trust Company, Trustee named in said will, a corporation of the State of New Jersey, doing business at Paterson, in this State, upon the probate thereof, accepted the trusts therein and thereby imposed and entered upon the execution thereof, and continued to so act as Trustees from thence until February 10, 1921, when by an order made by Passaic County Orphans' Court it was relieved and discharged from all further duties of its said office of trustee, except accounting for and paying over the moneys and assets received by it by virtue of its said office.

5. Testatrix had made in her lifetime investments of money in three 28th and 29th Street Crosstown Railroad (City of New York) First Mortgage 5% bonds due 1996, of the par value of $1,000.00 each; 2 Second Avenue (City of New York) Railroad Company Consolidated 5% Mortgage Bonds due 1948, of the par value of $1,000.00 each; 225 shares of the capital stock of Central Park North and East River Railway Company of the City of New York, of the par value of $100.00 each; 200 shares of Brooklyn City Railroad Company stock, par value $10.00 per share, all of which among other securities and investments

were among the assets of her estate at the time of her decease.

6. In and by the final account of said Executors duly filed in the office of the Surrogate in and for the County of Passaic, and allowed by the Orphans' Court in and for said county on April 17, 1919, said securities and investments were set forth as having been delivered to and accepted by Paterson Safe Deposit and Trust Company as part of the corpus of the trust created by said last will and testament as stated in the third paragraph hereof, as of Decmeber 1, 1905, and the respective values thereof were in said account stated to be as follows:

$3,000 28th and 29th Sts. Crosstown Ry. Bonds	$ 3,390.00
$2,000 Second Avenue R. R. Bonds	2,300.00
225 Shares Central Park N. & E. R. Ry. Co.	46,800.00
200 shares Brooklyn City Ry. Co.	4,800.00

And the total value of the assets of said trust was alleged to be the sum of $150,650.00 all of which assets were delivered to and accepted by said trustee as the equivalent of cash to that amount.

7. Said Trustee filed its intermediate account of said trust in the Orphans' Court in and for Passaic County covering the period from Dec. 31, 1905, to February 1, 1908, showing the corpus of said trust to be of the value of $150,650 as afore-

said, and so charging itself as trustee, and showing only two items of depreciation in the investments hereinbefore mentioned, namely:

28th and 29th Sts. Crosstown R. R. Bonds--$10.00
Second Avenue R. R. Bonds---------- 30.00

And included in its statement of investments all the securities mentioned in the 6th paragraph hereof, and has since and hitherto retained as a part of the corpus of said trust each and every of said investments.

8. Said Trustee continued to retain said investments as will appear from the intermediate and final accounts filed by it at the amounts or values set opposite each respectively:

	1910	1912	1914	1915
3,000 28th and 29th Crosstown Ry Bonds	3465	3465	3465	None
2,000 Second Ave. R. R. Bonds ----------	2270	2270	2270	None
225 shares Central Park N. E. Ry. Co.-------	46800	46800	46800	5.00
200 shares Brooklyn City Ry. Co.--------	4800	4800	4800	4800

Making a total depreciation in the value of said investments during a period of ten years of $53,330, or 93 per centum in a total investment in the securities aforesaid of $57,335 and a total shrinkage of about .35 4/10 per centum of the whole corpus of $150,650.

9. Although said last will and testament creating said trust directed said trustee to set apart one-fifth (or one of five parts of said trust fund for each of the children of testatrix, of whom the mother of complainants is one, this was not done by said trustee until in or about the year 1915, when, in the intermediate account filed by it, it for the first time prayed allowance for depreciation, of various investments of the corpus of said trust amounting to a total of $56,969.50 as will appear from the excerpt from said account as follows:

"COOKE TRUST
PRINCIPAL FUND DEPRECIATION.
April 30th, 1915.

Inventory valuation accounting April 15, 1914		$150,500.00
200 shs, Brooklyn City R. R. Co.	$ 800.00	
225 shs. Central Park N. & E.	46,795.00	
$5,000 Consol, Traction Bonds	147.50	
$8,000 Lehigh Valley Annuity Bonds	1,040.00	
$10,000 Long Dock Bonds	320.00	
$6,000 Mobile & Ohio Bonds	45.00	
$8,000 Passaic Lighting Bonds	271.00	
$7,000 Passaic Water 5s Bonds	462.00	
$4,000 Passaic Water 4s Bonds	220.00	
$5,000 Paterson & Passaic G. & E. Bonds	114.00	
$18,000 Paterson Railway 6% Bonds	1,440.00	
$5,000 United N. J. Rly. & Canal Bonds	120.00	
$2,000 Second Ave. R. R. Bonds	2,030.00	
$3,000 Twenty-eighth and Twenty-ninth St. Bonds	3,165.00	
		56,969.50
		$ 93,530.50

(SCHEDULE C.)

COOKE TRUST.

This accountant further reports that the principal fund of said Trust is invested as follows:

$5,000 Consolidated Traction Company Bonds due 1933	$ 5,150.00
$10,000 Long Dock Company bonds due 1935	12,000.00
$5,000 Lehigh Valley Annuity Bonds	6,650.00
$5,000 Mobile & Ohio Bonds due 1927	5,550.00
$5,000 Passaic Water Company 5s due 1957	5,000.00
$5,000 Passaic Lighting Company Bonds due 1925	5,050.00
$5,000 Paterson & Passaic G. & E. Co. Bonds due 1949	5,050.00
$15,000 Paterson Railway Co. Bonds due 1931	16,500.00
$5,000 United N. J. Ry. & Canal Co. Bonds, due 1925	5,000.00
200 shs. Brooklyn City Rly. Co. 8%	4,000.00
225 shs. Central Park N. & E.	5.00
Cash uninvested	23,575.50
	$ 93,530.50

(SCHEDULE D.)

This estate for the benefit of the five beneficiaries herein named, has for the purposes of economy, been kept and reported to the Orphans' Court as one account. The Trustee as of May 1st,

1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day and has divided the said estate into five parts according to the figures as hereafter shown and entitled "Distribution Sarah A. Cooke Trust as of May 1st, 1915," and said depreciation showing a total shrinkage of corpus of said trust of .378 per centum of the entire original corpus of $150,650.00.

10. In the month of January, 1921, said Trustee filed its final account in the Passaic County Orphans' Court wherein among other things it reported in "Schedule C" of said account that the Book Value of 40 shares of said Brooklyn City Railway Co. stock which was assigned to one-fifth share of the said Carrie S. Beam and these complainants and William B. Beam as remaindermen, was $800.00, whereas, in fact, it is of little or no value and could not then and cannot now be disposed of, for any such sum or for more than a merely nominal sum, and said Trustee expects to deliver said stock to any new trustee appointed in its stead at said arbitrary valuation of $800.

Edward Beam, John C.

11. The investments mentioned in the 5th paragraph hereof are not, nor are any of them, such investments as were permitted by the laws of this State to be made by Trustees at the time of the assumption of said trust by said Trustee, and said Trustee did not avail itself of the right to petition the Orphans' Court of Passaic County for leave to retain the same according to the statute in such case made and provided, and did not at any time

during the continance of its trust pray the advice of said Court or any Court or of any of the beneficiaries of said trusts, but on the contrary thereof wilfully, continually and repeatedly and in the exercise of bad faith, neglected and refused to give to the persons interested therein any information whatsoever, or more than meagre information concerning said investments or their retention or disposition. And, furthermore, said trustee not only failed and neglected to re-invest said assets so received as the equivalent of cash in such investments as were then or now allowed by the statutes of New Jersey to be made by trustees, but also wilfully and falsely treated and accounted for said depreciated securities as of full value in each and every of the accounts filed by it in the Passaic County Orphans' Court until the year 1915, as aforesaid, to each and every of which accounts, intermediate and final, some one or more of the beneficiaries of said trust have caused exceptions to be filed.

12. The investments mentioned in the fifth paragraph hereof have steadily depreciated in value and in the market from the date of the death of the testatrix to the present time, until they are, and have been for some time past, entirely valueless and this under the presumed and actual management of Paterson Safe Deposit and Trust Company, as trustee until the original corpus of said estate constituting the one-fifth part in which complainants are interested has been reduced from the value of $30,130.00 to the alleged value of $18,706.10, as set forth in the final

account of said Trustee thereof, the latter amount including the erroneouse valuation of Brooklyn City Railway Company stock at $800.00; and said Trustee has continued such investments of testatrix in said bonds and stock not only without applying to the proper tribunal for authority to retain and continue the same as provided, allowed and permitted by the statute in such case made and provided, as in the exercise of good faith, sound discretion, and a desire to serve the best interests of these complainants it should have done, but has wilfully, designedly and purposely refrained from doing so, and has also wilfully, designedly and purposely neglected, refused and refrained from giving information to the beneficiaries of said trust in which these complainants are interested, and has neglected, refused and refrained from endeavoring to recoup or prevent by sale of said securities or any of them at the proper time or times, losses occasioned by the holding of said bonds and stock, contrary to the requests and demands and information furnished to it by these complainants, or their representatives, and has continued such investments not only negligently and not in the excerise of good faith and reasonable discretion but in the exercise of positive bad faith, so that great loss has been occasioned to complainants, for which said Trustee should be held accountable.

13. Complainants have frequently and in a friendly manner applied to Paterson Safe Deposit and Trust Company for reimbursement to said trust fund for the losses occasioned by the continu-

ance of said investments and said Trustee has refused and still does refuse to comply with such reasonable requests of complainants.

14. Since the making of the order discharging said Trustee from the further performance of the duties of its office as such, such proceedings have been had that the name of said corporation has been changed to The National Trust Bank of Paterson, but without prejudice to this action as said trustee is by law continued as a corporation for three years.

15. Since the discharge of said Trustee, no one has been appointed or authorized in its place and stead as a new trustee to receive and hold in custody the securities held in said trust or any of them, and some interest and dividends have accumulated in the hands of said discharged trustee, and some fit person or corporation should be appointed as temporary receiver or trustee to receive said securities from said trustee, without prejudice, and receive and collect the interest and dividends accrued and accruing thereon from time to time and to pay the same to the life beneficiary under said trust or all of said securities should be impounded with this honorable court or the Clerk of this court, or some officer thereof with power as aforesaid, until the final termination of this cause.

Complainants are without adequate remedy in the Courts of Law, and therefore, pray:

1. That Paterson Safe Deposit and Trust Company, which is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made.

2. That an account may be taken of the property and moneys that have been received by Paterson Safe Deposit and Trust Company and defendant as its successor in name, as trustee as aforesaid, and of any and all charges it may have against the said property and moneys and what investments of such receipts or portion thereof it has made and the balance thereof, and to whom the same is due may be ascertained and declared and any balance found due to complainants and to said trust fund so held for the benefit of these complainants, may upon such accounting, be ordered paid to said trust fund so held for their benefit.

3. That a receiver of said trust fund so held for complainants' benefit be appointed with the usual powers and duties of receivers in like cases during the pendency of this suit, with all power to accept and receive from defendant each and every of the securities held in said trust, without prejudice to the rights of these complainants, and to collect and receive the interest and dividends already accrued or that may accrue from time to time hereafter during the pendency of this suit.

4. That defendant may be required to make good and pay into said trust fund and into the hands of such receiver the amount of any losses

sustained to said trust fund by said defendant, or its predecessor in name, together with interest thereon from the time each and every of such losses was sustained and that complainants may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

5. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this Court may make in the premises.

HUTCHINSON & HUTCHINSON,

Solicitors for and of Counsel with Complainants.

Exhibit A omitted.

A true copy,
JESSE R. SALMON, Clerk.

(Filed, Nov. 15, 1921).

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM and WILLIAM B. BEAM, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, Defendants.	On Bill. Answer to Amended Bill of Complaint.

The answer of the defendant, The Paterson Safe Deposit and Trust Company, a corporation doing business at Paterson, New Jersey.

This defendant answering the amended bill of complaint, says that:

1. Paragraphs 1 to 5 inclusive and paragraphs 14 and 15 are admitted.

2. As to the statements in paragraph 6 relating to the statements contained in the final account of the Executors of Sarah A. Cooke, deceased, this defendant has no knowledge sufficient to form a belief. This defendant admits and avers that there were delivered by said Executors to and accepted by the defendant as part of the corpus of the trust created by the twelfth para-

New Jersey State Library

graph of the will of said decedent certain securities as of December 1, 1905, and that the said securities and the inventoried and appraised value thereof were respectively as follows:

$3,000 28th and 29th Sts. Crosstown Ry.

Bonds	$ 3,390.00
$2,000 Second Avenue R. R. Bonds	2,300.00
225 shares Central Park N. & E. Ry. Co.	46,800.00
200 shares Brooklyn City Ry. Co.	4,800.00

Defendant admits and avers that the total value of the assets of said trust was inventoried and appraised prior to the said delivery and acceptance thereof, at the sum of $150,650. Defendant denies that said assets were delivered to and accepted by the defendant as the equivalent of cash to the amount of $150,650, but defendant avers that each portion of said assets was delivered to and accepted by said trustee as of no particular equivalent in cash whatever, but was delivered and accepted by the defendant for whatever the true value thereof actually was, although they had been inventoried and appraised at such values as are hereinbefore stated, and that this defendant has never been bound or responsible in any respect for any value of said securities at any time other than their actual value as the same has varied or existed from time to time during the term of said trust.

3. As to the statements in paragraph 7, defendant admits that it filed its intermediate account of said trust in the Orphans' Court in and

for the County of Passaic covering the period from December 31, 1905, to February 1, 1908, showing the corpus of said trust to be of the said inventoried and appraised value of $150,650 as aforesaid, and showed two items of reduction in said securities, by charging off premiums at interest periods namely:

28th and 29th Street Crosstown R. R. Bonds $10.00
Second Avenue R. R. Bonds---------- 30.00

And included in its statement of investments all the securities mentioned in said 6th paragraph of the bill of complaint and that defendant has retained as part of the corpus of said trust each and every of said investments since the acceptance thereof. Defendant denies that portion of paragraph 7 which alleges that said account was a final account and denies that portion of paragraph 7 which alleges that said account shows the corpus of said trust to be of the value of $150,650, and that this defendant so charged itself as trustee, if any other than said inventoried value is meant by said allegation in paragraph 7, and this defendant avers that it did not in said account charge itself other than for the actual value of said securities inventoried and appraised at said values as aforesaid.

4. As to the statements contained in paragraph 8, defendant admits that it continued to retain said securities and that in the intermediate accounts filled by it in the years hereinafter next stated, *the said appraised and inventoried values*

no italics

of each of the following securities were set opposite each respectively, as follows:

	1910	1912	1914	1915
3,000 28th and 29th Crosstown Ry. Bonds	3465	3465	3465	None
2,000 Second Ave. R. R. Bonds	2270	2270	2270	None
225 Shares Central Park N. E. R. Ry. Co.	46800	46800	46800	5.00
200 Shares Brooklyn City Ry. Co.	4800	4800	4800	4800

Making a total depreciation in the said inventoried and appraised value of said securities during a period of ten years of $53,330 or 93 per centum in a total investment in the securities aforesaid of $57,335 and a total shrinkage of about .35 4/10 per centum of the whole corpus of said securities inventoried and appraised at $150,650 as aforesaid.

All statements and allegations in paragraph 8 other than those herein admitted are denied.

5. As to the allegations in paragraph 9, it is admitted that this defendant did not set apart one-fifth of said trust fund for each of the children of the textatrix until about the year 1915 when in the intermediate account filed by it, for the first time showed said depreciation of investment of the corpus of said trust amounting to a total sum of $56,969.50, and the excerpt from said account is correctly set forth in paragraph 9. All other

allegations of paragraph 9 than such as are hereby admitted are denied. Defendant avers that said trust estate for the benefit of the five beneficiaries therein named prior to the filing of the intermediate account referred to in paragraph 9, for the purpose of economy and according to the consent and agreement of said five beneficiaries had, in fact, been kept and reported to the said Orphans' Court as one account, but owing to the fact that the said complainant, Carrie S. Beam, had prior to the time of said filing of said last named account expressed dissatisfaction with the said keeping and reporting of said estate as one account, the defendant divided the said estate into five parts as stated in said account.

6. Defendant denies the allegations contained in paragraph 10, except that it admits that in the defendant's final account therein referred to, the book value of said 40 shares of said Brooklyn City Railway Company stock therein referred to, was included as part of $18,906.10 which was stated in said account to be *the "balance of the corpus at book values as per last accounting"* for the said share of said trust for Carrie S. Beam, which is the trust in which the complainants are interested.

no italics

7. Defendant denies each and every allegation of paragraph 11, except that it admits that this defendant did not petition the Orphans' Court of Passaic County for leave to retain said securities or pray the advice of said court or any court with respect to retaining the same, and this defendant

avers that all of said investments were made by the textatrix, Sarah A. Cooke, in her lifetime, who continued to retain the same until her death; that the same were delivered to and accepted by this defendant as investments made by the said testatrix in her lifetime; that the retention and disposition of said investments, which were in fact made by the defendant in the performance of its trust, was permitted by the laws of this state, and that it was not the duty of this defendant under said trust to petition the said Orphans' Court or any court for leave to retain said investments or pray the advice of said Orphans' Court or any court with respect thereto, or any of them, but that it was the right and duty of this defendant to use reasonable care, good faith and sound judgment and discretion as to the retention or disposition thereof, all of which this defendant avers it used in the retention thereof as hereinafter set forth.

8. Defendant denies each and every allegation of paragraphs 12 and 13, except such allegations as are hereinafter next admitted in the 9th paragraph hereof as follows:

9. For answer to the allegations of said paragraphs 12 and 13 this defendant, as to the alleged liability of this defendant for the depreciation of the value of the said 3 28th and 29th Street Crosstown Railroad bonds, said 2 Second Avenue Railroad bonds and said 225 shares of the capital stock of Central Park North and East River Railway Company of the City of New York, says:

The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad, of the City of New York, the Second Avenue Railroad Company, of the City of New York, and the Central Park, North and East River Railroad Company, of the City of New York, were each separate corporations owning surface railways in the City of New York which a long time prior to the death of said Sarah A. Cooke in said will mentioned had been leased practically in perpetuity to the Metropolitan Street Railway Company, of New York City, which last named corporation prior to the death of the said testatrix had acquired by purchase, lease, and in other ways the control and right to operate practically all of the surface railways in the limits of the City of New York as one great metropolitan system.

On or about the 14th day of February, 1902, the Metropolitan Company leased its system, which included the three companies hereinbefore mentioned, to the Interurban Street Railway Company, the name of which was subsequently changed to the New York City Railway Company, by which last named company the same were operated continuously until on or about the 24th day of December, 1907, said leases and each of them obligated the lessee or operating company to pay the interest on all the outstanding bonds of said leased corporations and an annual divident of nine per cent per annum on the capital stock of the Central Park, North and East River Railroad Company.

The stocks and bonds of said three corporations and, in fact, the stocks and bonds of all the constituent companies making up the great system controlled and operated in the first instance by the Metropolitan and afterwards by the New York City Railway Company, during the period of such operation were known and regarded in the financial world as gilt-edge securities, and were placed with and held by investors who desired permanent and safe investment with a fixed income.

It is not true, as stated in paragraph 12 of said bill of complaint, that the value of the said bonds and of the stock in said bill mentioned steadily depreciated in the market from the date of the death of the said testatrix to the time of the filing of the said bill of complaint. The fact is that said bonds and stocks were not actively dealt in, and only occasionally sold or purchased, in most instances not from motives of speculation, but from economic considerations personal to the holders thereof. At the time of the death of the said testatrix and at the time the said securities came into possession of this defendant and for a considerable period afterwards, these stocks and bonds were considered by bankers, financiers, and investors as among the most desirable securities to be had for permanent investment.

Nothing occurred outside of the ordinary trifling changes in market value of all securities, to effect the estimate of the public as to the desirability of any of these securities until on or

about the 24th day of September, 1907, when a creditor's bill of complaint was filed in the United States Circuit Court for the Southern District of New York against the New York City Railway Company, alleging its insolvency and asking for the appointment of Receivers to operate the railway system which it controlled. The filing of this bill and the appointment of the Receivers was a great suprise to the public, but it was not at the time regarded as affecting *the substantial value or impairing the income of the underlying securities.*

no italics

In the bill of complaint upon which Receivers were appointed it was specifically alleged that a Receiver was needed with power to operate the whole system, in order to preserve the property and the unity of the system as it had been maintained and operated. The order appointing the said Receivers contained provisions for the continued operation of the system, to the end that operation of the said system should be continued in the same manner as at that time and the public duties obligatory upon the lessee be in all respects discharged.

Subsequently, on or about the 1st day of October, 1907, Metropolitan Street Railway Company filed its petition asking that it be made a party defendant to the suit against the New York City Railway Company, and that the receivership be extended to its property, and on the same day the same persons who were appointed Receivers of the City Company's property were appointed tem-

porary Receivers of the property of the Metropolitan Company. In granting the application for the appointment of Receivers, the Judge of the United States Circuit Court declared:

> " The Receivers are now in possession of the earning power of the petitioner, and under the terms of the lease petitioner can avail of no default in payment of the amount stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay interest on some underlying mortgage or some rental due the constituent road. It is of vital interest that the property be kept intact."

On or about the 9th day of October, 1907, the said Circuit Court of the United States for the Southern District of New York, in the suits relating to said receivership, directed the Receivers by said Court appointed to pay during their operation the interest on the various mortgage bonds of the underlying roads and the dividends on the stock of such roads as the Metropolitan and the New York City Railway Company had by said various leases undertaken to pay.

From the time said three properties were first leased to the Metropolitan Company, all of the interest on said bonds and the dividends due to the stockholders was promptly paid by the lessee or by the said Receivers, until certain dates in the year 1908.

It was generally believed in financial and business circles that the operation of said lines would be continued by said Receivers, that the Metropolitan system would be preserved intact, and that when a reorganization of the Metropolitan and the New York City Railway Company was made, the leased lines would be continued under the original leases the same as before. There was no reason to think that the said Receivers would permit the said system to be disintegrated by dropping any of said leased lines.

It turned out, however, contrary to general belief and expectation, that the Receivers concluded to abandon the lease of the Central Park, North and East River Railroad Company, and did abandon it on or about the 1st day of July, 1908. They also abandoned the lease of the Second Avenue on or about the 1st day of September, 1908, and abandoned the lease of the Twenty-eighth and Twenty-ninth Streets Crosstown line on or about the 1st days of July, 1908.

Up to the time of the abandonment of these various lines by the Receivers there was no fact known to the public or available as information to this defendant which could lead it to believe or expect that the interest on said bonds and dividends on said stock would not be paid as theretofore, and there was nothing available as knowledge for the guidance of this defendant to indicate that it was either wise or prudent to sell the said bonds or the said stock.

After it became known to the public that the Receivers had determined to discontinue the operation of the said three several lines respectively, the securities of each of said companies became immediately very much depreciated in market price, and not only depreciated in price, but became practically unsalable, *for the reason that the essential value of the property of said companies was not known and could not be determined,* nor could it be determined with any accuracy whether said companies could be successfully operated by themselves as detached from the Metropolitan system.

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The general effect of the announcement of the abandonment of these three leases by the Receivers was practically to put an end to all transactions in said stock and bonds; so that from August 6, 1908, when five shares of the stock of the Central Park, North and East River Railroad Company were sold at one hundred dollars a share, there was no record of any other sale until March 4, 1910, when there was a sale of fifty shares at Forty-one dollars a share. Similarly, the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad after July, 1908, dropped from a previous figure of from eighty to ninety to forty, and subsequently to Thirty dollars on the hundred. The bonds of the Second Avenue Railroad Company, from a price of from eighty-seven to ninety-eight in the early part of the year 1908, dropped to eighty, and subsequently to as low as Forty dollars on the hundred.

But these prices were nominal and not *practical* prices, inasmuch as it was impossible to sell said bonds or said stock, or any of them, except at what at the time was considered a ruinous sacrifice. Almost all the transactions in said stock and bonds from July, 1908, to the time of the last sales thereof have been what are known as "forced sales," where the owners have been compelled to submit to the sale of their securities being unable to retain them or to wait to see what the issue of the reorganization proceedings might be.

This defendant, further answering, denies that it has continued said investments in said bonds and stock negligently, and it denies that it has not exercised good faith and reasonable discretion in the discharge of its trust. It denies that the continuance of said investments was either negligent or unreasonable. On the contrary, it affirms that under the facts and circumstances and from the standpoint of facts and information available to this defendant at the time, the continuance of said investments was wise and prudent.

In continuing said investments, this defendant consulted reputable bankers of great experience and of special knowledge of the value of these particular securities, ascertained from them such facts as could be ascertained, and not only were advised by said bankers not to sell said securities or any of them at the ruinous prices at which they might be disposed of, but exercised and used its own discretion, which was to the same effect.

This defendant caused its president, John W. Griggs, to be made a director and counsel of the Second Avenue Railroad Company about the time the Receivers gave notice of their intention to abandon its operation, and John S. Cooke, now deceased, one of the beneficiaries of said trust, also *of his own volition,* became a member of said board of directors of said Second Avenue Railroad, largely for the purpose of obtaining information and keeping informed as to the prospects of a successful reorganization not only of the Second Avenue but of both of the other of said companies.

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The said John W. Griggs, president of this defendant was in frequent communication with bankers, attorneys and others interested in the said Metropolitan system or various parts thereof, and in the said three companies in said bill of complaint mentioned, and in that way obtained all possible information as to the prospects of the successful operation of said railroads by the companies themselves or of their successful reorganization.

Since the said securities came to the hands of this defendant, there never has been a day on which from facts then known or capable of being ascertained it has been either wise or prudent to sell the said securities, or any of them, and in continuing to hold said securities this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain.

The Second Avenue Railroad Company in about the year 1913 was under process of reorganization through proceedings in foreclosure, and there was a bondholders' committee for the consolidated bonds of said company, with which this defendant has deposited the bonds of that company. There was also a bondholders' committee for the bonds of the Crosstown road, and this defendant has deposited its bonds with said committee, thus securing the right to participate in any benefits of reorganization that might accrue when said roads should be finally reorganized.

About the year 1913 the mortgage on the property of the Central Park North and East River Railroad Company was foreclosed and the property sold to an independent purchaser, and it was not possible to know until said sale was actually made whether any reorganization thereof could be effected under which the stockholders would realize some interest in the assets of the company.

The reorganization of the said Metropolitan system and of the various parts thereof which have been from time to time cast off by the Receivers has been one of the most intricate and most difficult financial matters ever engaging the attention of the financial world, and great uncertainty has prevailed among business and financial men as to what might have been done and what could have been done. But the general view and opinion of all capitalists, investors, and bankers

has been that those who held stock and bonds in said companies or any of them would do better, if they were able to do so, to hold onto their securities, as it was believed that inherently the properties were of sufficient value and so necessary to the public use in New York City as to be certain to result in a better return to the security holders after reorganization than by sale while reorganization was in progress but undefined.

This defendant, further answering, says that from time to time since its qualification as Trustee under the Will of the said Sarah A. Cooke, deceased, it has filed its intermediate accounts in the Orphans' Court of the County of Passaic, in which it has set forth the holding by it of the said securities, the last of said accounts filed prior to the filing of the Answer in the suit in Chancery, hereinafter referred to, was filed on or about April 15, 1912, and the said complainants, on or prior to April 15, 1912, notwithstanding said accounts showed the retention by this defendant of said securities have not and either of them has not objected thereto, and said accounts have been by the Orphans' Court in every way approved and confirmed.

John S. Cooke, now deceased, a beneficiary of said trust, was a director and member of the finance committee of this defendant, and has been such during all the time that this defendant, has held said securities until the time of his death which occurred on November 15th, 1915. In con-

tinuing to hold said securities this defendant has had the benefit of the opinion and advice of the said John S. Cooke, and has to a great extent relied thereon and on the information obtained through him as to the status of the affairs of the said companies.

This defendant, among other trusts in its possession, has held during the same period stock in the Second Avenue Railroad Company and other securities of leased lines of the New York City Railway system, and has used and applied the same policy to the retention of those securities that it has with reference to the securities involved in this trust. The said securities have been the object of frequent conferences between the officers of this defendant, have been considered and discussed by its finance committee, and have been retained by the *unanimous* judgment of all the officers and members of the finance committee who have conferred upon the question.

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This defendant denies that it is liable to account to the said complainants or any or either of them for any loss occasioned by its continuance of the investments aforesaid, or any part thereof and it denies that the complainants are entitled to any relief or to any affirmative decree whatever in this cause against this defendant.

10. For further answer and defense to the allegations of said bill of complaint as to the alleged liability of this defendant for the depreciation of the value of said 5 bonds and said 225 shares

of stock, this defendant says, that on or about February 7, 1912, the complainant, Carrie S. Beam, exhibited and filed her bill of complaint in this honorable court against this defendant, and John S. Cooke, deceased, (who died after the filing of said bill of complaint,) Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, deceased, (who died after the filing of said bill of complaint,) and therein alleged among other things, the following matters and facts, viz: the death of said Sarah A. Cooke; the making, publishing and proving of her said Will; the letters testamentary thereof issued to the executors therein named; the recital of the eleventh, twelfth and thirteenth clauses of said will; that this defendant, the trustee named in said will, accepted the trusts therein imposed and entered on the execution thereof and continued to act as trustee thereunder until the time of the filing of said bill of complaint; that said testatrix had made in her lifetime investments of money in said 5 bonds and said 225 shares of said stock referred to in the 9th paragraph of this answer; *that each of said bonds and shares of stock came into the hands of the defendant, the trustee under said will* and were at the time of the filing of said bill of complaint in the hands of the defendant forming part of the trust fund; that said trustee had continued to hold such investments from thence until the time of filing said bill of complaint; that said 5 bonds and said 225 shares of stock had steadily depreciated in value in the market from the date of the death of said testatrix to the time of the filing of said bill of complaint and had with some little fluctua-

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tion steadily run down in market price during that period in the amounts therein stated; that for a long time prior to the filing of said bill of complaint no income whatever had been realized from said last named bonds and stock; that the defendant as Trustee under said Will had continued such investments of said testatrix negligently and not in the exercise of good faith and reasonable discretion, and that great loss had been occasioned to said complainant in said bill of complaint by reason of such alleged negligent continuance of said investments, for which loss the defendant, trustee as aforesaid, was, as alleged in said bill of complaint accountable; that said complainant in said bill of complaint had frequently applied to the said defendant for reimbursement to said trust fund for said losses occasioned by its said continuance of said investments as aforesaid, and that this defendant, trustee aforesaid, had refused and still refused at the time of the filing of said bill of complaint to comply with said request of said complainant.

Said complainant in said bill of complaint after alleging the matters aforesaid, therein prayed that the defendants therein should appear and answer the matters therein alleged as aforesaid, and that an account should be taken of the property and moneys that had been received by this defendant as trustee as aforesaid and the charge it had against the said property and moneys; also what investments of such receipts or any portion thereof it had made, and that the balance thereof,

and to whom the same was due, might be ascertained and declared and that any balance found due to said complainant in said bill of complaint, Carrie S. Beam, and to said trust fund so held for her benefit, upon such an accounting should be ordered to be paid to her and to said trust fund so held for her benefit, and that a Receiver of said trust fund so held for her benefit should be appointed with the usual powers and duties of Receivers in like cases; to which said bill of complaint this defendant put in its answer setting forth the same facts and matters as are stated in the 9th paragraph of this answer, which this defendant here repeats, and further alleging that this defendant in continuing to hold said securities had been guided by its best judgment and in so doing had exercised good faith and reasonable discretion and therein denying that it had in so doing acted negligently or had not exercised good faith and reasonable discretion in the discharge of its said trust, and the said cause afterwards, on or about the 12th day of November, 1913, duly came on to be heard, and after hearing the evidence submitted on said issue in said pleadings and argument thereon, this Court made a final decree in said cause upon the merits, on the *3 day of February, 1914,* wherein and whereby it was ordered, adjudged and decreed that the defendant, The Paterson Safe Deposit and Trust Company charge itself as Trustee for the complainant in said suit with the sum of Seven thousand one hundred and fifty-six dollars, being the

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value on September 24, 1907, of a one-fifth part of the securities held by it, consisting of three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds, due nineteen hundred and ninety-six, of the par value of one thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds, due nineteen hundred and forty-eight, of the par value of one thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each, which came to the hands of the said defendant, The Paterson Safe Deposit and Trust Company as Trustee, and that said defendant, The Paterson Safe Deposit and Trust Company charge itself with and pay to the said complainant the sum of Two thousand six hundred and six dollars and twenty-nine cents, being the amount of unpaid income from said trust fund, which should have been paid to said complainant to the time of making said decree.

And it was therein further ordered, adjudged and decreed that the costs of the said complainant in said suit be taxed, including a counsel fee of Six hundred dollars for her counsel, and that the same be paid by the said defendant, The Paterson Safe Deposit and Trust Company.

After the making of said final decree of this

Court, on or about February 7, 1914, this defendant duly appealed by its notice and petition of appeal duly made and filed from said decree to the New Jersey Court of Errors and Appeals in the last resort in all causes, to which petition of appeal the respondent, Carrie S. Beam, therein duly filed her answer and thereupon on or about the 16th day of November, 1914, after the said cause had been duly heard and argued on said appeal in said Court of Errors and Appeals, the said Court of Errors and Appeals decided that this defendant should not charge itself with said sum or any other sum as in said decree provided, and should not pay said costs and counsel fee as therein provided, and that this defendant was in no respect liable to said complainant in said bill of complaint, as appears by the opinion and decision of said Court of Errors and Appeals filed in said last named court on or about the day and year last aforesaid. And in and by the final decree of said Court of Errors and Appeals made on the 16th day of November, 1914, the said Court of Errors and Appeals ordered, adjudged and decreed that the said decree of said Court of Chancery be and was in all things reversed, set aside and for nothing holden, with costs of said Court of Errors and Appeals to be taxed, and that the said appellant therein do and should recover its costs in said Court of Chancery to be taxed, and that a decree be entered in the said Court of Chancery dismissing the said bill of complaint of said Carrie S. Beam, with costs to be taxed as aforesaid, and that the record and proceedings be remitted to said Court of Chan-

cery to be therein proceeded on according to law and the practice of said court. Pursuant to said last named decree of said Court of Errors and Appeals, the said record and proceedings were duly remitted to said Court of Chancery and therein proceeded on according to law and the practice of said court and under said decree of said Court of Errors and Appeals said bill of complaint of said Carrie S. Beam by the decree of this Court has been dismissed with costs taxed, as aforesaid, which said decree of the said Court of Errors and Appeals and said last named decree of said Court of Chancery are final decrees on the merits and remain in full force and effect.

This defendant further says that at no time since the filing of said bill of complaint by said Carrie S. Beam or since the said first named decree of said Court of Chancery or since the decree of said Court of Errors and Appeals until the present time could said 5 bonds and 225 shares of stock *or any part thereof have been sold or disposed of to any advantage* to the said trust; that during said last named time there has been no market therefor and the retention thereof by the defendant during that time has been necessary and in the exercise of good faith, sound judgment and reasonable discretion.

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As to so much of the allegations of the bill of complaint of the complainants filed herein as relates to the said 5 bonds and 225 shares of stock as aforesaid and the losses sustained with reference thereto and as to that part of the prayer

thereof which prays that this defendant account for or be charged with, make good or pay any losses for, on account or respecting said last named securities, this defendant avers that such part of said bill of complaint and prayer is and constitutes the same and identical issue and matter that was involved in said suit in Chancery wherein said Carrie S. Beam was complainant and this defendant was a defendant, and that the said decrees of the Court of Chancery and Court of Errors and Appeals determined the same and identical question as aforesaid, and that the said last named decrees are *res adjudicata* and are an estoppel and bar against said Carrie S. Beam, complainant herein, with reference to said identical questions involved in each of said suits, and that said complainants, Edward Beam, John C. Beam and William B. Beam, who are the children of said Carrie S. Beam, and have their interest in remainder in said property of said trust after the estate or interest of said Carrie S. Beam therein during her life shall terminate, were privies and were represented by said Carrie S. Beam in said suit in Chancery wherein she was complainant as aforesaid, so that said decrees in said last named suit in Chancery and said decree of said Court of Errors and Appeals likewise binds said Edward Beam, John C. Beam and William B. Beam as *res adjudicata* estoppel and bar with respect to said identical question so decided as aforesaid. To which said suit, proceedings and decrees in the Court of Chancery and said Court of Errors and Appeals this defendant refers as

showing more fully and at large the matters hereinbefore alleged; which suit, proceedings and decrees or copies duly certified this defendant will produce on the hearing herein if necessary so to do.

11. For answer and defense to the allegations of the bill of complaint filed herein as to the alleged liability of this defendant for the depreciation of the value of said 200 shares of the stock of the Brooklyn City Railway Company, this defendant says, that the investment of said 200 shares of stock were made by the testatrix and said stock was delivered to and accepted by the defendant as part of said trust fund; that said stock was known and regarded in the financial world as a gilt edged security and was placed with and held by investors who desired permanent and safe investments. It is not true as stated in paragraph 12 of said bill of complaint filed herein, that the value of said last named stock steadily depreciated in the market from the date of the death of the testatrix to the time of the filing of the said bill of complaint, but the fact is that said stock was not actively dealt in and only occasionally sold or purchased in most instances not for purposes of speculation, but from economic considerations personal to the holders thereof, and at the time of the death of said testatrix and at the time the said last named stock came into the possession of this defendant and for a considerable time afterwards, the same was considered by bankers, financiers and investors as among the most desirable securities to be had

for permanent investment. The said last named stock underwent some changes in market value at different times since it came into the possession of this defendant in sympathy with the changes in the general market for securities and in later years it has decreased in market value due somewhat to general market conditions and more particularly due to the fact that street railways of the character of said Brooklyn City Railroad Company have been regarded as unfavorably conditioned, with respect to their earning capacity, on account of the limitations imposed upon them with respect to the price of fares and the comparatively high cost of labor and other operating expenses which have prevailed for several years past. Quarterly dividends amounting to $1 per year per share have been paid regularly and constantly on said stock from the time it came into the possession of this defendant until October 1, 1919.

The statement of the said Brooklyn City Railroad Company as of July 15, 1919, showed a surplus of Five Hundred Forty-one Thousand Four Hundred Forty-six Dollars and Thirty-six Cents, ($541,446.36). The stock had declined somewhat in value between the years 1915 and 1919, but as the dividends seemed to be assured, after discussion among certain members of the Board of Directors of this defendant, it was deemed advisable by this defendant not to sacrifice the stock by selling it.

The Company was under the lease to the Brook-

lyn Heights Railroad Company for 999 years and the rental paid by it was more than sufficient to pay the regular dividends. Nothing occurred to effect the estimate of the public as to the desirability of said stock or to affect this defendant's sense of security in the investment of said stock until the Brooklyn Heights Railroad Company went into bankruptcy in 1919 and made default in the payment of the income tax due for the Brooklyn City Railroad Campany, in consequence of which the said Brooklyn City Railroad Company was obliged to pay this installment which amounted to over Forty-six Thousand Dollars ($46,000). On September 15, 1919, the Brooklyn Heights Company repudiated the said lease and the Brooklyn City Railway Company was obliged to operate its own lines. At that time the stock depreciated in value from about $10.50 to $4 per share. Mr. John L. Griggs, Vice-President of this defendant, then conferred with Mr. Job Hedges and Mr. James R. Sheffield, who were Receivers of said companies, and both of these gentlemen told said Griggs that if an increase in trolley fares should be granted, it looked as if the street railways would do well and that there was probability of an increased fare being granted. While the increase was not immediately granted, nevertheless, the stock depreciated very little *on that account*. Said Griggs also took the matter up with Mr. Porter, the Vice-President of the Brooklyn City Railroad Company, and he gave said Griggs practically the same answer and advice. Officers of The Chase National Bank were also of the same opinion. The said stock gained

about a point after that time and the matter was on different occasions brought to the attention of the Committee of this defendant and it was decided by this defendant that it would not be wise to sell the Brooklyn City stock at the prices then pevailing.

From reliable information which this defendant has obtained this defendant is satisfied that the financial condition of said Brooklyn City Railroad Company is as described by said Porter, and that it is reasonable to expect that said Company will earn a fair dividend within a reasonable time after the present high cost of operating ceases and reasonable increase of fare shall be allowed, and that said stock is liable to increase in market value.

This defendant denies that it has continued said investment in said last named stock negligently, and it denies that it has not exercised good faith and reasonable discretion in the discharge of its trust with respect to said stock. It denies that the continuance of the investment of said last named stock was either negligent, unreasonable, not in good faith or without reasonable discretion or judgment. On the contrary, it affirms that under the facts and circumstances and from the standpoint of facts and information available to and appearing to this defendant during the continuance of said trust, there has been no time when it appeared to this defendant acting with care and reasonable discretion and judgment that it was wise or prudent or to the advantage

of said trust to sell said last named stock, and this defendant avers that the continuance of the investment of said stock was wise and prudent according to the facts and information available to and appearing to this defendant, and since said last named stock came to the hands of this defendant there never has been a day on which, from facts then known or capable of being ascertained, it has been either wise or prudent to sell said last named stock or any of it, and in continuing to hold the same this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain.

12. For further answer and defense to the allegations of said bill of complaint filed herein, this defendant says, that from time to time since its qualification as Trustee under the said Will of Sarah A. Cooke, deceased, it has filed its intermediate account and its final account in the Orphans' Court of the County of Passaic; that said intermediate and final accounts covering the periods hereinafter stated respectively have been in every way approved and confirmed by said Orphans' Court and are as follows:

1. An intermediate account, from December 31, 1905, to February 1, 1908, inclusive, approved and cconfirmed by order dated, ~~July 13th, 1915.~~ April 23, 1908.

2. An intermediate account from February 1, 1908, to April 15, 1910, inclusive, approved and confirmed by order dated June 30th, 1910.

3. An intermediate account from April 15, 1910, to April 15, 1912, inclusive, approved and confirmed by order dated May 23rd, 1912.

4. An intermediate account from April, 15, 1912, to April 15, 1914, inclusive, approved and confirmed by order dated, May 14th, 1914.

5. An intermediate account from April 15, 1914, to April 30, 1915, inclusive, approved and confirmed by order dated, July 13th, 1915.

6. An intermediate account from January 7, 1915, to April 15, 1917, inclusive, approved and confirmed by order dated, May 24, 1917.

7. An intermediate account from April 15, 1917, to April 15, 1919, inclusive, approved and confirmed by order dated, June 5, 1919.

8. The final account from April 15, 1919, to January 5, 1921, inclusive, approved and confirmed by order dated, February 24, 1921.

In each of said intermediate accounts and in said final account this defendant set forth the holding by it of all said securities set forth in paragraph 5 of said bill of complaint filed herein. None of said complainants prior to the time of filing said account, approved July 13, 1915, as aforesaid, and notwithstanding said accounts so filed, approved and confirmed as aforesaid prior thereto, showed this retention by this defendant of all of said last named securities, has excepted or in any wise objected thereto.

On or about June 16, 1915, the complainant, Carrie S. Beam, filed exceptions to said account approved by said order, dated, July 13, 1915, as aforesaid, and in and by said exceptions stated as a reason for disallowing said account that said account set forth said depreciation of $56,969.50, which comprised and included the depreciation mentioned in said bill of complaint filed herein of the securities mentioned in paragraph 5 of said bill of complaint, and said exceptant therein prayed that said account be disallowed and that this defendant be required to account to the beneficiaries of said estate for the full amount of said depreciated securities at their full value as inventoried and appraised as aforesaid, and thereby charge this defendant with the said exceptions the said Orphans' Court considered and overruled the same and approved and confirmed said account as aforesaid.

loss of said depreciation. Notwithstanding the filing

On or about May 24, 1917, the complainants, Carries S. Beam, William B. Beam and John Beam, filed exceptions to said account approved by said order dated, May 24, 1917, and in and by said exceptions stated as a reason for disallowing said account that said share of said trust fund in which said exceptants were interested amounted to about $30,000, which was the said appraised and inventoried value thereof and that the defendant should be charged with said amount notwithstanding said depreciation of said securities, and said exceptant therein prayed that the account of this defendant in which this defendant was not charged with said depreciation

be disallowed and that this defendant be required to account to said beneficiaries of said trust for said depreciation in the value of said shares in which said exceptants were interested subsequent to the said decree of April 8, 1914.

Notwithstanding the filing of said exceptions the said Orphans' Court considered and overruled the same and approved and confirmed said last named account as aforesaid.

On or about May 29, 1919, the complainants, Carrie S. Beam, John C. Beam and William B. Beam filed exceptions to said account approved by said order dated June 5, 1919, and in and by said exceptions stated, among other reasons, as reasons for disallowing said account the following:

> "(1) That in the years 1908, 1910 and 1912 the trustee filed in this court accountings wherein it was shown under oath that the entire trust estate as then held amounted to some thirty to fifty thousand dollars more than was actually in the trustee's hands at those times, by virtue of which sworn statements of the trustee this court did at those times then decree that there was such an erroneous amount in its hands 'to be disposed of according to law', and by reason whereof this beneficiary was for several years kept in ignorance of the true condition of the affairs in regard to the trust, which afterwards made it practi-

cally impossible for her to compel the restitution of sums lost by the said trustee during this period.

(2) That in the year 1915 this trustee did file a fifth account wherein is was attempted to charge off this gross depreciation of Fifty-six thousand nine hundred and sixty-nine dollars and fifty cents without any explanation concerning how and when the said deprceiation had occurred notwithstanding that in the interim since this court had last previously decreed the trust estate to be practically intact there had been no material depreciation in the assets of the estate and none of the accounts had disclosed any depreciation.

(3) That in this attempt they were sustained by the then judge of this court who under the laws of this state was not qualified to sit upon this bench and who in discharging them of liability did inquire 'How can I punish them for something that they have already done?' That thereafter it was attempted to secure from the court stenographer, one Sidney Turner, the record of these proceedings in order that an appeal might be taken therefrom to the prerogative court but that the said attempts were futile and for that reason no appeal could be taken.

(4) That in the year 1917 this trustee did file a sixth account to which these exceptants filed exceptions which were by this court overruled, on the ground that the matter was *res adjudicata* inasmuch as the court had passed upon it in 1915 as hereinbefore set forth."

The said Orphans' Court in and by said order dated, June 5, 1919, after reciting that notice had been given to apply for an order to remove and strike from the records of the court said exceptions on the ground that the same were vague, uncertain and scandalous and not proper exceptions, overruled said exceptions and ordered the same to be disallowed and removed and stricken from the records of the court, and allowed and confirmed said account, as aforesaid.

On or about February 10, 1921, the complainants, William B. Beam and John C. Beam, filed exceptions to said final account approved by said order dated, February 24, 1921, and in and by said exceptions stated as reasons for disallowing said account, as follows:

"1. The accountant does not state the actual or market value of the securities set forth in schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in schedule C of said final account.

3. The accountant does not set forth the

method by which the bond and mortgage of Max Gold mentioned in schedule C of said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the number of the bonds and stocks held by it as trustee and mentioned in schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co., mentioned in schedule C of said final account."

The said Orphans' Court in and by said order dated, February 24, 1921, *overruled said exceptions,* and allowed and confirmed said account as aforesaid. Shortly after the date of said last named order the said complainant, William B. Beam, appealed from said last named order, which overruled said exceptions, to the New Jersey Prerogative Court and said appeal is now pending.

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All of said several orders of said Orphans' Court allowing and confirming said several accounts finally disposed of the matter involved therein on the merits and each of said orders continues to be and now is in full force and effect.

To all of which said several accounts and exceptions thereto and several orders and proceedings thereon hereinbefore mentioned, this defendant refers, all of which several accounts, exceptions and several orders and proceedings thereunder or duly certified copies thereof this defendant will produce on the hearing herein, if necessary so to do.

This defendant in further answer and defense to the said bill of complaint filed herein avers that all of said accounts of this defendant showed the retention by this defendant of all of said securities mentioned in paragraph 5 of said bill of complaint filed herein, as aforesaid, wherein the *inventoried and appraised values* thereof were stated in said accounts until the said account of 1915, wherein the said depreciation of said securities was set forth and the values of said securities set forth in said last named account and the said account thereafter filed were the depreciated values as aforesaid; that due and regular notice of the filing of said accounts was given to said complainants *and every requirement of law fulfilled for or respecting the* allowance and confirmation of said accounts, as aforesaid; that the subject matter of the bill of complaint filed

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herein that relates to all of the said securities mentioned in said paragraph 5 thereof and the losses sustained with reference thereto, and that part of the prayer of said last named bill of complaint which prays that the defendant should account for or be charged with, make good or pay any losses for, on account of or respecting said last named securities, were matters and questions involved in said accounts, proceedings and orders relating to said accounts, and were proper subject for exeception, objection and litigation in said proceedings, and that said complainants were in law required to so except, object or litigate therein, or otherwise to be estopped and barred from so excepting, objecting or litigating with reference to said subjects, in this suit; that by reason thereof, the said orders, approving and confirming said accounts to which no exceptions were filed and the said orders approving and confirming said accounts to which said exceptions were filed and wherein the same were either overruled or ordered stricken from the records of the court as aforesaid, are *res adjudicata* and an estoppel and bar against each of said complainants herein as to the said subject matter of the said bill of complaint filed herein that relates to all of said securities mentioned in said paragraph 5 thereof and the losses sustained with reference thereto and that part of the prayer of said last mentioned bill of complaint which prays that the defendant should account for, or be charged with, make good, or pay any losses for, on account of, or respecting said last named securities.

This defendant denies that it is liable to account to the complainants or any or either of them for any loss occasioned by its continuance of the investments mentioned in said 5th paragraph of the bill of complaint filed herein, aforesaid, or any of them, and it denies that the complainants *of* any or either of them are entitled to any affirmative relief whatever in this cause against this defendant.

This defendant prays to be hence dismissed with costs.

JOHN W. HARDING,
Solr and of Counsel with Defendant.

IN THE CHANCERY OF NEW JERSEY.

Testimony.

Between EDWARD BEAM, *et al.*, Complainants, and THE PATTERSON SAFE DEPOSIT AND TRUST COMPANY, Defendant.	On Bill, etc. Minutes of Final Hearing.

APPEARANCES.

MESSRS. HUTCHINSON & HUTCHINSON, for Edward Beam and John C. Beam.

WILLIAM B. BEAM, ESQ., solicitor *pro se.*

JOHN W. HARDING, ESQ., for defendant.

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Paterson, N. J., December 7, 1922.

The Vice Chancellor: I have read the pleading, gentlemen; I think you may proceed.

Mr. Hutchinson: Your Honor does not need any opening, then?

The Vice Chancellor: Oh; I think not, unless there is something additional to what there is in the pleadings.

Mr. Hutchinson: Very well, sir; we will call our first witness.

The Vice Chancellor: Are the complainants in this case all the children of Carrie S. Beam?

Mr. Hutchinson: May I state to your Honor that the bill in this cause was originally filed for Edward Beam and John C. Beam, two of the remaindermen, there are three children, Mr. William B. Beam is on the record as solicitor *pro se;* those three children are all of the children of Mrs. Beam.

The Vice Chancellor: Of Carrie S. Beam?

Mr. Hutchinson: Yes, sir.

The Vice Chancellor: Then Edward Beam, John C. Beam and William B. Beam are all the children of Carrie S. Beam?

Mr. Hutchinson: Yes.

The Vice Chancellor: And she is the lady who prosecuted the first suit in 1912, which went to the Court of Errors and Appeals?

Mr. Hutchinson: Yes, sir.

The Vice Chancellor: None of the other children are *cestui-que-trustent,* or parties to this suit?

Mr. Hutchinson: Well, there are not any; at least, I am not advised of any who could possibly be; there might be a child of Edward Beam who might come in later.

The Vice Chancellor: No; but I take it that this trust was divided into five parts—

Mr. Hutchinson: Five parts.

The Vice Chancellor: —and that the property in question, held in trust, was payable not only to Carrie S. Beam, but to other brothers and sisters?

Mr. Hutchinson: No.

Mr. Harding: It was divided into ten parts, of which one of the five went directly to the five; then the other half went into trust, to have a special trust on the part of each one; and during the life estate the interest of that went to Carrie Beam, and after that, to her children.

The Vice Chancellor: This whole property involved in this litigation, was that left in trust for Carrie S. Beam, alone?

Mr. Harding: Yes, it was left in trust for Carrie Beam during her life, for the income; and, after that, for her children, who would take in remainder.

The Vice Chancellor: I gained the impression (of course the bill and answer are long) that this trust was for the benefit of Carrie S. Beam and other children.

Mr. Harding: The income was payable to Carrie Beam during her life; then to the children. I will just read the clause in the will that is set out in the bill of complaint.

"Eleventh: I direct that all the rest, residue and remainder of the estate of which I may die seized and possessed be divided into ten equal parts, one of which

parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give to my son, Charles D. Cooke, another of which parts I give to my daughter, Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam."

"Twelfth: The other five parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarterly yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

"Thirteenth: If at the time of my death any of my said children shall be dead, I direct that then the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate."

Now, inasmuch as Carrie Beam survived the testatrix, of course she took this estate for life, and upon her death it goes to her children, all of whom survive.

The Vice Chancellor: But she took only a fifth, there were four other children, weren't there?

Mr. Harding: Yes, and half of the whole residue was divided into five parts, and her interest is one-fifth of one-half of that residue.

The Vice Chancellor: That leaves the other children four-fifths?

Mr. Harding: Well, her children took that one-fifth of one-half of the residue, after her death.

Mr. Hutchinson: I think the Vice-Chancellor has, probably, in his mind, the children of Carrie S. Beam, when, in fact, it went to the children of Sarah A. Cooke.

The Vice Chancellor: Well, that is what I understood.

Mr. Hutchinson: Now, the one-fifth share of Sarah A. Cooke, about which we are contending, the income of that share, as Mr. Harding says, goes to Mrs. Beam during her lifetime, she being entitled to one-fifth of that total fund. That has now been separated. In 1912 it was divided actually into five parts; one part is now held for the purpose of paying Carrie S. Beam, during her life, the income, and after that, to go to her three children, John C., Edward and William B. Beam.

The Vice Chancellor: Perhaps I have not made myself clear: As I understand it, this trust estate was to be divided into five parts, one part to go to Carrie S. Beam, and one other part each to the other remaining children; and, therefore, as I see it, the other four children have suffered to the same extent by this depreciation that Carrie S. Beam and her children have suffered—is that it?

Mr. Harding: Your Honor, it is this way: The will takes first one-half of the residuary fund and gives it outright to the five children—that is out of it—

The Vice Chancellor: That I understand.

Mr. Harding: —the other half is to be divided into five parts, equal parts, one to go in trust for each one. Now, Carrie Beam is one of them, and she takes a life estate in that one-fifth of the one-half of the residuum estate during her life, and her three children, after her death, are interested in the corpus that goes to her. You see, that is a trust entirely separate from all the other children of Sarah Cooke, the testatrix. All the parties are here. The parties in interest in this trust which is now involved, are Carrie S. Beam during her life, and her three children in remainder.

The Vice Chancellor: That is, as to one-fifth?

Mr. Harding: That is, as to one-fifth.

The Vice Chancellor: Well, what became of the other four-fifths, do they suffer alike?

Mr. Harding: Well, that has been divided up and given to the rest of them.

The Vice Chancellor: They have taken possession of theirs, have they?

Mr. Harding: They have taken possession, and there is no complaint about their loss, as far as that is concerned.

Mr. Hutchinson: That is not in issue here; no, sir.

Mr. Harding: It is accepted by everybody else.

The Vice Chancellor: As I understand, then, if Carrie S. Beam was living, she would be the complainant in this case, and all the present complainants claim under Carrie S. Beam?

Mr. Harding: Claim under Carrie S. Beam, as to one-fifth of this trust; but, of course, Carrie S. Beam is living, your Honor, now, and she is a party to the suit.

The Vice Chancellor: Oh, she is a party to this suit?

Mr. Harding: Yes, sir—to make it a little clearer, Carrie S. Beam originally was the one who solely filed a bill involving the same questions, practically, that are involved in this case. She filed the bill to hold the executors responsible for the failure to sell 5 bonds and 225 shares of stock, and that was all litigated, and was before the Court of Appeals, and decided; now, the only new question in this case, as far as she is concerned, is with reference to 200 shares of Brooklyn City Railroad stock that was not involved in that case.

The Vice Chancellor: I see.

Mr. Harding: That is the only distinction, as I take it, between the two suits.

The Vice Chancellor (To Mr. Hutchinson): Is that the situation?

Mr. Hutchinson: That is it.

The Vice Chancellor: That is, the only question in this suit is the 200 shares of the Brooklyn City Railroad stock?

Mr. Harding: Well, I don't know if counsel agrees to that. I say that is the only difference between the two suits. In this last suit the bill is brought almost in the same language as the original bill, asking for an accounting, and charging the trustee with having failed to sell these securities, in the same language, only, added to it, are the 200 shares of the Brooklyn Railroad Company, which had depreciated from a value of $4,800 down to some lower sum. I see no difference.

The Vice Chancellor: All the property that was in litigation in the former suit is in this suit, plus 200 shares, additional, of the Brooklyn City Railroad Company, is that right?

Mr. Hutchinson: Yes, sir. May I just state my position for a moment so I may make it clear: All the proceedings in the former suit were brought and conducted in the name of Carrie S. Beam, alone, and related to certain securities other than the Brooklyn City Railway stock, four securities, I think. There was no effort made at that time to bring in the remaindermen as parties to that suit, on either side; consequently, when the decree went, after appeal from the Court of Chancery, we claim

that it bound only Carrie S. Beam, and bound her only as to the securities that were in question in that suit. This bill is filed upon the theory that since that suit was decided the shrinkage in the Brooklyn City Railway stock has occurred which introduces a new element in the trust. Also that the remaindermen, not having been made parties at the instance of either complainant or defendant in the former suit, they are not precluded from bringing in not only the Brooklyn City Railway stock, but they are not precluded from investigating with regard to the securities in the former suit, on the further theory that what happened in the future throws light on the past; and what happened in the past throws light on the future; so that we claim that these five securities now, including the Brooklyn City securities, and the circumstances which surrounded them, constituted one continuous chain of circumstances which these new complainants are entitled to inquire into; and, as to the Brooklyn City Railroad stock, Mrs. Beam is entitled to be heard. That is our position.

The Vice Chancellor: Well, is not Carrie Beam bound by everything that transpired in the former suit?

Mr. Hutchinson: As to the securities that were involved in the former suit.

The Vice Chancellor: Couldn't she have brought into the former suit the Brooklyn City stock?

Mr. Hutchinson: No, sir; the loss had not occurred, as I understand it, at that time.

The Vice Chancellor: Was there any notice given to the Trust Company to sell these securities by the *cestui-que-trustent,* pending or since the former suit?

Mr. Hutchinson: I do not know that there was, except orally. I am not advised in regard to that matter. Our position is that it really does not make any difference, that it does not discharge the trustee from the faithful performance of its duty, because here is a woman unfamiliar with stock transactions and operations—

The Vice Chancellor: I am only discussing it so as to get a grasp of the case, as fully as I can.

Mr. Harding: If your Honor please, in reply to what counsel says, our claim is set up in our answer, that, while Carrie S. Beam was the only party to that original suit, yet she represented, in law, the remaindermen; so they were bound; and it is *res judicata* not only against her, but against them, as well. And we also set up the same defense, under the same facts, against them all, whether it is *res judicata,* or not.

The Vice Chancellor: Oh, that is another proposition.

Mr. Harding: And we have also set up that, by reason of some six or seven

decrees of the Orphans' Court, all these questions were subject to be litigated in the Orphans' Court; and different ones of the children of Mrs. Beam have, during the last three or four years, taken exceptions to the accounts of the executors, involving exactly these same questions.

The Vice Chancellor: That I take from the bill. But the children do not take from Carrie S. Beam, they take under the will.

Mr. Harding: They take under the will.

THE CASE FOR THE COMPLAINANTS.

FRED P. HEMPHILL, sworn.

Direct examination:

By Mr. Hutchinson:

Q. You are a Clerk in the office of the Prerogative Court? A. Yes.

Q. Have you produced here, at our request, a package of papers filed on the appeal by William B. Beam from a decree of the Orphans' Court of the County of Passaic? A. I have.

Q. You may hand them to the stenographer, if you please.

Mr. Harding: What is the purpose of this evidence? I do not see the materiality.

Mr. Hutchinson: Well, it is a little out of order, Mr. Harding, I may say, because Mr. Hemphill is an attache of the Secre-

tary of State's Office. I could have reserved it until later; but the point of it is this: You set forth that we are precluded by the final decree and the intermediate and final accounts in the Orphans' Court, and we offer these now to show that that is not correct, that the decree on the final account is not final, but that there is an appeal pending from that decree.

The Vice Chancellor: I suppose that might be addressed to the discretion of the Court. The final decree remains a decree —oh, that would be as to a final judgment not reversed.

Mr. Harding: I fail to see the materiality of it, for this reason, I assume that it is set up as an answer to our claim of *res judicata*—

Mr. Hutchinson: Pardon me, Mr. Harding—you are claiming an estoppel.

Mr. Harding: Well, that is what I mean—an estoppel—if we are right in that contention, it does not make any difference whether those exceptions in the Orphans' Court have been appealed, or not; and it does not make any difference what the result of the decision on the appeal would be. If they should succeed on it, why, they would succeed in an issue in the Orphans' Court; and my point is that if they are precluded by the decision of the Orphans' Court, or by the Prerogative Court, it is their remedy to litigate it in

the Court of Errors and Appeals, and they cannot raise that quesiton collaterally in this suit and have the two courts decide the same question. I fail to see the materiality of it.

The Vice Chancellor: I think I will let it in. It is safer to admit it, than to exclude it. A decree of the Orphans' Court is opened up, or, at least, it has no force and effect, when an appeal is taken, is not that the law? It is different as to a foreign judgment; but I think, as to our own courts, that the taking of an appeal from a decree of the Orphans' Court operates to remove the judgment, and there is no judgment there. It is different from a foreign judgment. I think I will admit it.

Mr. Harding: Of course your Honor will understand that this is only just one appeal from one of these orders?

The Vice Chancellor: Oh, it is just the last appeal. The exceptions on the others were overruled, and no appeal taken from them. These records need not be marked as exhibits, but they are admitted in evidence.

Mr. Hutchinson: Mr. Harding, what we are now offering in evidence are the papers in all three cases where appeals have been taken; there were appeals taken from intermediate accounts as well as from the final account.

Mr. J. L. Griggs: In the Prerogative Court?

Mr. Hutchinson: Yes; weren't there?

Mr. J. L. Griggs: No, sir.

Mr. Beam. We attacked all the other decrees on the ground of fraud, by one appeal.

Mr. Harding: My understanding is that there was only one appeal from the decree of the Orphans' Court. That is my understanding.

Mr. Hutchinson: That I do not know, because I had nothing to do with that. We will offer these papers.

Mr. Harding: What is it you are offering, Mr. Hutchinson?

Mr. Hutchinson: We are offering Certified Copy of the Petition of Trustee for discharge; Final Account; Exceptions to Account; Order discharging Trustee, and Amended Exceptions to Account, in the Matter of the Estate of Sarah A. Cooke, deceased.

Mr. Harding: Who is the appellant?

Mr. Hutchinson: William B. Beam is the appellant in this case.

Mr. Beam: But I do not see either the Petition of Appeal, nor Notice of Appeal.

Mr. Harding: Well, there must have been an appeal, or the record would not go up without it.

Mr. Beam: I don't know what became of it. It was filed. I have my own copies.

Mr. Hutchinson: Well, that is up to the solicitor; Mr. Beam is representing himself, as solicitor *pro se* in this case.

The Vice Chancellor: I will let you offer them later.

Mr. Hutchinson: Well, at recess we will have a chance to look them up.

The Vice Chancellor: Yes.

Q. Now, have you the record, also, of the former suit—that is, the testimony produced in the former suit?

(The witness thereupon produced a printed book, being Volume 592, of Records of Appeals in the Court of Errors and Appeals, containing, among others, the record on appeal in the case of Carrie S. Beam, Complainant-Respondent, and The Paterson Safe Deposit and Trust Company, *et als.*, Defendants-Appellants.).

Mr. Harding: Now, let me see it. I think we can facilitate matters. (Examining the volume produced by the witness). Mr. Hutchinson suggests that we admit the whole record of the former suit, as it appears in the printed book which the witness has in his hands—that includes everything?

Mr. Hutchinson: Yes, sir.

Mr. Harding: The testimony, and everything that is in it?

Mr. Hutchinson: Everything; I cannot offer part of it.

Mr. Harding: Well, I agree to that. I think it will facilitate matters.

The Vice Chancellor: Doesn't it include all reference to these former accounts in the Orphans' Court?

Mr. Harding: The answer sets up, in that case, that the former accounts had been filed, but there was no testimony given in that case with reference to it, at all it was decided upon other grounds.

Mr. Hutchinson: Well, they were not litigated at that time.

Mr. Harding: Not litigated at that time.

The Vice Chancellor: Then the testimony taken here will just supplement what was taken in the former suit?

Mr. Harding: Yes. The other testimony will be regarded as of the same effect as if it were produced here.

Mr. Hutchinson: Yes, sir. I thought that would save time. The Exhibits, and everything that are in there (referring to the printed book) are admitted.

(The record and proceedings in the former suit, being offered and admitted by consent, the Volume containing the same, produced by the witness, is marked Exhibit C, 1).

Mr. Harding: I suggest, in connection with that, Mr. Hutchinson, that I have now a Certified Copy of the remittitur reversing the decree of the Court of Chancery,

and I have a Certified Copy of the decree of the Court of Chancery dismissing the bill, in pursuance of the order of the Court of Errors and Appeals; perhaps you might offer them?

Mr. Hutchinson: I am entirely content. I think I have the original papers in the original suit here, Mr. Harding, so I think we had better offer those.

Mr. Harding: Yes. I suppose your Honor will probably inspect these, anyway; but there is no objection to offering them in evidence.

Mr. Hutchinson: Suppose we offer all of these papers?

The Vice Chancellor: Well, you have it all in the printed book.

Mr. Hutchinson: Well, I am willing to stipulate on the rcord that the remittitur was a reversal of the Court of Chancery.

(The two copies produced by Mr. Harding were then marked, by consent, Exhibit C, 2 and Exhibit C, 3, respectively).

Mr. Harding: I suppose your Honor will take notice of the opinion of the Court of Errors and Appeals?

The Vice Chancellor: Undoubtedly.

Mr. Harding: It is in 8th Buchanan, I think. There is a certified copy, for convenience, if your Honor wants it.

The Vice Chancellor: I think I read the case more than a year ago.

Mr. Harding: The opinion is in 83

Equity. Here is a certified copy of the opinion, if your Honor wishes it.

The Vice Chancellor: Well, you may let it be marked. (And the paper was thereupon marked Exhibit C, 4).

Mr. Beam: I have no questions.

No cross examination.

FREDERIC BEGGS, sworn.

Direct examination:

By Mr. Hutchinson:

Q. Mr. Surrogate, have you produced here, in response to a *subpoena duces tecum*, all the papers in your office in relation to the Sarah A. Cooke Estate, including the final accounts and intermediate accounts and decrees thereon? A. I have.

Mr. Hutchinson: I do not know how far your Honor will permit me to limit my offer, but I would like to offer these for one purpose only, and that would be to show the declination in the value of the Brooklyn City Railway stock, if there is any dispute about that. Your answer practically admits the declination, Mr. Harding, in value of the Brooklyn City Railway stock. But that is the purpose of producing these accounts.

Mr. Harding: I would suggest this, for the purpose of saving time. We have set up ourselves all of these accounts, from the intermediate accounts down, for the purpose of *res adjudicata;* and I would suggest that all of these accounts be put in, reserving to each counsel the right to object to them.

Mr. Hutchinson: Oh, you want to put them in, anyhow?

Mr. Harding: Yes, I would put them in, anyhow; and, to save time, I would suggest that.

Mr. Hutchinson: Yes; I think that is a fair proposition.

The Vice Chancellor: I would be inclined to admit them, anyway, and if they were not material, after examining the case, I would reject them, and so state.

Mr. Harding: Well, now I have them in such form as to be convenient.

Mr. Hutchinson: Well, that is satisfactory.

Mr. Harding: Of course, with these accounts I am speaking of would be included, the notices that were given, and the final decrees on them.

Mr. Hutchinson: Well, we do not object to the whole record.

The Vice Chancellor: You must offer the whole record, and not a part of it.

Mr. Harding: Well, we wish to put in all of these accounts and notices upon

which the accounts were given, according to the statute, the decrees on the accounts, and the exceptions; and the decrees on the exceptions. You have them all, Mr. Beggs?

The Witness: I have them all.

Mr. Hutchinson: Well, I will then withdraw my offer, and leave your offer stand —is that all right?

Mr. Harding: Well, that is satisfactory. Now, will it be necessary to specify each of these accounts, your Honor?

Mr. Hutchinson: I do not think so.

The Vice Chancellor: Counsel can stipulate as to what the record shows.

Mr. Harding: The first one is from December 31, 1905 to February 1, 1908; the next one is from February 1, 1908, to April 15, 1910; the next one is from April 15, 1910 to April 15, 1912; the next one is from April 15, 1912 to April 15, 1914; the next one is from April 15, 1914, to April 30, 1915; the next one is from January, 1915, to April, 1917; the next one is from April 15, 1917 to April 15, 1919; the next one is the final account, from April 15, 1919 to January 5, 1921.

Mr. Hutchinson: That is the so-called final account?

Mr. Harding: That is the so-called final account. Now, in connection with that, without enumerating them, as has just been agreed upon, we offer all the

proceedings, including the notices that were given pursuant to the statute, on which these accounts were approved; the order or decree approving the accounts, and the exceptions connected with them; and the decree of the Court on the exceptions—all matters that pertain to those accounts.

The Vice Chancellor: In other words, the entire record in each account.

No cross examination.

WILLIAM B. BEAM, ESQ., sworn.

Direct examination:

By Mr. Hutchinson:

Q. Mr. Beam, you are one of the new trustees appointed in the place of the Paterson Safe Deposit and Trust Company, in the matter of the Estate of Sarah A. Cooke, in a share of which your Mother and yourself and your two brothers have an interest? A. I am.

Q. As such trustee, did you come into possession, by delivery from the Paterson Safe Deposit and Trust Company, of some shares of the Brooklyn City Railroad Company? A. That is correct.

Q. When did you receive them? A. On the 22nd day of March, 1922.

Q. What did you do, if anything, in pursuance of the performance of your trust, after the receipt of those shares? A. Well, we investigated the Company, to some extent.

Q. What? A. We investigated the affairs of the Brooklyn City Railroad Company to some extent, and we sought advice of our brokers as to their retention.

Q. Did you retain them? A. We did not.

Q. What did you do? A. We sold them.

Q. When did you sell them? A. Why, I think it was some time in April, 1922, the middle of the month.

Q. I show you a paper purporting to be an account with Goodbody & Company, of 115 Broadway, New York City, and ask you if any part of that relates to the sale of the Brooklyn City Railroad Company stock? A. It does.

Q. Will you please state, from that, what was realized on that sale? A. We realized from the sale a total of $310.40.

Q. (By Mr. Harding) How much is that, per share? A. Seven and seven-eighths per share.

Q. (By Mr. Hutchinson) Seven dollars and seven-eighths per share? A. That is right.

Cross-examination:

By Mr. Harding:

Q. That was in April, 1922, when you sold this stock, was it? A. Yes.

Q. Had the stock been considerably lower than that before April, 1922? A. It might have been.

Q. Are you aware of anything about the price of the stock before you sold it? A. If my recollection were refreshed I might be able to state—if I were presented with some market reports.

Q. After you sold the stock it rose in value

considerably, didn't it? A. No—what was the latter part of that question?

Q. After you sold the stock did it not rise in value? A. I think it rose about one point, perhaps a point and a half; then it subsided again.

Q. Wasn't it about 10 in the summer of this year? A. No, I am quite certain it was not; I think the highest it ever got was about 9.

Q. Do you know what it is now? A. I think it is in the neighborhood of 8, somewhere around 8, 8½, 8¼.

Q. It is higher now than what you sold it for? A. About half a point, or a fraction of a point.

Re-direct examination:

By Mr. Hutchinson:

Q. Had you any knowledge of the values of the stock prior to your receipt of it from the Paterson Safe Deposit and Trust Company? A. I have only knowledge that was taken from the market reports, and reading the newspapers; I would not care to state, off-hand, without being shown something.

Q. Are you able to state, from your own knowledge, whether or not the stock declined or increased in value from the period of the filing by the Trustee of its account in the Surrogate's Office—

Mr. J. L. Griggs: February, 1921—that is the last account.

Mr. Hutchinson: Well, I would like to have the account, Mr. Griggs, in which the

valuation was reduced to $800—can you give us that date? Or can you give us that date, Mr. Beam?

The Witness: What is the date you want?

Mr. Harding: Wait until I get it for you; I think I can get it for you.

Mr. Hutchinson: There was a depreciation of from $4,800 to $400, and then from $4,000 down to $800.

Mr. Harding: I think I have it here. In the account (if this is what you mean) from April 15, 1914 to April 30, 1915, there is a depreciation of funds mentioned here, in which 200 shares of Brooklyn City R. R. stock is written down at $800—well, it is not written down at $800, the depreciation was $800.

Mr. Hutchinson: Well, that is where it broke from $4,800 to $4,000, but there was another point where it dropped to $800; that is what I am after.

Mr. Harding: It only appears in this account as that much written off for depreciation. Then it was carried, after that, on down.

Q. Are you able to state, from your own knowledge, whether or not the stock declined or increased in value from the period when the stock began to be carried at $800 down to the time when you made the sale? A. I believe it did.

Q. Did what? A. Declined.

Q. Well, you *believe* it did—do you know, as a

fact? A. I know as a fact; but I do not know the amounts.

Q. I am not asking you the amounts, I am asking you whether it declined, or not? A. Well, it did.

Q. Did it ever increase during that period? A. I do not think it did, up until about the year Nineteen hundred and—well, it was sometime after, I think it was about the year 1921, beginning, perhaps, a little later.

By Mr. Harding:

Q. This stock that you are now referring to, the Brooklyn City Railroad stock, is $10 par, is it not? A. It is.

Q. $10 a share? A. It is.

The Vice Chancellor: You mean the stock is $10, par, and sold for 7⅞?

Mr. Hutchinson: Yes, but from a valuation of the Trustee, in the first instance, of $4,800.

Mr. J. L. Griggs: $4,800 is for the whole five shares.

Mr. Hutchinson: Oh, I realize that. It would be really about—

Mr. Harding: In other words, it was selling at the rate of 24.

Mr. Hutchinson: When it was taken over it was 24. Now, it was sold at 7 and a fraction, I believe. If your Honor please, with the exception of two or three preliminaries that I overlooked, I believe we are through. One of them is this—I would like to have the privilege of amend-

ing the bill of complaint by substituting the real name of the defendant company.

Mr. Harding: I was about to suggest that.

Mr. Hutchinson: Yes, sir; I understand it has changed or merged into a name different from that which is used in my notice to counsel.

Mr. Harding: The successor of the Paterson Safe Deposit and Trust Company, which is the defendant named in this suit, is the National Trust Bank.

Mr. J. W. Griggs: If you will allow me to suggest—under the Law, the Trust Company is still suable in its own name; it doesn't make any difference whether they change the name, or not. I suppose there is no objection to his doing that, to amending his bill by stating that the Paterson Safe Deposit and Trust Company is merged in the National Trust Bank; but it is not necessary to do it.

Mr. Hutchinson: Well, I do not think there is any question about it, but for form's sake, I was going to make the motion to add to the name as set forth in the bill of complaint just the words "National Trust Bank."

The Vice Chancellor: Well, yes; and in that amendment, you will find it in the description of the Paterson Safe Deposit and Trust Company, as indicated, in the appropriate parts of the bill.

Mr. Hutchinson: Yes, sir. It is only technical, I imagine. And there are some clerical errors in the bill, which, I suppose, are not vital—for instance, calling an intermediate account a "final account" or *vice versa;* I am not very particular about it, but I think it would be well to have the record as straight as possible; so I would like to make the correction wherever those errors occur.

The Vice Chancellor: Yes.

Mr. Hutchinson: I offer in evidence the memorandum of Goodbody & Co., dated, April 17, 1922.

(And the same is admitted, without objection, and marked Exhibit C, 5).

The Complainants rest.

THE CASE FOR THE DEFENDANT.

JOHN L. GRIGGS, ESQ., sworn.

Direct examination:

By Mr. Harding:

Q. Are you an officer of the Paterson National Bank? A. Yes, sir.

Q. Which was formerly the Paterson Safe Deposit and Trust Company? A. Yes, sir.

Q. What is your office? A. Vice President and Trust Officer.

Q. How long have you been connected with the defendant? A. I was in that capacity since February, 1917, but a director of the institution for four or five years preceding that time.

Q. Is it part of your duty to specially look after the status of securities that you hold in trust? A. Yes, sir.

Q. And has that been your duty for these years that you have spoken of? A. Yes, sir—in conjunction with the assistance that is given by a specially appointed committee, which is known as a Trust Committee, and consists of three other directors of the institution and myself.

Q. And what are the duties, specially, of that committee? A. The duties of that committee are to meet and examine the securities held by various trusts, to consider the advisability of the retention or the selling of them, and the reinvestment of the proceeds, or the investment of uninvested principal or *corpus* (if it susceptible of being invested); and a general supervision over all the trust department of the bank.

Q. You are familiar with this so-called Cooke Trust? A. Yes, sir.

Q. In which Carrie S. Beam and the other complainants in this suit are beneficiaries? A. Yes.

Q. In that trust were there 200 shares of the Brooklyn City Railroad Company? A. Originally, in the trust, for the one-half of the residuum of the Sarah A. Cooke Estate, there were 200 shares.

Q. And were those some of the securities that were obtained and invested by the testatrix in her lifetime? A. All of them.

Q. They all were? A. Yes, sir.

Q. You mean by that, all of the 200 shares? A. Yes; and all of the securities that were received by us.

Q. They came to your Company in trust, then, as investments made by the testatrix herself? A. Yes.

Q. Just the same as the 225 shares of the Central Park Road and the 3 bonds of the Second Avenue, and the 2 bonds of the Twenty-eighth and Twenty-ninth Streets Cross-town? A. Yes.

Q. What do you, personally, know about the value of this stock of the Brooklyn City Railroad Company, while you had to do with the office of Vice-President? A. Well, it was one of my duties to keep continually in touch with the values of this stock, as well as other securities; and it has been my custom to examine the market quotations as set forth in the "Financial Chronical," regarding this stock; but, in addition to the quotations in the "Financial Chronicle," I have sought quotations from various brokers and bond people, that is, J. G. White & Co., and McClure, Jones & Reed, and I have weekly, perhaps, during February, 1917, down to this week, examined the values of this stock as reported in the financial papers.

Q. What is the character of this stock with reference to investment security? A. At the present time?

Q. Oh, what has it been? A. Primarily it was understood to be an investment stock of a very high character. I have understood that it was

probably held more by estates in the vicinity of New York than any other—

Mr. Hutchinson: You will pardon me, but Mr. Griggs, being one of the officials of the Company, is not on the stand in the position of an expert. I think he ought to state from his own knowledge, as far as possible, and not his opinion or understanding.

Mr. Harding: If your Honor please, in this case the real question is as to the good judgment and discretion of the defendant in keeping this stock; and, manifestly, in a case of that kind, what the witness himself knows is the general understanding among financial persons as to the character and status of this stock, and the change in it, directly bears on this very question as to his judgment and justification in holding the stock. That class of testimony was given in the other case, without a question, all the way through. Of course this witness cannot, perhaps, give quotations from day to day; but he has a perfect right, on this issue, in order to determine the justification of the Company in selling or holding this stock, to state to your Honor what the general knowledge was that he obtained in the financial world as to the character of the stock and the changes in it.

Mr. Hutchinson: Provided he states now that he obtained it. But a mere under-

standing, or opinion, or vague notion about things is not evidence.

The Vice Chancellor: Of course, that is one thing; but how does any man, in investment matters, learn whether an investment is good, or not? You have charged the Company with fraud—now, the question is, had they exercised that good faith and care in making the investments that the ordinary trustee is bound to exercise under the law? Now, he may state that he made inquiries of various persons, and, from his inquiries, he considered that it was a safe investment. Now, is it not proper, after making such inquires (remembering that there is nothing certain in life excepting death) for him to state that he made them in good faith and relied upon them? Why is he not justified in testifying to making the inquiries, and the view he gained from making the inquiries?

Mr. Hutchinson: Well, I have not the slightest desire to keep anything out, not the slightest; the broadest kind of investigation is what is wanted; but the point is this: Mr. Griggs has occupied a rather unusual position in regard to this trust; he has been the Trust Officer and had charge of it since 1917, and was a director four or five years before that, and he has had an opportunity to have definite knowledge about how this stock was going.

Now, I think it perfectly competent for him to tell us what he gleaned from any financial journal, or anything of authority, and tell us *that one thing;* but when he goes into the realm of theory or deduction from what he might get from the air, for instance, as to the general status of this stock and how people generally considered this stock, why, he gets into a very broad field which we cannot meet him upon at all.

The Vice Chancellor: Of course his views are not binding, except in so far as his views were based upon careful inquiry such as the law required. Now, he says, "I made all these inquiries, and it was my understanding, relying upon those inquiries, that it was safe, and I considered it safe to continue that investment"—is not that what he is practically saying?

Mr. Hutchinson: Well, I thought he went further than that.

The Vice Chancellor: Well, mere language does not convey completely the idea. That is what I understood him to say, and I took it that way.

Mr. Harding: It was my purpose to ask this witness what inquiries he made to get information with reference to this stock, and then to give his conclusions as to the advisability of selling it; and I will now just ask that question.

A. When I said that I "understood" (which I believe is what counsel objects to) that this stock was held largely by estates, I might say now that my information was obtained along those lines by personal interview with Mr. Hobart Porter, who was the Vice President and General Manager of the Brooklyn City Railroad Company. I asked him whether he knew if these estates were holding or selling their securities. He told me that in but a very few instances it was considered the best policy to hold the holdings, as the value of the Company was there; that at that time they had a surplus, and there was no reason why, with the continuation of their usual form of business, they should not maintain dividends indefinitely.

Q. Did you learn the previous history of this security, did you inquire as to the previous history of it, how it was secured? Tell us the nature of the stock, and the history of its dividends? A. This interview with Mr. Porter was before there had been any stopping of the dividends. It was after the accounting of 1915, when the valuation was written down—

Q. (Interrupting) Oh, what I want from you, Mr. Griggs, is to state what information you received as to the history of this stock from the beginning, how it was secured, what underlying securities there were; and state to the Court the history of the dividends as they have been paid, up to the time you held them? A. Well, I will have to begin at the beginning; so I am beginning with after the filing of the account in 1915. Then the question was considered in the bank as

to whether it would be advisable to continue this stock, and that question was considered with Mr. Fred W. Cooke, who was an owner of this stock individually, and is a *cestui-que-trust* under his mother's will; and, after due investigation with Mr. Porter, we decided that it was not advantageous to sell it; that it was still paying these dividends. The stock did not recede in value, for two or three years, a half a point, perhaps. The Brooklyn City Railroad Company, in July, 1919, declared its regular dividend, payable in October. At the time it declared this dividend I sent for a statement of the Company, and I found, by an examination, that it had at that time undistributed surplus on its books of over a half a million dollars. I called this fact to the attention of the Trust Committee, and we decided that the situation was better than it had been since we last investigated. Later on, in that year, about September 19th, without any previous notice or warning, it came out in the newspapers that the Brooklyn Heights Railroad Company, which was the lessee of the Brooklyn City Company, repudiated its lease and refused to pay the Brooklyn City Company its annual rental, (and also refused to pay the income tax), which, for that period, amounted to a payment of forty-six thousand dollars.

Q. The Brooklyn City Heights Company was then obligated to pay that income tax? A. That was for the rental. So that the Brooklyn City Company had to go down into their surplus and pay out forty-six thousand dollars in cash at that

particular time. Then the Brooklyn City Heights Company (the Company who ran the Brooklyn City) repudiated their lease and threw the road back on the Brooklyn City management; and they decided, and they so notified their stockholders, that, having to pay this tax and having to assume the liability of running the road, they would have to default in their dividend on their stock, although they would not default on the interest on their bonds. The stock of course, depreciated when this announcement came out.

Q. About how much? A. (Referring to a memorandum now produced by the witness). Well, it was selling for about 5, and it went down as low as 3¾.

Q. What was it selling for just before this insolvency happened? A. 10½.

Q. And then, after that insolvency happened, it got down as low as how much? A. The lowest bid price was 3½, which was in January, 1921.

Q. Now, at the time, did you make inquiries and seek the advice of others who were familiar with the conditions, as to the advisability of retaining or selling this stock? A. The minute that I got word from the Brooklyn City of the repudiation of the lease by the Brooklyn Heights I made immediate investigations and sought advice. I saw Mr. Job E. Hedges, who was the Receiver, as I remember, of the New York Railway Company in New York, and I saw James R. Sheffield, who was the Receiver of the Interurban, and I asked those gentlemen (stating that we were holding this stock in trust funds for four or five different

estates) what, in their opinion, we should do. Both Mr. Hedges and Mr. Sheffield said that they thought that while the trolley situation at that time was not particularly blooming in New York, there was a movement under way whereby it was beginning to be realized that the trolley companies should, at least, be allowed to charge a fare that would entitle them to pay their running expenses and their fixed obligations; and that, in their opinion, having that in view, they did not think that they would sacrifice the stock if they were in my position, particularly so because it was so small an amount, and if I did, I could not reinvest it to make a return that would in any way make up in the increase if the stock even went up a point or two.

Q. Go ahead. Are you through? A. No, sir; then I also wrote to the Chase National Bank of New York City, and asked their opinion on the subject; and they replied to me under date of December 29, 1919, that the "Traction situation in Brooklyn and New York is satisfactory—

Mr. Hutchinson: If you have the letter there, Mr. Griggs, you had better put the letter in, rather than read extracts from it.

The Witness: Well, I have a letter here.

Mr. Harding: We will offer the letter.

(Admitted and marked Exhibit D, 3).

A. (Resuming) I also saw Mr. Hobart Porter again (who was the Vice President of the Brooklyn City Railroad Company) and sought his ad-

vice as to what to do, and for a history of the Company, which he gave me, and told me that they had a good surplus, and he thought I should not sell at the present time. He wrote me a letter repeating his advice, which I have, and it is dated September 22, 1920 (Producing a letter).

Mr. Harding: I offer that in evidence.

Mr. Hutchinson: Of course I do not know what is in the letter, and I except to the statement of the witness as to its contents, so I think I had better look at it before they offer it.

The Witness: Of course the latter part of the letter has nothing to do with this particular case, Mr. Hutchinson.

Mr. Hutchinson (After examining the letter) That is all right.

(The letter was thereupon admitted in evidence and marked Exhibit D, 4).

Q. Had you completed your answer to the question? Have you any other letters that you wish to refer to, or papers? A. No, sir; I have no others.

Q. Now, will you state the market value of that stock, as near as you can, or the market price or quotations, if you have them, from the time just before this insolvency down to the time when you gave over the stock to the beneficiaries? A. The market price, just before the insolvency, was 10½ bid, 11½ asked. When I speak of "insolvency" I mean the insolvency of the Brooklyn Heights Company.

Q. The Brooklyn Heights Railroad Company, the lessee? A. Yes. Well, when it was found that the Brooklyn City Company had to do their own railroading, or just before it was found out that they had to do their own railroading, the stock was 10½ bid, 11½ asked; then, as soon as the news came out that they would not pay their dividend, and had to operate their own line, the stock dropped to 4 and 4½.

Q. About when did it do that? A. It did that about September 19, 1919.

Q. And how long was that after the default? A. That was almost immediately.

Q. Then, what was the course of the quotations after that? A. Then the stock held around that figure until about May, or June of 1920, and then it went down to 3¾ and 3⅞; then, in October and November it went up again to 4 and 4¼, and in December it touched its low mark of 2¾, there was a small block of about 30 shares sold at 2¾. Then, in January, 1921, it went up again to 4⅜; so that when it was delivered to the substituted trustees for Carrie S. Beam under the will of Sarah A. Cooke, in March, it was quoted at 4¾. It immediately went up and sold as high as 10 on October 13th.

Q. Of this year? A. Of this year.

Q. Has it been above 10? A. It has not been above 10; no, sir.

Q. And do you know what it is now? A. At the present time it is 8½ bid, 8¾ asked.

The Vice Chancellor: The new trustee sold at 7⅝ didn't he?

Mr. Hutchinson: 7⅞.

Q. Now, I wish to take you back: From all that you learned, and all the facts that you have referred to, what was your best judgment and discretion as to the advisability of selling or holding on to this stock?

Mr. Hutchinson: I object to that, if your Honor please, because it is going too far. Here is a gentleman who is the trust officer, and has direct charge of these transactions; now, he is asked his opinion upon his own judgment, he is asked to give judgment upon himself. He ought not to go on the record in that form.

The Vice Chancellor: Where does it make any difference? He has told what efforts he took to ascertain the value of the stock, in the protection of his trust, suppose his judgment was faulty, and he was honest in his judgment, would he be liable? I do not see that his stating that his mere best judgment was exercised would increase the force of what he says very much. The only thing is that it negatives the idea that he deliberately did what was wrong. I think the Court will presume that a trustee is faithful until his unfaithfulness is shown.

Mr. Hutchinson: Well, if your Honor

please, that is not in accordance with the decision in the original Beam case.

Mr. Harding: Your Honor, it seems to me that it is exactly in accordance with it. This action of the trustee was based upon the statute of 1899, which says that where a trust, which was an investment made by the testator himself, comes into the hands of a trustee, the trustee is not bound to sell so long as it acts *bona fide* and with good judgment. Now, the question of whether or not the trustee acted in good faith, of course, is a matter of fact; and it is proper for this witness to state whether he exercised good judgment, as he understood it, and in good faith, from all the circumstances. It was a perfectly proper question asked in the other case, and was answered.

Mr. Hutchinson: I am not charging anything against the Trust Company, or Mr. Griggs' conduct, that was not warranted by any facts. But when you put Mr. Griggs on the stand and he says "Oh, I am all right," that is not, to my mind, evidential at all.

The Vice Chancellor: Of course you object to his stating that his conclusion was that he exercised his best judgment in what he did?

Mr. Hutchinson: That is the point; and, of course, I was going to say, in answer to Mr. Harding—

The Vice Chancellor: I think I will sustain the objection.

Mr. Harding: I do not wish to be persistent, your Honor, but one of the issues in this case is whether he did act in good faith. Now, we make the offer, from this witness, from all the circumstances in this case, to show that he exercised the best judgment that he could, and acted in good faith; and we think he has a right to answer it.

The Vice Chancellor: Well, they object to it, of course, and if the testimony proves that fact it will be assumed that it is so.

Mr. Hutchinson: I think your Honor said, or intimated that the burden of proof is on us; the decision in the original Beam case is quite to the contrary, that the burden was upon the trustee to show good faith and reasonable discretion.

Mr. Harding: That is another reason why this witness ought to have the opportunity of expressing it to your Honor.

The Vice Chancellor: If you take that position, I will let him testify to it. It is not going to affect me very much; it is the testimony of what he did that will determine me.

Mr. Harding: I do not think it is very important, but I think it is proper that he should state what he did, under all of the circumstances.

(Question repeated).

The Vice Chancellor: I will allow the question. In view of your statement, Mr. Hutchinson, I think the question ought to be permitted.

Mr. Hutchinson: May I appear upon the record as objecting?

The Vice Chancellor: All right.

A. When I found out these facts I called a meeting of the Trust Committee, and conferred with the President of the institution, and laid my findings before them; and we considered the advisability of holding it. On the Committee was Mr. Fred W. Cooke, who as I said before, was the brother of the life tenant in this estate, he also was a holder of this stock, and the bank, also, was a holder of this stock in three other trusts; so that we were interested in more than one particular instance; and at the first meeting the policy was not definitely decided, because they thought I ought to investigate it further, which I did, when I got the letters from the Chase National Bank. And then, at the next meeting, it was decided that the only thing to do was to hold the stock, hoping that they would be able to work out their own salvation, and that the price would increase, so that if it should become necessary to sell it, or if any of these *cestui-que-trust* had asked that it be sold, why, we could give them more money than we would have in case we had sold it at that time. Then, in addition to that, I was weekly in consultation with the president of the institution, discussing this matter, together with others.

By Mr. Hutchinson:

Q. With what institution, may I ask? A. We call it "The Paterson National Bank," now.

By Mr. Harding:

Q. And what conclusion did you come to? A. And the conclusion, in every instance, was that we should hold it, not only in this trust, but in all the rest; that that was what was being done in other parts of the country; and that we, in our opinion, would lose more if we sold it than if we kept it.

Q. Well, after that accounting and discharge, what was done with this 200 shares of Brooklyn City Company stock?

The Vice Chancellor: Before going into that, that last answer is entirely irresponsive. In answer to a question as to his opinion, he goes on to relate the things that they did upon which the opinion was based.

The Witness: I thought I said it was the opinion of the Trust Committee and the president, and mine, also, that the only policy to pursue was to hold this stock, and that our policy has proved to be correct, considering the present market value.

Q. What ultimately became of those 200 shares? A. Why, the bank, as trustee for two other *cestui-que-trustent,* have the stock still.

Q. Has not a portion of it been paid over to Mrs. Beam? A. All of it, under Mrs. Beam's share, has been paid to her, and was paid to her in March. When we gave over the estate we gave

over this stock, and we had not sold it because we did not think it was the best time.

Q. You gave over her portion of it? A. Her portion of it.

Q. Now, I want to go back and ask you if you can tell me, from all the information that you had about this company, the Brooklyn City Railroad Company, what you learned with reference to it as an investment stock; and I mean by that, did you learn how it was secured, and did you learn the history of the stock from the time this trust came to you, or before that, down to the time you let it go?

Mr. Hutchinson: Now, if your Honor please, I consider that a little too much. In the first place, the question leads, but the witness is a lawyer, and I suppose that would not make so very much difference; and, in the second place he has asked the witness to absolutely close the transaction by saying that he did everything that it was possible to do, as the result of which, in his best judgment, he retained the securities. Now, it seems to me that is the very question that should not be allowed.

The Vice Chancellor: I do not think the question calls for that kind of an answer. He is asking what inquiry he made, and what knowledge was acquired of the stock, relating, perhaps, back beyond the time it was bought by the testatrix; and he is

going to show that the company familiarized itself with the history of this stock, as perhaps they should, in order to determine whether it was a safe thing.

Mr. Harding: The purpose of it was to show, from the history of it, whether it was a good investment to hold, and its probabilities of coming back, all bearing upon the judiciousness of their holding the stock.

Mr. Hutchinson: I would like the stenographer to read the question.

(The question was thereupon repeated by the stenographer).

The Vice Chancellor: I do not think counsel got the whole question.

Mr. Hutchinson: I had not got it, your Honor.

A. I only began investigating the stock in 1915. The investments had been made by the testatrix in her lifetime; so that when I commenced, in 1915, I found that this stock was was very largely held by estates and trusts; that it had a reputation, at the time the investments were originally made by the testatrix, as being a very high-grade investment stock.

Q. Did you find out how these securities were underlaid, or anything of that kind? A. I found that it had an authorized issue of six millions of bonds, and they only had out a little over a million and a quarter; and my recollection is that the stock came immediately after those bonds.

My investigation showed that they had more than earned their dividend of eight per cent on their stock for years, and did earn it up until 1919, in September, when their lease was repudiated.

Q. Now, let me ask you this: Did you learn the reasons why the stock gradually decreased in value from the time the trustee took it down to this time when the default was made? A. Yes.

Q. What was the reasons? The trolley situation in New York and Brooklyn became involved; Public Service Commissions were instituted, and acted in such a manner that the traction companies were of the opinion that they were about to be throttled. The opinion, and the *modus operandi* of the commissions were to reduce fares and to increase wages, so that the traction companies could not and did not make the amount of money that they had been accustomed to make in the past, could not make what they had made in the past; the thing obtained publicity and got notoriety, and that class of investment declined very rapidly in the minds of the average investors, and institutions that had bought traction bonds did not buy them any more.

Q. But the dividends on this stock did continue, from the time the company took it down to the time of this default that you have mentioned, at the same amount? A. Yes, sir.

Q. How much? A. 8%.

Q. 8%? A. 8%.

Q. Was there anything, except the occasional fluctuations in the market, due to general conditions of the market, that would affect the value

of this stock (except the things you have spoken of) from the time the trust came to the Trust Company down to the time of this default? A. No, sir, just except that the stock and that kind of investments, in the vernacular of the street, became "sour."

Q. Well, did you inquire several times during this period as to whether or not the facts warranted the probability that such a condition would grow better? A. Oh, that was the result of my immediate investigation; and in every instance, from everybody that I went to, I was advised against selling the stock, and told that the trolley situation must be better, *must be better,* and, in all probability, would be better.

Q. Was it the expectation that operating costs would become less rather than increase? A. More in the expectation that a higher rate of fare would be allowed by the Public Commissions.

Mr. Hutchinson: I would ask that you do not lead your witness, Mr. Harding; it is a very leading question.

Mr. Harding: Well, I will plead guilty of that, if you are going to stand upon it.

Q. You have spoken, by the way, Mr. Griggs, of certain other officers that were consulted—I will ask you who was your predecessor as Vice President of the Company? A. Mr. E. M. Berdan.

Q. Is he dead? A. He is dead.

Q. When did he die? A. He died in February, 1917.

Q. And another one was Mr. Francis McCully?

A. Mr. Francis K. McCully.

Q. What Committee was he on? A. He was on the Finance Committee; he was a broker and specialist in traction and other non-listed securities.

Q. And when did he die? A. About April, 1919.

By the Vice Chancellor:

Q. Was he Mr. McCully of the Telephone Company? A. No, sir.

Mr. Harding: He was a broker, here in Paterson.

The Vice Chancellor: There was a Mc Cully in the Telephone Company who died about the same time.

Q. And Mr. John Cooke? A. Mr. John S. Cooke was a member of the Board, and Vice President of the Paterson National Bank, and one of the children of Sarah A. Cooke, and for whose account the Bank held in trust one-fifth of all the shares of this Brooklyn City stock. He is dead.

Q. When did he die? A. He has been dead three or four years.

Q. And Frederick Cooke? A. Mr. Frederick W. Cooke was a brother of Mr. John S. Cooke, he also was a holder of shares of this stock; he was on the Board and he was a member of the Trust Committee, and he was in the Bank himself, daily, and I conferred with him almost daily.

Q. In reference to this stock? A. In reference to this stock.

Q. And did you confer with John S. Cooke during his life, with reference to it? A. Yes, sir.

Q. And Mr. Berdan, and Mr. McCully—at different times were they consulted? A. With Mr. McCully; but Mr. Berdan was always present when the Directors went over the matter.

Q. Well, what was the opinion of these various gentlemen with reference to holding this stock? A. Their opinion was unanimous that we should not sell it.

Q. Mr. John S. Cooke and Frederick Cooke were brothers of Mrs. Carrie S. Beam, the complainant in this cause? A. Yes, sir.

Q. And were beneficiaries equal with her with reference to this very stock? A. Yes, sir.

Cross-examination:

By Mr. Hutchinson:

Q. Mr. Griggs, what was your position with the defendant company when this trust was first created? A. I had none, sir.

Q. When did you first become connected with the defendant company? A. I would say off-hand, about 1914.

Q. About 1914? A. Yes, sir.

Q. And what was your first position? A. A Director.

Q. As a Director, were you a member of any committee upon the securities such as you have mentioned here? A. Not any officer that was recognized by the company. I had charge, by direction, of the Board of Directors, of the supervision, subject to Mr. Berdan's opinions and advice, of trust matters.

Q. Mr. William Berdan was your predecessor in office as Vice President of this Company, and Trust Officer? A. He did not bear the name of "Trust Officer"—Vice President.

Q. As Vice President, in that capacity he did what you have done since as Trust Officer, did he not? A. He did; yes sir.

Q. Then, as I understand it, you were a committee of one, of the Board of Directors to look after the investments of these various trust estates—is that right? A. No, sir.

Q. Well, I misunderstood you; did you not say that the supervision was turned over to you? A. No, sir; if I did—

Q. (Interrupting) Now, will you please just tell me; I just want to find out, that is all? A. Mr. Berdan was the Vice President; and when I became a Director he appointed me, subject to the Board of Directors, as his assistant in—I will use the words—having general supervision over the trust business.

Q. Well, now, that is what I understood you to say? A. Yes; but—

Q. Now, your knowledge began— A. May I not finish my answer?

Q. Finish your answer? A.—but that "general supervision" did not pertain to anything in regard to the making or the retention of investments; that was not final; all of these matters, after they were investigated by Mr. Berden and myself, were brought to the attention either of the entire Board of Directors, or of the Finance Committee of the Board of Directors, which had

almost concurrent power with the Board of Directors in making investments.

Q. Whose duty was it to bring any matter or matters in particular to the attention of the Board of Directors for its action? A. During what time, sir?

Q. I am speaking now of the time you came in there—from the time you became a Director? A. From the time I became a Director to February, 1917, it was Mr. Berdan's duty; from that time on it was my duty.

Q. Then you presented to the Board of Directors, from time to time, the questions as to not all the securities, but only some of them, as the questions arose—is that so? A. Yes; but there was an intermediate step—there was a presentation—you are talking about *me,* now?

Q. I am talking about you, yes. A. I made investigations daily, as I do now, and presented my findings, or my recommendations, to the Trust Committee, and they, in turn, if it was a matter that they could attend to without referring it to the Board of Directors, decided it; if not, my recommendations and their recommendations were presented to the Board of Directors, and it was decided upon as a Board.

Q. Yes; but as a matter of fact, were you not the first one who passed upon what should go before the Board of Directors? A. No, sir.

Q. In other words, suppose your suspicions were not aroused by a certain security, you would not present it to the Board of Directors, would you? A. Why, naturally, no, sir.

Q. No, of course you would not; therefore, only those securities concerning which you had knowledge, or suspicion, as to their desirability were presented by you to the Board—that is right, is it not? A. No, sir.

Q. That is the converse of what you said? A. No, I beg your pardon.

Q. Well, now, will you please state; I would like to know what your duties were there? A. As I said before, the Trust Committee met at stated meetings and examined, on their own initiative, the entire trust holdings of the Bank; and they, on their initiative, without my recommendations (if they did not care to have them,) decided certain matters, or referred them to the Board.

Q. Weren't you consulted? A. Why, yes; I attended the meetings.

Q. How often were those matters brought before the Board of Directors? A. Before the Board of Directors?

Q. Yes. A. It very seldom happened that it was necessary to bring them before the entire Board.

Q. In other words, then, the Trust Committee passed upon them, and it stopped there, in most cases—is that right. A. They generally functioned, yes.

Q. Did it ever stop with you? A. No, sir; not in this matter; no, sir.

Q. How many composed the Finance Committee? A. Three, besides myself, and the Chairman of the Board, ex officio.

Q. Who were they—members of the Board? A. Yes, sir.

Q. Now, just what was the first time that you had any knowledge about this Brooklyn City Railroad Company? You went in there in 1914—when did you first get on to this Brooklyn City Railroad stock? A. When Mrs. Beam brought her first suit.

Q. That was the first you heard of it? A. Oh, I wouldn't say that; you asked me when I "first got on to it"—that is when I "first got on to it."

Q. Well, let us make it clear: The first time your attention was called to the Brooklyn City Railroad stock was when Mrs. Beam brought her first suit—is that right? A. Yes, that is—

Q. (Interrupting) You had never given it any consideration, up to that time? A. No; I was not on the Board then—I wasn't even on the Board then, I was merely associate counsel.

Q. Well, this suit was brought in 1912, wasn't it? A. Yes.

Q. And you were elected in 1914? A. Yes, sir.

Q. But, then, you say it was when Mrs. Beam brought her first suit—I am speaking to you now as an officer of the Company, charged with the duty of examining the investments, and I ask you now when, as such officer, was your attention first called to this security? A. When I first went on the Board.

Q. Do you recall the amount at which that stock was carried at that time, in this trust, the value of it? A. I think, sir, the whole 225 shares were carried at $4,800.00.

Q. $4,800.00? A. I think so; that is my recollection.

Q. That is correct. Now, then, when you went on the Board in 1914, and after that time, the value fell, in your account in 1915, to $4,000, for all the stock for all five shares, is that so? A. My remembrance is that it depreciated before that account, but it was not written off until that account. You see, the five accounts, the share of Mrs. Sarah A. Cooke and all of her five children, was always carried in one account, and the income divided into fifths, obviously, because it saved Surrogates fees, counsel fees, and in fact, it made one accounting instead of five. Up until that year they had always been one account. Mrs. Beam objected to it being carried on in that way, and wanted the estate divided. So we communicated with Mrs. Beam and asked her what she wanted to do, did she want us to sell one-fifth of all these things and give her the money, and put it in her trust; and, in the alternative, we made a division of these five holdings, and got the opinion of all of the other heirs to give Mrs. Beam her first choice of the entire estate, which she took; and her first choice is the list of investments that were separated from the whole account, in the 1915 account, and carried on down to the time that we were discharged, with the exception of such reinvesting as might have been necessary to do during the period.

Q. Are you sure that she selected the securities that she wanted? A. I think she selected them through her counsel here, Mr. J. H. Reynolds of this city.

Q. Don't you know that the securities were all

divided equally, so far as possible, that is, the stock securities and bond securities were divided equally among the five shares? A. I don't think so; I know we wrote Mrs. Beam, and know that to have been the consent of all the four children, to give Mrs. Beam the first choice; and I know we wrote to her counsel and told him that; and it was my impression (I was not an active officer there then) but it was my impression that what she chose we took.

Q. Then this first trouble only arose shortly after you took office? A. I do not understand what you mean by "trouble."

Q. I say this Brooklyn with the Brooklyn City Railroad Company arose shortly after you took office? A. No, I would say that there had been a depreciation of the stock, somewhat, from the inventory price of the executors.

Q. Before that? A. Before I took office.

Q. Well, now, was it ever brought to your attention by Mrs. Beam, or her sons, that the condition of this stock was not satisfactory? A. Yes.

Q. Didn't they complain to you that the stock was declining, and that something ought to be done about it? A. No, sir.

Q. What? A. No, sir.

Q. Didn't ever write you letters about it? A. No, sir.

Q. Are you sure about that? A. I have never seen any letters.

Q. Did they write to the officers of the Company? A. I mean the Company; I am not quibbling over words. She wrote the Company, complaining about the securities, and we wrote her

and told her that if there were any she did not like to please advise us, and we would sell them; and I have no record of her ever asking us to sell any of them.

Q. Well, I understood that she had demanded of you to make some disposition of them? A. Well, I am open to correction. You are asking me my understanding, and I am giving it to you.

Q. All of the investigations that you have made with regard to this security were made, as I understand it, of people who were interested on the inside of the Company, were they not? A. No, sir—not the Chase National Bank, or Mr. Job E. Hedges, or Mr. James R. Sheffield.

Q. Mr. Hedges was the Receiver, wasn't he? A. Not of that company. This Company never went into bankruptcy.

Q. This Company never did? A. No, sir; it is making 15% now.

By the Vice Chancellor:

Q. What—the Brooklyn City? A. The Brooklyn City.

Q. The Company is making 15% and paying 8% dividends? A. They are not paying any dividend; their stock has gone up the equivalent of 100 points inside of three months.

Q. What is the par value? A. $10.

Q. Then, when you held it for $4,800 it must have been up to 24? A. Yes, sir.

Q. Around 24? A. Yes, sir—225 shares, it was.

The Vice Chancellor: Yes, it would make it around that.

By Mr. Hutchinson:

Q. Did you, when the dividends on this stock ceased, communicate with Mrs. Beam on the subject, at all? A. Not immediately; no, sir.

Q. Did you, sometime afterwards? A. Yes, sir.

Q. And to what purpose? A. I gave her a history, as I remember it, of the Company before and after the repudiation of the lease to the Brooklyn Heights Company. I told her, as I remember it—of course she must have the letter—have you got the letter?

Q. I haven't anything here. A. I told her they had a surplus of over $535,000; that we had asked certain people about it, and that it was the best opinion of the officials and proper officers of the Bank, that it should not be sold.

Q. You refer to the letter of April 15, 1920, do you not? A. I cannot tell you which it was, without seeing it.

Q. (Exhibiting a paper to the witness) I show you a letter—that is the letter you refer to, is it not? A. Yes, sir.

The Vice Chancellor: Do you desire to have it marked?

Mr. Hutchinson: I have no objection; I do not want to omit anything, though it does not bear very much on it, from our point of view; but I have no objection.

(The letter was thereupon offered by Mr. Hutchinson, and marked Exhibit C, 5.)

Q. From your experience now, looking backward at this situation, and if you were now placed

in a similar position, would you have continued that investment? A. Yes, sir.

Q. What are your reasons? A. I would have doubled my money.

Q. What are your reasons for saying so? A. I would have doubled my money if I had held my stock until now, if I had not sold it in those days.

Q. You observe that the stock fell from $4,800 (that is, the whole block) to $4,000, and then to $800, and then to $310—now, upon what theory would you say you would have doubled your money? A. That was not the question, Mr. Hutchinson, that you asked me. I am not going back to the executor's figures. If you wish to qualify your question I can answer it, perhaps.

Q. Well, in 1915, certainly, the Bank had the trust—they had it in 1915, and it was $4,000 then, and went from that to $800 in a jump; now, when it went to the $800 mark, do you think now it would have been the part of wisdom to have sold that stock out? A. Looking at it from the mechanical standpoint, in the view of figures, and not considering, perhaps, the future of this thing, I would say "Yes, sir." You can always look back and say what you should have done.

Q. Oh, I understand, but now the question is this: Was the information that you received, and the knowledge that you had regarding this security, in the light of the present situation, sufficient to warrant you holding on to that security? A. I could not answer the question that way.

Q. Well, I will ask you another question— A. (Interrupting) You are asking me to answer some-

thing for you which now, in the face of past performance, I can say, from a financial standpoint, is not the thing to do.

Q. I can agree with you when you say that "hindsight is a great deal better than foresight;" but I am going to ask you this question: Do you not know that there was an ulterior reason, an ulterior purpose, in holding on to this stock by the various banks and trust companies that held it for various estates, so that it should not be thrown upon the market and thereby disturb further the trolley situation in the City of New York? A. No, sir.

Q. Did you not know that? A. No, sir.

Q. Never heard it rumored? A. No, sir.

Q. You never heard it said that this class of securities were being held by banks and trust companies in order to protect the trolley situation in New York? A. No. I know that the Chase National Bank, in whose opinion I gave the greatest weight, did not hold any.

Q. Did not hold any? A. No, sir.

Q. And that is one of the banks from which you received your information and advice, wasn't it? A. Yes, sir.

Q. Was your decision to hold on to this in any wise influenced by the fact that you were receiving the income, in the way of dividends, from this stock, even with the decline in its value on the market? A. No, sir.

Q. Did you not say, in your direct examination, that as long as the income was coming you thought it was not advisable to dispose of it? A. Yes, sir.

Q. That, of course, was without regard to the interests of the organization, wasn't it, as to capital? A. No, sir.

Q. Why do you say that? A. I say it because, in my own opinion, it is elementary that it is advantageous to hold a stock that is paying a dividend, rather than to sell it and get such a small corpus that you could not reinvest it in anything, and have to carry it in a bank balance for a two-and-a-half per cent income.

Q. Then, upon that theory, you could almost exhaust the whole of the capital, and get the income, and you would be doing your duty as a trustee—is that right? A. I cannot understand whether your statement is a conclusion or a question.

Q. I am asking you—I raised my voice at the end (Question repeated). A. No, sir.

Q. Where do you draw the line, as a trustee, now, between the exhaustion of the capital and the receipt of the dividend—how far would you go? A. I could not tell you, unless you give me a specific case. No two cases are alike.

Q. Well, you never did reach the point of division with regard to the Brooklyn City Railroad, did you? A. Yes, sir.

Q. Well, you never disposed of the stock that was in your hands? A. No, sir; because we thought it the better course to pursue not to dispose of it.

Q. And you were receiving dividends, were you? How long did you receive dividends on the stock? A. Up until July, 1919.

The Vice Chancellor: There was a dividend declared in July, payable in October.

Q. Do you think that you came within the statute with regard to good faith and reasonable discretion in holding on to that stock? A. Yes, sir.

Q. Did you not think, Mr. Griggs, as has been set forth in your answer, not only in this but in the former suit, that inasmuch as you had received these securities from the testatrix, who had made the investment in her lifetime, you were amply protected by the Act of 1899, and that you had no duty to perform? A. Do you ask me for my legal opinion on that?

Q. Why, no, I ask you as a trust officer? A. I will say, "Yes."

Q. Eh? A. Yes, sir.

Q. You thought that was ample protection? A. Oh, no, not "ample protection"; we did not consider it in that manner.

Q. Well, what do you mean? A. The idea is to consider the interests of the *cestui-que-trust* first. We do not consider our legal position in those capacities, except to the extent that we want to try to do, and generally do do, the best that reasonable people can do in the care and management of their affairs and money and securities. Now, the fact that a stock should be paying 8%, and we would get, as we did in this case, probably 2½% commission on the income—the fact that it is paying 8% would not enter into our minds that we should continue it for that reason. The allowance of commissions—the amount of money that the trustee makes—is purely incidental. There is as much

of an ethical situation between the Bank and the *cestui-que-trust* as there is between a lawyer and his client.

Q. Well, I am not discussing the question of commissions. A. But you opened it.

Q. No, I did not; I am not claiming, at all, that anything you did was with the idea of making money out of it by way of commissions, or otherwise—I did not say that—but is it not a fact, as shown by the pleadings in this case, and in the former case, and your general attitude toward the security, that you have sheltered yourself behind the Act of 1899? A. No, sir. That question was brought up because Mrs. Beam threatened suit. She employed counsel, Mr. Pierre Cook, of Jersey City, who wrote us, setting forth his side of the case, and intimating that if we did not care to make an amicable settlement he would be forced to bring suit. We wrote him, as I remember it, and said that we could not make any settlement because we had used our best judgment, and, in any event, we could not confer with him on the subject; and we called his attention to the Act of 1899, which said, among other things, or which authorized, among other things, the retention of investments made by a testator in his lifetime. That is where that Act first dropped into this matter.

Q. You are a member of the Bar? A. Yes.

Q. And, in the performance of your trust duties in connection with this estate, did you ever have brought to your attention, or know of the case of Flynn vs. Brooklyn City Railroad Company? A. I cannot say that I had.

Q. You never examined into the status of the Brooklyn City Railroad Company, as reflected in the opinion in that case? A. No, sir, I do not remember it.

Q. Was it any part of your duty to do that, as trust officer? A. Why, I presume—no, it was not part of my duty to examine the statutes or reports in other states; no, sir, it was not.

Q. You say it was not your duty to be informed upon any question that might arise in a case of that character wherein the status of the Brooklyn City Railroad might be discussed as adjudicated? A. No, sir; I do not say that at all.

Q. Well, what did you say, please? A. Well, in answer to what question?

Q. Well, the last question? (Last question repeated at the request of examining counsel, as follows: "Q. You say it was not your duty to be informed upon any question that might arise in a case of that character wherein the status of the Brooklyn City Railroad Company might be discussed as adjudicated?").

Mr. Hutchinson: There appears to be a deadlock.

Q. Was there any person connected with your company whose duty it was to do that very thing —I mean, to examine the status of the securities held by you in respect to any of the decisions on litigations that might have been made? A. Why, Mr. Hutchinson, it was my duty, and it was also the duty of the officers, and it was the duty of the Trust Committee, to use and obtain all information, good, bad or indifferent, that they could ob-

tain with their usual care. They could not go and examine statutes in other states. If I, as a lawyer, in the course of my examination of cases in other states, came across anything that was germane or important, I made a note of it. If Gov. Griggs, in his practice, came across such cases, or such references, he referred them to me, and would say, "Perhaps this will be of interest to you." I think that condition does not usually exist in other institutions. I think that, in my opinion (and you have asked it) is more care than the usual trust officer gives. The usual trust officer reads the newspapers and the quotations; he does not know anything about receiverships or court reports.

Q. Then, in connection with that, you referred in your direct examination to the "Financial Chronicle"? A. As one of the many, yes.

Q. That is a New York security publication, is it not? A. Yes, sir.

Q. And is acknowledged throughout the business world as an authority? A. Yes, sir; in the financial world.

Q. And did you not see anything in the "Financial Chronicle", during the period of the difficulties of this Brooklyn City Railroad Company, to indicate the necessity for a closer supervision or a quicker action on the part of the Trust Company? A. No, sir.

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

Q. What did you mean, Mr. Griggs, when you said that the amount that you would have realized would have been so small that it was hardly worth while to sell the security? A. I meant that

if I sold 20 shares of stock at $4.00 a share, I would only have $80, and I would have to invest that to get any return from it.

Q. And that, you think, warranted you in holding on to it indefinitely? A. I think the general market shows that it did warrant me. I would have had $80.00, plus, say 2½% on it, if I had sold it. If I had not sold it I could sell it now for $180.

Re-direct examination:

By Mr. Harding:

Q. Just one question, Mr. Griggs: Since your connection with the defendant has there been any time, in the light of the knowledge that you then had, and was obtainable, when it was advisable to sell this Brooklyn City Railroad stock? A. No, sir.

Recess until 2 o'clock p. m.

AFTERNOON SESSION.

Hearing of the cause resumed at 2 o'clock p. m.

GEORGE S. COE, sworn.

Direct examination:

By Mr. J. W. Griggs:

Q. Your residence? A. Engelwood, N. J.

Q. Your business? A. Banker and broker.

Q. What is the name of your firm? A. A. M. Kidder & Co.

Q. Where is their place of business? A. 5 Nassau Street and 11 Pine Street, New York.

Q. How long have you been connected with that firm? A. Since 1890.

Q. Are you familiar, as a banker and broker and dealer in stocks, with the Brooklyn City Railroad Company? A. More or less, yes.

Q. Have you bought and sold the stock of that company? A. Many thousand shares, yes.

Q. Have you had occasion, as a broker, to inquire into its situation, its circumstances, etc.? A. Yes, sir.

Q. Tell us, just briefly, what the lines of that Company are? A. The Brooklyn City Railroad is the main trunk—surface trunk—of the B. R. T. system, over which all the collateral lines must pass to get to the Terminal; and is, what you might call an underlying, *the* underlying property of the B. R. T. surface lines.

Q. By "B. R. T." you mean the Brooklyn Rapid Transit Company? A. Yes.

Q. And that is the company that comprehends all the east end of Long Island? A. The parent company.

Q. Well, the Brooklyn Rapid Transit, as has been said, was leased to the Brooklyn Heights Company? A. No; the Brooklyn City was leased by the Brooklyn Heights, which was a satellite of the B. R. T.

Q. Do you know the terms on which it was leased? A. The original lease was a ten per cent guaranty, I think, in perpetuity; and securing that lease, in addition to its rate, there were deposited with the Peoples' Trust Company, as trustee, a

very considerable number of securities; I am harking back now twenty odd years; they had some very high-grade securities, which, pledged with the guaranty, it was unique in that respect. Some of these high-grade securities were, at the instigation of the parent company, and with the consent of both the Brooklyn City and the Brooklyn Heights, sold, and others substituted; but when the default occurred there were a good many hundred thousand dollars of securities which were surrendered by the Brooklyn Heights by their lapse in the payment of the dividends and went back to the Brooklyn City, and are now their property, under the default.

Q. Well, what happened to the Brooklyn Heights Company, the lessee, that made it give up the lease? A. My recollection is that the Brooklyn Heights was not much of a company in itself, except as a lessor. The child was bigger than the parent, as a matter of fact. The Brooklyn City was more of a property than the Brooklyn Heights, which had no revenues, could not make good the guaranty, and when the situation occurred which called for default the property, therefore, came back to the original holder.

Q. About when was the default made, do you remember—1917?

Mr. Harding: 1919.

A. In that respect I would have to refer to the evidence that has been produced; I would not trust my memory.

Q. Well, a few years ago? A. A few years ago.

Q. You have been familiar with the situation, financial, operating, etc., of the Brooklyn City Road, from that time on to this time? A. Yes.

Q. And you know about the fluctuations of the stock? A. More or less, as traders.

Q. Mention any very large stockholders that you have sold to? A. Well, since the default trading now has been mostly street trading rather than investment trading. Prior to that, we sold that stock in reams; I recollect one trade with the Mutual Life Insurance Company of 100,000 shares.

Q. That was sold by your house? A. By our house; I think we bought it from the Peoples' Trust Company of Brooklyn; whether as trustees they held it, or what, I do not know; and I turned it over to the Mutual. We were then trading per cent—240% or equivalent to $24 a share. I sold to the Equitable Life, that same year, it must have been twenty-five or fifty thousand shares in the aggregate. and they gave me *carte blanch.*

Q. Do you know whether they still hold that stock? A. I am confident they do; I am sure they do, because in conversation only the other day with one of the officers he informed me that they had not been able to market it since.

Q. Well, from what you know of the condition of the market and the value of this property, its prospects of prosperity in the future, what have you to say as to the advisability of having sold the stock at the market after the default and the fall in price which occurred in 1919—what have you to say as to that? A. Well, my judgment is this, and I have acted upon it as trustee (I am the trus-

tee of a considerable estate, and have, among other things, about two or three thousand shares of this stock); I have held it, and at times I have been disposed to average, but I am still long, I still have it, and intend to keep it until it is demonstrated that its opportunity is exhausted.

Q. What elements of unusual or extraordinary value are there in this property, this Brooklyn City Railroad property? A. Several. One underlying fact is that, on the Brooklyn City property is built a power house of the B. R. T., which supplies most of the electric juice for the system. That is No. 1. I should say the fact that it is the principal artery of the whole surface system over which all these collateral lines have to go into the Terminal is No. 2. Perhaps the fact that these securities which were taken in, might some day appreciate to a point where they would represent a very considerable value—No. 3. And the improving outlook of the B. R. T. system—I think it will be reorganized before the I. R. T., because the situation on that side of the river is much better than with us in New York—No. 4. The fact that it is earning its own way now, even though bereft of a good deal of equipment when the system was thrown back, I think, and having to face a great many financial and physical vicissitudes—the obstruction of Mr. Hylan, and everything else, would be a contributing feature—and my conviction that they are very soon going to start on dividends.

By the Vice Chancellor:

Q. You spoke at one time about the fact that you were considering whether you would produce

an "average"—what did you mean by that? A. By buying low, to average my high stock. It is a technical term.

The Vice Chancellor: I understood it, but I wanted to make it clear on the record.

Cross-examination:

By Mr. Hutchinson:

Q. Mr. Coe, you have had a good many years of experience, not only in the banking or brokerage business, but also in handling trust estates and in the management of trust estates? A. 47 years.

Q. Under the conditions that existed in this case, assuming that in 1905 a security like the Brooklyn City Railroad—and, in fact, the Brooklyn City Railroad stock—came into your hands as a trustee, and depreciated from that time until about 1915—a block of 200 shares—at the rate of $800, would you, as the trustee, have felt that you were justified in retaining that security? A. My position was exactly that.

Q. Did you have a like experience? A. Exactly, with this very same stock; and many of my clients had exactly similar experiences—the Pratt Estate, and I could mention a list as long as your arm.

Q. Upon what do you base that conclusion, in your own mind, as to the advisability of holding this stock? A. Because the property, in my judgment, *per se,* was a payer, independent of parentage; in fact, it would have been very much better

had it been divorced from its parent at any phase of the game; that was always my judgment.

Q. But, as a trustee, having taken securities supposedly worth $4,800, when there was a drop of $800, wouldn't you have looked about a bit to see whether it was advisable to sell; and would you not, ordinarily, have disposed of the security and taken one of higher and better prospects? A. There was no condition prevailing during that period where very great promise did not exist in that property. The Brooklyn City, of all the traction guarantees, in my opinion, was unique in its strength. It was inconceivable, to my mind, as a trustee, that the Brooklyn Heights would ever default on that ten per cent guarantee for the reason that they would have to surrender from a half to a million dollars, face value, of securities, and I knew they had them because my senior partner was Vice President of the company and was custodian of the securities, and I kept my ear very close to the ground, besides being acquainted with the physical side of the operation of the property.

Q. Well, now, surviving that slight shock, suppose the stock had gone on steadily depreciating until that same block, worth $4,800 in the first instance, had reduced itself to $800,—now, I ask you if, in the interval between the reduction from the $4,000 basis and that of $800 there was not a time when it was advisable to get out of the Brooklyn City Railroad stock, so far as the trust was concerned? A. Not in my judgment.

Q. You are both a banker and broker, are you not? A. Yes, sir.

Q. Is your opinion as an expert, and also as a trustee, colored by the fact that you are not only a trustee but you are also a banker and a broker? A. My judgment was only colored by actual facts and existing trading conditions.

Q. You do not think, then, that you might be influenced as a trader or dealer in stocks, in your conception of what was right and proper—or I will take out the word "right"—what was proper to do in a case where you were also involved as trustee? A Well, that is a nice question. I never allow myself, if you will permit me to use the expression, to undertake to "lead a double life"; I divorce my trading judgment from my trustee judgment.

Q. I have no doubt you desire to do so, but I am trying now to get at the possible coloring of your mind by the occupancy of two relations, one as a trustee and the other as a dealer in the stock? And it is no reflection upon you if you say that that is so. A. As a trader, you must appreciate that I would not go long (to use the technical term,) I would not buy a thing I thought was worthless—I would not carry in stock a thing I could not borrow on, or at some time or at some price, sell. I would not buy, to sell again, anything that I thought was, in itself, a bad investment. As traders in investment securities we specialize in guaranteed and underlying stocks, and only carry in the box, ourselves, as dealers, what we would feel warranted in selling to trustees, or take in myself as a trustee. That has been our policy always.

Q. You mean to say that you do not deal in anything but legal securities? A. In our investment end—not "legal," they are not legal, you know, guaranteed stocks are not "legal investments" but they do go to trusts that have latitude in regard to their investments.

Q. In other words, you do not confine yourselves, even in the investment department, to securities that are made legal for trustees in your state? A. No. High-grade, but not necessarily legal.

Q. Do you recognize the "Financial Chronicle" as an authoritative publication in your line of business? A. Not infallible. It is accepted as the best evidence that you can obtain. The "Financial Chronicle" does not know markets, they obtain their markets from specialists; and every week, or at least, every month, I suppose I quote as many as one hundred and fifty items for the "Financial Chronicle", as many other specialists do; and they obtain from the specialists as nearly accurate quotations, as nearly the market, as possible; that is the way they make up their tabulation.

Q. Do you recognize the "Wall Street Journal" as being of equal authority? A. Not on quotations; but, on opinions, very good.

Q. As to the inner working and development of companies? A. They give news; but they do not pretend to be a quotation sheet.

Q. Mr. Coe, you were a witness in the former suit, weren't you? A. I believe I was.

Q. In that suit you testified only as to the securities involved therein; of course this Brooklyn

City fiasco had not occurred. In that suit, at page 59 of the testimony in the printed book, you testified concerning credit properties, using the term "credit properties"—I want to ask you if this was one of those properties that you called "credit properties", and just what you meant by that? A. By "credit properties" I mean properties in themselves, irrespective of their parentage, that would earn their fixed charges and dividends, the guaranteed dividends.

Q. You testified in that suit, at page 59 of the book, concerning the New York City Railway, that that was a holding company, was showing credit, so it was fair to presume that all of those underlying properties, so completly submerged as they were, and such prices being paid by Mr. Whitney and others before their original acquisition, were credit properties" do you recall that? A. That was presumption. That is balance sheet.

Q. Now, has this New York Railway, or the Metropolitan, anything to do with the Brooklyn City Railroad? A. Nothing whatever.

Q. No connection? A. No.

Q. Were you advised of the suit of Flynn vs. Brooklyn City Railroad Company? A. No; I don't know that suit. I know Mr. Flynn, and his earlier relationship with the construction of many of the collateral lines, the Nassau Electric, and others; but I do not know that suit, or its text.

Q. That case was decided in 1899, wasn't it? A. What suit?

Q. Flynn vs. Brooklyn City Railroad Co. A. I have no knowledge.

Q. Your attention was never called to that suit? A. No.

Q. Never knew anything about it? A. Nothing, except that Mr. Flynn, on some contract (construction work, I believe) had a suit against some one of the companies.

Q. But I mean as to the underlying conditions of the Brooklyn City Railroad Company? A. I never knew of the suit. If you will permit me, did the Flynn suit bear against the Brooklyn City?

Q. It is against the Brooklyn City Railroad Company? A. That must have been a suit that was brought against the Brooklyn City at the time the dividend was broken from 10% to practically 8%. Can I state my knowledge and belief on this thing?

The Vice Chancellor: Of course you can tell all you know on it, whether it is upon information and belief, or not.

A. Well, there was a suit brought against the Brooklyn City, and if you will excuse me, I think I can recall what that suit was.

Q. All right. A. The guarantee of 10% was absolute. When the agreement, as I recall, was made between the Brooklyn Heights and the Brooklyn City to take over this property, there was a period intervening before that contract was finally signed. Brooklyn Heights claimed that the construction work, which immediately preceded on the Brooklyn City, (I believe the transmission from horse to electric power, or something) should be Brooklyn City's responsibility—maybe that is

where Flynn came in—and a decision was rendered against the Brooklyn City after a long period of suits and appeals; and it amounted to several hundred thousand dollars. Brooklyn City, therefore, had to pay for that suit, and they did it by deducting from us, the Brooklyn City holders, a proportion of the dividend each year until that dividend I think was finally restored to 10%, if my memory is correct—or did it default as an 8% stock, which? It eventually came back. That may be the Flynn suit.

Q. I must compliment you on your familiarity with the case; that is what I wanted to find out about the case. You are more familiar with the case than I am. A. Is that the Flynn suit?

Q. That is the Flynn suit. A. Yes.

Mr. Medina: In view of the statement of the witness, would it not be well to read the opinion of Mr. Justice Vann in the Court of Appeals in the Flynn suit into the record here? It seems to differ very materially from the statement made by Mr. Coe?

The Vice Chancellor: Oh, no; you can call the attention of the Court to the opinion, and, perhaps, offer it in evidence.

Mr. Hutchinson: I want to introduce Mr. Medina, of the New York Bar, representing Mr. William B. Beam, and ask that he may be permitted to be heard. He was unable to be here this morning on account of another engagement.

The Vice Chancellor: He may participate. (To Mr. Medina) I do not want the

opinion read on the record; it takes up a lot of time. Of course it can be offered in evidence if it is not objected to.

By Mr. Hutchinson:

Q. I want to ask you, if you knew there was any suit of Flynn vs. Brooklyn City Railroad Company in 1899, why weren't you put upon your guard with regard to the instability of this security? A. In my opinion, and that of my senior partner (who was at one time Receiver of the B. R. T.) we did not think that suit was going to hold.

Q. But it did hold, didn't it? A. After five years of appeals, I believe.

Q. And in that suit, Mr. Coe, there were allegations which were not denied concerning the unsoundness of the Brooklyn City Railroad, weren't there? A. No, I don't think so; I cannot recall it. I am ignorant of the case, except the bare facts that were recited to me by my senior partner.

Re-direct examination:

By Mr. J. W. Griggs:

Q. When did you say this Flynn suit was? A. 1899.

Q. I would just like to ask you what the stock sold for after that—after 1899? A. Well, in 1903, when I received my trust, it was selling at 240%, or $24 a share.

Q. So the Flynn suit did not hurt it very much? A. It went right on selling at full price while the suit obtained.

By Mr. Hutchinson:

Q. But that was by reason of the connection with the Brooklyn Heights, wasn't it? A. I don't think so. Intrinsically, that property was always good, and it would have been much better without the guaranty.

Mr. Hutchinson: Your Honor has ruled that this opinion would be evidential?

The Vice Chancellor No, I have not ruled upon it; it has not been offered. I said I would not allow it to be read into the record.

Mr. Medina: Well, I wanted to offer it in evidence. I do not make any special point of having it read.

The Vice Chancellor: What is the date of the opinion?

Mr. Medina: The date of the opinion is 1899; it is an opinion of the Court of Appeals of the State of New York.

Mr. Hutchinson: For the convenience of the Court, we have a certified copy of that opinion.

The Vice Chancellor: It is not necessary. Give me the book and page.

Mr. Harding: It seems to me it is irrelevant and immaterial, anyway, from my viewpoint; and especially in view of the fact that the whole thing has been brought out on cross-examination of the witness. It is not a substantive part of their case.

The Vice Chancellor: Well, the testatrix did not die until six years afterwards; she had the stock when she died.

Mr. Harding: Where is the opinion you are speaking of?

(The copy of the opinion was handed to Mr. Harding for his inspection).

The Vice Chancellor: You say the Court of Appeals decided finally in 1899?

Mr. Medina: In 1899; and the purpose of offering that opinion was that the witness took upon himself to explain to the Court and having written down upon the record what his view of what that opinion was, and as that is upon the stenographer's minutes, it seemed only proper to have the real facts appear; and we have a certified copy here of the opinion which has just been offered merely for that purpose.

Mr. Harding: My statement now is this: On cross-examination, when they asked the witness a question that was merely for the purpose of cross-examination, to test his credibility, they were bound by the answer, and it is not possible for them to contradict anything that he said that was brought out on cross-examination for the mere purpose of contradicting him.

The Vice Chancellor I do not quite see the force of the testimony, anyway, so far. Of course, I have not slept with the case, as you gentlemen have. You are attempting to hold this trustee on the ground that

it has negligently performed its duty, by means whereof the *cestui-que-trustent* lost money—now, what difference does it make what this witness testified as to this Flynn case? Is it not a question as to whether a trustee, in the use of ordinary judgment and common sense, honestly performed his duty, and, by mischance or misfortune, a loss occurred? Is not that all there is to it?

Mr. Medina: Well, I think the answer to that, if your Honor please, is that we did not, in any sense, solicit that particular testimony of the witness; he volunteered it himself, as your Honor will recall.

The Vice Chancellor: I will allow you to offer the opinion in evidence. I do not see how even that is material, or the testimony of the last witness as to what his view of that case was. Strictly speaking, your offer should be excluded, because you brought out the story yourself, and you can hardly be heard to contradict your own witness; and he became your own witness when you brought it out as new matter. I will admit it, though. I do not see how the testimony bears on the case—either that, or the opinion. Just dictate the title of the case and the page, on the record.

Mr. Medina: We have a certified copy.

Mr. J. W. Griggs: We do not make any point about that.

The Vice Chancellor: Put in the book and page of the report, and the title of the case.

Mr. Medina: The citation is Flynn vs. Brooklyn City Railroad Company, 158 N. Y., 493.

MRS. CARRIE S. BEAM, sworn.

Direct examination:

By Mr. Hutchinson:

Q. Mrs. Beam, you are one of the complainants in this cause? A. I am.

Q. And you are the Mrs. Beam that brought the former suit against the Paterson Safe Deposit & Trust Company? A. I am.

Q. And you are the mother of the three remaindermen in this suit? A. I am.

Q. Did you ever have any conversation with any of the officers or directors of the Paterson Safe Deposit and Trust Company about the Brooklyn City Railroad Company? A. None, whatever.

Q. Did you ever write any letters to them concerning the Brooklyn City Railroad Company? A. Only when the dividends grew less. I wrote and asked why, and no answer was sent to me, no reply.

Mr. Hutchinson: Have you any letters, Mr. Harding?

Mr. Harding: What letters do you refer to?

Q. Letters written to the company, were they, Mrs. Beam? A. I wrote to Mr. Griggs; I wrote to John L. Griggs, and I received no reply.

Q. Did you write to Mr. Connolly, also? A. Yes, I did write to Mr. Connolly.

Mr. Hutchinson: Letters to Mr. Connolly, Mr. Harding, or to John L. Griggs? Have you any such letters, or may I use copies?

Mr. Harding: I don't know; let me see them; I am not familiar with them, at all.

(Mr. Hutchinson thereupon handed to Mr. Harding for his inspection a number of letters).

Mr. Harding: Mr. John L. Griggs says that the copy which has been shown here, dated April 14, 1920, addressed to John L. Connolly, in his memory, is substantially the letter which the bank, or which Mr. Connolly received, and that Mr. Griggs responded to that by the letter which you have offered in evidence this morning; is that right—does that purport to be the answer?

Mr. Hutchinson: Yes; I think that is up on the table.

Mr. Harding: This letter says "Replying to your letter of the 14th inst" (referring to the letter of the 15th).

Mr. Hutchinson: That is the one. Now, what does Mr. Griggs say about this other letter of April 16th; and there is one, also,

of April 24th (showing the latter to Mr. Harding).

Mr. Harding: We have not these original letters, not having been called upon for them; but we have no doubt that these are substantial copies.

Q. Mrs. Beam, I show you a copy of a letter dated April 14, 1920, addressed to "Mr. John L. Connolly, The Paterson Safe Deposit & Trust Company," and ask you if you wrote a letter like that copy? A. Yes, I did.

Q. And also a letter of April 16th, 1920, addressed to the same person and The Paterson Safe Deposit & Trust Company (showing the witness another paper), and ask you if you wrote such a letter? A. Yes, I wrote them, both those letters.

Q. And also a letter of April 24th, 1920, addressed the same way, and ask you if you wrote such a letter (showing the witness another paper)? A. I did, Mr. Hutchinson.

Q. Did you receive any replies? A. I received a reply from Mr. Connolly; and then I wrote him again, and I received no reply. I called him up on the 'phone, and asked him why I had not. He informed me that he had laid my letter to him on his desk, and that Mr. John L. Griggs had come in, in his absence, and found it there, and had read it, and had taken him to task for writing to me replying to my letter; and he furthermore told him that he could mind his own business, that he need not write to me. And Mr. Connolly said

"Don't write to me again, but if you want to know anything call me up on the telephone, and I will try to answer you."

Q. You have answered my question. Did you, in response to any letter, or inquiry, made of the Paterson Safe Deposit & Trust Company, receive any information regarding any of the securities that you were interested in as your portion of this estate? A. None, whatever.

Q. Nor any officer connected with it? A. No, none.

Q. No letters? A. None that I can remember.

Q. There was a letter here this morning, offered in evidence, that I will show you in a moment— A. Well, if you let me see it, perhaps I will remember it.

Mr. Harding: You mean the letter of Mr. John L. Griggs, of April 15, 1920?

Mr. Hutchinson: Yes.

Q. That was in response to your letter of April 14th, wasn't it, (showing the witness the letter referred to, Exhibit C, 5)? You did receive that letter, didn't you? A. I suppose I did; I have had so much to think of that I might have forgotten it; yes.

Q. And no others? A. Never had any others.

Q. None that you can recall? A. None that I can recall.

The Vice Chancellor: Was that in answer to a letter written to the defendant (Referring to Exhibit C, 5)?

Mr. Hutchinson: Yes, sir; well it was in answer to the letter of April 14th, 1920. It says (reading the letter of April 14th, 1920 to the Court).

The Witness: I remember that, Mr. Hutchinson.

Q. That was answered April 15th, 1920? A. Yes.

Mr. J. W. Griggs: Now, has the answer to that been read?

Mr. Hutchinson: No; shall I read it?

Mr. J. W. Griggs: If you would?

(Mr. Hutchinson thereupon read the letter referred to, Exhibit C, 5).

(The three copies of letters identified by the witness, are offered in evidence by Mr. Hutchinson, admitted without objection, and are marked, respectively, Exhibit C, 6, Exhibit C, 7 and Exhibit C, 8).

Cross-examination:

By Mr. Harding:

Q. Who composed this last letter? A. I wrote them: I am quite capable of doing it.

Q. Did you have any assistance, at all, in composing them? A. No, sir.

Q. Absolutely your own composing? A. Yes, sir; I know how to do it.

JOHN W. GRIGGS, ESQ., sworn.

Direct examination:

By Mr. Medina:

Q. Gov. Griggs, in 1908, what position, if any, did you hold in the Paterson Safe Deposit and Trust Company? A. I was president.

Q. When did you become President, and during what period of time did you continue to be President of that company, do you recall? A. I cannot remember the year I became President. I continued to be President from the time I was appointed until it was merged into the National Trust Bank, in 1921.

Q. In connection with your duties as President, did you frequently confer with the trust officers of the Company with reference to the investment of trust funds? A. There were not any particular trust officers nominated as such. The affairs of the company were managed by the finance committee, the vice president, Mr. Berdan, and myself, as president, taking a general and particular oversight of the affairs. We had no distinctive trust officer.

Q. But you did confer, from time to time, with the gentlemen whose official positions and names you have stated? A. Yes.

Q. And those conferences related to the investment of trust funds, did they not, as occasion arose? A. Yes.

Q. Now, you know it to be a fact, do you not, that these proceedings involve not only the loss in

the Brooklyn City Railroad Company stock, but also the bonds of the Twenty-eighth and Twenty-ninth Streets Cross-town Railway Company, the Second Avenue Railway Company bonds, and also shares of stock of the Central Park, North and East Rivers Railway Company, as well as the shares of the Brooklyn City Railroad Company, is not that so? A. I understand so, from reading the bill of complaint.

Q. It is also the fact, is it not, that the Twenty-eighth and Twenty-ninth Streets Cross-town Railway Company, the Second Avenue, and the Central Park, North and East Rivers were parts of the so-called "Metropolitan System"? A. That is right.

Q. Now, when did you first learn of the default in the Metropolitan bonds, and by "Metropolitan bonds" I have reference to these very bonds of the Twenty-eighth and Twenty-ninth Streets Cross-town Railway Company, and the Second Avenue? A. In 1908.

Q. Do you recall about what time of the year 1908? A. Well, the default did not occur until the 1st of June or afterwards; so it must have been after the first of June, 1908.

Q. So that it was about some time in the summer of 1908 that the default occurred? A. Probably; the default occurred—

Q. (Interrupting) You so stated in your testimony, on page 36, in the former suit, and that is your present recollection, is it not? A. Yes.

Q. Now, prior to that default, did you have any knowledge of the probability of such default? A.

Well, I had considered the probability of such a default, and I did not think there was any.

Q. By the way, parenthetically, I am asking you whether you are not the senior member of the firm of Griggs, Baldwin & Baldwin? A. Yes.

Q. And that firm was, in 1908, Griggs, Baldwin & Pierce, was it not? A. Probably; I cannot get the dates back.

Q. Do you recall that, some time in the early part of February, 1908, your firm submitted, on behalf of a committee of the Metropolitan stockholders, a petition to the Governor of the State of New York for the removal from office of the District Attorney of New York County? A. No, I do not recall that; I know there was, at some time, such a proceeding conducted by Mr. Pierce, but I had nothing to do with it, and had no definite knowledge of it.

Q. You, however, knew it to be a fact that your firm did file such a petition? A. No, I did not.

Mr. Harding: I fail to see the materiality or relevancy of this line of examination.

The Vice Chancellor: I don't know; I did not try the other case.

Mr. Harding: Well, I object to it, unless counsel says what it is for.

The Witness: No; he can go on; I will tell him all I know.

Mr. Medina: I have no objection to stating on the record the relevancy of this testimony, it is to bring home direct and unequivocal notice to the president of the

defendant company that there was a very good probability that these bonds would default.

The Witness: Now, when I know what you want I can answer your question, so you won't have to ask me any more.

Mr. Medina: Well, I assume I may have the privilege of asking my own questions.

The Witness: You may—what is your question?

Q. Now, Mr. Griggs, did you, or did you not know, that Paragraph 8 of this petition, filed by your firm in February, 1908, provided therein as follows:— A. (Interrupting) Now, let me answer that before you go any further: I never knew there was such a petition; I never saw it; I did not know what was contained in it; and, in so far as my firm might have been represented in it, it was all done by Mr. Pierce, and I had no knowledge, at all, except what I got in the newspapers.

Mr. Medina: I move that that answer be stricken out, as not responsive to any question.

The Vice Chancellor: I will strike it out.

Q. Continuing my question—did you, or did you not, know that the petition filed by your firm in February, 1908, contained the statement, in Paragraph 8, "By February, 1902, the affairs of the Metropolitan Street Railway Company had

become so bad that dividends could no longer be paid out of the earnings, and some means must be devised whereby dividends could be paid without danger of violating the criminal law"? A. I do not know that; I never knew it.

Q. Did you know that the said petition contained the statement: "Mr. William C. Whitney and Mr. Thomas F. Ryan and others owned large blocks of the stock of the Metropolitan Street Railway and if the true condition of affairs became known the stock would become of little value"? A. I did not; I never saw the document you refer to, nor heard of it.

Q. Never heard of the document, did I understand you to say? A. Not that particular document, no.

Q. But you did hear of the petition? A. No; I knew there was a proceeding against the District Attorney.

Q. Of course you knew that. A. I did not know on what it was based; I did not know what papers were filed; I did not know what evidence was given; I did not know anything about it.

Q. You, I suppose, know perfectly well that no one in your firm would file a document with the Governor of the State of New York, of such public importance as a petition for the removal of the District Attorney of New York County, without consulting you as the senior member of the firm? A. On the contrary, I know they might.

Q. Now, did they, or did they not, as a matter of fact, consult you with reference to any phase of the petition that was filed? A. Never.

Q. Did you know that, in November, 1907, an article appeared in "Everybody's Magazine," written by Charles Edward Russell, charging you and others with being implicated in the Metropolitan Street Railway Company and the various manipulations of stock that took place therein? A. Charging me?

Q. That was my question. A. No, I never knew it, and I don't know it now.

Q. Did you ever read, or were you advised, of the portion of such article which, in stating the names of the persons implicated, gave the following list: John W. Griggs, then Attorney-General of the United States; Thomas F. Ryan; William C. Whitney; P. A. B. Widoner; R. A. C. Smith and Anthony M. Brady? A. My answer is the same —I never knew of it, or heard of it until now.

Q. Did you have any occasion to read a book written by Mr. Amory, Col. Wm. N. Amory, entitled "The Truth about Metropolitan"? A. No.

Q. Did you ever hear that book discussed by any members of your firm, or people in your office? A. Not that I remember.

Q. I ask whether this portion of the petition, filed with Governor Hughes, refreshes your recollection in that particular (reading from the Eighth Paragraph, page 25): "The New York City Railway Company was incorporated, its stock being held by the Metropolitan Securities Company, and leased the Metropolitan Street Railway Company, the Metropolitan stockholders receiving in lieu of dividends interest upon the stock which they held at 7%. The insolvency of the

Metropolitan Street Railway Company; the object of the Metropolitan Securities Company; the whole transaction, as we know it to-day , was fully disclosed by Mr. Amory to Mr. Jerome in 1903''—does that refresh your memory, at all, as to the Amory book? A. Not at all; I never heard that, or saw it before.

Q. Did you know it to be a fact that proceedings were initated in your office to remove Mr. Jerome as District Attorney? A. No; all I knew about it was that Mr. Pierce was specially and personally employed in a proceeding to remove Mr. Jerome.

Q. Then you did not know that proceedings were being initiated in your office to remove Mr. Jerome? A. I did not know that they were being initiated in our office.

Q. Do you state to the Court that Mr. Pierce never talked to you about that proceeding? A. No, I do not state that.

Q. Well, then, in the course of your conversations with him about it, what did he say? A. I do not remember.

Q. You do remember however, that he had conversations with you on the subject, do you not? A. I remember the matter was probably spoken of incidentally; I cannot tell you what was said; but as to furnishing me any details, or detailed information about it, or I having any interest in it; professionally or financially, I had none.

Q. Didn't you even know the ground upon which the removal of Mr. Jerome was being sought by your office? A. Possibly I did, but I could not tell you now what it was.

Q. Well, now, let me see if this will refresh your recollection (reading from page 26 of the petition): "The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the Railroad Company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money"—didn't you know that that was the ground upon which, in February, 1908, Mr. Jerome's removal was being sought by your office? A. I don't know whether I did, or not, but if I did know it, it was a mere matter of general information, more derived from the newspapers than from anything in my office.

Q. You would not call Mr. Amory's book a "newspaper"? A. What?

(Question repeated). I never saw Mr. Amory's book; I don't know whether it is a newspaper, or what it is.

Q. Further referring to the said petition and your conversations with your partner, Mr. Pierce, does this portion of the petition refresh your recollection at all, as to what Mr. Pierce told you at that time—I am reading from the Tenth Paragraph, page 29: "In the years 1902 and 1903 Thomas P. Fowler, Paul D. Cravath, Edward J.

Berwind, George C. Haven, Herbert H. Vreeland, Edward W. Sayre, Mortimer L. Schiff, Thomas F. Ryan, Peter A. B. Widener, Thomas Dolan, John D. Crimmins entered into a combination and conspiracy to appropriate to the use of the Metropolitan Securities Company millions of dollars out of the capital of the New York City Railway Company without the Metropolitan Securities Company giving any consideration therefor, in which conspiracy all of the above named defendants either at these times or subsequently, joined and participated with full knowledge of the nature and purposes of said conspiracy. Pursuant to said conspiracy and with the purpose and intent to rob the New York City Railway Company of its property, these defendants concocted and consummated the wrongful, illegal and criminal scheme hereinafter set forth to get from said New York City Railway Company, of which many of them were directors, the sum of $2,997,200''—does that refresh your recollection at all as to what Mr. Pierce told you? A. No.

Q. Didn't you know it to be a fact that the removal of Mr. Jerome from office as District Attorney of New York County was sought by your firm on the ground that Mr. Jerome had shut his eyes to the scheme of financiers and bankers in New York City to permit innocent investors to put their funds into the Metropolitan securities and permit the financiers and bankers to unload their own holdings, and thus let the public suffer—didn't you know that to be a fact? A. No.

Q. Do you know it now to be a fact that your

firm filed a petition with the Governor of the State of New York petitioning that he take action on such accusations? A. No.

Q. You do not, however deny that your firm filed such a petition, Mr. Griggs?

The Vice Chancellor: He says he knows nothing about it—how could he deny it?

Mr. Medina: I understood the witness to say that he did have a recollection of such a petition being filed.

The Vice Chancellor: I do not understand the witness said anything of the kind.

Mr. Medina: Am I to understand that I am precluded from further questioning on that?

The Vice Chancellor: No, you are not; but I think you are wasting a lot of time.

The Witness: I will repeat what I told you I did know about it—you do not seem to have recollected or noticed what I said.

Q. Referring to the former suit, and the answer of the Paterson Safe Deposit and Trust Company therein—did you have anything to do with drawing that answer? A. I don't remember.

Q. Have you any knowledge of the bill of complaint in an action entitled Adrian H. Joline and Douglass Robinson, as Receivers of the New York City Railway Company, Complainants, against the persons whose names I read a moment ago? A. No.

Q. That was a suit in the United States Circuit Court for the Southern District of New York,

but you have no recollection of that suit? A. Well, I don't know definitely what that suit was; I have a recollection of some suits, but I could not define it from that description.

Q. To assist your recollection in that, I may state (paraphrasing it somewhat) that that suit charged those persons with a criminal conspiracy to take all the substance out of the Metropolitan securities and render them valueless. A. Well, it was not a criminal action, was it?

Q. No, but it set forth what was alleged to be a criminal conspiracy, and damages were demanded. A. Well, I will tell you all I do know: I knew there was some suit by somebody (whether it was Joline and Robinson, as Receivers, or not, I don't know) against Ryan and Whitney and Cravath and others, in which the Court adjudged that they should pay back to somebody a certain amount of money—over a million dollars. I know that from newspaper accounts of it at the time, and from other parties; but I had no connection with it.

Q. Do you remember testifying about that bill of complaint in your testimony in the former proceedings? A. No, not about that bill of complaint.

Q. Referring to page 29 of the testimony in the former case, you say "And in the bill of complaint that was filed against the New York City Railroad Company it was alleged that it was most important that the system should be preserved intact and not broken up"? A. That is not the same suit.

Q. That is not the same suit? A. That bill of

complaint is the bill of complaint that was filed by creditors against the New York City Railway for the appointment of a receiver, in which suit Joline and Robinson were appointed Receivers. That bill of complaint I was familiar with.

Q. I do not suppose you remember the date of that particular proceeding against the New York City Railroad Company, do you? A. I think I do; I think it was the 7th of September, 1907.

Q. And it might have been the 24th of September? A. Well, it might have been the 24th, but it was September, 1907.

Q. Now, does your recollection of that proceeding in any way refresh your recollection as to your conversations with Mr. Pierce about the filing of the petition with the Governor? A. Not at all.

Q. You did, however, have some conversations with your partner, Mr. Pierce, about that, didn't you? A. I can only answer you as I did before, that possibly (and I think probably) that, incidentally in the office it was mentioned that he was prosecuting this complaint against Jerome, as, for instance, he might have said "I am going on with that Jerome case to-day"; but as to conversing with him about it, or any understanding with him about it or consulting with him about it, or anything more than incidental reference to it, I never had any conversation with him.

Q. And your present recollection is, as I understand it, that you did not even know the basis of the accusation against Jerome at that time by your office? A. Well, it is probable I did know

the basis of the complaint, because it was a matter of public publication in the newspapers—I probably knew it, but I do not remember it now.

Q. Well, now, that is just what I am trying to get at—it is probable, and one naturally thinks it is so, and what we want to get here is any bit or scintilla of recollection that you may now have of what your knowledge then was; now, can't you remember any of those conversations with your partner, Mr. Pierce? A. No.

Q. Does the statement that the petition related generally to the Metropolitan Street Railway affairs in any way refresh your recollection that that was the main basis of the accusation against Mr. Jerome? A. No, no.

Q. Do you recall whether or not Eugene G. Kremer was acting together with your partner, Mr. Pierce in that matter? A. I do not; I do not know even who he is, or was.

Q. Perhaps this paragraph, appearing on page 32 of the petition, will refresh your recollection as to these conversations with your partner, Mr. Pierce "This robbery of the New York City Railway Company by the directors of the Metropolitan Securities Company, and of the New York City Railroad Company by collusion and conspiracy between them has been called to the attention of Mr. Jerome. The newspapers of New York have given great publicity to this action and the facts have been laid before him and he takes no action for the punishment of these conspirators" —does that paragraph refresh your recollection to any degree? A. Not as to anything occurring between Mr. Pierce and me; or—

Q. Well,— A. Let me finish.

Q. Excuse me. A.—or as to the basis of the complaint against Mr. Jerome; but I remember perfectly well the accusations against that group of gentlemen that you have named, on that subject—that was in the newspapers; I remember that.

Q. And were those accusations, so aired in the newspapers, accusations to the effect that these bankers and financiers whose names have been used, had deliberately conspired to remove all value from the securities of the Metropolitan Street Railway Company? A. Well, I won't say that was just the basis of the accusation.

Q. Well, tell us what your recollection of those accusations, as they appeared in the newspapers at that time, and were thus brought to your notice, was? A. The accusations or charges were that this group of bankers had, by the process of putting together the various surface lines of the City of New York, greatly enriched themselves by the manipulation of the various securities of the various underlying lines, and improperly done it by piling one kind of system on another kind of a system, etc.—pyramiding combinations.

Q. Well, was the substance of the accusation the mere pyramiding of one company upon another, or was it, rather, that these bankers had floated these securities and were spreading them about among the public until they, themselves, could unload all their own holdings before the crash came? A. No, I cannot tell you precisely what the charges were. What is the date of that petition that you are referring to?

Q. The date of this petition is February 25, 1908, and it bears the stamp of the State Executive Chamber, February 28, 1908? A. That is fourteen years ago, and there has much water gone by since then.

Q. Do you suppose that if you read a few of the paragraphs of this petition, filed by your firm with the Governor of the State of New York, it might refresh your recollection further?

The Vice Chancellor: Haven't you read the whole thing through?

Mr. Medina: No, I have only read about, all together, two pages of it.

The Vice Chancellor: Well, I think you have read enough; it is now twenty minutes of four, and I do not think you have gotten very far with this thing, so far.

Mr. Medina: Well, at your Honor's suggestion, then, I have no further questions.

The Vice Chancellor: If he was President of the Company, and had knowledge that this stock was going to depreciate in value, and the Company was charged with his knowledge, then, of course, there would be a breach of trust; but I do not see it so far.

Mr. Medina: Well, of course, I thought it was too obvious for argument that if the firm, of which this distinguished gentleman was the chief member, filed a petition with the Governor, it would not

be unusual for the Court to attribute some knowledge of that fact to him.

The Vice Chancellor: Well, firms are not run in that way. The question is, What did he know?

Mr. Medina: Well, I now might inquire whether an offer of a photographic copy of this petition, as made in the Executive Offices at Albany, would be accepted as genuine by the other side, or whether we will be required to prove the fact, or call someone from Gov. Grigg's office to indentify it as a genuine copy. I will submit it to the inspection of the other side (handing the photographic copy to Mr. Harding).

Mr. Harding: Having inspected it, I object to it, on the ground, first of all, that it is irrelevant and immaterial to the issues in this cause; that it is not rebuttal, and should have been offered originally, on their original case, or their direct case, if it were material; and I shall object to it, too, on the ground that it is not an official document that can be offered. I object to it on all of those grounds.

The Vice Chancellor: Well, it is in no sense evidential. It is no transaction of this witness, and he says he knows nothing about it.

Mr. Medina: Well, the purpose with which I had intended to make the offer was to indicate that the original of this docu-

ment was filed, by the firm of which Gov. Griggs was the senior member, with the Governor of the State of New York, in February, 1908, for the purpose of having the Court draw such inferences therefrom as the filing of such a paper, together with such evidence as we are able to adduce, might justify; and my only inquiry was whether the paper would be objected to on the ground that it was not proper proof of the filing of the original; if so, naturally we must produce such proof.

The Vice Chancellor: I will rule it out, on the ground that the witness says he knows nothing about the paper; I do not care whether it was prepared in his office, or not.

Mr. Medina: So that it may appear on the record that your Honor does not exclude the paper on the ground that we have failed to prove that the original was properly filed—

The Vice Chancellor: Well, it would be excluded on that ground, anyway. It is not a paper exemplified according to the Act of Congress, or according to the statute. I will say now that I will also exclude it on the ground that it appears presently that the witness interrogated in regard to it knew nothing about the document, even if he was the senior member of the firm which conducted the proceeding.

Mr. Harding: In order that the record

might not be burdened by this immaterial testimony, I ask that that portion of it which has been read into the record purporting to come from some petition, and magazines, and things of that kind, be striken from the record. I do not think the record should be burdened with that.

The Vice Chancellor: Oh, I will overrule that motion. I deny the motion.

By Mr. Harding:

Q. Gov. Griggs, is there any explanation, or addition, you wish to state to any question? You were interrupted once or twice. A. I do not remember anything.

WILLIAM B. BEAM, ESQ., recalled.

Direct examination:

By Mr. Hutchinson:

Q. You are one of the complainants in this suit? A. I am.

Q. You are one of the sons of Mrs. Carrie S. Beam? A. I am.

Q. And one of the remaindermen in this trust? A. I am.

Q. Did you have a copy made of a certain petition filed in the office of the Governor of the State of New York for the removal of Wm. T. Jerome?

Mr. Harding: I object to that, on the same grounds that have been mentioned.

The Vice Chancellor: I know, but your objection is premature; he is not offering anything yet.

A. I did.

Q. Did you make a copy? A. I had a copy made.

Q. How was it made? A. It was made in the New York Public Library by the photostat process, from a copy filed there.

Q. Did you, at any time, compare the photostatic copy with the original on file in the Office of the Governor of New York? A. I did.

Q. What comparison was made, how did you make it? A. I compared it twice, on the 18th of November I compared it myself by running through each page. I went back on, what was last Saturday, the 2d of December, and I compared it again by reading it to a Mr. Alfred E. Kelly, who went with me to the Executive Chamber.

Q. And did you read it back and forth? A. I believe we did.

Q. Have you that copy? A. I believe it is here in Court.

Q. (Showing the witness a document) Is this the copy? A. Yes, that is the copy.

Mr. Hutchinson: Cross-examine.

Mr. Harding: Is the paper offered?

Mr. Hutchinson: No, sir; I am asking you to cross-examine; I suppose I cannot

offer it until you have an opportunity to cross-examine.

Mr. Harding: I do not care about cross-examining him.

Mr. Hutchinson: I offer it.

Mr. Harding: I object to it, on the ground that it is immaterial; it is not an exemplified copy, and it is not strictly a proven copy.

The Vice Chancellor: I will sustain the objection. Is there any law authorizing an examined copy of a paper to be offered where a certified or exemplified copy can be produced?

Mr. Hutchinson: Why, yes; we could have it under the seal of the Governor of New York State.

The Vice Chancellor: If there is a law of exemplification under the Act of Congress, this is not evidential. He has no right to use an examined copy of an instrument, except, I think, in cases where, under the law, he cannot get certified copies, or cannot produce the original. In some cases an examined copy may be offered in place of the original, but that is not the case.

Mr. Hutchinson: Well, I understood the rule to be that a copy verified by reading back and forth would be evidential of the original; but if it is important (and we rather think it is important for our case) we would like to have an opportunity to put

in an exemplified copy, and we make the offer now of an exemplified copy.

The Vice Chancellor: I can only rule when the evidence is offered. If it is a case where an exemplified copy can be procured, it is forbidden to use an examined copy, as I understand the law.

Mr. Hutchinson: I might say that we find that the Governor of the State of New York, in his Executive Office, where this is filed, has no official seal under which this can be certified as an executive document; that is the information that I have received.

Q. Did you make any inquiry as to that, Mr. Beam? A. I did.

Q. What did you find? A. On the 18th of November I attempted to secure a certification of this copy under the Great Seal.

Mr. Harding: I object to it; I do not think this witness is competent to testify as an expert on that subject. That should be done by the proper official.

Mr. Hutchinson: Well, I am only trying to show what effort he made.

The Vice Chancellor: Well, I suppose the statutes of the State of New York will show what can be exemplified.

Q. Did you make any further inquiry about that? A. I did; I wrote the Governor of New York a letter, and he replied, that his office not being an office of record—

Mr. Harding: I object to that as being hearsay and incompetent.

The Vice Chancellor: It is all hearsay.

Mr. Hutchinson: I have done all I can.

Mr. Harding: You know what Mark Twain says, "Angels can do no more"?

Mr. Hutchinson: I do not want to be persistent, but it seems to me—

The Vice Chancellor: If it is material I am going to allow you to prove the fact, for the purpose of getting a legal offer of that document; because, in the view I now entertain, I would exclude it in any event, because it has no evidential force, from the fact that the witness, Gov. Griggs testified that he did not know anything about it, and never heard of it. Now, in view of that, how you can charge him with knowledge of something done in his office is beyond me; especially in an independent transaction, outside of his office.

Mr. Hutchinson: Then, if your Honor please, I accept the generous offer of counsel that we be given that opportunity if, upon an examination of the case, we shall find it important.

The Vice Chancellor: I will give you that. I want a full hearing.

Mr. Harding: I don't know just what counsel meant by just speaking about some "generous offer" on my part; I am not generous about this thing, at all; I do not want him to make a false assumption. I

think it is immaterial and irrelevant all the way through.

The Vice Chancellor: The Court will be generous with him, and give him every opportunity to present his case fully.

Mr. Hutchinson: Yes, sir; I quite realize that. I am sorry to have acknowledged generosity when it was not intended.

Mr. Harding: Well, I did not want you to misunderstand me.

The Vice Chancellor: If you can produce evidence justifying this as a legal offer, of the paper being legally acceptable as proof, I will permit your offer to stand; and then I will deny your motion on the ground that the witness who was confronted with it said he knew nothing about it; so that will clear up the case, in case any question arises in the Court of Errors and Appeals.

Mr. Hutchinson: Perhaps I ought not to bother your Honor any more about this, but we have here a letter from the office of the Governor of the State of New York, in which he says (reading the same, the Court instructing the stenographer not to report the reading).

The Vice Chancellor: That does not answer the question; the simple question is, How are matters of this kind, before a Governor, authenticated? I presume, if there is no method of authentication prescribed, under the old method an examined

copy of the instrument, with the oath of the witness who examined it, is acceptable, where the original cannot be produced. I do not know that there has been any change in the method, but this does not show that there is no prescribed method of authentication.

Mr. Hutchinson: Well, your Honor, I suppose I will appear upon the record as having objected to your Honor's later ruling?

The Vice Chancellor: Yes, you may offer it in evidence and have it marked for identification, so the Court of Errors and Appeals, if it is necessary, shall see it. You may offer the letter for identification, too, if you want to offer that in evidence.

Mr. Hutchinson (To Mr. Harding): Do you object to the letter?

Mr. Harding: Yes; I have already objected to it.

The Vice Chancellor: If it is objected to, I will overrule the offer and sustain the objection.

(The photostatic copy of the petition is marked for identification, B, H, 1).

(Mr. Hutchinson, thereupon offered in evidence the letter last referred to, the offer is objected to by Mr. Harding; the Court overruled the offer, and the paper was marked for identification, B, H, 2).

No cross-examination.

HAROLD R. MEDINA, ESQ., sworn:

Direct examination:

By Mr. Hutchinson:

Q. Are you a member of the Bar of New York City? A. Yes.

Q. How long have you been a practitioner of that Bar? A. Since 1912.

Q. Are you familiar with the laws of the State of New York regarding the certification of executive documents? A. I am.

Q. Have you had experience in that regard? A. Well, my office, and offices with which I have been connected, have had many occasions to have certified copies of various papers, also authenticated copies, and we have also struck instances in which neither certified nor authenticated copies could be obtained.

Q. What is the state of the law in New York State with regard to the official certification of documents from the Executive Department? A. Documents filed with the Governor of the State of New York are considered just as papers filed with any public official in a merely administrative or individual capacity, and not the same as papers filed with a County Clerk, or with a Court, or with some other public official having records and facilities for certification and authentication of documents. It has never been the custom to obtain certifications or authentications of papers on file with the executive.

Q. Well, are they obtainable, at all? A. I

should say not; and, in my practice, I have never been able to obtain them.

Cross-examination:

By Mr. Harding:

Q. Have you any statute on the subject in New York? A. We have statutes bearing generally on the certification and authentication of documents, yes.

Q. No, but with reference to an executive document, have you any statutes, have you looked up to see if there is any statute? A. I have not looked them up for this occasion, but I have, for a great many years talked on the subject of evidence to students in New York, and have had many occasions to read these statutes.

Q. Do not answer any more than the question requires, with reference to the subject of this particular petition have you looked up the statutes of New York, down to date, to find what the statutory law is today with reference to that subject? A. With reference to this particular petition I have not made any investigation whatsoever.

Q. Have you looked up, with reference to this particular subject, any of the common law decisions of the State of New York? A. Not for this case, but I have for other cases.

Q. You have not prepared yourself for this suit, at all? A. I have not; I did not anticipate that the subject would arise.

Q. You have answered it; you did not anticipate

it; so, when you are called upon now to qualify as an expert on the subject you are simply giving us what you think is the custom, as you have stated it, in the State of New York? A. That is not correct.

Q. Well, didn't you say you thought that was the custom, not to have an authentication or certification of a document of this kind? A. I do not like to quibble over a word, but the only part I object to is the word "custom." I did testify that you cannot, as far as my experience has gone, obtain such certification, and I stated the reason for that opinion.

Q. And when you state that you are merely giving your thought on the subject, without reference to looking up any statute, or statutory law, or decision of the State of New York with reference to this particular subject? A. No; I have repeatedly and on many occasions examined those statutes but not for this case.

Q. Well, I ask you again—have you examined the statutory law of New York, down to date, to find out whether or not there is any statutory provision with reference to certification of a document of this kind? A. I haven't examined it particularly for this case, but I follow the advance sheets of our decisions and our recent statutes with a great deal of care, and I know that there is no recent statute affecting the subject whatever, the last statute being the Civil Practice Act, which took effect October 21, 1921, which has not been amended since that date.

Q. And your whole testimony today is given, so

to speak, without reference to this particular subject; you never have looked it up? A. That is right; but, as I have said, I have taught this subject for many years at the Columbia Law School—

Q. You have answered the question. A. Yes.

Mr. Harding: Your Honor, I object to the testimony of the witness, and ask that it be stricken out, on the ground that he has not shown himself qualified to give us the law upon the subject down to date.

By the Vice Chancellor:

Q. Do you know of any statute in New York providing for the exemplification of documents? A. Yes, your Honor—the Civil Practice Act.

Q. Is there an act in New York for the exemplification of court records? A. The same statute provides for the certification and exemplification of all documents on the files of public officials.

Q. Can you give the language of the statute? A. I could not remember it verbatim; but no doubt there is, in the Library of the Court, a copy of our Civil Practice Act, to which I could readily turn.

Q. Well, do you know of any decisions, off-hand, that construed this statute as to what is admissible without certification in your own state? A. Why, I do not think the statute requires any construction in that regard.

Q. I am not asking you that. A. I know of no decisions.

Q. You know of no decisions? A. No.

The Vice Chancellor: I think, on that subject, I will permit counsel to submit authorities on that point before I admit it, in view of this testimony.

The Witness: May I submit my qualifications on the subject, further, with the permission of the Court?

The Vice Chancellor: Well, yes, you may.

The Witness: In the year 1914 I first became a member of the faculty of the Law School of Columbia University, and continuously, since that time, have taught the subject of New York pleading, practice and procedure. I have also, continuously, for the past nine years, conducted classes in preparation for the New York Bar examinations, in preparation for the giving of which lectures I have felt it necessary to keep myself advised as to all the recent developments as to the statute and decisions in the state. Since the passage of the Civil Practice Act of the State of New York, which took effect October 1st, 1921, I have been very active in giving a number or series of lectures to practicing lawyers in the State of New York as to the provisions of the new Civil Practice Act, in the aggregate lecturing to upwards of a thousand members of the Bar of the State of New York on that particular subject, upon which subject I wrote a book, published by Baker-Vorhis & Co., entitled "Medina on

Pleading and Practice," which was published in June of this year. Since that time, and prior thereto, I have collaborated with the various committees of the New York City Bar Association and with Mr. Justice Page of the Appellate Division, First Department, in the submission of various suggestions looking toward the amendment of that particular statute.

Q. Well, now, is there any other statute providing for exemplification? A. Section 45 of the Decedent Estate Act also covers the same subject, but relates only to the various proceedings in the various Surrogates' Courts.

Q. You do not know of any ruling of *nisi prius* practice? A. I have experienced three instances in my own recollection in which papers from the Executive Office in Albany have been offered in evidence before trial courts, and in all three of those instances, which took place while I was associated with the firm of Davies, Auerbach & Cornell in New York (where I did a great deal of trial work) the papers were proved by calling the witnesses who examined the paper to testify as to what their examination showed; and the paper was then offered in evidence and received without objection; so that those cases may not be regarded as direct rulings on the subject. There was no objection raised and no ruling made by the Court, but it is commonly understood, among New York practitioners, that that is the method of proving papers where certified or exemplified copies cannot be obtained.

The Vice Chancellor: How much more evidence will you have in this case?

Mr. Harding: We are through.

The Vice Chancellor: Are you through, Mr. Hutchinson?

Mr. Hutchinson: If your Honor please, there is one other matter, that is the Amory Book, examined upon by Mr. Medina.

Mr. Medina: My testimony, of course, does not relate to that book.

The Vice Chancellor: Well, that book Governor Griggs says he never saw and never heard of.

Mr. Hutchinson: I know he says so.

The Vice Chancellor: Well, what do you want it for?

Mr. Hutchinson: Well, Mr. Medina was the one who examined upon that.

The Vice Chancellor: True; but how is it admissible to prove anything that the witness never saw or heard of.

Mr. Hutchinson (To Mr. Medina): Well Mr. Medina, this is your child.

Mr. Medina: Oh, the Amory book is not my child. We ask that this book here be marked for identification, also, as part of the other Exhibit, as Mr. William Beam tells me that it was compared by him.

Mr. Hutchinson: Well, of course I have only one-half of this case; I do not want to butt in; but the position taken by

Mr. Beam on this book is that that is referred to and linked up with the Exhibit of the petition which was filed in Gov. Hughes' office, and that being so, if that is admitted, this is also germane.

Mr. Harding: How is it linked up?

Mr. Hutchinson: Well, it is referred to in there.

The Vice Chancellor: I do not, for the life of me, see anything in either document; or that what was shown to Gov. Griggs was evidence that he knew all about these affairs, or knew of the condition, or knew enough to be put on inquiry.

Mr. Hutchinson: We ask the privilege of producing the man who made the photoscopic copy, and swearing him; and ask that this be marked for identification.

Mr. Harding: We shall object to that, on the ground that it is immaterial and irrelevant, and simply encumbering this record; we object to it on all of those grounds.

The Vice Chancellor: I will sustain the objection. It is clearly irrelevant, apart from the fact that it is not the method of proving the document. Now, this other document, filed with the Governor of the State of New York, I have excluded, on the ground that it is not evidential, because the witness who was confronted with it says he knew nothing about it. If I should decide against you, and the case

should go to the Court of Errors and Appeals, I do not want you to be confronted with the fact that I have excluded it upon that ground that is purely technical, or that it was not proven; I want to give you the benefit of every objection you may make in the case, so that, if you do go there, and I am wrong in excluding it, I am excluding it because it is not evidential in any case. I do not want you to lose on the ground that you have not proved the document in the proper manner.

Mr. Hutchinson: Now, if your Honor please, I want to make this rather definite offer. I want to offer the witness who made the protostat copy—Iwant to make the same offer as to this as made to the other. This is the Amory Book, "The Truth about Metropolitan." What I want to do is to put this in under exactly the same procedeure, if I can do so. We have the expert here, the man who made it.

Mr. Harding: To save the time of your Honor, we will not object to that being a copy, as they say, of the book.

Mr. Hutchinson: Well, now, that is all right. Then your Honor, as I understand it, overrules this (referring to the offer of the Amory Book) as it has no evidential force?

The Vice Chancellor: Yes.

(The Amory Book was thereupon marked for identification, B. H, 3).

Testimony closed. Case set for oral argument at Jersey City Chancery Chambers, on Friday, December 8th, at 10:30 a. m.

Chancery Chambers, Jersey City, Dec. 8, 1922. (Case argued orally, and held for decision).

(Filed July 1, 1924.

Opinion.

IN THE CHANCERY OF NEW JERSEY.

Between
EDWARD BEAM, *et al.*,
Complainants,
and
THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,
Defendant.

MESSRS. HUTCHINSON & HUTCHINSON (and MR. HAROLD R. MEDINA of the New York Bar) for Edward Beam, John C. Beam and Carrie S. Beam.

MR. WILLIAM B. BEAM, solicitor *pro se.*

MR. JOHN W. HARDING, for the Defendant.

GRIFFIN, V. C.:

The subject matter of this litigation (with the exception of the shares of stock of the Brooklyn City Railroad Company, which will be hereinafter refererd to), was passed upon in this Court in the case of *Carrie S. Beam, sole complainant, vs. the Paterson Safe Deposit and Trust Company,* the present defendant, by Vice Chancellor Stevenson, whose opinion is reported in 81 *N. J. Eq., p.* 38; and by the Court of Errors and Appeals, on appeal from the decree advised by him, *idem. p.* 195; and by Vice Chancellor Howell, on final hearing, whose opinion is reported in 82 *N. J. Eq., p.* 518, where he decided in favor of the complainant and against the defendant; and in the Court of Appeals where the latter decree was reversed and the bill dismissed. (*See* 83 *N. J., Eq., p.* 628).

The facts touching the litigation in the former case are fully set forth in the foregoing opinions, and need not be here repeated.

The property and interest of Mrs. Beam covered by said litigation are derived from the Twelfth Paragraph of the will of her mother, Sarah A. Cooke, which reads as follows:

> "Twelfth. The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company, of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part

is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

Passing under this paragraph (and dealing only with the securities covered by said litigation), Mrs. Carrie S. Beam was entitled to receive from the defendant, as trustee, one-fifth of the income from the following securities:

1. Three Twenty-eighth and Twenty-ninth Streets Crosstown R. R., New York City, First Mortgage Five per cent. Bonds of $1,000 each;

2. Two Five per cent Mortgage Bonds of the Second Avenue, New York City, R. R. Co., of $1,000 each;

3. 225 shares of the Central Park, North and East River Railway stock.

The three foregoing securities were dealt with in the cases above referred to.

In addition thereto, there also passed to her a one-fifth interest in 200 shares of the Brooklyn City R. R. Co., which shares, together with the securities above mentioned, in 1915 were divided into five parts, and thereafter one part was carried in a separate account in trust for Mrs. Beam under said Twelfth Paragraph.

The position taken by the complainants on opening the case is that the decree in the former suit bound only Mrs. Beam as to the securities there litigated; and the remaindermen, not having been parties thereto, are not precluded from investigating with rgeard to the securities in the former suit; and that neither Mrs. Beam nor her children are bound in any respect by the former decree as to the Brooklyn City securities.

The position taken by the defendant, as far as the five bonds and the 225 shares of stock are concerned (which were the basis of the former litigation) is that "although William B. Beam, Edward Beam and John C. Beam were not parties in the former suit, nevertheless they had an interest in remainder, and were represented in that litigation by Carrie S. Beam, who was their predecessor in the estate," citing *Woolsey vs. Woolsey,* 8 *Buch.,* 517; *Davison vs. Rake,* 18 *Stew.,* 767; *Dunham vs. Doremus,* 10 *Dick.,* 511.

In *Woolsey vs. Woolsey, supra,* at page 525, Pitney, Ordinary, after dealing with the rule as to proper parties, said, "It results that such contingent interests are held to be bound if the interest be represented in the litigation by a trustee, or (in some cases) by the predecessor in estate."

In *Davison vs. Rake, supra,* several legatees instituted suit in the Orphans' Court for their legacies, and the question presented was whether they were entitled to interest on their legacies from one year after the death of the testator or from

the admission of the will to probate. A residuary legatee, who was not a party to the suit in the Orphans' Court, appealed to the Prerogative Court and was the appellant in the Court of Errors and Appeals. It was assigned as one of the grounds of appeal that he was not a party. Mr. Justice Depuy, speaking for the Court of Errors and Appeals, on page 771, said, "On a bill filed by a general legatee for the recovery of a legacy the residuary legatee is not a necessary party," and on page 772, he said, "In suits by creditors or legatees, not involving the construction or effect of the residuary clause of the will, residuary legatees are interested consequentially only from the circumstance that the recovery of the debt or legacy will reduce the residue, and, under such circumstances, the executor is regarded as representative of all persons interested."

In *Dunham vs. Doremus, supra,* Mr. Justice Dixon, in the Court of Errors and Apeals, said (p. 513), "The established rule of equity practice is that estates limited over to persons not *in esse* are represented by the living owner of the first estate of inheritance."

It seems perfectly plain that these decisions do not apply here. Under the clause above cited Mrs. Beam took a life estate, and her children took a vested remainder subject to be opened to let in after-born children.

In the case of *Meirs vs. Person,* 92 *N. J., Eq.,* 17, Chancellor Walker said, "When the contin-

gency is not in the person but in the event or time of enjoyment, the interest is vested." And in *Clark vs. Morehous*, 74 *N. J. Eq.*, 658, where the language of the will was not as plain as the will in question, Vice Chancellor Howell, after stating that it is a well-known rule that courts will make every intendment in favor of vesting the estate, held that the children constituted a class and took a vested remainder on the death of the testator, subject to be opened to admit after-born children of the life-tenant. (See also *Aitken vs. Sharp*, 93 *N. J. Eq.*, 336).

The conclusion I have reached on these authorities is that under the will of Mrs. Cooke there was a life estate given to Mrs. Beam with a vested remainder to her children, subject to be opened to admit after-born children. Upon this conclusion, the children of Mrs. Beam living at the time the prior suit was brought were necessary parties thereto. Their mother did not represent them in that suit, and they are not estopped by the decree therein.

The next question propounded is this: The defendant claims that by reason of the various accounts filed by it in the Orphans' Court of the County of Passaic and passed and allowed by that Court, the decrees entered therein involved the same subject matter as this suit and are *res judicata* on all of the defendants.

There were three accounts filed from December 31, 1905, down to April 15, 1912, in which the trus-

tee, in one column, gave the par value of the securities, and in another, gave what is termed the "present value" of the securities. The bill in the former suit was filed February 7th, 1912, being prior to the filing of the last of the three accounts just referred to. No exceptions were filed to these accounts, although it plainly appeared in the bill that Mrs. Beam had knowledge of the fact that the securities mentioned in that suit had greatly depreciated in value and were not of the value given in the account.

In the fourth account, covering a period from April 15, 1912, to April 15, 1914, on one side the accountant gave the par value of the securities, and, on the other, the inventory value—thus substituting for the words "present value" as appeared in the three prior accounts, the words "inventory value." No exceptions were filed to this account, and it was regularly passed by the Orphans' Court.

In the fifth account, covering a period from April 15, 1914, to April 15, 1915, under the head of "Principal Fund Depreciation," it showed the inventory value, amounting, on April 15, 1914, to $150,500.00, and a depreciation in the various securities amounting to $56,969.50, leaving a balance of $93,530.50. The accountant then sets out, in another clause, the securities and their values which make up the total of $93,530.50. It then states as follows:

> "This estate, for the benefit of the five beneficiaries therein, has for the purpose of

> economy, been kept and reported to the Orphans' Court as one account. The trustee, as of May 1st, 1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day, and has divided the said estate into five parts according to the figures hereafter shown and entitled 'Distribution Sarah A. Cooke Trust as of May 1st, 1915;"

and in the table annexed a division is shown ratably among the five children of the testatrix, of whom Mrs. Beam is one. Exceptions were filed to this account by Mrs. Beam; and the Court being of the opinion that the exceptions were not well taken, on July 30, 1915 ordered that "said account be in all things allowed as reported and that there is a balance of corpus amounting to the sum of $93,530.50 remaining in the hands of said accountant to be disposed of according to law."

The exceptions were filed by Mrs. Beam, and are as follows:

> 1. The account sets forth in Schedule C a depreciation of $56,969.50 in certain securities, without any explanation concerning how and when said depreciation occurred. The accountant filed an intermediate account in February, 1908, one in April, 1910, and another in April, 1912, besides the present one, to which exception is herein made. Each of said account, except the present one, show the corpus of the estate to be

worth about $151,056.58, and the decree of the Court in each case so declared. None of the said accounts disclosed any depreciation, and since the accounting of 1914 there has been no material depreciation in the assets of the estate.

2. In the formation of the trust in question the trustee violated the express provisions of said will of said testatrix in creating but one trust fund in place of five, as in said will ordered."

The prayer of the exception is that the account be disallowed as filed, and that the trustee be required to account to the beneficiaries of the estate for the full amount shown to be in the hands of said trustee by the decree dated May 14, 1914; and that the exceptant may have other relief.

While the first exception is inartistically drawn, it pointed to the question of the good faith and reasonable discretion of the trustee in continuing the investments; thus calling on the trustee to bear the burden cast by law upon it to explain its action in holding the securities which were so declining as stated in *Beam vs. Paterson Safe Deposit and Trust Co.*, 81 *N. J. Eq.*, 195. Prior to this last accounting Mrs. Beam, having insisted that the accounts be kept separate according to the terms of the will, the subsequent accounts separated the fund into five parts, and the trustee thereafter accounted for the fund of Mrs. Beam separately. The first of these accounts is from January 7, 1915, to the 15th of April, 1917. This

account overlaps the last account, as that accounting was down to April 30, 1915. However, the accountant charges itself with the amount of assets "as per appraisal on division on accounting, April 30, 1915, $18,706.10" (which is one-fifth of the $93,530.50 which was the total fund held in trust for the five children). This account added the income from January 7, 1915, and deducted the disbursements from February 23, 1915, all of which was regular. In this account the par value of the various securities is set forth on one side, and the appraised value on the other. To this account Mrs. Beam and her two sons, William and John, excepted, which exceptions were overruled, and an order entered, on May 24, 1917, that the account be in all things allowed as reported.

The first exception is as follows:

> "The account does not explain depreciation in value of the corpus."

The second exception was substantially the same as the first exception to the last account.

The prayer is "that the account be disallowed, and that the trustees be acquired to account to the said beneficiaries of said estate for the depreciation in the value of the share of Carrie S. Beam subsequent to the decree of April, 1914."

These latter exceptions substantially put in issue the question of the exercise of good faith and reasonable discretion.

The next account was from April 15, 1917, to April 15, 1919. This account, under Schedule C, sets forth how the principal fund of the trust is invested, and places the par value on one side (without stating that it is par); and, on the other side a column of figures without any caption as to value. To this account exceptions were filed by Mrs. Beam, William B. Beam and John C. Beam, and a motion being made to strike from the records said exceptions on the ground that the same were vague, uncertain and scandalous and not proper exceptions in accordance with the statute in such case made and provided, the Court ordered "that said exceptions be disallowed and removed and stricken from the records of this court;" and also ordered "that the account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of $18,706.10 remaining in the hands of said accountant to be disposed of according to law."

On January 15, 1921, the trustee presented his petition to the Orphans' Court for discharge; and on the 10th of February, 1921, the Court ordered "that it be relieved and discharged from all further duties," etc., "except accounting for and paying over the money or assets received by it by virtue of its said office." Thereafter the Trust Company filed its final account from the 15th day of April, 1919, to the 5th day of January, 1921; and, in Schedule C set forth the principal fund of said trust and how invested. On one side the figures set forth the par value, and, on the other, the "book value." To this accounting exceptions

were filed by William B. Beam and John C. Beam, which were overruled in their entirety, and it was ordered "that the account be in all things allowed as reported, and that there is a balance remaining in the hands of the accountant amounting to $18,706.10 to be disposed of according to law, which balance is corpus at accountant's book value."

From the decree on this last accounting an appeal has been taken by William B. Beam to the Prerogative Court, and since which decree the defendant has turned over the securities to the new trustees.

The defendant also makes the point that all of the accounts approved showing the retention of the securities involved in the first suit, and the approval of each of these accounts upon due notice, was *res adjudicata* as to the propriety of the trustee's action in retaining the securities; citing *Re Slater's Estate,* 88 *N. J., Eq.,* 296; *Exton vs. Yule* 1, *McCart.,* 501; *Search's Adm'r. vs. Search's Adm'r.* 12 *C. E. Gr.,* 137.

In *Re Slater's Estate, supra,* Vice Chancellor Leaming had before him a case involving two accounts, one intermediate and the other a final account. To the intermediate account no exceptions had been filed, and the account was allowed by the Court as reported, and the Court's decree to that effect was signed and entered. On the final account being reported for settlement, exceptions were filed which included objections to both the intermediate and final accounts. At the hearing the Orphans' Court entertained the exceptions which

were directed to the intermediate account as well as to the final account, and decreed that the intermediate account be vacated, set aside and for nothing holden and that the intermediate and final accounts be re-stated in conformity with the specific adjudications touching the several matters of charge and credits. The Vice Chancellor dealt with Sections 124 to 127 of the Orphans' Court Act of 1898 (*P. L.* 1898, *p.* 760,) as amended by the *Laws of* 1905, *p.* 299, and held that, as a result of the amendment, intermediate accounts of an executor were placed upon the same plane as final accounts, and contemplated a like decree touching their allowance in lieu of the mere authorization that they be entered of record. In the Act of 1905, administrators and trustees were treated the same as executors. In the case before him, as above stated, no exceptions were filed to the intermediate account, and the Court decided the case under Section 125. Exceptions to the intermediate accounts in the present case having been filed the case is within Section 126, where, in general language, it deals with the settlement of the accounts of "executors, administrators, guardians and trustees." This means accounts which are to be settled, and includes the intermediate and final accounts of executors, administrators and trustees, but includes only the *final* account of a guardian, because that is the only account of a guardian which may be settled. Thus, when the Orphans' Court overruled the exceptions filed to the intermediate accounts and allowed the accounts as reported, under Section 127 the decree

of allowance "is conclusive upon all parties," and operates to exonorate and forever discharge an executor "from all demands of creditors, legatees or others, beyond the amount of such settlement.....excepting also in cases where a party applying for a resettlement shall prove some fraud or mistake therein, to the satisfaction of the said Orphans' Court;" and the application for resettlement, as held by Vice Chancellor Leaming, is by petition and rule to show cause.

The notice of the settlement of the various accounts was given in accordance with the provisions of the statute. This notice operates as constructive notice to all parties interested in the estate. In contemplation of the law they are all before the court, and all entitled to except to the account and be heard before the court. The decree of the court upon final settlement and allowance of the account is conclusive upon all parties, except in special cases enumerated in the statute. *Exton vs. Zule,* 1, *McC. p.* 501.

In the present case regular decrees allowing the account were entered while the trusts for the five beneficiaries were kept in one account. On the division of the account into five parts, in 1915, all of the securities referred to in the former chancery litigation were set out, and their depreciation was shown under the title "Cooke Trust, Principal Fund Depreciation, April 30, 1915." Under this head was also shown the 200 shares of Brooklyn City R. R. Co., which for the first time, has been brought into this litigation. The total amount of

the depreciation was deducted from the inventory value, showing a balance of $93,530.50, following which is a statement showing how the principal fund was invested.

In the case of *Hill vs. Hill*, 79 *N. J. Eq., pp* 521, 539, Pitney, Ordinary, said "It is established that the jurisdiction of that Court" (the Orphans' Court) "over the subjects committed by the statute to its cognizance has a general jurdisdiction similar to that of the Chancery and Prerogative Courts, and that its authority over accounts of trustees under wills is as ample as that of the Court of Chancery." (Citing cases). And on page 540, referring to the *Woolsey Case* (which originated in the Orphans' Court and passed through the Prerogative Court to the Court of Errors and Appeals, in a matter of accounting,) he says "....and that court required the account of the executors to be restated in a manner to give effect to an equitable estoppel arising out of the transaction between the executors and the beneficiaries. Afterwards, an attempt being made by bill in equity to open the account as thus re-stated, it was held by the Court of Chancery and affirmed by the Court of Errors and Appeals (*Woolsey vs. Woolsey*, 71 *N. J., Eq.* 1 *Buch* 609; 72 *N. J., Eq.*, 2 *Buch.*, 898) that the matter was *res judicata* because of the former decision; that the Orphans' Court had as ample jurisdiction to examine into the account and deal with it on equitable principles as was possessed by the Court of Chancery, and that the executors might have availed themselves in the Orphans' Court of the matters they

set up in the subsequent equity suit as ground for relief." See also *Pyatt vs. Pyatt,* 46 *N. J., Eq.* 285, *Woolsey vs Woolsey, supra; Re Slater's Estate, supra.*

Here the complainants could have obtained full relief in the Orphans' Court on exceptions to the account of the trustee with respect to the securities mentioned in the former suit as well as to the Brooklyn City R. R. Co., shares; and, in fact, exceptions were filed in some instances by Mrs. Beam, and, in others, by her sons, the remaindermen, which exceptions were overruled and no appeals were taken.

In view of the foregoing authorities, I am of opinion that the decrees of the Orphans' Court on the settlement of all of the accounts down to the final account are *res judicata,* and that the same subject-matter cannot be re-litigated in this Court.

The final account was passed February 24, 1921, and the bill in this case was filed August 1, 1921. To that account exceptions were filed, which were overruled and the account allowed as reported. From the decree there entered an appeal has been taken to the Prerogative Court, which court has full jurisdiction over the parties and subject matter; therefore, the questions arising on that account cannot be considered in this case.

In view of the fact that I have found that the decrees of the Orphans' Court are *res judicata,* I have not deemed it necessary to consider the other evidence in this cause.

I will advise a decree that the bill be dismissed.

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, *et al.*, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, Defendants.	On Bill, etc. MOTION.

APPEARANCES:

MR. WILLIAM B. BEAM, solicitor *pro se,* for the motion.

MR. B. B. HUTCHINSON, of counsel with complainants.

MR. CHARLES C. STALTER, of counsel with Defendant.

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J., June 19, 1924.

Mr. Beam: This is a motion in Chancery in a cause between Edward Beam, John C. Beam, Carrie S. Beam and William Beam, complainants and the Paterson Safe Deposit & Trust Company, the National Trust Bank of Paterson and the Paterson National Bank, defendants. It is on proper notice; and there is a proposed order (handing to the Court a paper).

Mr. Stalter: If your Honor please, I object to this on the grounds that it is immaterial and irrelevant, and especially, in two of these appeals. As your Honor remembers, this cause was heard before your Honor in Paterson in November,

1922. It was argued at great length, and closed. Now my adversary is seeking to introduce into the testimony of that cause an appeal from an order allowing a final account from the Orphans' Court to the Prerogative Court. There are four cases in which my adversary seeks to admit that testimony. To two of those cases neither the Paterson National Bank nor the National Trust Bank of Paterson were parties; and I submit that it would be obviously unfair to introduce that testimony in a case which has already been argued and closed some time ago. We have not had an opportunity of cross-examination, of objection to testimony, or of offering rebutting testimony; and, under those circumstances, sir, I object. The other two causes were appeals from the Orphans' Court to the Prerogative Court, and none of the testimony on our part was introduced with the view or with the object with which this case was started. In this case the complainants are seeking to hold the Paterson Safe Deposit & Trust Company responsible for certain depreciation in stocks and bonds; and so, in this appellate trial in which they are trying to offer the testimony in this case, I do not think it is relevant, and I therefore object to it.

Mr. Beam: If Your Honor please, I think that some of those matters could be explained: In their answer, that is, in the bank's answer to the Chancery suit, they set up one-fifth of the entire answer and devoted it to these accounts, and they pleaded these accounts as *res adjudicata.* Now,

sir, those accounts, if they were examined into, as they have been examined into before this Court in the Prerogative Court cases, would disclose that they were not filed in good faith, and it would lay the trustee open to the charge of having come into this Court of equity with unclean hands. Furthermore, it is not true that the defendants have not had an opportunity of cross-examination. They have in all cases, been represented by the same counsel—.

Mr. Stalter: No, sir; that is not so; Mr. Harding represented the bank, and Mr. Griggs represented two separate and individual cases in which an entirely different trust was involved.

Mr. Beam: Originally these matters were referred to this Court by the Chancellor, that is to say, the Edward Beam appeal was referred to this Court by the Chancellor in this letter (producing a copy of a letter), and I think it was the Chancellor's idea that they comprised the same subject-matter, arose out of the same estate, and that the issues were so inextricably bound up, one with another, that they could not be separated; and I think that it would be his desire and intention that this Court should make a complete decree, and should inquire into every fact and circumstance connected with the administration of this trust.

The Vice Chancellor: I do not see how it can be offered, because the testimony taken in the Prerogative Court was taken in an other matter, and

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if that testimony was used at all the case would have to be re-opened and the new testimony taken.

Mr. Beam: Well, I do not think that was your Honor's intention on holding off this Chancery suit; and I do not see that anyone is going to be harmed by it. They have all had an opportunity to cross-examine; the witnesses have been before the same court, the same physical entity; and the defendants, in their answer to the bill, go to great length in setting these things up. They say, at page 30 of the answer "that the subject matter of "the bill of complaint filed herein that relates to "all of the said securities mentioned in said para- "graph 5 thereof and the losses sustained with "reference thereto, and that part of the prayer "of said last named bill of complaint which prays "that the defendant should account for or be "charged with, make good or pay any losses for, "on account of or respecting said last named "securities, were matters and questions involved "in said accounts, proceedings and orders relat- "ing to said accounts and were proper subjects "for exception, objection and litigation in said "proceedings, and that said complainants were in "law required to so except, object or litigate "therein, or otherwise to be estopped and barred "from so excepting, objecting or litigating with "reference to said subjects in this suit." Now, as a matter of fact, in the Orphans' Court we were not permitted to properly litigate these matters, and there is no record of any one of these cases that shows this more clearly than the record of the Courtney case.

Mr. Stalter: And which, I submit, has nothing to do with the case at bar.

Mr. Hutchinson: If your Honor please, representing two of the complainants in this suit, I would like to be heard, at your Honor's convenience, with regard to the same matter. I join in the application made by Mr. Beam, which I think has been fully argued to the Court; but there are one or two things I desire to say with regard to the main suit in Chancery. That was the only suit in which I appeared. The other suits, that is, the Prerogative matters, have been dealt with by other attorneys, and by Mr. Beam on his own behalf. But the burden of the main Chancery suit is willful negligence and fraudulent conduct on the part of the defendant bank. In answer to that, the bank, itself set up the accounts filed in the Orphans' Court, in bar and by way of estopple to our action. Your Honor will remember that the records in the Orphans' Court were produced in evidence at Paterson (I think your Honor was sitting there, that is my recollection): Now, the accounts, as I understand it, have been attacked and re-opened in the appeals in these various cases, I cannot speak by the card regarding them, because I have not any knowledge of those appeal cases, except very incidental knowledge. Now, it would seem to me if your Honor please, that it is perfectly competent for your Honor to allow the introduction in evidence of the papers in these various appeal cases, the record and the testimony taken in those appeal cases.

The Vice Chancellor: As far as the record is concerned, that is admissible, and was admitted; but how can you introduce the testimony in one case in another, without consent?

Mr. Hutchinson: Well, I think your Honor has the right to adopt the testimony in another suit.

The Vice Chancellor: How can I? This case was tried first, and after the case was tried the testimony in the Prerogative Court was taken. How can the testimony taken in the Prerogative Court be offered in the Chancery suit without consent?

Mr. Beam: Well, your Honor has control of the cause at all times.

The Vice Chancellor: Well, I have to proceed according to law.

Mr. Hutchinson: Your Honor makes a distinction between legal record and the evidence that was taken.

The Vice Chancellor: Why, yes. The record was offered in evidence. That may be offered in evidence which is offered by consent of all the parties.

Mr. Hutchinson: That is, the record in the appeal cases?

The Vice Chancellor: Well, the accounts and records, from the first papers filed on down.

Mr. Hutchinson: Then, in all the appeal cases the records have been offered in evidence?

The Vice Chancellor: Yes.

Mr. Hutchinson: In the Chancery suit?

The Vice Chancellor: Yes.

Mr. Hutchinson: Well, I was not present at the time, so I do not know.

The Vice Chancellor: Here is what the record shows (reading from p. 19 of the minutes of the testimony in the Chancery suit, which the Court instructed the stenographer he need not report). And later on, I find that Mr. Harding said that he desired to offer the record as well; then you said "Well, I will then withdraw my offer, and leave your offer stand," and that is what was done.

Mr. Hutchinson: I recall the circumstance; yes, sir. Now, do I understand your Honor that that would carry with it all the appeals in the same matters?

The Vice Chancellor: In all of the cases; it takes in everything but the testimony taken in the Prerogative Court. As to that, that is clearly inadmissible in this case.

Mr. Beam: Will your Honor please glance at that letter of the Chancellor's? (handing to the Court a paper, which the Court examined). We desired at that time, the adjudication of this one case and could not get it. So the Chancellor believed, (and I imagine that he still believes) that it still has a great deal to do with the main case. It is impossible for us to secure a complete decree on the record as it now stands in the Court of Chancery, for the reason that this final account is undetermined. If your Honor renders a decree in the Court of Chancery, that question which was really before the Court at the time and had not been tried, is unsettled and is left out of it; and, as I say, it brings in all of this fraudulent conduct of the trustee and throws a strong and clear flood of light on the question of their good or bad faith. And perhaps you will recall, when I argued this case on December 8th, 1922, I stated that the only difference between this Chancery suit and the Chancery suit instituted by Mrs. Beam in 1912 was that, in that first suit, Mrs. Beam did not charge bad faith, and that the Court of Errors, in rendering its decree in 1914, based that decree solely on the question of reasonable discretion; that in this litigation, we had come in and charged positive bad faith, and we were prepared to prove it. I think the accounts themselves show bad faith.

The Vice Chancellor: Well, they are in evidence.

Mr. Beam: Yes, sir. Even so, I cannot see how anyone is going to be harmed by this. Both Mr. Griggs and Mr. Harding were present in the Prerogative Court proceeding; and this Court is not bound by the strict rules of law, it is bound to make equitable disposal of these questions.

The Vice Chancellor: I have got to follow the rules of evidence; and the testimony taken in one suit is not admissible in the other.

Mr. Beam: As I said before, the Trustee does not come into court with clean hands. They bring in these eight accounts, and have them tied up in nice little bundles, and they say "For Heaven's sake don't open them; if you do, we are damned by the contents, because we have acted in positive bad faith from the very day that we took this trust over, and those accounts show it." And they plead that they are not required to show the true value of these securities, and yet, in the first three of these accounts they did show that, they covered up depreciation in securities of from thirty to fifty thousand dollars—is this Court going to ignore all of that? The Governor of New York, at great trouble, sent his original records to the Prerogative Court; they could not be obtained in the Chancery suit. I fail to see what principle of equity there is which requires the Court of Chancery to close its eyes to the bad faith of trustees simply because our courts have grown up out of a procedure that was started back in the time of Blackstone. We might as well expect to look out of the window and see the "Half Moon" sail up the Hudson, for instance?

Mr. Stalter: It is obviously unfair to us to have this testimony introduced in another case in a court of original jurisdiction. Obviously it is unfair to us under these circumstances. If my adversary wants the case reopened, and has new evidence, or other evidence to be introduced, that is quite another matter; but I think it is very unfair to introduce evidence that was taken in an entirely different matter of a different nature.

Mr. Beam: If the Court please, in conclusion, I would like to call the Court's attention to the fact that there is no final account in this trust; and that I, as trustee, have nothing back of me on which to base my trusteeship. I think the bad faith of this trustee goes to the root of every charge of that bill.

The Vice Chancellor: Is not that in your appeal to the Prerogative Court?

Mr. Beam: Yes, sir; but I understand this Chancery suit is to be disposed of independently and in advance of the Prerogative Court suit. Now, how can the Court sit down and render a complete decree. The Court waited and wrote several letters to counsel on both sides, and stated that it was the Court's desire that this thing be done, and I cannot understand why the Court's mind has changed on it.

The Vice Chancellor: The Court's mind has not changed on the subject.

Mr. Beam: It was the Chancellor's intention (And I think your Honor's intention) to make a complete disposition of all of these matters; and if the motion is denied somone will be harmed.

The Vice Chancellor: Well, I cannot admit in evidence testimony taken in another case in this case; it is not legal.

Mr. Beam: Then may I ask that your Honor will dispose of the Appeal Cases first?

The Vice Chancellor: They probably both will be disposed of together.

Mr. Beam: Well, by "together" what do you mean, simultaneously, at the same moment, or one have precedence over the other?

The Vice Chancellor: I don't know.

Mr. Beam: Well, I wish it to be clearly stated on the record that this question of the good faith of the trustee cannot be determined until these Orphans' Court accounts are inquired into, until their actual state and condition is determined; and that any decree of the Court of Chancery that is rendered on a lack of that evidence is absolutely futile, in my humble opinion. That is all, sir.

Mr. Hutchinson: Your Honor will pardon me: With regard to the New York evidence, your Honor will remember that an offer was made in the main case in the Court of Chancery, of the

New York evidence (I speak of it in that general way, that is, the records) and your Honor then said that the papers were not in form to be admitted as evidence and that they might be put in form and then offered, and the offer passed upon as to whether they were admissible, or not, and as to their materiality; I think, as my recollection bears me out, that that is so. Now, as I understand it, that record has been perfected and has been used in the appeal cases. Now, either upon notice to the other side (this gentleman, Mr. Stalter, says he does not know anything about it), but in some way I would like to get that offer made in the main suit before the Chancery case is finally disposed of.

The Vice Chancellor (To Mr. Stalter): What do you say to that?

Mr. Stalter: If your Honor please, I am quite sure that either Mr. Harding or Mr. Griggs would like to be heard on that point. We have not been noticed, and that is a detail with which I am not familiar.

Mr. Hutchinson: I think it is in the notice of Mr. Beam, who represented himself in the Chancery suit.

The Vice Chancellor: I suppose it does not make much difference to you, because it has been offered in one case.

Mr. Stalter: Well, sir; I am not prepared to pass on that, whether or not it is proper. (To opposing counsel) Have you them here?

Mr. Beam: It was all offered in the presence of Mr. Griggs and Mr. Harding, and they made objection to it. This order provides that none of this evidence should be admitted except under the conditions that it was admitted in that proceeding; so I thought that would take care of that. If they had any objections to make, those objections will go in in the Chancery suit.

Mr. Hutchinson: It was perfectly well understood at the time, I think, that this New York evidence when perfected should be offered in evidence, and your Honor would then pass upon it. That is all we are asking for of course; I do not think that can hurt anybody.

The Vice Chancellor (To Mr. Hutchinson) Suppose you communicate with Mr. Harding?

Mr. Hutchinson: I have already done so, at your Honor's suggestion, on another occasion, and I came here specially to make a motion in this same matter and to the same effect; I wrote to Mr. Harding, and I have never had the courtesy of a reply. I asked him if he would consent. I have had no reply; and I have given no notice, because I felt that it would be sufficiently in time if I had this evidence introduced, or offered, at least, before your Honor reached a decision in the main case.

Mr. Stalter: I should certainly not like to consent for Mr. Harding, sir, under the circumstances. He is actively engaged in another court, in litigation, this morning, and it was impossible for him to get here; and as that matter is not specfically set out, I suggest to your Honor that my adversary get in touch with Mr. Harding and talk it over with him.

Mr. Hutchinson: If I must get in touch with him, I would, but I don't know how to do it.

Mr. Stalter: He is in Paterson, at 152 Market street.

Mr. Hutchinson: And I am in Trenton; and I wrote to him and got no response.

The Vice Chancellor: (To Mr. Hutchinson), Well, suppose you talk to Mr. Harding about admitting that.

Mr. Hutchinson: That I think would be proper.

Mr. Stalter: I have no desire to be unfair about it: I just do not like to consent to something for Mr. Harding about which I know nothing.

The Vice Chancellor: Well, then, ask Mr. Harding if he objects to having this record of these photostatic copies admitted in evidence the same as in the Prerogative Court, and if he does not, he can just stipulate that it may be done; and if it is not done you can give notice for the next motion day.

Mr. Beam: Do I understand, then, that this motion is denied?

The Vice Chancellor: The motion to offer the testimony in evidence is denied, because it is illegal.

Mr. Beam: May I have an objection on the record?

The Vice Chancellor: Oh, yes.

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, *et al.*, Complainants, and PATERSON SAFE DEPOSIT AND TRUST COMPANY, Defendants.	On Bill, etc. MOTION.

APPEARANCES:

MR. WILLIAM B. BEAM and MR. BARTON B. HUTCHINSON, for the motion.

MR. CHARLES C. STALTER, for GRIGGS & HARDING, *contra.*

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J.,
June 30, 1924.

Mr. Hutchinson: May it please your Honor, I have given notice of a motion this morning that I want to introduce some evidence in the case of Beam vs. Paterson Safe Deposit & Trust Company—what is, generally speaking, known as "the New York evidence". Your Honor will remember that in the final hearing of the Chancery suit a record was offered in evidence, and your Honor said it was not in probative form; since then the record has been offered in the appeal suits, and we desire now to offer it, and have your Honor pass upon it, in the Chancery suit.

Mr. Stalter: We object to it, may it please your Honor, on the ground that the case has been closed and argued fully, at great length.

Mr. Hutchinson: That was reserved.

The Vice Chancellor: I suppose the Court can open the case, if it wants to.

Mr. Hutchinson: In that case your Honor said it could be offered at some future time if it was in probative form.

The Vice Chancellor: No, my impression is that I thought it did not have any probative force; I think I ruled that it did not have any probative force as evidence.

Mr. Hutchinson: No, what I meant was this—it was not in a shape to be offered in its then present form; your Honor said you did not think

it should be admitted in the Chancery suit, but that it was not in proper shape for us even to offer it at that time; now, what we desire is to offer it, and whatever disposition your Honor makes of it, why, your Honor will make.

Mr. Stalter: I wonder why counsel waited a year and a half before it was offered.

Mr. Hutchinson: Well, it has not been perfected.

Mr. Stalter: Did it take all that time to perfect it?

The Vice Chancellor: Well, it was as offered in the Orphans' Court proceeding, I believe, wasn't it, Mr. Beam?

Mr. Beam: Why, I believe that delay has been caused by the attempt to try these Prerogative Court appeals.

The Vice Chancellor: Was not the offer overruled in the Prerogative Court case?

Mr. Beam: I think it was overruled, but not on those grounds; in fact, I believe the entire Chancery record was offered in evidence and was admitted in evidence in the Prerogative Court; the record shows that.

The Vice Chancellor: In order to give you the benefit of any exception you might have to it, in

the Chancery case I said if the original were produced and offered I would still overrule it.

Mr. Hutchinson: Yes, I recall that distinctly, sir.

The Vice Chancellor: If this case is taken up by either side. I think it ought to be put in such fashion that the fullest effect shall be given to it; I want to open it up to permit that to be offered, and then overrule the offer; so that, whichever side goes to the Court of Errors and Appeals on it will have the benefit of an exception.

Mr. Stalter: Very well, sir; then you will permit the photoscopic copy to be offered in evidence —is that it?

The Vice Chancellor: Well, the original was offered—there was no question about it—in the Prerogative case; it was produced from the Governor's office; and the photoscopic copy was offered as a substitute for it. Now, what I desire to do is to open up the case so as to permit the original to be offered, and then let the photoscopic copy go in as a substitute—

Mr. Hutchinson: And opened merely for that purpose?

The Vice Chancellor: Yes—and then the offer will be overruled.

Mr. Hutchinson: Shall I draw an order in accordance with that?

The Vice Chancellor: Yes; I want to get this thing in shape. I do not know that that is quite the regular form, but I do not want to hold up the case any longer just to bring back this original record. (To Mr. Stalter): Do you object to the fact that they have not got here at the present time the original record from the Governor's office?

Mr. Stalter: Well, on that ground; and I also object that it be offered in evidence on the ground that the case has been closed; and I do not think it has any bearing on the case at all, sir. That is just my reason.

The Vice Chancellor: Well, I think otherwise, but, of course, that is not the point; the point is this—do you object to the fact that the original record is not here in this case? It was here in the Prerogative Court case and offered.

Mr. Stalter: Yes, I do object on that ground, also.

Mr. Hutchinson: Well, that matter is in the hands of the Court, is it not?

The Vice Chancellor: Well, it (referring to the original record) was produced in the Prerogative Court, offered, and it was taken back and a photoscopic copy of it is substituted for the original—am I right on that, Mr. Beam?

Mr. Beam: Yes, sir; and I believe the photoscopic copy was consented to by Mr. Harding.

The Vice Chancellor: Yes, I believe it was.

Mr. Beam: Yes, because we had the original there.

The Vice Chancellor: Oh, the original was there, yes. How can I admit it in the Chancery suit now, when it is not brought into the Chancery suit?

Mr. Hutchinson: Do you mean the original?

The Vice Chancellor: Yes.

Mr. Hutchinson: Well, I take it for granted that the photoscopic copy was accepted as evidential—I did not know anything about this original being brought down, and I only have one angle of this litigation, only in the main suit; I have not represented anybody in the appeals, so I do not know exactly what had transpired there; but I take it that the photoscopic copy was evidential; I did not prepare myself on that point because I took it for granted that, having been offered in that form in the other suit, that it could be offered as evidential here in the Chancery suit.

The Vice Chancellor: They object to the fact that you have not got it here in this suit to offer it. They have the right to make that objection, I suppose; but it is more or less captious, I should say.

Mr. Hutchinson: Well, all I can say is that if the defendant company wants to rest upon it, I have nothing to say.

The Vice Chancellor: I think you have the benefit of it in the Chancery suit, because I said then that I overruled the offer even though the original were produced.

Mr. Hutchinson: Yes, I remember that distinctly, sir.

The Vice Chancellor: I want to give you the fullest opportunity for exception.

Mr. Hutchinson: Yes, sir; the only difficulty about that is that, possibly, when the record came to be printed, it would appear that there was no distinct offer, just as it now appears, from your Honor's statement, that there was no distinct offer of the original in evidential form. However, I cannot say anything more on the subject.

Mr. Beam: If the Court please, on the motion on June 19th, to admit the Prerogative Court record in evidence in the Chancery proceeding in this matter, I believe the Court stated that it was not legal and the Court would not admit it for that reason. Now, it is the fact that the Chancery record has been admitted in evidence in the Prerogative Court appeal. It seems to me, if that can be done one way, it can be done the other. I do not think your Honor recalls all that occurred

in Paterson in May, 1923, on that motion. Did you read that record in the Prerogative Court case?

The Vice Chancellor: I have read it.

Mr. Beam: Therefore I desire to renew my motion of last week, if I may do so, on the ground that it is legal.

Mr. Stalter: If your Honor please, I have notice of an entirely different matter from this motion that was argued last week and decided by your Honor.

Mr. Beam: That is not a matter that is contained in this notice that I have here, that Mr. Stalter speaks of.

Mr. Stalter: Do I understand that you are renewing your motion of last week?

Mr. Beam: Yes, sir; I think we are all here; we are trying to get rid of this thing, and do not want to waste the time of the Court, or anyone else; it is a perfectly simple proposition, as far as that is concerned.

The Vice Chancellor: I want to let this offer in, if there is any way I can do it; I do not think that the case should be decided on technicalities; I think the fullest opportunity should be given to both parties to prove their case. The offer in the Chancery suit was of all the records and accounts in the Prerogative Court—all the accounts in connection with it.

Mr. Beam: All the accounts, testimony and evidence and documents—not merely the accounts of the trustees, but all the testimony taken and documents submitted and offered in evidence. We simply are in a situation that we have part of the proof in one court and part in another; and this other motion that Mr. Stalter has referred to is to stay the proceeding in the Chancery suit—if you would like me to bring that on, I will do it, and discuss the whole thing at once.

The Vice Chancellor: I suppose Mr. Stalter is not in a position where he can consent to anything; he was not in the case.

Mr. Beam: Well, I think Mr. Stalter is in a position where he is sent down here without really knowing what Mr. Harding wants done.

Mr. Stalter: I know what Mr. Harding wants done, if the Court please.

Mr. Beam: That was not the case in the last motion.

Mr. Stalter: The point is that Mr. Beam desires to offer in evidence the testimony in the two cases in which the Paterson Safe Deposit & Trust Company, the defendants here, were not even parties, and which Mr. Wayne Dumont was counsel for.

The Vice Chancellor: The first proposition is this: there was offered in evidence in the Chan-

cery suit a photoscopic copy of a petition to remove Jerome, and that, of course, was inadmissible, as I saw it. They said the original could not be produced, and they undertook to substitute an examined copy. Well, it could be produced, and was produced in the Prerogative Court; and I stated at that time that I overruled the offer, even though the original was produced. It was produced in the Prerogative Court in the case in which the Paterson Safe Deposit and Trust Company was the respondent, and I there overruled the offer of the original. Now, I do not, for the life of me, see what objection there is to it—it would save time just to admit the offer of the original in the Chancery suit and let the matter take the same course, and then the case will go to the Court of Errors and Appeals, and that court will have before it what was decided and can determine whether it should be admitted in evidence and whether it would change the result.

Mr. Stalter: Well, I object, if the Court please, of course, and submit it to your Honor.

Mr. Hutchinson: Well, the record will show the objection.

The Vice Chancellor: Well, of course, that would mean a laying over of the case, if I concluded to do it, until some later date, so that could be offered, and I do not see what you are going to gain by it. I will take it on myself now —well, I cannot do it—I will consider whether or

not the thing is in such shape as to be treated as regarded as in evidence.

Mr. Beam: If your Honor please, I desire to move the Court, in the same cause, that the Chancery suit be stayed until the determination of the four appeals.

The Vice Chancellor: I do not think you need an order of that kind in the cause. The whole thing is submitted to the Court, and the Court then decides, in its discretion, which case it will decide first—is not that right, Mr. Hutchinson?

Mr. Hutchinson: Beg your pardon, sir.

The Vice Chancellor: I say, it is not necessary to take an order of this Court instructing the Vice Chancellor as to in what order he shall decide the cases?

Mr. Hutchinson: Well, I am not in this particular application.

The Vice Chancellor: He is asking me to stay your suit until the other cases are decided.

Mr. Hutchinson: All I say is that, as far as I am concerned, I have no objection, if it will serve any purpose in bringing about the administration of justice in all phases of this issue. I have no objection to that; but I am in no wise interested in moving toward this matter—naturally so—because I represent two complainants in the Chan-

cery suit; it is rather against the interest of my two clients, and I would not be justified in standing here before your Honor and saying that I consent or agree to anything; I simply stand mute.

The Vice Chancellor: Well, they want you to understand that they want your suit stayed.

Mr. Hutchinson: Well, Mr. John C. Beam says he consents to it; he is one of my clients.

Mr. John C. Beam: Mr. Edward Beam also would agree to that, if he were here.

Mr. Hutchinson: I might say to your Honor that, perhaps, there would be a distinct advantage regardless of this application, in disposing of the appeal cases first. They seem to be sort of collateral to this suit; and the Chancery suit is largely founded upon the actions and conduct of the defendant company in filing the accounts, or not filing their accounts, and various other tranactions that went on in the Orphans' Court in which these appeals were taken. But the application for a formal stay is something that is addressed to your Honor's discretion.

Mr. Stalter: If your Honor please, I understand that your Honor has them all before you, and it is within your own province as to which one you shall decide first—that is, there is no necessity for an order guiding your own action.

The Vice Chancellor: The only thing I had in my mind is whether any kind of a stay shall be made for the defendant to get into this record proper objection to the offer of the petition for the removal of Jerome. You do not consent that the offer of the original may be regarded, and that is the only thing that would justify me—

Mr. Stalter: Well, when Mr. Harding returns from Pennsylvania he may agree to that going in.

The Vice Chancellor: When do you expect him to return?

Mr. Stalter: Well, I do not expect him much before the 4th of July.

Mr. Beam: I think the question of the offer of the evidence is minor compared to the question presented by these accounts in the Prerogative Court. Now, it is a fact, that these Prerogative Court accounts are not according to the practice of the Court; and, furthermore they are not only not according to the practice of the Court, but they are not according to the practice that Griggs & Harding have employed for twenty-five years in another estate in the same Court. Since 1899 they have been acting as Proctors of the Estate of Garret A. Hobart, and have offered upwards of twenty-four or twenty-five correct accounts of that estate; and yet they go into this estate and they make simply a mess of it; they make such a mess of it that I, as trustee, cannot find about two

thousand dollars; and they follow it up by not filing any final account at all, leaving it utterly at sea. And all of that issue is in the Prerogative Court; and in the same Prerogative Court case the Chancery Court record has been admitted. A decision of the William B. Beam Appeal would settle the whole thing—together with the Edward Beam Appeal, which brings the conduct of the trustee down to date, and shows there is absolutely no final account at all. This trustee is here, pleading good faith on such a showing—

The Vice Chancellor: Well, there is an appeal of William B. Beam in the main case, touching the final account.

Mr. Beam: Yes, sir; I was made a party by the Paterson National Bank.

The Vice Chancellor: Then there is the Courtney Estate?

Mr. Beam: Yes, sir.

The Vice Chancellor: I have been unable to see how that has any application.

Mr. Beam: Well, when your Honor receives the brief that Mr. Blankenhorn expects to give you, you will see there is a marked coincidence in some of the things that occurred in the Courtney trust and some of the things that occurred in this other case; and I want your Honor to have the benefit of it.

The Vice Chancellor: You mean in the Courtney case they put in a list of the securities under that Rule 21—

Mr. Beam: I mean that there are a great many pieces of evidence in the Courtney case and a great many dates that coincide exactly with those in the other case; and your Honor will see that those two matters bear on each other. In the last case, the Courtney case, I am willing to leave it to your Honor's discretion (as matter of fact, they are all left to your Honor's discretion), but I simply want an objection to the ruling, I want to get this record straight; and, as far as that is concerned, I think Mr. Harding can come to this hearing; he is duly noticed; I might as well run away and send some clerk down here to tell your Honor that I want to be heard on this matter.

The Vice Chancellor: It is not a question of Mr. Harding being here, it is a question whether he is willing to consent to the offer of this piece of evidence in the record, that is, admit the paper itself, but object to its relevancy.

Mr. Beam: Pardon me; I thought we had passed over that, and were on this last motion.

The Vice Chancellor: Well, any other motion you have to make, now make it. If Mr. Harding is not here, that is his proposition. You can make your motion.

Mr. Beam: I made the motion, your Honor.

The Vice Chancellor: I understand what you want is to have the Fifty-odd dollar appeal case, the Courtney Estate case and the main case in the Prerogative Court construed and considered with the case in Chancery?

Mr. Beam: No, sir; I want them finally determined before the case in Chancery is even approached by your Honor.

The Vice Chancellor: I have approached them so far that I am ready to decide them all, and I do not propose to hold them up much longer. I have put in three or four weeks now on these cases, and they are in a most confused shape; it is difficult to find out what is in them.

Mr. Beam: That is all very true, sir; but the confusion is caused by these people; they say they do not have to comply with that Rule 21; and yet I say, for twenty-five years, in another case, they did comply with it, and have charged off depreciation where they lost money in securities, everyone of them, Griggs & Harding, Griggs, Dill & Harding, and John L. Griggs, acting as Proctors; and they come in here with an absolutely indefensible plea. Why, some of these accounts are absolutely rotten; they should have landed in jail long ago—

Mr. Stalter Well, I object to that.

The Vice Chancellor: You need not put that down, Mr. Black.

Mr. Beam: May I have an objection to that?

The Vice Chancellor: You may have an objection.

Mr. Beam: They did not state the correct value; they do not state it; and yet they marked in their titles that it was the correct value. They said "This is the present value," and yet, not in any one trust they had, that I can find (except in the Ryle Trust, where they did lose some money as they lost it in this) did they do any such thing. Now, if they can properly account in a million dollar estate, they can properly account in a one hundred and fifty thousand dollar estate; and the pleas are idle. They are not here in court with clean hands; they are not here to do equity; and if all of that is left out, if the Court approaches the Chancery suit and just closes its eyes to this condition, it is a disgrace, simply scandalous. I think that we might better never have come into this court at all. Here is Mrs. Beam, we want to pay her the $1,125.10 in income that was wrongfully taken from her by wrongful amortization, and which the accounts do not show that they had ever returned, and we cannot find it; here they have deducted fees, fees that were on appeal, and your Honor has held that such decree is void; those decrees are absolutely voided by the appeal; and yet we cannot get back that money. We cannot even make them account. They did not file any account at all, and the Legislature prescribes strict penalties for the failure to account, there is a fine in double the amount taken. I think Mrs.

Beam has suffered enough in this case. She has suffered for thirteen years at the hands of these people, who do not come in here, but send somebody in here, and run off to Pennsylvania because they are afraid to face the thing.

The Vice Chancellor: Well, this order, Mr. Beam, I will deny, because it is wholly a matter within the discretion of the Court, and it is an attempt to have the Court direct its own discretion.

Mr. Beam: Do I understand that your Honor is cognizant of the fact that the Chancery record is admitted in the Prerogative Court appeal of William Beam, and that the disposition of this matter is made with that knowlege?

The Vice Chancellor: Yes, sir.

Mr. Beam: May I have an objection on the record?

The Vice Chancellor: You may put anything on the record you please. I will call the next unlitigated motion.

(Filed July 2, 1924.)

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM and WILLIAM B. BEAM, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, Defendants.	On Bill, etc. ORDER.

IT IS on this 2d day of July, 1924, ORDERED that the motion made herein by William B. Beam, Solicitor, *Pro se,* on June 19, 1924, and by him repeated on June 30, 1924, to re-open the hearing in the case and to introduce herein in evidence the testimony taken and the exhibits offered in the following causes, that is to say, the testimony taken and the exhibits offered in the New Jersey Prerogative Court "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of William B. Beam from an order of the Orphans' Court of the County of Passaic allowing the final account of Paterson Safe Deposit and Trust Company, Trustee." "In the matter of the appeal of Edward Beam, *et al.* Substituted Trustees, from an order of the Orphans' Court of the County of Passaic dimissing an Order to Show Cause directed to The Paterson Safe Deposit & Trust Co., Retiring Trustees for Carrie S. Beam under

the will of Sarah A. Cooke, deceased, "In the matter of the Estate of Sarah A. Cooke, deceased upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic allowing the Paying Into Court of Distributive Share of Moneys theretofore held by Frederick W. Cooke and Charles D. Cooke, executors or their proctor therein, Wayne Dumont," and "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic and from certain other proceedings had therein relating to the accounts of the trustees, Frederick W. Cooke and Charles D. Cooke for Elizabeth C. Courtney," be and the same is hereby denied.

Respectfully advised,

JOHN GRIFFIN, V. C.

(Filed July 2, 1924.)

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM and WILLIAM B. BEAM, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, Defendants.	On Bill, etc. ORDER.

IT IS on this 2d day of July, 1924, ORDERED that the motion made herein by William B. Beam, solicitor *pro se,* on June 30, 1924, to stay the above entitled cause until the determination of the four appeal cases now pending in The New Jersey Prerogative Court under the following titles, that is to say, "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of William B. Beam from an order of the Orphans' Court of the County of Passaic allowing the final account of Paterson Safe Deposit and Trust Company, Trustee." "In the matter of the appeal of Edward Beam, *et al,* Substituted Trustees from an order of the Orphans' Court of the County of Passaic dismissing an Order to Show Cause directed to The Paterson Safe Deposit & Trust Co., Retiring Trustees for Carrie S. Beam under the will of Sarah A. Cooke, deceased, "In the matter

of the Estate of Sarah A. Coke, deceased, upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic allowing the paying into Court of Distributive Share of Moneys theretofore held by Frederick W. Cooke and Charles D. Cooke, Executors or their Proctor therein, Wayne Dumont,") and "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic and from certain other proceedings had therein relating to the accounts of the trustees, Frederick W. Cooke and Charles D. Cooke, for Elizabeth C. Courtney," be and the same is hereby denied.

Respectfully advised,

JOHN GRIFFIN, V. C.

(Filed October 14, 1924.)

IN THE CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM, *Complainants,* and PATERSON SAFE DEPOSIT AND TRUST COMPANY, *et al.*, *Defendant.*	Final Decree. On Bill, &c.

This cause coming on to be heard in the presence of Messrs. Hutchinson & Hutchinson, of counsel with complainants Edward Beam, John C. Beam and Carrie S. Beam and in the presence of complainant William B. Beam, solicitor *pro se*, and of John W. Harding, of counsel with the defendant, Paterson Safe Deposit and Trust Company, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainants are not and neither of them is entitled to the relief sought and prayed for by them in their bill of complaint.

It is on this 14th day of October, 1924, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the complainant's said bill of complaint filed herein be and the same is hereby dismissed against them and each of them with costs.

And it is further ordered and decreed that the said complainants pay to the said defendant the costs of this suit to be taxed, and that a counsel fee of $350 shall be paid by the said complainants to the said defendant, which shall be included in said taxed costs, and that execution issue therefor according to the practice of this Court.

Respectfully Advised,

JOHN GRIFFIN,
V. C.

E. R. WALKER,
C.

(Filed, November 12, 1924.)

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM, *Complainants,* and THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON AND THE PATERSON NATIONAL BANK, *Defendants.*	On Bill, etc Notice of Appeal

William B. Beam, one of the above-named complainants in the above-stated cause hereby appeals from a final order and decree in this cause filed and dated the 14th day of October, 1924, and from each and every part thereof, to the New Jersey Court of Errors and Appeals of the last resort in all causes.

And said complainant, William B. Beam, further appeals hereby from that part of said final order or decree which decreed and ordered that said complainants pay the costs of this suit to be taxed and that a counsel fee of Three Hundred and Fifty Dollars ($350.00) be paid by the said complainants to the said defendant to be included in said taxed costs, to the New Jersey Court of

Errors and Appeals of the last resort in all causes.

And said complainant as solicitor and counsel *pro se* conceives that there is good cause for said appeal.

WILLIAM B. BEAM,
Complainant and Solicitor *Pro se.*

Dated, Bogota, New Jersey, November 12, 1924.

(Filed December 5, 1924.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM, *Complainants-Appellants,* and THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON AND THE PATERSON NATIONAL BANK, *Defendants-Respondents.*	On Appeal. Petition of Appeal.

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

The petititon of William B. Beam, one of the appellants in the above-stated cause, respectfully shows that,

1. Petitioner appeals from a final decree and order filed herein and dated October 14, 1924, wherein it is ordered, adjudged and decreed, that the complainants' said bill of complaint, filed herein be and the same is hereby dismissed against them and each of them, with costs and wherein it is ordered and decreed that the said complainants pay to the said defendants the costs of this suit to be taxed, and that a counsel fee of Three Hundred and Fifty Dollars ($350.00) shall be paid by the said complainants to the said defendant, which shall be included in said taxed costs, and that execution issue therefor according to the practice of the Court of Chancery; and from each and every part thereof to the New Jersey Court of Errors and Appeals, for the following reasons:

I. The Court erred in dismissing the bill of complaint and should have granted the relief prayed by the complainants.

II. The defendant was guilty of fraud in,

a. Falsely stating the balances remaining in its hands in all of its accounts.

b. Continuing the investments in which a loss subsequently occurred, *not* in the exercise of good faith and reasonable discretion.

III. The defendant-accountant should have charged itself with $46,800.00, which it stated to be the value of the 225 shares of the stock of the Central Park N. & E. R. R. and should be compelled so to do and to pay over said sum to the complainants.

IV. The defendant-accountant should have charged itself with $3,465.00, which it stated to be the value of the $3,000.00 bonds of the 28th and 29th Streets Crosstown R. R. Co. 1st Mortgage Gold Bonds due 1996, and should be compelled so to do and to pay over said sum to the complainants.

V. The defendant-accountant should have charged itself with $2,270.00, which it stated to be the value of the $2,000.00 bonds of the Second Avenue R. R. Co. due 1948, and should be compelled so to do and to pay over said sum to the complainants.

VI. The defendant-accountant should have charged itself with $4,800.00, which it stated to be the value of the 200 shares of the stock of the Brooklyn City R. R. Co., and should be compelled so to do and to pay over said sum to the complainants.

VII. The accountants were guilty of bad faith in the continuing of investments not in the exercise of good faith and reasonable discretion and should be compelled to pay to the complainants the amounts lost.

VIII. If the bill of complaint is dismissed, petitioner will be deprived of property without due process of law.

IX. If the bill of complaint is dismissed, defendant will be absolved from the charge of bad faith set out in the bill of complaint and answered in the answer, before being required to account in this cause, contrary to the principles of equity and good conscience.

X. The allowance of counsel fee and costs was improper and excessive and none should be allowed.

XI. The intermediate accounts of the accountant should be re-opened down to the date at which time the accountants last showed the trust fund to be intact.

2. Your petitioner therefore prays that the said final decree and order may be wholly reversed and set aside in the particulars complained of, and that your petitioner may have such further relief in the premises as shall be equitable and just.

WILLIAM B. BEAM,

Solicitor, Counsel and Appellant, *pro se.*

Dated, Bogota, New Jersey, December 2, 1924.

Endorsed:

"Filed Dec. 2, 1924,
Thomas F. Martin, Clerk."

(Filed January 13, 1925.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM,
Complainants-Appellants,
and
THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON AND PATERSON NATIONAL BANK,
Defendants-Respondents.

ON APPEAL.

ANSWER TO PETITION OF APPEAL.

The answer of the above named defendants-respondents to the petition of appeal of William B. Beam, one of the appellants;

These defendants-respondents, not acknowledging all or any of the matters which in said petition of appeal are contained are true, for answer thereto, nevertheless say and admit that a final decree was on the 14th day of October, 1924, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, these defendants-respondents pray

to refer thereto when the same shall be produced.

And these defendants-respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these defendants-respondents.

Dated, December 15, 1924.

JOHN W. HARDING,
Solicitor and of counsel with
Defendants-Respondents.

Endorsed:
"Filed Jan. 13, 1925,
THOMAS F. MARTIN,
Clerk.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter
of
The Estate of SARAH A. COOKE,
deceased.

On Petition of Trustee for Discharge.

PETITION.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:—

The petition of The Paterson Safe Deposit and Trust Company of the City of Paterson, County of Passaic, and State of New Jersey, respectfully shows:—

1. That your petitioner is the Trustee for Carrie S. Beam named in the last Will and Testament of Sarah A. Cooke, deceased ,which said Will was duly proved before and letters testamentary thereon duly issued by the Surrogate of the County of Passaic on the Fifteenth day of May, 1905, petitioner has entered on the duties of its office but has not fully performed the same.

2. Your petitioner desires to be discharged from the further performance of the duties of its said office and is informed that such discharge is consented to by the beneficiaries.

3. The persons interested in this application are as follows:

Carrie S. Beam who resides at No. 552 Fifteenth Avenue, Paterson, N. J.

Edward Beam who resides at No. 188 River Street, Paterson, N. J.

William Beam who resides at No. 552 Fifteenth Avenue, Paterson, N. J., and

John C. Beam who resides at No. 552 Fifteenth Avenue, Paterson, N. J.

The said Carrie S. Beam being the person entitled to the income from said trust during her life and the said Edward Beam, William B. Beam and John C. Beam, being the remaindermen under said Trust created by the said last Will and Testament of Sarah A. Cooke, deceased; all of the aforesaid parties in interest are of full age.

Your petitioner therefore prays that it may be discharged from the further performance of the duties of its said office of Trustee of the aforesaid Estate.

THE PATERSON SAFE DEPOSIT
AND TRUST COMPANY,
By,
FRED LABAUGH, Treasurer.

Dated, Paterson, N. J., January 5th, 1921.

Exhibit—Pre. Ct. Appeal Papers.
On Petition of Trustee for Discharge.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } *ss*:.

Fred Lagaugh, being duly sworn according to law on his oath deposes and says that he is the Treasurer of the petitioner in the foregoing petition named, and the matters and things contained therein are true to the best of his knowledge and belief.

FRED LABAUGH,

Subscribed and sworn to before me this
5th day of January, 1921.
at Paterson, New Jersey.
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the Tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5th, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By,
FRED LABAUGH, Treasurer.

Exhibit—Pre. Ct. Appeal Papers.
On Petition of Trustee for Discharge.

STATE OF NEW JERSEY, }
PASSAIC COUNTY. } *ss.*:

T. W. Hendershot, of full age, being duly sworn, on his oath saith that he is the Bookeeper of The Call Printing and Publishing Company, and that the annexed notice was published on January 6, 13, 20, 27, 1921, February 3, 1921, in The Morning Call, a newspaper printed and published at Paterson, in this State.

T. W. HENDERSHOT.

Sworn and subscribed before me this
third day of February, 1921.
GARRETT H. STURR,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5th, 1921.

THE PATERSON SAFE DEPOSIT
& TRUST CO.
By,
FRED LABAUGH, Treasurer.

Exhibit—Pre. Ct. Appeal Papers.
On Petition of Trustee for Discharge.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } *ss:*.

Louis Kievit, being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: At the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office and on the corner of East Main St., and North Main St., all in the City of Paterson, N. J., on the 7th day of January, A. D., 1921.

LOUIS KIEVIT.

Sworn and subscribed this
7th day of January, A. D., 1921.
at Paterson, before me.
GEORGE L. KING,
A Commissioner of Deeds of New Jersey.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of SARAH A. COOKE, deceased.	On Accounting. PETITION.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:

The petition of The Paterson Safe Deposit and Trust Company, of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the last Will and Testament of Sarah A. Cooke, deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The name and adresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

John C. Beam, of full age, a grandson of testa-

tor, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account.

AS TO CORPUS.

Accountant charges itself as follows:		
Balance as per book and appraisal value in the hands of Trustee as shown by its last previous accounting.	$	18,706.10
Amount received during period covered by this account		None
Total charges	$	18,706.10
Accountant prays allowance as follows:		
Amount of disbursements		None
Balance of corpus in hands of Trustee	$	18,706.10

AS TO INCOME.

Accountant charges itself as follows:		
Balance in hands of Trustee as shown by its last previous accounting	$	145.00
Amount received during period covered by this account	$	1,637.18
Total charges	$	1,782.18
Accountant prays allowance as follows:		
Amount of disbursements as shown by said account	$	1,652.48
Balance of Income in hands of Trustee	$	129.70

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commissions and counsel fees.

Dated, Paterson, N. J., Jan. 5, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treasurer.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC, } *ss:*

Fred Labaugh, being duly sworn upon his oath deposes and says that he is the Treasurer of the Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me this
10th day of January, 1921.
ELVA M. BENSON,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the 10th

day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By,
FRED LABAUGH, Treasurer.

STATE OF NEW JERSEY, } ss:.
COUNTY OF PASSAIC, }

Elva M. Bensen, being duly sworn upon her oath according to law, deposes and says that on the fifth day of January, Nineteen Hundred and Twenty-one, she deposited in the United States mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice, addressed to:

Carrie S. Beam, 552 Fifteenth Ave., Paterson, N. J.

Edward Beam, 188 River St., Paterson, N. J.

William B. Beam, 552 Fifteenth Ave., Paterson, N. J.

John C. Beam, 552 Fifteenth Ave., Paterson N. J.

ELVA M. BENSON.

Subscribed and sworn to this
5th day of January, before me.
CHAS. C. STALTER,
An Att'y at Law of New Jersey.

THE FINAL ACCOUNT OF THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the Fifteenth day of April, 1919, to the Fifth day of January, 1921, both of the money and property received by the said Trustees on account of the Trust Estate and its disbursements out of the same.

This Accountant charges itself:

DEBTOR.

Balance of Corpus at Book Value as per last accounting		$ 18,706.10
Balance as per last accounting	$ 145.00	
Income received (Schedule A)	1,637.18	
	$ 1,782.18	
Disbursements from Income (Schedule B)	1,652.48	129.70
Total Trust January 5, 1921		$ 18,835.80

INCOME ACCOUNT.

(Schedule A.)

To Income received as follows:

1919.

Apr. 15, Balance as per last accounting	$ 145.00
May 1, Cps. Passaic Lighting Company	25.00
June 1, Reg. Int. Lehigh Valley R. R.	30.00
June 1, Cps. Baltimore & Ohio R. R.	25.00
June 1, Cps. Consolidated Traction Co. 25	
1	
—	24.00

	June 1, Cps. Paterson Railway Co.----90		
		10	
		—	80.00
10	June 1, Cps. First Liberty Loan-------		1.75
	June 1, Int. on Tax Mortgage to date----		13.89
	June 23, Int. on Warren Mtg. to June 30, 1919 ----------		30.00
	July 1, Cps. Mobile & Ohio R. R. Co.--15		
		5	
		—	10.00
	July 1, Cps. Passaic Water Company--		25.00
	July 15, Div. Brooklyn City R. R. Co.--		10.00
20	Aug. 1, Reg. Int. United New Jersey R. R. Co.----------		20.00
	Aug. 18, Int. on Sharpe Mtge. to June 30, 1919 ----------		60.00
	Sept. 1, Cps. Paterson & Passaic Gas & Electric Co. ----------		25.00
	Sept. 15, Cps. Third Liberty Loan------		2.13
	Oct. 1, Cps. Long Dock Co.----------60		
		10	
		—	50.00
30	Oct. 1, Cps. Mobile & Ohio R. R.------15		
		5	
		—	10.00
	Nov. 1, Cps. Passaic Lighting Co.------		24.00
	Dec. 1, Int. Lehigh Valley R. R.----------		30.00
	Dec. 1, Cps. Baltimore & Ohio R. R.----		25.00
	Dec. 1, Cps. Consolidated Traction Co.-25		
		1	
		—	24.00
40	Dec. 1, Cpt. Paterson Railway Co.----90		
		10	
		—	80.00

Dec. 15, Cps. Victory Liberty Loan-----	14.91	
Dec. 15, Cps. First Liberty Loan-------	1.75	
Dec. 26, Int. on Max Gold Mtg. to Dec. 31, 1919 ----------	60.00	
1920.		10
Jan. 2, Cps. Mobile & Ohio R. R. Co.--15		
5		
—	10.00	

INCOME ACCOUNT.
(Schedule A.)

1920.		
Jan. 2, Cps. Passaic Water Co.---------$	25.00	
Jan. 2, Int. on Catherine Warren Mtgs. to 12/31/19 ----------	30.00	20
Feby. 2, Div. United New Jersey R. R. Co.	20.00	
Mch. 1, Cps. Paterson Passaic Gas & Elec. Co. ----------	25.00	
Mch. 16, Cps. Third Liberty Loan------	2.12	
Apr. 1, Cps. Long Dock Co.----------60		
Prem. 10		
—	50.00	
Apr. 1, Cps. Mobile & Ohio R. R. Co.--15		
Prem. 5		30
—	10.00	
May 1, Cps. Passaic Lighting Co.-----25		
Prem. 1		
—	24.00	
June 1, Cps. Baltimore & Ohio R. R.-----	25.00	
June 1, Cps. Consolidated Traction Co.-25		
Prem. 1		
—	24.00	
June 1, Cps. Paterson Railway Co.----90		40
Prem. 10		
—	80.00	

	June 1, Reg. Interest Lehigh Valley Annuity Bonds		30.00
	June 15, Cps. First Liberty Loan		1.75
	June 15, Cps. Victory Liberty Loan		17.77
10	June 28, Int. on Catherine Warren Mtge. 6/30/20		26.60
	June 30, Int. on Max Gold Mtge. to 6/30/20		60.00
	July 1, Cps. Mobile & Ohio R. R. Co.	15	
		5	
		—	10.00
	July 1, Cps. Passaic Water Company		25.00
	Aug. 4, Div. United New Jersey R. R. Co.		20.00
20	Sept. 1, Cps. Paterson Passaic Gas & Electric Co.		25.00
	Sept. 15, Cps. Liberty Loan (Third)		2.13
	Oct. 1, Cps. Long Dock Co.	60	
		Prem 10	
		—	50.00
	Oct. 1, Cps. Mobile & Ohio R. R. Co.	15	
		Prem. 5	
		—	10.00
	Nov. 1, Cps. Passaic Lighting Company	25	
30		Prem. 1	
		—	
			24.00
	Dec. 1, Cps. Baltimore & Ohio R. R. Co.		25.00
	Dec. 1, Cps. Consolidated Traction Co.	25	
		Prem. 1	
		—	24.00
	Dec. 1, Cps. Paterson Railway Co.	90	
		Prem. 10	
		—	80.00
40			

Dec. 1, Reg. Interest Lehigh Valley Annuity Bonds ---------- 30.00
Dec. 15, Cps. First Liberty Loan------- 1.75
Dec. 15, Cps. Victory Liberty Loan----- 22.61

INCOME ACCOUNT.
(Schedule A)

1920.
Dec. 30, Int. on Catherine Warren Mortg. to Dec. 31, 1920 ----------$ 25.02
Dec. 31, Int. on Max Gold Mtge. to Dec. 31, 1920 ---------- 60.00
1921.
Jan. 1, Cps. Mobile & Ohio R. R.--------- 15.00
Jan. 1, Cps. Passaic Water Company---- 25.00

$1,782.18

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1919.
June 5, To Paterson Safe Deposit & Trust Co. Commission ----------1 $ 87.96
June 9, To Frederic Beggs, Surrogate Commission ----------2 31.91
July 3, To Carrie S. Beam----------3 280.00
July 15, To Interest on Victory Bonds Purchased ----------4 3.52
Oct. 2, To Carrie S. Beam----------5 160.00
1920.
Jan. 2, To Carrie S. Beam----------6 300.00
Apr. 1, To Carrie S. Beam----------7 105.00
Apr. 12, To interest paid on Victory bonds purchased ----------8 3.09
July 3, To Carrie S. Beam----------9 350.00
July 15, To interest paid on Victory

	Bonds purchased	10	1.00
	Oct. 4, To Carrie S. Beam	11	100.00
	1921.		
10	Jan. 5, To Carrie S. Beam	12	230.00
			$1,652.48

(Schedule C)

This accountant further reports that the principal fund of said Trust is invested as follows:

Par Value		Book Value
$1,000	Baltimore & Ohio R. R. Co. bonds	$1,000.00
400	Brooklyn City Railway Co. Stock	800.00
4,500	Central Park North & East River R. R. Co. Stock	1.00
1,000	Consolidated Traction Co. Bonds	1,021.00
1,000	Lehigh Valley Annuity Bonds	1,330.00
100	Liberty Loan of 1917, Bonds	98.00
2,000	Long Dock Company Bonds	2,290.00
100	Third Liberty Loan Bond	100.00
200	Victory Liberty Loan Bonds	191.84
200	Victory Liberty Loan Bonds	195.00
550	Victory Liberty Loan Bonds	550.00
1,000	Mobile & Ohio R. R. Co. Bonds	1,000.00
1,000	Passaic Lighting Co. Bonds	1,002.00
1,000	Passaic Water Company, Bonds	1,000.00
1,000	Paterson & Passaic Gas & Electric Co. Bonds	1,010.00
3,000	Paterson Railway Co. Consolidated Mtge. Bonds	3,180.00
1,000	United New Jersey R. R. & Canal Co. Bonds	1,000.00
2,000	Bond and Mortgage Max Gold	2,000.00

800 Bond and Mortgage Catherine Warren ---------- 800.00
Uninvested cash ---------- 137.26

$18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treas.

STATE OF NEW JERSEY, } ss.:
COUNTY OF PASSAIC, }

Fred Labaugh, being duly sworn, on his oath says that he the Treasurer of the Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant and as to the credits claimed thereto, according to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to
before me this 10th day
of January, 1921.
ELVA M. BENSON,
Notary Public of N. J.

To the judges of the Orphans' Court of the County of Passaic:

The above account having been placed on the files of my office on the twentieth day of January, 1921, and being by me audited and stated, is now reported for settlement.

Dated, Paterson, N. J., February 10th, 1921.

FREDERIC BEGGS,
Surrogate.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.	}	On Trustee's Final Account.

EXCEPTIONS TO THE ACCOUNT.

William B. Beam and John C. Beam, two of the *cestius que* trust under the last Will and Testament of Sarah A. Cooke, deceased, hereby except to the final account of The Paterson Safe Deposit and Trust Company, trustee under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, for the following reasons:

1. The accountant does not state the actual or market value of the securities set forth in Schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in Schedule C of said final account.

3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in Schedule C of said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the number of the bonds and stocks held by it as trustee

and mentioned in Schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co. mentioned in Schedule C of said final accountant.

Dated, February 9th, 1921.

WILLIAM B. BEAM,
JOHN C. BEAM.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.	On Trustee's Final Account.

EXCEPTIONS TO THE ACCOUNT.
AMENDED EXCEPTIONS.

Edward Beam, John C. Beam and William B. Beam, the three remaindermen of a trust created under the last Will and Testament of Sarah A. Cooke, deceased, hereby except to the final account of The Paterson Safe Deposit and Trust Company, trustee under the said Will, for Carrie S. Beam, for the following reasons:

1. The accountant does not state the actual or market value of the securities set forth in Schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in Schedule C of said final account.

3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C or said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the num-

ber of the bonds and stocks held by it as trustee and mentioned in Schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co., mentioned in Schedule C of said final account.

Dated, Paterson, N. J., February 16th, 1921.

WILLIAM B. BEAM,
JOHN C. BEAM,
EDWARD BEAM.

Sworn and subscribed to
before me this 16th day
of February, A. D. 1921.
BEULAH LOCKWOOD, (L. S.)
A Notary Public of New Jersey.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.	On Petition of Trustee of Carrie S. Beam for discharge.

ORDER DISCHARGING TRUSTEE.

It appearing from the petition of The Paterson Safe Deposit and Trust Company filed herein that the said The Paterson Safe Deposit and Trust Company is the Trustee of Carrie S. Beam under the Last Will and Testament of Sarah A. Cooke, deceased and that the said Trustee has entered upon the duties of its office, but has not fully performed the same, and that the said petitioner prays that it may be discharged from the further performance of its duties as such Trustee; and it appearing that due notice of this application has been given to all parties interested in the said Trust for Carrie S. Beam under the last will and Testament of Sarah A. Cooke, deceased, and the Court having examined into the matter and it appearing that there is sufficient reason for such discharge;

It is thereupon, on this tenth day of February, 1921, Ordered, that the said The Paterson Safe Deposit and Trust Company, be and it is hereby relieved and discharged from all further duties of its said office, except accounting for and paying over the moneys or assets received by it by virtue of its said office.

WILLIAM W. WATSON,
Judge.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.
TERM A. D., 19

In the Matter of The final account of the Paterson Safe Deposit and Trust Company, Trustee for CARRIE S. BEAM, under the last Will and Testament of SARAH A. COOKE, Deceased.	Decree on Final Account.

The Surrogate having audited and state the final account of The Paterson Safe Deposit and Trust Company, Trustee for Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the tenth day of February, A. D., 1921 and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said tenth day of February, A. D., 1921 in this Court was given by said accountant according to law.

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and ~~X~~ exceptions being made thereto by William B. Beam and John C. Beam and proofs and allegations of the parties having been heard and con-

sidered by the Court and said exceptions overruled in their entirety.

It is, on this twenty-fourth day of February A. D., nineteen hundred and twenty-one ordered, adjudged and decreed that the said exceptions be and the same are hereby overruled account be in all things allowed as reported and that there is a balance remaining in the hands of said accountant amounting to the sum of Eighteen Thousand Seven Hundred and Six Dollars and Ten Cents ($18,706.10) to be disposed of according to law which balance is corpus at accountant's book value.

It is further ordered that from the aforesaid balance the said accountant be allowed the sum of Four Hundred dollars as and for its commissions, and that a counsel fee of Two Hundred and Fifty dollars be allowed to Griggs & Harding, proctors of said accountant, and that a further commission of $81.86 on income received during the period of said accountant be also allowed to said accountant; and that the Surrogate be allowed the sum of thirty-seven and 39/100 dollars for fees, advertising and posting notices, two and 99/100 dollars for citations and six and 12/100 dollars for Sheriff's fees.

WILLIAM M. WATSON,
Judge.

Exhibit C-1.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CARRIE S. BEAM
Complainant-Respondent,

and

THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.,*
Defendants-Appellants.

STATEMENT OF THE CASE
On Appeal from Court of Chancery.

PIERRE F. COOK,
Solicitors of Defendants-Appellants.

GRIGGS & HARDING,
Solicitors of Defendants-Appellants.

(Filed February 7, 1912.)

IN CHANCERY OF NEW JERSEY.

To his Honor Mahlon Pitney, Chancellor of the State of New Jersey:

Complaining, showeth unto your Honor your oratrix Carrie S. Beam, of Bogota, in the County of Bergen and State of New Jersey, widow of John R. Beam, deceased.

1. That on the first day of May, nineteen hundred and five, Sarah A. Cooke, the mother of your oratrix, departed this life at Paterson, in the County of Passaic and State of New Jersey, first having duly made and published her last Will and Testament in writing, which said last Will and Testament was thereafter and on or about the fifteenth day of May, nineteen hundred and five, duly proved before the Surrogate of the County of Passaic, and letters testamentary thereon were duly issued to John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather and your oratrix, who thereupon took upon themselves the burthen of the administration thereof.

2. That said testatrix in and by said last Will and Testament, after sundry gifts and bequests thereinbefore made, made the following provisions:

"Eleventh: I direct that all the rest, residue and remainder of the estate of

which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give to my son Charles D. Cooke, another of which parts I give to my daughter Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam."

"Twelfth: The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

"Thirteenth: If at the time of my death any of my said children shall be dead, I direct that then the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate,"

as by a certified copy of said will and probate thereof now in the custody of your oratrix and ready to be produced when and where this honorable Court may direct, or the record thereof now

remaining in the said Surrogate's office of the County of Passaic, reference being thereunto had, may more fully appear, a copy of which said last Will and Testament is hereto annexed and forms a part thereof, and reference to which is hereby made.

3. And your oratrix further shows that the defendant The Paterson Safe Deposit and Trust Company, the Trustee named in said will, a corporation of the State of New Jersey, doing business at Paterson in this State, upon the probate thereof, accepted the trusts therein and thereby imposed, and entered into the execution thereof, and has continued to act as Trustee thereunder from thence hitherto.

4. That said testatrix had made in her lifetime investments of money in three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds due nineteen hundred and ninety-six, of the par value of One thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds due nineteen hundred and forty-eight of the par value of One thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each; that said bonds and the stock shares came into the hands of said defendant The Paterson Safe Deposit and Trust Company, the Trustee under the

will of said testatrix, and are still in the hands of said Trustee, forming part of such trust fund, said Trustee having continued such investments from thence hitherto.

5. And your oratrix further shows that said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad bonds have steadily depreciated in the market from the date of the death of said testatrix to the present time, and have with some little fluctuation steadily run down in market price during that period from one hundred and thirteen to ten; that said Second Avenue Railroad Company bonds have steadily depreciated in the market from the date of the death of said testatrix to the present time, and have with some little fluctuations steadily run down in market price during that period from one hundred and eighteen to forty-three; that said shares of the capital stock of the Central Park, North and East River Railway Company have steadily depreciated in the market from the date of the death of said testatrix to the present time, and have with some little fluctuations steadily run down in the market price during that period from two hundred and ten to ten.

6. And your oratrix further shows that for a long time no income whatever has been realized from said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad bonds, said Second Avenue Railroad Company bonds or said shares of the capital stock of the Central Park, North and East River Railway Company.

Exhibit C-1—State of Case First Beam
Chancery Suit.
Complaint.

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7. And *your oratrix further shows that said defendant* The Paterson Safe Deposit and Trust Company, as Trustee under said will, *has continued such investments* of said testatrix in said bonds and stock *negligently and not in the exercise of good faith* and reasonable discretion, and that great loss has been occasioned to your oratrix by reason of such negligent continuance of said investments, for which loss said The Paterson Safe Deposit and Trust Company, Trustee as aforesaid, should be accountable.

8. And your oratrix further shows that she has frequently and in a friendly manner applied to said defendant The Paterson Safe Deposit and Trust Company, for reimbursement to said trust fund for the losses occasioned by its continuance of said investments as aforesaid, and that said Trustee has refused and still does refuse to comply with such reasonable request of your oratrix.

All which actings, doings and pretenses of the said defendant The Paterson Safe Deposit and Trust Company are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix in the premises.

In consideration whereof and for as much as your oratrix is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable Court where matters of this nature are properly cognizable and relievable, to the end therefore that the said The Paterson Safe Deposit and Trust Company may appear according to law and the

course of this Court, and answer make to all and singular the matters aforesaid, and that the said John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather may, to the best of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, your oratrix hereby waiving, pursuant to the statute, the necessity of the answer of said defendants being put in under the oaths of the said defendants or the oaths of any of them, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated paragraph by paragraph, and that an account may be taken of the property and moneys that have been received by said The Paterson Safe Deposit and Trust Company as Trustee as aforesaid, and the charge it has against the said property and moneys; also what investments of such receipts or any portion thereof it has made and the balance thereof, and to whom the same is due, may be ascertained and declared, and that any balance found due to your oratrix and to said trust fund so held for her benefit upon such an accounting may be ordered paid to her and to said trust fund so held for her benefit, and that a Receiver of said trust fund so held for her benefit be appointed with the usual powers and duties of Receivers in like cases, and that your oratrix may have such further and other relief in the premises as the nature of the cause may require and as shall be agreeable to equity and good conscience.

Exhibit C-1—State of Case First Beam Chancery Suit. Complaint.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ or writs of subpoena issuing out of and under the seal of this honorable Court, to be directed to the said The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your oratrix in duty bound will ever pray, etc.

PIERRE F. COOK,
Solicitor for and of Counsel with
Complainant.

Exhibit C-1—State of Case First Beam Chancery Suit.
(Copy of will.)

I, Sarah A. Cooke, of the City of Paterson, in the County of Passaic and State of New Jersey, widow of John Cooke, deceased, do make publish and declare this to be my last will and testament hereby revoking all former wills and codicils by me made.

First: I direct that all my just debts and funeral expenses be paid as soon after my death as possible.

Second: I give and bequeath the mortgage which I now hold on the property of Charles B. Donele in the City of Providence, Rhode Island, to the said Charles B. Donele.

Third: I give and bequeath all the shares of stock of the Paterson Savings Institution, of which I may die possessed to my three sons, John S. Cooke, Frederick W. Cooke and Charles D. Cooke, to be equally divided among them, share and share alike.

Fourth: I give and bequeath all books of which I may die possessed to my five children, or to those of them surviving at the time of my death, to be divided among them as they shall agree; but if they shall not be able to agree upon the division of any or all of said books, then I direct that such latter books be sold to such of my said children as will pay the highest price therefor.

Fifth: I give and bequeath my piano to my granddaughter Helen Cooke.

Exhibit C-1—State of Case First Beam Chancery Suit.
Will.

SIXTH: I give and bequeath to each of my children such articles of my household furniture not otherwise disposed of as may be in their respective residences at the time of my death.

SEVENTH: I give and bequeath all of my clothing and jewelry to my two daughters, Lavinia Fayerweather and Carrie S. Beam, or to the one of them surviving at the time of my death, to dispose of and distribute as I may by letter to them direct; and if I do not so by letter direct, then to keep the same for themselves or otherwise dispose of them as they or she may think best.

EIGHTH: I give and bequeath to my executors hereinafter named the sum of Twenty-five thousand dollars ($25,000) in trust to invest the same and to pay the income therefrom, in equal monthly installments, to my sister Caroline A. Swineburne, so long as she shall live; and upon the death of my sister Caroline A. Swineburne to divide the said sum of Twenty-five thousand dollars ($25,000) equally among my five children.

NINTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars ($10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments to my niece Lavinia Courtney so long as she shall live and remain unmarried; and, upon the marriage or death of the said Lavinia Courtney, to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

Exhibit C-1—State of Case First Beam
Chancery Suit.
Will.

TENTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars ($10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments, to my niece Elizabeth Courtney so long as she shall live and remain unmarried; and upon the marriage or death of the said Elizabeth Courtney to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

ELEVENTH: I direct that all the rest, residue and remainder of the estate of which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give to my son Charles D. Cooke, another of which parts I give to my daughter Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam.

TWELFTH: The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child.

THIRTEENTH: If at the time of my death any of my said children shall be dead, I direct that

the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate.

FOURTEENTH: I hereby appoint my said five children, John S. Cooke, Frederick W. Cooke, Charles D. Cooke, Lavinia Fayerweather and Carrie S. Beam, executors of this my last will and testament, hereby giving and granting unto them or the survivor of them full power and authority to grant, bargain, sell and convey any or all of my real estate, at public or private sale at such times and upon such terms as to them shall seem meet.

In witness whereof I have hereunto set my hand and seal this Twenty-fifth day of October, in the year of our Lord, one thousand nine hundred and two.

SARAH A. COOKE (L. S.)

Signed, sealed, published and declared by the above named testatrix, Sarah A. Cooke, as and for her last will and testament in the presence of us, both of us being present at the same time, and thereupon we, at her request, in her presence and in the presence of each other have at the same time subscribed our names hereto as witness.

Anna M. Wolf, Athenia, N. J.
Ralph Shaw, Little Falls, N. J.

A true copy.

SAMUEL C. ROBBINS,
Clerk.

Exhibit C-1—State of Case First Beam Chancery Suit.

(Filed March 19, 1913.)

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Plaintiff,* THE PATERSON SAFE DEPOSIT and & TRUST COMPANY, *et al.*, Defendants.	On Bill, etc. Answer.

The answer of The Paterson Safe Deposit & Trust Company to the bill of complaint of Carrie S. Beam, complainant.

This defendant, for answer to said bill of complaint, admits the allegations contained in paragraphs 1, 2, 3, 4 and 6 of said bill of complaint.

And for answer to the allegations of said bill of complaint contained in Paragraphs 5, 7 and 8 thereof, this defendant, further answering, says:

The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad, of the City of New York, the Second Avenue Rilroad Company, of the City of New York, and the Central Park, North and East River Railroad Company, of the City of New York were each separate corporations owning surface railways in the City of New York which a long time prior to the death of the said Sarah A. Cooke

in said will mentioned had been leased practically in perpetuity to the Metropolitan Street Railway Company, of New York City, which last-named corporation prior to the death of the said testatrix had acquired by purchase, lease, and in other ways the control and right to operate practically all of the surface railways in the limits of the City of New York as one great metropolitan system.

On or about the 14th day of February, 1902, the Metropolitan Company leased its system, which included the three companies hereinbefore mentioned, to the Interurban Street Railway Company, the name of which was subsequently changed to the New York City Railway Company, by which last-named company the same were operated continuously until on or about the 24th day of December, 1907. Said leases and each of them obligated the lessee or operating company to pay the interest on all the outstanding bonds of said leased corporations and an annual dividend of nine per cent. per annum on the capital stock of the Central Park, North and East River Railroad Company.

The stocks and bonds of said three corporations, and, in fact, the stocks and bonds of all the constituent companies making up the great system controlled and operated in the first instance by the Metropolitan and afterwards by the New York City Railway Company, during the period of such operation were known and regarded in the financial world as gilt-edged securities, and were

placed with and held by investors who desired permanent and safe investment with a fixed income.

It is not true, as stated in Paragraph 5 of said bill of complaint, that the value of the said bonds and of the stock in said bill mentioned steadily depreciated in the market from the date of the death of the said testatrix to the time of the filing of the said bill of complaint. The fact is that said bonds and stocks were not actively dealt in, and only occasionally sold or purchased, in most instances not from motives of speculation, but from economic considerations personal to the holders thereof. At the time of the death of the said testatrix and at the time the said securities came into the possession of this defendant and for a considerable period afterwards, these stocks and bonds were considered by bankers, financiers, and investors as among the most desirable securities to be had for permanent investment.

Nothing occurred, outside of the ordinary trifling changes in market value of all securities, to effect the estimate of the public as to the desirability of these securities until on or about the 24th day of September, 1907, when a creditor's bill of complaint was filed in the United States Circuit Court for the Southern District of New York against the New York City Railway Company, alleging its insolvency and asking for the appointment of Receivers to operate the railway system which it controlled. The filing of this bill

and the appointment of the Receivers was a great surprise to the public, but it was not at the time regarded as affecting the substantial value or impairing the income of the underlying securities.

In the bill of complaint upon which Receivers were appointed it was specifically alleged that a Receiver was needed with power to operate the whole system, in order to preserve the property and the unity of the system as it had been maintained and operated. The order appointing the said Receivers contained provisions for the continued operation of the system, to the end that operation of the said system should be continued in the same manner as at that time and the public duties obligatory upon the lessee be in all respects discharged.

Subsequently, on or about the 1st day of October, 1907, Metropolitan Street Railway Company filed its petition asking that it be made a party defendant to the suit against the New York City Railway Company, and that the receivership be extended to its property, and on the same day the same persons who were appointed Receivers of the City Company's property were appointed temporary Receivers of the property of the Metropolitan Company. In granting the application for the appointment of Receivers, the Judge of the United States Circuit Court declared:

> "The Receivers are now in possession of the earning power of the petitioner, and under the terms of the lease petitioner can

avail of no default in payment of the amount stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay interest on some underlying mortgage or some rental due the constituent road. It is of vital interest that the property be kept intact."

On or about the 9th day of October, 1907, the said Circuit Court of the United States for the Southern District of New York, in the suits relating to said receivership, directed the Receivers by said Court appointed to pay during their operation the interest on the various mortgage bonds of the underlying roads and the dividends on the stock of such roads as the Metropolitan and the New York City Railway Company had by said various leases undertaken to pay.

From the time said three properties were first leased to the Metropolitan Company, all of the interest on said bonds and the dividends due to the stockholders was promptly paid by the lessee or by the said Receivers, until certain dates in the year 1908.

It was generally believed in financial and business circles that the operation of said lines would be continued by said Receivers, that the Metropolitan system would be preserved intact, and that when a reorganization of the Metropolitan and

the New York City Railway Company was made, the leased lines would be continued under the original leases the same as before. There was no reason to think that the said Receivers would permit the said system to be disintegrated by dropping any of said leased lines.

It turned out, however, contrary to general belief and ~~exception~~ expectation, that the Receivers concluded to abandon the lease of the Central Park, North and East River Railroad Company, and did abandon it on or about the 1st day of July, 1908. They also abandoned the lease of the Second Avenue on or about the 1st day of September, 1908, and abandoned the lease of the Twenty-Eighth and Twenty-ninth Streets Crosstown line on or about the 1st day of July, 1908.

Up to the time of the abandonment of these various lines by the Receivers there was no fact known to the public or available as information to this defendant which could lead it to believe or expect that the interest on said bonds and dividends on said stock would not be paid as theretofore, and there was nothing available as knowledge for the guidance of this defendant to indicate that it was either wise or prudent to sell the said bonds or the said stock.

After it became known to the public that the Receivers had determined to discontinue the operation of the said three several lines respectively, the securities of each of said companies became

immediately very much depreciated in market price, and not only depreciated in price, but became practically unsalable, for the reason that the essential value of the property of said companies was not known and could not be determined, nor could it be determined with any accuracy whether said companies could be successfully operated by themselves as detached from the Metropolitan system.

The general effect of the announcement of the abandoment of these three leases by the Receivers was practically to put an end to all transactions in said stock and bonds; so that from August 6, 1908, when five shares of the stock of the Central Park, North and East River Railroad Company were sold at One hundred dollars a share, there was no record of any other sale until March 4, 1910, when there was a sale of fifty shares at Forty-one dollars a share. Similarly, the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad after July, 1908, dropped from a previous figure of from eighty to ninety to forty, and subsequently to Thirty dollars on the hundred. The bonds of the Second Avenue Railroad Company, from a price of from eighty-seven to ninety-eight in the early part of the year 1908, dropped to eighty, and subsequently to as low as Forty dollars on the hundred.

But these prices were nominal and not practical prices, inasmuch as it was impossible to sell said bonds or said stock, or any of them, except at what

at the time was considered a ruinous sacrifice. Almost all the transactions in said stock and bonds from July, 1908, to the present time have been what are known as "forced sales," where the owners have been compelled to submit to the sale of their securities, being unable to retain them or to wait to see what the issue of the reorganiztion proceedings might be.

This defendant, further answering, denies that it has continued said investments in said bonds and stock negligently, and it denies that it has not exercised good faith and reasonable discretion in the discharge of its trust. It denies that the continuance of said investments was either negligent or unreasonable. On the contrary, it affirms that under the facts and circumstances and from the standpoint of facts and information available to this defendant at the time, the continuance of said investments was wise and prudent.

In continuing said investments, this defendant consulted reputable bankers of great experience and of special knowledge of the value of these particular securities, ascertained from them such facts as could be ascertained, and not only were advised by said bankers not to sell said securities or any of them at the ruinous prices at which they might be disposed of, but exercised and used its own discretion, which was to the same effect.

This defendant caused its president, John W. Griggs, to be made a director and counsel of the

Second Avenue Railroad Company about the time the Receivers gave notice of their intention to abandon its operation, and John S. Cooke, one of the defendants and one of the beneficiaries of said trust, also of his own volition, became a member of said board of directors of said Second Avenue Railroad, largely for the purpose of obtaining information and keeping informed as to the prospects of a successful reorganization not only of the Second Avenue but of both of the other of said companies.

The said John W. Griggs, president of this defendant was in frequent communication with bankers, attorneys, and others interested in the said Metropolitan system or various parts thereof, and in the said three companies in said bill of complaint mentioned, and in that way obtained all possible information as to the prospects of the successful operation of said railroads by the companies themselves or of their successful reorganization.

Since the said securities came to the hands of this defendant, there never has been a day on which from facts then known or capable of being ascertained it has been either wise or prudent to sell the said securities, or any of them, and in continuing to hold said securities this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain.

Exhibit C-1—State of Case First Beam Chancery Suit.
Answer.

The Second Avenue Railroad Company is under process of reorganization through proceedings in foreclosure, and there is a bondholders' committee for the consolidated bonds of said company, with which this defendant has deposited the bonds of that company. There is also a bondholders' committee for the bonds of the Crosstown road, and this defendant has deposited its bonds with said committee, thus securing the right to participate in any benefits of reorganization that may accrue when said roads are finally reorganized.

Only recently the mortgage on the property of the Central Park North and East River Railroad Company was foreclosed and the property sold to an independent purchaser, and it was not possible to know until said sale was actually made whether any reorganization thereof could be effected under which the stockholders would realize some interest in the assets of the company.

The reorganization of the said Metropolitan system and of the various parts thereof which have been from time to time cast off by the Receivers has been one of the most intricate and most difficult financial matters ever engaging the attention of the financial world, and great uncertainty has prevailed among business and financial men as to what might be done and what could be done. But the general view and opinion of all capitalists, investors, and bankers has been that those who held stock and bonds in said com-

panies or any of them would do better, if they were able to do so, to hold onto their securities, as it was believed that inherently the properties were of sufficient value and so necessary to the public use in New York City as to be certain to result in a better return to the security holders after reorganization than by sale while reorganization was in progress but undefined.

This defendant, further answering, says that from time to time since its qualification as Trustee under the will of the said Sarah A. Cooke, deceased, it has filed its intermediate accounts in the Orphans' Court of the County of Passaic, in which it has set forth the holding by it of the said securities, the last of said accounts having been filed on or about April 15, 1912, and that the said complainant, notwithstanding said accounts showed the retention by this defendant of said securities, has not objected thereto, and said accounts have been by the Orphans' Court in every way approved and confirmed.

John S. Cooke, one of the defendants, and a beneficiary of said trust, is a director and member of the finance committee of this defendant, and has been such during all the time that this defendant has held said securities. In continuing to hold said securities this defendant has had the benefit of the opinion and advice of the said John S. Cooke, and has to a great extent relied thereon and on the information obtained through him as to the status of the affairs of the said companies.

Exhibit C-1—State of Case First Beam Chancery Suit.
Answer.

This defendant, among other trusts in its possession, has held during this period stock in the Second Avenue Railroad Company and other securities of leased lines of the New York City Railway system, and has used and applied the same policy to the retention of those securities that it has with reference to the securities involved in this trust. The said securities have been the object of frequent conferences between the officers of this defendant, have been considered and discussed by its finance committee, and have been retained by the unanimous judgment of all the officers and members of the finance committee who have conferred upon the question.

This defendant denies that it is liable to account to the said complainant for any loss occasioned by its continuance of the investments aforesaid, and it denies that the complainant is entitled to any relief or to any affirmative decree whatever in this cause but submits that the said bill of complaint should be dismissed.

GRIGGS & HARDING,

Solicitors and of Counsel with Defendant, the Paterson Safe Deposit & Trust Company.

(Replication filed in the usual form.)

Exhibit C-1—State of Case First Beam Chancery Suit.

IN THE CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Complainant,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et al.*, **Defendants.**	On Bill, &c. Stipulation.

It is hereby stipulated by and between the solicitors of the respective parties that at the hearing of the above-entitled cause either party may offer in evidence on said hearing any facts material or relevant to the issues herein which are contained in the printed record of the suits of the Pennsylvania Steel Company, *et al.*, complainants, against New York City Railway Company, *et al.*, defendants; Morton Trust Company, complainant, against Metropolitan Street Railway Company, *et al.*, defendants; Guaranty Trust Company of New York, complainant, against Metropolitan Street Railway Company, *et al.*, defendants, and the appeal and suits and proceedings connected with said suits.

Also that either party may prove the periodical values of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds due nineteen hundred and ninety-six of the par value of One thousand dollars each; the Second Avenue (City of New York) Railroad Company consolidated five

per cent. mortgage bonds due nineteen hundred and forty-eight of the par value of One thousand dollars each; and the shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each; being the securities in question in said above-entitled cause, by the records and quotations of bid and asked prices furnished by the Standard Statistics Bureau, Inc., of 47 West Street, New York City.

Dated, October 7, 1913.

PIERRE F. COOK,
Solicitor of Complainant.

GRIGGS & HARDING,
Solicitors of Defendants.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

November 12, 1913.

Between
CARRIE S. BEAM,
Complainant,
and
THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et al.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled cause at Chancery Chambers, Newark, New Jersey, on Wednesday, November 12, 1913, before HON. JAMES E. HOWELL, Vice-Chancellor.

APPEARANCES:

MR. PIERRE F. COOK, for the Complainant.
MR. JOHN W. GRIGGS and MR. JOHN W. HARDING for the Defendants.

Mr. Cook: I offer in evidence certified copy of the last will and testament of Sarah A. Cook of Paterson, dated October 25, 1902, duly proven before the Surrogate of Passaic County, with letters testamentary.

Mr. Griggs: No objection to it, but it is not necessary, for it is admitted in the answer.

Marked Exhibit C-1 and Exhibit C-2.

CARRIE S. BEAM, sworn.

Direct examination:
By Mr. Cook:

Q. You are the complainant in this case? A. I am.

Q. You live in Paterson? A. No, I live in Bogota.

Q. And you are the daughter of Sarah A. Cook? A. I am.

Q. Who was the widow of John Cook, of Paterson, deceased? A. Yes.

Q. And you are one of the beneficiaries under the will of Sarah A. Cook? A. I am.

Q. Are you familiar with the securities forming a part of the trust fund under that will, namely, the 28th and 29th Street Crosstown bonds, and the Central Park, North and East stock, and the Second Avenue bonds? A. I am.

Q. Forming the basis of this suit? A. Yes.

Q. Do you recollect about up to what time you received income from those securities? A. Well, I think about three years after my mother died.

Q. And since that time have you received any income from them or either of them? A. Not from those; no.

Mr. Cook: I call for a letter from Mrs. Beam to Mr. Berdan.

Mr. Harding: The whole correspondence is here if you would like to put it in.

Mr. Cook: I will first offer a letter from

Mrs. Beam to William Berdan, vice-president of the Paterson Safe Deposit & Trust Company, dated September 11, 1911, suggesting an explanation for the shrinkage in value.

Q. Is that letter in your hand handwriting? A. Yes.

Q. Mailed by you to Mr. Berdan? A. Yes, sir.

Q. On or about the day of its date? A. Yes.

The Court: Who is Mr. Berdan?

Mr. Cook: He is treasurer of the defendant.

Letter marked Exhibit C-3.

Mr. Cook: I call also for letter from me to the Paterson Safe Deposit & Trust Company, dated November 28, 1911, and also for one from me under date of January 5, 1912.

Letters produced and offered in evidence and marked Exhibit C-4 and Exhibit C-5.

CONSELYEA TRAPHAGEN, sworn.

Direct examination:

By Mr. Cook:

Q. Where do you live? A. At South Nyack, New York.

Q. And what is your business? A. I am the

manager of the statistical department of the Standard Statistics Bureau.

Q. And what is the nature of that bureau? A. It is a bureau which was founded to file financial statistics.

Q. And where is your office? A. At 47 West Street.

Q. New York City? A. Yes.

Q. How long have you been in charge of that office? A. For about three years.

Q. And as such you are familiar with its records? A. I am.

Q. Have you investigated the records of that office as to the quotations of bid and asked prices of 28th and 29th Street Crosstown first mortgage five per cent. bonds, Second Avenue Railroad consolidated five per cent bonds, and Central Park, North and East Railroad stock, from May 1, 1905, to date? A. I have.

Q. At my request? A. Yes.

Q. And have you the result of that record? Have you that record with you? A. I have, yes.

Mr. Cook: It is stipulated either party may prove the periodical values of these securities by the records and quotations of bid and asked prices furnished by The Standard Statistics Bureau, and I ask that that stipulation be filed.

Q. Will you please produce your record? This was made up by you? A. It was, made up under my supervision.

Mr. Cook: I offer it in evidence.
Marked Exhibit C-6.

Cross-examination:

By Mr. Griggs:

Q. This was compiled from the printed stock and bond quotations that are furnished to Stock Exchange houses, brokers, bankers, etc., was it? A. Not necessarily, no.

Q. Not necessarily, but as a matter of fact was it? A. No, it was not.

Q. Well, what was it compiled from? A. It was compiled from quotations which were recorded in the Commercial and Financial Chronicle; they are accessible to bankers and brokers, however.

Q. That was included in my previous question. A. I thought you meant the Stock Exchange sheets, the official sheets.

Q. That is a publication that comes out every day? A. Every week.

Q. Every week? A. Yes.

Q. And you compiled it from that? A. Yes.

Mr. Cook: I think that is the complainant's case, sir.

JOHN W. GRIGGS, sworn.

Direct examination:

By Mr. Harding:

Q. You are the president of the Paterson Safe Deposit & Trust Company, the defendant in this suit? A. I am.

Q. And how long have you been president of it? A. Over twenty years.

Q. You were of course then president at the time when Mrs. Cook died? A. Yes.

Q. And the Paterson Safe Deposit & Trust Company became Trustee under her will? A. Yes.

Q. Are you personally familiar with the action of the Paterson Safe Deposit & Trust Company in the performance of its duties in the execution of this trust of Mr. Cook's widow? A. Yes.

Q. Just state what you had to do with it personally and what knowledge you personally had in relation to the trust? A. The Trust Company as Trustee for Mrs. Cook had these particular securities, and in some other trusts it was Trustee for other securities, either stocks or bonds, of interlying surface railroads in New York City which were leased originally, about 1902, to the Metropolitan Street Railway Company and combined into one system. There was considerable amount of these securities in charge of the trust company; they were regarded among investors and the officers of the trust company as gilt-edged securities, because the leases to the Metropolitan Company which was regarded as a strong company, back of which financiers such as ex-Secretary Whitney and Mr. Ryan were, guaranteed the payment of the interest on the bonds and a dividend on the stock in some cases of eight per cent., I think, and in this particular stock involved here, the Central Park, North and East River, of nine per cent. per annum. Previously to the panic of 1907 those

stocks commanded a very high price, so that I think the net income on the stock of the Second Avenue, according to the investment price, was certainly under four per cent. Nothing occurred to disturb anybody's sense of security about them until about September, 1907. Right in the midst of the panic of 1907 a creditors' bill was filed in the Circuit Court of the United States in New York alleging the insolvency of the New York City Railroad Company and asking for the appointment of the Receivers. I may say that previously to that time these stocks had, in common with all stocks, fallen very much in market price, on account of the stock depression of 1907. The appointment of these Receivers was not regarded as in any way jeopardizing the essential values of security, that is to say, the certainty of the payment of the dividends and the interest on the bonds, because the general belief was that the system was so consistently knit together and bound by the system of transfers from one to another that it could not be disintegrated, and that it would be not only very difficult to do it, but it would be a great public calamity to disintegrate the system and break it up. And in the bill of complaint that was filed against the New York City Railroad Company it was alleged that it was most important that the system should be preserved intact and not be broken up. Of course, if that was done the leases remained good, and the rent would be paid, that is, the rent was reserved in the form of payment of dividends on the stock and interest on the bonds. The Receivers ap-

pointed by Judge Lacombe were directed to operate the whole system; as to these three particular companies they were directed and authorized to borrow funds on Receivers' certificates in order to pay the rent for these particular leases; and down to the summer of 1908 there was not, so far as we could find at the time, or found since, there was not the slightest idea but what these would be retained; in fact, Judge Lacombe had directed the Receivers to retain the properties and pay the rent. Along sometime after the first—I think it was on the first of July that they defaulted—the Receivers did not pay the interest.

By Mr. Cook:

Q. What year? A. 1908, did not pay the interest on some bonds or the dividends on some stock of one of the companies, and then gradually, as the interest dates or the dividend dates came due they let go of all three of these companies. Then it was that there was, after it became known that they were likely not to retain the leases, the market quotations on these stocks did take a drop. The trust company, the defendant, was largely interested, more largely interested in Second Avenue stock and bonds than in any other one, and in order to keep an eye and a hand on the operations of the company and on the situation, I became a director of the Second Avenue Railroad Company and also became its general counsel, and in that way I had access to all the very voluminous records connected with the receivership of the Metropolitan and the New York City Railway Company, and became acquainted with the opera-

tions of the various reorganization committees that were formed and the various proceedings in foreclosure in the different lines, including the three that are mentioned in this case.

By the Court:

Q. When was it that you became a director of the company? A. I should say it was in the summer of 1908; it was after the Receivers had notified—

Q. After the default? A. After the default, yes, sir. I might say in explanation that these companies had been officered and the boards of directors filled up by the appointees of the lessee. The New York City Railway, when they defaulted they turned the management over to the stockholders, and the stockholders elected independent boards, not interlocking any longer. As to these roads, when they were turned over the question immediately arose, could they as independent companies maintain themselves on a profit-earning basis; secondly, would they be reorganized beneficially to the stockholders or the bondholders. The first question could only be answered after a period of experience, but the general opinion, as ascertained from inquiries and conversation with those interested, was that they could maintain themselves and be profitable; and the second question, as to whether a reorganization could be effected advantageously to those interests, was that it could be; and reorganization committees were formed in all the three cases, as to all the three companies. I continued in conference with the members of the firm of A. M. Kidder & Com-

pany, who were old, conservative, established bankers of New York, from whom I think all the securities held by the trust company had originally been bought. As soon as these leases were made by these individual companies to the Metropolitan Company, the stocks of the interlying companies became gilt-edged securities, and they were largely sold by A. M. Kidder & Company, and I believe that these particular stocks of the Cook estate were bought directly from them. Now, consulting with the members of that firm, both of whom, Mr. Marvin and Mr. Coe, both of whom were active in connection with the boards of these various companies, I formed the opinion, which was concurred in by the finance committee of the trust company, as the matter was laid before them from time to time, that it was not prudent or desirable to sell these securities at the sacrifice price at which they could then be disposed of. While there were nominal quotations of the stock they were unsalable, and in no instance, I think, on that list where a stock was quoted as 50 bid, if you had offered ten shares you couldn't have got fifty per cent. of the nominal quotation price. The dilemma was presented as to whether the Trustees should take the chances that would come from a reorganization, from a separate successful operation of these companies, or submit to a very gross loss at any particular time. The mortgage, the consolidated mortgage on the Second Avenue, as to which we had some bonds, was proceeding with foreclosure, and there was a separate Receiver appointed for that in the

Supreme Court of the State of New York, who is still in possession, and the reorganization committee have not yet thought it fit to force the matter to a sale; but there is a design and purpose on their part when it is sold to make a reorganization that is equitable to all interests, stockhilders and bonds, according to their different rank. The Central Park, North and East River has turned out the worst of any of them. The property was sold under foreclosure of the mortgage; we had no bond; we only had stock—and was bought at a price and by a purchaser which does not let in any reorganization scheme at all. The only asset that is available now to the stockholders of that company is the claim of something like a million dollars which has been allowed by Judge Lacombe against the Receivers of the Metropolitan Street Railway, and is a claim against the assets of that company.

Q. The debt of the Receivers and not the indebtedness— A. It is not a debt of the Receiver; it is a claim against the assets of the corporation.

Q. Not preferred? A. Not preferred; but there are funds in the hands of the Receivers of the Metropolitan out of which creditors will receive a dividend, how much I cannot say, but you remember a suit in which several millions of dollars were recovered against Mr. Cravath and some of the other former directors. Now, during all this time the advice and opinion which we received from others who were interested in this matter was that it was not advisable to sell, but to hold on to these securities. I may mention the firm of Davies,

Stone & Auerbach, who were acting as counsel not only in the Second Avenue, but in several of these other matters; and I frequently was in conference with Mr. Tolls, a member of that firm, and being anxious about the course of the trust company, conferred with him about it, and he always believed that these companies would be able to get on their feet eventually, and it would be better for the stockholders to hold on than to sell when nobody wanted to buy. Now, that generally represents the attitude and course of the trust company in the matter. It was not a matter as to which the company was negligent or indifferent; it was a question in which I think the company used every means of acquiring knowledge and forming judgment that was available to them, and, whether their judgment was sound or not, it was honest judgment; and I may say personally, I believe under all the circumstances it was sound, and, knowing the same facts, I should do it again exactly as I did do it.

Q. What consultations, if any, were had about the matter in the board of directors of the trust company? A. Oh, it was frequently talked about in the finance committee. The board of directors meets only once a month; the finance committee meets every week; it was frequently spoken of there. One of the members is Mr. Francis K. McCully; he is an active broker, and has been for thirty years, in Paterson, familiar with all these stocks. Another member of the finance committee is Mr. John S. Cook, who is brother of the complainant in this case; and the matter was discussed

in the finance committee, and I frequently reported to them what I had ascertained, what I knew about the progress of the earnings of the Second Avenue, for instance, under Mr. Linch, the Receiver, and the various situations; and there never was any opinion expressed by any of them except it was better not to make the sacrifice. The trust company held some securities of its own, some of these stocks, and they treated their own exactly as they treated those held in trust.

Q. You mean by the trust company of course the defendant here? A. Yes.

Q. And did John S. Cook, whom you have mentioned, also become a director of the Second Avenue? A. He did; when the old directors resigned and the new board was formed Mr. John S. Cook became a director.

Q. His purpose in doing that, I suppose, was like your own? A. The same as mine, to be on the job.

Q. And had you specially conferred with Mr. John S. Cook with reference to the advisability as to what disposition should be made of the stock and securities? A. I don't remember conferring with him specially on that subject apart from the other members of the finance committee, but I know that he was present as a member of the finance committee when the matter was discussed.

Q. He concurred in the general decision? A. He did.

By the Court:

Q. Is he living? A. Oh, yes.

Cross-examination:

By Mr. Cook:

Q. Generally you have stated that some time in 1908 you became general counsel for the Second Avenue and a member of its board. Did you have any official connection with either of these other corporations, the 28th and 29th Street, or the Central Park, North and East? A. No.

Q. Then your knowledge as to the affairs of those companies was acquired from your conferences with the banking authorities you have mentioned, and in other directions? A. Yes, and because their cases were inextricably mixed up in the court records and proceedings, which were very voluminous, and which I had to investigate; I filed some proceedings for the Second Avenue in the suit, and had various motions and applications, in which it was necessary to give notice to the representatives of all these companies, so I had to know their situation and status.

Q. Now, who constitute the finance committee of your board in the Paterson Safe Deposit & Trust Company? A. Now?

Q. Yes. A. I am ex-officio member, Mr. Berdan.

Q. Mr. William Berdan? A. Mr. William Berdan.

Q. Vice-president of the company? A. Yes; Mr. John S. Cook, Mr. Charles Agnew, Mr. Francis J. McCully, and Mr. Henry C. Knox, formerly cashier of the Paterson National Bank.

Q. And that board consists of as many members now as it did when this trust fund came into the

hands of the institution, or about the same? A. Yes, the same number. Almost identically the same persons.

Q. Now, what official action, if any, was taken by the finance committee upon the death of Sarah A. Cooke as to the retention of these securities as a part of this trust fund? A. If by official action you mean formal action of the board or the committee, I don't think any was taken.

Q. Then what informal action was taken, if any? A. Well, I can tell you what was done. The securities were received—

Q. I realize what was done; the record shows that; but please tell me if within your knowledge any action, official or unofficial, was taken, if the question was discussed in the board, to your knowledge?

The Court: You mean the question of the retention of these bonds as part of the securities of this trust?

Mr. Cook: Yes.

A. At the time it was originally taken?

Q. Yes. A. I don't think it was.

Q. When did it first come up for discussion in the board? A. Well, I shouldn't think that the matter became a subject of definite discussion until after the default by the New York City Railway Company.

Q. And approximately when was that? A. That would have been in the summer of 1908.

Q. Three years after the death of Mrs. Cook? A. Yes.

By the Court:

Q. It is probable then that the default was in the payment of the July interest? A. I think it was July interest, yes.

The Court: 1908.

Q. At that time, so far as your knowledge goes, was the matter formally discussed by the board or the finance committee? A. Well, it was discussed just as the values and desirability of other securities are discussed; a suggestion would be made or a question asked of somebody, and then it would be discussed, but it was not on the basis of any formal motion.

Q. Do you recollect any particular discussion of these particular securities at the time of the default? A. I can't distinguish one date from another, one time from another; I know it was frequently.

Q. I am not seeking to pin you down to any time. Do you recollect any discussion on the subject subsequent or about the time of the default? A. I certainly do.

Q. And what was the burden of that discussion and its result? A. The point of it was that this system—that these securities would remain essentially good, irrespective of their market price, because of the fact that they were essential to the complete Metropolitan system, that the system of transfers had been established from one to the other, and that they could not get along if they began to drop off integral parts of it.

Q. That was the matter of these 28th Street transfers which formed the basis of considerable newspaper discussion, didn't they? A. Yes, newspaper discussion, and I think of action before the Public Service Commission, if I am not mistaken.

Q. People were up in arms over there because that discontinued the system, weren't they? A. Yes; there was a great discussion and great protest from the public after these roads were dropped loose, when they stopped the transfer system.

Q. Now, in the organization of your bank whose duty is it to watch quotations of investments or funds invested? A. Why, I should say that it is everybody's duty to do it, but especially the duty of the treasurer, Mr. Berdan.

Q. What is everybody's duty is sometimes characterized as nobody's; was it everybody's duty or was it Mr. Berdan's duty? A. It was both.

By the Court:

Q. By everybody you mean the board of directors, members of the board of directors? A. No; I mean the finance committee; the members of that committee are constantly, by constantly I mean, yes, continuously regarding the prices and values and status of the securities that they hold either as Trustee or as individual. The bank holds a great many securities of its own, and Mr. McCully is especially active in connection with that, because he is a broker and he is always watching the ticker; the rest of us are not; but we all keep track on that. I can illustrate if want me to, but I think you understand.

By Mr. Harding:

Q. As a matter of fact, Mr. McCully appears about every day, doesn't he, regularly? A. He is there every day.

Q. In his capacity of broker or director? A. I can't tell just which, but he uses either one that happens to be useful.

Q. Are they distinguishable, those different capacities? A. Oh, yes.

Q. Now, then, is there any one, any officer in the bank who is personally charged with watching the quotations of securities in which you have funds invested?

The Court: You mean charged by rule, or law, or order, or resolution?

Q. May I change the form of that? Is there any one whose duty it is under your custom to watch those quotations, any particular person, or is it a general observance of the board? A. Well, if by quotations you mean the fluctuating prices, values.

Q. The trust companies with which I have been associated, there is usually a trust officer, I think there is one downstairs; now, it is his duty to keep tab on quotations, and if things go wrong it is put up to him; now, is there such an official in your institution? A. As I said before, Mr. Berdan, the vice-president and treasurer, is the one who is peculiarly charged, not by any resolution, but by the custom and course of business of the company, with looking after our securities.

By the Court:

Q. And by the fact that he is treasurer? A. And by the fact that he is treasurer, and because he is fitted for that thing, that is what we got him for.

Q. Now, what did Mr. Berdan report to the board as to these securities? A. I don't think Mr. Berdan reported anything.

Q. Did you ever hear him discuss the matter? A. Mr. Berdan as a member of the finance committee has been present; I have discussed these securities with him when the committee wasn't there, and I have discussed it in his presence and heard him participate in the discussion when the committee was there.

Q. And from his participation in that discussion what did you gather as to his views as to the advisability of the continuance of these securities? A. I gathered that his view was that it was not wise or prudent to dispose of these securities, but to hold them.

Q. Did he give his reasons? A. I can't say now that I remember.

Q. Were his views based upon the reports which you as counsel for the Second Avenue, and as intimately acquainted with these other lines, brought to him, or from independent investigations? A. I think that the information and advice which the committee and Mr. Berdan got on this subject was derived mainly from the reports that I made, and from what Mr. McCully made.

Q. What effort, if any, was made to sell any of these securities forming this particular trust fund? A. None.

Q. What consultation was there, if any, with this Mrs. Beam, the complainant, as to the advisability of their continuance? A. I don't know of any; I never had any conference with her.

Q. Well, was any conference ever referred to in the board? A. I think not; I think the matter of her letters was referred to.

Q. Was there any conference, so far as you know, between the finance committee and Mrs. Beam on this subject? A. Not that I know of.

Q. And you think you would have known it had there been? A. I think I should have.

Q. Was there any application ever made to the court or to any court for leave to continue the securities? A. No, it was not necessary.

Mr. Cook: I ask that that portion of the answer be stricken out.

A. All right; that was improper; strike it out, as far as I am concerned. No.

Re-direct examination:

By Mr. Harding:

Q. The securities were securities that came to the trust company which had been owned by Mrs. Cook at the time of her death? A. Yes.

Q. Therefore it was not necessary to apply to the court? A. I am not going to express any opinion; that is what I thought.

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Direct.

GEORGE S. COE, sworn.
Direct examination:

By Mr. Griggs:

Q. Where do you live? A. Englewood, New Jersey.

Q. Are you a member of the firm of A. M. Kidder & Company? A. I am.

Q. They are bankers and brokers? A. Yes.

Q. How long has that firm been in existence in New York City? A. Since 1865.

Q. How long have you been a member of the firm? A. I should say about 1897.

Q. Charles D. Marvin is also a member of the firm? A. Not now.

Q. Was he a member? A. He was.

Q. Down to what time? A. About two years ago, June.

Q. Did your firm deal in the underlying securities of the Metropolitan system? A. Very largely.

Q. Just tell us briefly what the status of those securities was after the lease of surface railways in New York to the Meropolitan Company?

Mr. Cook: When was that, General?
Mr. Griggs: 1902, wasn't it?

A. I should say about that time, yes. Why, second to none in the regard of the most conservative investors in point of security, being followed by two tiers of corporations, both showing large equities, they were regarded as being the very best, and ranked in point of basis with the superlatives we will say.

Q. Did you sell these bonds of the Second Avenue and the 28th and 29th Crosstown Street Railway? A. I don't know.

Q. And the stock of the Central Park, North and East River, you dealt in all those? A. Dealt in all those, yes.

Q. Did you sell? A. I say I don't know as to these particular ones.

Q. Did you sell this particular stock? A. I don't know; I sold Cook Brothers stocks different times, but never, that I recall definitely, without refreshing my memory, to the estate of.

Q. You remember when the receivership of the New York City Railway was instituted in September, 1907, you remember the fact? A. I remember the fact, September, 1907, yes.

Q. Was that at the time of the financial panic, as they called it? A. About that time, I think they were in the doldrums during the summer and fall, yes.

Q. There was a very severe financial convulsion and depression of securities during the whole of the fall of 1907, was there not? A. Yes.

Q. Do you remember whether or not for a considerable period the Receivers of the Metropolitan system paid the interest on the bonds and the dividends on the stock of these underlying securities, rentals? A. My recollection is they did for a couple of payments after the receivership of the Metropolitan.

Q. And do you recollect about when it was that they made default on some of them? A. I can't without refreshing my memory or looking into history, but from quotations I judge it was one of

the payments of 1908, judging from prices here. The property of the Central Park was abandoned in June, 1908; the dividends were quarterly, January, April, July and October, and I fancy it must have been early that year or the latter part of 1907. This is conjecture; I would have to look up and confirm.

Q. Did you have personally, and as a member of the firm, any interest in the securities of the Central Park, North and East River? A. Yes, I am very sorry to say I had, both as the firm and as Trustee.

Q. What did you have, stock or bonds? A. I had stock of the Central Park, North and East, and some Second Avenue.

Q. Stock of the Second Avenue? A. Yes.

Q. Bonds of the Second Avenue? A. No bonds of the Second Avenue, didn't carry those.

Q. Did you also represent in the transactions of these companies, after the default in rentals, clients who had purchased largely from you? A. Yes; we had to rather carry the burden of the fight.

Q. Were you frequently consulted by holders of these particular stocks and bonds as to what was best to do with reference to them, whether to sell them or hold them? A. Yes.

Q. And what, in your judgment, according to the facts and circumstances then known, was the best advice that you could give, and that you did give? A. The cases differed. Central Park, North and East in some cases we advised them to hold; when the Second Avenue was abandoned there was no other thing to do.

Q. Why do you say there was no other thing to do? A. Because you couldn't do anything; the bottom fell out completely.

Q. Well, explain a little more? A. I mean to say they dropped from a nominal market for odd lots to practically no market, or speculative market at auction.

Q. Have you got the records from the published lists of the sales of these various securities covering that period after the default? A. I have the record of my own books, Governor, and the record of the auction sales; there were no public record of sales, they were all privately made, and usually chlorform used to expedite the trade. It was impossible simply for the person that was willing to speculate on an average basis, say, for instance, if they were long at 220, if you choose, why, they would take a chance on evening out their lines at a price speculating on the outcome, feeling that the value was there, and that it might work out some time somehow.

Q. What was the opinion and feeling in the financial community as to the essential values of these properties ultimately?

The Court: At what time?

Q. Well, from the time of the default onward? A. Why, the feeling, of course, if you recall, the Central Park, North and East had its suits, and the trick of forcing that mortgage of the Central Park, North and East, which was so carefully and subtly concealed by the Metropolitan people, nominally paid but kept alive, we felt that we had a

very excellent case in the Central Park, North and East of putting aside the validity of that mortgage and thereby establishing a stock as the absolute first and prior lien; and the assessed value of the car barns alone at that time—I am going back, I am ruminating just a little now, was in excess of the stock itself. We felt there was a very good living chance there, and our counsel though that there was every chance of setting aside that mortgage.

Q. The mortgage under which the property was subsequently sold? A. Yes; the validity was established, and subsequently sold, and the stock wiped out.

Q. What was your own judgment as to your own stock in connection with that Central Park? A. I am frank to say I held until—

Q. What is your judgment—

Mr. Cook: Let him finish.

A. I held it until it had practically no value, and for fear of an assessment I sold.

By Mr. Cook:

Q. When? A. I should say—I sold it at auction, put it up for sale.

Q. When? A. The year I don't know, but I can tell you about the price; somewhere around between 20 and 30; sad loss. I inherited it at about 220; I bought it at about the same price; I am speaking as Trustee now. I don't know whether we had any other stock as Kidder & Company at the time. I can't recall it but we were trading in it apparently.

Q. Have you got a list of the transactions in it which occurred through your office? A. Yes; not back of December, 1907.

Q. No; but from thence on? A. From December, 1907, to October 23, 1912.

Q. Just give us what the transactions were? A. Well, my books appear, it appears in my books December 20, 1907, traded in a lot of three shares, appears on the books 122; January 8, fifty shares at 120; April, 1908, fifty shares 125; then it seems to have dropped to almost no market, eight shares at 100, July, 1908.

Q. That was about the time of the default? A. Just about, yes; the time the road was abandoned, formally abandoned; then Mr. Linch did not take possession until, I think, August of that year.

Q. Linch was the Receiver of the Central Park as well as the Second Avenue, was he not? A. Yes; and then August, 1908, five shares at par; then 1909, no sales of record; the bottom fell out; then March, 1910, the speculative demand came and we sold twenty-four shares at 41.

Q. What was that speculative demand due to? A. I think averaging mainly, people willing to take a chance.

Q. Just gambling? A. Yes.

Q. Professional operators, you mean? A. Yes, and investors who were willing to take a chance in averaging with this suit pending; this is Central Park we are speaking of; they were willing to take a chance.

Q. You did not sell any of your own at that time? A. No, I am figuring as Trustee; I don't think we had any as Kidder & Company then. We

had a sad loss I know in selling what we did have. Then March, the same date, 1910, twenty-six shares at 41 and six shares at 40. May, 1910, thirty shares at 25; May, later the same year, sixty shares at 26, and later in the same month twenty shares at 25. Then nothing down until March, 1911, one hundred shares sold at 12½. After that it was impossible to sell except at auction, and various amounts appear in the auction and were bid in by I don't know who, by speculators or perhaps investors, and it dropped from that time—Oh, just a moment. I see some auction sales in the same years at radically different prices; for instance, when we traded in 1908, July, at par some stock was sold at about the same time at 82.

By the Court:

Q. Sold at auction? A. Sold at auction.

Q. You mean at Mullers? A. At Mullers auction; and December, 1908, some stock was knocked down; about the same time, just a few months prior, we sold a small lot at par, some stock was sold at 35½.

Q. As to those auction sales, is it possible to say whether that is bought by an outside person, or whether the person that offers it, for instance, were it put up as collateral, is buying it in? A. It is usually for whom it may concern; it is impossible to say; I was only going to bring out the disparity between the auction sales and sales of the stock that was obtainable without a knock-down; there seems to be broad disparity between the auction sales and the others.

Q. Have you a list of the auction sales from June 10, 1908, to October, 1912? A. Yes.

Q. Have you it there tabulated? A. Yes.

Q. And have you a record of the sales that you made from December, 1907, to March 30, 1911? A. Yes.

Q. Tabulated? A. Tabulated.

Mr. Griggs: I suggest that we offer the table.

Q. Have you also compiled a statement of the sales of the Second Avenue Railroad Company consolidated five per cent. bonds? A. Yes.

Q. Is that it? A. Yes.

Q. Is that correct? A. That is from the same record as the Statistic Bureau, Financial Chronicle.

Q. Now, I will ask you what you think about the prudence of having retained the consolidated bonds of that company during this period in view of the situation that has existed in the Second Avenue, the reorganization committee, the foreclosure, and the receivership, and so on? A. I would rather not say, because different conditions obtained at different times, but I do not see what else could have been done, that is my recollection, at no time I do not see that anything else could have been done, because the market was so extremely narrow.

Q. Could not have sold without cutting even the quoted prices? A. No.

Q. Have you a statement there of the prices of the 28th and 29th Street five per cent. bonds? A. Yes.

Mr. Cook: You say prices; you mean quotations, you mean actual sales?
Mr. Griggs: No, quotations.

A. Quotations, no sales.
Q. Is that it? A. Apparently it is, yes.
Q. Now, what do you say with reference to the possibility of any kind of an advantageous sale on those bonds during the period from 1907 down? A. I cannot say, but the condition of that company was particularly sad from the time it was knocked off, it was practically impossible to do anything on that.

Mr. Griggs: I offer these three tables in evidence.

Cross-examination:
By Mr. Cook:

Q. Did you make up these tables, Mr. Coe? Were these made up by you? A. Yes.
Q. From your record? A. Practically a transcript from my books.
Q. And they show actual sales which passed through your office? A. Yes.

Further Direct examination:
By Mr. Griggs:

Q. Do you recall the fact of my having conferred with your firm, yourself and Mr. Marvin, relative to these securities, from time to time, from 1908 on? A. Yes; I know we were companions in misery, on our Second Avenue more particularly.

Q. More particularly in Second Avenue? A. Yes.

Q. Do you recollect about having been asked by us about the other securities? A. Yes, at times, by Mr. Berdan and yourself.

Q. By Mr. Berdan as well as myself? A. Yes.

Q. Mr. John S. Cooke ever question you, that you remember? A. I don't recall perhaps but once an informal meeting, happened to meet at the Englewood Golf Club at one time, and we made some passing remarks on the gilt-edge securities which we were jointly interested in.

Cross-examination:

By Mr. Cook:

Q. These securities you held as trustee, what were the nature, generally speaking, of those trusts? A. They were securities inherited about 1904, and by a very astute buyer, from a very astute buyer.

Q. From your firm? A. No, he didn't buy them from us; he had them from way back.

Q. You had them as trustee? A. As trustee.

Q. And you subsequently sold them? A. I subsequently added to my holdings, and then, when the trouble came, sold.

Q. Why did you sell? A. I thought the best runner was the quickest, the best thing to do was to sell and save what I could, sir, for the trust.

Q. When did that impression force itself upon you? A. When pretty much all hope had ended.

Q. And when was that about in point of time? A. I should imagine it was the latter part of 1908.

Q. Referring now to the Second Avenue? A.

No, Central Park, North and East. Second Avenue I think I am still possessor of 225.

Q. And the other security, do you own any of that? A. No.

Q. This chloroforming process was interesting; please explain that to me? A. Perhaps that was an unnecessary insertion, but I might say that it was necessary to go into a full explanation of—

Q. I am serious. A. I say in making sales it was necessary to go into the full explanation of the status of the suits, and whether or not that party considered all evidence given, they first having approached us because we undertook to sell none of this to anybody after the trouble came, only did it as traders, not as dealers, why, gave them all the evidence in hand and asked them what their judgment was; in nearly every case these were purchasers from disgruntled holders to those who were willing to take a chance.

Q. But they were purchasers? A. No, purchasers as dealers, from us as dealers.

Q. They were actual, bona fide? A. Yes, they were actual trades, yes, but you notice the small amount.

Q. There was considerable dissatisfaction, was there not, in the financial world as to the operations of the Metropolitan and its allied lines over there? A. After they lopped off the roads, yes.

Q. Previous to that time were the public complacent? A. There was no occasion to be otherwise.

Q. I say the public, I mean the financial public, which you represent? A. Yes.

Q. And they had no complaint until these lines were lopped off. A. Couldn't have.

Q. At the time of the receivership was there any dissatisfaction among investors over there? A. There was fear, I take it, but cannot recall, except review figures, just what the attitude of mind was.

Q. But from your experience as guardian of trust funds and investor, expert in these securities, receiverships are not favorable to continuation of high values, are they? A. Not usually.

Q. A. receivership is a sort of a danger signal, is it not? A. It depends upon the circumstances.

Q. And coming down to concrete cases, in the cases of these three securities was it such or not? A. Each was different.

Q. Take up the 28th and 29th Street, what was the effect of the receivership upon that as an investment security? A. That was disastrous.

Q. And the prognosis was not favorable? A. It is impossible to do anything after the receivership.

Q. And what was the effect of the receivership upon the Second Avenue? A. Also disastrous.

Q. And when they found out was the prognosis favorable or otherwise? A. It was extremely unfavorable. I might say in connection with that that they put barriers in the way of the appointment of a receiver. Mr. Linch was appointed in September, 1908, and was prevented from taking possession until November 12, of the same year.

Q. Who put those barriers in the way? A. The Metropolitan management skinned the car barns and took all the heavy motors off of the cars and left us sadly crippled.

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Cross-examination.

Q. And so far as the 28th and 29th Street Crosstown is concerned, what was the effect of the receivership upon that? A. As I said before.

Q. I am speaking of the third security; the Second Avenue and Central Park, North and East is the one I have in mind now. A. Central Park, North and East, the effect was apparently change of value.

Q. And it is that change of value, generally speaking, was there a slump? A. August 6, 1908, Mr. Linch qualified; early part of 1908 sales at 120, later part of 1908 sales 35½.

Q. I see considerable of a depression. Well, what was the prospect of a resumption of those values at the time of the receivership? A. It was wholly speculative, dependent upon the law suits.

Q. And the chances were how adjusted? A. Establishment of the validity of that mortgage gave the Metropolitan four per cent. bonds which formed part of the security of a lien on the property; it was sold out under lien.

Q. And the establishment of the validity of the mortgage destroyed the security? A. Yes.

Q. And was there was a pretty good chance that that mortgage would be established? A. There was every chance— Oh, that it would be established?

Q. Yes. A. Different views by the different counsels on either side.

Q. It eventually was established? A. Eventually, after two appeals, I believe.

Q. And destroyed the valuation of the securities practically? A. That was one reason.

Q. Now, at the time of this receivership were

you consulted as to the wisdom of investing in either of these securities? A. I don't quite catch it; by whom.

Q. There were sales; you have reported sales made subsequent to the receivership? A. We will call them transactions.

Q. We will call them bona fide sales, because you said that was what they were. A. Yes, bona fide transactions.

Q. These transactions that you have stated were bona fide sales subsequest to the receivership, were you consulted by those purchases as to the advisability of the purchases? A. Will you repeat that?

Q. Did any intended purchasers consult you after the receivership as to the wisdom of investing in either of these three securities? A. I wouldn't say they were investment purchasers; they were mere traders.

Q. Well, we will characterize them as such; did any of these traders consult you as to the wisdom of purchasing any of these three securities after the receivership? A. No, I can't say they did.

Q. And had they done so, what would have been your advice? A. I certainly would not have advised the purchase except on the speculative chance—the evidence that I spoke of being in my possession.

Q. And you would have advised the retention of the securities then held? A. At one phase I certainly would.

Q. And what phase is that? A. Well, when the arguments had been submitted to Judge Lacombe

by counsel, and every evidence was on the basis of precedent that the mortgage would be set aside.

Q. And depending upon that you would have advised a continuance? A. Of holding.

Q. You would have considered the chances of his setting aside the mortgage justified taking a chance at the loss of trust funds? A. Of continuing his holdings.

Q. It would result in a loss, did result in a loss in this case, you think that would have been good business? A. I certainly did; I acted on it.

Q. But the result showed otherwise, did it? A. To my loss.

By Mr. Griggs:

Q. Can you fix the time when that mortgage dispute with reference to the Central Park Company was finally settled adversely to the stockholders? I think you said the latter part of 1908, but I had an idea it was much later than that. A. Oh, the final appeal—my recollection is there were two appeals, and it came up before Judge Lacombe in each case.

Q. Let me get the date of that? A. About a year ago.

Q. 1912? A. Yes, I think so.

Q. You have mentioned the name of Mr. Berdan; how long have you known that gentleman? A. Some years, I should say ten or fifteen years, I should think, at least.

Q. During your acquaintance with him has he consulted you as to the values of these three securities? A. Not consulted, but asked questions on them, yes.

Q. And what was the effect of those questions, what was the burden of them? A. As to advice, and what you are doing yourself in the premises.

Q. Advice as to what? A. As to sale, and judgment of the future values.

Q. Did you gather from his conversation that he was the custodian of these securities as Trustee? A. I don't know that I gathered anything.

Q. Did he indicate to you the purpose of his inquiry? A. Well, I knew that the Cook family had some of these securities, and not so sure but what the trust company held some of them, but I knew that he was interested in some capacity.

Q. Did he tell you that the object of his inquiry was to determine whether or not is was good business to continue them as investments in trust funds? A. He did not.

Q. Nothing occurred between you on that subject? A. No.

Record of the sales of Central Park, North and East River Railroad Co. stock of A. M. Kidder & Co. offered in evidence and marked Exhibit D-1.

Record of 28th and 29th Street Railroad Co. five per cent. bonds, quotations, offered in evidence and marked Exhibit D-2.

Second Avenue Railroad Co. consolidated five per cent. bonds quotations, offered and marked Exhibit D-3.

Mr. Griggs: We offer in evidence letter

to Pierre F. Cook from William Berdan, vice-president, dated December 11, 1911, which answers Mr. Cook's letter of November 28.

Marked Exhibit D-4.

ALL REST.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

January 5, 1914.

Between

CARRIE S. BEAM,
Complainant,

and

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY.
Defendant.

Continuation of examination on January 5, 1914, at the place and in the presence of the Court and the parties as before.

The Court: I understand you desire to put in some testimony for the purpose of showing the condition of the New York companies?

Mr. Harding: Yes.

The Court: As to the secret mortgage?

Mr. Harding: Yes.

The Court: As to the decline in stocks?

Mr. Harding: Yes, sir.

The Court: And as to the action the other stockholders and bondholders took?

Mr. Harding: Yes, your Honor, and with reference to the assets of the companies, how they appeared at the time.

The Court: I think that is all admissible.

Mr. Cook: Weren't those points entirely covered before?

The Court: I don't think they were; they were very delicately touched.

Exhibit C-1—State of Case First Beam Chancery Suit.
Joseph C. Traphagen—Re-called—Direct.

JOSEPH C. TRAPHAGEN, recalled:
Direct examination:

By Mr. Cook:

Q. You have already been sworn in this case? A. Yes.

Q. And you are the manager of the statistical department of the Standard Statistical Bureau, Incorporated, in New York? A. Standard Statistical Bureau, yes, I am.

Q. And as such you made a statement of quotations as to the values of the Central Park, North and East stock, is that stock? A. Stock.

Q. Second Avenue bonds and 28th and 29th Street Crosstown bonds, which were offered in evidence? A. I did.

Q. Have you investigated your records as to the dates when the dividends and interest on these securities was discontinued? A. I have.

Q. Will you please state what was the last payment of dividend on the Central Park, North and East stock, the date? A. The last dividend paid?

Q. Yes. A. On that stock was on January 1, 1908.

Q. And on the Second Avenue First Consolidated 5's bonds what was the last interest paid? A. On February 1st, 1908.

Q. And on the 28th and 29th Street Crosstown bonds what was the last interest paid? A. April 1st, 1908.

Q. Do you know the rates of this interest, and dividends? A. Why, I do of the bonds, the Second Avenue first consolidated bonds were 5 per

cent. issue, 28th and 29th Street Crosstown were also 5's; I think the Central Park, North and East River stock was 9 per cent. stock.

Q. Nine per cent. on par? A. Yes.

Q. And have any dividends been paid since on those? A. Not to my knowledge, we have no record of that.

Mr. Harding: I presume the witness' testimony is correct, but I would like to reserve that point, as to whether it is correct.

Adjourned to Friday, January 16, 1914, at ten o'clock.

Continuation of examination on January 16, 1914, at the place and in the presence of the parties and Court as before.

GEOORGE S. COE, recalled:

Direct examination:

By Mr. Harding:

Q. Mr. Coe, at the time of the appointment of the Receivers of the Metropolitan system what was the understanding among the stockholders and the bankers who were acquainted with the situation as to the condition of the property of the Central Park and the Second Avenue and 28th and 29th Street Railroads? A. I am more

familiar with the Central Park and Second Avenue; 28th and 29th I think was a forelorn hope from the start. The Second Avenue was always supposed until the actual segregation of the property to be a credit property, as evidenced by the fact that just a few months prior to the segregation I sold two or three hundred shares of the Second Avenue stock to Mr. Vreeland for the gratuity fund of the Metropolitan Street Railway Company, which sale was concurred in by Mr. Warren, the treasurer of the Metropolitan Street Railway Company at 210 or 220, my memory fails me, but well over 200.

Q. Who was Mr. Vreeland? A. Mr. Vreeland was the then manager or president of the Metropolitan Street; he was head of the managerial department, anyway, I don't know but what he was acting president; and he evidently thought that that property was a credit property. There was no way of determining exactly what each property returned in point of revenue, because it was so permeated with other organizations on the top line which were showing credit. The Metropolitan Street was then paying 7 per cent. on its dividend, and the New York City Railway I think was the title then of the holding company, was showing credit, so it was fair to presume that all of those underlying properties, so completely submerged as they were, and such prices having been paid by Mr. Whitney and others before their original acquisition were credit properties.

By the Court:

Q. Just put on the record there what you mean

by the term "credit properties?" A. Earners in themselves of all of their interest and guarantee dividends and surplus besides.

Q. How long before the receivership was it that you sold this stock to Mr. Vreeland? A. I don't know, but I should say within a year prior.

Q. Now more particularly with reference to what was supposed to be the condition of the property of these companies, the equipment with reference to the rolling stock, and things of that kind? A. The presumption was natural on the part of the holders that what they were operating with they owned. As a matter of fact the parent company had erased the ownership and put their own stamp on a good many of the supposed cars of the original, which under the leases they were bound to keep up as their equipment; and in the Second Avenue case I distinctly remember they went so far as to cut off all the heavy motors just prior to the segregation and put on light motors, so when we received the equipment we received an inadequate equipment, we had to get in a storm three cars to haul one practically.

The Court: That has all been testified to.

Q. He merely referred to it as skinning the company. A. I don't know that that is relevant, but in the Central Park, North and East the case was similar, under the contract and lease, copy of which I have here, they were bound to replace horses and equipment and all, and when the Court was ordered to throw that property back on the

hands of the stockholders we received it minus equipment, or so far so that we could not,—we had to drop from one-half minute headway to substantially five minutes headway, or almost no service; and we had to go back to the parent and hire equipment from the Metropolitan, we had to hire electric juice from them because they cut us off on that; they fixed their own price, and it was not until we made partial arrangement with the Edison that they came down to something that was more nearly reasonable. That was one of the things that we had to battle with.

Q. Now, at the time of the receivership did you know, did the stockholders generally have means of knowing that the company had been deprived of its property in this way? A. No, but there was a considerable space of time, as I remember, you can confirm it by the records, between the time that the Metropolitan went into the hands of the Receiver and the time when we acutally had those properties thrown back on our hands and it gave some—I don't know but what it was fully six months for them to move. Meanwhile the Metropolitan in the hands of the Receiver, and everything was on the run, you couldn't sell them except at a sacrifice, and in the case of the Second, it dropped from, I don't know, my previous testimony will show, from a high grade guaranteed underlying of the first credit to nothing almost, not marketable except to a man who was willing to take a speculation or a chance on what he thought would be recovery by reason of the fact that the Metropolitan might take it back at some price

later on. There was no market except a speculative market. That was in the case of the Second. The case was a little different in the Central Park, North and East, in this respect, that we were all very sanguine in view of the fact that the City assessed the car barns on Tenth Avenue, I think it is, Ninth or Tenth Avenue, that can be confirmed, in excess of the bonded debt, and well towards a portion of the stock debt; there was a million two hundred thousand bonds, a million eight hundred thousand stock on that property; and those car barns and the 59th Street cars had been occupying such a strong strategic position they were considered physically well worth the bonded and the stock debt; so a good many people clung to that; and also I think they were influenced by the fact that the counsel Judge Dykeman, of Brooklyn, who in the most important phase of the case argued the foreclosure of the Central Park bonds, foreclosure of the mortgage, gave us every reason to believe that he was going to win out on that suit. He was extremely sanguine. The lease is loosely, carelessly drawn piece of work, but all of those of us who were long on the stock, who were holders, I may put it, felt extremely hopeful that we might eliminate that mortgage and have our stock as the first lien, you see. Now the conditions of the market were these. It matured in 1902, long prior to the receivership, and the Farmers' Loan & Trust Company where those coupons and the mortgage was due apparently paid those bonds, and all the stockholders thought that they had the first lien, that the bonds

had been paid, although in the mortgage it recites they have the privilege or refunding, but, mind you, they very carefully secreted those, said nothing about them, took them up to the Guaranty Trust Company, Trustee, successors of the Morton Trust, put them in the Metropolitan collateral trust 4's, never canceled them of record, and it was not until, well, it was not until really about the time of the receivership that we woke up to the fact that that mortgage was existing; and then the Farmers' Loan & Trust Company, at the instigation of the Metropolitan collateral trust 4½, instituted foreclosure proceedings. Then the defense came in. Well, we immediately formed—it was about the time it was segregated—formed this protective committee, represented by Mr. Kemble, now president of the Guaranty Trust, then vice-president, but as representing the Trustee of the Metropolitan 4's, three thousand shares, Dows, of the David Dows Estate, Mr. Brokaw, of Brokaw Brothers—

By Mr. Cook:

Q. Mr. Isaac B. Brokaw? A. His son, representing Isaac B., Isaac B. though was the owner; Mr. Smith, of Brooklyn, he was the largest holder, by the way, three thousand odd shares, and who had declined two hundred and fifty per share from Mr. Whitney just a year or two prior to the segregation, if he would sell his stock, and Mr. Smith said, "Yes, for three hundred, I will."

By Mr. Cook:

Q. Did you hear him say it? A. He was a cus-

tomer of mine; he said Mr. Whitney went to his own house and made him this proposition.

Mr. Cook: If the Court please—
The Court: I cannot regard that.

A. That is not germane; I only want to show you the condition.

By Mr. Cook:

Q. Do you know yourself? A. He being a director, he naturallly went on the protective committee, representing so large an amount; and others, Mr. Pratt, of Charles Pratt & Company, Standard Oil, representing the Pratt Estate, all being large stockholders, and all wishing to sell, if they could sell, but at no time did they sell.

Q. With these different people that you have spoken of who held the stock,—this is Central Park you are speaking of? A. Yes, I am speaking of Central Park more particularly now.

Q. Did you have conferences with them about the advisability of holding? A. Oh, yes; well, not as to the advisability of holding, it was not a question; it was a question whether you could or you could not; you had no choice in the matter, you had to hold; but there was more hope holding in those than there was of some recovery as the outcome of this suit than there was in the case of the Second Avenue, because that was an immediate case of receivership. Central Park, North and East did not go into the hands of a Receiver.

Q. What was the amount of the capital stock is-

sued to the Central Park, North and East? A. A million eight hundred thousand stock, a million two hundred thousand bonds.

Mr. Harding: Right in connection with this testimony, at this point, this testimony of Mr. Coe, I would like to have on the record the Federal Reporter decision; I find that it is all set forth, those decisions in the Federal Court. I will offer—

The Court: You give notice to the other side that you refer to them. I suppose you can hardly put them in evidence.

Mr. Harding: 193 Federal, case of Farmers' Loan & Trust Company v. Central Park, North and East Railroad Company, and others, 193 Federal, 963, which was decided in the Circuit Court of Appeals in the Second Circuit, on December 15, 1911; and the same case, decided below in 181 Federal, 595, in the Circuit Court the Southern District of New York, which was decided September 17, 1910. Then the same case, where an application was made for a certiorari to take it to the United States Supreme Court, reported in 225 United States Supreme Court Reports, 712, where the certiorari was refused.

Q. Now, in your previous testimony you gave us a schedule showing the auction sales of the stock of the Central Park, and bonds of it, I believe, I am not sure, bonds of the Second Avenue, and 28th

and 29th Street, and you also showed the sales that went through your office? A. Yes.

Q. Were these or not practically all the sales that took place? A. I couldn't state—

Mr. Cook: Just a moment. All the sales that were made on the market, or through his office?

A. He means on the market.

Mr. Cook: How can he testify to that?

The Court: What he knows he can testify.

A. I can only say, so far as I can say it is reasonable to assume that there were very few outside, because the market began and ended practically, so far as these specialties were concerned, with about three houses, and the other houses just quit when this thing came, and we had to go in and appoint the Receiver for the Second Avenue, or it was at our instigation, and the same Receiver that was appointed with Mr. Griggs, if you remember, I don't know, but Mr. Griggs can recall and verify this; and the Central Park, North and East, Mr. Linch, the Receiver of the Second Avenue, was made manager of it, a good hard headed operator.

The Court: Now you are running off.

A. I only say, I want to bring out the point, your Honor, that we were more identified with protecting our customers and the stockholders

than anybody else, and naturally the trading came to us on account of our activity.

Q. Did you have special means of knowing, generally speaking, what other brokers were doing with reference to the matter? A. You can confirm that.

Q. I ask you if you did? A. I won't say; that can be confirmed, your Honor, by reference.

The Court: Do you know Mr. Harding's question?

Q. I was asking you whether or not your firm as brokers particularly or specially dealt in these securities? A. Oh, yes.

Q. And on that account did you keep in touch with the market generally, and what was going on with reference to sales? A. Surely, everything naturally tended to our door.

Q. And from that knowledge of yours you have given practically all the sales that took place? A. Yes.

Mr. Cook: I want to give Mr. Coe the widest possible latitude. I think if he will direct his attention to Mr. Harding's questions it will not only save our time, but elucidate the record.

Q. At the time of this receivership, or shortly after, I think you refer in your previous testimony to the Third Avenue trying to make a deal? A. You are speaking of the Metropolitan receivership, sir?

Q. Yes. A. Yes.

Q. I wish you to explain a little more fully what was proposed by the Third Avenue, or what you had in mind with reference to any action of the Third Avenue? A. You are speaking now as to the Central Park, North and East?

Q. Yes. A. Well, the Central Park, North and East is known as the Belt Railroad, crossing 59th Street, going south to South Ferry on the west side, south to South Ferry on First Avenue, &c., on the east side, 59th Street crosstown was the strategical, one of the most important points of the crosstown operation in the traction system. The elimination of the privilege of crossing that point practically cut Mr. Whitridge's property in two; he went up on the east side.

By the Court:

Q. What is that? A. The Third Avenue system; he went up on the east side, and there he broke, and had no crosstown privileges without paying a second fare, no continuous route. He wanted it very particularly, and negotiated, tried to negotiate with the committee for its purchase.

By the Court:

Q. That is for the purchase of Central Park, North and East? A. Yes; but he wanted to give us nothing, and would not mention price, but tried to get us to name figure. Metropolitan Street also continued to want it because of their physical connection, crosstown connection was at 59th Street; but as soon as the Court threw these properties

back they immediately made their own connection at 54th, I think, just below, with Sixth Avenue, and that made their continuous route, so they didn't need it any more, so far as the Metropolitan —but Whitridge still wanted it; but he couldn't see his way clear to pay the price, because he was not in funds at the time.

Q. The main thing I want to get at is what, if anything, was the effect of these negotiations or propositions with reference to the Third Avenue upon the feeling of the stockholders with reference to holding on to the securities? A. Well, it only contributed another point of hope, I might say, because we were giving a continuous route to Mr. Whitridge, but on what he thought was an unequal distribution of the fare, 8 cents I think through, and he argued we got the biggest end of the stick, very short haul, and tried before the commission in every possible way to block us and kill us and acquire the thing, if he could.

Q. Now did the going through the Hudson Tube have an effect upon these railroads, these three roads, that was not expected at the time of this receivership, and for some time afterwarls? A. Eventually undoubtedly it had, because there was a great difference in earnings and the standing of this property between the first trouble and the final dissolution, because a great many things contributed against the property; the Hudson Tube killed a great deal of the ferry business; and then the fact that the bridges landed people at the center of the town killed north and south and east and west, and we found it profitable to operate

much longer headway, because we couldn't fill the cars, and it transformed travel very considerably.

Q. The main thing I want to get at is was the effect of the tube fully appreciated at the time or for some time afterwards? A. Well, I can't say, but for three or four years that made a great transition, I don't know just what period it occurred, but just as soon as the Hudson Tubes got in full swing it affected our earnings.

Q. In your talk with Governor Griggs, Mr. Cook and Mr. Berdan did you, generally speaking, talk about these things as affecting your judgment with reference to holdings? A. I did not about this particular point, but Mr. Berdan kept his ear very close to the ground.

Q. Did you generally speak about all these things that you have spoken of? A. I did as to the suit; I think they inquired as to the suit; as to the operating end I was thrown in contact with them as member of the committee, I don't think they ever said anything about that.

Q. You spoke of having sold your stock of the Central Park Road at 20; I think you did not give us the date when you did sell, about when you sold that stock? A. Well, I can't—

Q. I mean generally speaking? A. I wouldn't state date because—

Mr. Cook: He says he can't name the date.

A. If you had asked me that before, to verify it by my books, I could 'phone to my office and

give exact date; it isn't fair to ask me within the year. Let me say it was towards—when pretty much everything had become exhausted in my mind as to the possibilities of the suit going in our favor.

By the Court:

Q. Then it was during the foreclosure of the mortgage? A. Yes, it was, when we had been defeated once, and it was on appeal.

Q. December, 1911? A. 1910 or 1911, it must have been along there.

Q. The appeal was decided December 15, 1911. I think the price almost shows from the quotations it was about that time. The reason I speak of this, I don't know whether the stenographer got the records wrong or not, but on page 33 you speak about a time when all hope had ended? A. In my opinion.

Q. And he has it as if it was in the latter part of 1908? A. Oh, no, it could not have been.

Q. What would you say? A. It must have been two years later than that. When giving specific dates I think it is fair to give me a chance to verify by my books.

Q. Now at that time when you did sell at 20 what was the special consideration that induced you to sell that stock then? A. There were no considerations, if you wish to put it that way.

Mr. Cook: That is the answer.

A. What influences you might say?

Q. Yes.

Mr. Cook: Please confine yourself to the question.

A. It is a fair question?

By the Court:

Q. What was it that induced you to sell your stock at that time? A. Well, I felt that hope was gone, and I was a trader, and I don't carry dead things on my books, anything you can't borrow on, or in which there isn't some hope of recovery, are naturally junk, and I did it.

Q. Was it a custom in your business to do it in a case of that kind or not?

Mr. Cook: If the Court please—

The Court: I guess that is going pretty far.

A. My previous statement covers that, I think.

Q. Now, I wish you would state a little more particularly the condition of the market in general from 1905 down to this receivership of the Metropolitan Company, which was in September, 1907?

Mr. Cook: If that refers to quotations, I object; they are in evidence.

Q. I am not speaking of this; I am speaking of the market generally, of other things.

Mr. Cook: I would like to have the question a little more definite.

The Court: He is asking about the general state of the market.

Mr. Harding: I want to show that the general decline prior to the receivership was in common with all other stocks.

The Court: I will let you show that.

A. In reply to that I would not trust to my memory, but I would refer you to quotations.

Q. Well, you have them, have you? A. There is a book that gives, William B. Dana's book gives you all those quotations for a period, and make your own deductions. I won't trust to memory.

Q. Oh, I merely want to show generally as to a few stocks; perhaps he will consent to it, from the period when we got these securities in 1905 down to the time of the receivership.

Mr. Cook: When was that?

The Court: You want to know whether during that whole period there was a rising or falling market?

Mr. Harding: I want to show there was a falling market, everything went down.

The Court: Can't this witness answer that question?

A. We all recall that in 1907 we had our unfortunate panic, when values vanished.

Mr. Cook: That is not 1905.

A. No, 1905, things were practically strong, I think guaranteed stocks reached, 1904 and 1905, their maximum.

By Mr. Cook:

Q. That continued up to about the time the Knickerbocker went under in 1907? A. Yes, pretty nearly; I think the statistics would confirm that.

Q. Take the panic of 1907, that panic began early in the year, didn't it? A. My recollection was in the spring, was it not?

Q. The statement offered by the complainant in evidence, Exhibit C-6 being the table of these prices, shows that on December 1st, 1906, the Central Park, North and East was quoted at from 195 to 200. Now this same table shows that on September 28, 1907, at the time of the receivership, it was quoted at from 140 to 165. Now I ask you whether or not that decline in this stock was any greater than the standard railroad stocks decline during that same period due to the panic of that year?

Mr. Cook: May I ask if he knows?

The Court: Of course he won't answer unless he knows.

A. You want a yes or no answer?

The Court: Yes, you can answer yes or no, and if there are explanations needed you can explain afterwards.

A. I can say that all of those guaranteed stocks held right with other things, on account of their exemption from tax, until the misfortune came, and I would not say that the drop was out of har-

mony with the general market or not, I don't think the drop was as keen as the general market, because they couldn't short them, couldn't sell what they didn't have and cover. As a matter of fact, Mr. Vreeland undertook to short Second Avenue and borrow from me.

Q. Have you a memorandum there that will show you, for instance, how some of the standard stocks fell in that period?

The Court: From 1905 down to the time of the Metropolitan receivership.

A. I can quote from my records from 1906 to 1909, which you can read.

Q. Take a low market in 1907 and compare it? A. Until when?

Q. Say compare it with 1905 or 1906? A. I haven't got 1905; I can give you 1906 and 1907 as compared with 1909.

Q. That wouldn't do any good if you haven't the others. I don't think I will go in it any further, if counsel objects to it. Now was there anything known by you that would have induced you to sell the stock of the Central Park or the bonds of the Second Avenue, and the bonds of the 28th and 29th Street roads prior to the time when these receiverships took place? A. Nothing at all.

Cross-examination:

By Mr. Cook:

Q. Mr. Coe, you have acted as broker for the Paterson Safe Deposit & Trust Company, or your

firm, for how many years? A. I cannot flatter myself that I am broker of the Paterson Trust Company.

The Court: Don't quibble over words.

A. I am not; I am not their broker.

Q. How long have you represented the Paterson Safe Deposit and Trust Company in New York City in financial matters? A. I have never boasted of that honor.

Q. I am not seeking to lay any honors upon you; I am merely asking for a fact; how long have you been dealing in stocks in which this company, this bank was interested, for them, representing them in any capacity? A. I never represented them; I simply as a dealer in these various underlying securities sold to the Paterson Safe Deposit & Trust Company, as I would to any other investor, you see.

Q. I haen't any doubt of that. How long has that condition existed? A. As to date I can't say.

Q. How many years? A. I guess since their—when were they organized, can you tell me?

Q. No, I don't know that. Five years, ten years? A. Easily five years, I think.

Q. Ten? A. Have they been living ten?

Q. I am asking you how long you have been selling to them? A. I have always known Governor Griggs, and my partner, C. D. Marvin, came from the same college, and they have always been more particularly intimate, and it was while he was in the firm, they always had happy relations.

Q. Generally speaking, how many years have

you sold securities to this institution? A. I guess ever since they have been buyers of this character of goods.

Q. That harlly answers my question? A. I couldn't tell you as to date.

Q. As many as ten? A. 1904 that would put it; I should say so.

Q. Now with reference to the Hudson Tubes, there wasn't any extraordinary effect upon the general transportation conditions consequent upon the opening of those tubes which could not have been and was not foreseen by careful investors generally, was there? A. I don't suppose so.

Q. It was generally known that they were being successfully financed by Mr. McAdoo and the Harvey-Fisk interests, was it not? A. No, sir, excuse me, at one time their situation was extremely grave, and it was a question whether or not they would complete their enterprise.

Q. But it became apparent that he was going to get away with it? A. No, I don't know as to whether or not people speculated on that—

Q. Weren't the people trading upon the possibility that he might not be able to finance it? A. I don't think that entered.

Q. Now, the Farmers' Loan & Trust Company has been mentioned here as having financed these matters for a time, and you have stated that it was a great surprise when you found that for some things had been carried on the books improperly, or informally, to say the least. Now could that condition have been discovered, without characterizing the condition at all, this condition to which you have testified, and which you say came

as a total surprise to everybody, could that condition have been discovered upon thorough investigation? A. That is a nice question.

Q. That is what I intended to make it? A. You give me the same privilege of answering at the same length?

The Court: Answer it; make your explanation as you go along.

A. The Farmers' Loan & Trust Company——

Q. Just a moment; I think my question was plain; I ask you if it could have been discovered upon investigation, if you know? A. If what could have been discovered?

Q. The conditions to which you testify? A. The condition to which I testified does not apply wholly to the Farmers' Loan & Trust Company; the Farmers' Loan & Trust Company were put in possession of funds to meet those bonds.

Q. I will confine my inquiry to the condition so far as it applies wholly to the Farmers' Loan & Trust Company. Your testimony was directed to that. A. No, excuse me.

The Court: Just hear the question.

Q. Strike out the question and let me frame it connectedly. I direct your attention to the condition to which you testified so far as the Farmers' Loan & Trust Company alone was concerned in it, and which you said came as a great surprise, and I now ask you if this condition so far as it related to the Farmers' Loan & Trust Company,

could have been discovered upon investigation? A. Now will you let me answer the same way? The Farmers' Loan & Trust Company where those bonds——

Q. I think my question is plain. A. Your question is not fair, inasmuch as it was not all Farmers' Loan——

The Court: You may answer yes or no, and I will permit you to make such explanation as is necessary to elucidate the fact.

A. I cannot answer yes or no to the question, your Honor. I can answer in two words if you will let me answer my way.

Q. And what are those two words? A. The Farmers' Loan & Trust Company were payees—

By the Court:

Q. Of what? A. Of that mortgage; they were put in possession of funds to meet that; their duty ended; the bonds were then taken up to another trust company, mark you, I refer to my former statement, which was the Guaranty Trust Company, as successor to the Morton Trust Company, who were Trustees under the Metropolitan 4's, they having merged, you see, meanwhile, and then there is the point in connection with that trust company, that the business was transacted by the Farmers' Loan & Trust Company, *per se,* they were absolutely clean, and they simply performed a perfunctory service.

Q. And what was the name of this other trust company? A. My recollection is that Morton

Trust Company was Trustee under the Metropolitan 4's, and the Guaranty succeeded them in their merger to all their trusteeships.

Q. This transaction occurred then between the Farmers' Loan & Trust Company and the Morton? A. And the Guaranty as successor to the Morton.

Q. And the Guaranty as successor, is that right? A. That is right.

Q. Then there were three trust companies concerned in this transaction which came as a surprise? A. Only two trust companies.

Q. And which were those two? A. The Guaranty as successors of the Morton.

Q. And? A. And Farmers' Loan, but eliminate the Farmers' Loan from it.

Q. Now we will direct our attention very briefly to these two companies, the Guaranty Trust Company, of which Mr. Hemphill is president? A. Yes.

Q. Now you have stated that this transaction came as a great surprise; could it have been discovered upon investigation of the methods of these two companies? A. Might say the surprise came later; I haven't the least doubt had any of us as holders known that those bonds were not actually paid and cancelled, they were apparently so far as we are concerned paid, and we got our money, they are supposed to have been canceled of record.

Q. Could it have been discovered they were not so canceled if investigation had been made? A. It could have, of course.

Q. And was such investigation made by you or by your direction? A. No, nobody——

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Re-called—Cross.

The Court: You have answered the question.

A. Not that I know of, I might add that; whether anybody did or did not, I don't know.

Q. I don't know just where the answer did end; have you finished the answer? A. That is it.

Q. Now you have referred to Mr. Vreeland; I presume you have in mind Mr. Herbert H. Vreeland? A. Yes.

Q. And that gentleman's career was somewhat meteoric, was it not? A. I won't say that.

Q. He came up as a workman, didn't he? A. On the Northern of New York, not as a workman in the Metropolitan.

On the Northern? A. Yes.

Q. A protege of William C. Whitney? A. Yes.

Q. Received a present of a hundred thousand dollars— A. Don't ask me.

The Court: Is this cross-examination?

Mr. Cook: I want to show that Mr. Vreeland was discredited.

The Court: I don't think we can try that issue.

Q. He is no longer president of the company, is he? A. He is in the operating force still, not president of the company, very good operator.

The Court: The testimony taken this morning, and the argument had thereon, does not change my mind as to the final

result in this case at all. I still think that the burden of proof of the central proposition of this case is upon the trustee, and, as I said in my memorandum, I think the trustee has not met it, in accordance with the requirements of the rule established by the Court of Appeals, in this case. I therefore stand by my former memorandum.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

January 16, 1914.

BEAM
vs.
PATERSON SAFE DEPOSIT & TRUST COMPANY,

The Court: Mr. Cook says the defendant accounts for the capital of the fund as of the 27th day of September, 1907, but that since that time there has been no income paid, except certain items of income which are in evidence. Now, he wants not only the capital of the fund accounted for as of that date, but he wants income on that capital accounted for from the date of the default down to the present time.

Mr. Cook: As to the bonds, the interest payable.

The Court: There is no evidence touching the question of dividends on the stock, is there?

Mr. Cook: Yes, sir.

The Court: Except they paid nine per cent. down to the time of the default?

Mr. Cook: Yes, sir. I produced Mr. Traphagen at that time in order to clear up that point, and he testified they paid nine per cent. up to the time of the default, and no dividend has been paid since; and the stock he testified has paid five per cent. up to the time of the default, and no dividend since.

The Court: The stock?

Mr. Cook: The bonds, and those dates were fixed by his testimony.

The Court: What do you say to that, Mr. Harding, if they account for the capital of the fund as of September 24, 1907, what must be done with regard to the income? I think I will ask you to submit a memorandum on that point. It strikes me just now, in the present condition of the case, as being somewhat troublesome.

Mr. Cook: Could we make an appointment to meet your Honor and have the decree settled, or do you want a memorandum first?

The Court: I think I would like to have a memorandum first.

Mr. Cook: Could we make an appointment to settle the decree and then file a memorandum with your Honor long enough ahead of that time to give your Honor time?

The Court: That is what I mean to do.

Mr. Cook: I don't want to give Mr. Harding another notice on the decree.

Mr. Harding I don't see the necessity of me coming again, as far as that is concerned; if he is to submit memorandum let him send it to me and I can answer it, if necessary.

The Court: Very well; let it go that way then.

Exhibit C-1—State of Case First Beam Chancery Suit.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between
CARRIE S. BEAM,
Complainant,
and
THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*,
Defendant.

On final hearing on bill, answer, replication and proofs.

MR. PIERRE F. COOK for the Complainant.
Messrs. GRIGGS & HARDING for the Defendants.
Submitted November 12, 1913.
Decided December 6, 1913.

MEMORANDUM.

HOWELL, V. C.

The claim of the complainant in this case, and the facts upon which she relies, are fully stated in the opinion of Vice-Chancellor Stevenson on the motion to strike out the bill of complain herein, Beam vs. Paterson Safe eDposit Company, 11 Buch., 38, and in the same matter on appeal, 11 Buch., 196. It was held by the Court of Errors and Appeals on the allegations of the bill that the fact that securities which had come to the hands of a Trustee, and which had steadily depreciated in value from the beginning of the trust until the

shrinkage amounted to nine-tenths of the value, made a *prima facie* case of lack of good faith, or a failure to exercise reasonable discretion on the part of the Trustees, and that such a dealing with the trust funds called for an explanation by the Trustees of their action in holding on to securities which were steadily declining until they had shrunk to one-tenth of the value which they had at the time they became part of the trust estate. The burden of proof of the "exercise of good faith and reasonable discretion," to use the words of the statute (L. 1899, p. 236), is thus thrown upon the Trustee, and the only question now before the Court is whether the Trustee has met that burden. I am constrained to reach the conclusion that it has not. It appears that the securities in question were investments made by the testatrix in her lifetime, and that when the time came for the executors to transfer the fund in question to the Trustee, the Trustee instead of insisting upon cash accepted the securities in question without objection. This was in 1905. The securities at that time were considered by investors generally to be of the first quality. The market values began to depreciate about a year after the beginning of the trust, and continued thereafter to depreciate until the present time. The Trustee watched the decline in value, consulted with investors in relation thereto, discused the matter at meetings of its finance committee, procured the appointment of its president and a member of its finance committee as directors of one of the companies which is-

sued some of the securities, and otherwise kept in view the declining values. It owned and held as an investment some of the same securities which it held in trust for the complainant, so that its treatment of the trust fund was the same as was accorded by it to its own property. It appears to have done everything that it could have done in the way of informing itself of the disasters which finally overtook and wrecked the securities, but failed to perceive the inevitable outcome which now appears to be so plain.

I therefore think that as a matter of fact there was no lack of good faith on the part of the Trustee, nor do I find any affirmative charge which can be construed into such a charge. That leaves open the question of the exercise by it of a reasonable discretion in holding on to the securities after they had begun to decline. On this question the judgment must be for the complainant. It must have sufficiently appeared to the Trustee from the early part of 1906 forward that the securities held by it were doubtful in character, else there would have been no need of the exercise of the great watchfulness and anxiety testified to on the part of the defendant. There are probably no securities in which people invest their money which can be said to be safe at all events and under all circumstances. Thereis always some element of chance which time may develop. When, however, a security comes within the region of doubt, in my opinion it would be the part of prudence and dis-

cretion to eliminate it from a trust fund at the earliest possible moment. This the Trustee neglected to do. It is upon this ground that I deem the defendant to be liable to the complainant.

For the purpose of ascertaining the amount with which the defendant should be charged, it will be necessary to fix the date at or about the time of which securities should have been sold. As nearly as I can get at it there was sufficient decline by August 1, 1906, to inform the Trustee that a doubt about their value existed. Without having heard argument on this point, this date seems to me to be approximately correct. However, the point will be left open, and may be discussed at the time of settling the decree.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Complainant,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants.*	Final Decree. On Bill etc.,

This cause coming on to be heard upon bill, answer, replication and proofs in the presence of Pierre F. Cook, of counsel with the complainant, and of Griggs & Harding, of counsel with the defendants The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, and the Court having read the pleadings and heard the proofs and arguments of counsel for the several parties, and having considered the same, and being of the opinion that the complainant is entitled to relief,

It is on this third day of February, nineteen hundred and fourteen, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, orderd, adjudged and decreed that the defendant The Paterson Safe Deposit and Trust Company charge itself as Trustee for the complainant with the sum of Seven thousand one hundred and fifty-six dollars, being the value on September 24, 1907, of a one-fifth part of the securities held by it, consisting of three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New

York) first mortgage five per cent. bonds due nineteen hundred and ninety-six, of the par value of One thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds due nineteen hundred and forty-eight, of the par value of One thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each, which came to the hands of the said defendant The Paterson Safe Deposit and Trust Company as Trustee, and that said defendant The Paterson Safe Deposit and Trust Company charge itself with and pay to the complainant the sum of Two thousand six hundred and six dollars and twenty-nine cents, being the amount of unpaid income from said trust fund, which should have been paid to said complainant to the present time.

And it is further ordered, adjudged and decreed that the costs of the complainant in this suit be taxed including a counsel fee of Six hundred dollars for her counsel, and that the same be paid by the said defendant The Paterson Safe Deposit and Trust Company.

E. R. WALKER,
C.

Respectfully advised,
J. E. HOWELL,
V. C.

Exhibit C-1—State of Case First Beam Chancery Suit.
(Filed February 11, 1914.)

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Complainant,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants.*	On Bill, etc. Notice of Appeal.

The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, all of the defendants in the above-entitled cause, hereby appeal from the order made in this Court by the Honorable James C. Howell, one of the Vice-Chancellors in the above stated cause on the third day of February, nineteen hundred and fourteen, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, February 7th, 1914.

GRIGGS & HARDING,
Solicitors of Appellants.

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

JOHN W. GRIGGS,
Of Counsel with Appellants.

Exhibit C-1—State of Case First Beam Chancery Suit.

(Filed February 11, 1914.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CARRIE S. BEAM, *Complainant-Respondent,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants-Appellants.*	On Appeal. Petition.

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

The petition of The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke, and Lavinia Fayerweather, the appellants in the above stated cause, respectfully shows:

That your petitioners find themselves aggrieved by an order and decree made in the above cause by his Honor Edwin Robert Walker, Chancellor, bearing date the third day of February, nineteen hundred and fourteen, in this respect, to wit, that the said order and decree adjudges that the defendant The Paterson Safe Deposit and Trust Company charge itself as Trustee for the complainant with the sum of Seven thousand one hundred and fifty-six dollars, being the value on September twenty-fourth, nineteen hundred and seven, of a one-fifth part of the securities held by it

consisting of three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds due nineteen hundred and ninety-six, of the par value of One thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds due nineteen hundred and forty-eight, of the par value of One thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each, which came to the hands of the said defendant The Paterson Safe Deposit and Trust Company as Trustee, and that the said defendant The Paterson Safe Deposit and Trust Company charge itself with and pay to the complainant the sum of Two thousand six hundred and six dollars and twenty-nine cents, being the amount of unpaid income from said trust fund, and that the costs of the complainant in the said suit be taxed, including a counsel fee of Six hundred dollars for her counsel, and that the same be paid by the said defendant The Paterson Safe Deposit and Trust Company, and your petitioners appeal from the whole of the said order and decree upon the grounds that The Paterson Safe Deposit and Trust Company is not liable to account to the said complainant for any loss occasioned by its continuance of the investments aforesaid, and that the complainant is not entitled

to any relief or to any affirmative decree whatever in this cause, and that the same is erroneous, for that the Court of Chancery should have by its order and decree dismissed the complainant's bill.

Your petitioners therefore pray that the said order and decree may be wholly reversed, set aside and for nothing holden, and that your petitioners may have such further relief in the premises as shall be equitable and just.

GRIGGS & HARDING,
Solicitors for and of Counsel with Appellants.

Exhibit C-1—State of Case First Beam Chancery Suit.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CARRIE S. BEAM, *Complainant-Respondent,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants-Appellants.*	On Appeal. Answer to Petition of Appeal.

The answer of the above-named respondent to the petition of appeal of the above-named appellants:

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

PIERRE F. COOK,
Solicitor for and of Counsel with Respondent.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-1.

(*Copy of Will*)

I, SARAH A. COOKE, of the City of Paterson, in the County of Passaic and State of New Jersey, widow of John Cooke, deceased, do make, publish and declare this to be my last Will and Testament hereby revoking all former wills and codicils by me made.

FIRST: I direct that all my just debts and funeral expenses be paid as soon after my death as possible.

SECOND: I give and bequeath the mortgage which I now hold on the property of Charles B. Donele in the City of Providence, Rhode Island, to the said Charles B. Donele.

THIRD: I give and bequeath all the shares of stock of the Paterson Savings Institution, of which I may die possessed, to my three sons, John S. Cooke, Frederick W. Cooke and Charles D. Cooke to be equally divided among them, share and share alike.

FOURTH: I give and bequeath all books of which I may die possessed to my five children, or to those of them surviving at the time of my death, to be divided among them as they shall agree; but if they shall not be able to agree upon the division of any or all of said books, then I direct that such latter books be sold to such of my said children as will pay the highest price therefor.

Exhibit C-1.
Exhibit C-1—State of Case First Beam Chancery Suit.

FIFTH: I give and bequeath my piano to my granddaughter Helen Cooke.

SIXTH: I give and bequeath to each of my children such articles of my household furniture, not otherwise disposed of, as may be in their respective residences at the time of my death.

SEVENTH: I give and bequeath all of my clothing and jewelry to my two daughters, Lavinia Fayerweather and Carrie S. Beam, or to the one of them surviving at the time of my death, to dispose of and distribute as I may by letter to them direct; and, if I do not so by letter direct, then to keep the same for themselves or otherwise dispose of them as they or she may think best.

EIGHTH: I give and bequeath to my executors hereinafter named the sum of Twenty-five thousand dollars ($25,000) in trust to invest the same and to pay the income therefrom, in equal monthly installments, to my sister Caroline A. Swinburne, so long as she shall live; and upon the death of my said sister Caroline A. Swinburne to divide the said sum of Twenty-five thousand dollars ($25,000) equally among my five children.

NINTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars $(10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments, to my niece Lavinia Courtney so long as she shall live and remain unmarried; and, upon the marriage or death of the said Lavinia Courtney, to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-1.

TENTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars ($10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments, to my niece Elizabeth Courtney so long as she shall live and remain unmarried; and upon the marriage or death of the said Elizabeth Courtney to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

ELEVENTH: I direct that all the rest, residue and remainder of the estate of which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give give to my son Charles D. Cooke,, another of which parts I give to my daughter Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam.

TWELFTH: The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to equally divided among the children of such child.

THIRTEENTH: If at the time of my death any of my said children shall be dead, I direct that then

the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate.

FOURTEENTH: I hereby appoint my said five children, John S. Cooke, Frederick W. Cooke, Charle D. Cooke, Lavinia Fayerweather and Carrie S. Beam, excutors of this my last Will and Testament, hereby giving and granting unto them or the survivor of them full power and authority to grant, bargain, sell and convey any or all of my real estate, at public or private sale at such times and upon such terms as to them shall seem meet.

IN WITNESS WHEREOF I have hereunto set my hand and seal this twenty-fifth day of October, in the year of our Lord, one thousand nine hundred and two.

SARAH A. COOKE (L. S.)

Signed, sealed, published and declared by the above-named testatrix, Sarah A. Cooke, as and for her last Will and Testament in the presence of us, both of us being present at the same time, and therupon we, at her rquest, in her presence and in the presence of each other have at the same time subscribed our names hereto as witnesses.

ANNA M. WOLF, Athenia, N. J.

RALPH SHAW, Little Falls, N. J.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-3.

Mr. William Berdan,

Vice President Safe Deposit & Trust Co.

Dear Mr. Berdan:

The list of securities that compose the trust fund which my mother, the late Sarah A. Cooke, desired to have formed for the benefit of her heirs, I received some weeks ago.

There seems to be a very big shrinkage in this trust fund which I think ought to be explained.

This shrinkage means a great deal to me and I do not think I ought to let it pass without a close inquiry as to the cause, and also as to where the responsibility rests.

The Central Park N. & E. River stock has ceased to pay dividends which fact reduces my income very materially.

In your account you put the market value at $46,800.00. Is that correct? If so, how do you fix the value? Have there been any sales upon which to base the price?

Yours very truly.

CARRIE S. BEAM.

Bogota, N. J.
Sept. 7, 1911.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-4.

PIERRE F. COOK,
Counsellor at Law,
No. 1 Exchange Place,
Jersey City, N. J.

November 28, 1911.

Paterson Safe Deposit & Trust Co.,
Paterson, N. J.

Gentlemen:

Mrs. Carrie S. Beam has recently consulted me in reference to the trust fund held by you under the will of Sarah A. Cooke for the benefit of beneficiaries of whom she is one. There appears to be a very serious depreciation of the two bonds of the Second Avenue Railroad of New York, the three bonds of the Twenty-eighth & Twenty-ninth Sts. Crosstown Railroad of New York, and of the 225 shares of Central Park North & East River Railroad, forming a portion the of trust fund. An extended examination of quotations during the period of the trust, and of the authorities bearing upon the questions involved, has satisfied me that the trustee has rendered itself liable to make good the deficiency, and I have so advised my client.

I am preparing to institute appropriate legal proceedings to that end, but before doing so, will be glad to talk over the situation with your counsel or other representative. Will you be good enough to let me hear from you at your convenience, and oblige,

Yours very truly,

PIERRE F. COOK.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-5.

PIERRE F. COOK,
Counsellor at Law,
No. 1 Exchange Place,
Jersey City, N. J.

January 5, 1912.

Paterson Safe Deposit & Trust Co.,
Paterson, N. J.

Gentlemen:

I have your letter of 11th ult. in reference to trust fund held by you under the will of Sarah A. Cooke for the benefit of Carrie S. Beam and other beneficiaries. Before advising Mrs. Beam that she had a good cause of action I had examined the authorities bearing upon the questions involved and especially the Act of 1889, page 236 as construed by the Courts.

In view of the confident attitude of the Trust Co. I presume there is no hope of an adjustment without suit, and will therefore be obliged to take that course.

Yours very truly,

P. F. COOK.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-6.

New York, Nov. 11, 1913.

Mr. Pierre F. Cook,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:—

We hand you herewith a list of quotations from April 1905 to September 1913, on the following securities:

28th & 29th St. Crosstown R. R. First 5s, 1996,
Second Ave. R. R. Cons. 5s, 1948,
Central Park, North & East River Ry. Stock.

These quotations have been prepared from the records in our office and are correct to the best of our knowledge and belief.

Very truly yours,

STANDARD STATISTICS BUREAU.
By LUTHER L. BLAKE,
Pres.
By J. C. TRAPHAGEN,
Mgr., Stat. Dept.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-6.

	Central Park North & East River Ry. Stock. Date	Bid	Asked
	Apr. 29, 1905	205	210
	May 6, 1905	205	210
10	May 13, 1905	205	210
	May 20, 1905	206	---
	May 27, 1905	200	210
	June 3, 1905	205	210
	June 10, 1905	205	210
	June 17, 1905	205	210
	June 24, 1905	205	210
	July 1, 1905	205	210
	July 8, 1905	205	210
20	July 15, 1905	205	210
	July 22, 1905	205	210
	July 29, 1905	205	210
	Aug. 5, 1905	205	210
	Aug. 12, 1905	205	210
	Aug. 19, 1905	205	210
	Aug. 26, 1905	205	210
	Sept. 2, 1905	205	210
	Sept. 9, 1905	205	210
	Sept. 16, 1905	205	210
30	Sept. 23, 1905	205	209
	Sept. 30, 1905	205	209
	Oct. 7, 1905	205	209
	Oct. 14, 1905	205	210
	Oct. 21, 1905	205	210
	Oct. 28, 1905	205	210
	Nov. 4. 1905	205	210
	Nov. 11, 1905	205	210
	Nov. 18, 1905	205	210
40	Nov. 25, 1905	205	210
	Dec. 2, 1905	202	208
	Dec. 9, 1905	202	208

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Dec. 16, 1905	205	209
Dec. 23, 1905	205	209
Dec. 30, 1905	205	209
Jan. 6, 1906	205	209
Jan. 13, 1906	205	209
Jan. 20, 1906	205	209
Jan. 27, 1906	205	209
Feb. 3, 1906	205	209
Feb. 10, 1906	205	209
Feb. 17, 1906	205	209
Feb. 24, 1906	205	209
Mar. 3, 1906	205	209
Mar. 10, 1906	205	209
Mar. 17, 1906	205	209
Mar. 24, 1906	205	209
Mar. 31, 1906	205	209
Apr. 7, 1906	205	209
Apr. 14, 1906	205	209
Apr. 21, 1906	202	204
Apr. 28, 1906	200	205
May 5, 1906	197	200
May 12, 1906	198	202
May 19, 1906	198	202
May 26, 1906	198	202
June 2, 1906	198	202
June 9, 1906	198	202
June 16, 1906	202	202
June 23, 1906	198	202
June 30, 1906	198	202
July 7, 1906	198	202
July 14, 1906	198	202
July 21, 1906	198	202
July 28, 1906	195	200
Aug. 4, 1906	195	200

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Aug. 11, 1906	195	200
Aug. 18, 1906	195	200
Aug. 25, 1906	195	200
Sept. 1, 1906	195	200
Sept. 8, 1906	195	200
Sept. 15, 1906	195	200
Sept. 22, 1906	195	200
Sept. 29, 1906	195	200
Oct. 6, 1906	195	200
Oct. 15, 1906	195	200
Oct. 20, 1906	195	200
Oct. 27, 1906	195	200
Nov. 3, 1906	195	200
Nov. 10, 1906	195	200
Nov. 17, 1906	195	200
Nov. 24, 1906	195	200
Dec. 1, 1906	195	200
Dec. 8, 1906	195	200
Dec. 15, 1906	190	200
Dec. 22, 1906	190	200
Dec. 29, 1906	190	200
Jan. 5, 1907	190	200
Jan. 12, 1907	190	196
Jan. 19, 1907	190	195
Jan. 26, 1907	190	195
Feb. 2, 1907	190	195
Feb. 9, 1907	190	195
Feb. 16, 1907	185	195
Feb. 23, 1907	185	195
Mar. 2, 1907	175	195
Mar. 9, 1907	170	190
Mar. 16, 1907	160	190
Mar. 23, 1907	175	190
Mar. 30, 1907	175	190

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Apr. 6, 1907	175	190
Apr. 13, 1907	175	190
Apr. 20, 1907	175	190
Apr. 27, 1907	175	190
May 4, 1907	180	193
May 11, 1907	180	193
May 18, 1907	180	193
May 25, 1907	180	193
June 1, 1907	180	193
June 8, 1907	158	163
June 15, 1907	158	163
June 22, 1907	150	165
June 29, 1907	150	165
July 6, 1907	150	165
July 13, 1907	150	165
July 20, 1907	150	165
July 27, 1907	150	165
Aug 3, 1907	150	165
Aug. 10, 1907	145	165
Aug. 17, 1907	140	165
Aug. 24, 1907	130	160
Aug. 31, 1907	130	160
Sept. 7, 1907	140	165
Sept. 14, 1907	140	165
Sept. 21, 1907	140	165
Sept. 28, 1907	140	165
Oct. 5, 1907	140	160
Oct. 12, 1907	130	160
Oct. 19, 1907	130	160
Oct. 26, 1907	130	160
Nov. 2, 1907	125	150
Nov 9, 1907	125	150
Nov. 16, 1907	125	150
Nov. 23, 1907	125	150

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Nov. 30, 1907	125	150
Dec. 7, 1907	125	150
Dec. 14, 1907	125	150
Dec. 21, 1907	125	150
Dec. 28, 1907	125	150
Jan. 4, 1908	125	150
Jan. 11, 1908	100	150
Jan. 18, 1908	100	150
Jan. 25, 1908	120	150
Feb. 1, 1908	120	150
Feb. 8, 1908	100	150
Feb. 8, 1908	100	150
Feb. 15, 1908	100	150
Feb. 22, 1908	100	150
Feb. 29, 1908	100	130
Mar. 7, 1908	100	130
Mar. 14, 1908	100	130
Mar. 21, 1908	100	130
Mar. 28, 1908	100	130
Apr. 4, 1908	100	130
Apr. 11, 1908	100	130
Apr. 18, 1908	100	130
Apr. 25, 1908	100	130
May 2, 1908	100	140
May 9, 1908	110	140
May 16, 1908	100	130
May 23, 1908	100	130
May 30, 1908	100	130
June 6, 1908	100	130
June 13, 1908	80	100
June 20, 1908	80	100
June 27, 1908	75	100
July 4, 1908	75	100
July 11, 1908	75	100

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
July 18, 1908	--	100
July 25, 1908	--	110
Aug. 1, 1908	60	100
Aug. 8, 1908	50	90
Aug. 15, 1908	50	100
Aug. 22, 1908	50	100
Aug. 29, 1908	60	100
Sept. 5, 1908	64	100
Sept. 12, 1908	64	100
Sept. 19, 1908	64	100
Sept. 26, 1908	60	100
Oct. 3, 1908	50	100
Oct. 10, 1908	50	100
Oct. 17, 1908	50	100
Oct. 24, 1908	50	100
Oct. 31, 1908	50	100
Nov. 7, 1908	50	100
Nov. 14, 1908	50	100
Nov. 21 1908	50	80
Nov. 28, 1908	50	80
Dec. 5, 1908	50	80
Dec. 12, 1908	35½	70
Dec. 19, 1908	35½	70
Dec. 26, 1908	30	60
Jan. 2, 1909	30	60
Jan. 9, 1909	30	60
Jan. 16, 1909	30	60
Jan. 23, 1909	30	60
Jan. 30, 1909	30	60
Feb. 6, 1909	30	60
Feb. 13, 1909	30	60
Feb. 20, 1909	30	60
Feb. 27, 1909	30	60
Mar. 6, 1909	30	60

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Mar. 13, 1909	30	60
Mar. 20, 1909	30	60
Mar. 27, 1909	30	60
Apr. 3, 1909	30	60
Apr. 10, 1909	30	60
Apr. 17, 1909	30	60
Apr. 24, 1909	30	60
May 1, 1909	30	60
May 8, 1909	30	40
May 15, 1909	30	40
May 22, 1909	30	40
May 29, 1909	25	40
June 5, 1909	25	40
June 12, 1909	30	60
June 19, 1909	30	60
June 26, 1909	30	60
July 3, 1909	30	70
July 10, 1909	30	50
July 17, 1909	30	s36½
July 24, 1909	30	36½
July 31, 1909	30	36½
Aug. 7, 1909	30	36½
Aug. 14, 1909	30	36½
Aug. 21, 1909	28	34
Aug. 28, 1909	28	34
Sept. 4, 1909	30	35
Sept. 11, 1909	28	34
Sept. 18, 1909	30	40
Sept. 25, 1909	30	40
Oct. 2, 1909	28	34
Oct. 9, 1909	30	40
Oct. 16, 1909	30	40
Oct. 23, 1909	30	40
Oct. 30, 1909	30	50

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Nov. 6, 1909	30	50
Nov. 13, 1909	30	50
Nov. 20, 1909	30	50
Nov. 27, 1909	30	50
Dec. 4, 1909	30	50
Dec. 11, 1909	30	50
Dec. 18, 1909	30	50
Dec. 25, 1909	30	50
Jan. 1, 1910	30	50
Jan. 8, 1910	30	50
Jan. 15, 1910	30	50
Jan. 22, 1910	30	50
s—Sale price.		
Jan. 29, 1910	30	50
Feb. 5, 1910	30	50
Feb. 12, 1910	30	50
Feb. 19, 1910	30	50
Feb. 26, 1910	30	50
Mar. 5, 1910	30	50
Mar. 12, 1910	30	50
Mar. 19, 1910	30	50
Mar. 26, 1910	30	50
Apr. 2, 1910	30	50
Apr. 9, 1910	30	50
Apr. 16, 1910	30	50
Apr. 23, 1910	30	50
Apr. 30, 1910	30	50
May 7, 1910	30	50
May 14, 1910	30	50
May 21, 1910	30	50
May 28, 1910	24	40
June 4, 1910	24	40
June 11, 1910	20	25
June 18, 1910	20	34

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
June 25, 1910	18	30
July 2, 1910	18	30
July 9, 1910	18	30
July 16, 1910	18	30
July 23, 1910	15	25
July 30, 1910	15	25
Aug. 6, 1910	15	25
Aug. 13, 1910	15	25
Aug. 20, 1910	15	25
Aug. 27, 1910	15	25
Sept. 3, 1910	15	25
Sept. 10, 1910	15	25
Sept. 17, 1910	15	25
Sept. 24, 1910	15	25
Oct. 1, 1910	15	25
Oct. 8, 1910	18	27
Oct. 15, 1910	15	30
Oct. 22, 1910	15	s18⅛
Oct. 29, 1910	18	24
Nov. 5, 1910	12	20
Nov. 12, 1910	12	19
Nov. 19, 1910	12	19
Nov. 26, 1910	15	21
Dec. 3, 1910	15	21
Dec. 10, 1910	15	21
Dec. 17, 1910	15	21
Dec. 24, 1910	15	21
Dec. 31, 1910	10	15
Jan. 7, 1911	14	20
Jan. 14, 1911	14	20
Jan. 21, 1911	14	20
Jan. 28, 1911	15	20
Feb. 4, 1911	15	20

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Feb. 11, 1911	15	20
Feb. 18, 1911	15	20
Feb. 25, 1911	15	20
Mar. 4, 1911	15	20
Mar. 11, 1911	12	20
Mar. 18, 1911	5	15
Mar. 25, 1911	5	15
Apr. 1, 1911	5	15
Apr. 8, 1911	5	15
Apr. 15, 1911	5	15
Apr. 22, 1911	5	15
Apr. 29, 1911	5	15
May 6, 1911	5	15
May 13, 1911	5	s15⅜
May 20, 1911	10	20
May 27, 1911	10	20
June 3, 1911	10	20
June 10, 1911	10	20
June 17, 1911	10	20
June 24, 1911	10	20
July 1, 1911	10	20
July 8, 1911	10	20
July 15, 1911	10	20
July 22, 1911	10	20
July 29, 1911	10	20
Aug. 5, 1911	10	20
Aug. 12, 1911	10	20
Aug. 19, 1911	10	20
Aug. 26, 1911	10	20
Sept. 2, 1911	10	20
Sept. 9, 1911	10	20
Sept. 16, 1911	10	20
Sept. 23, 1911	10	20

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Sept. 30, 1911	10	20
Oct. 7, 1911	10	20
Oct. 14, 1911	10	20
Oct. 21, 1911	10	20
Oct. 28, 1911	10	20
Nov. 4, 1911	10	20
Nov. 11, 1911	10	20
Nov. 18, 1911	10	20
Nov. 25, 1911	10	20
Dec. 2, 1911	10	20
Dec. 9, 1911	10	20
Dec. 16, 1911	10	20
Dec. 23, 1911	10	20
Dec. 30, 1911	10	20
Jan. 2, 1912	10	20
Jan. 13, 1912	10	20
Jan. 20, 1912	10	20
Jan. 27, 1912	10	20
Feb. 3, 1912	10	20
Feb. 10, 1912	7	20
Feb. 17, 1912	7	20
Feb. 24, 1912	7	20
Mar. 2, 1912	10	16
Mar. 9, 1912	10	16
Mar. 16, 1912	10	16
Mar. 23, 1912	10	16
Mar. 30, 1912	10	16
Apr. 6, 1912	10	16
Apr. 13, 1912	10	s14½
Apr. 20, 1912	10	--
Apr. 27, 1912	10	--
May. 4, 1912	10	15
May 11, 1912	10	15
May 18, 1912	10	15

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
May 25, 1912	10	15
June 1, 1912	10	15
June 8, 1912	10	15
June 15, 1912	10	15
June 22, 1912	10	15
June 29, 1912	10	15
July 6, 1912	10	15
July 13, 1912	10	15
July 20, 1910	10	15
July 27, 1910	--	14
Aug. 3, 1912	5	15
Aug. 10, 1912	--	13
Aug. 17, 1912	--	13
Aug. 24, 1912	--	13
Aug. 31, 1912	--	13
Sept. 7, 1912	--	13
Sept. 14, 1912	--	13
Sept. 21, 1912	--	13
Sept. 28, 1912	--	13
Oct. 5, 1912	--	13
Oct. 12, 1912	--	13
Oct. 19, 1912	--	10
Oct. 26, 1912	--	s10
Nov. 2, 1912	--	--
Nov. 9, 1912	3	8
Nov. 16, 1912	3	10
Nov. 23, 1912	3	10
Nov. 30, 1912	3	10
Dec. 7, 1912	3	10
Dec. 14, 1912	3	10
Dec. 21, 1912	3	10
Dec. 28, 1912	2	7
Jan. 4, 1913	2	7

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Jan. 11, 1913	2	7
Jan. 18, 1913	2	7
Jan. 25, 1913	2	7
Feb. 1, 1913	2	7
Feb. 8, 1913	2	4
Feb. 15, 1913	1	3
Feb. 22, 1913	1	3
Mar. 1, 1913	1	3
Mar. 8, 1913	1	3
Mar. 15, 1913	1	3
Mar. 22, 1913	1	3
Mar. 29, 1913	1	3
Apr. 5, 1913	1	3
Apr. 12, 1913	1	3
Apr. 19, 1913	1	3
Apr. 26, 1913	1	3
May 3, 1913	1	3
May 10, 1913	1	3
May 17, 1913	1	3
May 24, 1913	1	3
May 31, 1913	1	3
June 7, 1913	1	3
June 14, 1913	1	3
June 21, 1913	1	3
June 28, 1913	1	3
July 5, 1913	1	3
July 12, 1913	1	3
July 19, 1913	1	3
July 26, 1913	1	3
Aug. 9, 1913	1	3
Aug. 16, 1913	1	3
Aug. 23, 1913	1	3
Aug. 30, 1913	1	3
Sept. 6, 1913	1	3

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Sept 13, 1913	1	3
Sept. 20, 1913	1	3
Sept. 27, 1913	1	3
Oct. 4, 1913	1	3

MONTHLY QUOTATIONS APRIL 1905 TO DATE.
28th & 29th Sts. Crosst. R .R. 1st 5s due 1996.

	Bid	Asked
Apr. 1905	112	113½
May 1905	111	113
June 1905	111	112½
July 1905	111	112½
Aug. 1905	111	112½
Sept. 1905	111	112½
Oct. 1905	111	111½
Nov. 1905	111	113
Dec. 1905	110	112½
Jan. 1906	111	112
Feb. 1906	111	112
Mar. 1906	110	112
Apr. 1906	106	108
May 1906	106	108
June 1906	106½	109½
July 1906	105	106
Aug. 1906	102	105¼
Sept. 1906	105	106
Oct. 1906	105	106½
Nov. 1906	104	106
Dec. 1906	105	--
Jan. 1907	104	107
Feb. 1907	104	107
Mar. 1907	100	105
Apr. 1907	101	103

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
May 1907	101	103
June 1907	100	103
July 1907	100	103
Aug. 1907	90	95
Sept. 1907	85	93
Oct. 1907	80	85
Nov. 1907	80	90
Dec. 1907	75	85
Jan. 1908	75	80
Feb. 1908	65	75
Mar. 1908	65	70
Apr. 1908	75	90
May 1908	80	82½
June 1908	--	50
July 1908	25	40
Aug. 1908	15	40
Sept. 1908	10	50
Oct. 1908	15	30
Nov. 1908	15	25
Dec. 1908	25	35
Jan. 1909	25	40
Feb. 1909	25	35
Mar. 1909	25	35
Apr. 1909	25	35
May 1909	25	32
June 1909	25	29
July 1909	25	32
Aug. 1909	20	25
Sept. 1909	20	25
Oct. 1909	15	25
Nov. 1909	15	20
Dec. 1909	--	20
Jan. 1910	10	20
Feb. 1910	15	25

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Mar. 1910	15	25
Apr. 1910	15	30
May 1910	15	30
June 1910	15	30
July 1910	15	30
Aug. 1910	15	30
Sept. 1910	15	30
Oct. 1910	10	20
Nov. 1910	10	20
Dec. 1910	10	20
Jan. 1911	10	25
Feb. 1911	15	25
Mar. 1911	15	25
Apr. 1911	15	25
May 1911	15	22
June 1911	15	21
July 1911	18	25
Aug. 1911	18	25
Sept. 1911	15	25
Oct. 1911	17	20
Nov. 1911	19½	23
Dec. 1911	21¾	26
Jan. 1912	20	25
Feb. 1912	20	25
Mar. 1912	20	25
Apr. 1912	23	30
May 1912	23	30
June 1912	23	30
July 1912	20	28
Aug. 1912	20	28
Sept. 1912	20	28
Oct. 1912	20	28
Nov. 1912	20	28
Dec. 1912	20	28

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Jan. 1913	16	25
Feb. 1913	--	20
Mar. 1913	5	20
Apr. 1913	5	20
May 1913	5	20
June 1913	5	20
July 1913	5	20
Aug. 1913	5	15
Sept. 1913	7	15

Second Ave. R. R. Co. Cons. 5s, due 1948.

	Bid	Asked
Apr. 1905	115	117
May 1905	114½	116
June 1905	115	116
July 1905	115	116
Aug. 1905	115	116
Sept. 1905	114½	115½
Oct. 1905	114½	115½
Nov. 1905	114½	115½
Dec. 1905	113	114½
Jan. 1906	114½	116
Feb. 1906	113½	115
Mar. 1906	113	114½
Apr. 1906	112	113
May 1906	112½	115
	Bid	Asked
June 1906	110	113
July 1906	109	112
Aug. 1906	111	113
Sept. 1906	109	112
Oct. 1906	110½	112½
Nov. 1906	110	112

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Dec. 1906	110	112
Jan. 1907	110	112
Feb. 1907	108	111
Mar. 1907	107	110
May 1907	107	109
June 1907	105½	107
July 1907	102	107
Aug. 1907	104	108
Sept. 1907	95	98
Oct. 1907	94	98
Nov. 1907	94	98
Dec. 1907	93	98
Jan. 1908	86	95
Feb. 1908	83	90
Mar. 1908	83	87
Apr. 1908	85	90
May 1908	87	92
June 1908	87	92
July 1908	87	90
Aug. 1908	81	85
Sept. 1908	80	85
Oct. 1908	75	80
Nov. 1908	77	80
Dec. 1908	81	82
Jan. 1909	81	82
Feb. 1909	80	82
Mar. 1909	75	78
Apr. 1909	74	79
May 1909	78	82
June 1909	78	82
July 1909	74	77
Aug. 1909	74	77
Sept. 1909	74	77
Oct. 1909	70	75

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Nov. 1909	70	75
Dec. 1909	65	70
Jan. 1910	60	65
Feb. 1910	55	60
Mar. 1910	55	60
Apr. 1910	50	60
May 1910	50	60
June 1910	50	60
July 1910	--	57
Aug. 1910	50	60
Sept. 1910	50	60
Oct. 1910	55	58
Nov. 1910	56	59
Dec. 1910	56	60
Jan. 1911	55	58
Feb. 1911	50	56
Mar. 1911	45	55
Apr. 1911	45	52
May 1911	44	50
June 1911	44	50
July 1911	45	50
Aug. 1911	40	60
Sept. 1911	40	48
Oct. 1911	40	45
Nov. 1911	43	44
Dec. 1911	43	46
Jan. 1912	45	48
Feb. 1912	45	48
Mar. 1912	45	48
Apr. 1912	45	48
May 1912	40	46
June 1912	42	45
July 1912	40	45
Aug. 1912	40	45

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Sept. 1912	38	42
Oct. 1912	35	42
Nov. 1912	35	40
Dec. 1912	35	40
Jan. 1913	30	38½
Feb. 1913	25	36
Mar. 1913	25	35
Apr. 1913	20	32
May 1913	25	30
June 1913	22	28
July 1913	22	28
Aug. 1913	20	28
Sept. 1913	25	30

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit D-1.

Members New York Stock Exchange — 5 Nassau Street, 11 Pine Street

A. M. KIDDER & CO.

BANKERS

New York March 6, 1913.

RECORD OF SALES OF CENTRAL PARK, NORTH & EAST RIVER R. R. CO. STOCK.

Date.	Shares.	Price.
Dec. 20, 1907,	3	122
Jan. 25, 1908	50	120
Apr. 6, 1908,	50	125
July 2, 1908	8	100
Aug. 6, 1908,	5	100
1909 no sales of record.		
Mch. 4, 1910,	24	41
Mch. 4, 1910,	26	41
Mch. 8, 1910,	6	40
May 18, 1910,	30	25
May 25, 1910	50	26
May 27, 1910,	20	25
Mch. 30, 1911,	100	12½
AUCTION SALES.		
June 10, 1908,	1	82
Dec. 9, 1908	34	35½
July 14, 1909	8	36½
June 22, 1910,	65	22
Oct. 19, 1910,	369	18⅛
May 10, 1911,	40	15⅜
May 17, 1911,	20	19
Apr. 10, 1912,	70	14½
Oct. 23, 1912,	110	10

Exhibit D-2.

Members New York
Stock Exchange
A. W. KIDDER & CO., BANKERS
5 Nassau Street
11 Pine Street
New York, March 6, 1913.

TWENTY-EIGHTH & TWENTY-NINTH STREET RAILWAY CO. 5% BONDS.

	1908		1909		1910		1911		1912	
	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked
Jan.	75	85	25	35	--	20	--	20	21¾	26
Feb.	75	80	25	40	10	20	10	25	20	25
Mch.	65	75	25	35	15	25	15	25	20	25
Apr.	65	70	25	35	15	25	15	25	20	25
May	75	90	25	35	15	30	15	25	23	30
June	80	82½	25	32	15	30	15	22	23	30
July		50	25	29	15	30	15	21	23	30
Aug.	25	40	25	32	15	30	18	25	20	28
Sept.	15	40	20	25	15	30	18	25	20	28
Oct.	10	50	20	25	15	30	15	25	20	28
Nov.	15	30	15	25	10	20	17	20	20	28
Dec.	15	25	--	20	10	20	19½	23	20	28

40 30 20 10

Exhibit D-3.

Members New York
Stock Exchange
A. W. KIDDER & CO., BANKERS
5 Nassau Street
11 Pine Street
New York, March 6, 1913.

40 30 20 10

SECOND AVENUE RAILROAD CO. CONSOLIDATED 5% BONDS

	1909		1909		1910		1911		1912	
	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked
Jan.	93	98	81	82 bonds	65	70 bonds	56	60 bonds	43	46 bonds
					63	70 c/d	56	60 c/d	43	46 c/d
Feb.	86	95	81	82 bonds	60	65 bonds	55	58 bonds	45	48 bonds
			79½	81 c/d	63	70 c/d	55	58 c/d	45	48 c/d
Mch.	83	90	80	82 bonds	55	60 bonds	50	56 bonds	45	48 bonds
			79½	81 c/d	55	60 c/d	50	56 c/d	45	48 c/d
Apr.	83	87	75	78 bonds	55	60 bonds	45	55 bonds	45	48 bonds
			75	78 c/d	55	60 c/d	45	55 c/d	45	48 c/d
May	85	90	74	79 bonds	50	60 bonds	45	52 bonds	45	48 bonds
			75	78 c/d	50	60 c/d	45	52 c/d	44¾	48 c/d
June	86¼	(sale)	78	82 bonds	50	60 bonds	44	50 bonds	40	46 bonds
			75	78 c/d	50	60 c/d	44	50 c/d	40	47 c/d
July	87	92	78	82 bonds	50	60 bonds	44	50 bonds	42	45 bonds
			75	78 c/d	50	60 c/d	44	50 c/d	42	45 c/d
Aug.	--	90	74	77 bonds	--	57 bonds	45	50 bonds	40	45 bonds
			75	78 c/d	--	57 c/d	45	50 c/d	40	45 c/d
Sept.	81	85	74	77 bonds	50	60 bonds	40	60 bonds	40	45 bonds
			--	-- c/d	50	60 c/d	40	60 c/d	40	45 c/d
Oct.	80	85	74	77 bonds	50	60 bonds	40	48 bonds	38	42 bonds
			--	-- c/d	50	60 c/d	40	48 c/d	38	42 c/d
Nov.	75	80	70	75 bonds	55	58 bonds	40	45 bonds	35	42 bonds
			--	-- c/d	55	60 c/d	40	45 c/d	35	42 c/d
Dec.	77	80	70	75 bonds	56	59 bonds	43	44 bonds	35	40 bonds
			68	72 c/d	56	59 c/d	43	44 c/d	35	40 c/d

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit D-4.

December 11, 1911.

Pierre F. Cook, Esq.,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:—

Referring to your letter of November 28th ultimo, relative to two bonds of the Second Avenue R. R. Co., three (3) bonds of the 28th and 29th St. Crosstown R. R. of New York and 225 shares of Central Park, North and East River Railroad, which form a part of the Trust Fund held by this Company as Trustee, under the will of Sarah A. Cooke, deceased, we beg to say that these securities were original investments of Mrs. Cooke, made in her life time, which came into the hands of her Executor, and by her Executor were transferred into this Company as Trustee as a part of the residuary Estate.

At the time this Company received these securities the street railway lines of the three corporations mentioned were leased to the Metropolitan Street Railway Company, and there was no reason to suppose that the leases, which were perpetual, would not be maintained and the interest on the bonds and the dividends of 9% on the stock, the payment of which was provided for by the lease, would not also be met.

The collapse of the Metropolitan Street Rail-

way was sudden and unexpected. Since that collapse there has never been a time in which, in the exercise of reasonable discretion, it seemed to be prudent to dispose of these securities. This Company claims that it exercised good faith and reasonable discreation in continuing these investments, and they are advised by their counsel that under the laws of New Jersey they are not accountable for any loss by reason of such continuance. See laws of 1899, page 236, section 1.

Yours very truly,

THE PATERSON SAFE DEPOSIT & TR. CO.,
Vice President.

Exhibit C-2.

(Filed Dec. 16, 1914.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

NOVEMBER TERM, 1914.

Between CARRIE S. BEAM Respondent, and PATERSON SAFE DEPOSIT & TRUST CO., Appellant.	On Appeal From Chancery.

DECREE OF REVERSAL.

This cause coming on to be heard at the March Term, one thousand nine hundred and fourteen, in the presence of the respective parties, and the case having been read, and the argument of counsel, as well as the record and proceedings duly considered upon the appeal set forth and specified in the petition of appeal, &c.

It is thereupon this sixteenth day of November, in the year of our Lord one thousand nine hundred and fourteen, ordered, adjudged and decreed that the decree of the Chancellor be in all things reversed, set aside and for nothing holden, with costs of this court to be taxed, and that the said Appellant do recover its costs in the Court of

Chancery to be taxed, and that a decree be entered in the Court of Chancery dismissing the bill of complaint of said Carrie S. Beam, with costs to be taxed, as aforesaid, and that the record and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to law and the practice of said Court.

On motion of

GRIGGS & HARDING,
Solicitors and of Counsel with
Appellant.

Endorsed:
"Filed Dec. 16, 1914,
David S. Crater
~~THOMAS F. MARTIN~~,
Clerk."

Exhibit C-3.

(Filed Jan. 28, 1915.)

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM Complainant, and THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, *et als.*, Defendants.	On Bill, &c. Decree of Reversal.

Upon opening the matter this day to the Court by Griggs & Harding of counsel with the defendants (the appellants in the Court of Errors and Appeals) and it appearing that the said defendants filed an appeal from the decree made in this cause on the Third day of February, Nineteen Hundred and Fourteen, to the Court of Errors and Appeals in the last resort; and that the said appeal has been determined by the said Court of Appeals and the proceedings have been remitted to this Court to proceed further thereon according to law; and upon reading the remittitur from the said Court of Appeals whereby it appears that it was ordered and decreed by said Court that the said decree of the Chancellor be in all things reversed, set aside and for nothing holden, with costs of this Court to be taxed, and that the said appellant do recover its costs in the Court of Chancery to be taxed, and that a decree be entered in the Court of Chancery dismissing the bill of complaint of said Carris S. Beam with costs to be taxed as aforesaid.

Exhibit C-3.

It is thereupon on this 26th day of January, 1915, on motion as aforesaid, ORDERED, that the decree of said Court of Appeals be and the same is hereby made the decree of this Court; and that the bill of complaint of the said Carrie S. Beam be and is hereby dismissed.

And it is further ordered, adjudged and decreed that the costs of the defendants in this suit be taxed, including a counsel fee of three hundred and fifty Dollars, for their counsel and that the same be paid by the said complainant, Carrie S. Beam.

Respectfully Advised,

J. E. HOWELL,
V. C.

E. R. WALKER,
C.

Exhibit C-4.

(Filed Nov. 16, 1914.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

March Term, 1914. No. 111.

Between
CARRIE S. BEAM
Respondent,
vs.
PATERSON SAFE DEPOSIT & TRUST CO.,
Appellant.

Argued March 18, 1914.

Decided November , 1914.

A trustee received as part of the trust fund stocks and bonds of corporations in which the testator had invested in his lifetime, which were supposed to be of the highest class; subsequently they depreciated at a time of financial depression; another corporation to which the properties had been leased became insolvent; the court directed the receiver to borrow money on receiver's certificates to pay the rent, and it was paid; later there was a default, but there was then no market for the securities; quotations were merely nominal and of a speculative character; the securities were unsalable: *Held,* that since the good faith of the trustee was conceded, it had under the special facts of the case exercised reasonable discretion and was not liable for the loss.

Exhibit C-4.

Appeal from decree advised by Vice-Chancellor Howell. Opinion 82, Eq. 518.

Pierre F. Cook for respondent.

John W. Harding (Griggs & Harding,) for appellant.

The opinion of the court was delivered by SWAYZE, J.

We agree with the learned Vice-Chancellor that the burden of proving that the trustee exercised good faith and reasonable discretion is upon the defendant, as we have already decided upon appeal from the order refusing to strike out the bill. 81 Eq., 195. We differ from his conclusion that the defendant has failed to establish the exercise of good faith and reasonable discretion, which is the duty imposed by the statue. C. S. 2271, pl. 34. Its good faith is not questioned. Our examination of the facts shows that the securities were supposed to be of the highest class; that on August 1, 1906, the date fixed by the Vice-Chancellor as the time when the trustee should have sold, they had fallen as follows: Central Park, North & East River Ry. stock from 206 bid and 210 asked to 195 bid and 200 asked; 28th and 29th Streets Crosstown R. R. first mortgage bonds from 112 bid and 113½ asked to 102 bid and 105¼ asked; Second Avenue R. R. Co. Consolidated 5's due 1948 from 115 bid and 117 asked to 111 bid and 113 asked. The prices at the date fixed by the Vice-Chancellor while lower than when the

trust company acquired the securities, were still prices commanded by high grade investments. To hold that so slight a variation in the market required the trustee to sell would in effect require a trustee to watch the "ticker" as any mere speculator might. This is not the duty of a trustee. He is to invest in safe productive securities and mere fluctuations in market price which may be due to variation in the current rate of interest or in the current demand for ready money in panic or in war, ought not to force him to sell. Were it otherwise, it would practically be impossible to invest a trust fund with any approach to permanence, and the loss of interest on the constant reinvestment might be a serious loss to the *cestui que* trust. These considerations suffice to show that the date fixed by the Vice-Chancellor cannot be justified. We cannot, however, leave the case at that since subsequently the securities became practically worthless, and a rapid fall began in the summer of 1907. This is shown to have been a time of financial depression when the best securities dropped in value. We think that even then the trustee was not required to sell, since great shrinkages take place at such times which are subsequently recovered; the trustee might be held liable for loss if he sold when the market was low, and there was a subsequent recovery. The testimony is uncontradicted that nothing occurred to disturb any one's sense of security until about September, 1907, when receivers were appointed for the New York City Railroad Company, the lessee of the

companies whose securities are now in question. This led to the trustee taking steps to protect the interests of its *cestuis que* trust as well as its own interests as holders of the same securities. We see no reaon to doubt, and there is no evidence to the contrary, that all was done that was possible. The Federal Court in New York directed the Receivers of the New York City Railroad Company to operate the whole system, and to borrow money on receivers' certificates to pay the rent on the leases of the three companies. There was no default until 1908. The dividend on the Central Park stock was paid on January 1, 1908, the interest on the Second Avenue bonds on February 1, 1908, and on the 28th and 29th Street Crosstown bonds on April 1, 1908. As long as the dividends and interest were regularly paid under an order of the Court, the trustees were certainly justified in disregarding the market fluctuations, unless there was something else to arouse their suspicions; there is no proof that there was. When the default in dividends and interest came later, the time had passed when it was possible to save the situation. There was no market for the securities; the quotations are shown to have been merely nominal and of a speculative character; as one witness said "you couldn't do anything; the bottom fell out completely" or as another witness put it, "they were unsalable; where a stock was quoted as 50 bid, if you had offered ten shares you couldn't have got fifty per cent of the nominal quotation price." In the face of this uncontradicted testimony, we are unable to see

what the trustee could have done; its good faith is unquestioned and is conceded; we think it exercised reasonable discretion. It is indeed suggested that the trustee should have sought the protection of an order of court under the act of 1889; but such an order would have done no more than give the authority which the statute of 1899 itself conferred. From whatever source the authority came, whether from the court or the legislature, the trustees would at least have been bound thereafter to exercise the good faith and reasonable discretion that the act of 1899 requires.

It is also suggested that perhaps an examination of the records would have disclosed that the old mortgage on the Central Park road was uncancelled. The difficulty is that it is impracticable to require trustees investing in bonds for a comparatively small amount, a portion of a large issue, to make such an examination. The expense would be prohibitory, and as business is done by careful investors, reliance must be had upon the opinions of bankers who have made or may properly be supposed to have made, the necessary examination and inquiry for their clients. This is one of the useful purposes served by bankers in our modern business organization.

We think the defendant in this case has proved that it exercised good faith and reasonable discretion and as the statute enacts is not accountable for any loss by reason of the continuance of the investments. If it is necessary to refer to

the adjudged cases, it is enough to cite Matter of Weston, 81 N. Y., 503; Matter of Mercantile Trust Co., 141 N. Y., Supp. 460; Bowker v. Pierce, 130 Mass., 262. The decree must be reversed and a decree entered dismissing the bill with costs.

Endorsed:

"Filed Nov. 16, 1914.
DAVID S. CRATER,
Clerk."

Exhibit—Printed Pursuant to Stipulation.

(See Vol. I, p. 279.)

United States of America,
Southern District of New York,
ss,:

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have herunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 9th day of May, in the year of our Lord One Thousand Nine Hundred and twenty three, and of the Independence of the said United States the One Hundred and Forty-seventh.

ALEXANDER GILCHRIST JR.
Clerk.

New Jersey State Library

Intervening Petition of Solomon H. Kohn.

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, *Complainants,*	
against	In Equity.
NEW YORK CITY RAILWAY COMPANY and METROPOLITAN STREET RAILWAY COMPANY, *Defendants.*	

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

And now comes Solomon H. Kohn, who is now and for more than six years last past has been the owner of five-hundred (500) shares of the capital stock of the defendant Metropolitan Street Railway Company, and a resident, inhabitant and citizen of the City, County, and State of New York, on behalf of himself and all other owners of capital stock of the defendant Metropolitan Street Railway Company, who may elect to become parties to this petition and share the expense of the prosecution thereof, and states:

1. That the defendant, Metropolitan Street

Railway Company, is a consolidated corporation organized and existing under the laws of the State of New York.

II. That at the time your petitioner purchased his said stock in said Metropolitan Company as hereinafter set forth, said Company owned and operated and still owns and operates a most important and valuable system of street railroads in the City of New York, practically covering the entire surface street railroad system in the Boroughs of Manhattan and the Bronx in the City of New York. That at the time your petitioner bought his said stock Metropolitan Street Railway Company was capitalized for Fifty-two Million (52,000,000.00) Dollars, divided into five hundred and twenty thousand (520 000) shares of the par value of One Hundred ($100.00) Dollars each. That at said time and for many years before then and ever since then and now said Metropolitan Street Railway Company and its directors were and are actually controlled by Thomas F. Ryan and his associates, said Ryan, however, having been and being the dominant factor in the control of said corporation and its directors.

III. That by reason of reports published and sent forth by said Thomas F. Ryan, his agents and employees and by the directors of said Metropolitan Street Railway Company, all of whom were under the control of said Ryan, as to the enormous earnings of said Company, and as to its excellent financial condition, your petitioner in the year 1901 purchased five hundred (500) shares of said stock for about One Hundred and Seventy ($170.00) Dollars per share, which was the market price, aggregating more than Eighty-

five Thousand ($85,000.00) Dollars. That your petitioner bought said stock in the open market, but now believes that said stock so purchased by him was the stock of said Ryan and associates or of said Ryan alone. That your petitioner ever since then has been and now is the owner of said stock. That during certain periods, however, two hundred (200) shares of said stock were temporarily transferred from the name of your petitioner to that of brokers who held the same as collateral for loans made to your petitioner thereon. That the numbers of the present certificates owned and held by your petitioner and standing in his name are as follows:

Certificate No.	15244	dated	Jan. 17, 1901,	100	shares
" "	18020	"	June 11, 1901,	100	"
" "	20566	"	Nov. 29, 1901,	100	"
" "	25683	"	Oct. 16, 1902,	100	"
" "	31688	"	Apr. 29, 1904,	100	"

IV. That after the purchase by your petitioner of said stock in said Metropolitan Street Railway Company said Ryan and associates organized a Street Railway Company in the City of New York under the name of Interurban Street Railway Company, and subsequently changed the name thereof to the New York City Street Railway Company, and said Interurban Street Railway Company will hereafter be referred to as the City Railway Company. That said City Railway Company and its directors ever since that time have been and now are controlled by said Ryan and his associates, said Ryan however having been and being the dominant factor in the control of said corporation and its directors.

V. That in the year 1902 said Ryan and associates, then in control of said Metropolitan Street Railway Company and said City Railway Com-

pany, for purposes of their own, conceived the scheme and plan of leasing said Metropolitan Street Railway system to said City Railway Company, then called the Interurban Street Railway Company. That a lease of extremely doubtful legality and validity dated February 14th, 1902, was pretended to be entered into between said City Railway Company, then called the Interurban Street Railway Company, and said Metropolitan Street Railway Company, in and by which said lease said City Railway Company agreed to pay to said Metropolitan Street Railway Company for the period of nine hundred and ninety-nine (999) years as an annual rental for said system a sum equal to seven per cent (7%) on the stock of said Metropolitan Street Railway Company, amounting to Fifty-two Million ($52,000,000.00) Dollars as aforesaid, and agreed in addition to pay all the interest on all of the mortgage indebtedness of said Metropolitan Street Railway Company and on all of the constituent companies of its system, and in addition agreed to keep said railway system in repair, and to pay all taxes, assessments, rentals payable under the leases of lines leased to the Metropolitan Street Railway Company, interest on the funded debt and fixed charges of said Metropolitan Street Railway Company. A copy of said lease is on file in this case, and by reference thereto is made a part hereof.

VI. That in and by said lease it was provided that said Metropolitan Street Railway Company should turn over to said City Railway Company, then called the Interurban Street Railway Company, a vast quantity of valuable securities which said Metropolitan Street Railway Company then

had, and that said City Railway Company should pay to the Metropolitan Street Railway Company Twenty--three Million ($23,000,000.00) Dollars. That said Metropolitan Street Railway Company complied with its part of these provisions of said lease, but upon information and belief your petitioner states that the full amount of said Twenty-three million ($23,000,000.00) Dollars) was not turned over by said City Railway Company, then called the Interurban Street Railway Company, to said Metropolitan Street Railway Company, and that the directors of said Metropolitan Street Railway Company and said Thomas F. Ryan have never properly accounted for such part of said Twenty-three Million ($23,000,000.00) Dollars as was turned over to them by said Interurban Street Railway Company. And your petitioner is further informed and believes that a suit ought to be brought on behalf of said Metropolitan Street Railway Company against said directors and said Ryan to obtain such an accounting, but that the present directors of said Metropolitan Street Railway Company being under the control of said Thomas F. Ryan have wrongfully failed to bring such suit. That a suit ought to have been brought long ago by said Metropolitan Street Railway Company against said New York City Railway Company to recover that part of said Twenty-three Million ($23,000,000.00) Dollars which has not been paid, but all of the directors of said Metropolitan Street Railway Company having been and being under the control of said Ryan and associates, have wrongfully failed to bring any suit or institute any proceedings or make any effort in that behalf.

VII. That simultaneously with the delivery of

said lease said Metropolitan Street Railway Company executed a mortgage dated March 21st, 1902, on all of its property, tangible and intangible, to the Morton Trust Company as Trustee. That at said time and ever since then and now said Thomas F. Ryan, controlled and now controls said Morton Trust Company in every way, and is now Vice-President thereof. That the avowed purpose of said mortgage was to substitute the bonds to be issued thereunder for the bonds then outstanding and secured on the property of said Metropolitan Street Railway Company and of its constituent lines. A copy of said mortgage is on file in this case, and by reference thereto is made a part hereof. That your petitioner has no knowledge or information sufficient to form a belief as to how many bonds were issued under said mortgage, or as to the validity of said bonds which were issued, or as to what if any consideration was given therefor.

VIII. Upon information and belief that at and prior to the time that your petitioner purchased his said stock relying on the statements of said Ryan and of his agents, and of the directors of said Metropolitan Street Railway Company as to the earnings and condition of said Company as aforesaid, said Thomas F. Ryan and his associates were large holders of stock in said Metropolitan Street Railway Company, and that they procured your petitioner and others to purchase said stock at enormous prices by making said statements and by declaring and paying dividends on the stock of said Metropolitan Street Railway Company in excess of the earnings thereof, and by paying said dividends out of capital and not out of earnings, and thus said Ryan and his associates sold and

unloaded nearly all of their said stock on the public at enormous prices, and have since become and are now largely interested in the bonds of said Metropolitan Street Railway Company secured by said mortgage to the Morton Trust Company.

IX. That in September, 1907, said Thomas F. Ryan and his associates, for the purpose of wiping out and freezing out the stock of the Metropolitan Street Railway Company held by your petitioner and others similarly situated, and of freezing your petitioner and others similarly situated out of all interest in said Metropolitan Street Railway property and system, instituted the following proceedings, with the intent of acquiring such interest themselves without paying your petitioners and others similarly situated anything therefor; and your petitioner states that unless his prayer hereinafter set forth is granted, said Ryan and his associates will succeed in accomplishing such design and purpose on their part.

X. Said Ryan and his associates procured the plaintiffs, the Degnon Construction Company and the Pennsylvania Steel Company, which it is alleged were creditors of the City Railway Company on open account, to file a creditors' bill in this Court in this case on September 24th, 1907, to put the property of said City Railway Company in the hands of a receiver. That said City Railway Company had ample funds, if said Ryan had desired that it should do so, to pay said claims of said plaintiff companies, which together did not exceed the sum of Fifty Thousand ($50,000) Dollars, and said plaintiffs could, if said claims had been past due, have collected the same on execution after obtaining judgment. It was alleged in

said bill that said plaintiffs were not citizens of the State of New York, and that the City Railway Company was a citizen of the State of New York.

XI. That said Ryan and his associates being in control of said New York City Railway Company, simultaneously with the institution of said proceedings by said plaintiffs had the solicitors for said City Railway Company join in said petition for a receivership and admit its insolvency and the claims of said creditors, and upon information and belief your petitioner states that in said proceeding (this suit) said Ryan and his associates procured the appointment of Adrian H. Joline and Douglas Robinson as receivers and said Joline and Robinson were duly appointed receivers in this case and duly qualified, and are now acting as such receivers. That said Adrian H. Joline is a member of the bar of the State of New York, and has frequently acted as counsel for said City Railway Company, and your petitioner upon information and belief states that at the time of his appointment said Joline was acting as counsel for said City Railway Company, and that during all said time said City Railway Company as aforesaid was controlled and in effect operated by said Thomas F. Ryan. That said Douglas Robinson so selected by said Thomas F. Ryan, as your petitioner is informed and believes, as receiver, was at the time of his appointment connected as real estate broker with the street railroads of the City of New York controlled by said Ryan, and that in that way he was in the employ of said Ryan; and that said Douglas Robinson for about two years has been and your petitioner believes still is the real estate appraiser

of the Equitable Life Insurance Company, controlled by said Thomas F. Ryan, and selected by said Ryan for that purpose.

XII. That although the City Railway Company merely had a lease of the properties of said Metropolitan Street Railway Company, said receivers immediately took charge of all the physical properties of said Metropolitan Street Railway Company.

XIII. That the directors of said Metropolitan Company in violation of their duties as such directors and instead of procuring counsel to assert the rights of said Company, assisted in the attempt to wreck said Metropolitan Street Railway Company, and acting under the orders and directions of said Ryan immediately had a petition filed in this case on behalf of the Metropolitan Street Railway Company, asking that said Joline and Robinson be ordered as receivers to take charge of the property of said Metropolitan Company, and thereupon an order was entered herein in conformity with said petition and said Joline and Robinson duly qualified and are now acting as receivers for the property of the Metropolitan Street Railway Company under said order. That a copy of said petition so filed by said Metropolitan Street Railway Company on October 1st, 1907, and of said order entered the same day, are on file in this cause and by reference thereto are made a part of this petition.

XIV. That said Joline and Robinson as receivers of the City Railway Company have defaulted in the payment of an installment of rent amounting to about Nine Hundred and Ten Thousand ($910,000.00) Dollars, which was due

to the Metropolitan Street Railway Company on October 15th, 1907, under said lease, but said Joline and Robinson as receivers of the Metropolitan Street Railway Company have not brought any suit against themselves as rceeivers of the City Railway Company to recover such installment of rent and have not in any way attempted to assert any right of any kind against themselves as receivers of the City Railway Company, on account of such default.

XV. That notwithstanding the fact that said Joline and Robinson as receivers of the City Railway Company are daily receiving enormous sums of money from the operation of the Metropolitan Street Railway system, they are not paying any rent therefor and are making no effort as receivers of the Metropolitan Street Railway Company to obtain any part of such money from themselves as receivers of the City Railway Company.

XVI. That if the receivers of said Metropolitan Street Railway Company were appointed who would have no interest to conserve except that of the stockholders and creditors of the Metropolitan Street Railway Company, such receivers would immediately institute proceedings for the purpose of recovering said rent and terminating said lease and obtaining possession of said property by reason of the defaults of said City Railway Company, and would also institute suits against the directors of said Metropolitan Street Railway Company and said Ryan and his associates for declaring illegal dividends.

XVII. That many questions of very great financial importance as to the construction of said lease, which is very complicated, are constantly

arising as between the City Railway Company and the Metropolitan Street Railway Company. That in the settlement of such questions it would become the duty of independent receivers of the Metropolitan Street Railway Company to advocate and support a construction in favor of that company, whereas the receivers of the New York Railway Company in the interest of the trusts taken over by them as receivers for the City Railway Company, would probably advocate and support an entirely different construction.

XVIII. Said Joline and Robinson as receivers of said City Railway Company contend that by reason of certain clauses in said lease, notwithstanding the fact that said City Railway has gone into the hands of a receiver and has defaulted in the payment of rent, and it is manifest from its own statments and from this fact that it cannot and will not be able at the end of a year to pay the amount due under the lease and that it will not be able to fulfill the terms of the lease, that they as receivers of the Metropolitan Street Railway Company must sit still and cannot take any action of any kind within said period of one year, and that it is not even their duty as receivers of the Metropolitan Street Railway Company to attempt, on behalf of the Metropolitan Street Railway Company, to assert any such claim. Said Joline and Robinson as such receivers of the Metropolitan Street Railway Company have shown by their conduct that notwithstanding the insolvency of the City Railway Company and its manifest inability to pay, and notwithstanding the terms of the lease and the common law and statutory rights which the Metropolitan Street Railway Company would have as lessor, that it is their

purpose to assert that as receivers of the Metropolitan Street Railway Company they are not required and ought not to be required to do anything to assert such rights, or even attempt to assert them. Your petitioner further states that the Directors of said Metropolitan Street Railway Company in violation of their duty as directors, have supported this destructive attitude so taken by the receivers of the City Railway Company. Your petitioner is informed by counsel and believes that all the circumstances considered the Metropolitan Street Railway Company is entitled to the immediate possession of its property and that if independent receivers were appointed such return could and would be enforced immediately.

XIX. That said Ryan and associates immediately after the appointment of said Joline and Robinson as receivers of said Metropolitan Street Railway Company and about October 9th, 1907, had said Ryan's Morton Trust Company as trustee file an independent suit in this court for the purpose of having said Joline and Robinson appointed Receivers of said Metropolitan Street Railway Company in said suit. That the general counsel of said Morton Trust Company is the personal counsel of said Ryan, and was during all the period aforesaid the counsel for all the railroads above mentioned, and is the general counsel of all the street railroads in the City of New York controlled by said Ryan, and your petitioner is informed and believes that all the suits and proceedings hereinbefore mentioned were instituted and defended as aforesaid under his direction.

XX. That the only ground on which it was alleged or could have been alleged that said Morton Trust Company, which is a corporation of

the State of New York, could have come into this court and brought an independent suit, was because of the fact that the property of the Metropolitan Street Railway Company was put in the hands of receivers in this case.

XXI. That immediately upon the filing of said suit by said Morton Trust Company the Metropolitan Street Railway Company acting under the order and direction of said Ryan and associates, and pursuant to the scheme aforesaid, consented to the appointment of said Joline and Robinson as such receivers, and they were so appointed and qualified and are now acting as such. That the Board of Directors of the Metropolitan Street Railway Company in violation of their duties as such directors failed to oppose said application and failed to in any way assert the rights of said company; in fact, to carry out the scheme aforesaid, but acting under the instructions of said Ryan, they consented thereto.

XXII. That thereafter and on or about November 9th, 1907, said Ryan and his associates through said Morton Trust Company filed a bill of foreclosure in this court to foreclose said mortgage from the Metropolitan Street Railway Company to said Morton Trust Company, trustee, making said receivers and all the parties hereto defendants.

XXIII. That it was a part of the scheme of said Ryan and his associates in order to bring about an exceedingly speedy foreclosure of said Metropolitan Street Railway Company mortgage, to have a default take place in the payment of the rental due on the Third Avenue Railway Company property, being one of the lines leased to the Metropolitan Street Railway Company

system. Said lease dated April 13, 1900, was covered by said mortgage, and it was provided in said Metropolitan Street Railway Company mortgage that in case of default by said Metropolitan Street Railway Company in payment of any rentals of any leased lines, that should constitute a ground for foreclosure, provided that the same should continue for the period of three months after written notice. That your petitioner is informed and believes that although no reason exists therefor except the desire to consummate the scheme aforesaid to bring about a default in the said mortgage to said Morton Trust Company, a default was made in the payment of the instalment of rent due from the Metropolitan Street Railway Company to the Third Avenue Railway Company falling due October 13th, 1907. That notwithstanding that the three months had not elapsed since the default of the payment of the Third Avenue rental, said Ryan procured the Morton Trust Company, controlled by him as aforesaid, to begin said foreclosure suit to foreclose said mortgage on or about November 9th, 1907. Your petitioner states, and he has been so advised by his counsel, that in said foreclosure suit no legal or proper ground is given for the foreclosure of said mortgage, but your petitioner upon information and belief states that unless independent receivers are appointed for the Metropolitan Street Railway Company having no other object than the conservation of the rights of the stockholders and creditors of said Metropolitan Street Railway Company, that a decree of foreclosure will be promptly entered and the rights of all the stockholders of said Metropolitan Street Railway Company, including

your petitioner, will be wiped out in said foreclosure.

XXIV. That said mortgage by its terms is subject to the said lease from the Metropolitan Street Railway Company to the New York City Railway Company (formerly the Interurban Company) and that therefore the New York City Railway Company and Messrs. Joline and Robinson, its receivers have nothing to lose by the foreclosure of said mortgage and are not in any way concerned whether the same be foreclosed or not.

XXV. Upon information and belief that at all the times since its incorporation, said Metropolitan Street Railway Company has earned and is now earning sufficient money to comply with the terms of said mortgage to said Morton Trust Company and to pay all its fixed charges and running expenses and to pay a dividend on its stock in addition thereto, despite the fact that it has been greatly mismanaged, and that had said company been properly managed it would have earned a greater amount. That the effect of said lease, dated February 14th, 1902, from the Metropolitan Street Railway Company to the New York City Railway Company (then the Interurban Street Railway Company) was to divert all the property, assets and earnings of said Metropolitan Street Railway Company so that, though it is solvent, it is, by reason of said lease, unable to pay the interest on its mortgage and its other obligations thereunder, and said mortgage will be foreclosed and the stock of said unless said New York City Railway Company Metropolitan Street Railway Company, including that of your petitioner, will be wiped out,

complies with its part of said lease or unless the property of said Metropolitan Street Railway Company be taken from said City Railway Company on account of its default and restored to the Metropolitan Street Railway Company.

XXVI. That it will be necessary for independent receivers who have no past or present relations with said Ryan and his associates to bring divers and sundry suits against Ryan and his associates for the purpose of obtaining an accounting from them with reference to the many transactions which they have had with the Metropolitan Street Railway Company and for the purpose of recovering from them large sums of money.

XXVII. That six of the nine directors of the Metropolitan Street Railway Company are also directors of the New York City Railway Company, which has only nine directors. That the directors of said Metropolitan Street Railway Company who are entirely under the control of said Ryan and his associates have proven themselves faithless to the trusts undertaken by them as such directors, and have not only not taken any steps to rescue said Metropolitan Street Railway and its property, but have done everything they could to aid the schemes, plans and purposes aforesaid, and it is necessary in the interests of the stockholders of said Metropolitan Street Railway Company that its property and interests should be taken out of their hands and placed in the hands of a receiver.

XXVIII. Your petitioner further states that it is necessary that receivers should be immediately appointed for the Metropolitan Street Railway Company and its property, who are entirely

independent of said Ryan and his associates, and who shall be in a position to protect the interests of said Metropolitan Street Railway Company in its dealings with said New York City Railway Company and who shall be in a position to bring suits against the said Joline and Robinson as receivers for the New York City Railway Company to compel them, among other things, to pay the rental due to the Third Avenue Railway Company, which, by the terms of the lease from the Metropolitan Street Railway Company to said New York City Railway Company said City Railway Company agreed to pay. That said receivers of said City Railway Company are now receiving all the earnings of said Third Avenue Railway, which are more than sufficient to pay said rental. That such independent receivers should also bring suits against said Ryan and his associates and others, and should defend said foreclosure suit, and any suits or proceedings which have been or may be brought against said Metropolitan Street Railway Company.

WHEREFORE your petitioner respectfully prays:

1st. That your petitioner may be made a party defendant herein for the protection of the interests of himself and such other stockholders as may join with him.

2nd. That receivers of the Metropolitan Street Railway Company and its property may be immediately appointed with the usual duties and powers of corporation receivers.

3rd. That the order of this court heretofore made appointing said Joline and Robinson receivers of the property of said Metropolitan Street Railway Company may be annulled and set aside.

Intervening Petition of Solomon H. Kohn.

4th. Your petitioner prays for such other and further relief as may be equitable, just and proper in the premises.

SOLOMON H. KOHN,
Petitioner.

WOLLMAN & WOLLMAN,
Solicitors for Petitioner,
Office and P. O. Address:
20 Broad Street,
Borough of Manhattan,
New York City.

HENRY WOLLMAN,
ACHILLES H. KOHN,
Of counsel.

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

SOLOMON H. KOHN, being duly sworn, deposes and says that he is the petitioner above-named. That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

SOLOMON H. KOHN.

Sworn to before me this
25th day of November, 1907.
N. J. MacPherson,
Notary Public,
New York City.
[Seal]

Exhibit—Pre. Ct. Appeal Papers.
Notice of Appeal.

Notice of Appeal.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter *of* The Estate of Sarah A. Cooke, Deceased.

William B. Beam, one of the next of kin of Sarah A. Cooke, deceased, and remainderman under her last will and testament, hereby appeals to the Prerogative Court from the decree entered herein, on the 24th day of February, 1921, allowing the final account of the Paterson Safe Deposit and Trust Company, trustees under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, and every part thereof.

William B. Beam,
Proctor Pro Se.

Dated, Paterson, N. J.,
May 23, 1921.

Exhibit—Pre. Ct. Appeal Papers.
Petition of Appeal.

Petition of Appeal.

(Filed June 21, 1921.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.

To the Ordinary of the State of New Jersey:

The petition of William B. Beam, of the City of Paterson, County of Passaic and State of New Jersey, respectfully shows that,

1. On January 21, 1921, Paterson Safe Deposit and Trust Company, trustee under the last will and testament of Sarah A. Cooke, deceased, presented its final account as such trustee to the Orphans' Court of the County of Passaic and exceptions having been filed thereto by your petitioner, the Orphans' Court on February 24, 1921, made its order overruling all of said exceptions "in their entirety" and ordering the said account to be allowed.

2. Your petitioner hereby appeals from the said order,

(a) From that part of the said order of the said Orphans' Court overruling the exceptions of appellant and John C. Beam, and Edward Beam "in their entirety".

(b) From that part of the said order of the Orphans' Court which overrules the first exception filed by appellant and John C. Beam and Edward Beam that the accountant did not state in said final account the actual or market value of the securities set forth in Schedule C of the final account.

(c) From that part of the order of the said Orphans' Court overruling the exception of the appellant and John C. Beam and Edward Beam, **that the accountant did not set forth in its account** the correct value of the stock in the Brooklyn City Company mentioned in Schedule C of said final account.

(d) From that part of the order of the said Orphans' Court which overruled the third exception filed by appellant and John C. Beam and Edward Beam, that the said accountant did not set forth in its final account the method by which the bond and mortgage of Max Gold mentioned in Schedule C of said final account was acquired by it as trustee as aforesaid.

(e) From that part of the order of the said Orphans' Court which overruled the fourth exception filed by appellant and John C. Beam and Edward Beam alleging that the accountant did not set forth in its final account the number of the bonds and stocks held by it as trustee and mentioned in Schedule C of said final account.

(f) From that part of the order of the said Orphans' Court which overruled the fifth exception filed by appellant and John C. Beam and Edward Beam alleging that the accountant had not annexed to its said final account, a full statement or list of securities, investments and assets of which the balance of the estate of the

said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in securities since the settlement of the last intermediate account.

(g) From that part of the said order of the Orphans' Court overruling the exception of appellants and John C. Beam and Edward Beam to the said final account alleging that the accountant had not set forth the correct value of the stock in the Central North and East River Railroad mentioned in said Schedule C of said final account.

(h) From that part of the said order of the Orphans' Court allowing to said trustee the sum of $400.00 as and for its commissions and a counsel fee of $250.00 to Griggs & Harding, proctors for said accountant, and a further commission of $81.86 on income received during the period of said account.

WILLIAM B. BEAM,
Proctor Pro Se.

Dated, Paterson, N. J.,
June 22, 1921.

Exhibit—Pre. Ct. Appeal Papers.
Answer to Petition of Appeal.

Answer to Petition of Appeal.

(Filed July 6, 1921.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.

The answer of the National Trust Bank of Paterson incorporated under the Federal laws, formerly The Paterson Safe Deposit and Trust Company, a corporation of the State of New Jersey, respondent to the petition of appeal of William B. Beam, appellant:

1. This respondent answering admits the allegations contained in the first paragraph of appellant's petition of appeal filed herein.

2. This respondent is advised, believes and submits that the portions of said decree complained of by appellant are justified and lawful, and this respondent denies that the aforesaid portions of the said decree or any part thereof are erroneous, improper or illegal, and alleges that the said portions of said decree are legal, proper and correct.

And it, therefore, prays that the said petition of appeal may be demissed with costs.

JOHN L. GRIGGS,
Proctor for and of
Counsel with Respondent.

6 OCT.T.1925

New Jersey Court of Errors and Appeals

EDWARD BEAM, JOHN C. BEAM, WILLIAM B. BEAM and CARRIE S. BEAM, *Complainants-Appellants,* *vs.* The PATERSON SAFE DEPOSIT & TRUST COMPANY, the NATIONAL TRUST BANK of PATERSON and The PATERSON NATIONAL BANK, *Defendants-Appellees.*	On Bill, etc. On Appeal from Final Decree from the Court of Chancery.

APPELLANT'S BRIEF.

Introduction.

1. Under the will of Sarah A. Cooke, who died at Paterson in 1905, a trust was created, giving a life interest to one of her children, Carrie S. Beam, with remainder over to *her* three children, Edward Beam, John C. Beam and William B. Beam.

2. Mrs. Cooke created this trust through a residuary bequest in her will and did not allot, set aside or in any way specify the securities that were to go into it (pars. 11 and 12 of Will, case Vol. I. p. 263). Simultaneously she created similar trusts for each one of her other four children, Lavinia Fayerweather, John S. Cooke, Frederick W. Cooke and Charles D. Cooke, being the sister and brothers of Mrs. Beam.

3. The Paterson Safe Deposit and Trust Company was created trustee of these five trust estates and in December, 1905, took up the burden of administration thereof by immediately discregarding the explicit and express direction of the testatrix and forming but one trust estate in place of the five ordered by the will (case p. 6).

4. Two of Mrs Beam's brothers were interested in the trust company and her relations with them at this time were friendly. The President of the trust company, Mr. John W. Griggs, was an old friend of the late John R. Beam and in fact had been associated with him in Mr. Beam's last case, decided after his death and reported in 65 N. J. Eq. 11, under the title *Pennington v. Metropolitan Museum of Art.* For these two reasons, in addition to the reason that it is a natural act in contemplation of law and equity for a beneficiary to trust her trustee, Mrs. Beam paid but little attention to the conduct of this trust estate down until about the year 1911.

5. For some time prior to this she had noticed that her income derived from the trust estate had seriously dimished. From 1905 down until March, 1910, she had lived side by side on the same street in Paterson with these two of her brothers who were interested in the trust company but as they had never spoken one word to her concerning this trust estate and as she had less than two years previous to the death of her mother also lost her husband she had quite enough to occupy her mind in the cares of her family and while she wondered at the loss of income and at her brothers' and the trust company's silence concerning it, for these first few years she let the matter rest.

6. In the Summer of 1911 she made inquiry

of the trust company as to the reason for this stoppage of a portion of the trust income and not receiving satisfactory replies to her inquires, she in 1912 commenced a suit in Chancery against the trust company for an accounting. This was litigated from February, 1912, to January, 1915, and it forms the substance of Exhibits C-1 to C-4 case, Vol. I, pp. 256-395.

7. From that time on matters did not go well with the trust relation and by the end of December, 1920, Mrs. Beam felt the necessity for ending it and securing a new trustee. Her sons made a formal demand on the trustee that it relinquish the trust and in January, 1921, it announced its intention of so doing (case Vol. II, p. 116).

The trust company was discharged as Mrs. Beam's trustee on Febuary 10, 1921, and its so-called "final account" was presented to the Orphans' Court and passed on February 24, 1921 (case, Vol. II, pp. 252-254).

8. The allowance of this account and the allowance of trustees' fees and commissions and counsel fees made thereon were appealed from to the Prerogative Court on May 23, 1921, (case Vol. I, p. 420). The appeal was duly perfected and issue joined July 6, 1921, (case Vol. I, p. 424).

9. The bill of complaint on which this suit was based was filed August 1, 1921, by Edward Beam and John C. Beam, (case, Vol. I, p. 1).

10. Thereafter the bill was amended on motion of defendants and as amended was filed on October 22, 1921. The amendments consisted of the addition thereto of the names of William B. Beam and Carrie S. Beam, as parties-complainant.

11. In the Summer of 1921 The Paterson Safe

Deposit and Trust Company died and its remaining property was incorporated in a bank known as The National Trust Bank of Paterson which latter bank was subsequently merged into The Paterson National Bank. This event caused the other amendment in the bill.

12. On December 13, 1921, counsel for complainants moved the Court of Chancery before Vice Chancellor Fielder for the appointment of a receiver under the 14th paragraph of the bill, (case, Vol. 1, p. 12). This paragraph had been admitted in paragraph 1 of Answer, (case, Vol. I, p. 15), and counsel expected no opposition on the motion. However, the motion was opposed by defendants, case of *Edward Beam et al Substituted Trustees* now before this Court on appeal from the Prerogative Court, p. 24, and no receiver could be had.

13. An entire year had now elapsed and Mrs. Beam had not had one cent of income from the trust estate while the old trustee had continued in possession of the funds and, as it was afterwards discovered, had paid itself some $731.86 in fees and commissions, the allowance of which was on appeal to the Prerogative Court and had in addition used about one tenth of the trust estate without paying even 2% interest therefor,—case of *Edward Beam, et al, Substituted Trustees*, supra.

14. This situation continued until March, 1922, when Mrs. Beam's sons made application to Mr. Justice Minturn, sitting as a judge of the Orphans' Court, for the appointment of a new trustee and the Court appointed her three sons as such trustees.

15. On the taking over of the trust property from The Paterson National Bank on March 22,

1922, a dispute arose as to the conduct of the trust estate from the date of the last account in 1921, down to March, 1922, and on March 28, 1922, through the issuance of an Order to Show Cause directed to the bank, the case of *Edward Beam et al, Substituted Trustees,* came into being.

16. It will thus be seen that at this time there were in existence three separate proceedings all relating to the conduct of this trust estate by The Paterson Safe Deposit and Trust Company and its successors, (pars. 8, 9 & 15 supra). In point of time the William B. Beam Appeal in the Prerogative Court and this suit in Chancery covered the same identical ground, while the *Edward Beam, et al. Substituted Trustees Appeal* in the Prerogative Court brought the litigation on down to March 22, 1922.

17. On December 7, 1922, Vice Chancellor Griffin tried this Chancery cause at Paterson and on the trial the defendants offered in evidence as a bar and estoppel to the relief sought herein by complainants all of the accounts filed by them in the Orphans' Court from 1908 down unto 1921 and all of the proceedings on which the accounts were approved—"all matters that pertain to those accounts." (case, Vol. I, pp. 72-73). The complainants affered in evidence the pending appeal in the Prerogative Court of William B. Beam from the allowance of this last filed account of 1921 and the statement that on the trial of that appeal the appellant intended to attack and seek to re-open all intermediate accounts of the trustee on the ground of fraud (case Vol. 1, p. 66). The Court admitted this evidence and proceeded with the trial (case, Vol. 1, p. 65).

18. It is perfectly true that the beneficiary and the remaindermen had gone into the Orphans' Court and had excepted to every account filed by the trustee from 1915 to 1921 but they had done so on the theory that existed prior to the determination of the *Slater* case, hereinafter referred to further, being informed by their counsel that while it was necesary that they formally except to these proceedings the same were not binding upon them. This same statement had even been made by Judge Abram Klenert of the Orphans' Court in 1915 but, as the minutes of the Orphans' Court on that hearing show no record of what was said and done at that time, the said statement could not be incorporated in the record of this cause. Finally in 1921, acting on the advice of B. B. Hutchinson, Esq., another bill of complaint was filed in Chancery partly upon the theory that the conduct of the trustee, since the decision of this Court in 1914, threw such a light on his conduct prior to that decision that a new case was made out in which positive bad faith was charged against him (case, Vol. I, p. 61). The prior suit in Chancery herein did not charge "bad faith" affirmatively (case, Vol. I, p. 349, and 396, V. C. Howell and Swayze, J. quoted). This is the first time that such a charge has been made against this trustee and it is quite important for this Court to bear that in mind as being the greatest distinction in character between this cause and the prior suit in Chancery herein. As the principal piece of evidence used by complainants in proving this allegation was not discovered until 1921, (case, Vol. II, p. 155, et seq.) complainants might very well have applied for a bill of review and would have so done had there not been other evidence to present to the Court which did not antedate the filing of the first bill in this cause in which the complainants

felt justified in relying on their pleas for relief. Notable among this other evidence was the condition of the Orphans' Court accounts filed by the trustee.

19. An examination of these Orphans' Court accounts offered by defendants, all of which are to be found in the case at (Vol. II, pp. 1-112), will reveal perhaps sufficient evidence of "bad faith" on the part of the trustee in its conduct of this trust as would entitle complainants to the fullest kind of relief herein without further proof, but complainants do not rest their case there. They are prepared to show and prove positive bad faith on the part of this trustee from the start to the finish of its conduct of this trust, they are prepared to show and prove that even at this day this trustee stands in court in violation of that principle of equity that he who would come into a court of Equity must do so with clean hands and they are further prepared to show and prove that this court by its decision of 1914 in the first suit herein was grossly misled as to the facts surounding the retention by this trustee of the securities that formed the subject matter of that litigation. This last will prove, on the newly discovered evidence heretofore referred to that brings home to the president of the trust company full and complete notice of the existence of conditions respecting the investments in which the losses occurred, the possession of the knowledge of which conditions has been heretofore strenuously denied by that officer of the trust company.

20. Complainants got as far as this with their proofs on the trial of this cause but the Court of Chancery did not reach it in the court's decision. The merits of the case have been lost in

an almost hopeless tangle that grows out of the interpretation given to certain amendments to the Orphans' Court Act made in 1905 and first interpreted in the case of *In Re Slater,* 88 N. J. Eq., 296, by Vice Ordinary Leaming in 1917, (case, Vol. I, p. 186). "In view of the fact that I have found that the decrees of the Orphans' Court are *res judicata,* I have not deemed it necessary to consider the other evidence in this cause." V. C. Griffin.

21. Prior to the decision in the Slater case trust estate disputes of this character were almost uniformly brought into the Court of Chancery by the filing of a bill of complaint and the intermediate accounts and decrees made thereon by the Orphans' Court were simply ignored. Unless a dispute arose in an estate after the allowance of the final account by the Orphans' Court, which, prior to the decision of the Slater case, was the only one considered as binding on any of the parties to the account, such a situation as has arisen in this case could not have occurred.

22. It is a fact that on the trial of the first suit in Chancery herein the trustee raised the issue of the filing of these accounts by a reference thereto in its Answer, (case, Vol. I, p. 277). The Court of Chancery and this Court at that time ignored it and the trustee did not press its claim thereunder for the very evident reason that up until that time every account filed by it in the Orphans' Court was false and every decree obtained therein was founded on fraud and perjury. Had the claim been pressed this would have stood revealed.

23. Such being the confusion introduced into the practice by this decision it must most cer-

tainly be true that this Court will not permit a cause to fail through an adherence to the practice as it has been understood in this State since time immemorial.

24. The situation as it stood before the trial of either of the two cases mentioned in paragraph 16 *supra* was that neither the beneficiary nor the remaindermen of this trust knew, nor was counsel able to tell them, whether this dispute was to be settled in the Prerogative Court on appeal from the Orphans' Court or in the Court of Chancery by bill filed in the first instance. The Court of Chancery entertained complainants' bill and set out to try it first and on the trial the defendants, although they themselves had moved the Chancery suit for trial, knowing of the existence outstanding of the pending appeal in the Prerogative Court, objected to the admission of these pending Prerogative Court Appeal papers in the following language, (case Vol. I, pp. 64-65).

> MR. HARDING: Well, that is what I mean —an estoppel—if we are right in that contention, it does not make any difference whether those exceptions in the Orphans' Court have been appealed, or not; and it does not make any difference what the result of the decision on the appeal would be. If they should succeed on it, why, they would succeed in an issue in the Orphans' Court; and my point is that if they are precluded by the decision of the Orphans' Court, or by the Prerogative Court, it is their remedy to litigate it in the Court of Errors and Apeals, and they cannot raise that question collaterally in this suit and have the two Courts decide the same question. I fail to see the materiality of it.

From which it will be evident that the defendants do not desire a trial of these issues in any

court but seek only to drive the litigation up a blind alley.

25. When the Vice Chancellor thereafter proceeded, on December 7, 1922, with the Chancery suit trial, his honor proceeded with it leaving open the issue as presented by these Orphans' Court accounts. His honor's action in admitting that pending appeal in evidence was equivalent to a direction to complaintants to go on in the Prerogative Court and in the Prerogative Court litigate the question as to whether or not these accounts constituted a bar and estoppel to the relief demanded in the Chancery suit.

26. Thereafter appellants in this cause proceeded in entire good faith on this theory and failing to effect a consolidation of these Prerogative Court cases with this Chancery suit they attempted to keep all of them running along together so that all parts of this trust picture might be before the court and presented to the court at the same time. One of the appellants herein, William B. Beam, proceeded under the direction of Vice Ordinary Griffin five months after the trial of this Chancery suit to a trial of two of those appeals in the Prerogative Court and for over a year thereafter he continued in those efferts as respected two other cases that arose out of the same estate, the so-called Courtney case and the appeal from an order permitting Mrs. Beam's brothers to pay certain money into court. Vice Ordinary Griffin has never written a formal opinion in either of those two cases and relief that was given Mrs. Beam by a decision in her favor of the first thereof on Feb. 28, 1924, has never been confirmed by an order of the court.

27. The case of *Edward Beam, et al, Substituted Trustees,* on appeal to this court from the Prerogative Court, has been brought up in line and appellants have attempted to bring up simultaneously the William B. Beam Appeal from the allowance of the bank's last filed account but they have been unable so to do, due to the manner in which this case has been conducted in the Prerogative Court. On September 29, 1924, the bank, as respondent in that case, moved for the entry of a final order and decree therein before Vice Ordinary Griffin. The case at that time was in no shape for the entry of such a final order or decree and the Court so informed counsel for the bank on the motion. The appellant therein, William B. Beam, has been sustained as to two matters raised on that appeal, i. e. (1) the failure of the trustees to comply with Rule 21 of the Orphans' Court and explain its trust transactions so that the Court might itself understand them fully and (2) the question of the propriety of the allowance of the fees and commissions taken by the trustee in 1921.—(In re Cooke's Estate, 125 Atl. 332-333). The Court on October 14, 1924, entered an order, directing the trustee to re-state its 1921 account in conformity with the opinion of June 30, 1924. No compliance was made by the trustee with this order until December 3, 1924, when the trustee filed a five-page statement, not through the Vice Chancellor but with the clerk of the Prerogative Court in Trenton. As this filing was made without notice to counsel for appellant in that case and as it was not discovered until the middle of August, 1925, appellant has been unable to proceed with a completion of that case by another hearing before Vice Ordinary Griffin in time to end that case by such final order as would be appeal-

able to this Court. The 1921 account of the trustee is thus still open although it forms part of the *res adjudicata* bar and estoppel set up by the trustee to defeat this suit.

28. The doctrine laid down by the *Slater* case has really resulted in creating two courts in this State wherein the same dispute may be litigated at the same time and it requires some dexterity on the part of counsel to keep two or three cases moving abreast of each other and get them finally into the court of last resort at the same time. In view of this confusion in the practice it is hoped by appellants that substantial justice will not be defeated in this cause by any mistakes made on their part in a placing of their proofs. They have proceeded with the utmost diligence, throwing out an anchor to windward whenever it might seem to be demanded by the practice and following the directions of the Court below to the best of their ability, energy and dexterity and if they do not safely come into port it will be due to the perils of navigating this uncharted sea of double litigation. If Equity still favors the vigilant, appellants are certainly entitled to be favored in a final decision of this cause, at least to the extent of being permitted to produce all of their proofs before this court at the same time. There is no one part of the evidence in this cause that appellants are desirous of suppressing. They seek a full disclosure of all of the acts of the trustee. Complainants therefore feel that this Court should withhold its decision in this cause until the William B. Beam Appeal in the Prerogative Court can be moved up on appeal from that court to this court and the issues therein raised, finally determined concurrently with the issues

in this cause.

There were only two questions raised and considered by Vice Chancellor Griffin in his Opinion filed herein. (1) Were the children of Mrs. Beam estopped by the decree of this court herein of 1914? (2) Were the parties-complainant to this suit bound by the decrees obtained by the trustee in the Orphans' Court?

The Vice Chancellor decided the first of these two questions in favor of the complainants and the second in favor of the defendants.

POINT I.

The Court of Chancery decided the question as to whether or not Mrs. Beam's children were estopped by the decree of the Court of Errors and Appeals herein of 1914 correctly and that decision should be by this Court affirmed.

This question should be decided in favor of complainants for the reasons given by the Vice Chancellor in his Opinion (case, Vol. I, pp. 174-176).

POINT II.

The Court of Chancery erred when it decided against complainants the question as to whether or not the complainants in this suit were bound by the adverse decrees obtained by the trustee in the Orphans' Court and that decision should be by this Court reversed and set aside.

In dealing with the question raised in Point I, it is to be noted that the Vice Chancellor from the top of page 174, Vol. I, case, states in two succeeding paragraphs, first, "the position taken by the complainants on opening the case" and, second, "The position taken by the defendants". Both sides as presented by the record were considered with the result that complainants prevailed.

In dealing with the question raised in this point it is to be noted that the Court dealt only with the position taken by the defendants and did not consider the position taken by complainants at all, with the exception of stating at line 26 *et seq.* on page 186 Vol. I. case. that there was an outstanding appeal pending in the Prerogative Court from the allowance of one of the very accounts set up so successfully as a bar and estoppel by the defendant trustee.

The position taken by complainants on this question on the opening was, as heretofore set out in par. 17 of the Introduction, to offer in evidence the pending appeal in the Prerogative Court of William B. Beam from the allowance of the last filed account of the bank of 1921 and to state

that on the trial of that appeal appellant therein intended to attack and seek to re-open all of the intermediate accounts of the trustee on the ground of fraud (case, Vol. I, pp. 63-66). The record was admitted in evidence (case, Vol. I, p. 65, ll. 31-33). "The Vice Chancellor * * * These records need not be marked as exhibits, but they are admitted in evidence." They appear in the record, case Vol. I, pp. 232-253, 420-424.

Thereafter in this cause, complainants dealt no further with this feature of the case, supposing it was to be dealt with by the court sitting as a Vice Ordinary of the Prerogative Court in the trial of the William B. Beam Appeal, until some two weeks before decision was rendered in this cause and in said Prerogative Court appeal case.

On June 13, 1924, the Court informed appellant William B. Beam that his honor was deciding the Chancery suit solely on the record of that cause without reference to any of the records before him in the Prerogative Court appeal cases. (Case *Edward Beam et al vs. Pat. S. D. & T. Co.* Appeal from three interlocutory orders, decided in this court March, 1925, p. 56).

On motion of June 19, 1924, the Court informed appellant in reply to a request that the Appeal Cases would be decided first, "They probably both will be disposed of together". (Case, Vol. I. p. 197.)

On June 30, 1924, appellant made another motion before the Vice Chancellor to stay the determination of this Chancery cause until the decision of the William B. Beam Prerogative Court Appeal and the same day the motion was denied and the William B. Beam Prerogative Court Appeal was decided.

This Court has already decided that Vice Chan-

cellor Griffin acted within his discretion in denying above motion, in the following words:

> "The present suit was required to be decided upon the issues raised by the pleadings and the testimony offered in support of or against those issues; and its decision could not be affected by the proceedings in or the decision of other causes, except perhaps to the extent that in those other causes legal principles were declared which were controlling as to questions involved in this litigation."

By admitting in this cause the record of the then pending William B. Beam Appeal in the Prerogative Court, the Court was thereafter bound to admit the balance of the record of the said appeal case herein and to base the decision in this cause on whatever had been decided in that appeal.

POINT III.

The complainants in this cause are not bound by the decrees obtained by the trustee in the Orphans' Court.

The Court of Chancery is a court of conscience and it requires that those who come into it not only shall come into it with clean hands but that they shall do equity if they wish to receive equity.

When the trustee came into the Court of Chancery on December 7, 1922, and offered the Orphans' Court accounts and proceedings in evidence in this cause in support of its claim that they constituted a *res adjudicata* bar and estoppel it was not to be heard on that plea for the reason

that those accounts were based on fraud and perjury as charged in the bill of complaint (case, Vol. I, p. 10).

On pages 9, 25 and 38, (case, Vol. II.) it will be found that the trustee in the years 1908, 1910 and 1912 swore to a "Present Value" of the securities comprising the trust estate that was from $30,000. to $50,000. short of the "present value" at those times as will be apparent from an examination of the values of the securities set out in the schedules 366-388, case Vol. I.

This has been by Vice Chancellor Griffin judicially found to be a fact in his opinion filed herein in which he states:

> "No exceptions were filed to these accounts, although it plainly appeared in the bill that Mrs. Beam had knowledge of the fact that the securities mentioned in that suit had greatly depreciated in value *and were not of the value given in the account.*

Since when has it become a practice of the Court of Chancery as a court of Equity and Good Conscience to permit anyone, particularly a testamentary trustee dealing with a helpless widow, to go into that court and there on false and fraudulent statements made under oath, to profit by his wrong? Since June 30, 1924, if this decision of Vice Chancellor Griffin, changing the equity practice of the last three or four hundred years, is not by this Court reversed and set aside.

Following upon these three accounts as a basis for further manipulation, the trustee in April, 1914, one year and one month after issue had been joined in the first suit in Chancery between Mrs. Beam and itself (compare case, Vol. I, p. 267, and Vol. II, p. 49), went again into the Orphans' Court and charged itself at this time with a so-

called "Inventory Value" of these depreciated securities and the Orphans' Court entered its order and decree solemnly binding it, in the words of *Slater's* case, "conclusively" and "operating to exonerate and forever discharge" it "from all demands of" the beneficiary or remaindermen "*beyond the amount of such settlement*".

The question which will naturally suggest itself to the Court at this stage of the proof will be: "What was the trustee trying to do with these accounts in the Orphans' Court?" It remains to be seen.

In 1915, notwithstanding the trustee's position, taken subsequently in 1923 on the trial of the William B. Beam Appeal in the Prerogative Court, that it never had to state the actual or market value of the securities in any of its accounts, the trustee came into the Orphans' Court and made the following statement, (case Vol. II. p. 58):

> "The trustee as of May 1st, 1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day," etc.

In the same account the trustee charged off a depreciation of $56,969.50, (case Vol. II, p. 57) and this depreciation was allowed by the Orphans' Court although the record is silent as to any reasons given by the presiding judge for allowing such and there is further nothing whatever in the record to show that the accounts of 1914, 1912, 1910 or 1908 were re-opened to make this action conform with the doctrine of *Slater's* case, enunciated two years later but based on an amendment of 1905 to the Orphans' Court act. Such action of the Orphans' Court at that time should be sufficient now to convince this court that the doctrine subsequently embodied in *Slater's* case either

was not known to the Orphans' Court at that time or that it was disregarded by that Court.

In 1917 the trustee came again into the Orphans' Court and again swore to an "appraised value" of the securities in the trust, thereby for the second time giving the lie to their subsequent assertions that they do not have to state the actual or market value of the securities in these accounts (case, Vol. II, p. 75).

In 1919 the trustee set the securities down in the list showing the corpus of the trust without any designation whatever at the head of the column and in 1921 it finally hit upon what appears to be an invention of its own when it used in this account the term "Book Value" (case, Vol. II, pp. 90 and 109). There are no other different designations used because there have been no further accountings to the Court so it is impossible to say whether or not the trustee has wholly exhausted its ingenuity in designating the assets or not.

The exceptions filed to the 1919 account were stricken out by order of the Orphans' Court, (case, Vol. I, p. 181 and Vol. II, pp. 92-94).

These exceptions were stricken from the record by the presiding judge of the Orphans' Court in a proceeding that was not a judicial proceeding in contemplation of law (case, Vol. II, p. 121, par. 26).

It has been objected to by counsel for defendants that the document entitled "Petition for Relief of William B. Beam" that contains the foregoing citation of the record is not a record of the Orphans' Court. Counsel is in error as to this. The said paper has been a record of the Orphans' Court since the 16th day of February, 1921. On August 26, 1925, the Passaic County Surrogate

as clerk of the Orphans' Court certified two copies thereof for appellant as of the record of the court on that day.

The significance of the foregoing is that on the 1919 accounting, the only accounting since 1917, no legal hearing has been had on these exceptions that has not been appealed from and the record of what the Orphans' Court did in 1915 in permitting the charging off of $56,696.50 of depreciation clearly shows that at that time the Orphans' Court was not proceeding under the doctrine of *Slater's* case or the record would contain some reference to a re-opening of the prior accounts of the trustee.

The Orphans' Court in 1915 having erred in this important particular complainants are not barred by what was subsequently done in the Orphans' Court in 1917 and 1919 for under the same doctrine of *Slater's* case the court in those years had no power to go back of the 1915 proceedings and the record shows that they never did.

From a consideration of which it is clear that complainants are not barred from relief herein by reason of what was done in the Orphans' Court in this estate and that Vice Chancellor Griffin's reasoning that they were is based on a misconception of the law and the facts. The Vice Chancellor was supplied with a copy of the "Petition for Relief of William B. Beam" (case, Vol II, pp. 113-122) by appellant William B. Beam prior to his honor's decision in this cause.

Laun v. Kip, 155 Wisconsin, 347.

(364) "Pointing to that rule the trial court found a fatal defect in the complaint, in that there was an absence of any statement of facts showing the requisite diligence to bring the matter complained of to the atten-

tion of the court and to show that they could have discovered the fraud in time to have availed themselves of its existence in the first action. On this branch of the case it seems to have been overlooked that respondent occupied a fiduciary relation to appellants. They had a right to rely upon his performing his duty prior to and upon the hearing before the referee. He had no right to remain silent and challenge the proof, much less was he justified in placing a delusive statement before the referee and pretending, either expressly or impliedly, that it contained an exhibit of his transactions during the trustee period. When the fiduciary position of respondent is considered and that appellants had used due care to employ attorneys whom they had reasonable ground to suppose were competent to protect their interests, the complaint shows such reasonable excuse for not presenting the matter complained of before the referee that a court of equity should not refuse to open its doors to prevent the success of a wicked scheme to cheat because of neglect at this point.

"It was respondent who should have been the moving party as regards the accounting. Appellants had a right to suppose that he would exhibit a true statement of his trustee transactions; that the referee would see that he did it and that appellants' attorneys would keep an efficient oversight in respect to the matter. It may be that appellants' attorneys were too unsophisticated in the matter; even that they were negligent, or possibly incapable of coping with the particulars constituting the subtle deception said to have been practised by respondent; but where a party uses ordinary care in the selection of attorneys to represent him in such matters, equity may relieve him from the consequences of their infirmity or negligence. *Wis. M. & F. Ins. Co., Bank v. Mann,* 100 Wis. 596, 76 N. W. 777. It would be a strange weakness in our

system of equity jurisdiction if a court could not or would not lend its aid to prevent a party from being greatly wronged by reason of his attorneys, either through negligence or otherwise, being imposed upon by the adverse party.

He who comes into equity must do so with clean hands.

"he that hath committed iniquity shall not have equity."

Bispham's Principles of Equity, 9th Ed. citing

Brinkerhoff v. Ransom, 57 N. J. Eq. 312;
Johns v. Norris, 22 N. J. Eq. 102;
Walker v. Hill's Executors, 22 N. J. Eq. 513.

He who seeks equity must do equity.

Bispham's Principles of Equity, 9th Ed. citing
Loder v. Allen, 50 N. J. Eq., 631-637.

Bogert on Trusts, p. 400, citing,
Smith v. Robinson, 83 N. J. Eq. 384;
Dufford's Ex'r. v. Smith, 46 N. J. Eq. 216.

"All presumptions are against the trustee upon the accounting, and obscurities and doubts in the account will be resolved against him."

Mattocks v. Moulton, 84 Me. 545.

"We do not think that the Probate Court, in settling the executor's account in the form in which it was presented, had any occasion to adjudicate, or even consider the propriety of the investments made by him of the funds of the estate. The purpose of the account was

simply to show the balance, if any, remaining in the hands of the executors after paying debts, expenses, etc. * * *

(p. 550): "But in his account, the executor made no claim to be allowed for any loss or depreciation in these particular assets or investments. By listing them in his schedule C, he alleged them to be of full face value. He only claimed credit for having turned them over to the trustee at their par value. By claiming such credit, he alleged that the trustee had received them at such valuation, thereby acquitting the executor. The two offices of executor and trustee, though held in this case by the same person, were legally as distinct as though held by different persons. *Plympton v. Richards*, 59 Maine, 115.

"Under the circumstances above stated, it is difficult to see how the question of the propriety of these investments arose, or was adjudicated in the proceedings upon the executor's account. * * *

"The executor (whether regularly or otherwise) claimed and received credit for 'amount transferred to trustee'. He claimed and received the benefit of it as though paid in cash. The trustee was entitled to receive it in cash. The executor was liable to him for cash. If he took anything else in discharge of the executor's liability to him, he assumed it as cash. He practically invested the money of the estate in whatever he took in lieu of cash from the executor. In taking from the executor the note of Nutter and the note of the Union Packing Company, as part of the money to be transferred, he thereby in effect invested the trust funds in these notes. The trustee having taken them in discharge of the executor's liability, when he need not have done so, we must regard them as investments made by the trustee and examinable in this, his account. * * *

"The appellant calls our attention to several Massachusetts cases. While the law of

that State seems more indulgent to trustees than is the law in other jurisdictions, we do not think it lets down much from the principles above stated. In *Harvard College v. Amory*, 9 Pick. 446 the trustee was expressly authorized to invest "in public funds, bank shares or other stocks". * * *

"On the other hand, it was held in the same jurisdiction in *Dickinson's Appeal*, 152 Mass. 184, that a trustee was not justified in making investments of trust funds in the stock of the Union Pacific Railroad Company, although he did so in entire good faith after much inquiry and consultation."

Moore, Appellant, 112 Me. 119, 88 Atl. 398. Aff'd 113 Me. 195.

Syllabus:—"1. Guardians, like other trustees, are required to exercise the utmost good faith in all matters pertaining to their employment.

"2. In settlement with their wards and in accounting to the Court, it is their duty to make full disclosure of all facts and circumstances necessary to a complete and full understanding by either of the business in hand and failure to do so is a breach of trust which has been held to be fraudulent." * *

BIRD, J.:

"This is the petition of Albert T. Gould to the Probate Court of Knox County to open the account therein denominated "final" of the appellant as guardian of the petitioner, and disallow sundry items of credit therein allowed the guardian, upon the ground that their allowance was obtained by fraud upon the court and also for disallowance of the guardian's commissions. The petition was sustained in the Probate Court, the account opened and the items in question and the commissions disallowed and the account restated. * * *

"(2) The final account of appellant, which was allowed in December, 1898, contains this item of credit:—'Nov. 11 (1896) Amount transferred to Geo. Hardy, Gdr. Assets of estate turned over to Gdr.——$10,660.', the account indicating that this item of credit was supported by voucher 23. This voucher is a receipt given by the succeeding guardian to the former guardian for sundry "evidences of property and securities."

Among these are included the following:

"Note of Henry Trowbridge, Nov. 24, 1891, for $400. Cert. of H. Trowbridge, Denver, Col. as to loan of $1900. April 17, 1893.

Cert of H. Trowbridge, Denver, Col. as to loan of $600. Feb. 27, 1893.

"No values however were carried out against these items in the account but at the time the account was settled, the face values were carried out against each item of the receipt and their aggregate inserted in the account by the accountant. By so doing he represented the face values to be the cash values and we find nothing in *Mattocks v. Moulton,* 84 Maine, 545, which militates against this view. * * *

"We do not find, however, that the accountant made a disclosure of his personal relations to these so-called investments and it by no means follows that, had such been made, they would have been allowed. Indeed, upon the evidence, we are warranted in the conclusion that they would not have been and that their allowance was procured by a suppression of the material facts. * * *

"Guardians, like other trustees, are required to exercise the utmost good faith in all matters pertaining to their employment. In settlement with their wards and in accounting to the court, it is their duty to make full disclosure of all facts and circumstances

necessary to a complete and full understanding by either of the business in hand. Failure to do so is a breach of trust which has been held to be fraudulent. Cases cited.

Brigham v. Morgan, 185 Mass. 27.

Syllabus:—"Two executors, one of whom was sole trustee under the same will, made an improper investment of $80,000. which proved to be worth only $40,000. This investment was turned over by the executors and received by the trustee at the value of $80,000 Later the trustee rendered a series of probate accounts covering nearly seven years, in which he stated the investment at the same value. Both of the executors one of whom was the trustee, acted in bad faith.

Baker, J.: "The residue was devised and bequeathed to the executors, but in trust, namely, to pay over and transfer to his wife one-third part thereof in value and to pay over or transfer the other two-thirds thereof to trustees to hold or manage for the benefit of the two children. It is this fund the accounts of the trustee of which are the trustee's accounts in question. * * *

"The trustee voluntarily had taken over into his trust the Kansas mortgages (made by the executors) at their face value of $81,100, and the Kansas bond at its face value of $2,500. and had put them into his official inventory at the same figues and had charged himself with them in his trustee's accounts at the same amount for principal. * * *

"The accountants contend that even if these investments were unwarranted they are exonerated from liability for them because their acts with reference to the investments have been ratified by the consent given by the beneficiaries to the allowance of the early accounts in which the investments were stated. *One simple reply to this, however is that the accounts were not true.*. They represented

that some thousands of dollars had been received from the sales of land, and that the interest upon the mortgages had all been promptly paid, whereas in fact not a dollar in cash had been paid to the estate by any purchaser, for the land, all the mortages were in default upon the interest. Even if it be true that the beneficiaries knew in a general way that the executors were selling the land and lending money to the purchasers for building purposes, the account seemed to show a healthy demand for the land and a buying class of purchasers, *a very different state of things from that which would have been disclosed if the facts had been truthfully stated.*

(43) "As trustee he was entitled to the rest and residue of the estate. As a part of that he took the Kansas investments. They were receipted for by him as trustee at their full face value and as so much cash. He carried them along in the same way through seven or eight accounts rendered to the Probate Court both before and after he had settled with the widow. * * * He has by his own conduct made himself accountable for the whole fund, and liable, as for making an improper investment, for that part which he received in the form of improper investments. * * * He took all the bad investments and receipted for them at their face value as if they had been good. He included them in a series of accounts covering nearly seven years. *In schedules annexed to these accounts he treated them as good investments, and as representing with other property the entire fund undiminished by losses.* Under these circumstances his liability upon his account is the same as if, as trustee, he had received the fund in money and invested it in the mortgages and the bond. In his official capacity as trustee he makes the investments his own, and must be charged for that part of the trust property which is represented by them."

POINT IV.

The Court of Chancery erred in stating that "complainants could have obtained full relief in the Orphans' Court on exceptions to the account of the trustee with respect to the securities mentioned in the former suit as *well as the Brooklyn City R. R. Co.*, shares." (case, Vol. I, p. 186).

The matter of the dispute over the holding of the Brooklyn City RR shares did not arise until April, 1920. Testimony of Carrie S. Beam (case, Vol. I, p. 135, Ex. C-5 Vol. II, p. 123, and Exhibits C-6 and C-7, pp. 149-153).

The Vice Chancellor had before him as Vice Ordinary the only set of Orphans' Court proceedings that could possibly have been construed as operating as a bar to any relief in respect to the dispute over the retention of this Brooklyn City RR. Co. stock at the same time that his honor had before him the testimony of Mrs. Beam above cited in relation thereto. Furthermore, the defendants had elected to try the issue in the Court of Chancery, having themselves moved this cause for trial in preference to the William B. Beam Prerogative Court Appeal.

Must a narrow technical construction as to the place in which these disputes are to be litigated obscure the merits of the controversy which deal with the injury done the beneficiary as shown by her testimony above cited? This testimony was not even subjected thereafter to cross examination by the defendants as to the following very pertinent part:

Mrs. Carrie S. Beam—Direct:

"A. I received a reply from Mr. Connolly; and then I wrote him again, and I received no reply. I called him up on the 'phone, and asked him why I had not. He informed me that he had laid my letter to him on his desk, and that Mr. John L. Griggs had come in, in his absence, and found it there, and had read it, and had taken him to task for writing to me replying to my letter; and he furthermore told him that he could mind his own business, that he need not write to me. And Mr. Connolly said "Don't write to me again, but if you want to know anything call me up on the telephone, and I will try to answer you."

The reply from Mr. Connolly above referred to has gotten into the record of the William B. Beam Prerogative Court Appeal from where Vice Chancellor Griffin refused to transfer it on motion to this record but enough appears from the context of the letter shown by Exhibit C-6, Vol. II, p. 149 to show that it dealt with perfectly proper inquiries by this beneficiary as to the condition of the securities composing her trust.

And the trust company through John L. Griggs was refusing the beneficiary any further information of a similar nature, it was reprimanding its secretary for giving any information at all and in the end it never answered the beneficiary's letter of April 24, 1920 (case Vol. II., p. 153).

With the trust relation reduced to the point where such an active animosity prevented the trust company from discharging its duty of giving all information demanded by the beneficiary, the trust company kept on with the relation for another eight and a half months until the remaindermen demanded that it be ended (case, Vol. II, p. 116).

The opinion of Vice Chancellor Griffin filed herein might be a fairly good one from the point of law, if it were not for the error exhibited in applying the doctrine of the *Slater* case in a one sided way as solely against the beneficiary and not against the trustee when as a matter fact this doctrine or principle is a two edged sword and cuts deeper into the trustee's side and at a far earlier date than it does into the beneficiary's, but it is a very poor one from the point of view of a court of equity.

A consideration of the foregoing shows that the obstacle set up by the Vice Chancellor to prevent his honor's passing on to consider the other evidence in the cause were founded upon error and that they fall of their own weight when considered from the only point of view that a court of equity was empowered to consider them.

POINT V.

The trustee has acted in bad faith from the beginning to the end of its trusteeship and is still even now after its termination acting in bad faith.

The first act of bad faith of the trustee was committed in the year 1905, shortly after taking over the trust securities from the executors, by its disregard for the explicit direction of the will that five trust estates be set up in place of the one that was set up.

No trustee has a right to disregard the will of the testator. Wills are made to be respected not to be disregarded whatever the alleged motives of the trustee who sets out to break them.

Much annoyance and unnecessary expense has been caused to Mrs. Beam and her children by this disregard of the trustee of the explicit direction of the testatrix for whatever was gained in the way of alleged economy in administration expenses was far offset in expense to Mrs. Beam when it came to a question of her litigating over the trust estate. The accounts for five persons instead of one have had to be printed and paid for, five parties to the first suit in Chancery had to be included in the place of one, constant reference to the fact that Mrs. Beam was the only one of the five who was dissatisfied with the administration of the trust estate was made by counsel in the Orphans' Court and the allegation was oft repeated that because thereof this dispute was only a "family matter." Mrs. Beam was entitled to one separate trust under her Mother's Will but she did not get it. In place thereof she was annoyed and harassed by all of the complications that ensued from the trustee's disregard of the wishes of the testatrix.

Thereafter the trustee acted in positive bad faith in filing in the Orphans' Court in 1908, 1910, 1912 and 1914 accounts that were false and fraudulent as to the value of the corpus sworn to by the trustee. Citations from case, *supra*.

When the beneficiary brought the trustee into the Court of Chancery in 1912 and there, not charging bad faith affirmatively (case, Vol. I, pp. 349, 396), the trustee, acting in positive bad faith, sought to profit by its fraudulent conduct in the Orphans' Court and to estop her thereby (case Vol. I, p. 277) and on the termination of that litigation, still acting in positive and wanton bad faith, annoyed and harassed the beneficiary by withholding her trust dividends until his

costs and counsel fees were paid (case William B. Beam Prerogative Court Appeal.) and further sought to injure and oppress the beneficiary by demanding in the Court of Chancery a counsel fee of $1500 (before Vice Chancellor Howell) which amount was reduced by the Court to $350.

Concurrently with the deception practiced on the beneficiary in the filing of these accounts the trustee continued the depreciating investments in positive bad faith, as charged in the present bill (case, Vol. I, p. 11.), with a knowledge of their character until ruinous losses were occasioned to the beneficiary.

The statements made in the Answer filed March 19, 1913, (case Vol. I, pp. 267-278), relating to the history of the wrecking of the traction system in New York City in which the funds of the beneficiary were invested, are in general untrue, and were known to be untrue by the president of the trust company, John W. Griggs, when he permitted them to be incorporated into the said Answer. In particular the following statements on which this Court in 1914 placed such full and complete reliance were untrue and were known to be untrue by the said John W. Griggs when they were presented to this Court by counsel for his defendant trust company:

> "Nothing occurred, outside of the ordinary trifling changes in market value of all securities, to effect the estimate of the public as to the desirability of these securities until on or about the 24th day of September, 1907, when a creditor's bill of complaint was filed in the United States Circuit Court for the Southern District of New York against the New York City Railway Company, alleging its insolvency and asking for the appointment of Receivers to operate the railway system which it controlled. The filing

of this bill and the appointment of the Receivers was a great surprise to the public, but it was not at the time regarded as affecting the substantial value or impairing the income of the underlying securities." (case Vol. I. pp. 269-270).

"It turned out, however, contrary to general expectation, that the receivers concluded to abandon the lease of the Central Park, North and East River Railroad Company, and did abandon it on or about the 1st day of July, 1908. They also abandoned the lease of the Second Avenue on or about the 1st day of September, 1908, and abandoned the lease of the Twenty-Eighth and Twenty-ninth Streets Crosstown line on or about the 1st day of July, 1908.

"Up to the time of the abandonment of these various lines by the Receivers there was no fact known to the public or available as information to this defendant which could lead it to believe or expect that the interest on said bonds and dividends on said stock would not be paid as theretofore, and there was nothing available as knowledge for the guidance of this defendant to indicate that it was either wise or prudent to sell the said bonds or the said stock (case Vol. I, p. 272).

"Since the said securities came to the hands of this defendant, there never has been a day on which from facts then known or capable of being ascertained it has been either wise or prudent to sell the said securities, or any of them, and in continuing to hold said securities this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain" (case Vol. I, p. 275).

And the following statement made by John W. Griggs on direct examination on November 12, 1913 before Vice Chancellor Howell was likewise in general untrue with regard to the character of the investments referred to and was known by the said John W. Griggs to be untrue when he made it:

"There was considerable amount of these securities in charge of the trust company; they were regarded among investors and the officers of the trust company as gilt-edged securities, because the leases to the Metropolitan Company which was regarded as a strong company, back of which financiers such as ex-Secretary Whitney and Mr. Ryan were, guaranteed the payment of the interest on the bonds and a dividend on the stock in some cases of eight per cent. I think, and in this particular stock involved here, the Central Park, North and East River, of nine per cent, per annum," (case Vol. I, p. 286, ll. 28-31).

Proof of the foregoing assertions as to the general untruthfulness of the statements cited is to be found in the testimony of John W. Griggs, (case Vol. I, pp. 138-155), and in exhibits to which reference is made, i. e. Exhibit B-H 1. for Iden. (case Vol. II, pp. 155-211), particularly (pp. 186-197), and Exhibit B-H. 3 for Iden. (case Vol. II, pp. 212-287) which latter document was among the exhibits that accompanied the Petition filed by Griggs, Baldwin & Pierce with Governor Hughes in Albany.

On the trial of the William B. Beam Prerogative Court Appeal the original petition of which Ex B-H 1 is a copy was brought from Albany by the Governor's secretary, George H. Graves, produced in court and offered in evidence by appellant.

On the said trial, John W. Griggs was further examined in regard to his connection with the filing of the said petition as follows:

"Q. The record of the testimony taken on December 7th, last year, and particularly the following question and answer:

"Q. Well, now, let me see if this will refresh your recollection (reading from page

26 of the petition): 'The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief, procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the railroad company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money,' didn't you know that that was the ground upon which, in February, 1908, Mr. Jerome's removal was being sought by your office? A. I don't know whether I did or not; but if I did know it, it was a mere matter of general information, more derived from the newspapers than from anything in my office"—calling your attention to your testimony then, Mr. Griggs, is it, or is it not the fact, that such knowledge as you had of the situation you derived from the newspapers? A. I repeat what I said before, that it was general information, largely derived from the newspapers; and I will add that I knew from, oh, just talk around the office, that Mr. Franklin Pierce was engaged in some proceeding to have Mr. Jerome removed as District Attorney." (Case—William B. Beam Prerogative Court Appeal.)

On the trial of the aforesaid case the said John W. Griggs further testified as follows:

"A. I gave particular attention to the proceeding in the receivership pending in the United States Circuit Court before Judge Lacombe." (Case—William B. Beam Prerogative Court Appeal.)

The intervening petition of Solomon H. Kohn (case Vol. I, pp. 401-419) filed on or about November 25, 1907 in the receivership referred to

in the above testimony of John W. Griggs was available to the said Griggs in these (his) investigations and a reading thereof will show the general distrust in which these receivership proceedings were held by certain of the stockholders of the Metropolitan Street Railway Company.

On the trial of this cause John W. Griggs testified as follows in regard to his knowledge of the petition filed by his firm and offered herein as Ex B-H 1 for Iden.:

"Q. You did, however, have some conversations with your partner, Mr. Pierce, about that, didn't you? A. I can only answer you as I did before, that possibly (and I think probably) that, incidentally in the office it was mentioned that he was prosecuting this complaint against Jerome, as, for instance, he might have said, 'I am going on with that Jerome case today'; but as to conversing with him about it or consulting with him about it, or anything more than incidental reference to it, I never had any conversation with him.

"Q. And your present recollection is, as I understand it, that you did not even know the basis of the accusation against Jerome at that time by your office? A. Well, it is probable I did know the basis of the complaint, because it was a matter of public publication in the newspapers—I probably knew it, but I do not remember it now. (Case—Vol. I, pp. 149-150.)

"Q. Perhaps this paragraph, appearing on page 32 of the petition, will refresh your recollection as to these conversations with your partner, Mr. Pierce, 'This robbery of the New York City Railway Company by the directors of the Metropolitan Securities Company, and of the New York City Railroad Company by collusion and conspiracy between them has been called to the attention of Mr. Jerome.

"The newspapers of New York have given

great publicity to this action and the facts have been laid before him and he takes no action for the punishment of these conspirators'—does that paragraph refresh your recollection to any degree? A. Not as to anything occurring between Mr. Pierce and me; or—

"Q. Well— A. Let me finish.

"Q. Excuse me. A. — or as to the basis of the complaint against Mr. Jerome; but I remember perfectly well the accusations against that group of gentlemen that you have named, on that subject—that was in the newspapers; I remember that.

Irrespective of whether or not the said John W. Griggs has admitted actual knowledge of the contents of the petition for the removal of Jerome above referred to, the law of partnership imputes knowledge to him and he cannot avoid it

Sparks v. Flannery, 104 Ga. 232 (1898).

"The means of knowledge was at hand, and it was negligence to close his eyes to that which was staring him in the face. He can not sit silently by for a number of years and only when loss has been sustained plead that he was ignorant of the nature of transactions out of which the loss arose. A state of facts was shown from which the law would presume knowledge."

Vredenburgh v. Burnet, 31 N. J. Eq. 229, 233.

"The mortgagor was his co-partner. He had always paid the interest for the mortgagor on the complainant's mortgage, and when he was informed that the original position of the mortgages had been changed by agreement he knew just where to apply for full information. If he chose to refrain from doing so, and to purchase, relying upon the representations of his assignor, I think

he has no right to ask the complainant to bear the consequences of his own folly. He admits notice of the arrangement; he complains simply because he did not know that it was understood that the complainant's mortgage should be the first lien on the vacant lot as well as the other. Notice of any part of the arrangement was sufficient in my judgment, to put upon him the duty of seeking full information of the holder of the other mortgage, and, if he failed to perform it, and loss ensued, he must bear it as the consequences of his own fault. Whatever puts a party upon inquiry, amounts, in judgment of law, to notice, provided the inquiry became a duty, as in the case of purchasers and creditors, and would lead to knowledge of the requisite fact by the exercise of ordinary diligence and understanding" (*Hay v. Bramhill,* 4 C. E. Gr. 572).

Huthmacher v. Lowman's Sons, 66 Ill. App. 448, 451.

"The evidence justifies the inference that the other two sons were also cognizant of these facts; but if it were not so, the knowledge of Harris would be imputable to his brothers, who were his partners, in the purchase and management of the store. *Wolf v. Mills,* 56 Ill. 360; *Loomis v. Baker,* 69 Id. 360; *Tenney v. Foote,* 95 Id. 99; *Wiley v. Thompson,* 23 Ill. App. 199; I Lindley on Partnership, 150.

"It is a strong circumstance against the good faith of the purchase by the three sons that neither of them testified upon this or any kindred question. The father was put upon the stand by the appellees and endeavored to uphold the transaction as being altogether innocent and legitimate. But his two dozen 'I don't remembers', and many equivalent expressions, behind which he took refuge when pressed by questions propounded by counsel for appellees, lead fairly to the inference that there was something in

the transaction which he deemed it advisable to conceal."

Burritt v. Dickson, et al., 8 Cal. 113, 117. (Law Partnership.)

"If he knows the facts himself, or has the means of knowing them within his own control, he has no right to throw the labor of communicating them upon others.

"In this case, it is very probable that the co-partnership articles were drawn up by Mr. Gorham, and that the plaintiff, in making out the account on the fourth of December, did not examine the items of the bill previously furnished by his deceased partner. But the circumstance could not justify the plaintiff. Notice to his partner was notice to him."

Bates on Partnership. Vol. 1. Sec. 390.

"A. & B., partners, bought lumber of the defendant B. B. measured the lumber before dissolution and found a deficiency in quantity. A., after dissolution, paid the note. The knowledge of the former is that of the latter; A. cannot sue for money had and received. The court say B. knew it, therefore A. knew it. Citing *Snarr v. Small,* 13 Up. Can. Q. B. 125."

Thompson v. Christie. 138 Pa. St. 230, 248. (Law Partnership.)

"W. C. Thompson cannot profit by a lease obtained for him by his law-partner, without being affected by notice of the facts brought to the attention of his partner during the negotiation and which formed the inducement to the lease."

McDonald v. Western Refrigerating Co., 35 Ill. App. 283, 294.

"How did this knowledge of Bennett affect the firm? We think it clear and well sus-

tained by authority, that such knowledge by one partner is not only notice to the firm of the facts, but that it must in law be held to be the knowledge of his co-partner, for what is known to the firm must be taken to be known by all the persons composing the firm, where the matter relates to the firm business or transactions.

Ruckman v. Decker, 23 N. J. Eq. 283, 289, rev. on other points in 28 N. J. Eq. 614.

"Again, the three defendants in this case are partners, and are sued as such; they were partners at the time of the alleged taking of these oysters. The doctrine of partnership applies to them, and by that doctrine notice to one partner is notice to all; and if Wilson knew at that time that these oysters were in part the complainant's, his knowledge was that of the firm. He may have defrauded his partners; it is probable that he did. Yet the severe but necessary law of partnership makes them liable for his acts and knowledge."

Burchell v. Vought, 35 App. Div. N. Y. 190, 191 (1898).

"As between Henry H. Vought and the assignor of the plaintiff, Vought is conclusively presumed to have knowledge of the entries in the books of the firm of Bork & Vought. (*Flour City National Bank v. Widener,* 24 App. Div. 330 and cases cited.)

McDermott v. Hacker, 109 Iowa, 239, 243.

"The book containing these entries was a book kept by the firm, and open to the inspection of the members thereof, and, although not regularly kept, the members are presumed to know what was entered thereon."

Gedge v. Cromwell, 19 App. Cases, D. C. 192, 201.

"The appellant Gedge claims that he communicated to Garrett his conception and sketches of all the devices now in controversy; and we think that the proof sustains his claim. Under the circumstances it would be unnecessary to show by actual proof that Garrett communicated these to Cromwell; for Cromwell would be chargeable with notice of them.

Baldwin v. Leonard, 39 Ver. 260, 265.

"The case, therefore, limits itself to the inquiry, whether mere knowledge of the defendant's agency by one partner, who does not make the trade or know of it, is constructively knowledge by the firm. If it is it must be upon the ground that it was the duty of the partner who had the knowledge to communicate it to the firm, or that it is to be presumed that in the ordinary course of business he did communicate it. Such a duty or presumption cannot exist unless some business has been done or commenced with him or by him as representing the firm. Such are the cases of commercial law which have been relied on by the defendant, in which a notice of dishonor or protest served upon one partner or even a clerk as representing the firm have been held well served."

Chase's Stephen's Digest of Evidence 2nd Edition. Art. 17, Chap. IV, page 66.

"Partners and joint contractors are each other's agents for the purpose of making admissions against each other in relation to partnership transactions or joint contracts.

"This is a well-settled rule as to the admissions of a partner made during the existence of the partnership."

Union Nat. Bk. v. Underhill, 102 N. Y. 336.

Van Keuren v. Parmelee, 2 N. Y. 512.
Smith v. Collins, 115 Mass. 388.
Western Assurance Co. v. Towle, 65 Wis. 247.
Griffith v. Stearns, 44 N. H. 498.
Slipp v. Hartley, 50 Minn. 118."

Not only did the trustee continue the aforesaid investments mentioned in the first suit in Chancery herein until over one third of the corpus of the trust estate was lost thereby, but thereafter the trustee, acting in positive bad faith, continued the investment in the stock of the Brooklyn City R. R. Co., causing further ruinous losses to the beneficiary and when in the year 1920 she sought of the officers of the trust company, full and complete information in regard to that continuance and in regard to the general conduct of her trust, she was denied the information beyond that contained in Exhibit C-5, Vol. II, pp. 123-124 and Exhibits contained in the William B. Beam Prerogative Appeal.

Thereafter, and in the year 1921, the trustee, again acting in positive bad faith, having abandoned the further conduct of the trust estate, went into the Court of Chancery and opposed the application for a receiver, knowing full well that the beneficiary had then been for nearly an entire year without any income whatever from the trust estate. (Case—Edward Beam, et al, Substituted Trustees' Appeal, p. 24.) In the same year the trustee acting in positive bad faith, deducted and paid itself $731.86 in fees and commissions, the allowance of which was on appeal to the Prerogative Court and in order to secure and obtain the same, sold a $2,000 mortgage which was bearing interest at the rate of 6% and thereafter failed to reinvest the proceeds amounting to ~~$650~~ $1350, but permitted the money to remain in its hands without the payment of any interest to the trust estate whatever thereon.

Thereafter and in the year 1922, the trustee, again acting in positive bad faith, and, having turned over to Edward Beam, et al, Substituted Trustees, the balance of the trust estate with certain exceptions, failed to comply with section 152 of the Orphans' Court Act and go into the Orphans' Court and there account for the balance of its trust administration.

In the same year, 1922, the trustee again acting in positive bad faith and with intent to injure the beneficiary and remaindermen of this trust estate appeared before the Chancellor and moved that the appeal of Edward Beam, et al, Substituted Trustees, which was subsequently dismissed without prejudice to the filing of a new petition of appeal by an order found at page 58, case, same title, be not dismissed. Had this plea been granted appellants would have been without further remedy in attempting to secure from the said trustee any relief under that case and any account for the period of the administration of the trust estate from 1921 to 1922. The Chancellor denied the motion of the trustee.

Thereafter and in the year 1923, following upon the trial of the appeal in the Prerogative Court of Edward Beam et al, Substituted Trustees, the said trust company through its counsel filed a brief with Vice Ordinary Griffin in which it plead as a "clear and full release" the receipt signed by the substituted trustees on March 22, 1922. Having opposed the motion for a receiver and having suggested on the motion of December 13, 1921, that complainants herein go into the Orphans' Court and obtain a new trustee, the trust company thereafter prepared the said receipt and thereafter plead it as a release, all in positive bad faith and with intent to injure and defraud complainants.

On September 29, 1924, the trustee appeared before Vice-Chancellor Griffin and moved for the entry of a final order herein and at the same time acting in positive bad faith, asked the Court of Chancery to award their counsel a counsel fee of $1,000 to be given it for the purpose of stopping this litigation, asserting that unless this litigation was stopped, that they could not go on as they were getting no more trust funds while it lasted. The said request and demand were made at a time when the said trustee had yet to complete its accounting in this trust estate and had yet to unravel its prior intermediate accounts in conformity with Rule 21 of the Orphans' Court and its final account, so-called, which latter it had been indicated by the opinion of the Vice Ordinary was expected of it. Thereafter, the said trustee acting in positive bad faith failed for upwards of two months to comply with the order of the Prerogative Court that it re-state its last filed account in certain particulars and finally on December 3, 1924, again acting in positive bad faith, it filed the said re-statement with the clerk of the court in Trenton and not through the Vice Ordinary, sending no copy thereof to counsel for appellants that he ever received.

Complainants have frequently called the attention of Vice-Chancellor Griffin to the condition of the prior intermediate accounts filed by this trustee herein particularly with reference to the tangle created therein through the wrongful amortization carried on by the trustee for sixteen years (case—Vol. I, pp. 213, 217) and notwithstanding that said representations have been made in the presence of counsel for the trust company, the trustee has made not the slightest effort to unravel its past accounts and complainants are unable to determine the true condition of the estate.

If ever there was of record a case in the annals of trusteeship so run through with the threads of act after act of positive bad faith, and that ran on year after year without any relief being afforded to those oppressed by the overriding of every principle of decent conduct on the part of trustees, complainants might find some solace in contemplating it.

The record of this cause and the Prerogative Court appeal cases, the records of the Orphans' Court, the files of the Chancellor alike, one and all, bear witness to the positive bad faith of the trustee from the first moment it took over this trust in 1905 down unto the hour of the writing of this brief. And on top of it all the trustee comes before this court and asks this court to confirm it in the allowance of another $350 in counsel fees awarded it by the Court of Chancery for having done all of this to the beneficiary in the name of New Jersey Law and Equity. In twenty years of maladministration of this trust estate this trustee has received approximately $5,000 in fees, commissions and counsel fees. This last award of $350 made under the circumstances above set out, is the very last straw.

POINT VI.

The trustee has made many explanations but they do not explain.—There is a difference in the eyes of a Court of Equity between "Good Faith" and "Good Intentions".

An examination of the record in the former suit, particularly that set out at pp. 294, 295, Vol. I, case, will prove that John W. Griggs was entrusted with the entire question of the sale or retention of these securities. In fact at l. 33, p. 295, Mr. Griggs testified:

> "Q. When did it first come up for discussion in the board? A. Well, I shouldn't think that the matter became a subject of definite discussion until after the default by the New York City Railway Company.
>
> "Q. And approximately when was that? A. That would have been in the summer of 1908."

The Court of Errors and Appeals has stated (case—Vol. I, p. 397) that "nothing occurred to disturb anyone's sense of security until about September, 1907" and (p. 398) that "when the default in dividends and interest came later, the time had passed when it was possible to save the situation. The bottom had dropped out completely."

So it is exactly and carefully ascertained that John W. Griggs, during the only period of time when the situation could have been saved, was the sole person who knew anything about what was going on or should be done and yet he did nothing.

The trust company confided the entire matter

to him and he never brought it before the board until it was too late to save the situation.

Minneapolis Trust Co. v. Menage, 73 Minn. 441.

"The fact that receiverships and other positions of trust are nowadays too often used for the personal benefit of the receiver or trustee himself, or to promote some scheme of third parties, rather than for the benefit of the cestui que trustent, is all the greater reason why courts should exact of such trustees the utmost good faith and fidelity to their trust, and require them satisfactorily to explain any acts on their part tending to cast serious doubt upon the integrity of their official conduct.

* * * *

"In the first place, it appears that, in all matters pertaining to the management and disposition of these West Pullman bonds, one Hamblin, its assistant secretary, was the trust company.

"Substantially the whole matter was from first to last left to him. The doctrine of respondeat superior fully applies, and whatever he did or omitted to do in the premises must be deemed to have been done or omitted by the trust company.

* * * * *

"There is, so far as we can discover, no evidence that any of the directors or general officers of the trust company were guilty of any personal fraud or bad faith; but, as already suggested, if Hamblin was, they are legally responsible for his acts.

* * * * *

"But there are certainly quite a number of circumstances which are calculated to cast much doubt upon his entire good faith towards his cestui que trustent, and which call for a satisfactory explanation. Such explanation has been attempted; and, if there were but one or two of these suspicious

circumstances, the explanations might be satisfactory.

"But there is a point beyond which explanation ceases to explain. The more numerous the circumstances requiring explanation, the clearer and more satisfactory the explanations should be."

"*Metropolitan Sec. Co. v. Directors of the New York City Ry. Co.* Circuit Court of the United States, S. D. of N. Y. January 24, 25, 1910. Complainant's Answering Memorandum.

"Mr. Choate:

"I think it was Mme. Roland who said when on her way to the guillotine, 'Oh, liberty, what crimes have been committed in thy name!' Well might these unhappy creditors have exclaimed when the debacle—as Mr. Stetson has so well called it—came: 'Oh, high finance, what crimes have been committed in thy name!' This debacle, this complete collapse, only occurred in 1907, but the rottenness and corruption which preceded it had lasted through many years, as is necessarily the case with every debacle. I do not hesitate to say that the greatest financial enormity ever committed in New York was the flotation and inflation of the Metropolitan Street Railway, its securities and those of its subsidiary companies. The trouble was that they inflated not only the Metropolitan itself, but all the underlying companies, for which they made the Metropolitan responsible. The object and the result was to enable its contrivers to sell out at the top of the market so falsely created, realizing enormous profits, leaving innocent and deluded purchasers to bear the loss upon securities which shrivelled in their hands like parched scrolls.

"Now, they have made many explanations but the trouble is that these explanations don't explain. The question still remains;

why did you do it? Mr. Cravath here has made many explanations, but they are worse than none. He's very gallant about it, and comes bravely into the lists, with rueful countenance but in the true spirit of chivalry; with vizor down and spear at rest, he rushes upon us for the protection of his associates who don't care or don't dare to appear. He insists that there was nothing but the most honest intention.

"The only thing I reply is that men have been required from very early time to have it assumed that they intended the consequences of their acts.

* * * * *

"And Mr. Stetson also says it was done in good faith. Nobody knows better than he, with his clear sense of justice and his thorough knowledge of law, that if good faith does not appear then this court must smite his clients hip and thigh. Look at it as it now appears, and how can any one impute good faith or say that it was merely a transaction in the usual order of business? I say that no one can stifle the equity power of this court with the vain utterance of high-sounding words.

* * * * *

"Now, I don't dispute Mr. Cravath's good intentions. He may have had all the good intentions in the world, but we all know that very gloomy places are paved with good intentions. A court of equity is not satisfied with good intentions; it demands good faith. And I called Mr. Cravath in the course of the taking of testimony and asked him to explain. But the trouble with his testimony was that instead of explaining and justifying, it flatly condemned.

"The defendant's counsel indulge in the heartiest eulogiums upon all parties concerned. Each offers himself as a witness to character, and I do not object or dissent. In fact, we gladly join in the acclaim. You may place them upon the highest pinnacle,

but after all, this court must deal with facts and not with words.

* * * * *

(p. 5.) "In view, however, of the great stress laid by defendants' counsel upon this point, we will review briefly certain facts which conclusively dispose of defendants' contention that they were acting in good faith and for the best interest of the city company in these transactions whereby they transferred almost three millions of dollars of its capital to its sole stockholder without consideration.

"And in this connection we call attention to the following statement in Bouvier's Law Dictionary as to what constitutes fraud in the view of a Court of Equity:

"'What constitutes a case of fraud in the view of Courts of Equity, it would be difficult to specify. It is indeed, part of the equity doctrine of fraud not to define it, not to lay down any rule as to the nature of it, lest the craft of men should find ways of committing fraud which might escape the limits of such a rule or definition. The court very wisely hath never laid down any general rule beyond which it will not go, lest other means for avoiding the equity of the court should be found out.' Per Hardwicke, C., in 3 Atk., 278. It includes all acts, omissions, or concealments which involve a breach or lack of equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another" (Bouvier's Law Dictionary—"Fraud").

It is true that as Mr. Choate said, this debacle, this complete collapse, only occurred in 1907 and by that we are set a whole year ahead of the time when Mr. Griggs' explanations would lead us to believe he might have become alarmed at the situation. But Mr. Choate also says that "the rottenness and corruption which preceded it had lasted through many years," and we have

the word of Griggs, Baldwin & Pierce that it had come to an acute stage as far back as 1902.

Many trustees may have been misled and have lost their trust funds in this debacle but here was a trustee who delivered over the conduct of its affairs in this trust to one man and that one man sat in on the inside and yet knew nothing. What a picture of innocence in the midst of the ravening wolves of Wall Street does not Mr. Griggs present us with?

POINT VII.

A trustee who acted in such positive bad faith as to commit a plain and palpable fraud on the beneficiary in his accountings to the court will not be heard as to his good intentions until he makes right the wrong done.

The least that the complainants have ever asked the Court of Chancery was that their accounts might be straightened out, accounts that had their inception in fraud and deceit and their end in a vacuum.

The trustee has gone before the Court of Chancery and offered many wondrous explanations as to why certain securities were retained and why certain were not sold, explanations that are given the lie by evidence that the court never even came to consider in its opinion filed herein.

Until such time as such a trustee makes right the wrong it has done to the beneficiary, the remaindermen and the substituted trustees, by a cleaning up of its past accounts and a compliance with the primary conceptions of trusteeship in filing with the court a final account in accordance with the statute, it is hoped that anything that

the trustee may have to say to this court as to its intentions, will be taken by this court at its face value.

This trustee must be brought to account for its maladministration of this trust estate, involving almost every form of deception, breach of trust or fraudulent conduct ever brought to the bar of a Court of Equity. The summary treatment accorder the trustee by the courts of Massachusetts in the case of *Brigham v. Morgan, supra,* for conduct somewhat similar in its general features to that of this trustee on the accountings herein furnishes a guide which this court might well follow in ending this fourteen year dispute to the everlasting credit of our courts and New Jersey Justice.

Respectfully submitted,

WILLIAM B. BEAM,

Complainant and solicitor pro se.

6 OCT.1925

New Jersey Court of Errors and Appeals

Edward Beam et als., Complainants-Appellants, vs. The Paterson Safe Deposit and Trust Company et al., Defendants-Appellees.	On Bill, &c. On Appeal from Final Decree of the Court of Chancery.

BRIEF OF APPELLEES

I.

The purpose of this suit is to compel the defendant Paterson Safe Deposit and Trust Company to pay to the complainants the amount of certain losses due to the depreciation in the market value of securities held by the defendant as trustee under the will of Sarah A. Cooke, deceased. (Case, p. 13.)

The Paterson Safe Deposit and Trust Company, at the time of the hearing, had become by merger the National Trust Bank, so that at the request of complainants' counsel for the sake of form the bill was amended by adding to the name of the defendant as set forth in the bill of complaint, the National Trust Bank, although it was deemed unnecessary, since the Paterson Safe Deposit and Trust Company remained liable for any of its obligations. (Case, pp. 78, 79.)

The said securities involved in this suit are three bonds of the 28th and 29th Streets Cross-

town Railway of the par value of one thousand ($1000) dollars each.

Two bonds of the Second Avenue R. R. of the par value of one thousand ($1000) dollars each.

225 shares of stock of Central Park and North East Railway Co., of the par value of $100 per share.

200 shares of stock of Brooklyn City Railway Co. of the par value of $10. per share. (Case, pp. 4, 5, 108.)

The original bill of complaint in the present suit was filed August 1, 1921, by Edward Beam and John C. Beam as complainants, but was amended upon the objections of the defendant for non joinder of necessary parties, by joining Edward Beam, John C. Beam, Carrie S. Beam and William B. Beam, who are the complainants in the present suit. Only one of the complainants, William B. Beam has appealed from the decree in the present suit. (Case, p. 225.)

On February 7th, 1912 (Case, p. 256) a suit was started in the Court of Chancery wherein said Carrie S. Beam was sole complainant. The purpose of that suit was the same as that of the present suit, with reference to all the securities involved in that suit. The securities involved in the former suit were the same as those involved in the present suit except the 200 shares of stock of the Brooklyn City Railway Co., which were not involved in the former suit. (Case, p. 256 to 262.)

The answer to the amended bill of complaint in the present suit set up matters in defense as follows:

1. With reference to the five bonds and 225 shares of stock involved in the present suit, the

same facts were alleged in the answer in the present suit as were alleged in the former suit, showing that the defendant in holding said securities acted in good faith and with reasonable discretion and was not liable for the loss due to their depreciation in value. And likewise with reference to the 200 shares of stock of the Brooklyn City Railway Co. involved in the present suit, similar facts were alleged in the answer showing that the defendant in holding the same acted in good faith and with reasonable discretion and was not liable for the said loss due to their depreciation. (Case, pp. 39 to 43.)

2. With reference to the five bonds and 225 shares of stock involved in the former suit, the answer also set up the proceedings of the former suit in Chancery, the decree therein holding the defendant liable for said losses, the appeal therefrom to this court and the decree of this court reversing the decree of the Court of Chancery and directing that a decree be entered in said Court of Chancery dismissing said bill of complaint, the remittitur to the Court of Chancery of said proceedings and the decree of the Court of Chancery pursuant to said decree of this court, dismissing said bill of complaint. It was alleged in the answer to the amended bill of complaint in the present suit, that the former suit was *res adjudicata* and *estoppel* against all the complainants in the present suit, with reference to the five bonds and 225 shares of stock involved in the former suit. (Case, pp. 37 to 39.)

3. The answer also set up eight different decrees of the Orphans' Court confirming eight accounts of the defendant as *res adjudicata* and an *estoppel* and bar against all of said complainants as to all of said

securities involved in the present suit. (Case, pp. 43 to 50.)

II.

POINT I.

Respecting the five bonds and 225 shares of stock involved in the present suit, the decree in the former suit undoubtedly is res adjudicata as against Carrie S. Beam.

So far as she is concerned, she stands as identical complainant in both suits, the five bonds and 225 shares of stock which are the subject matter of both suits are identical and the cause of action which is to hold the defendant liable for the loss in the depreciation of these securities is identical in the two suits. This identity of parties, subject matter and cause of action, in so far as Carrie S. Beam is concerned in the two suits, presents all the elements essential to constitute the decree of the former suit *res adjudicata* against her.

This court in that case reversed the decree of the Court of Chancery and held that the defendant exercised good faith and reasonable discretion and was not accountable for said loss.

See opinion in *Beam v. Paterson Safe Deposit & Trust Co.*, 83 *N. J. Eq.*, 62 ', also the decree of reversal of this Court and the decree of the Court of Chancery in pursuance thereof dismissing the bill. Exhibits C-2 and C-3 (Case, pp. 391 and 393).

POINT II.

As to the five bonds and 225 shares of stock involved in the former suit, even if the former decree is not strictly res adjudicata as against the three complainants, Edward Beam, John C. Beam and William B. Beam, because they were not parties to the former suit, nevertheless precisely the same cause of action relating to the five bonds and 225 shares of stock involved in the former suit was litigated in the present suit; and, where the evidence in each suit was essentially the same, this court should stand by its decision in the former case and follow the law of the case then established upon the same evidence for the same cause of action.

Even if the decision of the same cause of action in a former suit may not be *res adjudicata* to bind one not a party to the former suit, nevertheless where the same cause of action has been litigated upon substantially the same evidence in a former suit, the court will follow the former decision as the law of the case established by the former decision. This law of precedent or *stare decisis* as distinguished from that of *res adjudicata* is referred to by *Vice Chancellor Pitney* in *Newark City National Bank vs. Crane*, 60 *N. J. Equity*, 121, affirmed by this court 61 *N. J. Equity*, 634, at page 123, as follows:

> "There is a clear distinction between a decree and the law declared by the court which produces the decree, and though a party may not be bound by a decree, as such, he may be bound, so to speak, by the law which produces that decree. That is to say, his rights

are affected, as all other citizens' rights are affected, by the declaration of the law made by the courts in the due administration of justice." See also 24 *Am. & Eng. Enc. L., 2nd Ed., pp.* 715, 716 *and cases cited.*

POINT III.

As to the five bonds and 225 shares of stock involved in the former suit, the evidence in the former suit relating thereto was by agreement admitted as the evidence in the present case and no further evidence was admitted or offered which changed or affected the force and effect of the evidence in the former suit with reference to those securities.

That no evidence was admitted or offered in the present suit which changed or affected the force and effect of the evidence in the former suit as to those securities will appear from an inspection of the printed case.

The record of the former suit was offered in evidence by complainant's counsel and admitted by consent of defendant's counsel including the evidence admitted therein, the decree made therein, the decree of this court reversing the decree of the Court of Chancery and the decree of the Court of Chancery dismissing the bill of complaint pursuant to the decree of this court. (Case, pp. 67 to 70. Exhibits C-1, C-2, C-3, C-4, pp. 255 to 400.)

Moreover, the evidence and exhibits and everything in the former suit as contained in the printed book on the appeal in this court were admitted in the present suit to have the same effect as if it

were produced in the present suit. (Case, pp. 67, 68.)

The evidence in the former suit thus admitted in the present suit was the only evidence admitted in the present suit that had any material or substantial value as bearing upon the defendant's liability in holding the said five bonds and 225 shares of stock which were involved in both the former and the present suit. As to the defendant's alleged liability for the loss of depreciation of those five bonds and 225 shares of stock involved both in the former and the present suits, the defendant in the present suit offered no further evidence than the evidence relating to the same securities in the former suit, since upon that same evidence this court had held that the defendant was justified in holding on to those securities.

The only evidence offered by the complainants in their main case in the present suits was as follows:

(1) They called the Clerk of the Prerogative Court as a witness to papers filed on the appeal by William B. Beam from the final decree on the final account of the defendant in the Passaic County Orphans' Court. (Case, pp. 63, 64.)

(2) The Surrogate was called and produced said eight accounts in the Orphans' Court, all proceedings connected therewith including the decrees allowing the accounts, and the exceptions thereto and decrees thereon. (Case, pp. 71 to 73.)

(3) William B. Beam one of the complainants, then testified respecting the said 200 shares of stock of the Brooklyn City Railway Company and the sale thereof by the new trustees appointed in place of the Paterson Safe Deposit and Trust Company. (Case, pp. 73, 74.)

After the evidence produced by the complainants as above stated had been admitted, the complainants rested their case. (Case, p. 79.)

The only evidence then offered by the defendant was evidence of John L. Griggs and George D. Coe (Case, pp. 79 to 133) relating to the facts under which the defendant held on to the said 200 shares of stock of the Brooklyn City Railway Company showing that the defendant exercised good faith and reasonable discretion in so doing.

Respecting the said securities involved in the former suit, the complainants closed their case without offering any evidence other than the evidence admitted in the former suit, upon which evidence this court had held that the defendant was justified in holding on to those securities.

The complainants, however, after they had rested their case and after the defendant had closed its case, called as a witness John W. Griggs, former President of the defendant and examined him as to whether or not Mr. Pierce who was connected with the law firm in New York of which Mr. Griggs was a member, had in February, 1908, on behalf of a committee of the Metropolitan Railway stockholders, submitted a petition to the Governor of the State of New York for the removal from office of the District Attorney of New York County. (Case, p. 140.) Counsel for the defendant objected to this testimony as immaterial and irrelevant. The Complainants' counsel stated that the purpose of it was to bring home direct and unequivocal notice to the president of the defendant that there was a very good probability that these bonds would default (Case, pp. 140, 141) counsel of complainant presumably meaning that

the facts stated in the said petition contained such notice. Counsel likewise examined Mr. Griggs presumably for the same purpose as to whether he was acquainted with the contents of a book written on the subject by one Amory. Mr. Griggs positively testified several times in his examination that he had no personal knowledge of the contents of the petition to the governor of New York and that he had merely read newspaper reports relating thereto or had heard casually of the fact that Mr. Pierce had at some time conducted such a proceeding, and that he had no knowledge of the Amory book. He testified on that subject as follows:

> "Q. Do you recall that, some time in the early part of February, 1908, your firm submitted, on behalf of a committee of the Metropolitan stockholders, a petition to the Governor of the State of New York for the removal from office of the District Attorney of New York County? A. No, I do not recall that; I know there was, at some time, such a proceeding conducted by Mr. Pierce, but I had nothing to do with it, and had no definite knowledge of it. Q. You, however, knew it to be a fact that your firm did file such a petition? A. No, I did not. * * * Q. Now, Mr. Griggs, did you, or did you not know, that Paragraph 8 of this petition, filed by your firm in February, 1908, provided therein as follows: (A. (Interrupting) Now, let me answer that before you go any further; I never knew there was such a petition; I never saw it; I did not know what was contained in it; and, in so far as

my firm might have been represented in it, it was all done by Mr. Pierce, and I had no knowledge, at all, except what I got in the newspapers. Mr. Medina: I move that that answer be stricken out, as not responsive to any question. The Vice Chancellor: I will strike it out. Q. Continuing my question—did you, or did you not, know that the petition filed by your firm in February, 1908, contained the statement, in Paragraph 8, 'By February, 1902, the affairs of the Metropolitan Street Railway Company had become so bad that dividends could no longer be paid out of the earnings, and some means must be devised whereby dividends could be paid without danger of violating the criminal law'? A. I do not know that; I never knew it. Q. Did you know that the said petition contained the statement: 'Mr. William C. Whitney and Mr. Thomas F. Ryan and others owned large blocks of the stock of the Metropolitan Street Railway and if the true condition of affairs became known that stock would become of little value'? A. I did not; I never saw the document you refer to, nor heard of it. Q. Never heard of the document, did I understand you to say? A. Not that particular document, no. Q. But you did hear of the petition? A. No; I knew there was a proceeding against the District Attorney. Q. Of course you knew that. A. I did not know on what it was based; I did not know what papers were filed; I did not know what evidence was given; I did not know

anything about it. Q. You, I suppose, know perfectly well that no one in your firm would file a document with the Governor of the State of New York, of such public importance as a petition for the removal of the District Attorney of New York County, without consulting you as the senior member of the firm? A. On the contrary, I know they might. Q. Now, did they, or did they not, as a matter of fact, consult you with reference to any phase of the petition that was filed? A. Never.*****Q. Did you have any occasion to read a book written by Mr. Amory, Col. Wm. N. Amory, entitled 'The Truth About Metropolitan'? A. No. Q. Did you ever hear that book discussed by any members of your firm, or people in your office? A. Not that I remember. Q. I ask whether this portion of the petition, filed with Governor Hughes, refreshes your recollection in that particular (reading from the Eight Paragraph, page 25): 'The New York City Railway Company was incorporated, its stock being held by the Metropolitan Securities Company, and leased the Metropolitan Street Railway Company, the Metropolitan stockholders receiving in lieu of dividends interest upon the stock which they held at 7%. The insolvency of the Metropolitan Street Railway Company; the object of the Metropolitan Securities Company; the whole transaction, as we know it to-day, was fully disclosed by Mr. Amory to Mr. Jerome in 1903'—does that refresh your memory, at all, as to the Amory book?

A. Not at all; I never heard that or saw it before. Q. Did you know it to be a fact that proceedings were initiated in your office to remove Mr. Jerome as District Attorney? A. No; all I knew about it was that Mr. Pierce was specially and personally employed in a proceedings to remove Mr. Jerome. Q. Then you did not know that proceedings were being initiated in your office to remove Mr. Jerome? A. I did not know that they were being initiated in our office. Q. Do you state to the Court that Mr. Pierce never talked to you about that proceedings? A. No, I do not state that. Q. Well, then, in the course of your conversations with him about it, what did he say? A. I do not remember. Q. You do remember however, that he had conversations with you on the subject, do you not? A. I remember the matter was probably spoken of incidentally; I cannot tell you what was said; but as to furnishing me any details, or detailed information about it; or I having any interest in it; professionally or financially, I had none. Q. Didn't you even know the ground upon which the removal of Mr. Jerome was being sought by your office? A. Possibly I did, but I could not tell you now what it was. Q. Well, now, let me see if this will refresh your recollection (reading from page 26 of the petition): 'The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging

moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the Railroad Company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money'—didn't you know that that was the ground upon which, in February, 1908, Mr. Jerome's removal was being sought by your office? A. I don't know whether I did, or not, but if I did know it, it was a mere matter of general information, more derived from the newspapers than from anything in my office. Q. You would not call Mr. Amory's book a 'newspaper'? A. What? (Question repeated.) I never saw Mr. Amory's book; I don't know whether it is a newspaper, or what it is." (Case, pp. 140 to 145.)

Counsel for complainants offered a photographic copy of said petition. Under objection the copy was not admitted, on the ground that it was irrelevant and immaterial and that such copy was inadmissible. (Case, pp. 152 to 155.) Thereupon the complainant William B. Beam testified that he had a copy made in the New York Library by the photostat process from a copy filed there, and that he compared that copy with the original on file in the office of the Governor of New York. (Case, p. 156.) This copy was offered in evidence by com-

plainants and overruled as inadmissible. (Case, p. 157.) A photostatic copy of the Amory book was also offered in evidence and overruled as immaterial and irrelevant and not admissible as a copy. (Case, p. 168, 169, 170.) All of this testimony and the offers of documents above referred to was taken on the final hearing of the cause on December 7th, 1922. (Case, p. 53.) The testimony was then closed and the case set for oral argument and was argued on December 8th, 1922. (Case, p. 171.)

The case was held for decision from December 8th, 1922, until the opinion herein was filed July 1, 1924. (Case, p. 171.) On June 19th, 1924, a few days before the opinion herein was filed and about a year and seven months after the case had been finally argued, said William B. Beam, one of the complainants as counsel *pro se* and Mr. Hutchinson, counsel for the other complainants, made a motion before Vice Chancellor Griffin in this case to reopen the hearing and to introduce therein in evidence the testimony taken and the exhibits offered in four distinct appeal cases from orders of the Orphans' Court which were then pending before Vice Chancellor Griffin in the Prerogative Court. (Case, pp. 187 to 201.)

Vice Chancellor Griffin denied the motion stating: "The motion to offer the testimony in evidence is denied because it is illegal." (Case, p. 201.)

Thereupon on June 30th, 1924, another motion was made by said William B. Beam as solicitor *pro se* and by Mr. Hutchinson counsel for the other complaintants to again offer the said copies of what he called the "New York Evidence" consisting of the same copies of the petition to the Governor of New

York and the Amory Book. (Case pp 201 to 219).

The offer, as we have stated, was made about a year and seven months after it had been offered on the final hearing when the case was closed. At the final hearing Vice Chancellor Griffin in denying the motion at that time, denied it on the ground that the petition and book were irrelevant and immaterial, and that the copies offered were not admissible. The complainants made no further attempt to produce the original or admissible copies of these documents, and left that matter rest from the time of the final hearing until June 30th, 1924, when the motion was made and the complainants again merely offered the same copies. The Vice Chancellor then stated that he would not lay over the case for another date in order to produce the documents so that they might be admissible but that he would consider whether or not the copies offered were in such shape as to be treated or regarded in evidence. (Case, pp 210, 211.). On the motion made on June 30th, 1924, said William B. Beam also moved that the Vice Chancellor should stay the present suit in Chancery until he should determine the said four appeal cases then pending before him in the Prerogative Court. (Case, p 211.). That motion was denied and William B. Beam then repeated the previous motion which he had made and which had been denied on June 19th, 1924, to reopen the hearing in this case and introduce therein the testimony taken and exhibits offered in the said four appeals in the Prerogative Court. This motion was likewise denied (Case, p 211 to 218). On July 2nd, 1924, two orders were made in this case, one denying the said motion to reopen the hearing and to introduce said testimony and exhibits in said cases in the Prero-

gative Court (Case, pp 219-220) and the other denying the said motion to stay this cause until the determination of said four cases in the Prerogative Court (Case, p 221 222.) Said William B. Beam appealed to this Court from these two orders together with another order of the Chancellor herein dated August 16th, 1924, wherein the Chancellor denied the motion of said William B. Beam that the said decree in this suit then advised by Vice Chancellor Griffin should not be signed by the Chancellor until the Court of Chancery should examine proceedings on which it was based and should consider every step in the proceedings, every act of Vice Chancellor Griffin and the various counsel before him in this cause and in said appeal cases in said Prerogative Court.

These orders appealed from were affirmed by this court on March 16th, 1925 (See opinion of this court 128 Atlantic Reporter 229, 230.) The appellant has included in the printed case on this appeal the stenographer's notes of these two motions which were the same notes that were contained in the printed case on the appeal wherein the orders were affirmed. We have served upon the appellant written notice of objection to the inclusion in the printed case on this appeal, the notes of these motions as irrelevant and immaterial to the issues involved in this appeal, and we submit that such matters are so irrelevant and immaterial and tend to confuse the issue in the present appeal.

POINT IV.

The petition to the Governor of the State of New York and the Amory book were irrelevant and immaterial; the copies offered were inadmissible, even if the documents themselves had been relevant.

(1) The evidence was conclusive that Mr. Griggs had no knowledge of the contents of either the petition or the book and the defendant Trust Company of which Mr. Griggs was president, evidently would not be bound by the contents of a petition of which Mr. Griggs had no knowledge because some one connected with his law firm had acted for those who filed the petition, and that is so, even if it had appeared in the evidence that the petition showed such facts as would have required Mr. Griggs acting in good faith and with reasonable discretion to sell the securities in question.

(2) The mere fact that the charges were made in the petition could not in itself do more than to put Mr. Griggs upon notice to inquire into their truth, and even if they were true they were merely charges of improper conduct of certain persons connected with the Metropolitan Street Railway Company and the New York City Railway Company, and even if they were true, they were not in themselves facts that showed that the securities of the company held by the defendant which were leased to these companies, whose intrinsic values were not necessarily affected by the alleged acts of the officers of the

Metropolitan Street Railway Company and the New York City Railway Company, should be sold at a price below their intrinsic value. Even if Mr. Griggs had been put upon notice by the facts disclosed in the petition and the defendant were bound thereby, the action of Mr. Griggs and the other officers of the defendant in making inquiry and receiving advice as shown in the evidence in the former case and admitted in this case, justified the defendant's action in holding on to the securities, even if Mr. Griggs had knowledge of the contents of the petition and the matters therein stated were true.

I refer the court to the testimony of Mr. Griggs on pages 286 to 300 of the printed case showing that the appointment of the Receivers was not regarded as jeopardizing the essential values of the securities of the leased lines and the reasons for such belief, and also showing all the facts upon which this court held in the former case that the defendant was justified in holding on to the securities.

(3) So far as the matters contained in the Amory book are concerned Mr. Griggs had no knowledge thereof. (Case, pp. 143, 144.)

(4) The Vice Chancellor properly held that the copies of these documents offered were inadmissible in evidence, even if their contents were relevant.

POINT V.

The evidence in the former case admitted in this case justified the defendant in holding the five bonds and 225 shares of stock involved in that case, as this court decided in the former case.

The defendant was justified in its action by the statute approved March 23, 1899. (P. L. 1899, page 236) which provides as follows:

> "Whenever any testator shall have made, in his life time, any investment of money in municipal bonds or on bonds secured by mortgage, or in the bonds or stock shares of any corporation, and the same bonds, mortgages or stock shares shall come or shall have come into the hands of the Executor of or trustee under the will of such testator or of the administrator with the will annexed, to be administrated, and such executor, administrator or trustee may, in the exercise of good faith and reasonable discretion, have continued such investment, or may hereafter continue the same, he shall not be accountable for any loss by reason of such continuance."

The facts bearing upon the reasonableness of the defendants' discretion in holding on to the securities are testified to by John W. Griggs, President of the defendant Company, and George S. Coe, a member of the firm of A. M. Kidder & Company, a banking firm of New York City, and the undisputed facts are as follows:

The securities in question had been purchased by Sarah A. Cooke, deceased, who died on or about May 1, 1905, and came shortly after her death

to the defendant Company as Trustee under her will.

When these securities came to the defendant, the defendant held a considerable amount of the same securities for itself and for other trusts. They were regarded among investors and the officers of defendant as gilt edge securities. These securities were securities of underlying surface railroads in New York City, the properties of which were, together with others, leased practically in perpetuity to the Metropolitan Street Railway Company as one system and the Metropolitan Company afterwards leased its system to the Interurban Company, the name of which was subsequently changed to the New York City Railway Company, who operated the same on or about September 24, 1907.

The leases to the Metropolitan Company, which was regarded as a strong company, back of which were such financiers as ex-Secretary Whitney and Mr. Ryan, guaranteed the payment of the interest on the bonds in question of eight per cent, and a dividend on the stock in question of the Central Park, North & East River Company of nine per cent. per annum.

Previously to the financial panic of 1907, all of the three securities in question commanded a very high price. During the financial panic of 1907 these securities in common with all securities had fallen considerably in market price, but nothing occurred to disturb anybody's sense of security about them until September, 1907, when right in the midst of the panic, a creditors' bill was filed in the Circuit Court of the United States in New York, alleging the insolvency of the New York

City Railroad Company, and Receivers were shortly afterwards appointed for that Railroad Company and for the Metropolitan Company. The appointment of these Receivers was not regarded as in any way jeopardizing the essential values of these securities, that is to say, the certainty of the payment of the dividends on the stock and the interest on the bonds, because the general belief was that the system was so consistently knit together and bound by the system of transfers of fares from one to another, that it could not be disintegrated and that it would be not only very difficult to do it, but it would be a great public calamity to disintegrate the system and break it up. In the bill of complaint filed against the New York City Railroad it was alleged that it was most important that the system be preserved intact and not broken up. If that had been done, as a matter of course, the leases remained good and the rent would be paid, which rent was reserved in the form of payment of dividends on the stock and interest on the bonds. The Receivers appointed by Judge Lacombe were directed to operate the whole system; as to these three particular companies in question, they were directed and authorized to borrow funds on Receivers' certificates in order to pay the rent for these particular leases; and down to the summer of 1908, so far as the officers of the defendant could find, there was not the slightest idea but what these three lines would be retained in the system; in fact Judge Lacombe had directed the Receivers to retain the properties and pay the rent. Contrary to expectations, however, about July 1, 1908, the Receivers defaulted and did not

pay interest on some of the bonds or dividends on the stock of the three companies in question, and then gradually as the interest dates or dividend dates came due, the Receivers let go of all three of these companies.

The last dividend on the stock of the Central Park, North & East Company was paid January 1, 1908; the last interest paid on the bonds of the Second Avenue Company was February 1, 1908, and on the Twenty-eighth and Twenty-ninth Streets Crosstown Company was paid April 1, 1908, but the default and failure to pay the dividends and interest was not known and determined until July 1, 1908.

Then after it became known that the Receivers were not likely to retain the leases, the market quotations on these stocks dropped lower. The defendant was largely interested in these securities, more in the Second Avenue securities than the others, and after the default by the Receivers, in order to keep an eye and a hand on the operations of the company and on the situation, the defendant caused John W. Griggs, the President of the defendant, to become a director of the Second Avenue Railroad Company, and also its general counsel, and in that way he had access to all the voluminous records connected with the Receivership of the Metropolitan Company and the New York City Railway Company, and became acquainted with the operations of the various reorganization committees that were formed and the various proceedings in foreclosure in the different lines, including the three lines involved in this case. Previous to the default officers and directors of these three companies had been made

by the appointees of the lessee. When the Receivers defaulted, the management of these three companies was turned over to their stockholders who elected independent boards no longer interlocking.

As to these roads when they were turned over, the question immediately arose, could they as independent companies maintain themselves on a profit-earning basis; secondly, would they be reorganized beneficially to the stockholders or the bond-holders. The first question could only be answered after a period of experience, but the general opinion, as ascertained from inquiries and conversation with those interested, was that they could maintain themselves and be profitable, and the second question, as to whether a reorganization could be effected advantageously to those interested, was that it could be; reorganization committees were formed in all the three cases as to all the three companies. The firm of A. M. Kidder & Company, of New York, were old, conservative, established bankers of New York from whom, as Mr. Griggs believed all the securities held by the defendant company, as well as those particular stocks of the Cooke Estate, had originally been bought. These stocks of the interlying companies, which became gilt-edged securities, were originally sold by the firm of A. M. Kidder & Company, and Mr. Griggs conferred and continued in conference with the members of that firm concerning the advisability of holding on to these stocks, consulting with Mr. Marvin and Mr. Coe, members of that firm both of whom were active in connection with the boards of the various companies. Mr. Griggs formed the opin-

ion which was concurred in by the finance committee of the defendant Trust Company, as the matter was laid before them from time to time, that it was not prudent or desirable to sell the securities in question at the sacrifice price at which they could then be disposed of. While there were nominal quotations of the securities they were unsalable, and in no instance, in the opinion of Mr. Griggs, on the list where a security was quoted as 50 bid, if one had offered ten shares could he have got fifty per cent of the nominal quotation price. The dilemma was presented as to whether the defendant should take the chances that would come from a reorganization, from a separate successful operation of these companies, or submit to a very gross loss at any particular time. The mortgage on the Second Avenue Company, as to which the defendant had some bonds, was proceeding with foreclosure, and there was a separate Receiver appointed for that proceeding in the Supreme Court of New York, who was still in possession at the time of the hearing, and the reorganization committee had not then, at the time when Mr. Griggs gave his testimony, thought it fit to force the matter to a sale; but there was then a design and purpose on their part when it was to be sold to make a reorganization that was equitable to all interests, stockholders and bonds according to their different rank. The property of the Central Park, North & East River Company turned out the worst of any of the three companies and was sold under foreclosure of the mortgage. The defendant had no bonds, but only stock in this company, and the property was bought at a price

and by a purchaser which did not let in any reorganization scheme at all, and the only asset that was available to the stockholders of that company was the claim of something like a million dollars which had been allowed by Judge Lacombe against the Receivers of the Metropolitan Street Railway Company and was a claim against the assets of that company, and was a debt of the Receiver, there being funds in the hands of the Receiver of the Metropolitan out of which creditors would receive a dividend, how much was not known. During all this time the advice and opinion which Mr. Griggs and the officers of the defendant received from others who were interested in the matter was that it was not advisable to sell, but to hold on to these securities. Mr. Griggs mentions the firm of Davies, Stone & Auerbach, who were acting as counsel for the Second Avenue Company in several of those matters and Mr. Griggs was frequently in conference with Mr. Tolles, a member of that firm, and being anxious about the course that the defendant should pursue, Mr. Griggs conferred with Mr. Tolles about it, and Mr. Tolles always believed that these three companies would be able to get on their feet eventually, and that it would be better for the security holders to hold on than to sell when nobody wanted to buy. The matter was frequently talked about by the finance committee of the defendant, who met every week. One of the members of this committee was Mr. Francis K. McCully, who was an active broker and had been for thirty years in Paterson, and was familiar with these stocks; another member of this finance committee was

Mr. John S. Cooke, who was a brother of the complainant in this case, and who also became a Director of the Second Avenue Company so that he might keep an eye and a hand on the situation. The matter was discussed by the finance committee, and Mr. Griggs frequently reported to them what he had ascertained and what he knew about the progress of the earnings of the Second Avenue Company under Mr. Linch, the Receiver, and the various situations; and there never was an opinion expressed by any of the finance committee, except the opinion that it was better not to make the sacrifice. The defendant company held some of these securities as its own and they treated their own exactly as they treated those which they held in trust.

After the Receivers defaulted and delivered over the three roads, the finance committee of the defendant discussed the subject and decided that the securities would remain essentially good, irrespective of their market price, because they were essential to the complete Metropolitan system; that the system of transfers had been established from one to the other, and that they could not get along if they began to drop off integral parts, and that the public protested against it; from which the defendant had a right to presume that the roads would probably be taken back into the system.

Mr. Griggs, after stating these reasons why the defendant held on to the securities, said:

> "Now, that generally represents the attitude and course of the trust company in the matter. It was not a matter as to which the company was negligent or in-

different; it was a question in which I think the company used every means of acquiring knowledge and forming judgment that was available to them, and, whether their judgment was sound or not, it was honest judgment; and I may say personally, I believe under all the circunstances it was sound, and, knowing the same facts, I should do it again exactly as I did do it."

George S. Coe, a member of the firm of A. M. Kidder & Company, testified that the status of these securities in question after the lease to the Metropolitan Company, was second to none in regard to the most conservative investors in point of security, and being followed by two tiers of corporations, both showing large equities, they were regarded as being the very best and ranked in point of basis with the superlatives. He dealt in all of these securities, and he owned personally as a member of his firm, and they held as Trustee stock of the Central Park, North & East River Company and stock of the Second Avenue Company.

He says that when the Second Avenue road was abandoned, there was nothing to do but to hold on to the securities of that company, because the bottom of the market for that stock fell out completely, and that it was impossible to sell; that they dropped from a nominal market for odd lots to practically no market.

He also says that he does not see how anything could prudently have been done with the Second Avenue bonds but to hold them, because the market was so narrow, and that they could not be sold without cutting even the quoted prices.

As to the Twenty-eighth and Twenty-ninth Street bonds, he says that it was impossible to do anything in the way of selling them.

He held the stock of the Central Park, North & East River Company, which he originally purchased at 220, until it practically had no value and then, for fear of an assessment, he put it up for sale at auction and sold it somewhere around 20 or 30. He sold this in 1910 or 1911, and he sold then because he was a trader and did not carry dead things on his books upon which anything cannot be borrowed.

He testified that it was the general opinion among the large holders of these securities that the only thing to do was to hold on to the securities and states various reasons and inducements for such action which existed and continued to exist, which are hereafter referred to.

This witness produced schedules showing the sales of stock of the Central Park, North & East River Company from December 20, 1907, to October 23, 1912, (Case, p. 386, Ex. D-1) taken from the books of his firm. He says there were no public records of sales, but they were all privately made and only under special inducements and by persons who had purchased at a high price and who were willing to take the chance of speculation in order to average their prices; that his firm and two others originally were the only dealers in the securities in question, which were specialties, and the other firms quit dealing in them when the Receivers were appointed, and that naturally the trading came to his firm on account of its remaining activity; that everything tended to the door of his firm, which was the only

firm that continued to deal in these specialties, and that from his knowledge, gained by keeping in touch with the market generally as to the sales of these stocks, the schedule from the books of his firm states practically all sales whatever of these securities that took place from December, 1907, to October, 1912.

Schedule D-1 (Case, p. 386) shows that from December 20, 1907, to July 2, 1908, there were only 103 shares of the Central Park, North & East River stock sold at private sale, and one share at auction all ranging in price from 82 to 125. Thereafter, from July 2, 1908, to March 4, 1910, there were only 13 shares sold privately at 100, 8 shares July 2, 1908, and 5 shares August 6, 1908, and during the same time 42 shares sold at auction at prices ranging from 35½ to 36½; after that there were only a few scattered sales at still lower prices.

The quoted prices for the Twenty-eighth and Twenty-ninth Street bonds, after the default of interest in July, 1908, by the Receivers became known, was from 25 bid to 40 asked (Case, p. 366, Ex. C-6) and the Second Avenue bonds was from 81 bid to 85 asked. These quoted prices do not represent any actual sales, but are taken from the Commercial and Financial Chronicle, a weekly publication, which, after the securities became inactive, continued to quote nominal prices which do not represent the actual prices which could be obtained (p.).

This was the only evidence offered by the complainant in the former suit as to the ability of the defendant to sell these securities if they had attempted to do so, and the evidence of Mr.

Griggs and Mr. Coe was undisputed that the defendant could not have sold them even at what then appeared to be ruinous prices quoted. Mr. Griggs said that they could not have been sold for half of those quoted prices.

Assuming, however, that the defendant could have sold the securities at some low price, the defendant was not liable for failing to do so.

We maintain that the defendant, in the light of all apparent facts and obtainable knowledge, exercised the "reasonable discretion" required by the statute.

By this statute a Trustee who takes securities which the testator has himself bought may continue them without being accountable for loss, if he exercises good faith and reasonable discretion, while a Trustee as to other securities is required to invest in such securities as are prescribed by Section 137 of the Orphans' Court Act. (3 Comp. Sts., p. 3864.)

This act of 1899, in thus distinguishing the duties of a Trustee, when he holds investments made by the testator himself, from other cases, shows the design of the statute to continue the investments made by the testator himself so far as they may be continued with the exercise of good faith and reasonable discretion.

The statute recognizes that such investments may not be as safe as those which are designated by the statute in other cases, and therefore contemplates the continuance of a less safe investment by the Trustee, because the testator himself made it, and only charges the Trustee to use good faith and reasonable discretion in continuing to hold it; and reasonable discretion given to

the Trustee in such case imposes upon him the right and duty, not merely to sell the security when conditions and circumstances appear reasonably to warrant a sale, but to keep the security when conditions and circumstances appear reasonably to warrant keeping it. The only restriction upon this discretion so given by the statute is, that it must be reasonable, and that, we apprehend, means that it must be such reasonable discretion as men exercise generally with respect to their own property or that which they hold in trust.

If such an investment declines suddenly or otherwise under circumstances which reasonably indicate to the Trustee that it will benefit the trust to hold rather than sacrifice it, he would use reasonable discretion, within the meaning of the statute, to hold rather than sell it. Inasmuch as the Trustee is by this act presumed to hold a security of fluctuating price, it would be as unreasonable discretion to sell it on a decline when he had reason to believe it would thereafter advance, as it would to hold it when he had reason to believe it would thereafter decline. To hold that a trustee in order to escape liability must sell such a security when it declines, although he has reason to believe that it should be held, would take away the very discretion that the statute evidently intended to confer upon the trustee in such cases.

The statute having designed that a trustee shall continue to hold an uncertain and fluctuating security, if purchased by the testator, as long as reasonable discretion so dictates, it is unreasonable to suppose that this discretion is restricted

to hold it only in case it does not decline, and that when it enters the region of doubt, it must be instantly sold under any circumstances.

Such securities are from their nature always more or less within the region of doubt from the time the trustee takes them and are bound to so remain, and naturally are liable to become doubtful during business changes; and, if the statute requires that a trustee is compelled to sacrifice such an investment under all circumstances, when reasonable discretion as ordinarily understood would dictate otherwise, it is difficult to see for what purpose the act was passed allowing the continuance of such investments, instead of requiring their investment to be converted into the safe securities prescribed in Section 137 of the Orphans' Court Act, as in other cases.

The Receivership came suddenly, without warning or knowledge, to the defendant. Its effect was to greatly depress the market price of the securities, so that defendant was instanly placed in the dilemma of attempting to sell at what appeared a ruinous sacrifice, or of holding on and awaiting developments.

When placed in this dilemma, it must be admitted that the defendant could not be charged with prophetic insight to foresee what effect this Receivership would ultimately have upon the value of these securities, but was bound only to act with reasonable care and discretion; nor was it, in determining whether it would continue to hold the securities, bound to perform the impossible task of finding out what the actual condition of the finances of the Metropolitan Com-

pany was. The defendant, confronted with this sudden and unforeseen exigency, could only prepare itself for discreet action in the matter by making reasonable efforts to inform itself of the situation from the best obtainable sources, and thereupon act according to its best judgment and discretion. And this the defendant did. Acting not only for this trust, but for other trusts in which it held these securities, and acting for itself (since the defendant owned some of these same securities as its own), the defendant with great diligence sought all information obtainable, obtained the most reliable advice possible, actually caused its President to become a director and general counsel of the Second Avenue Company for the express purpose of keeping an eye and hand on the situation, so as to protect the interest of these security holders, and generally made extreme efforts to do everything possible for the protection of their interests.

The best advice which could be obtained from those upon whom defendant properly placed reliance, was to hold on and not attempt to sacrifice at such prices as could be obtained.

And, apart from this advice, various facts then apparent to defendant warranted such action. It should be carefully considered that the insolvency and Receivership was not that of the three companies whose securities the defendant held. It was merely that of the company which had leased the properties of the three companies, and had guaranteed the payment of interest and dividends on these securities by way of rent.

If the defendant had held these securities, and a Receiver, because of insolvency, had been ap-

pointed for the three companies who had issued them, the defendant would have been given knowledge of the insolvency of the companies whose securities it held, and a different situation would have been presented as to the advisability of casting off such securities in such case, at any sacrifice. But this Receivership against the Metropolitan Company did not indicate to defendant that the substantial assets of the three companies which would ultimately determine the intrinsic value of its securities were impaired.

The securities of these companies, while operated alone, had in the past become gilt-edged securities and commanded their high price in the market; from which it appeared reasonable to defendant to suppose that, even if the Receivers should drop them from the system, they could be operated separately, so that their securities would be thereafter worth more under a separate operation than the small price that probably could then be obtained for them.

But from the appointment of the Receiver in September, 1907, until July 1, 1908, the defendant had every reason to suppose that the Receiver would retain the leases of these three companies and continue to pay the interest and dividends on the securities as theretofore. When, however, the Receiver, contrary to all expectations, abandoned these roads in July 1908, the quoted prices dropped still lower. The reasons which justified the defendant in not then attempting to sell at these still lower prices were stated by Mr. Griggs as follows:

> "As to these roads, when they were turned over, the question immediately arose,

could they, as independent companies, maintain themselves on a profit-earning basis; secondly, would they be reorganized beneficially to the stockholders or the bondholders? The first question could only be answered after a period of experience, but the general opinion, as ascertained from inquiries and conversation with those interested was, that they could maintain themselves and be profitable; and the second question, as to whether a reorganization could be effected advantageously to those interested, was that it could be; and reorganization committees were formed in all three cases, as to all three companies. I continued in conference with the members of the firm of A. M. Kidder & Company, who were old, conservative, established bankers of New York, from whom I think all the securities held by the trust company had originally been bought. As soon as these leases were made by these individual companies to the Metropolitan Company, the stocks of the interlying companies became gilt-edged securities, and they were largely sold by A. M. Kidder & Company, and I believe that these particular stocks of the Cooke Estate were bought directly from them. Now, consulting the members of that firm, both of whom, Mr. Marvin and Mr. Coe, were active in connection with the boards of these various companies, I formed the opinion, which was concurred in by the finance committee of the Trust Company, as the matter was laid before

> them from time to time, that it was not prudent or desirable to sell these securities at the sacrifice price at which they could then be disposed of. While there were nominal quotations of the stock, they were unsalable, and in no instance, I think, on that list where a stock was quoted at 50 bid, if you had offered 10 shares you couldn't have got 50 per cent. of the nominal quotation price. The dilemma was presented as to whether the Trustees should take the chances that would come from a reorganization, from a separate successful operation of these companies, or submit to a very gross loss at any particular time." (Case, pp. 289 to 290.)

Mr. Griggs also said that, subsequent to the time of this default, the board of finance of the defendant discussed the situation, and that the point of the discussion was that these securities would remain essentially good, irrespective of their market price, because of the fact that they were essential to the complete Metropolitan system, that the system of transfers had been established from one to the other, and that they could not get along if they began to drop off integral parts of it (Case, p. 296). The dropping off of these roads caused great newspaper discussion, and action was taken before the Public Service Commission, and people were up in arms about it, and there was a great discussion and great protest from the public after these roads were dropped loose, when they stopped the transfer system (Case, p. 297). This naturally caused the defendant to believe that the Metropolitan Com-

pany would be compelled to take the properties back into the system.

Mr. Coe, when asked as to the prudence of selling the bonds of the Second Avenue Company during this period covered by his tabulation from January, 1908, to December 1912, in view of the situation that had existed in the company, the reorganization committee, the foreclosure and the Receivership, and so on, said that at no time could he see that anything could have been done but hold them, because the market was so extremely narrow, and these bonds could not have been sold without cutting even the quoted prices (Case, pp. 308, 309).

Asked as to the possibility of any kind of an advantageous sale on the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Company during the period from 1907 down, Mr. Coe says, that the situation of that company was peculiarly sad from the time it was abandoned by the Receiver, and it was practically impossible to sell its bonds. (Case, p. 309.)

Mr. Coe also mentioned several holders of large amounts of these three securities who held on to the securities, either because they thought it better to hold than to sell at such a sacrifice, or because there was nothing else to do since there was no market. (Case, pp. 325, 326.)

After the default in July, 1908, other facts than those already stated then reasonably appeared to the defendant to justify holding rather than attempting to sell at such sacrifice price, although, as it eventually turned out, the expecta-

tions which appeared reasonable were not realized.

These expectations were as follows:

At the time of the default in July, 1908, the stockholders of the Central Park, North and East River Company had a right to suppose, and it was the general understanding among them for a long time after the default, that the assets of that company had not been impaired by the lessee, but it became known after the default that the lessee, in violation of the terms of the lease, had destroyed and converted the property and caused it to deteriorate in value, so that the reasonable expectations which the stockholders had that the company could operate alone successfully were not realized. Moreover, it was generally understood at the time of the default, and afterwards, that a prior mortgage to secure an issue of bonds for $1,200,000 previously given by the Central Park, North and East River Company to the Farmers' Loan and Trust Company, which matured December 1, 1902, had been paid off (Case, pp. 320 to 325). By the lease of the Central Park, North and East River Company to the Metropolitan Company, the Metropolitan Company assumed and agreed to pay this debt. In March, 1902, the Metropolitan Company executed to the Morton Trust Company a mortgage on all its property owned and leased, to secure refunding bonds to replace bonds, including the said $1,200,000 bond issue. These bonds were taken up with the moneys the Metropolitan Company derived from the sale of the refunding bonds and delivered to the Morton Trust Company and secretly kept alive as additional security for the refunding bonds, although the stockholders of the Central Park, North and East

River Company supposed that they had been paid (Case, pp. 324 to 327; see 193 Fed. Rep., 963).

The foreclosure of the mortgage by the Farmers' Loan and Trust Company was resisted by the Central Park, North and East River Company, on the ground that these acts of the Metropolitan operated as payment.

The case was pending in the courts until it was finally decided against the Central Park, North and East River Company in the Supreme Court of the United States, June 10, 1912 (Case, p. 327; see 225 U. S. Supreme Court Reports, 712).

Although the decision ultimately upheld the validity of the mortgage and bonds, the undisputed testimony was that counsel for the Central Park, North and East River Company were confident of success and the stockholders placed reliance upon the outcome of this suit as affecting the value of the stock. (Case, pp. 324, 325.) This was another consideration which bears upon the defendant's discretion in holding the stock. It appears also, that the traffic of the Hudson Tubes turned out contrary to general expectations to injure the separate operation of these three roads (Case, p. 331).

After the default there was also the prospect of a sale of the Central Park, North and East River Company to Third Avenue, and one Whitridge, which was another inducement to the stockholders not to sell (Case, p. 330). And the defendant continued to have before it the prospect that the Metropolitan Company would ultimately be compelled to take back the three roads, as testified to by Mr. Griggs (Case, p. 297).

Moreover, Mr. John S. Cooke, the brother of the complainant and one of the five beneficiaries of this trust, was on the finance committee of the defendant and was also made a director of the Second Avenue Company, and upon receiving all information and giving careful consideration to the matter, concurred with the other officers of the defendant in the action of the defendant. Neither the complainant nor any other beneficiary appears to have requested the defendant to sell, or objected to its action until the complainant did so just prior to the commencement of this suit.

All of these facts, which were undisputed, were considerations which appeared all the time to defendant as good reasons why it should hold, rather than sell at such a sacrifice as it would be compelled to sell for. The fact that the reasonable expectations of the defendant have not been realized does not render the defendant liable, if they reasonably appeared to it in the use of reasonable discretion to warrant its action.

The fact that a stock under such circumstances declines from time to time, affords the possessor no good reason to sell at any particular time, when he continues to have reasonable expectations that it will eventually be better to hold. If, for example, the trustee had good reason to believe, when the Receiver was appointed, that he should not sacrifice the securities at the then prevailing low price, he was also justified in holding on at later periods, when he still had good reason to believe it was better to hold than to sacrifice it at still lower prices.

The facts in the case of *Bowker v. Pierce,* 130 *Mass.,* 262, have peculiar resemblance to those in this case. In that case it was held that where a trustee under a will who, in good faith and in the exercise of a sound discretion, decided to retain an investment made by the testator in stock of a railroad corporation, when it was gradually falling in value in the market, was not responsible for the depreciation, although the stock became worthless.

In that case, however, unlike this case, the appellant had requested the trustee to sell, but the trustee had declined.

The reasoning of Judge Morton in that case, which is peculiarly pertinent to the questions involved here, appear at pages 263 and 264 of his opinion, as follows:

> "The other reason of appeal filed by all of the appellants raises the question whether the Trustee should be charged with the depreciation in value of twenty-nine shares of the capital stock of the Eastern Railroad Company, which at the time of his appointment was a part of the Trust estate. In the leading case of Harvard College v. Amory, 9 Pick., 446, the rule in this Commonwealth was held to be that 'all that can be required of a Trustee to invest is, that he shall conduct himself faithfully and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested.' This rule has

been reaffirmed by numerous decisions since. Brown v. French, 125 Mass., 410, and cases cited.

In the case before us, it appeared that the shares of the Eastern Railroad Company were purchased by the Testator before his death, and when they came into the hands of the Trustees were appraised at par. The railroad company met with reverses so that it paid no dividends after July, 1873, and the value of its stock gradually decreased until it became nearly worthless, and the appellant Martha A. Pierce and her husband, before and after September 18, 1874, requested the Trustee to sell the stock, and to convert the same into more profitable securities, but he declined to do so, upon the ground that in his judgment it would be a great sacrifice to sell at that time.

In determining whether he would sell this stock, all that was required of the Trustee was that he should act with good faith and in the exercise of a sound discretion. It is not contended by the appellants that he acted in bad faith. It seems to us from the evidence reported that he acted throughout with an anxious desire to do what was for the best interests of the cestuis que trust. He was placed in unexpected and embarrassing circumstances. The railroad company, which had been considered safe and strong, met with reverses, became embarrassed, and its stock was gradually falling in the market. It appeared in evidence that he made inquiries and investigations, and

was informed that the road was in good order and that they saw no reason why a dividend could not be paid in January, 1876, and was also informed that one of the directors, and the treasurer, had advised their friends to buy the stock, and had said it was a good investment at sixty dollars per share. We can now see that it would have been wiser to sell the stock. But in judging his acts we should put ourselves in his position at the time. He was considering the question, not whether he should invest in this stock, but whether he should sell the stock bought by the testator, upon a falling market. The evidence shows that he in good faith made investigations, sought information from trustworthy sources, and acted upon such information according to his best judgment. We are of opinion that the Presiding Justice who heard the case rightly found that, under the circumstances, the Trustee acted in good faith and with the sound discretion which the law required of him."

In Harvard College v. Amory, 9 *Pickering*, 464, there was a devise of $50,000 to executors, in trust to loan the same upon ample and sufficient security, or to invest the same in safe and productive stock, either in public funds, bank shares or other stock, according to their best judgment and discretion, and to pay over the profits and income thereof to the testator's wife during the term of her natural life, and after her decease to deliver one-half in actual value of the said entire fund to

a college and the other half to a hospital. It was held that the Trustees were authorized to make investments in stock of an incorporated manufacturing company, and of an incorporated insurance company.

Judge Putnam in his opinion at page 461 says:

> "All that can be required of a Trustee to invest is, that he shall conduct himself faithfully, and exercise a sound discretion. He is to observe how men of prudence, discretion and intelligence manage their own affairs, not in regard to speculation, but in regard to permanent disposition of their funds, considering the probable income, as well as the probable safety of the capital to be invested."

Again at page 465 he says:

> "The claim now made upon the Trustees, to make up the subsequent depreciation, would seem to be justified only on the ground of gross abuse of their trust, even if it were not barred by the decree in the probate court from which no appeal was made. But upon examining all the documents and evidence, it seems to us that there is no reason whereon to ground that imputation.
>
> Trustees are justly and uniformly considered favorably, and it is of great importance to bereaved families and orphans, that they should not be held to make good, losses in the depreciation of stocks or the failure of the capital itself, which they held in

> trust, provided they conduct themselves honestly and discreetly and carefully, according to the existing circumstances, in the discharge of their trusts. If this were held otherwise, no prudent man would run the hazard of losses which might happen without any neglect or breach of good faith."

We submit that the "good faith" and "sound discretion" which in these well-considered cases justified the action of the Trustee, are equivalent to the "good faith" and "reasonable discretion" described in our statute, and that the undisputed facts in this case afforded equal justification for the action of the defendant.

Moreover, the Act of 1899 is substantially a re-enactment of Section 2 of the Act of March 17, 1881 (P. L. 1881, p. 130), and while this act was in force, in *Parker v. Glover,* 15 *Stewart,* 559, *the* Chancellor held, that an executor was not liable for the total loss of stock owned by testator which came to the executor, because he acted in good faith and with reasonable discretion, and so, in *Coddington v. Stone,* 9 *Stewart,* 361, executors were held to be not liable for the loss of stock under the Act of 1881; and likewise, in *Brown v. Brown,* 2 *Buch.,* 667, and in *Babbit v. Fidelity Trust Co.,* 2 *Buch.,* 745, executors and trustees were held to have used reasonable discretion under the Act of 1899 in question.

While we admit that the Court has the power to determine whether the Trustee in such case exercised the reasonable discretion required by

the statute, we submit that where it appears, as it does in this case, that men who are presumably of good business judgment, and who are from their education and experience specially fitted to exercise reasonable discretion in such a matter, have acted in good faith and made the utmost endeavors to inform themselves of the situation so as to act for the best, have exercised their best care and judgment and have dealt with the trust precisely as they have their own property, the Court should give consideration to their honest judgment and require a plain case, before it decides that their discretion was not reasonable.

POINT VI.

The action of the defendant in continuing to hold the 200 shares of the Brooklyn City Railway Company, was done in the exercise of good faith and reasonable discretion, and the defendant is not liable for any depreciation thereof.

The market value of this stock which was not involved in the former case, depreciated and was retained by the defendant.

The par value of this stock was $10 per share (Case, p. 77). The complainants were entitled to a fifth interest in the 200 shares, or 40 shares. The par value, therefore, of the interest of the four complainants in this stock was $400 at par value. This stock also was held by the testatrix Sarah A. Cooke at the time of her death and came to the defendant as an investment made by the testatrix (Case, pp. 80, 81). The facts re-

lating to the reasonableness of the discretion of the defendant in continuing to hold this stock is shown by the testimony of John L. Griggs, Vice President and Trust Officer of the defendant, and said George S. Coe, the witness in said former suit, as follows:

After the stock came into the hands of the defendant it had sold as high as $24 per share. Prior to 1915 it had fallen due presumably to general market conditions to $20 per share (Case, p. 106). The stock gradually depreciated in the market after that time due to the involved situation of the railroad companies in Brooklyn and New York. The action of the Public Service Commission in reducing fares and the increasing wages and costs of operation rendered it impossible for the companies to make the amount of money that they had been accustomed to make in the past; the publicity of such a situation caused the market value of such securities to decline (Case, p. 98). The dividends on the stock continued to be paid regularly at 8% until the year 1919 when they were temporarily passed. During the time of the decrease in the market value there was no particular time when the defendant acting in good faith and with reasonable discretion was not justified in continuing to hold these securities, considering the intrinsic value and prospect of the stock.

Upon this John L. Griggs testified as follows:

> "Q. Was there anything, except the occasional fluctuations in the market, due to general conditions of the market, that would affect the value of this stock (except the things you have spoken of) from the

time the trust came to the Trust Company down to the time of this default? A. No, sir, just except that the stock and that kind of investments, in the vernacular of the street, became 'sour.' Q. Well, did you inquire several times during this period as to whether or not the facts warranted the probability that such a condition would grow better? A. Oh, that was the result of my immediate investigation; and in every instance, from everybody that I went to, I was advised against selling the stock, and told that the trolley situation must be better, *must be better,* and, in all probability, would be better. Q. Was it the expectation that operating costs would become less rather than increase? A. More in the expectation that a higher rate of fare would be allowed by the Public Commission." (Case, pp. 98, 99.)

The witness conferred as to the advisability of holding the stock with Mr. Berdan, his predecessor as Vice President of the defendant who subsequently died before the hearing in this case, also Mr. McCully who was on the finance committe of the defendant and a broker and specialist in such stock, who subsequently died before the hearing in this case; he also conferred with John S. Cooke a member of the Board of the defendant and Vice President of the defendant, Paterson National Bank and one of the children of the testatrix, Sarah A. Cooke and brother of the complainant Carrie S. Beam and for whose account the defendant held in trust the said one fifth of the shares of said stock, who subsequently died before the hearing in this case; he also con-

ferred with Frederick W. Cooke, a brother of John S. Cooke and Carrie S. Beam, who was also entitled to a one fifth share of said stock, and was also on the board of the defendant and a member of its Trust Committee and was in the bank himself almost daily and witness conferred with him almost daily with reference to said stock and the opinion of all these persons was that the defendant should not sell said stocks (Case, pp. 100, 101).

After the accounting in 1915 when the stock had depreciated in market value Mr. Griggs had a personal interview with Hobart Porter who was the Vice President and General Manager of the Brooklyn City Railway Company. Mr. Griggs asked him as to whether estates that held this stock were selling or holding it and Mr. Porter told the witness that in but very few instances it had been considered the best policy to hold the holdings, as the value of the Company was there; that at that time the said railway company had a surplus, and there was no reason why with the continuation of their usual form of business they should not maintain the payment of dividends indefinitely (Case, p. 85). Then the question was considered by the defendant as to whether it would be advisable to continue to hold the stock and it was decided to hold it. The stock did not recede in market value for two or three years more than perhaps half a point. The regular dividend was paid in July, 1919, payable in October.

With reference to the passing of the dividend and the defendant's action at that time with

reference to the stock, Mr. Griggs testified as follows.

> "At the time it declared this dividend I sent for a statement of the Company, and I found, by an examination, that it had at that time undisturbed surplus on its books of over a half a million dollars. I called this fact to the attention of the Trust Committee, and we decided that the the situation was better than it had been since we last investigated. Later on, in that year, about September 19th, without any previous notice or warning, it came out in the newspapers that the Brooklyn Heights Railroad Company, which was the lessee of the Brooklyn City Company, repudiated its lease and refused to pay the Brooklyn City Company its annual rental, (and also refused to pay the income tax), which, for that period, amounted to a payment of forty-six thousand dollars. Q. The Brooklyn City Heights Company was then obligated to pay that income tax? A. That was for the rental. So that time the Brooklyn City Company had to go down into their surplus and pay out forty six thousand dollars in cash at that particular time. Then the Brooklyn City Heights Company (the Company who ran the Brooklyn City) repudiated their lease and threw the road back on the Brooklyn City management; and they decided, and they so notified their stockholders, that, having to pay this tax and having to assume the liability of running the road, they would

have to default in their dividend on their stock, although they would not default on the interest on their bonds. The stock of couse, depreciated when this announcement came out. Q. About how much? A. (Referring to a memorandum now produced by the witness.) Well, it was selling for about 5, and it went down as low as 3¾. Q. What was it selling for just before this insolvency happened? A. 10½. Q. And then after that insolvency happened, it got down as low as how much? A. The lowest bid price was 3½, which was in January, 1921. Q. Now, at the time, did you make inquiries and seek the advice of others who were familiar with the conditions, as to the advisability of retaining or selling this stock? A. The minute that I got word from the Brooklyn City of the repudiation of the lease by the Brooklyn Heights I made immediate investigations and sought advice. I saw Mr. Job E. Hedges, who was the Receiver, as I remember, of the New York Railway Company in New York, and I saw James R. Sheffield, who was the Receiver of the Interburban, and I asked those gentlemen (stating that we were holding this stock in trust funds for four or five different estates) what, in their opinion, we should do. Both Mr. Hedges and Mr. Sheffield said that they thought that while the trolley situation at that time was not particularly blooming in New York there was a movement under way whereby it was beginning to be realized that the

trolley companies should, at least, be allowed to charge a fare that would entitle them to pay their running expenses and their fixed obligations; and that, in their opinion, having that in view, they did not think that they would sacrifice the stock if they were in my position, particularly so because it was so small an amount, and if I did, I could not reinvest it to make a return that would in any way make up in the increase if the stock even went up a point or two. Q. Go ahead. Are you through? A. No, sir; then I also wrote to the Chase National Bank of New York City, and asked their opinion on the subject; and they replied to me under date of December 29, 1919, that the 'Traction situation in Brooklyn and New York is satisfactory.' * * * *. I also saw Mr. Hobart Porter again (who was the Vice President of the Brooklyn City Railroad Company) and sought his advice as to what to do, and for a history of the Company, which he gave me, and told me that they had a good surplus, and he thought I should not sell at the present time. He wrote me a letter repeating his advice, which I have, and it is dated September 22, 1920 (producing a letter) * * * * *. Q. Now, will you state the market value of that stock, as near as you can, or the market price or quotations, if you have them, from the time just before this insolvency down to the time when you gave over the stock to the beneficiaries? A. The mar-

ket price, just before the insolvency, was 10½ bid, 11½ asked. When I speak of 'insolvency' I mean the insolvency of the Brooklyn Heights Company. Q. The Brooklyn Heights Railroad Company, the lessee? A. Yes. Well, when it was found that the Brooklyn City Company had to do their own railroading, or just before it was found out that they had to do their own railroading, the stock was 10½ bid, 11½ asked; then, as soon as the news came out that they would not pay their dividend, and had to operate their own line, the stock dropped to 4 and 4½. Q. About when did it do that? A. It did that about September 19, 1919. Q. And how long was that after the default? A. That was almost immediately. Q. Then, what was the course of the quotations after that? A. Then the stock held around that figure until about May, or June of 1920, and then it went down to 3¾ and 3⅞; then, in October and November it went up again to 4 and 4¼, and in December it touched its low mark of 2¾, there was a small block of about 30 shares sold at 2¾. Then, in January, 1921, it went up again to 4⅜ so that when it was delivered to the substituted trustees for Carrie S. Beam under the will of Sarah A. Cooke, in March, it was quoted at 4¾. It immediately went up and sold as high as 10 on October 13th. Q. Of this year? A. Of this year. Q. Has it been above 10? A. It has not been above 10; no, sir. Q. And do you know

what it is now? A. At the present time it is 8½ bid, 8¾ asked. * * * * A. When I found out these facts I called a meeting of the Trust Committee, and conferred with the President of the institution, and laid my findings before them; and we considered the advisability of holding it. On the Committee was Mr. Fred W. Cooke, who as I said before, was the brother of the life tenant in this estate, he also was a holder of this stock, and the bank, also, was a holder of this stock in three other trusts; so that we were interested in more than one particular instance; and at the first meeting the policy was not definitely decided, because they thought I ought to investigate it further, which I did, when I got the letters from the Chase National Bank. And then, at the next meeting, it was decided that the only thing to do was to hold the stock, hoping that they would be able to work out their own salvation, and that the price would increase, so that if it should become necessary to sell it, or if any of these cesquis-que-trust, had asked that it be sold, why, we could give them more money than we would have in case we had sold it at that time. Then, in addition to that, I was weekly in consultation with the president of the institution, discussing this matter, together with others. By Mr. Hutchinson: Q. With what institution, may I ask? A. We call it 'The Paterson National Bank,' now. By Mr. Harding: Q. And what conclusion did

you come to? A. And the conclusion, in every instance, was that we should hold it, not only in this trust, but in all the rest; that that was what was being done in other parts of the country; and that we, in our opinion, would lose more if we sold it than if we kept it. * * * *. Q. What ultimately became of those 200 shares? A. Why, the bank, as trustee for two other cestui-que-trustent, have the stock still. Q. Has not a portion of it been paid over to Mrs. Beam? A. All of it, under Mrs. Beam's share, has been paid to her, and was paid to her in March. When we gave over the estate we gave over this stock, and we had not sold it because we did not think it was the best time. Q. You gave over her portion of it? A. Her portion of it. Q. Now, I want to go back and ask you if you can tell me, from all the information that you had about this company, the Brooklyn City Railroad Company, what you learned with reference to it as an investment stock; and I mean by that, did you learn how it was secured, and did you learn the history of the stock from the time this trust came to you, or before that, down the time you let it go? * * * * A. I only began investigating the stock in 1915. The investments had been made by the Testatrix in her lifetime; so that when I commenced, in 1915, I found that this stock was very largely held by estates and trusts, that it had a reputation, at the time the investments were originally made

by the testatrix in her lifetime; so that investment stock. Q. Did you find out how these securities were underlaid, or anything of that kind? A. I found that it had an authorized issue of six millions of bonds, and they only had out a little over a million and a quarter; and my recollection is that the stock came immediately after those bonds. My investigation showed that they had more than earned their dividend of eight per cent on their stock for years, and did earn it up until 1919, in September, when their lease was repudiated." (Case, pp. 86 to 90.)

With reference to the division of the stock into five shares, Mr. Griggs on cross examination testified as follows:

"Q. Now, then, when you went on the Board in 1914, and after that time, the value fell, in your account in 1915, to $4,000, for all the stock for all five shares, is that so? A. My remembrance is that it depreciated before that account, but it was not written off until that account. You see, the five accounts, the share of Mrs. Sarah A. Cooke and all of her five children, was always carried in one account, and the income divided into fifths, obviously, because it saves Surrogate's fees, counsel fees, and in fact, it made one accounting instead of five. Up until that year they had always been one account. Mrs. Beam objected to it being carried on in that way, and wanted the estate divided. So we communicated with Mrs. Beam and asked her

what she wanted to do, did she want us to sell one-fifth of all these things and give her the money, and put it in her trust; and, in the alternative, we made a division of these five holdings, and got the opinion of all the other heirs to give Mrs. Beam her first choice of the entire estate, which she took; and her first choice is the list of investments that were separated from the whole account, in the 1915 account, and carried on down to the time that we were discharged, with the exception of such re-investing as might have been necessary to do during the period. Q. Are you sure that she selected the securities that she wanted? A. I think she selected them through her counsel here, Mr. J. H. Reynolds of this city. Q. Don't you know that the securities were all divided equally, so far as possible, that is, the stock securities and bond securities were divided equally among the five shares? A. I don't think so; I know we wrote Mrs. Beam, and know that to have been the consent of all the four children, to give Mrs. Beam the first choice; and I know we wrote to her counsel and told him that; and it was my impression (I was not an active officer there then) but it was my impression that what she chose we took. Q. Then this first trouble only arose shortly after you took office? A. I do not understand what you mean by 'trouble'. Q. I say this Brooklyn with the Brooklyn City Railroad Company arose shortly after you took office?

A. No, I would say that there had been a depreciation of the stock, somewhat, from the inventory price of the executors. Q. Before that? A. Before I took office. Q. Well, now, was it ever brought to your attention by Mrs. Beam, or her sons, that the condition of this stock was not satisfactory? A. Yes. Q. Didn't they complain to you that the stock was declining, and that something ought to be done about it? A. No, sir. Q. What? A. No, sir. Q. Didn't ever write you letters about it? A. No, sir. Q. Are you sure about that? A. I have never seen any letters. Q. Did they write to the officers of the company? A. I meant the company; I am not quibbling over words. She wrote the company, complaining about the securities, and we wrote her and told her that if there were any she did not like to please advise us, and we would sell them; and I have no record of her ever asking us to sell any of them. Q. Well, I understood that she had demanded of you to make some disposition of them? A. Well, I am open to correction. You are asking me my understanding, and I am giving it to you. Q. All of the investigations that you have made with regard to this security were made, as I understand it, of people who were interested on the inside of the company, were they not? A. No, sir—not the Chase National Bank, or Mr. Job E. Hedges, or Mr. James R. Sheffield. Q. Mr. Hedges was

the receiver, wasn't he? A. Not of that company. This company never went into bankruptcy. Q. This company never did? A. No, sir; it is making 15% now. By the Vice Chancellor: Q. What—The Brooklyn City? A. The Broolyn City. Q. The company is making 15% and paying 8% dividends? A. They are not paying any dividend; their stock has gone up to the equivalent of 100 points inside of three months. Q. What is the par value? A. $10. Q. Then, when you held it for $4,800 it must have been up to 24? A. Yes, sir. Q. Around 24? A. Yes, sir—225, it was. The Vice Chancellor: Yes, it would make it around that." (Case, pp. 106 to 108.)

The said George S. Coe, banker and broker of the firm of A. M. Kidder & Co., of New York City, after showing his familiarity with the stock in question described the property of the Brooklyn City Railway stock as the underlying property of the Brooklyn Rapid Transit surface lines, testified:

"The original lease was a ten per cent guaranty, I think, in perpetuity; and securing that lease, in addition to its rate, there were deposited with the Peoples' Trust Company, as trustee, a very considerable number of securities; I am harking back now twenty odd years; they had some very high grade securities, which, pledged with the guaranty, it was unique in that respect. Some of these high-grade securities were,

at the instigation of the parent company, and with the consent of both the Brooklyn City and the Brooklyn Heights, sold, and others substituted; but when the default occurred there were a good many hundred thousand dollars of securities which were surrendered by the Brooklyn Heights by their lapse in the payment of the dividends and went back to the Brooklyn City, and are now their property, under the default." (Case, p.p. 118, 119.)

Again he testified as follows:

"Q. And you know about the fluctuations of the stock? A. More or less, as traders. Q. Mention any very large stockholders that you have sold to? A. Well, since the default trading now has been mostly street trading rather than investment trading. Prior to that, we sold that stock in reams; I recollect one trade with the Mutual Life Insurance Company of 100,000 shares. Q. That was sold by your house? A. By our house; I think we bought it from the Peoples' Trust Company of Brooklyn; whether as trustees they held it, or what, I do not know; and I turned it over to the Mutual. We were then trading per cent—240% or equivalent to $24 a share. I sold to Equitable Life, that same year, it must have been twenty-five or fifty thousand shares in the aggregate, and they gave me carte blanche. Q. Do you know whether they still hold that stock? A. I am confident they do; I am sure they do, because in conversation only the other day with one of

the officers he informed me that they had not been able to market it since. Q. Well, from what you know of the condition of the market and the value of this property, its prospects of prosperity in the future, what have you to say as to the advisability of having sold the stock at the market after the default and the fall in price which occurred in 1919—what have you to say as to that? A. Well, my judgment is this, and I have acted upon it as trustee (I am the trustee of a considerable estate, and have, among other things, about two or three thousand shares of this stock); I have held it, and at times, I have been disposed to average, but I am still long, I still have it, and intend to keep it until it is demonstrated that its opportunity is exhausted. Q. What elements of unsual or extraordinary value are there in this property, this Brooklyn City Railroad property? A. Several. One underlying fact is that, on the Brooklyn City property is built a power house of the B. R. T., which supplies most of the electric juice for the system. That is No. 1. I should say the fact that it is the principal artery of the whole surface system over which all these collateral lines have to go into the Terminal is No. 2. Perhaps the fact that these securities which were taken in, might some day appreciate to a point where they would represent a very considerable value—No. 3. And the improving outlook of the B. R. T. System—I think it will be recognized before the I. R. T., because

the situation on that side of the river is much better than with us in New York—No. 4. The fact that it is earning its own way now, even though bereft of a good deal of equipment when the system was thrown back, I think, and having to face a great many financial and physical vicissitudes—the obstruction of Mr. Hylan, and everything else, would be a contributing feature—and my conviction that they are soon going to start on dividends." (Case, pp. 120, 121.)

On cross examination he testified as follows:

"Q. Mr. Coe, you have had a good many years of experience, not only in the banking or brokerage business, but also in handling trust estates and in the management of trust estates? A. 47 years. Q. Under the conditions that existed in this case, assuming that in 1905 a security like the Brooklyn City Railroad—and, in fact, the Brooklyn City Railroad stock—came into your hands as a trustee, and depreciated from that time until about 1915—a block of 200 shares—at the rate of $800, would you, as the trustee, have felt that you were justified in retaining that security? A. My position was exactly that. Q. Did you have a like experience? A. Exactly, with this very same stock; and many of my clients had exactly similar experiences—the Pratt Estate, and I could mention a list as long as your arm. Q. Upon what do you base that conclusion, in your own mind, as to the advisability of holding this stock? A.

Because the property, in my judgment, per se, was a payer, independent of parentage; in fact, it would have been very much better had it been divorced from its parent at any phase of the game; that was always my judgment. Q . But, as a trustee, having taken securities supposedly worth $4,800, when there was a drop of $800, wouldn't you have looked about a bit to see whether it was advisable to sell; and would you not, ordinarily, have disposed of the security and taken one of higher and better prospects? A. There was no condition prevailing during that period where very great promise did not exist in that property. The Brooklyn City, of all the traction guarantees, in my opinion, was unique in its strength. It was inconceivable, to my mind, as a trustee, that the Brooklyn Heights would ever default on that ten per cent guarantee for the reason that they would have to surrender from a half to a million dollars, face value, of securities, and I knew they had them because my senior partner was Vice President of the Company and was custodian of the securities, and I kept my ear very close to the ground, besides being acquainted with the physical side of the operation of the property." (Case, p. 122, 123.)

From the foregoing facts it is evident, that the defendant in continuing to hold this stock exercised good faith and reasonable discretion and that the reasons for so continuing to hold that

stock were equally as valid as the reasons for holding the five bonds and 225 shares of stock involved in the former suit wherein the defendants' action in so doing was justified by the said decision of this court in said former suit.

The result of the defendant's action in holding this 200 shares of stock compared with the action of the substituted trustees is significant.

When in September, 1919, the Brooklyn City Heights Company repudiated its lease and became insolvent this stock was selling at 10½ (Case, p. 86). When it become evident that the Brooklyn City Railway would temporarily suspend payment on its dividends, the market price of the stock decreased and in December, 1920, it was at its lowest at 2¾. The price advanced thereafter with some fluctuations and when it was turned over to the substituted trustees in March, 1922, it was quoted at 4¾ (Case, p. 90).

In April, 1922, the substituted trustees sold it at 7⅞ (Case, p. 74). On October 10th, 1922, it sold as high as 10 and it sold higher at the time of the hearing than the price for which the substituted trustees sold it (Case, p. 90).

POINT VII.

By reason of the foregoing the decree should be affirmed not only for the reasons given by the Chancellor in his opinion hereinafter referred to, but also because, as to the five bonds and 225 shares of stock involved in the former suit, essentially the same evidence was admitted in the present suit as was admitted in the former suit, wherein the defendants' act in continuing to hold these securities was justified by the said decree of this court, so that as to those securities the complainants in the present suit were merely attempting to again litigate the very same question that had been litigated with reference to the same securities in the former suit, and as to the said 200 shares of stock of the Brooklyn City Railway Company, the undisputed evidence in the present case showed that the defendants' action in continuing to hold those securities was equally as justifiable as it was in holding the securities involved in the former case.

With respect to the question of defendants' acting in good faith, the Court of Chancery and this court in the former case, held that the testimony conclusively showed the defendants' good faith with reference to the securities involved in that case, although the complainants in the former suit alleged in their bill of complaint that the defendants' continuing to hold said securities, was "not in exercise of good faith" (Case, p. 260).

The suggestion had been made that the question of good faith stands upon a different footing in

the two cases, but the fact is otherwise. In the first bill it is denied that the defendant acted in good faith and the bill in present case alleges that defendant acted not in the exercise of good faith but in the exercise of positive bad faith. There is no difference in the legal conception between "lack of good faith," "bad faith" or "positive bad faith."

So far as the evidence is concerned relating to the good faith of the defendant, as we have shown, essentially the same conditions and circumstances existed to justify the defendants' holding on to the said 200 shares of Brooklyn City Railway stock as existed for its holding on to the other securities which this court held was justified.

Nothing in the examination of Mr. Griggs with reference to the so called petition to remove the District Attorney and the Amory book in anywise affected the good faith of the defendant shown in the evidence admitted in both cases. Indeed it is rather absurd to impute to this defendant bad faith, in continuing to hold the securities in question, in view of its conceded, strenuous efforts to inform itself from every available and valuable source as to the advisability of doing so; in view of the fact that other holders of the same securities who had the best informtion concerning the situation continued to hold the securities; in view of the fact that the brothers of the complainant Carrie S. Beam, who likewise had the same interest in these same securities as she had, after full investigation and consideration determined to hold them; and particularly in view of the fact that the defendant itself held the same securities

for itself and for other trusts, and determined to hold them.

POINT VIII.

The Vice Chancellor correctly decided that the several accounts filed in the Orphans' Court by the defendant and passed and allowed by that court and the decree entered therein involved the same subject matter as this suit and were res adjudicata as against all the complainants.

The correctness of the Vice Chancellor's decision on that point appears so conclusively from his opinion that we deem it unnecessary to add anything to it except the following:

1. It should be noted, that the present appeal to this court is taken by William B. Beam alone, none of the other complainants appealing, so that none of the rights of the other complainants are involved in this appeal. (Case, pp. 225 to 230.) However, each complainant has excepted to one or more of these accounts against whom the decision thereon is *res adjudicata.*

William B. Beam, the present appellant together with Mrs. Beam and John C. Beam filed exceptions to the account from January 7th, 1915 to April 15th, 1917. (Case, Vol. II, pp. 79, 80.) The same persons filed exceptions to the account from April 15th, 1917 to April 15th, 1919. (Case, Vol. II, pp. 95 to 99.) William B. Beam, together with John C. Beam and Edward Beam filed amended exceptions to the final account from April 15th, 1919 to January 5th, 1921. (Case, Vol. I, pp. 250, 251.)

All of the accounts and exceptions thereto referred to by Vice Chancellor Griffin in his opinion appear in the printed case, Vol. II, from pages 1 to 112, and in Vol. I from pages 248 to 251.

Moreover, the exceptions filed by William B. Beam the appellant to several accounts not only litigated the liability of the trustee for the loss in depreciation of the securities involved in the former Chancery suit, as shown in the opinion of the Vice Chancellor, but in the exceptions to the final account by said William B. Beam, John C. Beam and Edward Beam, one of the exceptions was that, "The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company mentioned in schedule C of said final account" (Case, Vol. I, pp. 250, 251), so that the liability of the depreciation of the stock of the Brooklyn City Railway Company was involved in that exception as well as that of the securities involved in the former suit in Chancery.

2. But even if no exceptions had been filed and the questions had not been litigated thereon, the decrees of the Orphans' Court were *res adjudicata*. Such proceeding are in the nature of proceedings *in rem* and in such case all interested persons are bound by the decree whether they come in and litigate or not.

Exton v. Vule, 14 *N. J. Eq.*, 501; *Searchs' Administrator v. Searchs' Administrators*, 27 *N. J. Eq.*, 137; *Woolsey v. Woolsey*, 72 *N. J. Eq.*, 898; *Hill v. Hill*, 79 *N. J. Eq.*, 521.

3. At pages 22 to 28 of appellants' brief three cases, viz.: *Mattocks v. Moulton*, 84 *Me.*, 545, 24

Atlantic Reporter, 1004; *Moore, appellant*, 112 *Me.*, 119, 90 *Atlantic Reporter*, 1088; *and Brigham v. Morgan*, 185 *Mass.*, 27, are cited as showing that the appellant is not bound by the said decrees of the Orphans' Court and as conflicting with Vice Chancellor Griffin's decision. None of these cases in anywise conflicts with the Vice Chancellor's decision.

In *Mattocks v. Moulton, supra*, Mattocks was made both executor and trustee of the will of testatrix. It appeared that as executor he made two certain investments of a risky nature which he clearly was not justified in making. *Emery, J.*, in the opinion at page 24 of 24 Atl. Rep., said: "These two investments had not been made by the testatrix, but were made by the executor from cash of the estate in his hands," thus showing the difference between the facts in that case and those in the present case where the trustee under said act of March 23, 1899 (P. L. 1899, p. 236) alrady referred to, is not liable for loss in holding such securities as were made by the testatrix herself so long as trustee acts in good faith and with reasonable discretion. The executor in *Mattocks v. Moulton, supra*, thus having made such investments for the loss on which he was clearly liable, caused his final account as Executor to be allowed, and transferred to himself as trustee the investments at their face value without in his account in anywise indicating any claim to be allowed for any loss or depreciation in said investments, so that the question of the propriety of his making the investments apparently did not arise and was not adjudicated on the executor's account.

Afterwards, when objection was made to his account *as trustee* that he should be charged with this loss, he contended that the investments so made by him as executor had been adjudicated by the Probate Court to be proper investments by the allowance of his account as executor. The court in that case held that by his account as executor, he made no claim to be allowed for losses on the investments, so that the propriety of the investments had not been adjudicated and, therefore, he as trustee on objection to his account as trustee, could not set up the allowance of his account as executor because the court on the allowance of his account as executor could not have adjudicated upon the loss since nothing in the account showed such loss and no claim was made by the executor for allowance for such loss. The facts in that case were thus obviously entirely different from the facts in the present case, where the account of 1915 and the three following accounts not only clearly showed the depreciation of the securities in question in the present case and the trustees' claim that it was not liable therefor, but the appellant and other beneficiaries contested the very question involved in the instant case by filing exceptions in in the Orphans' Court to the account of 1915, and the three following accounts; all of which is fully stated by Vice Chancellor Griffin in his opinion. The clear implication in *Mattocks v. Moulton, supra,* is that under the facts existing in the instant case the decree would have been held to be *res adjudicata.*

In the case of *Moore, appellant, supra,* a petition was filed on behalf of an infant to reopen an ac-

count upon the ground that the allowance of certain items was obtained by the guardian's fraud upon the court. The account was reopened upon that ground and it was held that the investments were improper investments for the guardian to make and the guardian in his account falsely represented the face values of the securities to be their cash values. The question of *res adjudicata* was not considered in that case and it has no pertinency to the instant case where the accounts showed the depreciation of the securities in question, and where the question of liability for such losses was thus litigated on exceptions to the accounts.

In *Brigham v. Morgan, supra,* it was held that executors had made unwarranted investments from the funds of the estate and that they were a maladministration on the part of the executors. The executors contended that, even if the investments were unwarranted they were exonerated by the consent given by the beneficiaries to the allowance of their accounts. The court, however, held that such consent did not exonerate them because the accounts stated matters which were in fact false, and that one executor had wilfully misrepresented the facts stated in the account because he knew the facts and as to the other executor his statement therein was fraudulent in law, since it was a statement made by him as true of his own knowledge when he did not know it to be true. There is nothing in that case inconsistent with the decision in the instant case where the accounts showed the losses which were excepted to and litigated.

In all three cases last above cited it will be observed that the investments had been made by the executors, and guardian and did not come to their hands as investments already made.

In *Mattocks v. Moulton, supra,* Emery, J. in his opinion in 24 Atlantic Reporter, page 1004, particularly pointed out this fact as follows: "These two investments had not been made by the testatrix but were made by the executor from cash of the estate in his hands."

In the instant case, as we have shown, the act of 1899, (P. L. 1899, p. 236), expressly provides that where the trustee, as in the present case, merely received the investments in question which were made by the testatrix herself, the trustee is not liable for the loss caused by continuing to hold them, if he acts in good faith and with reasonable discretion.

In *Bowker v. Pierce,* 130 *Mass.,* 262, it was held that, even in the absence of such statute, the trustee would not be held liable in such case, where the stock gradually depreciated and became merely worthless and the beneficiaries requested the trustee to sell the stock and he declined to do so. In that case *Morton, J.,* says:

> "In determining whether he, (the trustee), would sell this stock, all that was required of the trustee was that he should act with good faith and in the exercise of sound discretion****We can now see that it would have been wise to sell the stock, but in judging his acts we should put ourselves in his position at the time. He was considering

the question, not whether *he should invest in the stock but whether he should sell the stock bought by the testator upon a falling market.* The evidence shows that he acted in good faith, made investigations, sought information from trustworthy sources and acted upon such information according to his best judgment."

We submit that the decree should be affirmed not only for the reason stated by the Vice Chancellor, but also for the reasons which we have hereinbefore set forth.

Respectfully submitted,
John W. Harding,
Solicitor and of counsel with
the defendants-appellees.

6/8 OCT.T.1925

New Jersey Court of Errors and Appeals

EDWARD BEAM, JOHN C. BEAM, WILLIAM B. BEAM and CARRIE S. BEAM,.. *Complainants-Appellants,* *vs.* THE PATERSON SAEF DEPOSIT & TRUST COMPANY, the NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, *Defendant-Appellees.*	On Bill, etc., On Appeal from Final Decree from the Court of Chancery.

APPELLANT'S ANSWERING BRIEF.

I.

The purpose of this suit is not as stated in the opening paragraph of Appellees' Brief and as further qualified in the last paragraph commencing on page 1 thereof, simply to compel The Paterson Safe Deposit and Trust Company to pay to the complainants herein the amounts of certain losses due to depreciation in the market value of the five bonds and 425 shares of stock mentioned therein.

The purpose of the suit is to secure an accounting from The Paterson National Bank as successor to The Paterson Safe Deposit and Trust

New Jersey State Library

Company of its entire administration of this trust estate.

See prayer to bill of complaint pp. 12-14 Vol. I, Case.

Complainants pray:

* * * * * *

"2. That an account may be taken of the property and moneys that have been received by Paterson Safe Deposit and Trust Company and defendant as its successor in name, as trustee as aforesaid, and of any and all charges it may have against the said property and moneys and what investments of such receipts or portion thereof it has made and the balance thereof, and to whom the same is due may be ascertained and declared and any balance found due to complainants and to said trust fund so held for the benefit of these complainants and to said trust fund so held for the benefit of these complainants may, upon such accounting, be ordered paid to said trust fund so held for their benefit.

* * * * * *

"4. That defendant may be required to make good and pay into said trust fund and into the hands of such receiver the amount *of any* losses sustained to said trust fund by said defendant, or its predecessor in name, together with interest thereon from the time each and every of such losses was sustained and that complainants may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

It is true that the investments mentioned by Appellees in their brief are referred to in the bill of complaint but the bill goes further.

"12. The investments mentioned in the

fifth paragraph hereof have steadily depreciated in value and in the market from the date of the death of the testatrix *to the present time,* until they are, and have been for some time past, entirely valueless and this under the presumed and actual management of Paterson Safe Deposit and Trust Company, as trustee, until the original corpus of said estate constituting the one-fifth part in which complainants are interested has been reduced from the value of $30,130.00 to the alleged value of $18,706.10, as set forth in the final account of said Trustee thereof, the latter amount including the erroneous valuation of Brooklyn City Railway Company stock at $800.00; and said Trustee has also *wilfully, designedly and purposely* neglected, refused and refrained from giving information to the beneficiaries of said trust in which these complainants are interested, and has neglected, refused and refrained from endeavoring to recoup or prevent by sale of said securities or any of them at the proper time or times, losses occasioned by the holding of said bonds and stock, contrary to the requests and demands and information furnished to it by these complainants, or their representatives, and has continued such investments not only negligently and not in the exercise of good faith and reasonable discretion *but in the exercise of positive bad faith,* so that great loss has been occasioned to complainants, for which said Trustee should be held accountable."

(Case. Vol. I, pp. 10-11.)
(The italics do not appear in the bill.)

It will thus be seen that the purpose of this suit is very broad and goes far beyond any simple inquiry as affecting just these five bonds and these 425 shares of stock. As drawn the bill euphemistically charges "Fraud" in the conduct of the entire trust estate from 1905 down *"to the present time"*, i. e. August 1, 1921.

WILLIAM B. BEAM,
P. O. Box 297
Hackensack, New Jersey.

Case #6.

Beam v. Paterson Safe Deposit and Trust Co.

Errata in Appellant's Answering Brief.

On Page 62 at Line 12, the word "Appellant's" should read "Appellees'".

On Page 75 at Line 22, the word "its" should read "is".

On Page 76 the entire Line 36 should be replaced with the following:
"Orphans' Court to have the mistake corrected".

The suit carried on by Carrie S. Beam from 1912 to 1915 in Chancery differed radically from this suit. The former suit was based on the admitted "good faith" of the trustee. This suit is based on the trustee's charged and proven "bad faith".

Opinion of V. C. Howell:

> "I therefore think that as a matter of fact there was no lack of good faith on the part of the Trustee, *nor do I find any affirmative charge which can be construed into such a charge.*" (Case. Vol. I, p. 349.)

Opinion of Swayze, J.:

> "Its good faith *is not questioned.*" (Case. Vol. I, p. 396.)

From which it will be seen that this Court now has presented to it not only the subject matter that came before this Court in 1914 but in addition it now has presented to it some seven years more of trust estate administration that never came before this Court on the trial of the former suit. The entire period of the trusteeship is also presented in the new light thrown on it by the averments of the present bill and the proofs submitted under those averments.

Under the circumstances of this case Carrie S. Beam might well have gone into the Court of Chancery in 1921 and sought for permission to file a Bill of Review but when it was believed by Edward Beam and John C. Beam that they were not precluded by the former decree in this suit from litigating those particular matters back through the Court of Chancery to this Court (in which view they have been sustained by Vice Chancellor Griffin) Mrs. Beam undoubtedly felt that she would abide the determination of this Court before proceeding before the Court of

Chancery toward a reopening of the decree based on this Court's decision of 1914. From a consideration of which, Appellees' Point I appears to be rather academic.

II.

This Court is not bound to stand by its decision in the former case and follow the law of that case then established for the very good reason that the evidence in the former case and the pleadings in the former case are not the same as the evidence and the pleadings in this case. This is not the same cause of action. The *evidence herein is not even "substantially" the same.*

Appellees state in their heavy type at page 5 of their Brief that these two causes of action are the same but they very clearly qualify that assertion some five lines thereunder by suggesting that this cause of action has been litigated upon "substantially" the same evidence as the former suit.

In a comparison of pleadings and evidence the use of this word "substantially" is a dangerous one and is to be deprecated. It means less than to say that a driver was driving his car "rapidly" or "slowly" along a road.

The fact is that this suit was tried on pleadings, which as shown hereabove were entirely different from those on which the former suit was tried and the evidence in the former suit has been so far augmented by the addition of the following proofs as to make any comparison between the two all but futile:

"1. An examination of the system of accounting employed by the trustee in The Passaic County Orphans' Court. The accounts were offered in evidence by Mr. Harding together with an extraordinary petition to the Prerogative Court which damns the Orphans' Court procedure, under which these accounts were settled, for all time. Only the first three of these accounts were settled at the time of the trial of the former suit and not even these three were offered in evidence on that trial.. The trustee did not dare to offer them in evidence on that suit but contented itself with merely referring to their allowance in its Answer.

"2. The conduct of the trustee relating to the retention of the Brooklyn City Railway Company stock from 1905 to 1921.

"3. The bringing home of notice to the trust company through its president John W. Griggs, of notice in law and in fact of the conditions respecting the five bonds and the 225 shares of stock litigated in the former suit which not only proves that the losses occasioned by the retention of these securities were brought about by the wilful misconduct of said Griggs as president of the trust company but that his knowledge of those conditions is diametrically opposite to that to which he has previously sworn under oath.

"4. The refusal of the trustee to give Mrs. Beam any further information when demanded of it by her in the Spring of 1920, respecting the trust estate administration."

In addition to the foregoing, the cases of *Edward Beam et al Substituted Trustees* and *William B. Beam* on appeal from the Prerogative Court contain an amplification of these proofs together with many pieces of evidence that belong in this suit but were therein admitted. One of these cases is now before this Court and the other will be brought before this Court in Feburary, 1926.

The law of *stare decisis* does not apply to this case for if this Court finds that it was fooled and tricked by this trustee in 1914 no law was established at all at that time. Our legislative and judicial acts are not to be founded on folly and deception, fraud and mistake. They rest on Truth and Justice.

As further proof that the evidence in this cause is not even "substantially" the same as the evidence in the former suit attention is directed to the evidence submitted by Carrie S. Beam on the former suit. It will be found at pp. 282-285 Vol. I of case and by reference therefrom to other pages in that case. It consisted of three letters written by Mrs. Beam to the trust company and by the trust company to her and of the testimony of Mr. Traphagen relating to the record of the values of the securities litigated over in that suit. These values were proved by a series of quotations that were offered in evidence under a stipulation found at page 279 of Vol. I, case, but having secured what they wanted under that stipulation the Respondents in that suit broke their gentleman's agreement and attacked the prices or values shown as being "merely nominal and of a speculative character." In other words on the trial of the former suit Mrs. Beam offered no testimony or evidence at all except this meager increment. All that was done was to put the trustee through the process of explaining what it had done, in conformity with the opinion of Mr. Justice Kalisch, 81 N. J. Eq. 195, which placed upon the trustee the burden of proof to show that it had exercised good faith and reasonable discretion in its retention of the particular securities litigated over in that suit.

10 20 30 40

III.

Appellees erroneously state in their Point III that on the trial of this suit, aside from the evidence admitted in the former suit, "no further evidence was admitted or offered which changed or affected the force and effect of the evidence in the former suit with reference" to the securities litigated over in that suit.

Under this point Appellees set forth on page 7, of their brief a summary of what they claim is "the only evidence offered by complainants in their main case" but they omit all mention of the testimony of Carrie S. Beam found at pages 133-137, Vol. I, case, and of the letters there admitted in evidence and found at pages 149-154 of Vol. II, case, together with Exhibit C-5 found at p. 123 of same volume.

Not only do Appellees not refer to this testimony of Mrs. Beam in their summary here referred to but they have nothing to say by way of answer as to its effect as presented at page 29 of Appellant's brief filed herein. It is thus clearly admitted and the evidence is uncontradicted that the trustee in the Spring of 1920 did reprimand its secretary for giving information to the beneficiary as to its conduct of her trust to which she was entitled and did sit down thereafter and refuse to answer or acknowledge any further communications from her after the last letter which they wrote her preceding her two letters of April, 16, 1920 and April 24, 1920, Exhibits C-7 and C-8 (case Vol. II, pp. 150-154.)

Under the same point at pp. 13-14 of their brief

the Appellees also omit to refer to the testimony of Harold R. Medina who qualified as an expert and testified as to the procedure and the law in the State of New York respecting the certification of documents on file in the Governor's office at Albany with particular reference to Ex. BH-1 ident, the Jerome petition (case, Vol. I, pp. 162-171).

After this suit was tried in December, 1922, Appellant did try to secure the production of the original record of the Jerome petition from the Executive Chamber at Albany and did succeed through the kindness of the Hon. Alfred E. Smith in having the original brought to the Prerogative Court at Paterson on May 10, 1923, where it was produced and offered in evidence on the trial of that cause.

It is not customary for the Governors of States to send their secretaries all about the Union with the records of their offices and it was not possible to secure the production of the originals of these papers from the Executive Chamber in Albany in December, 1922.

The Vice Chancellor stated at page 157 of Vol. I, case:

> "He has no right to use an examined copy of an instrument, except, I think, in cases where, under the law, he cannot get certified copies, or cannot produce the original."

Harold R. Medina, qualifying as an expert on New York Law testified on pages 162-163 of same volume of case htat it was not customary to certify papers from the Executive Chamber at Albany. There was no law compelling the Governor of New York to send the original record out of the State or even out of his office.

The original could not be produced until the merest chance made it possible as a personal favor from an incoming executive and it is doubtful if the records of his office have ever before

been sent out of the Executive Chamber as they were in the following month of May, 1923. An "Alfred E. Smith" does not sit in the governor's chair once in a hundred years. This is said without reference to the number of terms of one "Alfred E. Smith."

At pages 169 and 170 of the same volume of the case the Vice Chancellor held in reference to his exclusion of this document represented by Ex. B-H-I iden.

> "Now, this other document, filed with the Governor of the State of New York, I have excluded, on the ground that it is not evidential, because the witness who was confronted with it says he knew nothing about it. If I should decide against you and the case should go to the Court of Errors and Appeals, I do not want you to be confronted with the fact that I have excluded it upon that ground *that is purely technical*, or that it was not proven; I want to give you the benefit of every objection you may make in the case, so that, if you do go there, and I am wrong in excluding it, I am excluding it because it is not evidential in any case. I do not want you to lose on the ground that you have not proved the document in the proper manner."

On June 30, 1924, Barton B. Hutchinson, Esq., representing Edward Beam and John C. Beam, appeared before the Vice Chancellor and moved for the re-opening of the Chancery suit herein and offered the above evidence by way of transferral from the record of the Prerogative Court suit of William B. Beam.

(Case Vol. 1, pp. 202-207.)

A great deal was said on that motion by both the Vice Chancellor and Mr. Hutchinson but Mr. Stalter, speaking for the absent Mr. Harding,

seems to have prevailed, for this Court may search the record of that motion in vain to discover that anything ever came of all of the discussion that was indulged in on that June morning in Jersey City by Mr. Hutchinson, the Vice Chancellor and Mr. Stalter.

The record is replete with the Vice Chancellor's protestations that his honor did not wish to decide the case on a technicality but nothing was done and the motion of Mr. Hutchinson was not denied by the order entered on July 2, 1924, for that order denies only the motion of William B. Beam, a motion involving an entirely different matter.

There were theree motions made on June 30, 1924, although it is not clear from the record in the case that this was so unless it is followed with care. The first motion is indicated by the following:

> "MR. HUTCHINSON: May it please your Honor, I have given notice of a motion this morning that I want to introduce some evidence in the case of *Beam vs. Paterson Safe Deposit & Trust Company*——what is, generally speaking, known as "the New York evidence". Your Honor will remember that in the final hearing of the Chancery suit a record was offered in evidence, and your Honor said it was not in probative form; since then the record has been offered in the appeal suits, and we desire now to offer it, and have your Honor pass upon it, in the Chancery suit.
>
> "MR. STALTER: We object to it, may it please your Honor, on the ground that the case has been closed and argued fully, at great length.
>
> "MR. HUTCHINSON: That was reserved.
>
> "THE VICE CHANCELLOR: I suppose the Court can open the case, if it wants to." (Case Vol. I, p. 202.)

The second motion is indicated by the following:

> "MR. BEAM: Therefore I desire to renew my motion of last week, if I may do so, on the ground that it is legal.
>
> "MR. STALTER: If your Honor please, I have notice of an entirely different matter from this motion that was argued last week and decided by your Honor.
>
> "MR. BEAM: That is not a matter that is contained in this notice that I have here, that Mr. Stalter speaks of.
>
> "MR. STALTER: Do I understand that you are renewing your motion of last week?
>
> "MR. BEAM: Yes, sir; I think we are all here; we are trying to get rid of this thing, and do not want to waste the time of the Court, or anyone else; it is a perfectly simple proposition, as far as that is concerned." (Case Vol. I, p. 208.)

The third motion was the motion that William B. Beam had served a notice for independently of the notice served by Mr. Hutchinson. It is shown by the following:

> "MR. BEAM: If your Honor please, I desire to move the Court, in the same cause, that the Chancery suit be stayed until the determination of the four appeals.
>
> "MR. HUTCHINSON: Well, I am not in this particular application." (Case, Vol. I. p. 211.)

Only one of these three motions was denied by the Court.

> "THE VICE CHANCELLOR: Well, this order, Mr. Beam, I will deny, because it is wholly a matter within the discretion of the Court, and it is an attempt to have the Court direct its own discretion." (Case, Vol. I, p. 218.)

The two orders of July 2, 1924, referred to in Appellees' Brief at page 16 thereof do not include

this motion made by Mr. Hutchinson which has never been granted nor denied. It was left gloriously up in the air.

It is for that reason, and in addition in order to clarify the issues in this suit, that Appellant has included in this case the record of the motion papers referred to by Appellees in their Brief at the foot of page 16 thereof.

Appellees complain at page 15 of their Brief that the complainants made no further effort to produce the original or admissible copies of the Jerome petition and "left that matter rest from the time of the final hearing until June 30th, 1924, when the motion was made and the complainants again merely offered the same copies."

The secretary of the Governor of New York cannot commute 150 miles from Albany to Jersey City carrying with him the records of the Executive Chamber in order to satisfy the niceties of New Jersey Chancery procedure. What chance would the Appellants have had to get the Hon. Alfred E. Smith to send his secretary back on such an errand? The originals were before the Hon. John Griffin once in May, 1923, and the same counsel were present representing the Appellees at the time of the offer of the originals in evidence in the Prerogative Court. Would the Governor of New York send his secretary to Jersey City a second time in order simply to permit the Hon. John Griffin to refuse to admit them in evidence? The proposition is too ridiculous to be discussed further in a Court of Equity in the United States of America in the year 1925. The word "substantial" can be used in every other connection in these cases but when Appellant and the cause of Justice have something to gain by its use the word is gone from the dictionaries of the Court of Chancery and the Appellees.

VIII.

The Vice Chancellor erred in deciding that the several accounts filed in the Orphans' Court by the defendant and passed and allowed by that court and the decree entered therein involved the same subject matter as this suit and were res adjudicata as against all the complainants.

Appellees refer under Point IV to the fact that this appeal is taken by William B. Beam alone, so that none of the rights of the other complainants are involved in this appeal.

This is a captious objection and is similar to one made by their counsel on the motion of July 29, 1924, before Chancellor Walker. At that time it brought little more than a smile from his honor and the statement that he did not see how he could make a decree binding William B. Beam and not bind the other parties to the suit. Perhaps Appellees intend to convey the impression that William B. Beam has no rights that this court or any court is bound to respect and possibly they wish to note the absence from the scene of battle of the erstwhile champion of John C. Beam and Edward Beam, Mr. Barton B. Hutchinson. As Mr. Blankenhorn has entered the lists in favor of these two gentlemen in the Prerogative Court Appeal of *Edward Beam, et al, Substituted Trustees,* the absence of Mr. Hutchinson should not militate against them or against Appellant herein.

The Appellees set up these Orphans' Court accounts and the proceedings thereon as a bar to relief by the Appellant and before proceeding to answer in detail the several questions raised by

them in their brief it will be necessary to take this court on a little excursion and to review in detail the remains of this Orphans' Court *res adjudicata* bar and estoppel in order that this court may be competent to judge as to its value as such a barrier to such relief as is herein demanded.

We will enter the edifice by the doorway dedicated by the trust company in 1908 under the name of "Amortization" and we will examine the interior through the passageway thus opened up to us.

The following ten sets of securities came into the trust estate at a premium and the premium was in each case amortized by the trustee as follows:

I.

7,000 Passaic Water Co. 5% bonds due 1937. 7,700 seven bonds at $1,100 a bond, premium $100 on each bond (case, V. II, p. 9).

Case, V. II.

p. 9	1908.	$9.00 on each bond.
p. 25	1910.	7.14 " " " .
pp. 33-36	1912.	7.14 " " " .
pp. 44-47	1914.	7.14 " " " .
pp. 51-55	1915.	3.57 " " " .
		$33.99 " " " ,

leaving approximately $66.00 on each bond to be thereafter amortized.

One of these bonds was placed in the trust in 1915, then for the first time created for Carrie S. Beam, and it appears in the 1917, 1919 and 1921 accounts (pp. 75, 91 and 109) at $1,000, variously styled "Appraised Value", no value but that given in dollars and cents and so-called "Book Value".

Had these bonds been amortized on the straight-line method the sixty-two interest payments would have required a reduction of but

$1.61 from each coupon clipped, making for the nineteen coupons from January, 1906, down unto and including January, 1915, a total of but $30.59 on each bond.

II.

6,000 Mobile & Ohio R. R. Co. 1st Mtge Ex 6% bonds due July, 1927, 7,440.

Six bonds at $1,240 a bond, premium $240 on each bond (case, V. II, p. 9).

Case, V. II. Account of

p. 9.	1908.	$29.17 on each bond.
p. 25.	1910.	35.00 " " " .
pp. 33-36.	1912.	23.33 " " " .
pp. 44-47.	1914.	23.33 " " " .
pp. 54-55.	1915.	11.67 " " " .
pp. 72-74.	1917.	40.00 " " " .
pp. 88-90.	1919.	40.00 " " " .
pp. 106-108.	1921.	30.00 " " " .
		$232.50 " " " .

leaving approximately $7.50 on each bond to be thereafter amortized.

One of these bonds was placed in the trust created in 1915 for Carrie S. Beam and it appears in the 1917, 1919 and 1921 accounts (pp. 75, 91 and 109) at $1,070, $1,030, and $1,000, styled respectively, "Appraised Value", no value, and "Book Value", so-called.

Had these bonds been amortized on the straight-line method, the eighty-seven interest payments would have required a reduction of but $2.76 from each quarterly coupon clipped, making for the sixty coupons clipped from January, 1906, down unto and including October, 1920, a total of but $165.60 on each bond.

III.

2,000 Second Ave. R. R. of N. Y. City 1st Cons. 5% bonds due 1948, 2,300.
Two bonds at $1,150 a bond, premium $150. on each bond (case, V. II, p. 9).

Case, V. II. p. 9-10.	Account of 1908.	$15.00 on each bond.

The amortization of the premium on this bond does not appear to have been carried on after February, 1, 1908, for the reason that no more interest was received thereon from that date.

Had this bond been amortized on the straight-line method, the eighty-six interest payments would have required a reduction of but $1.37 from each coupon clipped making for the five coupons clipped from January, 1906, down unto and including February 1, 1908, a total of but $8.65 on each bond.

There has been no explanation given by the trustee as to why this bond was amortized in this manner and the five deductions shown on p. 8 of Vol. II, i.e. $4.00, $4.00, $4.00, $8.00 and $10.00 seem to indicate that the trustee was in doubt as to just how much to deduct at each time.

IV.

5,000 United New Jersey R. R. & Canal Co. Reg 4% bonds due February, 1923, 5,300.
Five bonds at $1,060 a bond, premium $60 on each bond.

Case, V. II.	Account of	
p. 10.	1908.	$10.00 on each bond.
p. 25.	1910.	6.00 " " " .
pp. 33-36.	1912.	8.00 " " " .
pp. 45-47.	1914.	8.00 " " " .
pp. 54-55.	1915.	4.00 " " " .
		$36.00 " " " ,

leaving approximately $24.00 on each bond to be thereafter amortized.

One of these bonds was placed in the trust

created in 1915 for Carrie S. Beam and it appears in the 1917, 1919 and 1921 accounts (pp. 75, 91, 109) at $1,000 styled respectively "Appraised Value", no value, and "Book Value", so-called.

Had these bonds been amortized on the straight-line method, the thirty-five interest payments would have required a reduction of but $1.71 from each coupon clipped, making for the nineteen coupons from February, 1906, down unto and including February, 1915, at total of but $32.49 on each bond.

V.

$5,000 Paterson & Passaic Gas & Elect. 5% bonds due March, 1949, 5,250.

Five bonds at $1,050 a bond, premium $50 on each bond.

Case, V. II. Account of

p. 10.	1908.	$2.20 on each bond.
p. 25.	1910.	5.00 " " " .
pp. 33-36.	1912.	4.00 " " " .
pp. 45-47.	1914.	4.00 " " " .
pp. 54-55.	1915.	2.00 " " " .
		$17.20 " " " ,

leaving approximately $32.80 on each bond to be thereafter amortized.

One of these five bonds was placed in the trust created in 1915 for Carrie S. Beam and it appears in the 1917, 1919 and 1921 accounts (pp. 75, 91 and 109) at $1,010, styled respectively, "Appraised Value", no value, and "Book Value", so-called, but there has never been any attempt to amortize the remaining premium of $10.00 carried on this bond as shown by these figures.

Had these bonds been amortized on the straight-line method, the eighty-seven payments would have required a reduction of but 57.5¢ from each coupon clipped, making for the nineteen coupons from March, 1906, down unto and including March, 1915, a total of but $10.92 on each bond.

VI.

10,000 Long Dock Co. 6% bonds due October 1935, 13,400.
Ten bonds at $1,340 a bond, premium $340 on each bond.

Case, V. II.	Account of	
p. 10.	1908.	$24.00 on each bond.
p. 26.	1910.	24.00 " " " .
pp. 34-36.	1912.	24.00 " " " .
pp. 45-47.	1914.	24.00 " " " .
pp. 54-55.	1915.	12.00 " " " .
pp. 72-74.	1917.	20.00 " " " .
pp. 88-90.	1919.	20.00 " " " .
pp. 106-108.	1921.	15.00 " " " .
		$163.00 " " " ,

leaving approximately $177 on each bond to be thereafter amortized.

Two of these ten bonds were placed in the trust created in 1915 for Carrie S. Beam, and they appear in the 1917, 1919 and 1921 accounts at $2,360.00, $2,320.00 and $2,290.00, respectively, styled "Appraised Value", no value, and "Book Value", so-called.

Had these bonds been amortized on the straight-line method, the sixty interest payments would have required a reduction of but $5.67 from each coupon clipped, making for the thirty coupons from April, 1906, down unto and including October, 1920, a total of $170.10 on each bond.

VII.

3,000 Twenty-eighth & Twenty-ninth Sts Crosstown R. R. Co. 1st 5% bonds due 1996, 3,390.
Three bonds at $1,130 a bond, premium $130 on each bond.

Case, V. II.	Account of	
p. 10.	1908.	$3.33 on each bond.
p. 26.	1910.	1.66 " " " .
		$4.99

The amortization of the premium on this bond does not appear to have been carried on after April 1, 1908, for the reason that no more interest was received thereon from about that date.

Had this bond been amortized on the straight-line method, the one hundred and eighty two interest payments would have required a reduction of but 71¢ from each coupon clipped, making for the five coupons clipped from April, 1906, down unto and including April, 1908, of but $3.55 on each bond.

There is no explanation for the method of amortization shown by the accounts as respects these three bonds, and at page 26 of Vol. II of the case, the trust company charged off along with the amortization, an item entitled "Assessment paid December 22, 1909—$90.00" without further explanation given in the account.

VIII.

8,000 Passaic Lighting Co. 1st Con. 5% bonds due May, 1925, 8,640.00.

Eight bonds at $1,080 a bond, premium $80.00 on each bond.

Case, V. II.	Account of	
p. 11.	1908.	$8.50 on each bond.
p. 26.	1910.	8.50 " " " .
pp. 33-35.	1912.	6.38 " " " .
pp. 44-47.	1914.	8.50 " " " .
pp. 53-55.	1915.	4.25 " " " .
pp. 72-73.	1917.	2.00 " " " .
pp. 87-89.	1919.	3.00 " " " .
pp. 107-108	1921.	3.00 " " " .
		$44.13 " " " ,

leaving approximately $35.87 a bond to be thereafter amortized in four and a half years.

One of these bonds was placed in the trust created in 1915 for Carrie S. Beam, and it appears in the 1917, 1919 and 1921 accounts (pp. 75, 91 and 109) at $1,008, $1,005 and $1,002 styled respectively, "Appraised Value", no value,

and "Book Value", so-called.

Had these bonds been amortized on the straight line method, the thirty-nine interest payments would have required a reduction of but $2.05 from each coupon clipped, making for the thirty coupons from May, 1906, down unto and including November, 1920, a total of $61.50 on each bond.

IX.

5,000 Consolidated Traction Co. 5% bonds due June, 1933, 5,450.00.

Five bonds at $1,090 a bond, premium $90.00 on each bond.

Case, V. II. Account of

p. 11.	1908.	$7.00 on each bond.
p. 26.	1910.	6.60 " " " .
pp. 33-36.	1912.	6.70 " " " .
pp. 44-47.	1914.	6.80 " " " .
p. 54.	1915.	3.40 " " " .
pp. 73-74.	1917.	2.00 " " " .
pp. 88-89.	1919.	3.00 " " " .
pp. 106-108.	1921.	4.00 " " " .
		$39.50 " " " ,

leaving approximately $50.50 a bond to be thereafter amortized in twelve and a half years, although by the statement shown at l. 18 on p. 109 of Vol. II, case, it appears that there remains but $21.00 a bond to be amortized.

One of these bonds was placed in the trust created in 1915 for Carrie S. Beam, and it appears in the 1917, 1919 and 1921 accounts (pp. 75, 91 and 109) at $1,028, $1,025 and $1,021 respectively, styled "Appraised Value", no value, and "Book Value" so-called.

Had these bonds been amortized on the straight-line method the fifty five interest payments would have required a reduction of but $1.64 from each coupon clipped, making for the thirty coupons from June, 1906, down unto and including December, 1920, a total of $39.20 on each bond.

X.

18,000 Paterson Rly. Co. Consol. Mtge 6% bonds due June, 1931, $22,500.00.

Eighteen bonds at $1,250 a bond, premium $250 on each bond.

Case, V. II. Account of

p. 11.	1908.	$15.56 on each bond.
p. 27.	1910.	15.56 " " " .
pp. 33-35.	1912.	15.56 " " " .
pp. 44-47.	1914.	15.56 " " " .
pp. 53-54.	1915.	7.78 " " " .
pp. 72-74.	1917.	13.33 " " " .
pp. 87-89.	1919.	13.33 " " " .
pp. 106-108.	1921.	13.33 " " " .
		$110.01 " " " ,

leaving approximately $139.99 a bond to be thereafter amortized in ten and one half years, whereas at page 109 of Vol. II, case, the so-called "Book Value" of these bonds is shown at "3180" for three bonds making but $60.00 a bond to be thereafter amortized.

Had these bonds been amortized on the straight-line method, the fifty-one payments would have required a reduction of $4.90 from each coupon clipped, making for the thirty coupons from June, 1906, down unto and including December, 1920, a total of $147 on each bond.

A comparison of the values shown in the table attached to the 1914 account, shown on page 49, Vol. II of the case with those attached to the 1915 account and shown on pages 57 and 58, same volume, discloses some marvellous things.

The 1914 table is headed "Inventory Value" and it is the first time in the history of this trust estate that that designation appears in the accounts. The preceding designations have all been "Present Value", shown on pages 9, 25 and 38 same volume. This reversion to the term "Inventory Value" is first made use of nine years after the death of Sarah A. Cooke, and in the fourth account filed instead of in the first.

The 1915 table, on p. 57, bears no heading, but

the amounts shown by the side of the respective securities are identical with those shown in the table on the following page, p. 58, and that table has the following statement attached to it:

> "The trustee, as of May 1st, 1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day and has divided the said estate into five parts, according to the figures as hereafter shown * * * " etc.

From which it is evident that the values shown in the table on the preceding page are intended to be shown at "Market Value as of May 1, 1915".

From the table on page 49, we find that the so-called "Inventory Value" of each of the securities dealt with in this section of Appellant's brief, compares with the "Market Value" of the same in the table on page 57 as follows:

Passaic Water 5s	1914	$1069.57	
	1915	1000.00	
			69.57
Mobile & Ohio 6s	1914	$1129.17	
	1915	1110.00	
			19.17
United N. J. R. R. & C. Co. 4s	1914	$1028.00	
	1915	1000.00	
			28.00
Pat. & Pass. G. & E. 5s	1914	$1034.80	
	1915	1010.00	
			24.80
Long Dock 6s	1914	$1244.00	
	1915	1200.00	
			44.00
Pass. Lighting 5s	1914	$1048.125	
	1915	1010.000	
			381.25
Cons. Traction 5s	1914	$1062.90	
	1915	1030.00	
			32.90
Pat. Ry. 6s	1914	$1187.78	
	1915	1100.00	
			87.78

In the table marked "Schedule B" shown on page 57, same volume, the trustee in 1915 prayed "depreciation" of the above securities as follows:

		On each bond
Passaic Water 5s	$220.00	$66.00
Mobile & Ohio 6s	45.00	7.50
U N J R R & C 4s	120.00	24.00
P & P G & E 5s	114.00	22.80
Long Dock 6s	320.00	32.00
Pass. Ltg. 5s	271.00	32.625
Con. Trac. 5s	147.50	29.50
Pat. Ry. 6s	1,440.00	80.00
Total	$2,677.50	

It will appear on an examination of the schedules compiled by Appellant for each bond hereabove, that in 1915 the trustee deducted from the Income Account the following amounts for these securities by way of amortization:

	On each bond	'Despreciation"	
Passaic Water 5s	$3.57	$66.00	$69.57
Mobile & Ohio 6s	11.67	7.50	19.17
U N J R R & C 4s	4.00	24.00	28.00
P & P G & E 5s	2.00	22.80	24.80
Long Dock 6s	12.00	32.00	44.00
Pass. Ltg. 5s	4.25	33.875	38.125
Con. Trac. 5s	3.40	29.50	32.90
Pat. Ry. 6s	7.78	80.00	87.78

Adding each of these amounts to the amount of "Depreciation" deducted in 1915 we get the respective differences shown in the table hereabove between the 1914 "Inventory Value" and the 1915 "Market Value". These figures check to the fraction of a dollar and show that what was done in 1915, when an alleged appraisal was made "at the market value" of May 1, 1915, was no appraisal at all but simply a charging off of amortization that should not have been charged off and could not have been charged under any proper scheme of amortization known to accountancy. The court cannot permit a trustee to charge off as "Depreciation", amortization. Amortization has nothing whatever to do with

the market value of the securities and it should never be shown by schedules having anything to do with the corpus unless they are kept separate and apart from the schedules showing the loss by real depreciation.

It is a fact shown by these figures that there never was any appraisal of May 1, 1915, and any depreciation that was charged off by such a chowdered-up proposition as is revealed by these accounts is not a proper depreciation to be allowed to any trustee. It is something absolutely worthless and utterly beyond the comprehension of any accountant.

The Passaic County Orphans' Court swallowed this in 1915, hook, line and sinker, and Vice Chancellor Griffin repeated the operation in 1924 by refusing to examine what had been done because of the doctrine of *Slater's* case, notwithstanding that the record showed that the required re-opening of prior intermediate accounts to effect any allowance for depreciation had not been made by the trustee in 1915 and notwithstanding that in the Prerogative Court Appeal case of William B. Beam his honor had before him a motion to re-open these accounts for fraud. If it is not a fraudulent act to foist such a thing upon any court as an "appraisal" then there is no such thing as "fraud".

But perhaps the worst angle exhibited by this phase of the case is that revealed by its consideration along with the following decision in the case of *Ballentine v. Young,* 74 N. J. Eq. 572, 574. (May, 1908).

Appellant has up to this point discussed the amortization of these securties as if it were a proper thing for trustees placed as this trustee was placed, to do. It is not, as witness the following:

The Court, by Stevens, V. C., said:

> "As far as concerns the bonds held by the testator in his lifetime, there seems to be very little conflict among the decided cases. It is held very generally that in the case of such bonds the entire interest belongs to the life tenant, unless there is a clear indication in the will to the contrary."

This decision was rendered within six months from the time that this amortization was commenced by the trustee and yet it, acting in "good faith", continued it down until 1921, for fourteen years.

On the morning after this Court opened, this trustee advertised in the public press of Paterson, New Jersey:

> YOUR— (250)
> estate can enjoy the management of men thoroughly trained in business, law, investments and estate procedure.
> The Paterson National Bank
> 152 Market St., Paterson, N. J.
> "Simply name The Paterson National Bank as your executor-trustee."

As far as Carrie S. Beam is concerned a total of $1125.10 was taken from her income by this trustee throughout its administration of her trust on account of this amortization and it is a fact shown by the accounts that there is no place in the accounts that this sum has ever been accounted for. The accounts show it as having been taken out and new securties appear in the accounts from time to time but there is no real balance ever struck between the accounts and no compliance ever having been made with Rule 21

of the Orphans' Court; there is no means of knowing whether this money has ever been returned to the trust estate or not. If the trustee could show that it was taken out it should be required to show what was done with it thereafter. Added to this is the fact that in 1915 the Orphans' Court permitted a charging off of "depreciation" in the amount of $2,677.50 which was not depreciation at all and we have created in these accounts another hole into which anything could be sunk with the greatest ease. This charging off of "depreciation" that never occurred is about as useful to a trustee as a battle or a fire is to the supply officer of a regiment in the Army.

Appellant has gone to great lengths to secure through the trustee a re-statement of these past accounts, to secure the same through the Hon. John Griffin and failing in both of these attempts he has tried to secure the same through resort to the processes of the criminal law of the State of New Jersey in order that it might be determined what has been done with this portion of the trust estate. And notwithstanding the three or four hundred protestations of "good faith" made by the trustee found running throughout its brief submitted to this court herein, the trustee has not only refused to disclose the manner in which it disposed of this money but has gone so far as to retaliate on Appellant for his efforts to learn what it has done with these lost trust funds, lost by it through its training "in business, law, investments and estate procedure."

If there ever was a case of the most positive "bad faith" brought to the bar of a court of equity that can equal this as revealed by this one feature of these accounts it has yet to be recorded by the reported decisions. A Court of Equity, as Mr. Choate says, "is not satisfied with good inten-

tions; it demands good faith. Look at it as it now appears, and how can any one impute good faith or say that it was merely a transaction in the usual order of business?"

Yes, look at it. There never should have been any amortization at all but the trustee conducted it. What is a little thing like a decision of the New Jersey Court of Chancery to the trustee if it sees fit to do otherwise? And then, notwithstanding that there should have been no amortization, there was carried on an amortization that is a disgrace to accountancy and gives the lie to the 1925 assertions of the trustee that it is "trained in business, law, investments and estate procedure." And on top of this bastard proposition that baffles classification the trustee fails to disclose where the money amortized went to and goes even so far as to attempt to have Appellant punished in the criminal courts of this State for daring to attempt to locate it in compliance with his solemn duty toward his cestui. And yet this Court is asked to condone such a procedure and see trust companies flourish and permit them to go on, leading other widows into such a trap as this trust estate has proved to Mrs. John R. Beam until they are despoiled of their property, ostracised of their friends and threatened in their old age with being deprived of their sons, who have fought for them against such a trustee os would have been hanged under the criminal laws of Blackstone's time, and with having them thrown into jail, in order that the system may go on and prove as profitable to others as it must have proven to this trustee!

It is perfectly apparent that that was why this amortization was carried on in defiance of law. It was profitable as viewed from the viewpoint of the trustee although on first sight this may not appear to an individual.

The Paterson National Bank or its prodecessors never paid one red cent of interest on the uninvested cash retained by it from this trust estate and at times this balance ran up to as high as $1839.18 (case V. II, p. 3). The 1908 account shows at page 9, same volume, that from 1905 to 1908 the amortization amounted to $962 and the 1910 account shows at page 25 same volume that it amounted to $941.00 from 1908 to 1909 inclusive.

As Secretary Mellon says of the small income tax payments: "These seem insignificant sums. They are to the taxpayer, but not to the Government."

Appellant insists that these amortized sums seem insignificant sums and that they are to each individual *cestui* but they are not to the trust company that numbers its trust funds in the millions or would like to unmber them there They can use that money and they do use it and that is why they take it in defiance of New Jersey Law. How much of it they keep "for keeps" and how much they return in the form of new investments cannot be determined until accounting procedure in the Orphans' Court comes down to earth and deals with accounts on principles known to accountancy.

Possibly this is the same principle of "large deals and small profits" that underlies the custom of the trustee in permitting mortgagors of mortgages held in the trust to pay off as little as $50. at a time on the principal of their mortgages (case William B. Beam Prerogative Court appeal).

VI.

The petition to the Governor of the State of New York and the Amory book were relevant and material and the copies offered were admissible.

Appellees contend in their Point IV at page 17 of their brief that the defendant trust company would not be bound by the contents of the Jerome petition because Mr. Griggs' partners had knowledge of its contents.

In law, the knowledge of Mr. Pierce, Mr. Griggs' partner, was the knowledge of Mr. Griggs. The knowledge of Mr. Griggs was the knowledge of the trust company because the trust company had down until the summer of 1908 delegated solely to him the question of the retention of these Metropolitan securities.

In support of the first of these two propositions Appellant has cited at pages 37-42 of his brief no less than twenty cases and it is significant that the Appellees *do not cite a single case in opposition.*

In support of the second proposition, reference must be had to the testimony of John W. Griggs under cross-examination, page 295, Vol. I, case:

> "THE COURT: You mean the question of the retention of these bonds as part of the securities of this trust?
>
> "MR. COOK: Yes.
>
> "A. At the time it was originally taken?
>
> "Q. Yes. A. I don't think it was.
>
> "Q. When did it first come up for discussion in the board? A. Well, I shouldn't think that the matter became a subject of definite discussion until after the default by the New York City Railway Company.

"Q. And approximately when was that? A. That would have been in the summer of 1908."

See also Appellant's brief, page 46, et seq. and case there cited. Mr. Griggs "was the trust company" in this question and it is bound by the doctrine of *respondeat superior.*

"In fact" the knowledge of Mr. Pierce was the knowledge of Mr. Griggs, for no reasonable man will say that at a time when Mr. Griggs has testified that he was running around all over New York City, making inquiries as to this Metropolitan situation, that he could possibly have remained ignorant of the basis of these charges against Jerome. It is not only unreasonable to suppose that Mr. Griggs did not know the basis of the charges; it is preposterous. John Jones does not spend his time rooting around all over the lot for that which is right under his nose, unless, indeed, he wishes to remain so blind that he shall not see it.

Mr. Griggs' two dozen "I don't remembers", given both on this trial and in the Prerogative Court Appeal of William B. Beam and his many equivalent expressions, behind which he took refuge, lead fairly to the inference that there was something in the transaction which he deemed it advisable to remain ignorant of as far as the record is concerned.

And if this line of reasoning is not sufficient to give the lie to the assertions of Appellees, we are confronted by their statement found at page 17 of their brief, that the contents of this petition to impeach Jerome, do not show such a state of facts as would have required the trust company to sell the securities in question, had they known of them. We have to wonder, why if this is so, they have, in common with Mr. Griggs, been at such tremendous pains to deny all knowledge of the contents of the petition.

They state that the Griggs, Baldwin & Pierce charges

> "were *merely* charges of improper conduct of certain persons connected with the Metropolitan Street Railway Company and the New York City Railway Company, and even if they were true, they were not in themselves facts that showed that the securities of the company held by the defendant which were leased from these companies whose intrinsic values were not necessarily affected by the alleged acts of the officers of the Metropolitan Street Railway Company and the New York City Railway Company, should be sold at a price below their intrinsic value."

The charges were "merely" that the entire structure of the Metropolitan System was not only being looted by the men who had built it up and brought its parts together, but that the whole edifice was so racked with graft and corruption and had been so shot to pieces for so long, that no one knew what any component part of it was worth.

The "intrinsic values" of the securities held by the trust company were what? $46,800.00 worth of stock which had ahead of it, bonds. Griggs and Coe attempt to deny that they knew that there were bonds ahead of this stock but those bonds were reported as outstanding in the manuals published for the guidance of investors, and bankers, as far back as 1906.

Much time has been wasted in attempts to prove that the trust company did not know and could not have known that there were bonds outstanding ahead of this stock and the Appellees go so far as to cite the very case that gives the lie to their efforts in this direction. They cited it on the trial of the former suit and they fooled this court on it in 1914 (Case, Vol. I, p. 327),

and now they cite it again in their brief filed herein, p. 39. Let Circuit Judge Ward deny their claims in his Honor's own words, in the case of *The Farmers' Loan and Trust Co. v. Central Park North and East River R. R. Co.*, 193 Fed., 963:

> "I have little difficulty in finding that the bonds were purchased and not paid as between the parties here involved. This was the scheme of the mortgage. They were delivered to the Morton Trust Company for that purpose, and were marked by it held in trust for the purpose of the mortgage and the Central Park Company reported the bonds to the public authorities, *as outstanding and held in the investment account of the Metropolitan Company in the months of June, 1904, 1905, and 1906.*"

On the trial of the former suit, George S. Coe testified at great length, from pages 339 to 343 of the case, Vol. I, concerning this transaction, but it is significant that he ended his testimony at line 38 on page 342 with the following:

> "Q. Could it have been discovered they were not so canceled if investigation had been made? A. It could have, of course.
> "Q. And was such investigation made by you or by your direction? A. No, nobody—
> "THE COURT: You have answered the question."

This court, speaking through Mr. Justice Swayze at page 399 of the case in 1914, has been entirely misled by the discussion on this point. It seems to have been made to appear to the court that such an examination was an expensive proceeding. It is no more expensive for an investor to open the pages of a street railway manual, in which these bonds were reported outstanding in 1906, than it is to open a newspaper. It also seems that this court believed in 1914 that there

was another class of bankers who made a specialty of this form of investigation "or may properly be supposed to have made" it. That was just the kind of a banker that George S. Coe was passing himself off to be. He had qualified as an expert, from page 301 of the case on, and he testified as an expert, and it was on his testimony as an expert that this court relied as to the balance of the case.

The truth of the matter is that his testimony has no value at all, as witness the following excerpts:

> "A. I cannot answer yes or no to the question, your Honor. I can answer in two words if you will let me answer my way.
>
> "Q. And what are those two words? A. The Farmers' Loan & Trust Company were payees—
>
> BY THE COURT:
>
> "Q. Of what? A. Of that mortgage" (Case, Vol. I, p. 341).

and then follows the balance of the two words.

* * * *

> "Q. Then there were three trust companies concerned in this transaction which came as a surprise? A. Only two trust companies.
>
> "Q. And which were those two? A. The Guaranty as successors of the Morton.
>
> "Q. And? A. And Farmers' Loan, but eliminate the Farmers' Loan from it" (Case, Vol. I, p. 342).

A trust company is indeed a very sacred thing.

This shifty, crafty witness Coe, knew the truth of the transaction, and the very way in which he in vain, attempted to dodge the questions of Pierre F. Cook on cross-examination, shows it.

What is it to this court that certain untrained

individuals, such as the expert George S. Coe in New York City, did not know this? The Paterson Safe Deposit and Trust Company is in another class. Does it not advertise that it is managed by men "thoroughly trained in business, law, investments and estate procedure"? Will such an institution be let go acquit on such a showing, when by reference to a stock manual of that day it at once appeared that there were bonds ahead of this stock? What are these trust companies for if they cannot find out these things? Are they to be permitted to secure business on false pretenses through millions of dollars worth of lurid advertising, and then when they are in danger of exposure are they to be permitted to run into this court and put upon this court the odium of their wilfully ignorant acts and in this court wash their hands of their folly and their wrongdoing?

But Appellees go further in their impudence when they state at page 18 of their brief, that the appointment of the Receivers of the Metropolitan Street Railway Company "was not regarded as jeopardizing the essential values of the securities of the leased lines."

Reference to the Intervening Petition of Solomon H. Kohn found at pages 402-419, Vol. I of the case, gives the extent of the particular misrepresentation which Appellees are here trying to foist upon this court at this time. At page 22 of their brief, Appellees admit that John W. Griggs "had access to all the voluminous records connected with the Receivership of the Metropolitan Company", and this petition of Kohn, filed in November, 1907, should be read by this court entire. It will dispel all doubts in the mind of any reasonable man that the Receivership in question was believed by many to be but a continuation of the work of Ryan, Whitney and the

others who had already wrecked the property, to complete their wrong doing.

The connection between the Amory book and the petition to impeach Jerome is that the Amory charges formed part of the record in the Jerome impeachment case conducted by Griggs, Baldwin & Pierce (Case, Vol. II, p. 187), and so they are chargeable to Mr. Griggs' and the trust company's notice.

V.

Appellees' Point V. that "The evidence in the former case admitted in this case justified the defendant in holding the five bonds and 225 shares of stock involved in that case, as this court decided in the former case." has no force and effect and no bearing on this Court's decision of this case for the reason that this case comes before the Court on entirely different pleadings and evidence from the pleadings and evidence in the former suit.

Appellant has already pointed out that this case is based on the alleged "bad faith" of the Appellees from 1905 to 1921 and that the former case and this Court's decision thereon were based on the trustee's admitted "good faith", from 1905 to 1912.

It therefore becomes the duty of this Court to examine with great care and in the light of the evidence hereon submitted the explanations of the trustee made in 1913 and 1914, and on which they still rely, as to its conduct in the retention of these securities.

The first of these explanations appears at page 20 of Appellees' Brief:

> "The leases to the Metropolitan Company, which was regarded as a strong company, back of which were *such financiers as ex-Secretary Whitney and Mr. Ryan,* guaranteed the payment of the interest on the bonds in question of eight per cent, and a dividend on the stock in question of the Central Park, North & East River Company of nine per cent per annum."

What kind of financiers were ex-Secretary Whitney and Mr. Ryan and what kind of financiers were they known to be by John W. Griggs, the president of the trust company? Let us examine the petition filed by Griggs, Baldwin & Pierce with Governor Hughes early in 1908 and see.

EIGHTH.

> "By February, 1902, the affairs of the Metropolitan Street Railway Company **had become so bad** that dividends could no longer be paid out of the earnings, and some means must be devised whereby dividends could be paid **without danger of violating the criminal law. Mr. William C. Whitney and Mr. Thomas F. Ryan** and others owned large blocks of the stock of the Metropolitan Street Railway and if the true condition of affairs became known the stock would become of little value. *To continue and to enable them to unload* their stock **Mr. Whitney, Mr. Ryan,** Mr. Dolan, Mr. Widener and others **formed a criminal conspiracy** to continue the credit of the Railway Co., to unload their stock and to strip the Metropolitan St. Railway Company of upwards of $20,000,000 of securities, which it then held, before its bankruptcy became known. These men **conspired criminally together** *. *. * etc." (Case. Vol. II, p. 186.)
>
> "**The criminal conspiracy** to divert the

property of the Railroad Company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country **were robbed of their money.** Finally the Company destroyed its books existing before 1902, **to hide the stealing,** *and that offense* is said to be outlawed.

"We herewith submit not as part of this charge but for your examination a copy of the statement of Col. Wm. N. Amory, submitted in 1903 to Mr. Jerome, showing the condition of the Metropolitan Street Railway Company and the condition of its affairs as described above." (Case. Vol. II, p. 187.)

The foregoing is rather violent language for a lawyer to use in a pleading but it is the language of Griggs, Baldwin & Pierce.

"On May 6th, 1902, Mr. Ryan was elected a member of the Board of Directors of the Metropolitan Securities Company. On October 21st, 1902, a check to the order of *cash* in the amount of $540,000, was drawn on the Metropolitan Securities Company and was paid to the President of the Company, H. H. Vreeland. This amount was then *fraudulently* entered in the books of the Metropolitan Securities Company as payment of certain alleged claims against the Wall & Cortlandt Ferries Company." (See Record of Public Service Commission, pp. 1601-1818. pp. 1718-1721.) ?

"Mr. Jerome was furnished with two copies of the testimony taken before the Public Service Commission. He was in complete possession of all the facts in the case as above detailed. Eleven days after the $540,000 check transaction was brought to the attention of Mr. Jerome, *a transaction indicating larceny,* the statute of limitation intervened as to some of the parties, and no action has been taken by Mr. Jerome." (Case. Vol. II, pp. 189-190.)

TENTH.

"In the years 1902 and 1903 Thomas P. Fowler, Paul D. Cravath, Edward J. Berwind, George G. Haven, Herbert H. Vreeland, Edward W. Sayre, Mortimer L. Schiffff, *Thomas F. Ryan,* Peter B. Widener, Thomas Dolan, John D. Crimmins entered into a combination and conspiracy to appropriate to the use of the Metropolitan Securities Company millions of dollars out of the capital of the New York City Railway Company without the Metropolitan Securities giving any consideration therefor, in which conspiracy all of the above named defendants either at these times or subsequently joined and participated with full knowledge of the nature and purposes of said conspiracy. Pursuant to said conspiracy and *with the purpose and intent to rob* the New York City Railway Company of its property, these defendants concocted and consummated *the wrongful, illegal and criminal scheme* hereinafter set forth to get from said New York City Railway Company, of which many of them were the directors, the sum of $2,797,200.

"*This criminal scheme to rob the New York City Railway* Company was accomplished in the following manner: etc. (Case Vol. II, pp. 190-191.)

"*This robbery of the New York City Railway Company* by the directors of the Metropolitan Securities Company and of the New York City Railroad Company by collusion and conspiracy between them has been called to the attention of Mr. Jerome. The newspapers of New York have given great publicity to this action and the facts have been laid before him and he takes no action for the punishment of these conspirators." (Case. Vol. II, pp. 193-194.)

* * * * * *

"This practice has recently received a severe rebuke at the hands of one of the Justices of the Court of Sessions, and we call your

Honor's attention, in that connection, to the remarks of Mr. Justice Rosalsky as they appear in the New York Law Journal of January 30th, 1908, in which, speaking of Mr. Jerome's subpoenaeing Thomas F. Ryan, and examining him before the Grand Jury, he says:

"'The practice of calling a probable defendant under a subpoena, or otherwise, before a Grand Jury and interrogating him should be condemmed, and the law itself condems it since even if successful at the outset in securing an indictmnet, a prosecution thereafter will result in a defeat of its purpose.'

FOURTEENTH.

"On October 8th, 1907, it was disclosed at a hearing before the Public Service Commission that, on June 9th, 1903, *Thomas F. Ryan took* $24,000 *from the treasury of the Metropolitan Securities Company,* and again, on August 7th, 1903, *that he took the further sum of* $28,500" (pp. 1623-1633).

"On October 10th, 1907, it was disclosed before the Public Service Commission that $299,800 had been taken from the treasury of the Metropolitan Securities Company and paid by the said Company to the firm of A. A. Ryan & Bro., sons of Thomas F. Ryan, brokers, in payment of 2700 shares of Metropolitan Street Railway Company stock at a price in excess of its actual value" (pp. 1716-1717). (Case. Vol. II, pp. 196-197.)

This much Griggs, Baldwin & Pierce had to say for Ryan and Witney as financiers and now let us see what William N. Amory had to say of them in 1906 and subsequently perforce to Griggs, Baldwin & Pierce.

"Here are the names of these eminent financiers who have made for many years *the*

robbing of their own stockholders their chief business: *William C. Whitney, Thomas F. Ryan,* Herbert H. Vreeland, W. L. Elkins, P. A. B. Widener, Thomas Dolan.

"This practically completes the number, but these men have had confederates and willing tools, *numerous lawyers, some with reputations,* some without, secretaries and other officials of the companies in the system, claim agents, detectives, professional perjurers, and, as will be shown robbers of the United States mails. And besides all these, a retired contractor, now the vice president of a trust company on Wall Street, who has been described by a lawyer of my acquaintance as 'always hanging around the kitchen door when there were any Metropolitan feasts, gratefully picking out the scraps from the financial garbage barrel.'

"It was the genius of *William C. Whitney* that conceived the possibilities of the Metropolitan railways, and erected this monument of infamous graft. It is the skill and unscrupulousness of *Thomas F. Ryan* to which many of the completed deals owe their success." (Case. Vol. II, p. 214.)

"This is the same Mr. Ryan who recently purchased control of the Equitable Life Assurance Society. That former President Cleveland is unaware of Mr. Ryan's true character is plainly indicated by his letter accepting the voting trusteeship of the Equitable Life, while his admonitions stand without parallel as an example of unconscious irony.

"'*We can better afford to slacken our pace* wrote Mr. Cleveland to Thomas F. Ryan in June, 1905, '*than to abandon our own simple American standards of honesty, and we shall be safer if we regain our old habit of looking at the appropriation to personal uses of property and interests held in trust in the same light as any other form of stealing.*'

"It is to laugh! *The appropriation to per-*

sonal uses of property and interest held in trust has been Mr. Ryan's regular line of business.

* * * * * * *

"Mr. Ryan is the dominant factor in the Metropolitan Railway. He has been trying for 18 months to sand-bag the Interborough interests to buy out the Metropolitan by threats of competition in the Subway field of transit. This was a clever scheme and worthy of Mr. Ryan's best efforts, if successful.

"*He and his piratical crew,* having for many years sailed the stormy seas of finance, looting and destroying all those they have come up with, *are now preparing to desert the sinking ship and to turn over the command of the rotten hulk to others.* They have, as they imagine, safely sequestered their spoils, and desire now to enjoy them in peace. Time alone can show whether this last desperate effort of this truly wonderful man will result in complete success or dire failure.

"*Mr. Ryan is the Jonathan Wild of finance.* He is a great man, a man of genius in his own calling.

"As I review his list of achievements and consider his qualities amiable or detestable, worthy of admiration or abhorrence—I am convinced that Fielding with admirable prescience was drawing a true picture of Mr. Ryan, when he portrayed Jonathan Wild.

* * * * * * *

"My admiration for his genius in finance is surpassed only by my detestation of his criminal methods. But after all, Mr. Ryan is only the logical result of prevailing conditions. He is the chief representative of a corrupt system and a state of moral degeneracy that are a menace to the public.

"Mr. Ryan may successfully sell his gold brick to Mr. Belmont; very likely he will, but is that any reason why he should be allowed to escape *with his millions of stolen money and go unpunished of his crime?*

> I hear men speak of Mr. Ryan's successes as if they were certain of being continuous. But I am reminded that even Jonathan Wild was pinched at last and ended his career ignominiously, and that Napoleon met his Waterloo." (Case. Vol. II, pp. 214-218.)

And now, if this Court please, Mr. John W. Griggs of Griggs, Baldwin and Pierce, who had this very information at his finger tips and talked of the prosecution of Mr. Jerome with his partner, without going into the details thereof: "A. I can only answer you as I did before, that possibly —and I think probably—that incidentally in the office it was mentioned that he was prosecuting this complaint against Jerome, as, for instance, he might have said, 'I am going on with that Jerome case today'; but as to conversing with him about it or consulting with him about it, or anything more than incidental reference to it, I never had any conversation with him." (Case, Vol. I, p. 149.) This Mr. John W. Griggs, comes before this Court and through his counsel says that because of the fact that "*such financiers as ex-Secretary Whitney and Mr. Ryan were*" back of the property, these securities here in litigation were considered gilt-edged. In 1913 John W. Griggs testified in the former suit at page 286 of Vol. I of the Case as follows:

> "There was considerable amount of these securities in charge of the trust company; they were regarded among investors *and the officers of the trust company as gilt edged securities because* the leases to the Metropolitan Company which was regarded *as a strong company*, back of which *financiers such as ex-Secretary Whitney and Mr. Ryan were*, guaranteed the payment of the interest on the bonds and a dividend on the stock * *"

The Metropolitan Company was so "strong"

that it stunk to High Heaven with a stench of corporate rottenness that has never been equalled before or since in the financial annals of America.

And what does the record show that Whitney and Ryan were as financiers and that Griggs knew they were from shortly after Christmas 1907 and earlier and yet failed to communicate to his directors in the Paterson Safe Deposit and Trust Company until after the default in July, 1908, and perhaps not even then: "A. Well, I shouldn't think that the matter became a subject of definite discussion until after the default by the New York City Railway Company. Q. And approximately when was that? A. That would have been in the summer of 1908." (Case, Vol. I, p. 295.) What kind of financiers does the record show these two men were?

Griggs, Baldwin & Pierce charge them with grand larceny, accuse them of having "stolen"the money of these corporations, of having "robbed" hundreds of stockholders, and of having "criminally" conspired to strip these properties of all of their assets and Mr. Amory who subsequently communicated his information to Griggs, Baldwin & Pierce and permitted them to use it as basis of the above accusations, Mr. Amory, why he describes them as "pirates" and pictures Ryan as the "Jonathan Wild" of finance, stating that "the appropriation to personal uses of property and interest held in trust has been Mr. Ryan's regular line of business," and that Ryan and "his piratical crew" were in 1906 after "having for many years sailed the stormy seas of finance, looting and desroying all those they have come up with * * * preparing to desert the sinking ship and to turn over the command of the rotten hulk to others."

It might have been all summed up in two

words, this specific description of these looters, pirates, thieves and criminal conspirators, Griggs, Baldwin & Pierce might have simply described them as "unjailed criminals".

And Appellant repeats that this trustee now says that, because such were the conditions back of these underlying stocks, which had bonds ahead of them, it was justified under the statute of 1899 acting in "good faith and reasonable discretion" to have retained them.

Would this Court, sitting to pass upon the application of any trustee that he be permitted to invest trust moneys, permit that trustee to place the trust funds in the hands of "unjail birds" whose criminal record was so notorious that the applying trustee admitted that he had read of it in the newspapers? What could the "intrinsic value" of such securities actually ever be, what could it possibly be and what could the "essential value" of such securities be? The trust securities were found to be in a "rotten hulk" that these pirates were preparing to desert and let sink and yet it was "reasonable discretion" and an act of "good faith not only to continue them but to not even discuss their continuance in the board of directors of The Paterson Safe Deposit and Trust Company until it was too late to save the situation.

It has been stated by these witnesses for the trust company that "nothing occurred to disturb anybody's sense of security" * * *"until September, 1907, when right in the midst of the panic "the Receiverhip of the New York City Railway came".

In other words it is sought to impress upon this Court that the panic caused the Receivership. The contrary is the fact and the record shows it. This rottenness in Metropolitan helped to cause the

panic and was so found by the National Monetary Convention some months thereafter and is a matter embodied in their reports to the United States Congress.

Appellees state at page 32 of their Brief "That the Receivership came suddenly, without warning or knowledge, to the defendant." This statement and the statement above cited that "nobody's sense of security" was disturbed until September, 1907, are not only ridiculous but they are absolutely false. Receiverships do not drop down out of the sky. When a receivership was proposed for our own Public Service Railway a few years ago was it not discussed as a possibility for months and was it not publicly commented on by the Chief Justice of the New Jersey Supreme Court, the Chancellor and the Governor? Any matter that is of such importance to be discussed by such officials in the State government must be known to investors and to bankers who pose before the public that they knew more about the investing business than any individual that ever lived. These extravangces of statment on the part of the Appellees are almost childish in their simplicity and they are nothing but an insult to the intelligence of this Court.

One other inquiry should be made by this Court in regard to the statements of Appellees that Mr. Griggs knew nothing of these conditions in Metropolitan. Why did Mr. Griggs inquire of A. M. Kidder & Company, George S. Coe, Jr., Mr. Marvin, Mr. Tolles, Davis, Stone & Auerbach and the many others of whom he testified he made inquiries, why did he go out of his office and make all of these inquiries and in the face of that not make any inquiry of Mr. Franklin Pierce, his own partner in his own office by his side as to the conditions in these companies?

Mr. Griggs would have this Court believe that he is a very unusual man and a very unusual lawyer. So would Vice Chancellor Griffin. See the following excerpt from the record, (case, Vol. I, pp. 152-153.)

> "THE VICE CHANCELLOR: Haven't you read the whole thing through?
>
> "MR. MEDINA: No, I have only read about, all together, two pages of it.
>
> "THE VICE CHANCELLOR: Well, I think you have read enough; it is now twenty minutes of four, and I do not think you have gotten very far with this thing, so far.
>
> "MR. MEDINA: Well, at your Honor's suggestion, then, I have no further questions.
>
> "THE VICE CHANCELLOR: If he was president of the company, and had knowledge that this stock was going to depreciate in value, and the company was charged with his knowledge, then, of course, there would be a breach of trust; but I do not see it so far.
>
> "MR. MEDINA: Well, of course, I thought it was too obvious for argument that if the firm, of which this distinguished gentleman was the chief member, filed a petition with the governor, it would not be unusual for the court to attribute some knowledge of that fact to him.
>
> "THE VICE CHANCELLOR: *Well, firms are not run in that way.* The question is, what did he know?"

Appellant does not think it is going too far to say that the learned Vice Chancellor has had an experience in law practice that is most unusual if it leads him to such a concluding observation as the foregoing. Is there any member of this court, who in his past practice as the junior member of a firm, would have so much as dared proceed to lay before the Governor of a State such a set of charges as these Griggs, Baldwin & Pierce charges against Jerome con-

sist of, in which a set of the richest and most powerful men in the country were accused of a long series of the foulest of crimes and in which the District Attorney of the greatest city in the world was charged with having kept them out of jail, without consulting with the senior member of the firm before so proceeding? Is there a member of this court who can honestly say he is of the opinion of Vice Chancellor Griffin, as above given, under all of the facts and circumstances of this case?

No, John W. Griggs spent his time going all over New York City, making inquiries in this matter, and right in his own office, right under his very nose, staring him in the face, the means of full and complete information was at hand, his own partner even spoke to him of it, but Mr. Griggs never went any further with him, so he would have us believe. Right then and there he saw nothing, he heard nothing, he learned nothing. He was deaf, he was dumb, he was blind. When he was outside the office, he was all inquiry. When he returned and was in the office he was as tight shut as a live and healthy clam.

One trembles for Mr. Griggs if his examination as to these matters had been conducted before some of the other Vice Chancellors of the Court of Chancery.

And if the members of this court feel that firms are conducted as the learned Vice-Chancellor indicates, then all that Appellant can say is that your honors have been sitting on the woolsack and the bench so long that you do not know how the practice has changed, for Appellant knows of his own bitter knowledge and experience, how difficult it has been to obtain counsel to sue the trust company of such a prominent man as John W. Griggs.

Appellees' statement on page 33 of their brief that:

> "It should be carefully considered that the insolvency and Receivership was not that of the three companies whose securities the defendant held. It was merely that of the company which had leased the properties of the three companies, and had guaranteed the payment of interest and dividends on these securities by way of rent."

is misleading as it attempts to sidetrack the court from a consideration of the real meaning *of this particular receivership.* Amory told Griggs, Baldwin & Pierce as much as that "the piratical crew" which had been looting the entire Metropolitan structure and particularly the Central Park North and East River R. R. Co. (see pp. 234-236, Vol. II, case, under the heading "The Central Park North & East River Railroad Company".), were preparing to desert the sinking and "rotten hulk". Solomon H. Kohn told the United States Circuit Court for the Southern District of New York that the Metropolitan receivers were but Ryan's tools and that they were proceeding with the receivership at the bidding of Ryan to finish the job for him and help him make a clean getaway. (Case, Vol. I, pp. 402-419.)

So it was more than "merely" a Receivership that had no interest for the stockholders and the bondholders of the underlying companies.

And what did the quotations show as to how Wall Street viewed the situation? Up to September 21, 1907, the stock had sunk to 140-165 from 205-210 in 1905. (Case, Vol. I, pp. 366 and 369.) From that time on the difference between the bid and asked prices widens until on January 11, 1908, it had become as much as 50 points, p. 370, indicating that the public no longer was as desirous of buying as they were of selling the stock.

Appellees refer on page 40 of their brief, to the activities of Mr. John S. Cooke in connection with the retention of these securities, and they particularly refer to the fact that he was a brother of Mrs. Beam.

The decision of this case does not hinge on whether or not this is "a family matter", but Appellees would like to make it appear to the court that it does.

Mr. John S. Cooke is dead and he should be allowed to rest in his grave in peace. He may have been entirely innocent of much that has been done in connection with this case but it is significant that in the Prerogative Court Appeal taken by Mrs. Beam from an order of the Orphans' Court allowing Mrs. Beam's brothers to pay a certain small sum of money into court, the Hon. John Griffin has never filed the opinion he rendered in Mrs. Beam's favor in that case on February 28, 1924. That opinion ended the efforts of twelve years on the part of Mrs. Beam's brothers, to force her, through threats, to sign a general release in this estate that would have forever barred her from any relief herein. Appellant is forced to refer to these facts because of the action of Appellees in dragging into this discussion Mr. Cooke's name. Incidentally, Mrs. Beam has not yet received a sum of money that the Messrs. Cooke withheld from her from 1917 on, as a part of their threats in this connection, although an order was presented to the Hon. John Griffin as Vice Ordinary of the Prerogative Court for that purpose in April, 1924. It cost Mrs. Beam hundreds of dollars to resist these attempts to secure her signature, and that money has gone into the general war chest that she has had to maintain in fighting for her rights in this suit.

Appellees refer on pages 41-43 of their brief,

to the case of *Bowker v. Pierce,* 130 Mass. 262, as having a peculiar resemblance to this case.

The *Bowker v. Pierce* case was a part of the law of Massachusetts at the time it was decided and the opinion printed in Appellees' brief was written, but it is no longer the law of Massachusetts as Appellees would have discovered had they examined the entire Massachusetts doctrine carefully.

Appellant took the trouble some time ago to secure from the clerk of the probate court of Essex County, Massachusetts, copies of the trustee's inventory of the estate of Daniel Stoddard, deceased, that formed the basis of the case of *Bowker v. Pierce.* From an examination of that inventory it appears that the Appraised Value of the entire Estate on April 1, 1872, was $32,221.51 and the Appraised Value of the 29 shares of Eastern R. R. Stock mentioned in that case was on the same date $2,900.00, which makes the holding of this stock by the trustee amount to exactly 11.11% of the Total Estate.

Many years after the case of *Bowker v. Pierce* was decided the courts of Massachusetts decided in the case of *Dickinson's Appeal,* 152 Mass. 184 (1890), that not more than *one third* of a trust fund should be invested in fluctuating securities, which were defined as covering all kinds of stock, and not more than *five per cent of a trust fund* in any one of that class of securities. At page 188, the Massachusetts court held that an investment of between *one-fourth and one-fifth* of the whole trust fund in stock was unjustifiable.

Subsequently and in 1903 the Massachusetts courts in the case of *Davis' Appeal,* 183 Mass. 499, disallowed an investment made in stock of a railroad company "heavily in debt and whose continued prosperity depended upon many circumstances that could not be predicted" to the

New Jersey State Library

extent of $6,500 in a trust fund of $30,000. (Incidentally, the exact sum almost of Mrs. Beam's share in this case.) The doctrine of the *Dickinson* case was cited and followed.

There have been later cases in Massachusetts on this point and it is still upheld by the Massachusetts courts and is the real law of Massachusetts in respect to the investment of trust funds in stocks.

The trust company in the case at bar had $46,800.00 out of $150,500.00 invested in the stock of the Central Park, North & East River R. R. Company, and yet they seek to justify that holding on Massachusetts law and doctrine. It is respectfully suggested that this court erred in 1914 in citing the doctrine of *Bowker vs. Pierce* in support of its decision in this case * * * at that time and that the present time is a good time to correct the court's honest error.

Appellant has further procured a copy of the last will and testament of Daniel Stoddard, deceased, the testator in the case of *Bowker v. Pierce,* and it appears that under the 4th par. thereof the trustee was vested with a wide discretion in the making of investments. The will reads that the trustee "shall keep the same well invested, with power to change any investment".

It is significant in connection with the case of *Bowker v. Pierce,* that the trustee kept a different kind of accounts in the probate court from those kept by this trustee and that he undoubtedly had no partner in the Eastern Railway Company to tell him how "the pirates" in control of the same were "looting" it.

There is, however, one other point raised by the same case that should not pass without comment. It appears that the beneficiary requested

the trustee to sell the stock and that he refused to sell it. Let it be borne in mind that Courts of Equity sometimes talk of the estoppel of beneficiaries when the trustee has acted wrongfully within their knowledge. In fact, the trustee in this case at bar seeks to prove an estoppel on Appellant because the Passaic County Orphans' Court has overlooked its fraud and its perjury in connection with its accounts, and the Hon. John Griffin has shut his eyes and ears thereto. How can these two ideas repose side by side in any proper system of jurisprudence? Is the beneficiary always to be held to blame if she consents to improper conduct on the part of the trustee and yet when she would have a voice in the conduct of the trust, and does so protest, and after-circumstances prove that her advice would have saved the trust estate, if heeded, is she not to be heard?

The case of *Harvard College v. Amory,* 9 Pick, 464, cited by Appellees at pages 43-45 of their brief is better understood by the Courts of New Hampshire and Maine than it has been since understood by the courts of Massachusetts.

Note the cases of

Kimball (App't.) v. Reding, 31, N. H. (11 Foster) 352; Woods, C. J.

"The case of *Harvard College v. Amory,* bearing in some particulars a resemblance to the one before us, as it respects the legal discretion of the trustee in making investments of the trust fund, *turns upon expressions in the will of the testator* indicating with a good deal of clearness what kind of stock and securities he considered proper investments of the money. They were intrusted with the fund, with discretions 'to loan the same upon ample and sufficient security, or to invest the same in safe and productive stock, either in the public funds,

bank shares or other stocks, according to their best judgment and discretion', etc., with the further power and direction to sell and reinvest as exigencies might require. And the court, in delivering their opinion expressly base their conclusions in favor of the trustees upon those expressions in the will. 'It is argued for the appellants', says Mr. Justice Putnam, 'that the trustees have not loaned the money on good security. The answer is found in the authority which the testator gave to them. They were to loan or to invest the same in stocks. They preferred the latter'. And when the judge proceeds to remark that 'all that can be required in such cases is, that the trustee shall conduct himself faithfully, and exercise a sound discretion', we are bound to understand the remark, not as containing or intending to enunciate as a general rule, that trustees may, in all cases left to their legal discretion, invest in the kind of stocks there described—bank, factory, insurance or public stocks; but only as confirming the old doctrine, that a trustee is protected who discharges with honesty and a legal discretion the trust, whether a large and liberal or a close and limited one, that has actually been conferred upon him; reference being in all cases had to the instrument creating it, and to the general rules of law for ascertaining the extent of the confidence reposed, and the limits clearly assigned to his discretion."

Mattocks v. Moulton, 84 Me. 545,

"The appellant calls our attention to several Massachusetts cases. While the law of that State seems more indulgent to trustees than is the law in other jurisdictions, we do not think it lets down much from the principles above stated. In *Harvard College v. Amory,* 9 Pick. 446, the trustee was expressly authorized to invest "in public funds, bank shares or other stocks".

The Act of 1899, on which the trust company in this case relies, reposes in our statutes side

by side with the statute which with great particularity limits trustees investing trust funds in this State to certain classes of bonds and mortgages, in general, in investments that alone a savings bank can invest its funds in.

How thin the distinction between the case at bar and the case of *Babbitt v. Fidelity Trust Co.* 72 N. J. Eq. 745, (Decided May, 1907) really is, will be seen by a comparison of the two cases.

In the *Babbitt* case Vice Chancellor Garrison held the Fidelity Trust Company liable for its retention of Prudential Insurance Company stock in the trust estate. Simply because the Babbitt trust was a "living trust" it was admitted that no statute law was involved and the trust company could not plead this wonderful Act of 1899.

Appellant cannot understand why Appellees ever cited the *Babbitt* case in their brief filed herein. The situation in that case was in many respects identical with the situation in this case and yet the trust company was there held liable.

Vice Chancellor Garrison in a masterful opinion brings the law relating to investments by trustees in New Jersey down to date of 1907 and clearly indicates that there is a distinct doctrine of conversion in this State whereunder trustees are required within a reasonable time to convert the securities comprising the assets of the trust that come into their hands into those securities authorized by law. His honor says:

Page 757.

> "In the case in hand it is clearly shown that it could have sold the Prudential stock during the years 1898, 1899, 1900, 1901 and 1902 for at least $360. per share. The income from this stock was very small, being ten per cent upon $50. par, and therefore about one and one-half per cent on the market value of the stock. There was therefore

> no reason, properly viewed by the trustee to induce it, to hold an unauthorized security, paying so little, at a time when the market for its sale was open and a large price could have been obtained for it, and that price could have been invested in authorized securities to yield a rate of interest at least three times greater than that received from the then investment."

The Central Park stock in the Beam trust netted a very low return, about 4%, it could have been sold, and simply because Sarah A. Cooke was dead, this trustee has been permitted to plead that under one section of the statute it could continue that security.

It is urged by Appellant herein that the Act of 1899 by its insertion into the body of our statute law side by side with the other section that requires the investment of money by trustees under such great restrictions robs it of all its force and effect. Either one or the other of these two sections must fall, they cannot be maintained side by side in any other way than as parts of a farce and a joke, trap and a snare to the beneficiary and a loophole to the negligent trustee.

Vice Chancellor Garrison further says, citing this Court in the case of *Tuttle v. Gilmore*, 36 N. J. Eq. 617, 1883, two years after the passage of the Act of 1881 which forms the basis of the Act of 1899:

> "It is a breach of trust for the trustee to speculate with trust funds for his own gain, *but it is no less a breach of trust to make unauthorized investments. * * * To do so knowingly is a willful and intentional breach of trust. In my judgment it is a willful and intentional breach of trust, within the meaning of this clause, to knowingly do any act hazarding trust funds in violation of a duty imposed in a trustee."*

"*Hazarding* trust funds", let this Court remember its own words, "*hazarding* trust funds".

The case of *Parker v. Glover,* 42 N. J. Eq. 559, is not understandable in the light of the foregoing decision of this court and the most that can be said for it is that it did not get beyond the Court of Chancery. Are testators in this State to suppose that trust investments in "bank stock" are permissible simply because of the existence of this Act of 1899? Can a savings bank in New Jersey invest its depositors' savings in bank stock?

A curious light is thrown upon the case at bar by an examination of the pleadings in the case of *Pennington v. Metropolitan Museum of Art,* 65 N. J. Eq. 11. In that case Mr. John R. Beam and Mr. John W. Griggs made an application to Chancellor Magie for instructions and directions to the trustees under the will of Jacob Rogers, deceased, and one of the matters presented to the Court was a request for a direction as to the retention in a trust fund of underlying stocks of the Erie Railroad Company, investments of a high class but which the trustee admitted were not proper investments for a trust fund. This case was decided in 1903, four years after the enactment of the Act of 1899 above referred to. Mr. John L. Griggs also appeared as guardian *ad litem* in the case. Counsel in that case seemed to think it necessary to ask the court for permission to retain securities which are almost identical in kind with those in the case at bar.

The case of *Brown v. Brown,* 72 N. J. Eq. 667, cited by Appellees at page 45 of their Brief, was decided by Vice Chancellor Garrison January 23, 1907, four months before his honor wrote his opinion in the *Babbitt* case and it involves little more than a recital of the terms of the Act of 1899, as it is based on a bill filed to obtain the construction of a will and to procure directions to the trustees.

POINT VI.

The action of the defendant in continuing to hold the 200 shares of the Brooklyn City Railway Company, was not done in the exercise of good faith and reasonable discretion, and the defendant is liable for the depreciation thereof.

From 1905 to 1915, the trustee sat by and saw over one third of the trust estate go up in smoke in the traction stocks and bonds of the Metropolitan System.

At page 292 of the case, Vol. I, John W. Griggs testified in November, 1913, concerning the above lossess:

> "It was not a matter as to which the company was negligent or indifferent; it was a question in which I think the company used every means of acquiring knowledge and forming judgment that was available to them, and, whether their judgment was sound or not, it was honest judgment; and I may say personally, I believe under all the circumstances it was sound, and, *knowing the same facts, I should do it again, exactly as I did do it.*"

From 1915 to 1920 the trustee sat by and repeated the above operation and down until 1920 it let some more of these trust funds slide to the brink of wreck and ruin in the stock of the Brooklyn City Railway Co.

If this Court were dealing with an ordinary trustee it would not be possible to charge that trustee with knowledge of "law, investments and estate procedure" but the Court is dealing with

the finest, the most superlative trustee that ever handled trust funds in the Sovereign State of New Jersey. It has at its head a former Governor of New Jersey and a former United States Attorney General, it numbers on its staff Mr. John L. Griggs, one of the greatest living financiers the world has ever seen and it has at its beck and call the serviecs of George S. Coe, Jr. of the firm of A. N. Kidder & Co. and it can get any and all information that it desires, so it is chargeable with knowledge of the contents at least of the opinion of Judge Vann of the New York Court of Appeals in the case of *Flynn vs. Brooklyn City RR. Co.,* 158 N. Y. 493, decided April 18, 1899.

In fact, George S. Coe testified, at pages 127-128 of Vol. I of the case, that he knew of this suit.

At pages 115-116, same volume, Mr. John L. Griggs testified as follows, respecting it:

"Q. You never examined into the status of the Brooklyn City Railroad Company, as reflected in the opinion in that case? A. No, sir; I do not remember it.

"Q. Was it any part of your duty to do that, as trust officer? A. Why, I presume—no, it was not part of my duty to examine the statutes or reports in other states; no, si;r it was not.

"Q. You say it was not your duty to be informed upon any question that might arise in a case of that character wherein the status of the Brooklyn City Railroad might be discussed as adjudicated? A. No, sir; I do not say that at all.

"Q. Well, what did you say, please? A. Well, in answer to what question?

"Q. Well, the last question? (Last question repeated at the request of the examining counsel as follows) Q. You say it was

not your duty to be informed upon any question that might arise in a case of that character wherein the status of the Brooklyn City Railroad Company might be discussed as adjudicated?

"MR. HUTCHINSON: There appears to be a deadlock.

"Q. Was there any person connected with your company whose duty it was to do that very thing—I mean to examine the status of the securities held by you in respect to any of the decisions on litigations that might have been made? A. Why, Mr. Hutchinson, it was my duty, and it was also the duty of the officers, and it was the duty of the Trust Committee, to use and obtain all information, good, bad or indifferent, that they could obtain with their usual care. They could not go and examine statutes in other states. If I, as a lawyer, in the course of my examination of case in other states, came across anythink that was germane or important, I made a note of it. If Gov. Griggs, in his practice, came across such cases, such references, he referred them to me, and would say, 'Perhaps this will be of interest to you.' I think that, in my opinion (and you have asked it) is more care than the usual trust officer gives. *The usual trust officer reads the newspapers and the quotations; he does not know anything about receiverships or court reports.*

The last statement of Mr. Griggs above cited should be printed by every trust company in the land as a testimonial of the character of the service they offer to the public through the thousands of advertisements that they print yearly and as a view of the comparative worth of The Paterson National Bank above all other similar institutions. *Ne plus ultra* hardly expresses it.

Judge Vann's Opinion, particularly from page

140 to page 148 of Vol. II, case, describes for us what was done to the Brooklyn City Railroad Company in 1896 almost as well as Griggs, Baldwin & Pierce described the structure of Metropolitan in 1908.

The re-direct examination by Mr. J. W. Griggs of George S. Coe as to the effect of the Flynn suit on the stock of the Brooklyn City RR. Co., found at the foot of page 12 of Vol. I, case, is of little interest in view of the accurate picture given by Judge Vann of just how the property was watered. At the most it bears out the old saying that "There is a sucker born every minute." It seems to be possible to sell the stock of such concerns to life insurance companies and to keep it in trust funds by virtue of statutes similar to the Act of 1899, but no individual trustee would invest his trust funds in such a concern after reading the above Opinion.

Defendant's exhibit D-3 printed at pages 126-127 of Vol. II of the case is interesting in showing just how close the Brooklyn City stock came to following the primrose paths of the Central Park North and East and the other Metropolitan "cats and dogs" that were retained as gilt-edged" in 1906, 1907 and 1908.

In that letter The Paterson National Bank is advised, under certain contingencies, to sell the stuff and not to hold it.

> "If the increases are not forthcoming, we believe it will be the part of wisdom to dispose of your holdings, as the situation will probably become *more* involved. Just what will happen is anybody's guess and, under the circumstances, we do not feel competent to express a definite opinion as to whether to hold or sell the stock of the Brooklyn City Railroad Company."

Vice Chancellor Garrison said, in citing this

Court's opinion in *Tuttle v. Gilmore, supra,* that it was a wilful and intentional breach of trust to do any act *"hazarding"* trust funds.

The above letter shows that these Brooklyn City shares were such a hazard that the Chase National Bank of New York could not, in September, 1919, express an opinion on it, as the situation was likely to become "more involved" if fare increases were not forthcoming. *So it already was involved.*

There are twenty-eight pages of explanation in Appellant's brief as to why this stock was retained in "good faith and reasonable discretion" and, as counsel for the bank asked Vice Chancellor Grffin on September 29, 1924, for a counsel fee of $1000. because the defendants "had prevailed", as he stated, and for other reasons, the beneficiary can figure or estimate that the trustee considers that these explanations are worth about $35.71 a page.

This Court should bear in mind that the trust company's handling of this situation was an exact parallel of its attitude in handling the Metropolitan securities some years previously. Mr. John W. Griggs had testified that he would do the same thing again if he got the chance, *and he did it.*

The Court should also remember that, although the above letter from the Chase National Bank, outlining the peril in the situation was written in September, 1919, Mrs. Beam was not apprised of the situation in any way until she found in the following Spring that her dividends were no longer being received, and wrote asking for the reason. Then, and only then, did Mr. Griggs reply in part.

In Mrs. Beam's letter of April 14, 1920, written to Mr. John L. Connolly, (Ex. C-6 p. 149 of Vol.

II,) she asks why she has not been informed that these Brooklyn City dividends are no longer paid. Mr. Griggs's answer is characteristic. It is found on page 124 of same volume and is as follows:

> "An examination of the statements sent you during the past year, particularly of October 1st, 1919, showed that usual dividend had not been received upon this stock."

So that is all of the notice that Paterson National trust beneficiaries get if their dividends are no longer being paid. The trustee sends along whatever comes in and if any do not come in, it does not say anything about it. And yet they would invoke the doctrine of the estoppel of a beneficiary treated in such a manner and given such an amount of information.

From pages 48 to 64 of Appellees' brief, there follow the usual explanations of the trustee as to why he held on to this stock and it reads like the Metropolitan case all over over again. They were all so very active, and on the trial of the cause the same Mr. Coe came out to Paterson and testified in the same way and the beneficiaries are given empty words instead of their due.

And now, in their Point VII, *the Appellees contend that they were justified in retaining this Brooklyn City stock.*

VII.

The fiirst part of Appellees' Point VII has already been covered by Appellant in part in reply and is further covered in Reply to Point VIII hereinafter. As to the last part thereof, the undisputed evidence in the present case does not show that the defendants' action, in continuing to hold the securities in the Brooklyn City Railway Company, was as equally justifiable as it was in holding the securities involved in the former case.

The trustee sat supinely by and saw over one-third of the fund wrecked in the Central Park stock and the Metropolitan Street Ry. bonds and it came within an ace of losing all it had invested in the Brooklyn City Railway stock and now simply, because the stock in that road, after sinking from 24 to 2¾, thereafter rose to 10 (case, Vol. I, p. 90), they say that they are justified in having held on to the securities. And at its highest price at which it came into the trust, it netted only slightly over 4%. The Paterson National Bank can be turned into a trustee's kennel and cattery for all of the mangy curs and cats of Wall Street rather than the widow's little can be invested in the class of securities that a savings bank alone can invest its cash in under our statute, and these same widows can have the very life worried out of them in order that such a damnable system can endure for the benefit of someone.

And looking at the transaction from the lowest

point to which the stock fell, the trustee replies that, because it came back, his action in retaining it was justified. John L. Griggs, in cross-examination said:

> "Q. From your experience now, looking backward at this situation, and if you were now placed in a similar position, would you have continued that investment? A. Yes, sir.
>
> "Q. What are your reasons? A. I would have doubled my money.
>
> "Q. What are your reasons for saying so? A. I would have doubled my money if I had held my stock until now, if I had not sold it in those days.
>
> "Q. You observe that the stock fell from $4,800 (that is, the whole block) to $4,000, and then to $800, and then to $310—now, upon what theory would you say you would have doubled your money? A. That was not the question, Mr. Hutchinson, that you asked me. I am not going back to the executor's figures. If you wish to qualify your question I can answer it, perhaps." (Case, Vol. I, pp. 109-110).

At almost the same point in the trial of this cause, Mr. John L. Griggs made two references that are so typical of the false impression that the trustee seeks to make upon this Court whenever it is brought to the bar in these cases, that they should not pass unnoticed.

At line 9 on page 112, Vol. I, Mr. Griggs testified to being forced to carry a small amount of cash "in a bank balance for a two-and-a-half percent income". This trustee never paid any 2½% in such cases in the entire history of this trust estate as its accounts show and the Edward Beam, Substituted Trustees Appeal now before this Court shows that they ruthlessly smashed up a $2000 investment, returning 6%, simply to get $650. in fees out of it and then never reinvested

the proceeds or paid even this 2½%, although they testified that it was their custom so to do. And at the last line on page 113, following the above, Mr. Griggs says: "There is as much of an ethical situation between the bank and the *cestui que trust* as there is between a lawyer and his client." What hypocrisy, in the face of the record of this case, in the face of the deprivation and suffering that they have forced Mrs. John R. Beam to endure at their hands! They think that they can do all of this which the record shows that they have done, and then come slyly into court with soft words and, under their cloak of sheep's wool, fool this Court as to what they have done!

In connection with this proposition, that a trustee should sell in a declining market, this Court in its 1914 decision stated that, if the trustee sold when the market was low, "and there was a subsequent recovery", he might be held liable for the loss (case Vol. I, p. 397). It is respectfully called to the attention of this Court that such a proposition was not, prior to such enunciation, the law of New Jersey. In *Green's Case,* 37 N. J. Eq. 254, 259, the Court held:

> "That the stock subsequently rose in value, and the sequel proved that it would have been more profitable to the estate if it had been held, does not affect the determination of the question whether his act was lawful and proper at the time. Had he, under the circumstances, continued to hold the stock, and had it fallen still lower and a loss been occasioned to the estate by his failure to sell when he did, he would have been guilty of a devastavit. It was his duty to sell when he did."

And it is also called to this Court's attention that the cases cited at the end of the opinion of

Mr. Justice Swayze in this Court's 1914 decision in the former suit, i. e. *Matter of Weston,* 81 N. Y. 503 and *Matter of Mercantile Trust Co.,* 141 N. Y. Supp. 460, are not predicated on the New Jersey statute of 1899 and do not deal with cases similar to the case at bar. The first of these cases concerns the retention by executors of a house that it was impossible for them to sell because it was probably built in that period of American architecture known as "The Savage Period" and some stock that the testator had requested his executors to hold. The other deals with an executor who had handed to him a large block of Anaconda copper stock *on margin* in a falling market. As a matter of fact there does not seem to be a single case on record, interpreting the Statute of 1899, other than this case which is based on a loss actually sustained.

The Law of Pennsylvania relating to trust estate administration is strangely enough derived from the New York and New Jersey doctrine.

> "In England it has been held for more than a century to be settled law, that a trustee can only protect himself from risk, when he invests the trust fund in real or government securities, or makes the investment in pursuance of an order by the court: 3 Atkyns 444; 5 Ves. 838; 7 Ves. 150; 1 Madd. 290. The same rule has been adopted in its whole length and breadth by the courts of New York and New Jersey. * * * In Pennsylvania this doctrine does not appear ever to have been either affirmed or denied * * * So far therefore as our own authorities go, the question is an open one. But the time has come when the interests and rights of trustees, as well as orphans, married women, and insane persons, demand the settling of it, and we think the rule here ought to be as it is elsewhere, not because we feel bound by the precedents of a foreign state, but because

we cannot resist the considerations of justice and policy by which they are supported.

* * * * * *

"There is no reason why the trustee should not make the investment in some security which cannot fail. * * * It is better for trustees that the rule of their conduct should be clearly defined and well understood. A plain path, though it may be a narrow one, is safer to walk in than a trackless waste, where no man can be sure that he is on the right course."

Hemphills' Appeal, 18 Pa. St. 303. (1852).

See also

Pray's Appeals, 34 Pa. St. 100, 110.
Worrell's (2nd.) Appeal, 23 Pa. St. 44.
Commonwealth v. McConnell, App't, 226 Pa. 244. (1910).
Hart's Estate (No. 1.) 203 Pa. 480, 484.
Ihmsen's Appeal, 43 Pa. St. 431.

"If honesty of intention and acting as for himself are always sufficient, we have no rule at all, and nothing is so hazardous but could be defended."

Worrell's Appeal, 9 Pa. St. 508.

There has been a loss to the trust estate in the sale of the Brooklyn City Railway stock that can not be estimated until this trustee is required to file a few accounts in accordance with law and the principles of accountancy. Just what it is or amounts to cannot be predicated on the misleading and meaningless figures that have been passed off on the Orphans' Court as accounts herein.

The true rule in these matters is well known to the courts of all the States and it is that securities of a class that are liable to fluctuation and are not based on some security, such as a

promise for the return of the principal sum loaned, have no place in trust funds; that trustees are charged with the knowledge of this and that it is their duty to avoid all hazards that can be avoided and not to subject trust estates to the chance of being wrecked.

As far as these traction stocks and bonds are concerned, Sarah A. Cooke, deceased, has been blamed for having purchased them and, while it is true that there is nothing in the record to indicate the contrary, it would interest the court considerably could Sarah A. Cooke return to this world and inform the Court on whose advice she made the purchases. She might also have a few things to say to her trustee and to those who have participated in this trust dispute. It is perfectly evident however, that whenever a corporation is being deliberately wrecked by a gang of financiers, that "someone must hold the bag". There is no class so eminently fitted for this important duty in the wide world as the testamentary beneficiaries. They stand elected by those who are seeking "to unload". It is to protect them that the Courts of this State must do something about the statute of 1899 for if trustees can come into court and give explanations at $35.71 a page and "get away with it", the end of the trust estate is in sight. Testators who have not had the good grace to die, sometimes read the reported cases and sometimes change their wills. They have a right to leave their money in trust, and the Courts should give them every assurance that that trust will be kept inviolate.

It cannot be successfully argued by the trustee that the tables on pages 57 and 58 of Vol. II, case, show the correct appraisal for the 425 shares of stock and at the same time not for the bonds mentioned hereabove as well, for there is

no distinction whatever made by the trustee in these tables between the two classes of securities. The statement on page 58 is very broad and includes all of the securities. It reads "a re-appraisement *of the securities on hand*", etc.

The same difficulty was encountered by the trustee in attempting to explain the statement of securities that John L. Connolly surreptitiously sent to Mrs. Beam in April, 1920, and was reprimanded for sending by John L. Griggs. (See pp. 124, 149 and 152 of Vol. II, case.)

Mrs. Beam has never received any reply in 1920, nor since, to the question found on page 152 of Vol. II, and this court can understand why she did not, now that it has had a view of what was done on the charging off of "depreciation" in 1915.

From letter of Carrie S. Beam:

> "The answer to question number six is very clear, but if I take you at your word on that, how am I to interpret your answer to question number seven? Do you mean to tell me that a value of $1. was placed on the shares of stock of the C. P. N. & E. Ry. Co. 'by the executors of the estate of Sarah A. Cooke at the time they were turned over by the executors to the trustees' in 1906? Somewhere I seem to have seen something that does not quite agree with this statement so that I think that the answers to these two questions, numbers six and seven, are a little bit involved and throw a cloud on the question of values as expressed by your figures." (Case, Vol. II, p. 152.)

The trustee's view of this business of Orphans' Court accounts is that all they have to do is to go into that court and set down an "arbitrary sum" that has no relation to anything that went before or will come after just as long as they can get a decree from that court and wave it

shamelessly in the face of the Court of Chancery and this court.

> "In this position of affairs, to allow the credit claimed, the court must accept *an arbitrary sum fixed by the trustee,* in utter ignorance whether it is just or not, and without affording the *cestui que trust* the slightest opportunity to investigate or dispute its correctness—such a thing I venture to say, has never been done by any tribunal having the slightest acquaintance with the law defining the duties and obligations of trustees."

Gaston's Trust, 35 N. J. Eq., 60, 64.

One more beam of light is thrown on this question by this attempt of the trustee to charge off depreciation in the 1915 account. Why did the trustee attempt to do this and why did it attempt to state the actual or "market value" of the securities in the trust if the conclusions of the Hon. John Griffin in the William B. Beam Prerogative Court Appeal (125 Atl. 332, 333), that they do not have to so state the same, are correct? And what was Vice Ordinary Leaming talking about in the *Slater* case, *supra,* when his Honor said, and was followed by the Hon. Jonn Griffin in his opinion therein (Case, Vol. I, pp. 183-184) "the decree of allowance 'is conclusive upon all parties, and operates to exonerate and forever discharge an executor' from all demands of creditors, legatees or others, *beyond the* amount of such settlement * * * excepting also" in cases of fraud and mistake, etc. What *amount? Amount* of what? Every system of trust accounts starts with an inventory, or should so start, and the inventory is, under the law and the rules of the Orphans' Court, required to be made by properly appointed appraisers. See in this connection *Pursel vs. Pursel,* 14 N. J. Eq. 514, 519,

and also *Green's* case, 37 N. J. Eq., 254, 256. Why did the executor in the latter case pray depreciation if this "amount" is not an amount in dollars and cents?

Appellant only partially covered the subject matter of this Point VIII raised by Appellees in his Point III at pages 16-27 of his main brief, but the insistence of the defendants on their claim that these infamous Orphans' Court accounts of theirs bar Appellant from all relief, has made it necessary that the subject be examined with great particularity, in order that the extent of the fraud which the appellees shamelessly urge on this court, may stand completely revealed.

Not one word do Appellees have to say in their brief by way of reply to the charges contained in Appellant's brief on this point. Their stand is, as it has been all along before Vice Chancellor Griffin, that they have gotten away with something a little less than murder and that this court should confirm them in it and save them from the consequences of their wrongdong.

Appellees even press upon this court at page 70 of their brief, by way of reply to the case of *Mattocks v. Moulton,* 84 Me. 545, cited by Appellant:

> "The facts in that case were thus obviously entirely different from the facts in the present case, where the account of 1915 and the three following accounts *not only clearly showed the depreciation* of the securities in question in the present case and the trustees' claim that it was not liable therefor, but the appellant and other beneficiaries contested the very question involved in the instant case by filing exceptions in the Orphans' Court to the account of 1915, and the three following accounts; all of which is fully stated by Vice Chancellor

> Griffin in his opinion. The clear implication in *Mattocks v. Moulton, supra,* is that under the facts existing in the instant case, the decree would have been held to be *res judicata.*"

It is possible that Appellees make the foregoing concluding statement in the same frame of mind in which they have cited the case of *Babbitt v. The Fidelity Trust Co., supra,* and the case of the *Farmers' Loan and Trust Co. v. The Central Park N & E R R R Co., supra,* i.e., because they do not apply and do not back up their assertions. They may even hope that this court will not read those cases carefully and entire.

The trustee in the case of *Mattocks v. Moulton, supra,* took the securities into his trust and listed them "in his schedule at full face value. By listing them in his schedule C, he alleged them to be of full face value".

The trustee in the case at bar did exactly the same thing. He took the securities into his trust and listed them "in his schedule at full face value. By listing them in his schedule, he alleged them to be of full face value". He did that in 1908, 1910 and 1912 and went even further and called this value, "Present Value". In 1914, over a year after issue had been joined in the former suit, he did it again and called it "Inventory Value".

In 1915, the trustee, in the case at bar, attemped to make his getaway and, like all persons similarly engaged in a similar maneouvre, he made a very bad job of it as your Honors who have accompanied Appellant through the Memorial Doorway "Amortization" into the interior of the sacred edifice "Res Adjudicata Bar and Estoppel" erected by the trustee from 1908 to 1921, must admit.

Appellees state in the foregoing excerpt from their brief that:

"the account of 1915 and the three following accounts *clearly showed the depreciation* in the securities in question in the present case", etc.

Having now viewed the interior of this edifice it is difficult to say just what these particular accounts do show. A cubist work of art might show more with far more clarity than the 1915 account shows. And as for "the three following accounts" what in the name of Equity they show baffles description! The 1917 account is supposed to show the securities at "Apraised Value" and yet there is no difference in the amounts between the figures in that account and those in the 1915 account but a little more illegal amortization chopped off. Do the accountants wish this court to understand that all stock and bond quotations stood absolutely still between the years 1915 and 1917? Aye, that they do, and the sun, moon, planets, tides and anything, everything or anybody that they can make this court believe stood still, just so long as this court decides in their favor. Why, the World War came in between 1915 and 1917 and everyone knows what happened to all security prices between those times! But these prices stood just the same and only varied the amount, the exact amount, of the illegal amortization that they went on deducting. The 1919 account is the one and only account that bears no legend above the amounts shown in the values appertaining to the corpus. And between 1917 and 1919, right through the World War, past Armistice Day, past everything that intervened, the stock and bond market again stood still, except for the satellite "amortization" directed by that financial genius of the trust company, the trust officer, Mr. John Leavitt Griggs. This court is supposed to swallow that too, without even any sugar

coating. And then in 1921 we arrive at an invention of some one in the Paterson Safe Deposit Trust Co. or The Paterson National Bank; we come down to the famous "Book Value" and we find the last decree of the Passaic County Orphans' Court actually changed to conform to the new legislation enacted at the Paterson branch of the New Jersey legislature, presided over by the *ci-devant* Governor Griggs, No. 152 Market Street, Paterson, N. J. See Vol. II. of case, at page 112.

> "and that there is a balance remaining in the hands of said accountant amounting to the sum of Eighteen Thousand Seven Hundred and Six Dollars and Ten Cents ($18,706.10) to be disposed of according to law, *which balance is corpus at accountant's book value.*"

So it is not even ordinary "Book Value" it its "Accountant's Book Value". We must inquire into the mind of an accountant who has run through the list of everything in the dictionary in the way of terms and exhausted them all, in order to find out what this means. Ten psychologists and ten alienists could not determine what the term means if the accountant did not wish to tell them and, so far, neither the court, the trustees substituted in the place of the trust company, the beneficiary or anyone, has been favored with an explanation.

It is, indeed, quite an edifice this "Res Adjudicated and Estoppel" but it only looks well from the outside and from a distance, for it does not bear interior inspection or anyalysis.

And that is all, all that Appellees have to say about it, in their brief, by way of answer.

On the whole, and in the face of what has been done in this case in the Orphans' Court, it looks very much as if appellant and his co-litigants

have done pretty well therein, for, how can it be said that there has ever been a single account filed by this trustee in this estate in the Orphans' Court that is in due form of law?

Far back in 1853 this Court said in the case of *Black v. Whitall,* 9 N. J. Eq. 572, 585:

> "A court of equity, moreover, had, at the time of the passage of the act in question, and still has, concurrent jurisdiction with the orphans' court in the settlement of executors' accounts. *Salter v. Williamson,* 2 Green's Chan. Rep. 480. *In correcting an obvious mistake upon the face of the account as settled, a court of equity does not attempt to review the judgment of the orphans' court. The matter in question is not res adjudicata. It never was passed upon by the Orphans' Court.* It is believed, moreover, to be not only in accordance with the sentiment of the profession, but with the practice of the Court of Equity to correct, even incidentally, the mistakes of a settlement in the Orphans' Court. Such was obviously the opinion of Chancellor Vroom, in *Gray v. Fox,* Saxton's R. 259; in *Peacock v. The Ex'rs of Newbold,* 3 Green's Chan. 61, which was a bill for the recovery of a residuary legacy; the bill contained no allegation of any mistake in the settlement before the Orphans' Court. But upon the production of the account, the mistake was apparent, and it was conceded, as an unquestioned point, that the error could be corrected in law, and if the complainant was entitled to recover at all, she should recover the full amount of her share, without the necessity of resorting to the without the necessity of resorting to the in that tribunal."

It is not exactly true that the Orphans' Court has not been passing on these legal horrors in the way of accounts but its judgments are clearly subject to the rule of *Slater's* case, 88 N. J. Eq.

296 (1917) and, unless the record shows that the "depreciation", if it can be graced by such a name, charged off was accompanied by a reopening of the prior intermediate accounts, then it is true that that matter "never was passed upon by the Orphans' Court" within the meaning of the case cited hereabove, *Black v. Whitall.* If the Orphans' Court did attempt to pass upon it without reopening, its judgment is void as founded on mistake.

Vice Chancellor Griffin has attempted to cite against Appellant the case of *Hill v. Hill,* 79 N. J. Eq., 521. (Case, Vol. I, p. 185) but the vital part of page 539, his honor left out of the opinion. It reads as follows:

> "It goes without saying that the accounts of a trustee under a will must be stated and settled on equitable principles, according to the truth and substance of the matter in controversy, and without regard to matters of form. *Woolsey v. Woolsey,* 72 N. J. Eq. (2 Buch.) 898, 900."

His Honor also inadvertently omitted a very pertinent part of page 532 of the same case:

> "The accounting of a trustee respecting the administration of his trust of course must proceed according to the truth of the matter, and he will not be permitted to shield himself behind so transparent a cloak. Whether he accounts in the Orphans' Court or in the Court of Chancery, the account is to be dealt with on equitable principles. *Woolsey v. Woolsey,* 68 N. J. Eq. (2 Robb.) 763; *Woolsey v. Woolsey,* 72 N. J. Eq. (2 Buch.) 898, 900."

In neither his Honor's opinion in the case at bar nor in the one written by his Honor in the Prerogative Court Appeal case of William B. Beam has this principle been followed. Nothing that the trustee has done in the Orphans' Court

has been held against it and a narrow technical view of the scope of the exceptions filed by exceptants in that court has been used as a basis for permitting them to go acquit.

It is perfectly evident that the trustee has never filed a single account in the Orphans' Court in this estate that is either true or correct, in due form of law, or the embodiment of anything but fraud and deception. How will a court of equity look upon such a trustee?

> "The court is prompt to protect an administrator or trustee against loss resulting from an honest mistake, but will not relieve him of loss resulting from measures adopted solely with a view to his own interest. *Cooley v. Van Syckle,* 14 N. J. Eq. 496, 500."

Until this court rips open these Orphans' Court accounts in this estate and lays the basis for a proper accounting the Appellant cannot tell the extent of what claims he may have against the trustee. Such is the prayer of the bill and such are the proofs in the shape of these accounts. They certainly speak for themselves and they tell more about their condition than the trustee itself is willing or dares to tell of them.

It matters little to this Appellant now whether this question is settled in this case at bar or in the appeal of Willam B. Beam from the allowance of the trustee's last filed account that Appellant has on appeal and is perfecting, but there is a principle underlying both of the two cases that goes to the heart and root of the whole controversy and affects vitally the question of trusteeship in this State.

This court said, on the three appeals that Appellant brought before this court in this estate in January last, that the decision in this case could not be affected by the proceedings in or the

decision of, the other causes, "except perhaps to the extent that in those other causes, legal principles were declared which were controlling as to questions involved in this litigation".

It can now be seen that there are. The Vice Chancellor used the past accounts in the Orphans' Court as a basis for letting the trustee go acquit in the case at bar and dealt with those accounts in the Prerogative Court Appeal of William B. Beam contrary to the principles stated in the very cases his Honor used in his Chancery opinion herein. When the appeal of William B. Beam comes before this court from the Prerogative Court, it will be apparent to this court wherein the Vice Chancellor erred, and this court can decide the entire dispute in either case that the law seems to indicate it should be decided in.

It is, however, clear that Appellees' Point VIII, raised herein, is wholly without merit, for the reason that, even if the proceedings had in the Orphans' Court on the several accounts referred to in that point, did involve the same subject matter, the decrees entered therein are not *res adjudicata* because of the manner in which the Orphans' Court dealt with the accounts, and because of the condition in which this court now finds those accounts.

Appellant had a right to rely on the trustee performing his duty prior to and upon the accountings in the Orphans' Court. The trustee had *no* right to remain silent and challenge the proof, much less was he justified in *placing a delusive statement before the Orphans' Court and pretending, either expressly or impliedly, that it contained an exhibit of his transactions during the trustee period.* When the fiduciary position of the Appellees is considered, and that Appellant had used due care to employ attorneys

who, he had reasonable ground to suppose, were competent to protect his interests, the case shows such reasonable excuse for having gotten into its present shape that a court of equity should not refuse to open its doors to prevent the success of a wicked scheme to cheat because of neglect at this point. With this partial paraphrase of the case of *Laun v. Kip* cited by Appellant in his brief at pp. 20-22, Appellant rests his case, confident that he has proven to this court that the conduct of the trustee herein shows no more and no less than a long-conducted "wicked scheme to cheat" in which the trustee has stopped at nothing, and in which it now seeks to enlist the aid and services of this Honorable Court to insure its final success. Appellant respectfully urges that the unanswered charges made against the trustee be weighed against it in the balance and that, after over fourteen long years, Equity be done in this case at last.

WILLIAM B. BEAM,
Complainant-Appellant
and Solicitor Pro Se.

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EXHIBIT—

Orphans' Court Records.

Intermediate Account of 1908.

Notice of Settlement of Account.

Notice is hereby given that the accounts of the subscriber, Trustee, under the will of Sarah A. Cooke, deceased, late of the City of Paterson, will be audited and stated by the Surrogate and reported for intermediate settlement to the Orphans' Court of the County of Passaic, on Thursday, the twenty-third day of April, 1908.

Dated, March 17th, 1908.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By Wm. Berdan, V. P.

STATE OF NEW JERSEY, }
Passaic County. } ss.:

Robert J. Burke, of full age, being duly sworn on his oath, according to law deposes and says that he is the Advertising Agent of Press P. & P. Co., and that the annexed Notice was published in the Paterson Press, a newspaper printed and published at Paterson in said County and State, on March 19 & 26th & April 2nd, 9th, & 16th, 1908.

ROBERT J. BURKE,

Sworn and subscribed before me this }
21st day of April, A. D., 1908. }
HENRY A. SAUTTER,
Notary Public, N. J.

Filed March 23, 1908,
CHARLES M. KING,
Surrogate.

Notice of Settlement of Account.

Notice is hereby given that the accounts of the subscriber, Trustee under the Will of Sarah A. Cooke, deceased, late of the City of Paterson, will be audited and stated by the Surrogate and reported for intermediate settlement to the Orphans' Court of the County of Passaic on Thursday the twenty-third day of April, 1908.

Dated, Paterson, N. J., March 17th, 1908.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By Wm. Berdan, V. P.

STATE OF NEW JERSEY,
County of Passaic } ss.:

George L. King, being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Post Office and Donahoes Saloon, all in the City of Paterson, on March 20th, 1908.

GEORGE L. KING.

Sworn and subscribed this 21st day of March, A. D. 1908, at Paterson before me

HENRY A. SAUTTER,
Notary Public of N. J.

(Filed, Mar. 23, 1908.)

CHAS M. KING,
Surrogate.

The intermediate account of the Paterson Safe Deposit & Trust Company, Trustees under the Will of Sarah A. Cooke, deceased, from the 31st day of December, 1905, to the 1st day of February 1908, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself:

DEBTOR.

To total amount of assets received		$150,650.00
Income received	$14,402.25	
Disbursements from Income	12,563.07	
Cash in hands of accountant		1,839.18
Total amount of Estate Feb. 1, 1908		$152,489.18

Trustee's Commission	$720.11
Surrogate's Fees	38.18
Counsel Fee (including search fees in foreclosure 87 50/100)	125.00
Geo. L. King, Adv. &c.	6.02

INCOME ACCOUNT.

To Income received as follows:

1905			
Dec. 31,	Coupons Mobile & Ohio 6s (Premium $35.00		$ 90.00
1906			
Jan. 2,	Dividend Centl. Park, N. & E. R. R. R.	$506.25	
	Coupons Passaic Water Co., 5s (Premium $12.50)		175.00
15	Dividend Brooklyn City R. R. CO.		50.00
31,	Int. Second Ave. R. R. Co., (Premium $4.00)		50.00
Feb. 1,	Dividend United N. J. R. R. & Canal Co. (Premium $10.00)		100.00
28,	Coupons Paterson & Passaic G. & E. Co. (Premium $3.00)		125.00
Apr. 1,	Dividend Centl. Park, N. & E. R. R. R.		506.25
	Coupons Passaic Water Co, 4s		80.00
	Coupons Long Dock Co. 6s (Premium $60.00)		300.00

	Coupons 28th & 29th St. Crosstown R. R. (Premium $2.50)	75.00
	Coupons Paterson Sewer Certf. 4%	1.26
	14, Dividend Brooklyn City R. R.	50.00
	30, Coupons Passaic Lighting Co. (Premium $17.00)	200.00
	May 31, Coupons Paterson Railway Co. 6s (Premium $70.00)	540.00
10	Coupons Consolidated Traction Co. (Premium $8.50)	125.00
	June 1, Interest Lehigh Valley R. R. Regstd, 6s	240.00
	30, Dividend Centl. Park, N. & E. R. R. R.	506.25
	Coupons Mobile & Ohio 6s (Premium $35.00)	90.00
	Coupons Passaic Water Co. 5s (Premium $12.50)	175.00
	Coupons Mobile & Ohio 6s due Apr. 1st.	90.00
	July 16, Dividend Brooklyn City R. R.	50.00
	31, Coupons Second Ave. R. R. 5% (premium $4.00)	50.00
20	Aug. 1, Dividend United N. J. R. R. & Canal Co. (premium $10.00)	100.00
	Sept. 1, Coupons Paterson & Passaic G. & E. Co. (premium $3.00)	125.00
	14, Int. on Graham Mtge. to 6/30/06	80.00
	Oct. 1, Interest Passaic Water Co. 4%	80.00
	Coupons Long Dock Co. 6% (Premium $60.00)	300.00
	Coupons 28th & 29th St. Crosstown R. R. (Premium $2.50)	75.00
	Coupons Paterson Sewer Certf.	1.26
	Coupons Mobile & Ohio	90.00
30	2. Dividend Centl. Park, N. & E. R. R. R.	506.25
	15, " Brooklyn City R. R.	50.00
	31, Coupons Passaic Lighting Co. (Premium $17.00)	200.00
	Nov. 30, Coupons Paterson Sewer Certfs. 4%	.24
	" Paterson Railway Co. (Premium $70.00)	540.00
	Coupons Consolidated Traction Co. (Premium $8.50)	125.00
	Dec. 1, Dividend Lehigh Valley R. R.	240.00
	31, Coupons Mobile & Ohio (Premium $35.00)	90.00
40	Coupons Passaic Water Co. (Premium $12.50)	175.00

1907			
Jan. 2,	Dividend Centl. Park, N. & E. R. R. R. Co.	506.25	
15,	" Brooklyn City R. R. Co.	50.00	
31,	Coupon Second Ave. R. R. (Premium $4.00)	50.00	
Feb. 1,	Dividend United N. J. R. R. & Canal Co. (Premium $10.00)	100.00	
6,	Int. on Grahm Mtg. to Dec. 31, 1906	60.00	
	Forward	$7,719.01	10
1907			
Feb. 28,	Coupons Paterson Sewer Certf.	3.54	
	" Paterson & Passaic G. & E. Co.	125.00	
Mar. 29,	" Paterson Sewer Certfs.	1.26	
	" Passaic Water Co.	80.00	
	" Long Dock Co. 6s (Premium $60.00)	300.00	
	" 28th & 29th Sts. Crosstown R. R.	75.00	
	" Mobile & Ohio	90.00	
Apr. 1,	Dividend Centl. Park, N. & E. R. R. R. Co.	506.25	20
15,	" Brooklyn City R. R. Co.	50.00	
30,	Coupons Passaic Ltg. Co. (Premium $17.00)	200.00	
June 1,	Dividend Lehigh Valley R. R.	240.00	
5,	Coupons Consolidated Traction Co. (Premium $9.00)	125.00	
	Coupons Paterson Sewer Certf.	.24	
	" Paterson Railway Co. (Premium $70.00)	540.00	
10,	Int. on Graham Mtge. to June 30, 1907	60.00	
30,	Coupons Passaic Water Co. (Premium $12.50)	175.00	
	Coupons Mobile & Ohio (Premium $35.00)	90.00	30
	" Paterson Sewer Ctf.	4.08	
July 1,	Dividend Centl. Park, N. E. R. R. R. Co.	506.25	
15,	Dividend Brooklyn City R. R. Co.	50.00	
31,	Coupons Second Ave. R. R. Co. (Premium $8.00)	50.00	
	Coupons United N. J. R. R. & Canal Co. Premium $10.00)	100.00	
Sept. 3,	Coupons Paterson Sewer Certf.	3.54	
	" Paterson Passaic G. & E. Co. (Premium $5.00)	125.00	
30,	Coupons Passaic Water Co.	80.00	
	Coupons 28th & 29th Sts. Crosstown R. R. (Premium $5.00)	75.00	40

		Coupons Mobile & Ohio	90.00
		" Long Dock Co. (Premium $60.00)	300.00
	Oct. 1,	" Paterson Sewer Certfs.	1.26
		Dividend Centl. Park, N. & E. R. R. R. Co.	506.25
	15,	" Brooklyn City R. R. Co.	50.00
	Nov. 1,	Coupons Passaic Ltg. Co. (Premium $17.00)	200.00
	30,	Paterson Rly. Consol. (Premium $70.00)	540.00
10		" Consolidated Traction Co. (Premium $9.00)	125.00
	Dec. 2,	Coupons Paterson Sewer Certfs.	.24
		Dividend Lehigh Valley R. R.	240.00
	1908		
	Jan. 2,	Coupons Passaic Water Co. (Premium $13.00)	175.00
		Coupons Mobile & Ohio (Premium $35.00)	90.00
		" Paterson Sewer Certf.	4.08
	15,	Dividend Brooklyn City R. R. Co.	50.00
	24,	" Central Park, N. & E. R. R. R. Co.	506.25
20	Feb. 1,	Coupons Second Ave. R. R. (Premium $10.00)	50.00
		Dividend United N. J. R. R. & Canal Co. (Premium $10.00)	100.00
			$14,402.25

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
	1906				
30	Mar. 6,	Paid Int. on Sewer Ctfs. Bot today	1	$	1.07
	Apr. 2,	" John S. Cooke, Beneficiary	2		290.00
		" Fred W. Cooke "	3		290.00
		" Chas. D. Cooke "	4		290.00
		" Carrie S. Beam "	5		290.00
		" Lavinia Fayerweather "	6		290.00
	July 2,	" John S. Cooke "	7		290.00
		" Fred W. Cooke "	8		290.00
		" Chas. D. Cooke "	9		290.00
		" Carrie S. Beam "	10		290.00
		" Lavinia Fayerweather "	11		290.00
	Oct. 1,	" John S. Cooke "	12		29000
40		" Fred W. Cooke "	13		290.00

	" Chas. D. Cooke "	14	290.00	
	" Carrie S. Beam "	15	290.00	
	" Lavinia Fayerweather "	16	290.00	
1907				
Jan. 2,	" John S. Cooke "	17	290.00	
	" Fred W. Cooke "	18	290.00	
	" Chas D. Cooke "	19	290.00	
	" Carrie S. Beam "	20	290.00	
	" Lavinia Fayerweather "	21	290.00	10
Apr. 1,	" John S. Cooke "	22	290.00	
	" Chas. D. Cooke "	23	290.00	
	" Fred W. Cooke "	24	290.00	
	" Carrie S. Beam "	25	290.00	
	" Lavinia Fayerweather "	26	290.00	
July 1,	" John S. Cooke "	27	290.00	
	" Fred W. Cooke "	28	290.00	
	" Chas. D. Cooke "	29	290.00	
	" Lavinia Fayerweather "	30	290.00	
	" Carrie S. Beam "	31	290.00	
Oct. 1,	" Chas. D. Cooke "	32	290.00	
	" Fred W. Cooke "	33	290.00	20
	" John S. Cooke "	34	290.00	
	" Carrie S. Beam "	35	290.00	
	" Lavinia Fayerweather "	36	290.00	
1908				
Jan. 3,	" Chas. D. Cooke "	37	290.00	
	" Fred W. Cooke "	38	290.00	
	" John S. Cooke "	39	290.00	
	" Carrie S. Beam "	40	290.00	
	" Lavinia Fayerweather "	41	290.00	
	Forward		$11,601.07	

30

40

INCOME ACCOUNT.

		Forward		$11,601.07
	The premium on bonds reduced as follow:			
	Dec. 31, 1905 Mobile & Ohio 6s	$35.00		
	June 30, 1906 " " "	35.00		
	Dec. 31, " " "	35.00		
	June 30, 1907 " " "	35.00		
10	Jan. 2, 1908 " " "	35.00	175.00	
	Jan. 2, 1906 Passaic Water Co. 5s	12.50		
	June 30, " " "	12.50		
	Dec. 31, " " "	12.50		
	June 30, 1907 " " "	12.50		
	Jan. 2, 1908 " " "	13.00	63.00	
	Jan. 31, 1906 Second Avenue R. R. Co.	4.00		
	July 31, " " " " "	4.00		
	Jan. 31, 1907 " " " " "	4.00		
	July 31, " " " " "	8.00		
20	Feb. 1, 1908 " " " " "	10.00	30.00	
	Feb. 1, 1906 United N. J. R. R. & Canal Co.	10.00		
	Aug. 1, " " " " " " " "	10.00		
	Feb. 1, 1907 " " " " " " " "	10.00		
	July 31, " " " " " " " "	10.00		
	Feb. 1, 1908 " " " " " " " "	10.00	50.00	
	Feb. 28, 1906 Paterson & Passaic G. & E. Co.	3.00		
	Sept. 1, " " " "	3.00		
	Sept. 3, 1907 " " " "	5.00	11.00	
	Apr. 1, 1906 Long Dock Co. 6s	60.00		
30	Oct. 1, " " "	60.00		
	Mar. 29, 1907 " " "	60.00		
	Sept. 30 " " "	60.00	240.00	
	Apr. 1, 1906 28th & 29th Sts. Crosstown	2.50		
	Oct. 1, 28th & 29th " "	2.50		
	Sept. 30, 1907 28th & 29th " "	5.00	10.00	
	Apr. 30, 1906 Passaic Lighting Co.	17.00		
	Oct. 31, " " "	17.00		
	Apr. 30, 1907 " " "	17.00		
	Nov. 1, " " "	17.00	68.00	
40				
	May 31, 1906 Paterson Railway Co. 6s	70.00		

Nov. 30,	"	"	"		70.00	
June 5, 1907	"	"	"		70.00	
Nov. 30,	"	"	"		70.00	280.00
				Forward	$927.00	$11,601.07

INCOME ACCOUNT.

				Forward	$927.00	$11,601.07
May 31, 1906	Consolidated Traction Co.			8.50		
Nov. 30,	"	"	"	8.50		
June 5, 1907	"	"	"	9.00		
Nov. 30,	"	"	"	9.00	35:00	962.00
						$12,563.07

This accountant further reports that the principal fund of said estate is invested as follows:

				Present Value
2,000.00	200 Shs. Brooklyn City R. R. Co. 10% (Par value $10.)			4,800.000
22,500.00	225 Shs. Centl. Park, North & East R. R R. Co. 9%			46,800.00
7,000.00	Passaic Water Co. 5%		7,700.00	
	Reduced by charging off Prem. at following interest periods;			
	Jan. 2, 1906	12.50		
	June 30	12.50		
	Dec. 31,	12.50		
	June 30, 1907	12.50		
	Jan. 2,1908	13.00	63.00	7,637.00
6,000.00	Mobile & Ohio R. R. Co. 1st Mtge. Extens. 6%		7,440.00	
	Reduced by charging off Prem. at following interest periods;			
	Dec. 31, 1905	35.00		
	June 30, 1906	35.00		
	Dec. 31,	35.00		
	June 30, 1907	35.00		
	Jan. 2, 1908	35.00	175.00	7,265.00
2,000.00	Second Ave. R. R of. N. Y. City 1st Cons. 5%		2,300.00	

		Reduced by charging off Prem. at following interest periods;			
		Jan. 31, 1906	4.00		
		July 31, 1906	4.00		
		Jan. 31, 1907	4.00		
		July 31	8.00		
		Feb. 1, 1908	10.00	30.00	2,270.00
10	5,000.00	United New Jersey R. R. & Canal Co. Regstd. 4% Gold Gen. Mtge. Bond		5,300.00	
		Reduced by charging off Prem. at following interest periods;			
		Feb. 1, 1906	10.00		
		Aug. 1,	10.00		
		Feb. 1, 1907	10.00		
		July 31,	10.00		
		Feb. 1, 1908	10.00	50.00	5,250.00
	5,000.00	Paterson & Passaic Gas & Elect. 5%		5,250.00	
		Reduced by charging off Prem. at following interest periods;			
20		Feb. 28, 1906	3.00		
		Sept. 1,	3.00		
		Sept. 3, 1907	5.00	11.00	5,239.00
	227.89	Acquackanonk Township Certificate due Sept. 11, 1908			227.89
		Forward			$79,488.89
	615.52	Paterson City Sewer Certificates 4%			615.52
	2,000.00	Bond and Mortgage Jos. R. Graham 6%			2,000.00
	4,000.00	Passaic Water Co. 4% Bonds			4,000.00
	10,000.00	Long Dock Co. 6% Bonds		13,400.00	
30		Reduced by charging off Prem. at following interest periods;			
		Apr. 1, 1906	60.00		
		Oct. 1,	60.00		
		Mar. 29, 1907	60.00		
		Sept. 30,	60.00	240.00	13,160.00
	3,000.00	Twenty-eighth & Twenty-ninth Sts. Crosstown R. R. Co. 1st Mtge. 5% Gold		3,390.00	
		Reduced by charging off Prem. at following interest periods;			
		Apr. 1,1906	2.50		
40		Oct. 1,	2.50		
		Sept. 30, 1907	5.00	10.00	3,380.00

8,000.00	Passaic Lighting Co. 1st Consol. Mtge. 5% Bonds		8,640.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 30, 1906	17.00		
	Oct. 31,	17.00		
	Apr. 30, 1907	17.00		
	Nov. 1,	17.00	68.00	8,572.00
5,000.00	Consolidated Traction Co. 5% 40 Year Gold Bond		5,450.00	
	Reduced by charging off Prem. at following interest periods;			
	May 31, 1906	8.50		
	Nov. 30,	8.50		
	June 5, 1907	9.00		
	Nov. 30,	9.00	35.00	5,415.00
18,000.00	Paterson Rly. Co. Consol. Mtge. 40 Year 6% Bonds		22,500.00	
	Reduced by charging off Prem. at following interest periods;			
	May 31, 1906	70.00		
	Nov. 30,	70.00		
	June 5, 1907	70.00		
	Nov. 30,	70.00	280.00	22,220.00
8,000.00	Lehigh Valley 6% Annuity Bond, Irredeemable Registd.			11,680.00
	Cash uninvested			118.59
				$150,650.00

THE PATERSON SAFE DEPOSIT & TRUST CO.
WM. BERDAN, V. P.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WILLIAM BERDAN.

Sworn to and subscribed before me }
this 12th day of March, A. D. 1908 }
S. S. LAMBERT,
Notary Public of New Jersey.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:

The above account being by me audited and stated, and placed on the files of my office March 17, 1908 for the inspection of any person interested, twenty days previous to this time, is now reported for settlement and allowance.

CHAS. M. KING,
Surrogate.

Decree on Accounting of 1908.

PASSAIC ORPHANS' COURT.

January Term, 1908.

The Paterson Safe Deposit and Trust Company, Trustees under the Will of Sarah A. Cooke, Deceased.

The surrogate having audited and stated the intermediate account of the The Paterson Safe Deposit and Trust Co. Trustees of the Estate of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Twenty third day of April, 1908, and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having said Trustee to settle its said account on the been proved that notice of the intention of the Twenty third day of April 1908, has been duly given and advertised according to law, and the court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all respects, and no exception having been made to the aforesaid report of the surrogate.

It is on this 20th day of April, 1908, ordered, adjudged and decreed that the said account be in all things allowed as stated.

F. Scott,
President Judge.

(Endorsed:)

Passaic Orphans' Court.

January Term, 1908.

The Paterson Safe Deposit Trust Company, Trustee under the will of Sarah A. Cooke, deceased.

INTERMEDIATE ACCOUNT.

Filed March 17th, A. D. 1908 and recorded in Book G of Gdns. Trus. and Assig. Accounts for Passaic County, page 428 & c.

CHARLES M. KING,
Surrogate.

Recorded in Book S of Court records, page 153.

Intermediate Account of 1910.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Thirtieth day of June, next.

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,
By WM. BERDAN, Treas.

Dated May 24, 1910.

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

Chas. R. Webster Bkkpr. being duly sworn upon

his oath says, that the annexed notice was published in The Paterson Press on the 24, 31 days of May, 1910 and the 7, 14, 21 days of June, 1910.

Signed CHAS R. WEBSTER

Sworn to and subscribed before me
this Twenty second day of June, 1910
Jas. P. McNair,
Notary Public of N. J.

(Filed June 22, 1910,)
CHARLES M. KING,
Surrogate.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Thirtieth day of June next.

Dated May 24, 1910

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,
By WM. BERDAN, Treas.

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

George L. King being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Post Office and Donahoes Saloon on the 25th day of May, A. D., 1910.

GEORGE L. KING

Sworn and subscribed this 25th day of May, A. D. 1910. at Paterson before me
Henry A. Sautter,
Notary Public of N. J.

(Filed, May 25, 1910,)
CHARLES M. KING,
Surrogate.

Orphans' Court Records—Accounting of 1910.

The intermediate Account of The Paterson Safe Deposit & Trust Company, Trustees under the Will of Sarah A Cooke, deceased, from the first day of February, 1908 to the fifteenth day of April, 1910, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

To total amount of assets at last accounting			$150,650.00
Reduced as follows:			
Graham Mortgage merged into title to property by Quit Claim Deed			2,000.00
			$148,650.00
Sold the above property for		$2,000.00	
Less commission paid to E. H. Lambert for selling property	$50.00		
Paid Mary E. Redmond for dower rights in above property	100.00	150.00	1,850.00
			150,500.00
Income received	$11,774.38		
Disbursements from Income	10,855.97		
Cash in hands of Accountant			918.41
Total Amount of Estate April 15, 1910			$151,418.41
Trustee's Commission	$588.71		
Surrogate's Fees	46.32		

COOKE TRUST.

INCOME ACCOUNT.

To income received as follows:

1908			
Feb.	1,	Balance of income on hand, per last accounting	$ 1,839.18
	29,	Coupons Paterson & Passaic, G. & E. Co. (Premium $5.00)	125.00
Mar.	2,	Coupons Paterson Sewer Certf.	6.98
Apr.	1,	" Long Dock Co. (Prem. $60.00)	300.00
		" Mobile & Ohio (Prem. $35.00)	90.00
		" Passaic Water Co.	80.00
		" 28th & 29th Sts. R. R. (Prem. $5.00)	75.00
		" Paterson Sewer Certfs.	3.01
	15,	Dividend Brooklyn City R. R. Co.	50.00
	30,	Coupons Passaic Lighting Co. (Prem. $17.00)	200.00
May	4,	Brennan rent for May	9.00
		Webb rent for May	9.00
	29,	Coupons Consol. Tract. Co. (Prem $8.00)	125.00
		" Paterson Rly. Co. (Premium $70.00)	540.00
June	1,	Lehigh Valley R. R. Div.	240.00
		Coupons Paterson Sewers	1.02
	2,	Brennen rent for June	9.00
		Webb rent for June	9.00
July	1,	Coupons Mobile & Ohio (Prem. $35.00)	90.00
		" Passaic Water Co. (Premium $12.50)	175.00
		" Paterson Sewers	4.08
	9,	Brennen rent for July	9.00
	15,	Dividend Brooklyn City R. R. Co.	50.00
	16,	Webb rent for July	9.00
Aug.	1,	Dividend United N. J. R. R. & Canal (Premium $10.00)	100.00
	10,	Brennen rent for August	9.00
	24,	Webb rent for August	9.00
Sept.	5,	Brennen rent for Sept.	9.00
	10,	Coupons Paterson & Passaic G. & E. (Premium $5.00)	125.00
		Webb rent for Sept.	9.00
	11,	Coupons Paterson Sewers	6.98
		Interest Acquackanonk Twp. Ctf	11.39

Oct. 1,	Coupons Passaic Water Co.	80.00	
	" Mobile & Ohio	90.00	
	" Long Dock	300.00	
	" Paterson Sewer	2.10	
	Interest on Paterson Sewer	.56	
2,	Brennen rent for Oct.	9.00	
8,	Webb rent for Oct.	9.00	
15,	Dividend Brooklyn City R. R.	50.00	
Nov. 2,	Coupons Passaic Lighting Co. (Prem. $17.00)	200.00	
9,	Webb rent for Nov.	9.00	
2,	Brennen rent for Nov.	9.00	
30,	Coupons Consol. Tr. Co. (Prem. $7.00)	125.00	
	" Paterson Rly. Co. (Premium $70.00)	540.00	
Dec. 1,	Dividend Lehigh Valley R. R.	240.00	
	Coupons Paterson Sewer Certfs.	1.02	
	Int. on Paterson Sewer Certfs.	.65	
3,	Webb rent for Dec.	9.00	
	Brennen rent for Dec.	9.00	
1909			
Jan. 2,	Coupons Mobile & Ohio (Prem. $35.00)	90.00	
	" Passaic Water Co. (Premium $12.50)	175.00	
	" Paterson Sewers	4.08	
7,	Brennen rent for January	9.00	
11,	Webb rent for January	9.00	
15,	Dividend Brooklyn City R. R.	50.00	
	Forward	$6,348.05	

COOKE TRUST.

INCOME ACCOUNT.

	Forward	$6,348.05	
1909			
Jan. 30,	Brennen rent for February	9.00	
	Coupons United N. J. R. R. & Canal Co. (Premium $10.00)	100.00	
Feb. 11,	Interest from Joanna Graham	50.00	
	Webb rent for February	9.00	
25,	Webb rent for March	9.00	
Mar. 1,	Coupons Paterson & Passaic G. & E. Co. (Premium $5.00)	125.00	
	" Paterson Sewer Certfs.	6.98	
	Brennen rent for March	9.00	

	Apr.	1, Coupons Mobile & Ohio (Prem. $35.00)	90.00
		" Passaic Water Co. 4s	80.00
		" Long Dock (Premium $60.00)	300.00
		12, Balance of int. due us from Joanna Graham	50.00
		Webb rent for April	9.00
		15, Dividend Brooklyn City R. R. Co.	50.00
		27, Brennen rent for April	9.00
10	May	3, Coupons Passaic Lighting Co. (Prem. $17.00)	200.00
		10. Webb rent for May	9.00
		13, Balance of Brennen rent to the 13th	3.00
		14, McDonald, new tenant, to June 1st	4.50
	June	1, Coupons Consol. Tr. Co. (Prem. $9.00)	125.00
		" Paterson Railway Co. (Prem. $70.00)	540.00
		Dividend Lehigh Valley R. R.	240.00
		McDonald rent for June	9.00
		17, Webb rent for June	9.00
	July	1, Coupons Passaic Water Co. (Premium	
20		$12.50)	175.00
		" Mobile & Ohio (Prem. $35.00)	90.00
		McDonald rent for July	9.00
		Coupons Paterson Sewers	4.08
		15, Dividend Brooklyn City R. R. Co.	50.00
	Aug.	2, Coupons United N. J. R. R. & Canal Co. (Premium $10.00)	100.00
		3, McDonald rent for August	9.00
		24, Webb rent for July	9.00
	Sept.	1, Coupons Paterson & Passaic G. & E. (Premium $5.00)	125.00
		" Paterson Sewers	6.98
		Interest on Paterson Sewers	6.31
30		Webb rent for August	9.00
	Oct.	1, Coupons Mobile & Ohio	90.00
		" Passaic Water Co.	80.00
		" Long Dock Co. (Prem. $60.00)	300.00
		4, Rebate on Insurance from F. Wilkinson	4.25
		11, Interest on Paterson Sewer Certfs.	2.05
		15, Dividend Brooklyn City R. R. Co.	50.00
	Nov.	1, Passaic Lighting Co. Coups. (Premium $17.00)	200.00
		Interest to date on Paterson St. Imp. Scrip.	31.35
	Dec.	1, Coupons Consol. Tr. Co. (Prem. $9.00)	125.00
40		" Paterson Railway Co. (Prem. $70.00)	540.00
		" Lehigh Valley R. R. Regd.	240.00

1910			
Jan. 3,	"	Passaic Water Co. (Premium $12.50)	175.00
	"	Mobile & Ohio (Prem. $35.00)	90.00
	"	Paterson Sewers	4.08
4,	Interest	on Paterson Sewer	6.12
15,	Dividend	Brooklyn City R. R. Co.	50.00
20,	Interest	on Paterson Sewer	1.44
Feb. 1,	Coupons	United N. J. R. R. & Canal Co.	100.00
Mar. 1,	"	Paterson & Passaic G. & E. Co. (Premium $5.00)	125.00
Apr. 1,	"	Mobile & Ohio	90.00
	"	Passaic Water Co.	80.00
	"	Long Dock (Premium $60.00)	300.00
	"	Paterson Sewers	1.32
	"	Interest on Paterson Sewers	51.87
15,	Dividend	Brooklyn City R. R. Co.	50.00
			$11,774.38

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

			Voucher No.	
1908				
Apr. 1,	Paid	Chas. D. Cooke, Beneficiary	42	$ 290.00
	"	Fred W. Cooke "	43	290.00
	"	John S. Cooke "	44	290.00
	"	Carrie S. Beam "	45	290.00
	"	Lavinia Fayerweather "	46	290.00
27,	"	G. L. King, to advertising	47	6.02
	"	C. M. King, Surrogate's fees	48	38.18
	"	P. S. D. & Tr. Commission allowed by court Apr. 24, 1908	49	720.11
May 1,	"	J. L. Griggs for services	50	125.00
June 22,	"	Thos. Keys for lumber and carpenter work, Grand St. Property	51	14.13
July 7,	"	Chas. D. Cooke, Beneficiary	52	275.00
	"	Fred W. Cooke "	53	275.00
	"	John S. Cooke "	54	275.00
	"	Carrie S. Beam "	55	275.00
	"	Lavinia Fayerweather "	56	275.00
24,	"	Richard Warren, ins., 433 Grand St.	57	7.50
Sept. 3,	"	Passaic Water Co., a/c 433 Grand St.	58	2.99

Oct.	1,	" Chas. D. Cooke, Beneficiary	59	120.00
		" Fred W. Cooke "	60	120.00
		" John S. Cooke "	61	120.00
		" Carrie S. Beam "	62	120.00
		" Lavinia Fayerweather "	63	120.00
	3,	" Jas. Rankin, mason reprs. 433 Grand St.	64	91.85
	6,	" 1903-4 Taxes on 441 Grand St.	65	145.18
	13,	" A. H. Smith, masons supplies a/c 433 Grand St.	66	26.00
Nov.	25,	" Int. on Paterson City Imp. Scrip No. 1099	67	2.09
Dec.	21,	" Passaic Water Co. a/c 433 Grand St.	68	2.99
		" Taxes for 1905-6-7-8 on 441 Grand St.	69	252.26
1909				
Jan.	5,	" John S. Cooke, Beneficiary	70	150.00
		" Fred W. Cooke "	71	150.00
		" Charles D. Cooke "	72	150.00
		" Lavinia Fayerweather "	73	150.00
		" Carrie S. Beam "	74	150.00
Mar.	3,	" Passaic Water Co. a/c 433 Grand St.	75	2.85
Apr.	1,	" Jas. T. Cox, reprs. 433 Grand St.	76	3.52
		" John S. Cooke, Beneficiary	77	140.00
		" Charles D. Cooke "	78	140.00
		" Fred W. Cooke, "	79	140.00
		" Lavinia Fayerweather "	80	140.00
		" Carrie S. Beam "	81	140.00
	23,	" Recording Deed from M. E. Redmond to P. S. D. & Tr. Co.	82	1.18
June	2,	" for repairs to Grand St. property	83	3.20
	3,	" Passaic Water Co.	84	2.85
July	1,	" John S. Cooke, Beneficiary	85	250.00
		" Fred W. Cooke "	86	250.00
		" Chas. D. Cooke "	87	250.00
		" Lavinia Fayerweather "	88	250.00
		" Carrie S. Beam "	89	250.00
Aug.	18,	" J. R. Hurley, Ins. Prem. a/c Grand St.	90	7.05
		Forward		$7,579.95

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

			Voucher No.	
		Forward		$7,579.95
1909				
Sept.	2,	Paid J.. H. White repairs to property, 433 Grand St.	91	12.20
		" Receiver of Taxes, St. assessment paid on Grand St. Property	92	108.00
	11,	" Passaic Water Co. Grand St. property	93	3.42
Oct.	1,	" John S. Cooke, Beneficiary	94	120.00
		" Fred W. Cooke "	95	120.00
		" Charles D. Cooke "	96	120.00
		" Carrie S. Beam "	97	120.00
		" Lavinia Fayerweather "	98	120.00
Nov.	3,	" J. L. Griggs for services in relation to transfer and sale of property on Grand St. and recording deed	99	11.40
1910				
Jan.	3,	" John S. Cooke, Beneficiary	100	200.00
		" Fred W. Cooke "	101	200.00
		" Charles D. Cooke "	102	200.00
		" Carrie S. Beam "	103	200.00
		" Lavinia Fayerweather "	104	200.00
Apr.	2,	" John S. Cooke "	105	120.00
		" Fred W. Cooke "	106	120.00
		" Lavinia Fayerweather "	107	120.00
		" Carrie S. Beam "	108	120.00
		" Charles D. Cooke "	109	120.00
		Forward		$9,914.97

COOKE TRUST.

INCOME ACCOUNT.

		Forward		$9,914.97
	The premium on Bonds reduced as follows.			
	Apr. 1, 1908 Mobile & Ohio	$35.00		
	July 1, " " "	35.00		
10	Jan. 2, 1909 " " "	35.00		
	Apr. 1, " " "	35.00		
	July 1, " " "	35.00		
	Jan. 3, 1910 " " "	35.00	$210.00	
	July 1, 1908 Passaic Water Co.	12.50		
	Jan. 2, 1909 " " "	12.50		
	July 1, 1909 " " "	12.50		
	Jan. 3, 1910 " " "	12.50	50.00	
	Aug. 1, 1908 United N. J. R. R. & Canal Co.	10.00		
	Jan. 30, 1909 " " " " " " " "	10.00		
20	Aug. 2, 1909 " " " " " " " "	10.00	30.00	
	Feb. 29, 1908 Paterson & Passaic G. & E. Co.	5.00		
	Sept. 10, " " " "	5.00		
	Mar. 1, 1909 " " " "	5.00		
	Sept. 1, " " " "	5.00		
	Mar. 1, 1910 " " " "	5.00	25.00	
	Apr. 1, 1908 Long Dock Co.	60.00		
	Apr. 1, 1909 " " "	60.00		
	Oct. 1, " " "	60.00		
	Apr. 1, 1910 " " "	60.00	240.00	
	Apr. 1, 1908 28th & 29th Sts. Crosstown	5.00	5.00	
30				
	Apr. 30, 1908 Passaic Lighting Co.	17.00		
	Nov. 2, " " "	17.00		
	May 3, 1909 " " "	17.00		
	Nov. 1, " " "	17.00	68.00	
	May 29, 1908 Paterson Railway Co.	70.00		
	Nov. 30, " " "	70.00		
	June 1, 1909 " " "	70.00		
	Dec. 1, 1909 " " "	70.00	280.00	
	May 29, 1908 Consolidated Traction Co.	8.00		
40	Nov. 30, " " "	7.00		
	June 1, 1909 " " "	9.00		
	Dec. 1, 1909 " " "	9.00	33.00	941.00
				$10,855.97

COOKE TRUST.

This accountant further reports that the principal fund of said estate is invested as follows:

				Present Value	
$2,000.00	200 shs. Brooklyn City R. R. 10% (Par Value $10.)			$ 4,800.00	
22,500.00	225 shs. Centl. Park, North & East R. R. R. 9%			46,800.00	10
7,000.00	Passaic Water Co. 5%		7,637.00		
	Reduced by charging off Prem. at following interest periods;				
	July 1, 1908	$12.50			
	Jan. 2, 1909	12.50			
	July 1, 1909	12.50			
	Jan. 3, 1910	12.50	50.00	7,587.00	
6,000.00	Mobile & Ohio R. R. Co. 1st Mtge. Extens. 6%		7,265.00		
	Reduced by charging off Prem. at following interest periods;				20
	Apr. 1, 1908	35.00			
	July 1,	35.00			
	Jan. 2, 1909	35.00			
	Apr. 1,	35.00			
	July 1,	35.00			
	Jan. 3, 1910	35.00	210.00	7,055.00	
5,000.00	United New Jersey R. R. & Canal Co. Regstd. 4% Gold Genl. Mtge. Bonds		5,250.00		
	Reduced by charging off Prem. at following interest periods;				
	Aug. 1, 1908	10.00			
	Jan. 30, 1909	10.00			30
	Aug. 2, 1909	10.00	30.00	5,220.00	
5,000.00	Paterson & Passaic, Gas & Elect. 5%		5,239.00		
	Reduced by charging off Prem. at following interest periods;				
	Feb. 29, 1908	5.00			
	Sept. 10,	5.00			
	Mar. 1, 1909	5.00			
	Sept. 1,	5.00			
	Mar. 1, 1910	5.00	25.00	5,214.00	
					40

10,000.00	Long Dock Co. 6% Bonds		13,160.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 1, 1908	60.00		
	Apr. 1, 1909	60.00		
	Oct. 1,	60.00		
	Apr. 1, 1910	60.00	240.00	12,920.00
3,000.00	Twenty-eighth & Twenty-ninth Sts., Crosstown R. R. Co. 1st Mtg. 5% Gold		3,380.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 1, 1908		5.00	
			3,375.00	
	Assessment paid Dec. 22, 1909		90.00	3,465.00
4,000.00	Passaic Water Co. 4% Bonds			4,000.00
8,000.00	Lehigh Valley 6% Annuity Bonds Irredeemable Regstd.			11,680.00
	Forward			$108,741.00

COOKE TRUST.

	Forward			$108,741.00
8,000.00	Passaic Lighting Co. 1st Consol. Mtge. 5% Bonds		$ 8,572.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 30, 1908	$17.00		
	Nov. 2,	17.00		
	May 3, 1909	17.00		
	Nov. 1,	17.00	68.00	8,504.00
5,000.00	Consolidated Traction Co. 5% 40 year gold bond		$ 5,415.00	
	Reduced by charging off Prem. at following interest periods;			
	May 29, 1908	$ 8.00		
	Nov. 30,	7.00		
	June 1, 1909	9.00		
	Dec. 1, 1909	9.00	33.00	5,382.00

18,000.00	Paterson Rly. Co. Consol. Mtg. 40 year 6% Bonds ,		$22,220.00	
	Reduced by charging off Prem. at following interest periods;			
	May 29, 1908	$70.00		
	Nov. 30,	70.00		
	June 1, 1909	70.00		
	Dec. 1,	70.00	280.00	21,940.00
2,000.00	Second Ave. R. R. of N. Y. City 1st Consol. 5%		,	2,270.00
1,867.14	Paterson City Sewer certificates 5%			1,886.67
626.91	Paterson City Street Imp. Scrip 5% ,			626.91
	Cash uninvested			1,149.42
				$150,500.00

THE PATERSON SAFE DEPOSIT & TRUST CO.
By WM. BERDAN, Treas.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WM. BERDAN.

Sworn to and subscribed before me }
this 23rd day of May, A. D. 1910 }

John L. Griggs, M. C. C. of N. J.

TO THE JUDGES OF THE ORFHANS' COURT OF THE COUNTY OF PASSAIC.

The above account being by me audited and stated, and placed on the files of my office May 24, 1910 for the inspection of any person interested, twenty days previous to this time, is now reported for settlement and allowance.

CHAS M. KING,
Surrogate.

Decree on Accounting of 1910.

PASSAIC ORPHANS' COURT.

April Term, 1910.

The Paterson Safe Deposit and Trust Company, Trustee under Will of Sarah A. Cooke, Deceased.

INTERMEDIATE ACCOUNT.

The Surrogate having audited and stated the intermediate account of The Paterson Safe Dep. & Trust Co., Trustee under will of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Thirtieth day of June, 1910, and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having been proved to the satisfaction of the court that notice of its intention to settle the said account on the Thirtieth day of June, 1910, in this court was duly given by said accountant according to law; and the said account having been examined by the court and being found to be properly and fairly stated, and the articles thereof to be supported and justified by the vouchers.

It is thereupon, on this 30 day of June, 1910, ordered, adjudged and decreed that the said account be entered of record.

F. SCOTT,
President Judge.

(Endorsed:)

Passaic Orphans' Court.

April Term, 1910.

SARAH A. COOKE, deceased.

Intermediate Account Filed May 24th A. D. 1910, and recorded in Book I of Guardians, Trustees & Assignees Accounts for Passaic County, page 128 & c.

CHARLES M. KING,
Surrogate.

Intermediate Account of 1912.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as trustee under the will of Sarah A. Cooke, deceased, will be audited and stated by the Surogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the twenty third day of May, next.

Dated, April 16, 1912.

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Sec'y.
JOHN L. GRIGGS, Proctor.

Orphans' Court Records—Accounting of 1912.

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

Chas. R. Webster, Bkkpr., being duly sworn, upon his oath says that the annexed notice was published in The Paterson Press on the 17, 24 days of April, 1912 and on the 1, 8, 15 days of May, 1912.

Signed CHAS R. WEBSTER.

Sworn to and subscribed before me }
this 15th day of May, 1912. }
Richard H. Stalling,
Notary Public of N. J.

Filed May 17, 1912,
FREDERIC BEGGS,
Surrogate.

ACCOUNT.

Notice is hereby given that accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the twenty third day of May next.

THE PATERSON SAFE DEPOSIT & TR. CO.
FRED LABAUGH, Secy.

Dated April 16, 1912.
John L. Griggs, Proctor.

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

John Grimshaw Jr. being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Post Office and Colt Restaurant, all in the City of Paterson, N. J. on the 19th day of April, A. D., 1912.

Sworn and subscribed this 19th day of April, A. D., 1912 at Paterson, before me.

JOHN GRIMSHAW JR.

George L. King,
Deputy Surrogate.

Filed April 20, 1912,
FREDERIC BEGGS,
Surrogate.

The Intermediate Account of The Paterson Safe Deposit & Trust Company, Trustees under the will of Sarah A. Cooke, deceased, from the fifteenth day of April, 1910 to the fifteenth day of April, 1912, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

To total amount of assets at last accounting		$150,500.00
Income received	$9,040.93	
Disbursements from Income	8,333.84	

Cash in hands of Accountant		707.09
Total amount of Estate April 15, 1912		$151,207.09
Trustee's Commission	$	
Surrogate's Fees	$	

COOKE TRUST.

INCOME ACCOUNT.

To income received as follows:

1910				
Apr. 15,	Balance of Income on hand, per last accounting			$918.41
May 2,	Coups. Passaic Lighting Co.	Prem.	200. 17.	183.00
2,	Int. Sewer Crtf. paid			9.21
2,	Int. Sewer Crtf. paid			58.59
24,	Int. accrued on Sewer Crtf. sold to P. S. D. & T. Co.			1.19
June 1,	Coupons Consol. Tract Co.	Prem.	125. 8.	117.00
1,	" Lehigh Valley			240.00
1,	" Paterson Rly. Co.	Prem.	540. 70.	470.00
1,	" Int. Paterson Sewer Certf.			4.36
29,	Int. Mtge. Tunis Kuyper 6/30/10			16.78
July 1,	Coupons Passaic Water Co.	Prem.	175. 12.50	162.50
1,	" Paterson Sewers			.96
1,	" Mobile & Ohio	Prem.	90. 35.	55.00
18,	From Principal account to adjust to par Sewer Certf. bought today			1.98
15,	Div. Brooklyn City R. R.			40.00
Aug. 1,	Coups. Regt'd United N. J. R. R. & Canal Co.	Prem.	100. 10.	90.00
15,	From Principal account to adjust to par Sewer Crtf. bought today			1.89
Sept. 1,	Coups. Pat. & Pas. G. & E. Co.	Prem.	125. 5.	120.00
1,	Int. on Sewer Crtf. paid today			5.29
9,	From Pricipal account to adjust to par Sewer Crtf. bought today			.49

Oct.	1,	Coupons	Mobile & Ohio R. R.			90.00
	1,	"	Passaic Water Co.			80.00
	1,	"	Long Dock Co.	Prem.	300. 60.	240.00
	1,	"	Sewer Crtfs.		.48 .84	1.32
	15,	Div.	Brooklyn City R. R.			40.00
Nov.	1,	Coups.	Passaic Ligthing Co.			200.00
	1,	Int. on	Pat. St. Imp. Scrip. to date			31.35
Dec.	1,	Reg. Int. on	Lehigh Valley R. R. Bonds			240.00
	1,	Coups	Consol. Tract. Co.	Prem.	125.00 8.50	116.50
			Forward			$3,535.82

COOKE TRUST.

INCOME ACCOUNT.

			Forward			$3,535.82
1910						
Dec.	1,	Coupons	Paterson Rly. Co.	Prem.	540. 70.	470.00
1911						
Jan.	3,	"	Passaic Water Co.	Prem.	175.00 12.50	162.50
	3,	"	Mobile & Ohio R. R.	Prem.	90. 35.	55.00
	3,	Int. on	Mtge. T. Kuyper to 12/31/10			62.50
	3,	Coupons	Paterson Sewers			.96
	3,	"	Paterson Sewers			1.32
	4,	Int. on	Sewer Crtf.			4.65
	4,	Int. on	Sewer Crtf.			2.25
	16,	Div.	Brooklyn City R. R.			40.00
Feb.	1,	Coupons	Paterson Sewers		.33 1.26	1.59
	1,	"	United N. J. R. R. & Canal Co.	Prem.	100. 10.	90.00
Mar.	1,	"	Pat. & Pass. G. & E. Co.		125. 5.	120.00
Apr.	1,	"	Mobile & Ohio R. R.			90.00
	1,	"	Passaic Water Co.			80.00
	1,	"	Long Dock Co.			240.00
	1,	"	Paterson Sewers		.48 .84	1.32

	15, Div. Brooklyn City R. R. Co.			40.00
May	1, Coups. Passaic Ligthing Co. Prem.	200.	17.	183.00
	1, Int. on Sewer Crtf. paid today			9.21
June	1, Coupons Consol. Tract Co. Prem.	125.00	8.50	116.50
	1, " Pat. Rly. Co. Prem.	540.	70.	470.00
	1, " Lehigh Valley R. R. Co.			240.00
	29, Int. on Kuyper Mtge. to 6/30/11			62.50
July	1, Coupons Passaic Water Co. Prem.	175.00	12.50	162.50
	1, " Mobile & Ohio R. R. Prem.	90.	35.	55.00
	1, " Paterson Sewers	.96	1.32	2.28
	15, Div. Brooklyn City R. R.			40.00
Aug.	1, Coups. Paterson Sewers			1.59
	1, Div. United N. J. R. R. & Canal Co.	100.	10.	90.00
Sept.	1, Coups. Pat. & Pass. G. & E. Co.			120.00
	Forward			$6,550.49

COOKE TRUST.

INCOME ACCOUNT.

	Forward			$6,550.49
1911				
Oct.	2, Coupons Mobile & Ohio R. R.			90.00
	2, " Passaic Water Co.			80.00
	2, " Long Dock Co.	300.	60.	240.00
	2, " Paterson Sewers			1.32
	2, Int. on Sewer Ctf. paid today			15.93
	16, Div. Brooklyn City R. R. Co.			40.00
Nov.	1, Coups. Passaic Lighting Co.	200.	17,	183.00
	1, Int. on St. Imp. Scrip. paid			31.35
Dec.	1, Coups. Consol. Tract. Co.	125.	8.50	116.50
	1, Div. Lehigh Valley R. R. Co.			240.00
	1, Coups Paterson Rly. Co.	540.	70.	470.00

		23, Int. on Brown Mtge. to 12/31/11			32.50
1912					
Jan.	2,	Coupons Mobile & Ohio R. R.	35.		55.00
			175.00		
	2,	" Passaic Lighting Co.	12.50		162.50
			1.32		
	2,	" Paterson Sewers	.96		2.28
	2,	Int. on Kuyper Mtge. to 12/31/11			62.50
	2,	Int. on Pat. Sewer Crtf. paid			4.65
	15,	Div. Brooklyn City R. R.			40.00
			100.		
Feb.	1,	Coupons United N. J. R. R. & Canal	10.		90.00
			.36		
	1,	" Paterson Sewers	1.26		1.59
			125.00		
Mar.	1,	" Pat. & Pass. Gas & E. Co.	5.00		120.00
			300.		
Apr.	1,	" Long Dock Co.	60.		240.00
	1,	" Mobile & Ohio R. R.			90.00
	1,	" Passaic Water Co.			80.00
	1,	" Paterson Sewers			1.32
					$9,040.93

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
1910					
May	10,	Int. on Sewer crtf. #1869-73 paid Apr. 1/10 should be $30.26 instead of $51.87. $21.61 being credited to Principal account as premium which is deducted from Int.		1	21.61
	10,	Int. on Sewer Crtf. #1882 should be $19.53 less than $58.59 which was credited on May 2, see above $19.53 is credited to Prin. Prem.		2	19.53
July	1,	To P. S. D. & T. Co. commission to last accounting		3	588.71
	6,	" John S. Cooke		4	275.00
	6,	" Chas. D. Cooke		5	275.00

	6, "	Fred W. Cooke	6	275.00	
	6, "	Lavinia Fayerweather	7	275.00	
	6, "	Carrie S. Beam	8	275.00	
	8, "	Chas. M. King	9	46.32	
	11, "	J. L. Griggs services in relation to intermediate accounting	10	50.00	
Oct.	4, "	Fred W. Cooke	11	125.00	
	4, "	John S. Cooke	12	125.00	
	4, "	Chas. D. Cooke	13	125.00	10
	4, "	Carrie S. Beam	14	125.00	
	4, "	Lavinia Fayerweather	15	125.00	
1911					
Jan.	3, "	Johns S. Cooke	16	250.00	
	3, "	Chas. D. Cooke	17	250.00	
	3, "	Fred W. Cooke	18	250.00	
	3, "	Carrie S. Beam	19	250.00	
	3, "	Lavinia Fayerweather	20	250.00	
	18, Int.	to date on Sewer Certificates bought		4.75	
Mar.	13, To	J. L. Griggs for taking affidavit on assignment		.50	20
Apr.	1, "	Fred W. Cooke	21	120.00	
	1, "	Carrie S. Beam	22	120.00	
		Forward		$4,221.42	

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

		Forward		$4,221.42	
1911					
			Voucher No.		
Apr.	1, To	Lavinia Fayerweather	23	120.00	30
	1, "	Chas. D. Cooke	24	120.00	
	1, "	John S. Cooke	25	120.00	
July	1, "	Carrie S. Beam	26	250.00	
	1, "	John S. Cooke	27	250.00	
	1, "	Lavinia Fayerweather	28	250.00	
	1, "	Fred W. Cooke	29	250.00	
	1, "	Chas. D. Cooke	30	250.00	
Oct.	2, "	Carrie S. Beam	31	125.00	
	2, "	John S. Cooke	32	125.00	
	2, "	Fred W. Cooke	33	125.00	
	2, "	Chas. D. Cooke	34	125.00	
	2, "	Lavinia Fayerweather	35	125.00	
Dec.	1, Int.	on Brown Mtge. bought from P. S. D. & T. Co.		27.42	40

1912				
Jan.	2,	To John S. Cooke	36	250.00
	2,	" Fred W. Cooke	37	250.00
	2,	" Chas. D. Cooke	38	250.00
	2,	" Lavinia Fayerweather	39	250.00
	2,	" Carrie S. Beam	40	250.00
Apr.	1,	" John S. Cooke	41	120.00
	1,	" Fred W. Cooke	42	120.00
	1,	" Chas. D. Cooke	43	120.00
	1,	" Lavinia Fayerweather	44	120.00
	1,	" Carrie S. Beam	45	120.00
				$8,333.84

COOKE TRUST.

This accountant further reports that the principal fund of said estate is invested as follows:

		Present Value
176.51	Acquackanonk Township Imp. Crtf.	176.51
2,000.00	Brooklyn City R. R. Co. Stock 200 shs.	4,800.00
22,500.00	225 shs. Cent. Park & E. R. R. R. Co.	46,800.00
5,000.00	Consol. Tract. Co. Bond due 7/1933	5,348.50
8,000.00	Lehigh Valley Annuity Bonds due	11,680.00
10.000.00	Long Dock Co. Bonds due 1935	12,680.00
6,000.00	Mobile & Ohio R. R. Co. Bonds due 1927	6.915.00
8,000.00	Passaic Lighting Co. Bonds due 5/1/1925	8,453.00
7,000.00	Passaic Water Co. Bonds due 7/1/1937	7,537.00
4,000.00	Passaic Water Co. Bonds due 4/1/1920	4,000.00
259.30	Paterson City Sewer Certificates	259.30
62.06	Paterson City St. Imp. Scrip.	62.06
5,000.00	Pat. & Pass. G. E. Co. Bonds due 3/1/1949	5,194.00
18,000.00	Paterson Rly. Co. Consol. Mtge. Bonds due 1931	21,660.00
2,000.00	Second Ave. R. R. Co. Bonds due 1948	2,270.00
3,000.00	Twenty-eighth & Twenty-ninth Sts. Crosstown R. R. due 1996	3,465.00
5,000.00	United N. J. R. R. & Canal Co. Bonds due 1923	5,180.00
1,300.00	Bond & Mtge. Fred Brown 5%	1,300.00
2,500.00	Bond & Mtge. Tunis Kuyper 5%	2,500.00
	Cash uninvested	219.63
		$150,500.00

THE PATERSON SAFE DEPOSIT & TRUST CO.,
Trustee.
By WILLIAM BERDAN, V. P.

Orphans' Court Records—Accounting of 1912.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WILLIAM BERDAN

Sworn to and subscribed before me }
this 17th day of April, A. D. 1912, }
John L. Griggs,
Master in Chancery of New Jersey.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC.

The above account having been placed on the files of my office on the Twenty second day of April, 1912, and being by me audited and stated, is now reported for settlement.

FREDERIC BEGGS,
Surrogate.

Dated, Paterson, N. J.
May 23rd, 1912.

Filed April 22, 1912,
FREDERIC BEGGS,
Surrogate.

Decree on Accounting of 1912.

PASSAIC COUNTY ORPHANS' COURT.

April Term A. D., 1912.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.	Decree on Intermediate Accounting.

The Surrogate having audited and stated the intermediate account of The Paterson Safe Deposit and Trust Company, Trustees under will of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Twenty third day of May A. D., 1912, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said Twenty third day of May A. D., 1912, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and no exceptions being made thereto,

It is, on this Twenty third day of May A. D., nineteen hundred and twelve ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of

corpus amounting to the sum of One hundred fifty thousand and five hundred dollars, and a balance of income amounting to the sum of Seven hundred seven and 09/100 dollars remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of Four Hundred and Fifty Two $^{05}/_{100}$ dollars as and for its commissions, on the sum of Nine thousand forty and $^{93}/_{100}$ dollars of income collected by it and that the Surrogate be allowed the sum of Thirty and $^{68}/_{100}$ dollars for fees, and advertising expenses.

LEWIS J. MARTIN,
Judge.

[Endorsed:]

Passaic County Orphans' Court.
April Term A. D. 1912.

In the matter of the intermediate account of the Trustee of Sarah A. Cooke, Deceased.

Intermediate Account and Decree Thereon.

Filed April 22nd, 1912.

Decree Recorded Book U of Orphans' Court Records, Page 372.

Account Recorded Book J of Accounts, Page 89.

FREDERIC BEGGS,
Surrogate.

Intermediate Account of 1914.

ACCOUNT.

Notice is hereby given that accounts of the subscriber as Trustee under the will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Fourteenth day of May, next.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
FRED LABAUGH, Secretary.

Dated, April 11, 1914.
John L. Griggs, Proctor.

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

E. M. Greenhalgh, Cashier, being duly sworn, upon her oath says, that the annexed notice was published in The Paterson Press on the 11, 18, 25 days of April, 1914, and on the 2, 9 days of May, 1914.

Signed E. M. GREENHALGH.

Sworn to and subscribed before me }
this 11 day of May, 1914. }
Richard H. Stalling (L. S.)
Notary Public of N. J.

Filed May 11, 1914,
FREDERIC BEGGS,
Surrogate.

Orphans' Court Records—Accounting of 1914.

ACCOUNT.

Notice is hereby given that accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the fourteenth day of May next.

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Secy.

Dated April 11, 1914.
John L. Griggs, Proctor.

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

John Grimshaw Jr. being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Cor. DeGrasse & Hamilton Sts. & Cor. DeGrasse & Clarke Sts., all in the City of Paterson, N. J. on the 14th day of April A. D., 1914.

JOHN GRIMSHAW JR.

Sworn and subscribed this 14 day of April A. D. 1914, at Paterson, before me
George L. King,
Deputy Surrogate.

Filed April 14, 1914,
FREDERIC BEGGS,
Surrogate.

The Intermediate account of The Paterson Safe Deposit & Trust Company, Trustees under the will of Sarah A. Cooke, deceased, from the fifteenth day of April 1912 to the fifteenth day of April, 1914, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

To total amount of assets as last accounting		$150,500.00
Income received	$8,921.55	
Disbursements from Income	8,364.97	
Cash in hands of Accountant		556.58
Total Amount of Estate, April 15, 1914		$151,056.58

COOKE TRUST.

INCOME ACCOUNT.

To income received as follows:

1912			
Apr. 15,	Balance last accounting		$707.09
15,	Div. Brooklyn City R. R. Co.		40.
May 1,	Passaic Lighting Co.	200. 17.	183.
June 1,	Coupons Consol. Tr. Co.	125. 8.50	116.50
1,	" Paterson Railway Co.	540. 70.	470.
1,	Div. Lehigh Valley		240.
28,	Int. on Brown Mtge. to 6/30/12		32.50
July 1,	Int. on Kuyper Mtge. to 6/30/12		62.50
1,	Coupons Mobile & Ohio	90. 35.	55.
1,	" Passaic Water Co.	175. 12.50	162.50

	1, "	Paterson Sewers		2.28	
	1,	Int. on St. Imp. Scrip. paid		3.10	
	18,	Int. on Acquackanonk Imp. Crtf. paid		8.83	
	15,	Div. Brooklyn City R. R. Co.		40.	
Aug.	1,	Coupons United N. J. & Canal	100. 10.	90.	
			1.26		
	1, "	Paterson Sewers	,33	1.59	10
Sept.	3, "	Pat. & Pas. G. & E. Co.	125. 5.	120.	
Oct.	1, "	Long Dock Co.	300. 60.	240.	
	1, "	Mobile & Ohio		90.	
	1, "	Passaic Water Company		80.	
	1, "	Paterson Sewers		1.32	
	15,	Div. Brooklyn City R. R.		40.	
Nov.	1,	Coupons Passaic Lighting Co.	200. 17.	183.	
Dec.	1, "	Consol. T[illegible] Co.	125. 8.50	116.50	20
	1, "	Paterson Railway Company	540. 70.	470.	
	1, "	Lehigh Valley		240.	
	28,	Int. on Brown Mtge. to 12/31/12		32.50	
		Forward		$3,828.21	

OOKE TRUST.

INCOME ACCOUNT.

1913		Forward		$3,828.21	30
Jan.	2,	Coupons Mobile & Ohio	90. 35.	55.	
	2, "	Passaic Water Company	175. 12.50	162.50	
	2, "	Paterson Sewers		.96	
	2,	Int. on Kuyper Mtge. to 12/31/12		62.50	
	2,	Coupons Paterson Sewers		1.32	
	15,	Div. Brooklyn City R. R. Co.		40.	
Feb.	1,	Coupons Paterson Sewers		2.49	
	1, "	United N. J. R. R. & Canal	100. 10.	90.	40

	Mar. 1,	"	Paterson & Passaic G. & E.	125. 5.	120.
	Apr. 1,	"	Long Dock Co.	300. 60.	240.
	1,	"	Mobile & Ohio		90.
	1,	"	Passaic Water Co.		80.
	15,	Div.	Brooklyn City R. R. Co.		40.
10	May 1,	Coupons	Passaic Lighting Co.	200. 17.	183.
	June 2,	"	Consol. Tr. Co.	125. 8.50	116.50
	2,	"	Lehigh Valley R. R.		240.
	2,	"	Paterson Railway Co.	540. 70.	470.
	30,	Int. on	Brown Mtge. to 6/30/13		32.50
	July 1,	Coupons	Mobile & Ohio	90. 35.	55.
	1,	"	Passaic Water Co.	175. 12.50	162.50
20	1,	"	Paterson Sewers		1.32
	1,	Int. on	St. Imp. Scrip. paid		3.10
	10,	Int. on	Kuyper Mtge. to 6/30/13		62.50
	15,	Div.	Brooklyn City R. R. Co.		40.
	Aug. 1,	Coupons	United N. J. R. R. & Canal	100. 10.	90.
	1,	"	Paterson Sewers		2.49
	5,	Int. on	Acquackanonk Twp. paid		27.66
	Sept. 2,	Coupons	Pat. & Pas. G. & E.	125. 5.	120.
	Oct. 1,	"	Long Dock Co.	300. 60.	240.
30			Forward		$6,659.55

40

COOKE TRUST.

INCOME ACCOUNT.

	Forward		$6,659.55
1913			
Oct. 1,	Coupons Mobile & Ohio		90.
1,	" Passaic Water Company		80.
15,	Div. Brooklyn City R. R. Co.		40.
Nov. 11,	Coupons Passaic Lighting Co.	200. 17.	183.
Dec. 1,	Int. on Lehigh Valley Bonds		240.
6,	Coupons Paterson Rly. Co.	540. 70.	470.
29,	Int. on Brown Mtge. to 12/31/13		32.50
31,	Int. on Kuyper Mtge. to 12/31/13		62.50
1914			
Jan. 2,	Int. on Lockwood Mtge. to 12/31/13		30.
5,	Coupons Consol. Tr. Co.	125. 8.50	116.50
5,	" Passaic Water Company	175. 12.50	162.50
6,	" Mobile & Ohio	90. 35.	55.
15,	Div. Brooklyn City R. R. Co.		40.
Feb. 2,	Int. on United N. J. R. R. & Canal	100. 10.	90.
Mar. 2,	Coupons Pat. & Pas. G. & E. Co.	125. 5.	120.
Apr. 1,	" Passaic Water Company		80.
3,	" Long Dock Co.	300. 60.	240.
3,	" Mobile & Ohio		90.
15,	Div. Brooklyn City R. R. Co.		40.
			$8,921.55

Orphans' Court Records—Accounting of 1914.

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
1912					
May	24,	To	J. L. Griggs in re-accounting	1	$50.
	24,	"	P. S. D. & T. Co. Commission allowed by Court	2	452.05
	24,	"	Surrogates fees etc. in re-accounting	3	30.68
July	1,	"	John S. Cooke	4	250.
	1,	"	Fred W. Cooke	5	250.
	1,	"	Charles D. Cooke	6	250.
	1,	"	Lavinia Fayerweather	7	250.
	1,	"	Carrie S. Beam	8	250
Aug.	14,	"	Int. on Acquackanonk Twp. Crtf. bought		.53
Oct.	1,	"	John S. Cooke	9	125.
	1,	"	Fred W. Cooke	10	125.
	1,	"	Charles D. Cooke	11	125.
	1,	"	Lavinia Fayerweather	12	125.
	1,	"	Carrie S. Beam	13	125.
Dec.	6,	"	Int. on Sewer Crtf. #2080 bought		.63
1913					
Jan.	2,	"	Charles D. Cooke	14	250.
	2,	"	John S. Cooke	15	250.
	2,	"	Fred W. Cooke	16	250.
	2,	"	Lavinia Fayerweather	17	250.
	2,	"	Carrie S. Beam	18	250.
Apr.	1,	"	Charles D. Cooke	19	120.
	1,	"	John S. Cooke	20	120.
	1,	"	Fred W. Cooke	21	120.
	1,	"	Lavinia Fayerweather	22	120.
	1,	"	Carrie S. Beam	23	120.
July	1,	"	John S. Cooke	24	250.
	1,	"	Fred W. Cooke	25	250.
	1,	"	Charles D. Cooke	26	250.
	1,	"	Lavinia Fayerweather	27	250.
	1,	"	Carrie S. Beam	28	250.
Aug.	6,	"	Int. on Lockwood Mtge. bought		6.08
			Forward		$5,394.97

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

			Voucher No.	
		Forward		$5,394.97
1913				
Oct.	1,	To John S. Cooke	29	175.
	1,	" Fred W. Cooke	30	175.
	1,	" Charles D. Cooke	31	175.
	1,	" Carrie S. Beam	32	175.
	1,	" Lavinia Fayerweather	33	175.
1914				
Jan.	7,	" John S. Cooke	34	275.
	7,	" Fred W. Cooke	35	275.
	7,	" Charles D. Cooke	36	275.
	7,	" Lavinia Fayerweather	37	275.
	7,	" Carrie S. Beam	38	275.
Apr.	3,	" John S. Cooke	39	120.
	3	" Fred W. Cooke	40	120.
	3	" Charles D. Cooke	41	120.
	3	" Lavinia Fayerweather	42	120.
	3,	" Carrie S. Beam	43	120.
				$8,364.97

COOKE TRUST.

This accountant further reports that the principal fund of said estate is invested as follows:

1914

		Inventory Value.
$2,000.00	200 Shs. Brooklyn City R. R. Co Stock 8%	$ 4,800.00
22,500.00	225 shs. Central Park N. & East River R. R. Co. 9%	46,800.00
5,000.00	Consol. Tr. Co. Bonds due 1933	5,314.50
8,000.00	Lehigh Valley Annuity Bonds	11,680.00
10,000.00	Long Dock Co. Bonds due 1935	12,440.00
6,000.00	Mobile & Ohio R. R. Co. Bonds due 1927	6,775.00
8,000.00	Passaic Lighting Co. Bonds due 1925	8,385.00
7,000.00	Passaic Water Co. Bonds due 1937	7,487.00
4,000.00	Passaic Water Co. Bonds due 1920	4,000.00
5,000.00	Pat. & Pas. G. & E. Co. Bonds due 1949	5,174.00
18,000.00	Pat. Rly. Co. Consol. Mtge. Bonds 1931	21,380.00
2,000.00	Second Avenue R. R. Co. Bonds due 1948	2,270.00

3,000.00	Twenty-eighth & Twenty-ninth Sts. Crosstown R. R. Co. 1st Mtge. Gold Bonds 1996	3,465.00
5,000.00	United N. J. R. R. & Canal Co. Bonds due 1923	5,140.00
1,300.00	Bond & Mtge. Fred Brown 5%	1,300.00
2,500.00	Bond & Mtge. Tunis & Mary Kuyper 5%	2,500.00
1,200.00	Bond & Mtge. Stephen H. & Emma Lockwood 5%	1,200.00
	Cash uninvested	389.50
		$150,500.00

THE PATERSON SAFE DEPOSIT & TRUST CO.
WM. BERDAN, Vice Prest.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WILLIAM BERDAN.

Sworn to and subscribed before me }
this 17th day of April, A. D., 1914 }
John L. Griggs,
M. C. C. of N. J.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:

The above account having been placed on the files of my office on the Seventeenth day of April, 1914, and being by me audited and stated, is now reported for settlement.

FREDERIC BEGGS, Surrogate.

Dated, Paterson, N. J., May 14th, 1914.

Decree on Accounting of 1914.

PASSAIC COUNTY ORPHANS' COURT.

April Term A. D., 1914.

In the matter of the intermediate *account of the Trustee under the Will of* SARAH A. COOKE, *Deceased.*	Decree on Intermediate Accounting.

The Surogate having audited and stated the intermediate account of the Trustee under the will of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Fourteenth day of May A. D., 1914, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said Fourteenth day of May, A. D., 1914, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and no exception being made thereto,

It is, on this Fourteenth day of May A. D., nine-

teen hundred and fourteen ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of corpus and income amounting to the sum of One hundred fifty one thousand fifty six and $^{58}/_{100}$ dollars, remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of Four Hundred and forty six $^{08}/_{100}$ dollars as and for its commissions, on the sum of Eight thousand nine hundred twenty one $^{55}/_{100}$ dollars of income collected by it, and that the Surrogate be allowed the sum of Thirty and $^{14}/_{100}$ dollars for fees, advertising and posting notices.

ABRAM KLENERT,
Judge.

(Endorsed:)

Passaic County Orphans' Court.
April Term A. D. 1914.

In the matter of the intermediate account of the Trustee under the Will of Sarah A. Cooke, Deceased.

Intermediate Account and Decree Thereon.

Filed April 17th, 1914.

Decree Recorded Book V of Orphans' Court Records, Page 399.

Account Recorded Book B-3 of Accounts, Page 315.

FREDERIC BEGGS,
Surrogate.

Intermediate Account of 1915.

THE INTERMEDIATE ACCOUNT OF
THE PATERSON SAFE DEPOSIT & TRUST CO.

Trustees under the will of Sarah A. Cooke, deceased, for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and final account as to Estate Lavinia Fayerweather, from the fifteenth day of April, 1914 to the thirtieth day of April 1915, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

Total amount of assets as last accounting		$150,500.00
Less depreciation (See Schedule C)		56,969.50
		$ 93,530.50
Income received (Schedule A)	$5,209.44	
Disbursements from Income (Schedule B)	5,209.44	
Total Amount of Trust Apr. 30th, 1915 (See Schedule D)		$ 93,530.50

COOKE TRUST.
INCOME ACCOUNT.

To income received as follows:

1914		
Apr. 15, Balance last accounting		$556.58
May 5, Coups. Passaic Lighting Co. Prem.	200.17.	183.00
May 22, Rebate of commission paid in excess to Paterson Safe Deposit & Trust Co.		173.22
June 1, Coupons Paterson Railway Co.	540.70.	470.00

	1, " Consol. Tr. Co.	125.	8.50	116.50
	1, Int. on Lehigh Valley Bonds			240.00
	26, Int. on Brown Mtge. to 6/30/14			32.50
July	1, Coups. Mobile & Ohio	90.	35.	55.00
	2, Int. on Lockwood Mtge. to 6/30/14			30.00
	6, Coups. Passaic Water Co.	175.	12.50	162.50
	6, Int. on Kuyper Mtge. to 6/30/14			62.50
	15, Div. Brooklyn City R. R. Co.			40.00
Aug.	1, Reg Int. United N. J. R. R. & Canal	100.	10.	90.00
Sept.	8, Cps. Pat. & Pas. G. & E. Co. Prem.	125.	5.	
	1% on 4/5 deducted Income Tax	120.	1.	119.00
Oct.	2, Coupons Passaic Water Co.			80.00
	2, " Mobile & Ohio 1% on 4/5 deducted	90.	.72	89.28
	3, " Long Dock Co. Prem.	300.	60.	240.00
	15, Div. Brooklyn City R. R. Co.			40.00
Nov.	4, Cps. Passaic Lighting Co.	200.	17.	183.00
Dec.	1, Reg. Int. on Lehigh Valley Bonds			240.00
	10, Coupons Paterson Railway Co.	540.	70.	470.00
	" Consol. Tr. Co.	125.	8.50	116.50
	" Consumers L. H. & P. Co.			12.50
	30, Int on Brown Mtge. to 12/31/14			32.50
1915 Jan.	2, Int. on Lockwood Mtge. to 12/31/14			30.00
	Forward			$3,864.58

(Schedule A)

COOKE TRUST.

INCOME ACCOUNT.

	Forward			$3,864.58
1915				
Jan. 4,	Int. on Kuyper Mtge. to 12/31/14			62.50
5,	Cps. Mobile & Ohio	Prem.	90.00 35.00	
	1% on ⅘ deducted Income Tax		55.00 .75	54.28
	Cps. Passaic Water Co.	Prem.	175.00 12.50	162.50
15,	Div. Brooklyn City R. R. Co.			40.00
27,	Int. on Bor. Garfield Crtf. sold			1.85
Feb. 1,	Int. on United N. J. R. R. & Canal		100.00 10.00	90.00
Mar. 3,	Cps. Pat. Pas. G. & E. Co.	Prem.	125.00 5.00	
	1% on ⅘ deducted Income Tax		120.00 1.00	119.00
Apr. 5,	Cps. Passaic Water Co.			80.00
6,	" Mobile & Ohio 1% on ⅘ deducted		90.00 .72	89.28
	" Long Dock Co.		300.00 60.00	240.00
15,	Div. Brooklyn City R. R. Co.			40.00
30,	Int. on Lehigh Valley Annuity, sold			75.00
	" " Consumers L. H. & P. Co. "			10.42
	" " Paterson Railway Co. "			75.00
	" " Passaic Water 4s "			13.34
	" " Passaic Water 5s "			33.34
	" " Passaic Lighting Co. "			75.00
	" " Mobile & Ohio "			5.00
	" " Brown Mtge. "			16.68
	" " Lockwood Mtge. "			20.00
	" " Kuyper Mtge. "			41.67
				$5,209.44

(Schedule A)

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
1914					
May	14,	To	P. S. D. & T. Co. Comm. allowed by court	1	$446.08
	15,	"	Surrogate fees etc. in re-accounting	2	30.14
	20,	"	J. L. Griggs fees etc. in re-ac counting	3	50.00
June	23,	"	Income Tax for 1913	4	19.00
	30,	"	Int. etc. on Consol. L. H. & P. Co. to date	5	7.02
July	7,	"	John S. Cooke	6	280.00
		"	Fred W. Cooke	7	280.00
		"	Charles D. Cooke	8	280.00
		"	Carrie S. Beam	9	280.00
		"	Est. L. Fayerweather	10	280.00
Oct.	5,	"	John S. Cooke	11	120.00
		"	Fred W. Cooke	12	120.00
		"	Charles D. Cooke	13	120.00
		"	Est. L. Fayerweather	14	120.00
		"	Carrie S. Beam	15	120.00
1915					
Jan.	6,	"	John S. Cooke	16	279.39
		"	Fred W. Cooke	17	279.39
		"	Charles D. Cooke	18	279.39
		"	Est. L. Fayerweather	19	279.39
		"	Carrie S. Beam	20	280.43
Apr.	6,	"	John S. Cooke	21	119.57
		"	Fred W. Cooke	22	119.57
		"	Charles D. Cooke	23	119.57
		"	Est. L. Fayerweather	24	119.57
		"	Carrie S. Beam	25	120.00
	30,	"	John S. Cooke, Trust		132.19
		"	Fred W. Cooke, Trust		132.19
		"	Charles D. Cooke, Trust		132.18
		"	Est. L. Fayerweather, Trust		132.19
		"	Carrie S. Beam, Trust		132.18
					$5,209.44

(Schedule B)

COOKE TRUST.

PRINCIPAL FUND DEPRECIATION.

April 30th, 1915.

	Inventory valuation accounting April 15, 1914		$150,500.00	
	200 shs. Brooklyn City R. R. Co.		800.00	
	225 Shs. Cent. Park N. & E.		46,795.00	
$5,000.	Consol. Tr.	Bonds	147.50	
8,000.	Lehigh Valley Annuity	"	1,040.00	
10,000.	Long Dock	"	320.00	
6,000.	Mobile & Ohio	"	45.00	
8,000.	Passaic Lighting	"	271.00	
7,000.	Passaic Water 5s	"	462.00	
4,000.	Passaic Water 4s	"	220.00	
5,000.	Pat. & Pas. G. & E.	"	114.00	
18,000.	Paterson Railway 6%	"	1,440.00	
5,000.	United N. J. Rly. & Canal	"	120.00	
2,000.	Second Ave. R. R.	"	2,030.00	
3,000.	28th & 29th St.	"	3,165.00	56,969.50
				$93,530.50

(Schedule C)

COOKE TRUST.

This accountant further reports that the principal fund of said Trust is invested as follows:

$5,000.	Consolidated Traction Company Bonds due 1923	$ 5,150.00
10,000.	Long Dock Company Bonds due 1935	12,000.00
5,000.	Lehigh Valley Annuity Bonds	6,650.00
5,000.	Mobile & Ohio Bonds due 1927	5,550.00
5,000.	Passaic Water Company 5s due 1937	5,000.00
5,000.	Passaic Lighting Co. Bonds due 1925	5,050.00
5,000.	Pat. & Pas. G. & E. Bonds due 1949	5,050.00
15,000.	Paterson Rly. Co. Bonds due 1931	16,500.00
5,000.	United N. J. Rly. & Canal Co. Bonds due 1923	5,000.00
	200 Shs. Brooklyn City Rly. Co. 8%	4,000.00
	225 Shs. Central Park N. & E.	5.00
	Cash uninvested	23,575.50
		$93,530.50

(Schedule D)

This estate for the benefit of the five beneficiaries herein named, has for the purposes of economy, been kept and reported to the Orphan's Court as one account. The Trustee as of May 1st, 1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day and has divided the said Estate into five parts according to the figures as hereafter shown and entitled "Distribution Sarah A. Cooke Trust as of May 1st. 1915."

DISTRIBUTION SARAH A. COOKE TRUST AS OF MAY 1st, 1915.

	SECURITIES				Fayerweather	C. S. B.	F. W. C.	C. D. C.	J. S. C.
$5,000.	Con. Tr. Co. J. & D. 5%	1933	103	5,150	1,030	1,030	1,030	1,030	1,030
10,000.	Long Dock Co. A. & O. 6%	1935	120	12,000	2,400	2,400	2,400	2,400	2,400
5,000.	Lehigh Valley Annuity J. &. D. 6%		133	6,650	1,330	1,330	1,330	1,330	1,330
			Irred						
5,000.	Mobile & Ohio J. A. J. O. 6%	1927	111	5,550	1,110	1,110	1,110	1,110	1,110
5,000.	Passaic Water Co. J. J. 5%	1937	100	5,000	1,000	1,000	1,000	1,000	1,000
5,000.	Passaic Light Co. M. & N. 5%	1925	101	5,050	1,010	1,010	1,010	1,010	1,010
5,000.	Pat. & Pass. G. & E. Co. M. & S. 5%	1949	101	5,050	1,010	1,010	1,010	1,010	1,010
15,000.	Pat. Rly Co. J. & D. 6%	1931	110	16,500	3,300	3,300	3,300	3,300	3,300
5,000.	United N. J. Ry. & C. Co. F. & A. 4%	1923	100	5,000	1,000	1,000	1,000	1,000	1,000
	200 Shs. Brooklyn City Rly. Co. 8% @		200	4,000	800	800	800	800	800
	225 Shs. Central Park N. & E.			5	1	1	1	1	1
	Cash			23,575.50	4,715.10	4,715.10	4,715.10	4,715.10	4,715.10
				93,530.50	18,706.10	18,706.10	18,706.10	18,706.10	18,706.10

		Int.				
C. S. B. Mtge.	M. J. Berdan	500	8.33	508.33		
	" J. Sharpe	3000	50.	3,050.		
	" D. Vigorita	1100	22.	1,122.		
	Cash uninvested			34.77		
				4,715.10		
F. W. C. Mtge.	G. W. Latus	3000	50.		3,050.	
	" Matt Love	1500	25.		1,525.	
	Cash uninvested				140.10	
					4,715.10	
C. D. C. Mtge.	D. Finamore	3000	50.			3,050.
	" Fanny Perry	800	13.33			813.33
	" G. Amantea	650	13.00			663.
	Cash uninvested					188.77
						4,715.10
J. S. C. Mtge.	Fred Brown	1000	16.68			1,016.68
	" S. Lockwood	1200	20.			1,220.
	" Tunis Kuyper	2500	41.67			2,541.67
						4,778.35
	Over Invested					63.25
						4,715.10

PATERSON SAFE DEPOSIT & TRUST CO., Trustee.
WM. BERDAN, V. P.

Passaic County, ss.

William Berdan, Treasurer of The Paterson Safe Deposit & Trust Company the above named Accountant being by me duly sworn, according to law, on his oath says that the foregoing account is in all things just and correct, both as to the charge and discharge thereof, according to the best of his knowledge and belief.

WM. BERDAN.

Sworn and subscribed this 17th day of May A. D. 1915, before me

John L. Griggs,
Master in Chancery of New Jersey.

Decree on Accounting of 1915.

PASSAIC COUNTY ORPHANS' COURT.

In the matter of the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee of Sarah A. Cooke for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and final Account as to Estate of Lavina Fayerweather.	Decree on Intermediate and Final Accounting.

The Surrogate having audited and stated the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, deceased, for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and the final Account of the said Trustee as to the estate of Lavinia Fayerweather under the said Trust and placed the same on the files of his office twenty days previous to the Fifteenth day of June, A. D., 1915, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said the Fifteenth day of June, A. D., 1915, in this Court was given by said Accountant according to law, and exceptions being filed thereto, upon which a hearing was had this day and the Court having considered that the same were not well taken,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in particulars and the same having been continued to this day;

It is on this thirteenth day of July, A. D., Nineteen hundred and fifteen, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of Ninety-three thousand five hundred and thirty dollars and Fifty Cents remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of Two hundred thirty two and $^{64}/_{100}$ dollars as and for its commissions on the sum of Four Thousand Six Hundred and fifty-two dollars, and Eighty-six cents, collected by it, and that the said accountant be allowed the further sum of Nine hundred thirty-five and $^{30}/_{100}$ dollars, as and for its full commissions on the corpus of one-fifth of said Estate, namely, the sum of Eighteen thousand seven hundred and six dollars and Ten cents, being the share of the Estate of Lavinia Fayerweather, and that a counsel fee of Twenty five Dollars be allowed to John L. Griggs, Proctor for said Accountant out of the shares of John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, which shares are not at this time to be distributed, and that a counsel fee of Fifty Dollars be allowed to John L. Griggs, proctor for said accountant out of the share of the Estate of Lavinia Fayerweather, which is about to be distributed, and that the Surrogate be allowed the sum of Thirty and $^{48}/_{100}$ dollars for fees, advertising and posting notices.

ABRAM KLENERT,
Judge.

Orphans' Court Records—Accounting of 1915.

(Endorsed:)

Passaic County Orphans' Court.

Term A. D. 191 .

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee of Sarah A. Cooke for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and Final Account as to Estate of Lavina Fayerweather.

Intermediate and Final Account and Decree Thereon.

Filed May 17th, 1915.

Decree Recorded Book W of Orphans' Court Records, Page 132.

Account Recorded Book C-3 of Accounts, Page 523.

FREDERIC BEGGS,
Surrogate.

Exceptions to accounting of 1915.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.	Exceptions to Account.

Carrie S. Beam, one of the beneficiaries under the last will and testament of Sarah A. Cooke, deceased, hereby excepts to the account of the Paterson Safe Deposit and Trust Company, Trustee under the last will and testament of said Sarah A. Cooke, deceased, for the following reasons:

1. The account sets forth in schedule "c" a depreciation of $56,969.50 in certain securities, without any explanation, concerning how and when said depreciation occurred. The accountant filed an intermediate acount in February, 1908, one in April 1910, and another in April, 1912, besides the present one, to which exception is herein made. Each of said accounts, except the present one, showed the corpus of the estate to be worth about $151,056.58 and the decree of the court, in each case, so declared. None of the said accounts discloses any depreciation and since the accounting of 1914, there has been no material depreciation in the assets of the estate.

2. In the formation of the Trust in question the trustee violated the express provisions of the said will of said testatrix in creating but one trust fund in place of five as in said will ordered.

Wherefore, exceptant prays that the account of said Paterson Safe Deposit and Trust Company, the trustee herein, be disallowed as filed; that said trustee be required to account to the beneficiaries of said estate for the full amount shown to be in the hands of said trustee by the decree of this court dated May 14th, 1914, and that exceptant may have such further and other relief as to this court may appear to be just and proper.

HENRY MARELLI.
Proctor of Carrie S. Beam.

Filed June 16, 1915,
FREDERICK BEGGS,
Surrogate.

Intermediate Account of 1917.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber, the trustee for Carrie S. Beam, under the will of Sarah A. Cooke, late of Paterson, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of the said County of Passaic, on Thursday, the Twenty-fourth day of May, Nineteen Hundred and Seventeen, at which time application will be made for allowance of commissions.

Dated, Paterson, N. J., April 20, 1917.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

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

W. A. Clarkson, Clerk, being duly sworn, upon his oath says, that the annexed notice was published in The Paterson Press-Guardian on the 21-28 days of April, 1917 and on the 5-12-19 days of May, 1917.

(Signed) W. A. CLARKSON.

Sworn to and subscribed before me this
21st day of May, 1917.

RICHARD H. STALLING,
(L.S.) Notary Public of N. J.

Notice is hereby given that the accounts of the subscriber, the Trustee, for Carrie S. Beam

under the Will of Sarah A. Cooke, late of Paterson, deceased, will be audited and stated by the Surrogate of the County of Passaic and reported for Intermediate settlement to the Orphans' Court of the said County of Passaic, on Thursday, the twenty-fourth day of May, Nineteen hundred and seventeen, at which time application will be made for allowance of commissions.

Dated Paterson, N. J.,
April 20, 1917.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LARAUGH,
Treasurer.

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

THOMAS F. VIGORITO, being duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Engineer's Office and corner Hamilton and De Grasse Streets, all in the City of Paterson, N. J., on the 26th day of April A. D. 1917.

THOMAS F. VIGORITO.

Sworn and subscribed at Paterson, before me this 26th day of April A. D. 1917.
GEORGE L. KING,
A Commissioner of Deeds for New Jersey.

PASSAIC COUNTY ORPHANS' COURT.

In the matter of the Estate *of* SARAH A. COOKE, *Deceased.*	On Accounting Petition.

To the Orphans' Court of the County of Passaic:

The petition of the Paterson Safe Deposit & Trust Company, respectfully shows as follows:

1. Your petitioner is the Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, deceased, and herewith presents its Intermediate Account of its administration of the aforesaid estate.

2. The names and addresses of all persons interested said accounting are as follows:

Carrie S. Beam, of full age, a daughter of the said Testatrix, who resides at 396 Van Houten St., Paterson, N. J.

Edward B. Beam, of full age, a grand-son of the said Testatrix, who resides at 188 River St., Paterson, N. J.

John Beam, of full age, a grandson of the said Testatrix, who resides at 396 Van Houten St., Paterson, N. J.

William B. Beam, of full age, a grand-son of the said Testatrix, who resides at 396 Van Houten St., Paterson, N. J.

3. The following is a summary of this Accountant's aforesaid account:

Accountant charges itself as follows:

Balance in hand of Accountant as shown in last previous account....	$18,706.10
Amount received during period covered by this account.....	2,068.09
	$20,774.19
Forward	$20,774.19

Accountant prays allowance as follows:

Amount of disbursements as shown by said account	1,978.09
Balance in hands of accountant.....	$18,796.10

Your petitioner therefore prays that said account may be allowed and also for allowance of commissions.

Dated, Paterson, N. J.,
April 20, 1917.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

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

FRED LABAUGH, being duly sworn according to law on his oath deposes and says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the petitioner in the foregoing petition named; that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me }
this 23rd day of April, A. D. 1917. }
HELEN GRANGER,
Notary Public of N. J.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate
of
SARAH A. COOKE,
Deceased.

Proof of Mailing.

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

FRANK D. SAVASTANO, being duly swron on his oath, according to law, deposes and says that on the twentieth day of April, Nineteen hundred and seventeen, he deposited in the United States Mail in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice addressed to

Carrie S. Beam, No. 396 Van Houten St., Paterson, N. J.

Edward B. Beam, No. 188 River St., Paterson, N. J.

John Beam, No. 396 Van Houten St., Paterson, N. J.

William B. Beam, No. 396 Van Houten St., Paterson, N. J.

FRANK D. SALVASTANO.

Subscribed and sworn to before me }
this 20th day of April A. D., 1917. }

HELEN GRANGER,
Notary Public of N. J.

Orphans' Court Records—Accounting of 1917.

Notice is hereby given that the accounts of the subscriber, the Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, late of Paterson, deceased, will be audited and stated by the Surrogate of the County of Passaic and reported for Intermediate settlement to the Orphans' Court of the said County of Passaic, on Thursday, the twenty-fourth day of May, Nineteen hundred and seventeen, at which time application will be made for allowance of commissions.

Dated Paterson, N. J.
April 20, 1912.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

Filed April 24, 1917,
FREDERIC BEGGS,
Surrogate.

The Intermediate Account of
THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the seventh day of January, 1915, to the fifteenth day of April, 1917, both of the money and property received by the said Trustees on account of the Trust Estate and of its disbursements out of the same.

DEBTOR.

This Accountant charges itsef:			
Amount of assets as per appraisal on division on accounting of Apr. 30, 1915,	(Schedule C)		$18,706.10
Income received	(Schedule A)	$2,068.09	
Disbursements from Income,	(Schedule B)	1,978.09	90.00
Total April 15, 1917.			$18,796.10

INCOME ACCOUNT.

To Income received as follows:

1915			
Jan. 7,	From Sarah A. Cooke Trust		$280.43
Jan. 7,	" Sarah A. Cooke Trust		38.72
Apr. 30,	" Sarah A. Cooke Trust		93.46
May 29,	Cps. Pass. Ltg. Co. due May 1st		25.00
June 2,	Reg. Int. Lehigh Valley Bds.		30.00
June 11,	Cps. Paterson Railway Co.	$90.00 10.00	80.00
June 11,	" Consol. Tract. Co.		25.00
July 1,	Int. on Vigorita Mtge. 6/30/15		11.00
	Cps. Passaic Water Co.		25.00
	" Mobile & Ohio	15.00 5.00	10.00
	6, Int. on Sharp Mtge. 6/30/15		25.00
	" on Berdan Mtge. 6/30/15		4.17
	15, Div. Brooklyn City R. R. Co.		8.00
Aug. 4,	Reg. Int. United N. J. R. R. & Canal		20.00
Sept. 2,	Cps. Paterson & Passaic G. & E. Co.		25.00
Oct. 4,	" Long Dock Co.	60.00 10.00	50.00
	5, " Mobile & Ohio	15.00 5.00	10.00
	15, Div. Brooklyn City R. R.		8.00
Nov. 10,	Cps. Passaic Lighting Co.	25.00 1.00	24.00
Dec. 7,	Reg. Int. Lehigh Valley R. R.		30.00
	Cps. Consolidated Traction Co		25.00

	" Paterson Railway Co.	90.00 10.00	80.00	
1916				
Jan. 3,	Interest on Vigorito mortgage 12/31		33.00	
	" " Berdan " "		12.50	
	" " J. Sharpe " "		75.00	
4,	Cps. Passaic Water Co.		25.00	
	Forward		$1,073.28	10

(Schedule A.)

INCOME ACCOUNT.

	Forward		$1,073.28	
1916.				
Jan. 4,	Cps. Mobile & Ohio	15.00 5.00	10.00	
15,	Div. Brooklyn City R. R. Co.		8.00	
Feb. 1,	Reg. Interest United N. J. R. R. & Canal		20.00	20
Mar. 1,	Cps. Paterson & Passaic G. & E. Co.		25.00	
Apr. 1,	Cps. Long Dock Co.	60.00 10.00	50.00	
	" Mobile & Ohio	15.00 5.00	10.00	
15,	Div. Brooklyn City R. R. Co.		8.00	
May 2,	Cps. Passaic Lighting Co.	25.00 1.00	24.00	
June 2,	Reg. Int. Lehigh Valley Bds.		30.00	
14,	Cps. Consol. Traction Co.	25.00 1.00	24.00	30
	" Paterson Rly. Co.	90.00 10.00	80.00	
29,	Int. on Sharpe Mtge. 6/30/16		75.00	
July 1,	Cps. Passaic Water Co.		25.00	
	" Mobile & Ohio	15.00 5.00	10.00	
5,	Int. on Vigorita Mtge. 6/30/16		33.00	
7,	" on Berdan Mtge. 6/30/16		12.50	
15,	Div. Brooklyn City R. R.		8.00	
Aug. 8,	Reg. Int. United N. J. R. R. & Canal		20.00	40

Sept.	7,	Cps. Paterson & Passaic G. & E.		25.00
Oct.	2,	" Long Dock Co.	60.00 10.00	50.00
		" Mobile & Ohio	15.00 5.00	10.00
	16,	Div. Brooklyn City R. R.		8.00
Nov.	9,	Cps. Passaic Lighting Co.		25.00
Dec.	1,	Reg. Int. Lehigh Valley Annuity		30.00
	14,	Cps. Baltimore & Ohio		25.00
		" Consol. Tract. Co.	25.00 1.00	24.00
		" Paterson Rly. Co.	90.00 10.00	80.00
1917				
Jan.	2,	" Mobile & Ohio	15.00 5.00	10.00
		Forward		$1,832.78

(Schedule A)

INCOME ACCOUNT.

		Forward		$1,832.78
1917				
Jan.	2,	Passaic Water Co.		$ 25.00
	3,	Int. on Sharpe Mortgage 12/31/16		50.00
	8,	" on Berdan Mortgage 12/31/16		12.50
	10,	" on Vigorita Mtge. 12/31/16		33.00
		" to date on Vigorita Mtge. 6/31/16		1.81
	15,	Div. Brooklyn City R. R.		8.00
Feb.	1,	Reg. Int. United N. J. R. R. Co.		20.00
Mar.	5,	Cps. Paterson & Passaic G. & E.		25.00
Apr.	2,	" Long Dock Co.	60.00 10.00	50.00
		" Mobile & Ohio		10.00
				$2,068.09

(Schedule A.)

PAYMENTS FROM INCOME ACCOUNT.

This Accountant prays allowance as follows:

			Voucher No.	
1915				
Feb.	23,	To Carrie S. Beam	1	$280.43
July	14,	" 1/5 Surrogate & Court fees, Cooke acct. 4/30/15	2	8.23

"	14,	"	1/5 Counsel fee, Cooke Acct. 4/30/15	3	5.00
"	14,	"	1/5 Commission	4	46.53
"	14,	"	Carrie S. Beam	5	307.59
Oct.	6,	"	Carrie S. Beam	6	98.00
1916					
Jan.	6,	"	Carrie S. Beam	7	307.50
Apr.	1,	"	Carrie S. Beam	8	100.00
July	6,	"	Carrie S. Beam	9	302.00
July	7,	"	Int. & Prem. on Baltimore & Ohio bond bought	10	17.93
Oct.	3,	"	Carrie S. Beam	11	97.57
1917					
Jan.	4,	"	" " "	12	267.00
Jan.	10,	"	" "	13	45.50
		"	Int. on Warren Mtge. bought	14	1.64
Apr.	2,	"	Carrie S. Beam	15	93.17
					$1,978.09

(Schedule B)

This Accountant further reports that the principal fund of said Trust is invested as follows:

		Appraised Value
$1,000	Baltimore & Ohio R. R. Co. 5% 1995	$1,000.00
400	40 shs. Brooklyn City R. R. Co. stock	800.00
4,500	45 shs. Central Park N. & E. R. R. R.	1.00
1,000	Consol. Tract. Co. 5% 1933	1,028.00
1,000	Lehigh Valley Annuity Bds. Reg. 6%	1,330.00
2,000	Long Dock Co. 6% 1935	2,360.00
1,000	Mobile & Ohio R. R. Co. 6% 1927	1,070.00
1,000	Passaic Lighting Co. 5% 1925	1,008.00
1,000	Passaic Water Co. 5% 1937	1,000.00
1,000	Pat. & Pasc. G. & E. Co. 5% 1949	1,010.00
3,000	Paterson Rly. Co. Consol. Mtge. 6% 1931	3,260.00
1,000	United N. J. R. R. & Canal Co. Reg. 4% 1923	1,000.00
500	Bd. & Mtge., Mary J. & W. L. Berdan 5%	500.00
2,000	Bond & Mtge., Joseph Sharpe 5%	2,000.00
1,200	Bond & Mtge., Catherine Warren 5%	1,200.00
	Cash uninvested	139.10
		$18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treas.

(Schedule C)

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

Fred Labaugh, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account, that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

FRED LABAUGH.

Sworn and subscribed to this 23rd day of April, A. D. 1917, before me
Helen Granger,
Notary Public of N. J.

Decree on Accounting of 1917.

PASSAIC COUNTY ORPHANS' COURT.

April Term A. D., 1917.

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee *of* Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, Deceased.	Decree on Intermediate Accounting and Dismissal of Exceptions. ing.

The Surrogate having audited and stated the Intermediate account of The Paterson Safe Deposit and Trust Company, Trustee of Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the twenty-fourth day of May, A. D., 1917, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said Twenty-fourth day of May, A. D. 1917, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and exceptions being made thereto, by Carrie S.

Beam, William B. Beam and John Beam and the hearing having been had thereon in the presence of Henry Marelli, Esq., Proctor for the exceptants, and John L. Griggs, Esq., Proctor for the said Accountant and the Court being of the opinion that the exceptions were not well taken and should be overruled and the said account allowed; It is, on this twenty-fourth day of May A. D., nineteen hundred and seventeen, ordered, adjudged and decreed that the said exceptions be overruled and that the said account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of Eighteen thousand seven hundred six and $^{1}/_{100}$ dollars, and a balance of income amounting to the sum of Ninety dollars remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of One hundred three and $^{40}/_{100}$ dollars as and for its commissions, on the sum of Two thousand sixty-eight and $^{09}/_{100}$ dollars of income collected by it, and that a counsel fee of Twenty-five dollars be allowed to John L. Griggs proctor for said accountant, on the argument of the said exceptions, together with the costs of same. And that the Surrogate be allowed the sum of Thirty $^{88}/_{100}$ dollars for fees, advertising and posting notices.

WILLIAM W. WATSON,
Judge.

(Endorsed:)

Passaic County Orphans' Court.
April Term, A. D. 1917.

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee of Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, Deceased.

Intermediate Account and Decree Thereon, and dismissal of exceptions.

Filed April 24th, 1917.

Decree Recorded Book X of Orphans' Court Records, Page 184.

Account Recorded Book F-3 of Accounts, Page 514 and etc.

Exceptions to Accounting of 1917.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.	Exceptions to Account.

Carrie S. Beam, William B. Beam and John Beam, beneficiaries under the last will and testament of Sarah A. Cooke, deceased, hereby except to the account of Paterson Safe Deposit and Trust Company, Trustee under the last will and testament of said Sarah A. Cooke, deceased, for the following reason:

THE ACCOUNT DOES NOT EXPLAIN DEPRECIATION IN VALUE OF CORPUS.

The accountant filed an intermediate account in February 1908, one in April, 1910, one in April 1912, one in April, 1914, another in April 1915 and the present one to which exception is herein made. Each of said accounts except the one filed in April, 1915, and the present one showed the corpus of said Carrie S. Beam's share of the estate, in which said William B. Beam and John Beam also have an interest, to be about thirty thousand dollars, and the decree of the court, in each case, so declared. None of said accounts discloses any depreciation and since the accounting of 1914 there has been no material depreciation in the assets of the estate.

Wherefore, exceptants pray that the account of said Paterson Safe Deposit and Trust Company, the trustee herein, be disallowed as filed; that said trustee be required to account to the said beneficiaries of said estate for the depreciation in the value of said share of Carrie S. Beam subsequent to the decree of April, 1914.

HENRY MARELLI,
Proctor of Exceptants.

Filed May 24th, 1917,
FREDERIC BEGGS,
Surrogate.

Intermediate Account of 1919.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Twenty-ninth day of May, next, at which time application will be made for the allowance of commissions.

Dated, April 21, 1919.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

JOHN L. GRIGGS,
Vice-President.

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

T. W. HENDERHOT, of full age, being duly sworn, on his oath, saith that he is the Bookkeeper of The Call Printing and Publishing Company, and that the annexed notice was published on April 24, 1919, May 1, 8, 15, 22, 1919, in The Morning Call, a newspaper printed and published at Paterson, in this State.

T. W. HENDERHOT.

Sworn and subscribed before me
this 22nd day of May, 1919.

GARRET H. STURR,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam, will be audited and stated by the Surrogate of the County of Passaic, and reported for Intermediate settlement to the Orphans' Court of said County, on the Twenty-ninth day of May next, at which time application will be made for the allowance of commissions.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

By JOHN L. GRIGGS,
Vice-President.

Dated, April 21st, 1919.

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

LOUIS KIEVIT, being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office, and on the corner of East Main and North Main St., all in the City of Paterson, N. J., on the 25th day of April, A. D. 1919.

LOUIS KIEVIT.

Sworn and subscribed at Paterson before me this 25th of April A. D. 1919.

GEORGE L. KING,
A Commissioner of Deeds of New Jersey.

Orphans' Court Records—Accounting of 1919.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate of SARAH A. COOKE, *Deceased.*	On Accounting. Petition.

To the Orphans' Court of the County of Passaic:

The petition of The Paterson Safe Deposit and Trust Company of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the Last Will and Testament of Sarah A. Cooke, Deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

Edward B. Beam, of full age, a grandson of testator, who resides at No. 188 River Street, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552 15th Avenue in the City of Paterson, State of New Jersey, and

John C. Beam, of full age, a grandson of Testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account:

Orphans' Court Records—Accounting of 1919.

As to Corpus.

Accountant charges itself as follows:

Balance in the hands of Trustee as shown by its last previous accounting	$18,706,10
Amount received during period covered by this account	none
Total charges	$18,706.10

Accountant prays allowance as follows:

Amount of disbursements	none
Balance of corpus in the hands of Trustee	$18,706.10

As to Income.

Accountant charges itself as follows:

Balance in hands of Trustee as shown by its last previous accounting	90.00
Amount received during period covered by this account	1,759.11
Total charges	$1,849.11

Accountant prays allowance as follows:

Amount of disbursements as shown by said account	$1,704.11
Balance of income in the hands of Trustee	$145.00

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commisions.

Dated. Paterson, N. J.
April 21, 1919.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

JOHN L. GRIGGS,
Vice-President.

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

JOHN L. GRIGGS, being duly sworn upon his oath deposes and says that he is the Vice-President and Trust Officer of The Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

JOHN L. GRIGGS.

Subscribed and sworn to before me this 21st day of April, 1919.

ELVA M. BENSON,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, will be audited and stated by the Surrogate of the County of Passaic, and reported for Intermediate settlement to the Orphans' Court of said County, on the Twenty-ninth day of May, next, at which time application will be made for the allowance of commissions.

Dated, April 21st, 1919.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

By JOHN L. GRIGGS,
Vice-President.

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

ELVA M. BENSON, being duly sworn upon her oath, according to law, deposes and says that on the Twenty-first day of April, Nineteen Hundred and Nineteen, she deposited in the United States Mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice addressed to

Carrie S. Beam, No. 552 15th Avenue, Paterson, N. J.

Edward B. Beam, No. 188 River Street, Paterson, N. J.

William B. Beam, No. 552 15th Avenue, Paterson, N. J.

John C. Beam, No. 552 15th Avenue, Paterson, N. J.

ELVA M. BENSEN.

Subscribed and sworn to at Paterson, N. J.
before me this 21st day of April, 1919.

CHARLES M. VAN BUREN,
M. C. C. of N. J.

Filed April 24, 1917,

FREDERIC BEGGS,
Surrogate.

Orphans' Court Records—Accounting of 1919.

The Intermediate Account of

THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the Will of Sharah A. Cooke, deceased, for Carrie S. Beam, from the fifteenth of April, 1917, to the fifteenth day of April 1919, both of the money and property received by the said Trustees on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself:

DEBTOR.

Balance of corpus as per last accounting and Amount of assets as per appraisal on division on accounting of Apr. 30, 1915, (Schedule C)		$18,706.10
Income received (Schedule A)	$1,849.11	
Disbursements from Income (Schedule B)	$1,704.11	145.00
Total Trust April 15, 1919.		$18,851.10

INCOME ACCOUNT.

(Schedule A)

To Income received as follows:

1917			
Apr. 15, Balance as per last accounting			90.00
16, Div. Brooklyn City R. R. Co.			8.00
May 4, Cps. Passaic Lighting Co.		25.00	
	Premium	1.00	24.00
June 1, Reg. Int. Lehigh Valley R. R. Co.			30.00
18, Cps. Baltimore & Ohio R. R. Co.			25.00
18, " Consolidated Traction Co.			25.00
18, " Paterson Ry. Co.		90.00	
	Premium	10.00	80.00
26, Int. on Warren Mtge. to 6/30/17			30.00

July	2, Cps. Mobile & Ohio R. R.	15.00		
		Premium 5.00		10.00
	2, " Passaic Water Co.			25.00
	2, Int. on Sharpe Mtge. 6/30/17			50.00
	2, " " Berdan " "			12.50
	16, Div. Brooklyn City R. R. Co.			10.00
Aug.	4, Reg. Int. United N. J. R. R. & Canal Co.			20.00
Sept.	1, Cps. Pat. & Pass. G. & E. Co.			25.00
Oct.	2, " Long Dock Co.	60.00		
		Premium 10.00		50.00
	4, " Mobile & Ohio R. R.	15.00		
		Premium 5.00		10.00
	16, Div. Brooklyn City R. R. Co.			10.00
Nov.	2, Cps. Passaic Lighting Co.			25.00
Dec.	1, Reg. Int. Lehigh Valley R. R. Co.			30.00
	5, Cps Baltimore & Ohio R. R.			25.00
	5, " Consol. Traction Co.	25.00		
		Premium 1.00		24.00
	5, " Paterson Ry. Co.	90.00		
		Premium 10.00		80.00
	31, Int. on Warren Mtge. to 12/31/17			30.00
1918				
Jan.	3, " on Sharpe Mtge. to 12/31/17			50.00
	3, Cps. Mobile & Ohio R. R.			10.00
	3, " Passaic Water Co.			25.00
	7, Int. on Berdan Mtge. to 12/31/17			12.50
	15, Div. Brooklyn City R. R. Co.			10.00
Feb.	4, Reg. Int. United N. J. R. R. & Canal Co.			20.00

(Schedule A. continued)

Mar.	1, Cps. Paterson Passaic G. & E. Co.			25.00
Apr.	1, " Long Dock Co.	60.00		
		Premium 10.00		50.00
	1, " Mobile & Ohio R. R.	15.00		
		Premium 5.00		10.00
	15, Div. Brooklyn City R. R.			10.00
May	1, Cps. Passaic Lighting Co.			24.00
June	1, " Baltimore & Ohio R. R.			25.00

	1, " Consol. Tract. Co.	25.00		
		Premium 1.00	24.00	
	1, " Paterson Railway Co.		80.00	
	18, Reg Int. Lehigh Valley R. R.		30.00	
	18, Cps. First Liberty Loan		1.75	
	29, Int. on Warren Mtge. to 6/30/18		30.00	
July	1, Cps. Mobile & Ohio R. R.	15.00		
		Premium 5.00	10.00	**10**
	1, " Passaic Water Co.		25.00	
	3, Int. on Sharpe Mtge. to 6/30/18		50.00	
	5, " " Berdan Mtge. to "		12.50	
	15, Div. Brooklyn City R. R. Co.		10.00	
Aug.	1, Reg. Int. United N. J. R. R. & Canal Co.		20.00	
Sept.	1, Cps. Paterson, Passaic G. & E. Co.		25.00	
	15, " Third Liberty Loan		1.49	
Oct.	1, " Long Dock Co.	60.00		
		Premium 10.00	50.00	
	1, " Mobile & Ohio R. R. Co.	15.00		
		Premium 5.00	10.00	**20**
	15, Div. Brooklyn City R. R. Co.		10.00	
Nov.	1, Cps. Passaic Lighting Co.	25.00		
		Premium 1.00	24.00	
Dec.	2, " Baltimore & Ohio R. R.		25.00	
	2, " Consol. Traction Co.	25.00		
		Premium 1.00	24.00	
	2, " Paterson Ry. Co.	90.00		
		Premium 10.00	80.00	
	2, Reg. Int. Lehigh Valley R. R.		30.00	
	16, Cps. First Liberty Loan		1.75	**30**
	30, Int. on Warren Mtge. to 12/31/18		30.00	
1919.				
Jan.	1, Cps. Passaic Water Co.		25.00	
	1, " Mobile & Ohio R. R. Co.	15.00		
		Premium 5.00	10.00	

40

(Schedule A., Continued)

1919				
Jan.	9,	Int. on Bergen Mtge. to 12/31/18		12.50
	21,	" " Sharpe " "		50.00
	15,	Div. Brooklyn City R. R. Co.		10.00
Feb.	1,	Reg. Int. United N. J. R. R. Co.		20.00
Mar.	1,	Cps. Pat. & Pass. G. & E. Co.		25.00
	15,	" Third Liberty Loan		2.12
Apr.	1,	" Long Dock Co.		50.00
	1,	" Mobile & Ohio	15.00	
		Premium	5.00	10.00
	15,	Div. Brooklyn City R. R. Co.		10.00
				$1,849.11

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1917				
June	1,	To J. L. Griggs, Counsel Fee	(1)	25.00
	18,	" Paterson Safe Deposit & Trust Co., Commission to April 15, 1917	(2)	103.40
	18,	" To Frederic Beggs, Surrogate	(3)	30.88
July	2,	" To Carrie S. Beam	(4)	240.22
Oct.	2,	" Carrie S. Beam	(5)	105.00
1918				
Jan.	5,	" Carrie S. Beam	(6)	299.00
Apr.	1,	" Carrie S. Beam	(7)	117.50
July	13,	" Carrie S. Beam	(8)	300.00
Oct.	3,	" Carrie S. Beam	(9)	118.74
1919				
Jan.	1,	" Carrie S. Beam	(10)	249.75
Apr.	1,	" Carrie S. Beam	(11)	114.62
				$1704.11

(Schedule C)

This accountant further reports that the principal fund of said Trust is invested as follows:

1000.	Baltimore & Ohio R. R. Co. bonds	$1000.00
400.	Brooklyn City R. R. Co., Stock	800.00

4500.	Central Park, N. & E. River R. R. Co. Stock	1.00
1000.	Consolidated Traction Co. Bonds	1025.00
1000.	Lehigh Valley Annuity Bonds	1330.00
100.	Liberty Loan of 1917	98.00
100.	Third Liberty Loan	100.00
2000.	Long Dock Co. Bonds	2320.00
1000.	Mobile & Ohio R. R. Co. Bonds	1030.00
1000.	Passaic Water Company Bonds	1000.00
1000.	Passaic Lighting Company	1005.00
1000.	Paterson & Passaic G. & E. Co. Bonds	1010.00
3000.	Paterson Ry. Co. Cons. Mtge.	3220.00
1000.	United N. J. R. R. & Canal Co. Bonds	1000.00
500.	Bond & Mortgage Mary J. Berdan	500.00
2000.	" " " Joseph Sharpe	2000.00
1200.	" " " Catherine Warren	1200.00
	Uninvested Cash	67.10
		$18706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
Trustee.

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

John L. Griggs, being duly sworn, on his oath says that he is the Vice-President of the Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant, and as to the credits claimed thereto, according to the best of his knowledge and belief.

JOHN L. GRIGGS.

Subscribed and sworn to before me }
this 21st day of April, 1919 }
Elva M. Benson,
Notary Public of N. J.

To the Judges of the Orphans' Court of the County of Passaic

The above account having been placed on the files of my office on the twenty-second day of April, 1919, and being by me audited and stated, is now reported for settlement.

Frederic Beggs,
Surrogate.

Dated, Paterson, N. J.
May 29th, 1919.

Decree on Accounting of 1919.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam.	Decree on Intermediate Accounting.

The Surrogate having audited and stated the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam, and placed the same on the files of his office twenty days previous to the 29th day of May, 1919, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the sat-

isfaction of the court that notice of intention to settle the said account on said 29th day of May, 1919, in this Court was given by said accountant according to law, and the matter being then and there adjourned until the 5th day of June, 1919; and the said court on the day last aforesaid having examined the said account and vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars, and exception being made thereto by Carrie S. Beam, William B. Beam and John C. Beam, to which exceptions accountant gave notice of its intention, served upon Henry Marelli, Proctor of said exceptants, to apply to the said Court on Thursday, June 5th, 1919, for an order to remove and strike from the records of the said court said exceptions on the ground that the same were vague, uncertain and scandalous and not proper exceptions in accordance with the statute in such case made and provided, and the matter coming on to be heard on the 5th day of June, 1919, in the presence of Henry Marelli, Proctor of exceptants, and John L. Griggs, Proctor of accountant:

It is on this 5th day of June, 1919, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of $18,706.10 remaining in the hands of said accountant to be disposed of according to law.

It is further ordered, adjudged and decreed that the said exceptions be disallowed and removed and stricken from the records of this Court.

It is further ordered that the said accountant be allowed the sum of $87.96 as and for its commis-

sions on the sum of $1,759.11 of income collected by it and that a counsel fee of $25.00 be allowed to John L. Griggs, Proctor for said accountant, and that the Surrogate be allowed the sum of thirty-one and $^{59}/_{100}$ dollars for fees, advertising and posting notices and thirty-two cents for Notice to strike out exceptions.

WILLIAM W. WATSON,
President Judge.

(Endorsed:)

Passaic County Orphans' Court.

April Term A. D. 1919.

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam.

Intermediate Account and Decree Thereon.

Filed April 22nd, 1919.

Decree Recorded Book Y of Orphans' Court Recorded, Page 381.

Account Recorded Book J-3 of Accounts, Page 324 &c.

FREDERIC BEGGS,
Surrogate.

Exceptions to Accounting of 1919.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate of Sarah A. Cooke, deceased.	On Accounting. On Exceptions to Account. Exceptions.

Carrie S. Beam, one of the beneficiaries of the trust created under the last Will of Sarah A. Cooke, deceased, and John C. Beam and William B. Beam, two of the remaindermen of said trust, hereby file the following exceptions to the account of the Paterson Safe Deposit & Trust Co., the trustee of said trust named in said Will.

They except to the account on the ground that the trustee has by its several acts as hereinafter set forth proved conclusively that it either has no conception of the functions of a trustee and the obligations it is under to the beneficiaries under the laws of this state or is of the opinion that it is beyond the pale of those laws and may and in fact shows that it does regard the property of the trust estate as its own to do with as it sees fit and to totally disregard the beneficiary in any or all of its relations with her wherein she does by law have a voice.

(1) That in the years 1908, 1910 and 1912, the trustee filed in this court accountings wherein it was shown under oath that the entire trust estate as then held amounted to some thirty to fifty thousand dollars more than was actually in the trustee's hands at those times, by virtue of which

sworn statements of the trustee this court did at those times then decree that there was such an erroneous amount in its hands "to be disposed of according to law", and by reason whereof this beneficiary was for several years kept in ignorance of the true condition of affairs in regard to the trust, which afterward made it practically impossible for her to compel the restitution of sums lost by the said trustee during this period.

(2) That in the year 1915 this trustee did file a fifth account wherein it was attempted to charge off this gross depreciation of Fifty Six Thousand Nine Hundred and Sixty Nine Dollars and fifty cents without any explanation concerning how and when the said depreciation had occurred notwithstanding that in the interim since this court had last previously decreed the trust estate to be practically intact there had been no material depreciation in the assets of the estate and none of the accounts had disclosed any depreciation.

(3) That in this attempt they were sustained by the then judge of this court who under the laws of this state was not qualified to sit upon this bench and who in discharging them of liability did inquire "How can I punish them for something they have already done?" That thereafter it was attempted to secure from the court stenographer one Sidney Turner, the record of these proceedings in order that an appeal might be taken therefrom to the prerogative court but that the said attempts were futile and for that reason no appeal could be taken.

Exceptions to Accounting of 1919.

(4) That in the year 1917 this trustee did file a sixth account to which these exceptants filed exceptions which were by this Court overruled, on the ground that the matter was res adjudicata inasmuch as the court had passed upon it in 1915 as hereinbefore set forth. An exact wording of the decree of the court at that time is as follows: "And the court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in particulars and the same having been continued to this day, It is, etc." The language of the decree defies interpretation for a careful and close reading thereof fails to disclose, any bill of particulars wherein the account was not found correct, in what manner the account was not correct or any explanation of the wording of the decree so as to leave the impression that the court had not passed upon the entire account or having passed upon it in its entirely what had been found and the disposition ordered made of the findings. On this decree this court in 1917 based its refusal to hear anything further of the matters which it so completely closes and yet leaves open.

(5) That at the time of the application to this court in 1917 one of the remaindermen herein now excepting to the allowance of this account was in the military service of the United States and unable to give to the matter the close attention to which he was entitled under An Act of Congress approved March eighth, 1918, 40 Stat. par 604 before being by this court forever foreclosed of his rights therein.

Exceptions to Accounting of 1919.

(6) That this trustee has for several years past been in the habit of paying to the beneficiary her dividends not when due on the quarter, but at various times thereafter at their convenience in one case amounting to some seven or more weeks, on one of several excuses each in itself beyond the law. That numerous complaints to the trustee regarding this dereliction have been consistently disregarded. That on complaint to the directors of the said trustee trust company personally, the complaint has been met with indifference, discourtesy and contempt, the action of the trustee having by them been severally described as one of "the private actions" of the president of the trust company, one John W. Griggs, in which they had no concern and the simple say-so of the said Griggs has been referred to as a "reason" for the withholding. That on the occasion of the last of the said acts of the withholding this beneficiary addressed to the Board of Directors of the trustee trust company a communication dated January 7, 1919, in which inquiry was made as to whether or not it was the policy of the trustee to so withhold the dividends then due and informing them that on complaint to the treasurer of the trust company, one Fred Labaugh, the latter had cut her off while still engaged in conversation on the telephone. That this letter was never asknowledged nor a second letter sent on February 7, 1919, enclosing a copy of the first, although a copy of the latter, sent to one Arthur Ryle, a director of the trust company, was by him acknowledged in the same vein as previous complaints had been by him.

(7) That by reason of the foregoing the relation of trustee and cestui que trust, if it ever did, now no longer exists and the continuance of the relation in its present state finds no warrant in law or in equity and can only operate to the con tinued oppression of the beneficiary and the further dissipation of the trust estate.

(8) That the trustee is asking for fees out of money collected at various times throughout the entire period since its last accounting to this court which sum of money has been in their hands during this period in ever increasing amount without the payment to this beneficiary of one cent of interest thereon.

(9) That on previous occasions this trustee has adopted the same form of collection of its commissions months in advance even to the extent of overdrawing its five percent on the total income collected by introducing in the amount collected the balance from the last account which said money was rebated at times different from these at which in its account it was so sworn to have been done.

That by reason of the foregoing this trustee has proved that it is not entitled to any commissions whatsoever and that it is utterly incapable of discharging the functions of a trustee as interpreted by the laws of this state.

Carrie S. Beam.
John C. Beam.
William B. Beam.

Filed May 28, 1919,
FREDERIC BEGGS,
Surrogate.

Last Account, 1921.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber, as trustee for Carrie S. Beam, under the will of Sarah A. Cooke deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the Tenth day of February next, at which time application will be made for the allowance of commissions and counsel fees.

THE PATERSON SAFE DEPOSIT AND TRUST CO.,
By FRED LABAUGH, Treasurer.

Dated Jan. 5, 1921.

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

T. W. Hendershot of full age, being duly sworn, on his oath saith that he is the Bookkeeper of THE CALL PRINTING AND PUBLISHING COMPANY, and that the annexed notice was published on January 6-13-20-27, 1921, February 3, 1921, in THE MORNING CALL, a newspaper printed and published at Paterson, in this State.

T. W. HENDERSHOT.

Sworn and Subscribed before me }
this third day of February, 1921 }
Garret H. Sturr,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for Final settlement to the Orphans' Court of said County, on the Tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated January 5th, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
By FRED LABAUGH,
Treasurer.

State of New Jersey }
County of Passaic } ss.:

Louis Kievit being by me duly sworn according to law, on his oath saith, that he put a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office and on the corner of East Main St., and North Main St., all in the City of Paterson, N. J., on the 7th day of January A. D. 1921

LOUIS KIEVIT.

Sworn and subscribed this 7th day of January A. D. 1921 at Paterson, before me }
George L. King,
A Commissioner of Deeds of New Jersey.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.	On Account-Petition. ing.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC.

The petition of THE PATERSON SAFE DEPOSIT AND TRUST COMPANY of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the Last Will and Testament of Sarah A. Cooke, deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator who resides at No. 552-15th Avenue in the City of Paterson, State of New Jersey.

Edward Beam, of full age, a grandson of testator who resides at No. 188 River Street, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552-15th Avenue in the City of Paterson, State of New Jersey.

John C. Beam, of full age, a grandson of testator, who resides at No. 552-15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account.

As to Corpus.

Accountant charges itself as follows:

Balance as per book and appraisal value in the hands of Trustee as shown by its last previous accounting,	$18,706.10	
Amount received during period covered by this account,	None	
Total Charges,	$18,706.10	10
Accountant prays allowance as follows:		
Amount of disbursements,	None	
Balance of Corpus in hands of Trustee	$18,706.10	
As to Income.		
Accountant charges itself as follows:		
Balance in hands of Trustee as shown by lts last previous accounting,	$ 145.00	
Amount received during period covered by this account,	$ 1,637.18	
Total Charges	$ 1,782.18	20
Accountant prays allowance as follows:		
Amount of disbursements as shown by said account,	$ 1,652.48	
Balance of Income in the hands of Trustee	$ 129.70	

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commissions and counsel fees.

Dated, Paterson, N. J.
Jan. 5, 1921. 30

THE PATERSON SAFE DEPOSIT AND TRUST CO.
FRED LABAUGH, Treasurer.

40

State of New Jersey }
County of Passaic } ss.:

Fred Labaugh, being duly sworn upon his oath deposes and says that he is the Treasurer of the Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me }
this 10th day of January, 1921. }
Elva M. Benson,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for Final Settlement to the Orphans' Court of said County, on the Tenth day of February next, at which time application will be made for the allowance of commissions and counsel fees.

Dated January 5, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
By FRED LABAUGH, Treasurer

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

Elva M. Benson, being duly sworn upon her oath, according to law, deposes and says that on the Fifth day of January, Nineteen Hundred and Twenty-One, she deposited in the United States mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice, addressed to

Carrie S. Beam, 552 Fifteenth Ave., Paterson, N. J.

Edward Beam, 188 River St., Paterson, N. J.

William B. Beam, 552 Fifteenth Ave., Paterson, N. J.

John C. Beam, 552 Fifteenth Ave., Paterson, N. J.

ELVA M. BENSEN.

Subscribed and sworn to this 5th day of January, 1921, at Paterson, N. J., before me.
Chas. C. Stalter,
An Attorney at Law of New Jersey.

The Final Account of ,
THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the Fifteenth day of April, 1919 to the Fifth day of January, 1921, both of the money and property received by the said Trustees on account of the Trust Estate and its disbursements out of the same.

This accountant charges itself:

DEBTOR.

Balance of Corpus at Book Value as per last accounting,		18,706.10
Balance as per last accounting	145.00	
Income received (Schedule A)	1,637.18	
	1,782.18	
Disbursements from Income (Schedule B)	1,652.48	129.70
Total Trust January 5, 1921		18,835.80

INCOME ACCOUNT.

SCHEDULE A.

To Income received as follows:

1919		
Apr. 15, Balance as per last accounting		$145.00
May 1, Cps. Passaic Lighting Company		25.00
June 1, Reg. Int. Lehigh Valley R. R.		30.00
" " Cps. Baltimore & Ohio R. R.		25.00
" " " Consolidated Traction Co.	25/1	24.00
" " " Paterson Railway Co.	90/10	80.00
" " " First Liberty Loan		1.75
" " Int. on Zax Mortgage to date		13.89
" 23, " on Warren Mtge. to June 30, 1919		30.00
July 1, Cps. Mobile & Ohio R. R. Co.	15/5	10.00
" " " Passaic Water Company		25.00
" 15, Div. Brooklyn City R. R. Co.		10.00
Aug. 1, Reg. Int. United New Jersey R. R. Co.		20.00
" 18, Int. on Sharpe Mtge. to June 30, 1919		60.00
Sept. 1, Cps. Pat. & Pass. G. & E. Co.		25.00
" 15, " Third Liberty Loan		2.13
Oct. 1, " Long Dock Co.	60/10	50.00
" " " Mobile & Ohio R. R.	15/5	10.00

Nov.	1,	"	Passaic Lighting Co.		24.00	
Dec.	1,	Int.	Lehigh Valley R. R.		30.00	
	"	"	Cps. Baltimore & Ohio R. R.		25.00	
	"	"	" Consolidated Traction Co.	25 1	24.00	
	"	"	" Paterson Railway Co.	90 10	80.00	
	"	15,	" Victory Liberty Loan		14.91	
	"	"	" First Libery Loan		1.75	10
	"	26,	Int. on Max Gold Mtge. to Dec 31, 1919		60.00	
1920				15		
Jan.	2,	Cps.	Mobile & Ohio R. R. Co.	5	10.00	

INCOME ACCOUNT.

(Schedule A.)

1920						
Jan.	2,	Cps.	Passaic Water Co.		$25.00	
	"	"	Int. on Catherine Warren Mtge. to 12/31/19		30.00	20
Feb.	2,	Div.	United New Jersey R. R. Co.		20.00	
Mar.	1,	Cps.	Pat. & Pass. G. & E. Co.		25.00	
	"	16,	" Third Liberty Loan		2.12	
Apr.	1,	"	Long Dock Co. Prem.	60 10	50.00	
	"	"	" Mobile & Ohio R. R. Co. Prem.	15 5	10.00	
May	1,	"	Passaic Lighting Co. Prem.	25 1	24.00	
June	1,	"	Baltimore & Ohio R. R.		25.00	30
	"	"	" Consolidated Tract. Co. Prem.	25 1	24.00	
	"	"	" Paterson Railway Co. Prem.	90 10	80.00	
	"	"	Reg. Int. Lehigh Valley Annuity bonds		30.00	
	"	15,	Cps. First Liberty Loan		1.75	
	"	"	" Victory Liberty Loan		17.77	
	"	28,	Int. on Catherine Warren Mtge. 6/30/20		26.60	
	"	30,	" on Max Gold Mtge to 6/30/20		60.00	
July	1,	Cps.	Mobile & Ohio R. R. Co.	15 5	10.00	40

	" " "	Passaic Water Company			25.00
Aug.	4, Div.	United New Jersey R. R. Co.			20.00
Sept.	1, Cps.	Pat. & Pass. G. & E. Co.			25.00
	" 15, "	Third Liberty Loan			2.13
Oct.	1, "	Long Dock Co.	Prem.	60 10	50.00
	" " "	Mobile & Ohio R. R. Co.	Prem.	15 5	10.00
Nov.	1, "	Passaic Lighting Co.	Prem.	25 1	24.00
Dec.	1, "	Baltimore & Ohio R. R. Co.			25.00
	" " "	Consol. Tract. Co.	Prem.	25 1	24.00
	" " "	Paterson Railway Co.	Prem.	90 10	80.00
	" "	Reg. Int. Lehigh Valley Annuity bonds			30.00
	" 15, "	First Liberty Loan			1.75
	" " "	Victory Liberty Loan			22.61

INCOME ACCOUNT.
(Schedule A.)

1920				
Dec.	30, Int.	on Catherine Warren Mtge. to Dec. 31, 1920		$ 25.02
	" 31, Int.	on Max Gold Mtge. to Dec. 31, 1920		60.00
1921				
Jan.	1, Cps.	Mobile & Ohio R. R.		15.00
	" " "	Passaic Water Company		25.00
				$1,782.18

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1919				
June	5, To	Paterson Safe Deposit & Trust Co. Commission	1	87.96
	" 9, "	Frederic Beggs, Surrogate	2	31.91
July	3, "	Carrie S. Beam	3	280.00
	" 15, "	To Int. on Victory Bonds purchased	4	3.52
Oct.	2, "	Carrie S. Beam	5	160.00
1920				
Jan.	2, "	Carrie S. Beam	6	300.00

Apr.	1,	"	Carrie S. Beam	7	105.00
"	12,	"	Int. paid on Victory Bds. purchased	8	3.09
July	3,	"	Carrie S. Beam	9	350.00
"	15,	"	Int. paid on Victory Bds. purchased	10	1.00
Oct.	4,	"	Carrie S. Beam	11	100.00
1921					
Jan.	5,	"	Carrie S. Beam	12	230.00
					$1,652.48

(Schedule C.)

This accountant further reports that the principal fund of said Trust is invested as follows:

Par Value		Book Value.
$1000	Baltimore & Ohio R. R. Co. Bonds	$ 1000.00
400	Brooklyn City Railway Co. Stock	800.00
4500	Central Park N. & E. R. R. R. Co. Stock	1.00
1000	Consolidate Traction Co. Bonds	1021.00
1000	Lehigh Valley Annuity Bonds	1330.00
100	Liberty Loan of 1917, Bonds	98.00
2000	Long Dock Company Bonds	2290.00
100	Third Liberty Loan Bond	100.00
200	Victory Liberty Loan Bonds	191.84
200	Victory Liberty Loan Bonds	195.00
550	Victory Liberty Loan Bonds	550.00
1000	Mobile & Ohio R. R. Co. Bonds	1000.00
1000	Passaic Lighting Co. Bonds	1002.00
1000	Passaic Water Company, Bonds	1000.00
1000	Paterson & Passaic G. & E. Co. Bonds	1010.00
3000	Paterson Rly. Co. Consol. Mtge. Bonds	3180.00
1000	United New Jersey R. R. & Canal Co. Bonds	1000.00
2000	Bond and Mortgage Max Gold	2000.00
800	" " " Catherine Warren	800.00
	Uninvested Cash	137.26
		18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treas.

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

Fred Labaugh, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant and as to the credits claims thereto, according to the best of his knowledge and belief.

FRED LAUBAUGH.

Subscribed and sworn to before me
this 10th day of January, 1921
Elva M. Benson,
Notary Public of N. J.

Decree in Accounting of 1921.

PASSAIC COUNTY ORPHANS' COURT.
Term A. D., 19

In the matter of the final account of the Paterson Safe Deposit and Trust Company, Trustee for Carrie S. Beam under the Last Will and Testament,

of

SARAH A. COOKE, deceased.

The Surrogate having audited and stated the final account of The Paterson Safe Deposit and Trust Company, Trustee for Carrie S. Beam under the Last Will and Testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the tenth day of February A. D., 1921, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said tenth day of February A. D., 1921, in this Court was given by said accountant acording to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and exceptions being made thereto, by William B. Beam and John C. Beam and proofs and allega-

tions of the parties having been heard and considered by the Court and said exceptions overruled in their entirety.

It is, on this Twenty-fourth day of February A. D., nineteen hundred and Twenty-one ordered, adjudged and decreed that the said account be in all things allowed as reported and the said exceptions be and the same are hereby overruled and that there is a balance remaining in the hands of said accountant amounting to the sum of Eighteen Thousand Seven Hundred and Six Dollars and Ten cents ($18,706.10) to be disposed of according to law, which balance is corpus at accountant's book value.

It is further ordered that from the aforesaid balance the said accountant be allowed the sum of Four Hundred dollars as and for its commissions, and that a counsel fee of Two Hundred and Fifty dollars be allowed to Griggs & Harding, proctors for said accountant, and that a further commission of $81.86 on income received during the period of said account be also allowed to said accountant; and that the Surrogate be allowed the sum of thirty seven and $^{39}/_{100}$ dollars for fees, advertising and posting notices, two and $^{99}/_{100}$ dollars for citations and six and $^{12}/_{100}$ dollars for Sheriff's fees.

WILLIAM W. WATSON,
Judge.

Petition of William B. Beam for Relief.

PASSAIC COUNTY ORPHANS' COURT.

IN THE MATTER *of* The Estate of SARAH ANN COOKE, *Deceased.*	On Petition for Relief.

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

William B. Beam, of the City of Paterson, in the County of Passaic and State of New Jersey, one of the remaindermen of a trust created for the benefit of Carrie S. Beam of the said City of Paterson by and under the last will and testament of Sarah Ann Cooke, deceased, being duly sworn according to law upon his oath, deposes and says that he is the petitioner in the petition hereafter and hereto annexed and that he, in the presence of John C. Beam, one of the other remaindermen of the said trust, in the court room of The New Jersey Court of Errors and Appeals, at the hour of 4 o'clock in the afternoon of the 15th day of February, 1921, instant, presented the said petition to The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, as The Ordinary of the State of New Jersey, and that the Honorable Edwin Robert Walker in the aforesaid capacity as The Ordinary of the State of New Jersey then and there accepted the same.

WILLIAM B. BEAM.

Subscribed and sworn to this
16th day of February, 1921, at
Paterson, N. J., before me.

(L. S.) BEULAH LOCKWOOD,
A Notary Public of New Jersey.

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

John C. Beam of the City of Paterson in the County of Passiac and State of New Jersey, one of the remaindermen of a trust created for the benefit of Carrie S. Beam of the said City of Paterson, by and under the last will and testament of Sarah Ann Cooke, deceased, being the same John C. Beam mentioned in the foregoing affidavit of William B. Beam heretofore annexed, being duly sworn according to law upon his oath, deposes and says that he saw the said William B. Beam in the court room of The New Jersey Court of Errors and Appeals, at the hour of 4 o'clock in the afternoon of the 15th day of February, instant, 1921, present the petition hereafter and hereto annexed to The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, as The Ordinary of the State of New Jersey and that he, the said John C. Beam, then and there both saw and heard The Honorable Edwin Robert Walker, accept the same.

JOHN C. BEAM.

Subscribed and sworn to this
16th day of February, 1921, at
Paterson, N. J., before me.

(L. S.) BEULAH LOCKWOOD,
A Notary Public of New Jersey.

Petition of William B. Beam for Relief.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER *of* Appeal from certain Extraordinary Proceedings in the Orphans' Court of the County of Passaic in the Matter of the Estate of SARAH ANN COOKE, *Deceased.*	On Petition for Relief.

TO THE ORDINARY OF THE STATE OF NEW JERSEY:

The petition of William B. Beam, of the City of Paterson, in the County of Passaic and State of New Jersey, respectfully shows that:

1. Petitioner is one of three remaindermen of a trust created under the will of Sarah Ann Cooke late of the County of Passaic, deceased, for the benefit of Carrie S. Beam of the City of Paterson in said County.

2. The Paterson Safe Deposit and Trust Company, a corporation organized under the laws of this state and having its place of business at number one hundred and fifty two Market Street in the said City of Paterson, was appointed by and under the said will, trustee of the said trust estate and thereafter accepted the said trust and entered upon its duties thereunder.

3. Sarah Ann Cooke departed this life in the month of May 1905, and shortly thereafter the

said trustee entered upon its duties as aforesaid.

4. In the year 1911, the said beneficiary, Carrie S. Beam discovering through the loss of income that a large portion of the said trust estate had been wasted and lost, thereupon commenced a suit in the New Jersey Court of Chancery against the said trustee for an accounting.

5. In the year 1914 the aforesaid action terminated in favor of the said trustee who was relieved from liability to account to the said beneficiary on the ground that as his good faith had not been questioned he was only to be held for a failure to exercise a reasonable discretion in the premises and that he had exercised such a discretion.

6. In the years succeeding the termination of above suit the trust estate continued to depreciate and the relation of trustee and cestui que trust in the above trust estate proceeded to the vanishing point.

7. Alarmed at this condition of affairs the three remaindermen of this trust, to wit, your petitioner herein and Edward Beam and John C. Beam of the said City of Paterson on the 7th day of December 1920 made a formal demand upon the said trustee trust company that it go into the Passaic County Orphans' Court, there restore the said fund, compel its president to restore certain sums of money that he had forced the said beneficiary to spend in attempts to save the said trust estate and then and there release the said trust estate to a new trustee to be appointed by the court.

8. On the 6th day of January, 1921, the said trustee served upon the said remaindermen

and the said beneficiary notice that upon the 10th day of February, instant, it would apply to the Orphans' Court of the County of Passaic for the settlement of its final account under the said trust and for an order discharging it and relieving it of all further duties under the said trust.

9. On the 21st day of January, 1921, the said trustee filed its final account in the office of the Surrogate of the County of Passaic.

10. From the date of service upon the said remaindermen of the aforesaid notice this petitioner has tried diligently to find counsel to represent him in the said matter and he is informed and believes that the other two remaindermen hereunder have likewise attempted to secure such services.

11. Notwithstanding all of these attempts, it was not until the evening of the 9th day of February, inst, that counsel was found for the purpose in the person of Carl Abruzzese, Esq., a counsellor at law of the City of Newark, in the County of Essex and State of New Jersey.

12. On the 9th day of February as aforesaid your petitioner and one of the other two remaindermen hereunder, to wit, John C. Beam, had a clear understanding with the said Carl Abruzzese, as to what was desired of him on the morrow and the said understanding was in substance as follows: Exceptions were to be drawn and filed excepting to the final account as then filed by the trustee in the Surrogate's Office of the County of Passaic, the said exceptions were to be argued on the hearing and the court was to be asked that in entering its decree thereon such decree should provide that it should not operate as a bar to any future application to the

court for the opening of the preceding intermediate accounts for fraud, filed in the said court by the said trustee in the said trust estate, in conformity with the concluding words in the opinion of Vice Ordinary Leaming in the *Slater* Case, 88 N. J. Eq. 296, (1917), to wit, "The decree should also provide that it shall not in any way be operative as a bar to any application to open the intermediate account for fraud or mistake."

13. On the 10th day of February, instant the said Carl Abruzzese did file at 9:38 A. M. in the Surrogate's Office of the County of Passaic exceptions drawn up by him in conformity with the understanding set out hereabove, which said exceptions were signed by the said John C. Beam, and William B. Beam as exceptants.

14. Thereafter the said Carl Abruzzese accompanied by your petitioner and the said John C. Beam entered the court room of the Passaic County Orphans' Court, the former going inside the rail and the latter remaining without.

15. Shortly thereafter John Leavitt Griggs, a counsellor at law of the said City of Paterson and counsel for the said trustee trust company, entered the said court room and approached the said Carl Abruzzese and handed him a certain piece of paper.

16. The said Carl Abruzzese appeared to read the said paper for a few moments when he arose and coming without the rail beckoned your petitioner and the said John C. Beam with him out into the hall without the court room where he stated that due to the existence of a certain letter written by your petitioner to the Justices of the Peace of Passaic County asking them to accept process against Judge William W. Wat-

son, who was then sitting on the bench of the said Orphans' Court to hear and settle the said account, he could not go on with the case but that he would return and make a motion for an adjournment, placing the entire matter over for a week.

17. Your petitioner and the said Carl Abruzzese thereupon returned inside the court room, the former resuming his seat and the latter going up to the bar with the said J. L. Griggs where for some five minutes or more they were engaged with the judge, the said William W. Watson, in a conversation that your petitioner could not hear.

18. At the same moment of re-entry of your petitioner into the court room, Edward Beam one of the other said remaindermen, entered the court room and seated himself without the rail.

19. Throughout this hearing that was taking place before the bar your petitioner did not see the Surrogate of Passaic County in the court room and he twice heard the said J. L. Griggs say prior thereto, "Where is the Surrogate?" at which inquiry a small young man who accompanied the said Grigss left the room and returned alone.

20. At the conclusion of this hearing your petitioner saw the said Carl Abruzzese leave the bar and with him your petitioner left the court room and proceeded to the street without the court house at which place an understanding was had with him as to just what had occurred. Your petitioner was then and there informed in the presence of the said Edward Beam that the entire matter had been adjourned for one week from that day and that your petitioner had lost

nothing by the dropping by counsel of the case before the bar.

21. On the 11th day of February, instant your petitioner accompanied by the said John C. Beam called at the Surrogate's Office of the County of Passaic and asked to be allowed to see all the papers in the record of the aforesaid proceedings of the previous day. They were then and there shown an order signed by the court on the said 10th day of February, relieving and discharging the said trustee, The Paterson Safe Deposit and Trust Company "from all further duties of its said office" in connection with the said trust estate. Your petitioner then and there asked the Deputy Surrogate where he had gotten the said papers and was told that the Surrogate had brought them down from the court room. Upon your petitioner informing the said deputy that the surrogate was not present throughout the said hearing the said deputy said: "They sent down for me twice and I got ready to go when the Surrogate came and went up."

22. Thereupon your petitioner accompanied by the said John C. Beam called upon the said Carl Abruzzese at his office in the said City of Newark and again asked him what his understanding of the adjournment of the previous day had been and if "All had been put over for a week." To which query the said Abruzzese replied "Yes". Upon further inquiry then and there the said Abruzzese said that the aforesaid order of discharge had been before the court and had been passed by the court at that time. Your petitioner and the other remaindermen were not so informed at the conclusion of the proceedings on the said 10th day of February.

23. By virtue of the foregoing order this trust estate is at this day and hour and may be for an indefinite period without a trustee, that it has so been without a trustee since the said tenth day of February on which day the said order without the knowledge of your petitioner or of any of the other remaindermen or the beneficiary was by Judge William W. Watson signed.

2 Lewin on Trusts. p. 838 *671.

"It is certain that the Court cannot divest him (the trustee) of the *estate* before some the office it is not unreasonable that if a man once engages to undertake it, he shall one can be found to take it, and even as to so leave the estate without a trustee."
not retire from it without any reason, and

Ardill v. Savage, 1 Ir. Eq. Rep. 79.
Forshaw v. Higginson, 20 Beav. 485.
Gardner v. Downes, 22 Beav. 397.

24. Your petitioner has heretofore unsuccessfully attempted to secure the trial of the said Judge Watson before the high court of impeachment of this state on charges of misfeasance and malfeasance in office in connection with the settlement of one of the Intermediate accounts of this same trustee and of the final account of the executors of the estate of the said Sarah Ann Cooke, deceased.

25. The said Judge William W. Watson on the said 10th day of February, instant sat upon the bench of the said court with full knowledge of the said charges and of other charges in connection therewith that your petitioner had attempted to bring against him.

26. Upon the settlement of the last intermediate account of this trustee as heretofore referred to the said Judge William W. Watson shut your

petitioner, an exceptant to said account, out without hearing counsel for the exceptants, entering an order and decree while said counsel was yet without the court room and before any hearing at all in the matter was had before the court for the exceptants.

27. Your petitioner is attempting to secure counsel to appear for him on the adjourned hearing of February 17, 1921, but up to this hour his attempts have not met with success.

28. Meanwhile the trust estate is without a trustee and the court which successfully entered its order depriving the trust estate thereof without your petitioner's knowledge is still in a position to do further damage to the interests of the remaindermen and the beneficiary.

Therefore your petitioner prays that the aforesaid order discharging the said trustee be revoked, that the entire matter be removed out of the hands of Judge William W. Watson of the Passaic County Orphans' Court forthwith and that all and singular the proceedings had before the said Judge in the said court be inquired into and for such other relief as to the court may seem just.

Dated, Paterson, N. J.,
February 13, 1921.

WILLIAM B. BEAM.
Proctor and Counsel for himself.

Exhibit C-5.

THE PATERSON SAFE DEPOSIT & TRUST COMPANY
JOHN W. GRIGGS, President
J. EDWARDS BARBOUR, 1st V. P. F. LABAUGH, Treas.
J. L. GRIGGS, 2nd V. P. & Trust Officer J. L. CONNOLLY, Sec.
152 Market Street
Paterson, New Jersey

April 15, 1920.

Mrs. Carrie S. Beam,
552—15th Avenue,
Paterson, N. J.

Madam:

Replying to your letter of the 14th instant addressed to the Secretary of our Company, we would advise you that the date of the last dividend received on the Brooklyn City Railway Company shares was July 3rd, 1919. No intimation was given by the Company that it would suspend its October dividends nor did it contemplate doing so until September 19th, 1919 when the Brooklyn Heights Railway Company as lessee of the property and lines of the Brooklyn City Railway Company made default in the payment of the third installment of its income tax amounting to $46,34.32 and thereupon the Brooklyn City Railway Company paid the sum in order to avoid the penalty prescribed by law. This exhausted the funds of the Company. The Brooklyn Heights Railway Company went into the hands of the receiver and repudiated its lease to the Brooklyn City Railway Company and defaulted in the payment of the

rent, which income the Brooklyn City Railway Company was accustomed to apply towards the payment of its dividends. The Brooklyn City was obliged therefore to undertake the operation of the road and the outcome of its operation depends to a large extent upon whether or not satisfactory increases in fares are granted by the state of New York.

An examination of the statements sent you during the past year, particularly of October 1st, 1919 showed that usual dividend had not been received upon this stock.

"Book Value" as applied to the securities in your Trust means the value thereof placed upon the same by the executors of the estate of Sarah A. Cooke at the time they were turned over by the executors to the trustees.

Very truly yours,
THE PATERSON SAFE DEPOSIT AND TRUST CO.
By JOHN L. GRIGGS.
Vice-President.

JLG/P

Form 4—5 M, 12-20-21

Members N. Y. Stock Exchange
Telephone 8120 Rector

GOODBODY & CO.
115 Broadway

New York, April 17, 1922.

630
742 "
Edward Beam Trustee Carrie S. Beam
John C. " Under Will Sarah A. Cook
Wm. B. "

Please note that in compliance with your instructions we have this day SOLD or your account and risk

QUANTITY	DESCRIPTION	PRICE	AMOUNT	INTEREST	COMM.	TAX	TOTAL	TO WHOM SOLD
10	B. & O. 5'95 J. D.	87¼	872.50	1903	2.00		889.53*	E. F. Hutton
40	Bklyn City R. R.	7⅞	315.00		3.00	1.60	310.40*	Wm. C. Ewen

(a) All orders for the purchase or sale of any securities or commodities are received and executed with the distinct understanding and agreement that an actual purchase or sale is contemplated, and also subject to the rules and customs of the New York Stock Exchange or of the Exchange or market where they are executed. (b) It is also agreed that all securities and commodities, from time to time, carried in your account or deposited to protect the same may be loaned or pledged by us either separately or together with other securities or commodities, all without further notice to you. (c) The purpose of this is that the customer hereby expressly gives to us the consent mentioned or provided for in Chapter 500 of the Laws of New York of 1913. It is also agreed that on default as to margin we may sell such securities without notice of the time and place of sale.

Interest is computed to date we expect to receive payment; if payment is delayed, interest to date of payment will be charged.

Yours respectfully,

GOODBODY & Co.

125

Exhibit C-5½.

Exhibit D-3.

THE CHASE NATIONAL BANK
New York

September 29, 1919.

CONFIDENTIAL

Mr. John L. Griggs, Vice President,
The Paterson Safe Deposit & Trust Co.,
Paterson, N. J.

Dear Sir:

Your letter of September 27th is received.

The Brooklyn City Railroad Company about which you inquire, is a subsidiary of the Brooklyn Rapid Transit Company. There has been some talk within the past week or so to the effect that the Brooklyn City Company would reassume the direction of its 26 lines, as the Brooklyn Rapid Transit Company has found it impossible to make its payments under the leasing agreement. Just how this will affect the shares of the Brooklyn City Company, it is impossible to say.

The traction situation in Brooklyn and New York is highly unsatisfactory, and the outcome with the companies engaged in the street railway work depends to a large extent upon whether or not satisfactory increases in fares are granted. If these increases are forthcoming, we feel that the situation will in time work out satisfactorily. In this case, we should not be inclined to advise a sale of stock of an underlying company. If the increases are not forth-

Exhibit D-3.

coming, we believe it will be the part of wisdom to dispose of your holdings, as the situation will probably become more involved. Just what will happen is anybody's guess and, under the circumstances, we do not feel competent to express a definite opinion as to whether to hold or sell stock of the Brooklyn City Railroad Company.

With respect to the Central Park North & East River Railroad Company, we have been unable to find this concern listed in any of the manuals here. In endeavoring to secure information, we have approached friends of ours and are advised that the Central Park North & East River Railroad Company was sold under foreclosure in 1913, and was succeeded by the Belt Line Railway Company. Our friend does not believe that the stock of the Central Park Company has any value at this time. In checking up this situation, we were advised from another source that there have been no sales of stock of the Central Park North & East River Raliroad Company since 1915, and that at that time a block was sold at auction at $1.50 a share.

We trust the above will prove of some use, and assure you of our pleasure in serving as always.

Yours very truly,

Signed: M. H. Howell,
Assistant Cashier.

Exhibit D-4.

THE BROOKLYN CITY RAILROAD COMPANY.

April 22, 1920.

The Paterson Safe Deposit & Trust Company,
152 Market St.
Paterson N. J.

Gentlemen:

In response to your letter of the 15th inst. we have to advise that, as you probably know, the property of The Brooklyn City Railroad Company was leased to The Brooklyn Heights Rail road Company for 999 years in 1893.

The Brooklyn Heights Railroad Company became insolvent and Lindley M. Garrison, as Receiver, under order of United States District Judge Julius M. Mayer, returned the property to The Brooklyn City Railroad Company as of October, 19, 1919, since which time the company has been operated independently. As a result of such operation, the cutting off of all transfers not required by law, and the most rigid economy, the company has been able to earn its operating expenses, provide for current taxes and the interest on the bonds, and in addition to lay aside some small reserves. There does not appear, however, to be any possibility of there being any distribution of dividends on the stock as long as the present high cost of labor and all materials continues unless the State or City Regulating authorities can be induced to fix a rate of fare which will enable the company to earn a reasonable return on the value of its property.

The company has outstanding $6,925,000. par value of bonds, of which $1,627,000. are in the Guarantee Fund provided by the Lessee and which, under the terms of the lease, was to be forfeited to The Brooklyn City Railroad Company in case the lease was breached. Action calling for the return of these bonds to the company is now pending, and in the meantime no interest thereon is being paid. The company has outstanding Capital Stock with total par value of $12,000,000. The value of the property of the company has been estimated at a figure largely in excess of $30,000,000. so you may note that the value of the property is largely in excess of the outstanding securities.

Trusting the above will give you the information which you may need, we remain

Yours very truly,

THE BROOKLYN CITY RAILROAD CO.

(Signed) By H. Hobart Porter

Vice President.

Exhibit—Opinion in *Flynn vs. Brooklyn City R. R. Co.* (158 N. Y. 493).

State of New York,
Court of Appeals,
State Reporter's Office, } ss.:

I, J. NEWTON FIERO, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of PATRICK H. FLYNN, Appellant, v. THE BROOKLYN CITY RAILROAD COMPANY, and THE BROOKLYN HEIGHTS RAILROAD COMPANY, Respondents. decided by the Court of Appeals on the eighteenth day of

April, 1899, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

IN WITNESS WHEREOF, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this fifth day of December 1922.

J. NEWTON FIERO,
As Reporter of the Court of Appeals
of the State of New York.

Attest:

[Seal
State of New York.
Court of Appeals.]

(L. S.) R. M. BARBER,
Clerk of the Court of Appeals.

State of New York,
Court of Appeals.

I, FRANK H. HISCOCK, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that Richard M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by

said clerk and said reporter of the annexed copy of the official opinion rendered in the case of PATRICK H. FLYNN, *Appellant*, v. THE BROOKLYN CITY RAILROAD COMPANY, *and* THE BROOKLYN HEIGHTS RAILROAD COMPANY, *Respondents*. decided by the said Court of Appeals on the eighteenth day of April, 1899, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of Richard M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said Richard M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York, on the fifth day of December in the year one thousand nine hundred and twenty-two.

FRANK H. HISCOCK,
As Chief Judge of the Court of
Appeals of the State of New York.

PATRICK H. FLYNN, *Appellant*, v. THE BROOKLYN CITY RAILROAD COMPANY, *and* THE BROOKLYN HEIGHTS RAILROAD COMPANY, *Respondents*.

(Decided April 18, 1899.)
(Reported in 158 N. Y. 493)

APPEAL from a judgment of the Appellate Division of the Supreme Court in the second judicial department, entered December 10, 1896, affirming a judgment entered on an order of the Special Term which dismissed the complaint upon the opening.

This action was brought by the plaintiff as a stockholder of The Brooklyn City Railroad Company to set aside a lease made by it to The Brooklyn Heights Railroad Company, to compel the retransfer of all the property that passed under the lease and for an accounting by the lessee to the lessor.

The record shows that the counsel for the plaintiff opened the case "claiming that by means of the alleged fraudulent scheme set forth in the complaint, the votes of the holders of more than two-thirds of the stock of the defendant, The Brooklyn City Railroad Company, had been given in approval of the lease therein set forth, and admitting, only for the purposes of the argument to dismiss upon the opening, that such vote was given and that plaintiff is the only complaining stockholder, and that the gravamen of this action is that its said lease is a violation of the duties of its directors, and a fraud upon the said The Brooklyn City Railroad Company, the corporation for the benefit of whose stockholders the plaintiff claims to

bring this action in a representative capacity," whereupon the defendants respectively moved, "on the said admissions and statements in said opening and the complaint herein, for a dismissal of the complaint as not stating facts sufficient to constitute a cause of action." The court granted the motion and dismissed the complaint, no application having been made to amend. The Appellate Division affirmed the judgment entered accordingly, all of the justices uniting, but two of them placing their votes upon a ground not concurred in by the majority.

It is alleged in the complaint that the plaintiff owns five hundred shares of the capital stock of the Brooklyn City Railroad Company, which, for many years prior to the 15th of February, 1893, owned and operated a valuable and extensive street surface railroad in the city of Brooklyn and the adjoining towns in Kings and Queens counties. It had constructed tracks through more than one hundred miles of streets, possessed franchises authorizing extensions into many other streets, owned valuable depots, stables, car houses and other structures, besides cars and appliances sufficient for the successful operation of its railroad. The value of its property exceeded thirty millions of dollars, and it was in a position to procure all funds necessary to properly equip and operate its entire system by electricity. Its capital stock was $9,000,000, which was finally increased to $12,000,000, all having been paid in, and for many years its regular dividends were at the rate of 8 per cent. In January, 1892, it had obtained the proper consents for the use of electricity as a motive power, and prior to Feb-

ruary 15th, 1893, it was operating by that means. It owned many electric cars, and was engaged in building large power stations, upon its own lands, in order to generate electricity for the operation of its road. The use of electric power, as it was alleged, would result in a reduction of from thirty to forty per cent in the operating expenses, as well as in an increase in the number of passengers, owing to the improved facilities, and the company would thus be enabled to pay dividends of more than ten per cent, with the certainty of a further increase from the future growth of the city. Prior to the date last named, certain persons, composing a so-called syndicate, some of whom were directors of the company, "entered into a scheme to divest a portion of the earnings of said company from the stockholders, and, in pursuance of said scheme, it was planned and arranged that the railroad of the said company, and its property and franchises should be leased to another company for a consideration less than the actual rental value thereof, and that pany, a controlling interest in the stock of said other company should be owned by the "'syndicate" and not by the stockholders of The Brooklyn City Railroad Company, and that the difference between the actual rental value of the said railroad, property and franchises and the rental paid under the said proposed lease would thus ensue to the profits of the stockholders of the said other company, and not to the profits of the stockholders of The Brooklyn City Railroad Company." Pursuant to this scheme the syndicate acquired by purchase a controlling interest in the stock of the Brooklyn City Railroad Company, and on the 6th of Jan-

uary, 1893, caused it to issue to the stockholders a proposition, in the name of the directors, which was in substance that the syndicate should "procure the leasing of The Broklyn City Railroad Company by a street surface railroad company," with a guarantee of ten per cent dividends on the stock of the former and the deposit in a trust compnay of $4,000,000 as security for the performance of the lease. The lessee was "to pay and discharge all fixed charges of The Brooklyn City Railroad Company, including interest on bonded debt, and all taxes and assessments and license fees, and also pay the expenses of keeping up the organization of The Brooklyn City Railroad Company, furnishing it with suitable offices, etc." The syndicate "was to give the stockholders of The Brooklyn City Railroad Company the right to purchase three shares of a traction company's stock of the par value of $100 each, for every ten shares of the par value of $10 each held by the stockholders in the Brooklyn City Railroad Company at the date of the delivery of the lease, at $15 per share," with the option to dispose of said right to purchase. The capital stock of the traction company was to be fixed at $30,000,000, "and this arrangement," as the proposition stated, "Will place in the stockholders of the Brooklyn City Railroad Company nine-tenths of the capital of the traction company, the remaining one-tenth will be allotted to the present syndicate, but shall be paid for at the same rate as that purchased by the stockholders of the Brooklyn City Railroad Company." The syndicate, as the directors asserted in their cir-

cular, had deposited with the New York Guaranty & Indemnity Company, its representative, the sum of $500,000, "'as an earnest of its good faith to carry out the proposition." It was further stated that the board of directors were unanimously of the opinion that the proposition was a most favorable one, and that they unhesitatingly recommended it to the stockholders, who were requested to forward their proxies, so that the lease might be approved by at least two thirds of the stock "present and voting in person or by proxy," as required by law. No information appears to have been furnished by the directors to the stockholders except such as was contained in the circular.

The complaint further alleged that the defendant, The Brooklyn Heights Railroad Company, is a domestic corporation engaged in operating a railroad upon Montague street, about half a mile long, and that it was controlled by said syndicate. Its bonded indebtedness was $250,000, and its capital stock $200,000, which was worth not more than fifty per cent of its face value. It was not a paying road, and its earnings were less than the operating expenses and fixed charges. Its only property was its franchise upon Montague street, the roadbed, a power house and a few cars, all worth not to exceed $350,000. In order to further carry out the scheme, it was intended to tansfer the stock of The Brooklyn Heights Railroad Company to a foreign corporation called a traction company, not authorized by law to own or operate a railroad. A part of the capital stock of the traction company was to be allotted to such stockholders of The Brooklyn City Railroad

Company as might subscribe and pay therefor, the remainder being reserved by the syndicate for its own use. It was charged that the effect of the scheme was "to lease the railroad and property of The Brooklyn City Railroad Company to said foreign corporation and divest a portion of the earnings of said railroad from the stockholders thereof to the "syndicate as the holder" of the said reserved stock of the said Traction Company." It was further alleged that said proposition thus submitted to the stockholders was intended to convey the impression that the proposed lease was to be made to a company with a capital stock of $30,000,000, "whereas, in fact, no street surface railroad corporation with a capital stock of $30,000,000 or any amount approaching that sum, had been incorporated or existed in the state of New York to which" said lease could lawfully be made, "but on the contrary it was in fact intended to lease said railroad and property to the Brooklyn Heights Railroad Company, which was incapable of paying a dividend of ten percent upon the stock of said Brooklyn City Railroad Company otherwise than from the proceeds of operating the railroad of said last named company under said lease." It was asserted that this scheme "was unlawful, the effect and intent thereof on the part of the shareholders of the Brooklyn City Railroad Company who designed, approved and carried the same into effect * * * being to injure and defraud the shareholders of said company." In pursuance of such scheme the proposed lease was executed by the directors of both railroad companies and approved on the 15th of February, 1893, by stockholders owning two-thirds of

New Jersey State Library

the stock of the lessor, which on June 6th, 1893, delivered to the lessee all its property and franchises. Thereupon a foreign corporation known as the Long Island Traction Company was organized with a capital stock of $30,000,000, divided into three hundred thousand shares, which became the owner of the entire capital stock of the lessee, two hundred and seventy thousand of which shares were allotted to the stockholders of the lessor at $15 per share "in the proportion of three shares of the stock of said Traction Company for every ten shares of" the lessor. The remaining thirty thousand shares were reserved "by certain persons, shareholders of the Brooklyn City Railroad Company, who had approved" said lease, "for their own use and benefit." It was declared that the privelege given to the stockholders of the lessor to purchase stock of the traction company "was in no respect a compensation to" them "for the injury they would receive through said lease; that by the said plan of distributing the said thirty millions of stock of the said Traction Company among the stockholders of the said Brooklyn City Railroad Company, the said stockholders were prevented from receiving the whole amount of said stock and were unjustly and fraudulently deprived of $3,000,000 in par value thereof and of a corresponding portion of the earnings of said Traction Company; that said Traction Company's stock is of no value except as derived from the operation of the railroad of" the lessor unler said lease, and the stockholders of that company "are entitled to the full amount of the earnings derived from the operation of its

said railroad without any deduction therefrom fo the benefit of the intermediate operating concern or company;" that the lessor company "is able to pay a dividend largely in excess of ten per cent upon its present capital stock, that is to say, at least fifteen per cent thereon, and that by the leasing of this railroad, as aforesaid, its stockholders have been and are wrongfully deprived of said increase in said dividends, besides the benefit resulting therefrom and the advantage consequent upon the certain constant increase in the value of the franchises and property of the last-mentioned company through the extension of its road and increase in travel thereon due to the growth of the city from year to year; that this plaintiff at divers times since the execution of said lease, duly demanded of the Brooklyn City Railroad Company, its officers and directors, as a stockholder in said Brooklyn City Railroad Company, his share of the proceeds of the operation of the railroad of said company over and above the ten per cent paid to him under said lease, but that the said defendant, The Brooklyn City Railroad Company, has refused and neglected to pay the plaintiff his said portion of said proceeds to which he was legally and properly entitled; that the plaintiff herein has from time to time notified the directors and officers of said Brooklyn City Railroad Company that the leasing aforesaid of the Railroad and property of said company was unlawful and to the injury of the stockholders of said company and has demanded that there shall be distributed among the stockholders of said company all the profits and receipts arising from the operation of said railroad and of said property as the

same may accrue without regard to the said lease, and that such distribution necessarily involved such action on the part of said officers and directors as would effect the annulling of said lease, but that said directors and officers have failed and neglected to take any proceedings toward the annulling of said lease or agreement."

The relief demanded was that the lease be declared void and set aside, that the lessee be directed to transfer and deliver to the lessor all the property, real and personal, of the latter in the possession of the former, and that it be required to account for all moneys received from the operation of the railroad leased and to pay the same over to the lessor. There was also a prayer for general relief.

The Appellate Division, in affirming the judgment, held that the primary right of action was in the corporation and that it was essential to allege that it had been applied to and had refused to bring the action; that the demand alleged was insufficient, and that, although it did not appear that the lease was illegal, the complaint permitted proof of facts to sustain the allegation of fraud on the part of the majority stockholders.

AUGUSTUS VAN WYCK and JAMES C. CHURCH for appellant.

WILLIAM C. DEWITT and WILLIAM C. TRULL for the Brooklyn City Railroad Company, respondent.

JULIEN T. DAVIES, CHARLES FRANCIS STONE, WILLIAM F. SHEEHAN, CHARLES A. COLLIN AND HERBERT BARRY for the Brooklyn Heights Railroad Company, respondent.

VANN, J. For the purpose of this appeal such facts as could properly have been proved

under the allegations of the complaint, when supported by reasonable implication and fair intendment, must be accepted as true, and, in connection with the admissions made upon the opening, must be treated as the facts of the case upon which the rights of the parties depend. (*Marie* v. *Garrison,* 83 N. Y. 14; *Kley* v. *Healy,* 127 N. Y. 555; *Sage* v. *Culver,* 147 N. Y. 241, 245) The question of primary importance is whether those facts constitute a cause of action against the defendants upon the merits, although due regard must be paid to any technical deficiencies that may exist.

The case presented upon the merits is that of a stockholder in a successful, dividend-paying corporation, with large assets and good prospects, who was compelled by the vote of the directors and the other stockholders, induced by fraud, to surrender a part of his interest in the corporate assets represented by his stock, without any real consideration. The stock owned by the plaintiff made him the equitable owner of an undivided fractional part of the entire assets of the company. (*Burrall* v. *Bushwick R. R. Co.*, 75 N. Y. 211, 216; *Jermain* v. *Lake Shore & M. S. R. Co.,* 91 N Y. 483, 492).

By the lease he was forced to part with one-tenth of his interests without a corresponding advantage. The lessor company in which he was interested transferred all its rights and property to an irresponsible lessee, with inadequate security, for the privilege of buying back a part only of that property and paying a premium therefor. Leaving out of view for the present the security furnished, and we have the lessor parting with all it had for the right to buy back nine-tenths thereof and pay over

$4,000,000 for the bargain. The stockholders got nothing except a part of their own property and paid heavily for the privilege. They parted with property of immense value for stock in a traction company with no assets and without a dollar of paid-up capital, and in addittion were compelled to pay $15 for every share given them. The syndicate on the other hand paid nothing for their shares of the par value of $3,000,000, except $15 a share, which every stockholder of the lessor had to pay, in addition to parting with his interest in a paying corporation with $30,000,000 worth of property. The profits of the syndicate in the traction itself were over $2,000,000, and its prospective profits were nearly $500,000 a year. A solvent and powerful lessor gave everything it had to an insolvent and weak lessee, and received in payment a part of its own property, paying a premium even for that right. There was no substance to any of the three companies except what was furnished by the lessor, and the scheme, in effect, was to divide up its property and donate a part of it to the syndicate. There was no exchange of properties but simply a division of the substantial property owned by the lessor. The lessee contributed nothing and the syndicate contributed nothing, except as it paid $15 a share for the stock of the traction company, the same as the stockholders of the lessor were compelled to do. The scheme did not involve a consolidation of two valuable properties, which, by uniting, would be able to earn more at less expense, but it involved a surrender by the lessor of part of its own with nothing to speak of in return. The little railroad, with nominal assets, swallowed the big railroad

with assets exceeding $30,000,000, and the traction company, with no assets whatever, swallowed both, and it is claimed that this scheme is not fraudulent as to a protesting stockholder of the road making the sacrifice. None of the three corporations involved had anything to lose except the lessor. One of them had nothing whatever, and another had so little that it was not worth mentioning in comparison with the splendid property successfully managed and paying a great profit that belonged to the lessor. The sham traction company, with no assets whatever, and the dummy lessee, with but trifling assets, had no substance except what they sucked as parasities from the lessor. The traction company got its first assets in the $15 a share paid for its stock by the stockholders of the lessor, and the traction company's promoters got $3,000,000 for $450,000.

But, it is said, the stockholders of the lessor get ten per cent dividends guaranteed and secured for all time in place of the eight per cent they had before. What do they get it out of? Their own property, capable as we must assume of paying fifteen per cent instead of ten. Now we come to the only value furnished by the syndicate, and that is security for the payment of the ten per cent dividends by the deposit of $4,000,000. How long will that last under unsuccessful or dishonest management by trustees incompetent or willing to wreck in order to make money? Security is furnished for less than five years' rental on a lease for nine hundred and ninety-nine years. While the amount of the security seems large in one sense, in fact it is small when the magnitude of the risk is considered. The syndicate received over two

and one-half millions of dollars for furnishing a guaranty that a road capable of earning and paying dividends of fifteen per cent would pay dividends of ten per cent. Moreover, the syndicate did not furnish any security whatever except in form, for the substance came from the stockholders of the lessor through their subscriptions to the capital stock of the traction company. The guaranty fund was four millions of dollars, but the subscriptions of the stockholders to the stock of the traction company was more than four millions of dollars. The stockholders of the lessor, therefore, furnished a larger fund than was required for the deposit with the guaranty company, and that this fund was the source of that deposit might have been proved upon the trial under the facts alleged. The syndicate furnished nothing and risked nothing, and its enormous profits were simply contributed by the stockholders of the lessor, the contribution of the plaintiff having been extorted by a two-thirds vote. The scheme in its final analysis took something for nothing, and if not fraudulent upon its face as to a non-assenting stockholder, was fraudulent under the allegations of the complaint.

It is distinctly alleged that the scheme of leasing the road was unlawful, and that the intent and effect thereof on the part of the stockholders of the lessor, who designed, approved and carried the same into effect, was to injure and defraud the stockholders of that company. The motive and object of the stockholders who approved the lease by their votes are charged to have been furtive and evil, and the effect of their action injurious and fraudulent. The method of accomplishing the fraud was set

forth, and the complaint, which was amplified somewhat by the opening, asserted that the syndicate, composed in part of directors of the lessor, and in control of both lessor and lessee when the lease was made, devised and executed a plan to take away property of the stockholders and give it to third persons. While the complaint is not as definite as it might be, so far as appears, there was no motion made by the defendants to make it more definite or certain. No bill of particulars was called for, nor was further information sought by any of the methods authorized by the settled practice. When a party goes to trial upon a loose pleading without any effort to have it made more definite, he can make no lawful complaint if under the general allegations all facts fairly covered thereby are admitted in evidence against him. We think that under the allegations of the complaint before us every fact bearing upon the intention of the stockholders who approved the lease to defraud the minority stockholders could have properly been received.

As a general rule, courts have nothing to do with the internal management of business corporations. Whatever may lawfully be done by the directors or stockholders, acting through majorities prescribed by law, must of necessity be submitted to by the minority, for corporations can be conducted upon no other basis. All questions within the scope of the corporate powers which relate to the policy of administration, to the expediency of proposed measures, or to the consideration of contracts, provided it is not so grossly inadequate as to be evidence of fraud, are beyond the province of the courts.

The minority directors or stockholders cannot come into court upon allegations of a want of judgment or lack of efficiency on the part of the majority and change the course of administration. Corporate elections furnish the only remedy for internal dissensions, as the majority must rule so long as it keeps within the powers conferred by the charter.

To these general rules, however, there are some exceptions, and the most important is that founded on fraud. While courts cannot compel directors or stockholders, proceeding by the vote of a majority, to act wisely, they can compel them to act honestly, or undo their work if they act otherwise. Where a majority of the directors, or stockholders, or both, acting in bad faith, carry into effect a scheme which, even if lawful upon its face, is intended to circumvent the minority stockholders and defraud them out of their legal rights, the courts interfere and remedy the wrong. Action on the part of directors or stockholdes, pursuant to a faudulent scheme designed to injure the other stockholders, will sustain an action by the corporation, or, if it refuses to act, by a stockholder in its stead for the benefit of all the injured stockholders. (*Leslie* v. *Lorillard,* 110 N. Y. 519, 535; *Gamble* v. *Queens County Water Co.,* 123 N. Y. 91; *Sage* v. *Culver,* 147 N. Y. 245; *Farmers Loan & Trust Co.* v. *N. Y. & N. Ry. Co.,* 150 N. Y. 410; *Hawes* v. *Oakland,* 104 U. S. 450.) When a contract founded in fraud is executed by the directors with a third party upon the express approval of a required number of stockholders, with the intention on the part of all concerned to defraud the non-assenting stockholders, and the scheme will naturally result in

serious injury to them or to the corporation, a court of equity will set aside the fraudulent transaction and compel the delinquent parties to account. Such is the case before us as we interpret the complaint.

The right of action, however, belongs to the corporation and should be brought by it as plaintiff, but when it will not bring the suit itself, an aggrieved stockholder, after due demand and a refusal, or unreasonable neglect to proceed. may bring it in his own name upon making the corporation a party defendant. (*Greaves* v. *Gauge,* 69 N. Y. 154.) Such an action is not for the benefit of the plaintiff alone, but is representative in character and for the benefit of himself and all other stockholders similarly situated. In the case last cited it was held that, when a stockholder brings an action of the kind under consideration, the complaint should allege that the corporation, on being applied to, refused to prosecute, and that this averment constitutes an essential element of the cause of action. The complaint before us does not set forth a demand that the corporation should bring an action to annul the lease. The plaintiff alleges that, as a stockholder of the Brooklyn City Railroad Company, he demanded his share of the proceeds of operating the road over and above the ten per cent paid to him under the lease; that he notified the directors and officers that the lease was unlawful and injured the stockholders, and demanded a distribution among them of all the profits and receipts arising from the operation of the road without regard to the lease. He follows this with the further allegation that such distribution necessarily involved such action on the part of the officers and direc-

tors as would effect the annulling of the lease. This did not meet the requirements of the situation, because no demand was made that the corporation bring an action to annul the lease. The demand was either of a payment to the plaintiff of what he deemed he was entitled to, or of a distribution among the stockholders of what he deemed they were entitled to. These demands might have been complied with simply by the payment of money without the bringing of an action. They were not necessarily inconsistent with the continuance of the lease. He was not entitled to what he demanded, and he made no demand of what he was entitled to. *Non constat* if he had made a proper demand this action would have been unnecessary, as the corporation would have done its duty by suing to annul the lease, for it does not appear that it is still under such control as to make a demand useless, as held in *Sage* v. *Culver* (supra). The averments relating to the subject of demand are not aided by the allegation that the distribution demanded involved such action as would effect the annulling of the lease, for that was not a fact, but an argument or legal conclusion which does not warrant the introduction of evidence.

We agree with the learned judges of the Appellate Division that the demand was insufficient to meet the requirements of law and for that reason we affirm their judgment.

All concur (PARKER, CH. J., BARTLETT and HAIGHT, J J., on the ground that the demand to bring the action was insufficient to meet the requirement of the law), except GRAY J., not sitting.

Judgment affirmed, with costs.

Exhibit C-6.

Paterson, N. J.,
April, 14, 1920.

John L. Connolly, Sec'y.,
The Paterson Safe Deposit & Trust Co.,
#152 Market Street, Paterson, N. J.

My dear Mr. Connolly:-

I have your letter of the 13th inst enclosing me the requested list of securities composing my trust as of the same date and note therefrom that the forty shares of stock of the Broklyn City Railroad Company are not paying any dividends.

Please inform me

1. The date when the last dividend was received by the trust company for me on these Brooklyn City R R shares,
2. Why these dividends are no longer paid,
3. What the prospects are for a resumption of these dividend payments,
4. Why I have not been informed that these dividends were no longer being paid,
5. If there is anyone in the entire trust Company who knows anything more about these particular securities than you have told me in this list,
6. What do you mean by "Book Value" in your valuation of these particular shares,
7. What you mean by "Book Value" in your valuation of the other securities shown in this list,

and 8. Why you have used an eraser in the place where you have shown a valuation of $800 after the Brooklyn City R R shares?

CARRIE S. BEAM.

Exhibit C-7.

Paterson, N. J.,
April 16, 1920.

John L. Connolly, Sec'y.,
The Paterson Safe Deposit & Trust Co.,
No. 152 Market St., Paterson, N. J.

My dear Mr Connolly:-

I am this day in receipt of a letter from the Second Vice President and Trust Officer of your trust company, Mr. John L. Griggs, written me in reply to my letter to you of the 14th inst.

I am addressing this letter to you as I suppose that it is the custom of your other officers to answer only those letters not addressed to them but addressed to others and in order to follow out the procedure and be sure of a reply hereto I will stick to it faithfully and apply the rule as it seems to be laid down. There are several letters of mine written to the other officers of your trust company that have for many, many months been left unanswered, unacknowledged and ignored so that I fear that it is a little late in the game to begin to teach these old dogs new tricks of correspondence with much prospect of success.

I note all of the information contained in the letter of Mr John L. Griggs above referred to and I note also that all of my questions except question number eight have been answered. Why question number eight should be discriminated against I am at a loss to understand as I am also at a loss to understand a great many other pleasant possibilities opened up by the answers to my other questions.

The answer to question number two is partic-

Exhibit C-7.

ularly lucid and shows an extent of knowledge concerning the affairs of the Brooklyn City Railroad Co that I did not believe your trust company with all of its equipment for the conservation and protection of the funds of beneficiaries was possessed of. The degree of exhaustion to which the Brooklyn City has approached is attested to by your figures showing the amount of the income tax that was abstracted out of the dividend cash, to wit "$46,34.32".

The answer to question number three is very re-assuring and I look forward with a great deal of pleasure to the time when in your columns I shall see these shares listed at $1. side by side with the shares of The Central Park North & East River Railway Co. and shall once again have the pleasure of having my son send to Henry C. Knox, one of your directors and a one time friend of my late husband, another dollar for its purchase, to be retained by the said Mr Knox with dollar number One and make Two Dollars that he can lay away for the day when he is no longer a bank director and stands in need of an umbrella.

The answer to question number four is of even more than ordinary interest and confirms an impression that I have long held concerning your methods of informing your beneficiaries of the condition of the securities comprising your trusts. I will not say *their* trusts. You have had all of this knowledge that fills over a page and a half of your letter of the 15th inst, some of it since last September, and I was, through some occult form of reasoning best known to yourselves or to Guglielmo Marconi, expected to find it out by noting that my dividends no longer appeared on your quarterly statement. How did

Exhibit C-7.

I know when your one typewriter broke down and you had to send me this statement in long hand that you had not left that dividend out through sheer over exertion and weariness or perhaps have withheld it for purposes that it was not for me to know, much less to ask?

The answer to question number five leads me to ask you one more question which I will number, Number 9 of the series. Why, if your officials knew all of this concerning these shares was I not notified of it at the time?

The answer to question number six is very clear but if I take you at your word on that how am I to interpret your answer to question number seven? Do you mean to tell me that a value of $1. was placed on the shares of stock of the C P N & E Ry Co "by the executors of the estate of Sarah A. Cooke at the time they were turned over by the executors to the trustees" in 1906? Somewhere I seem to have seen something that does not quite agree with this statement so that I think that the answers to these two questions, numbers six and seven, are a little bit involved and throw rather a cloud on the question of values as expressed by your figures.

With the addition of one more question, number ten, to those already asked of you I will commit this to your considerate care and ask that you take it up with Mr. John L. Griggs and try and obtain for me a reply thereto. I would like to know what the Paterson Safe Deposit & Trust Company intends to do about this state of affairs in this one security. Exhaustion of funds, repudiation of leases, defaults in payments of fixed charges and other items make up an altogether comforting statement of affairs

concerning these shares, the present value of which you tell me nothing at all about. Perhaps your trust company does not know what it is going to do about it, perhaps it has not yet made up its mind, perhaps it has not any mind at all to make up. I recall an almost parallel case to this one that cost me a good cold Ten Thousand and more Dollars and proved to me that some persons did not possess a great amount more of brains than the law allows. I want to know what your trust company is going to do about this or if they are or are not going to do anything at all and I will expect your answer at your earliest convenience.

I am,

Very truly yours,
CARRIE S. BEAM.
(Mrs John R. Beam)

Exhibit C-8.

Paterson, N. J.,
April 24, 1920.

John L. Connolly. Sec'y.,
The Paterson Safe Deposit & Trust Co.,
#152 Market St., Paterson, N. J.

My dear Mr. Connolly:-

On April 16th last I wrote you a two page letter that to this writing I have not received any acknowledgment of from you nor any notice of its receipt from your trust officer, Mr. John L. Griggs.

As this matter is a matter of some importance I again ask you to present this request to your

trust officer and see if you can get for me a reply to my last letter. I want to know what the trust company is going to do about this Brooklyn City R R stock and also what your figures mean under the caption "Book Value". I can make nothing out of the statement sent me by you when it is taken in conjunction with John L. Griggs explanation of these figures. I also can make nothing, in fact somewhat less, out of the figures in your company's last account filed in the Orphans' Court for there I find no heading whatever. I don't know what any of the securities you hold are worth from the statements that are available to me for inspection. I want to know where I stand. I am entitled to this information and I am going to have it.

I also want to know something about this Max Gold mortgage that your statement shows was purchased on Nov 11, 1919. I want to know where the property is, in what book in the Register's Office the mortgage is recorded, what the property is worth, who this Max Gold is, why the Sharpe mortgage was sold and to whom it was sold and why I was not notified that the change was to be made or consulted about the making of it and asked for any preference that I might have as to the reinvestment of this money. I trust that if you are unable to answer this my second request since I last heard from your trust officer that I will be accorded the courtesy of a reply.

I am,

Very truly yours,

CARRIE S. BEAM.
(Mrs John R. Beam.)

Exhibit B. H. 1. for Iden.

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

William B. Beam of the City of Paterson in the County of Passaic and State of New Jersey, and Alfred D. Kelly, of City of Watervliet, County of Albany, State of N. Y., being duly sworn, depose and say, that:

1. On the 2nd day of December, 1922, at the Capitol in the City of Albany, New York, they examined the file there kept in the Executive Chamber in the matter of the "Petition for Removal from Office of the District Attorney of the County of New York", which said file they believe to be numbered 114-103.

2. Among said papers they found several printed copies of the petition in said matter of which the copy hereto annexed and made by the so-called "Photostat" process from a copy in the files of New York Public Library is a counterpart. They then and there compared the copy hereto annexed with said copies on file in the Governor's Office or Executive Chamber and found the subjoined copy to be identical with the same with the exception that the front and rear covers were lacking on the copy filed in said office and that upon one of said copies there filed there appeared numerous writings which they entered upon the subjoined copy and which now appear thereon in his (said William B. Beam's) handwriting. Another of said copies there filed was without said corrections and bore on the top of page 1 the stamp "Execu-

tive Chamber Rec'd Feb. 27, 1908, Ref'd Ans'd".

3. In addition to the copies of said petition there filed they found numerous letters on the letterhead of "Griggs, Baldwin, and Pierce, No. 27 Pine Street, New York" and signed "Franklin Pierce" addressed to Governor Hughes and pertaining to the said matter, bearing dates throughout the year 1908 and also a letter bearing date the 19th day of November, 1909 on the same letterhead and in regard to the same matter and addressed similarly but signed by Arthur J. Baldwin of said firm of Griggs, Baldwin and Pierce.

4. They also found among said papers another printed brief entitled,

"Before the Governor
In the Matter of the Charges
against
WILLIAM TRAVERS JEROME
District Attorney of the County of New York.

BRIEF FOR PETITIONERS

GRIGGS, BALDWIN & PIERCE,
Attorneys for Petitioners,
27 Pine Street,
New York City.

FRANKLIN PIERCE,
Of Counsel.

Printed by the
PRESS OF FREEMONT PAYNE
47 Broad Street
New York City"

page 1 of which said Brief was entitled:

Exhibit B. H. 1 for Iden.

"Before the Governor in the matter of the charges against William Travers Jerome, District Attorney of the County of New York.

"Argument of Petitioners before Hon. Richard L. Hand at Elizabethtown, N. Y., May 26, 1908."

5. They also found among said papers a typewritten brief backed with the back of the firm of "Griggs, Baldwin and Pierce, 27 Pine Street, New York", entitled in said matter, dated "June 29th, 1908" and concluding

"Respectfully submitted,
GRIGGS, BALDWIN & PIERCE,
Attorneys for Committe of Stockholders
of Metropolitan Street Railway Company.
(Signed) *Franklin Pierce*
Of Counsel."

6. They also found among said papers a printed letter addressed to the Metropolitan Stockholders and dated "Jan. 4, 1908", signed by the same persons whose signatures appear upon the copy hereto attached and by "Griggs, Baldwin & Pierce" as their counsel.

7. They also found among said papers a copy of a letter purporting to have been written by the same William F. King, whose name appears on the copy hereto attached to William Travers Jerome, dated "New York, Jan. 16th, 1908" and stating in part: "If you desire consultation in regard to this matter, I will be pleased to meet you, with Counsel, Mr. Baldwin and Mr. Kremer, and if they will consent will also be glad to have Mr. Wilcox and Mr. Ivins present."

Exhibit B. H. 1 for Iden.

8. They also found among said papers a copy of a letter addressed "To Editor Editorial Writers", dated Jan. 5th, 1907 and signed "Arthur S. Baldwin Griggs, Baldwin & Pierce" of similar purport to the circular letter mentioned in par. 6 *supra.*

9. They also found among said papers a brief marked "Original Exhibits Volume 1 A-Z and examination of which disclosed that Exhibits U, W and X thereof consisted of letters and reports prepared by Patterson, Teele & Dennis, Certified Public Accountants, of No. 30 Broad Street, New York; Kuchler & Teichman, Certified Public Accountants and Auditors, Baltimore, Md., March 23, 1903 and John C. Hertle of Hertle & Decker, Certified Public Accountants State of New York, No. 280 Broadway, New York, all relating to the matter of the said Metropolitan Street Railway and William Travers Jerome.

10. They also found among said papers a petition to the Governor of the State of New York, dated Sept. 22, 1907, bearing upwards of sixty signatures and relating to the said matters and which appeared to have been presented to the Governor by Bernard A. Rosenthal and a committee of citizens and among said papers was a letter from said Rosenthal written to the Governor of the State of New York in regard thereto some time thereafter.

11. They also found among said papers certain correspondence between the Bar Association of the City of New York and the Governor of New York relating to the return to them of exhibits loaned to Messrs. Griggs, Baldwin and Pierce in the said matter.

12. They also found certain correspondence

Exhibit B. H. 1 for Iden.

therein relating to the return to Messrs. Griggs, Baldwin & Pierce of upwards of 55 separate exhibits supplied by them in connection with said matter.

WILLIAM B. BEAM
ALFRED D. KELLY

Sworn and subscribed to before me this 2nd day of December, 1922, at Albany, N. Y.
JOSEPH E. MCNARY,
Notary Public,
Albany Co., N. Y.

State of New York,
County of Albany, Clerk's Office, } ss.:

I, IDA D. WARNER, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certify, that Joseph E. McNary, whose name is subscribed to the jurat of the annexed affidavit, was on the day of the date thereof, a Notary Public, in and for the County of Albany dwelling in said County, duly authorized to administer oaths for general purposes; and that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to said jurat is genuine.

I do further certify that the seal of Joseph E. McNary, by whom the foregoing affidavit was taken is not required by law to be filed in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 2 day of December, 1922.

IDA D. WARNER,
Clerk.

Petition For Removal From Office
of the
District Attorney
of the
County of New York

Before the Governor, Feb. 27, 1908.

Eugene G. Kremer

Griggs, Baldwin & Pierce

Attorneys for Petitioners

TO THE HONORABLE CHARLES E. HUGHES,

Governor of the State of New York:

The undersigned, a committee of Stockholders of the Metropolitan Street Railway Company, through our Chairman, William F. King, respectfully ask that William Travers Jerome, the District-Attorney of the County of New York, be removed from said office, because of the following facts:

FIRST:

Mr. Jerome, in a public speech delivered on October 26, 1901, when a candidate for the office of District-Attorney, said:

> "Let me tell you that if I am elected I "shall make it my business to follow the "trails of wrong-doing and corruption, not "only when they lead into tenement houses, "but I shall follow them even if they lead "into the office of the Metropolitan Street "Railway Company."

In the campaign for the re-election of Mr.

Jerome in 1905, he reiterated this promise, and said:

"Rest assured I will punish the enemies "of the people."

While he was reiterating these promises, and soon thereafter, the following facts existed:

In October, 1905, one William H. Tillinghast, who had been an employee of the Metropolitan Street Railway Company, confessed to Mr. Jerome or his assistant that he had been in the employ of said Railway Company, that he had for several years past sat as a juror in the trial of suits against said Railway Company, and had in each suit received from or through Stanley S. Bagg, an investigator during all the said times in the employ of said Metropolitan Street Railway Company and the New York City Railway Company, in each case sums of money which were paid to him at different places in the City of New York, and which were handed to him by the said Bagg, or someone in his behalf, in an envelope, as payment for his services as such juror. In November, 1905, said Stanley S. Bagg confessed to Mr. Jerome, or his assistant, that he, while in the employ of said Metropolitan Street Railway Company and said New York City Railway Company, and while assisting in the preparation and trial of damage suits, had on many different occasions paid money to the said Tillinghast while Tillinghast was acting as a juror on the trial of damage suits in which the Metropolitan Street Railway Company was the defendant. Bagg, in his confession to said Jerome, stated that some of said payments were approved by one Ambrose F. McCabe, one of the attorneys of

the Metropolitan Street Railway Company or the New York City Railway Company, who had tried several of said cases. These confessions were sworn to by Tillinghast and Bagg. *With this evidence in his possession, Mr. Jerome took no action during the months of November and December, 1905, and January, 1906.* In the latter part of January, 1906, A. Edward Woodruff, attorney at law, having heard that the District-Attorney was in the possession of such evidence and was taking no action thereon against Mr. McCabe and the New York City Railway Company, wrote a letter to Mr. Jerome asking whether it was true that the District-Attorney had the written confession of Tillinghast, and received a letter in response to his inquiry as follows:

"District Attorney's Office,
County of New York.
New York, February 6th, 1906.
A. Edward Woodruff, Esq.,
111 Broadway, New York City.

Dear Sir:—

Yours of the 23d ultimo has been referred to me by Mr. Jerome as I have had general supervision of this matter.

We have the written statement of Tillinghast, who served on numerous juries in Metropolitan Street Railroad Cases, although not a juror on the panel. His name appears as a juror in the clerk's minutes but not on the jury list of the Commissioners of Jurors.

These matters, however, began about

five years ago, and the last case, as I remember, that Tillinghast served on in this manner was in January, 1902. The corroborating evidence would have been amply sufficient to have found an indictment under subdivision 6, section, 168 of the Penal Code, but, of course, that offense being a misdemeanor, the statute of limitations had run long before our attention was called to the matter.

We also obtained a statement from an ex-employee of the Metropolitan Street Railroad that paid Tillinghast monthly. This man, however, was an accomplice, and it was impossible to obtain any corroboration of his statements implicating those higher up in the office who furnished him with this money.

It is only fair to state, as far as we have been able to ascertain, the present administration of the Metropolitan Street Railroad law department, under Mr. Quackenbush, has vastly improved in tone, and it is my opinion that he is endeavoring to correct all abuses to the best of his ability.

I am not aware that the records were ordered sealed, but they were taken into custody for preservation. They can, however, be inspected by you or by the committee of the State Bar Association if so desired.

Yours very truly,

Charles C. Nott, Jr.,
Acting District Attorney."

As a matter of fact, several of said cases in

the City Court, and especially the case of *Eichner* against *The Metropolitan Street Railway Company,* tried in the Supreme Court in May, 1904, wherein said Tillinghast had sat as a juror, had been tried within the period of two years, and the alleged offenses of Mr. McCabe, an attorney of the Company, were in fact felonies. Tillinghast had sat in the City Court as a juror in *twenty cases* wherein the New York City Railway Company and the Metropolitan Street Railway Company were defendants, within the five years preceding his confessions to the District Attorney, and in each of these cases he had been paid money by Bagg, according to his testimony. He had also sat as a juror in the Supreme Court in several of the Company's cases.

No action having been taken by the District Attorney on the 23rd day of February, 1906, Tillinghast was brought in the forenoon of that day before Mr. Justice Seabury, then a Judge of the City Court, and his statement as to these facts taken. On his return to his home he was met by an officer with a warrant to arrest him for a misdemeanor in recently personating one Henderson, another juror in the City Court, and Mr. Jerome, although he had confessed to him, caused him to be taken before the Court of Special Sessions as quickly as it could be accomplished, and as he, upon his own admission, had personated such juror at a recent date in the City Court before Judge O'Dwyer, he was at once sentenced to three months imprisonment.

At about this time Mr. Jerome communicated with Judge Seabury, arranged for a conference

at lunch, assured Judge Seabury that he would aid him in tracing this trail into the New York City Railway Company's office, and a proceeding, *"The People on the complaint of Louis E. Julian against Ambrose F. McCabe"* was instituted in the City Court before Judge Seabury sitting as a magistrate. Judge Seabury permitted Mr. Jerome to subpoena, through the District-Attorney's office, the witnesses to be brought before him. Among those witnesses, Stanley S. Bagg, who claimed to have received the money paid Tillinghast from Ambrose F. McCabe, an attorney of the Railway Company, was the most important witness. The District-Attorney held the sworn statement of Bagg that McCabe had paid this money to Bagg on different occasions for the juror Tillinghast. Stanley S. Bagg, at the request of the District-Attorney, came to his office on the morning of March 26 1906, the day set for the examination before Judge Seabury. He accompanied Mr. Jerome to the chambers of Judge Seabury in the City Hall. Mr. Jerome said to Judge Seabury, "I have brought Mr. Bagg," but gave him no intimation that Bagg's testimony would be different from what it had been when given before his assistant. Mr. Jerome conducted the examination on the part of the People. The first witness called was Louis E. Julian. Mr. Jerome, in behalf of the People, offered Julian's deposition taken before the magistrate on the 23d day of February, 1906, in evidence, and Julian then testified that the facts therein stated by him, namely, that he had heard a conversation between Stanley S. Bagg and Ambrose F. McCabe wherein McCabe had given

$40 to Bagg on a certain day, to be paid to a juryman, was true.

Thereupon, Mr. Jerome proceeded, as appears from the stenographer's minutes, as follows:

"Q. I now hand you three instruments "in writing marked respectively Plaintiff "Exhibits C, D and E, for identification, "and ask you if you ever saw those papers before?"

Exhibits C, D and E were checks which had been given by Julian and which had not been paid, and they were handed to him and afterwards offered in evidence by Mr. Jerome for the purpose of discrediting him as a witness for the People.

Objection having been taken by Mr. Stevenson, an attorney, who had appeared as counsel for Mr. Julian, Judge Seabury said: "Is it claimed that they bear any relation?"

Thereupon, after some discussion, Mr. Jerome said:

"Would it weigh in your Honor's mind "at all, or would it not, if it appeared that "this witness was a man of such character "that his word could not be believed under oath?"

"The Court: As I understand this pro- "ceeding, this is not a trial of the com- "plainant's witness. After the complainant "has given his testimony, then I think it is "quite proper that full latitude should be "allowed the witness, to determine whether "his testimony is credible; but I certainly "do not think that we should commence "proceedings by an attack upon the com- "plainant.

"Mr. Jerome: Your Honor is a judicial "officer sworn to determine on evidence. "One of the elements of evidence is its cred- "ibility. I am *quasi* judicial, and I am "sworn to see even-handed justice done to "the people of the State of New York, and "any defendant; that is simply my duty "here. I do not know whether this man "McCabe, at the Bar, is a guilty man or "not, but in my humble judgment it would "go largely in my mind to determine "whether he was a guilty man or not if it "should appear whether the person who "brought the charge against him was actu- "ated by sinister motives or not, and how "am I to be asked, if your Honor should "determine to hold this man charged with "this crime, to be asked to go before the "Grand Jury and seek his indictment, when "I have in my possession evidence which "bears on the credibility of that witness; "I would not be acting in good faith to "your Honor, or just, or doing right to allow "your Honor, an upright judge, trying to "do his full duty, to suppress facts within "my knowledge in regard to this case."

Then Mr. Jerome, having introduced Mr. Julian's deposition before Judge Seabury, and having done all in his power to discredit Mr. Julian before Judge Seabury, said that he had no further questions to ask; and the defendant's counsel, Ex. Judge Hatch, took up the cross-examination where it had been left by Mr. Jerome.

When the witness, Stanley S. Bagg, was called to the stand, Mr. Jerome said:

"It is testified to here in this affidavit of "Mr. Julian that this man was present at "certain conferences between McCabe, Ju- "lian and his brother, George Bagg. I "have not until this morning talked to this "man. I asked him one question—whether "what I read to him from this affidavit "was true, and he said it was not true *in* "*toto.* And I then asked him if he had not "made a contrary statement in our office, "and he said he had made a contrary state- "ment in the office. The first statement "he made, he said, was he knew nothing "about it, and later he made a contrary "statement, and he had freely told me "about it, and I suggested that he should "keep the story to himself in substance, "and said, 'You keep the story to yourself in "substance until you get before Judge Sea- "bury, as I do not care to know anything "about it.' He is now produced here as a "witness. I know nothing about what the "man knows or can tell."

"Judge Seabury: What statement is "that the one of November 27th?"

"Mr. Jerome: The one in which he said "his first statement was true."

During the cross-examination of Stanley S. Bagg by defendant's counsel, Judge Hatch, the question of the existence of a voucher for $40, claimed by Mr. Julian to have been paid by Mr. McCabe to Stanley S. Bagg for the juror Tillinghast, was discussed, and the following colloquy took place between Mr. Quackenbush, the attorney of the Railway Company, the Court, and Mr. Jerome:

"Mr. Quackenbush: You requested me "to furnish information, and I now offer "to furnish anything your Honor asks, and "I offered it long ago, and I supposed your "Honor believed in my offer in good faith, "and I repeat it, so that there will be no "misunderstanding that anything you re- "quire of me will be produced."

"The Court: If you will produce the "vouchers in the case of Eichner against "the Metropolitan and in the case of "Eichenbrod and in the cases of Lowen- "bein and Flannery, the individual vouch- "ers in those cases, it would facilitate the "efforts of the Court."

"Mr. Quackenbush: You make that state- "ment knowing, as I said to you, I cannot produce those vouchers."

"The Court: I say to you, you have not "produced those vouchers."

"Mr. Jerome: The District-Attorney now "withdraws from this proceeding. I have "heretofore tried to conduct myself with "propriety, but when your Honor was in- "formed by my assistant that he endeav- "ored to get those vouchers, and that they "were disposed of after a year—"

"The Court: Do you realize that there "is no proof presented at all that those "vouchers have been destroyed? That is a "mere statement, but there has been no "evidence presented to that effect."

"Mr. Jerome: But this is a public chal- "lenge to a gentleman, because Mr. Quack- "enbush is a gentleman, and his word may "always be taken."

"The Court: I don't care to be lectured "by you, and if you don't care to partici- "pate in the matter you may withdraw. "Have you any other questions to propound "to this witness Bagg?"

Mr. Jerome then withdrew from the case, after 194 pages of testimony had been taken. He did not institute any prosecution against Stanley S. Bagg for perjury, but the witness Louis E. Julian was soon arrested in connection with the checks referred to and was discharged.

342 pages of testimony were taken upon this examination, and we submit herewith * the stenographer's transcribed notes of all the evidence taken. The parts quoted from are found in Volume I, pages 2 to 6, pp. 116, 117, 193, 194 and 195.

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*Note—On the original, there appears in writing "not as part of the charge but for your examination."

SECOND:

In the latter part of the year 1900 the case of *Sparling against the Third Avenue Railway Company,* an action to recover damages because of the defendant's negligence, was being tried before Mr. Justice O'Gorman in one of the parts of the Supreme Court, in the County and City of New York. Upon the jury was one Charles Winters. Mr. Henry M. Ward, an attorney of high character, was defending the case in behalf of the Third Avenue Railway Company. In the midst of the trial, Captain Truman, at that time connected with the Third Avenue

Railway Company, communicated to Mr. Ward that a son of Mr. Winters had appeared at the Third Avenue Railway Company's offices and had communicated with some of its officials, saying that his father was upon this jury and could control the action of the jury, and would procure a disagreement of the jury or a verdict for the defendant, if he could be paid therefor. Mr. Ward at once called the plaintiff's counsel to the presence of the Presiding Judge and disclosed these facts and asked for his advice. Judge O'Gorman, deeming it of great importance to put a stop to such practices, advised the counsel to continue the case, to encourage the son in his efforts, and when the father appeared to receive his money, at the end of the case, to procure his arrest. A small compromise verdict was brought in by the jury. Immediately Mr. Winters, a man of considerable property, appeared at the office of the Third Avenue Railway Company, he asked for his money, and was told by the official in charge that he had not carried out his part of the agreement, that the jury had brought in a verdict, when the offer was to procure a disagreement or a verdict for the defendant. He protested that it was impossible to procure a verdict for the defendant, and that he got the verdict reduced, and that he had earned his money and ought to have it. Thereupon a compromise upon $50 for Mr. Winters was made; the money was handed to him in marked bills, he was arrested at the door of the office by a detective, the marked bills were taken from his pocket and preserved, and he was thereafter indicted, and upon the indictment in the Clerk's office are the following endorsements:

"The defendant Charles Winters is "charged with taking a fee to influence his "action as a juror. The evidence is that "said defendant refused to receive the "marked money offered him as a bribe. It "was then thrust in his pocket by complain- "ant, and later said defendant was ar- "rested. Complainant cannot testify to "facts which prove that said defendant "knew the money to be in his pocket. In "view of the insufficiency of the proof that "any crime was committed, the dismissal "of the indictment against Charles Winters "is recommended.

"Part I, April 30, 1902.

W. A. Smyth,
D. A. D.A.

"I concur,
Robert Townsend,
A. D. A.

"Approved:
William Travers Jerome,
District-Attorney.

"April 30, 1902."

"April 30, 1902.

"On motion of District-Attorney, indict- "ment against Charles Winters is dis- "missed.

"J. E. N."

THIRD:

One Jacob J. Hecht attended as a juror at a trial term held in Part III of the Supreme Court in the County of New York on the first Monday of December, 1902. He had been ac-

quainted, for some time before he was summoned, with one Harry Kaufmann, an investigator or a person who prepared cases for trial on the part of the Railroad Company. While Hecht was sitting in the Court room of Part III, in the early part of the term, Kaufmann passed him, and in the very presence of the Court said to him:

> "If you get on the Smith case, I want "you to stay on it. I have a special inter- "est in it."

At about 2 o'clock of that day the case of *Wright Smith against the Metropolitan Street Railway Company*—that being the case referred to by said Kaufmann—was called and a jury impanelled, and the said Hecht sat as a juror in the case.

Later in the term the case of *Green against the Metropolitan Street Railway Company* was tried. The case had been tried four times before the trial in question. In two of the prior trials the jury had disagreed. The trial commenced upon Thursday, in the latter part of December, continued on Friday, and was adjourned until Monday. On Monday the juryman, Jacob J. Hecht, who had been drawn as a juror in that case, and was at that time sitting upon the jury, communicated with the Hon. James J. O'Gorman, the presiding judge, saying to him that upon the intervening Saturday he had been approached by Harry J. Kaufmann on his way to lunch and asked to stand by the Metropolitan Street Railway Company in the *Green case;* that he reprimanded said Kaufmann therefor, and that he thought it his

duty to communicate this fact to Justice O'Gorman. The witnesses's testimony was taken in full at the intermission of the Court on Monday, and by consent of counsel on both sides, he returned to the jury, and a verdict of $10,000 damages for the plaintiff was returned by the jury.

Thereupon Mr. Justice O'Gorman made an order directing Harry Kaufmann to appear before him and show cause why he should not be punished for his contempt of Court.

The contempt in the Smith case, having been in the very presence of the Court, was urged with the greater vigor, and the Court, after hearing a large number of witnesses found Mr. Kaufmann guilty of contempt and fined him $250.

In February, 1903, the papers and affidavits used upon the motion, together with the testimony taken before Judge O'Gorman, were turned over to the District-Attorney's office, but no indictment was procured and Kaufmann was not punished for his offense, although he had been found guilty of the act in the contempt proceedings.

FOURTH:

In July, 1903, one L. B. Treadwell, an attorney-at-law, submitted to Mr. Jerome, as District Attorney, the written confession of one Louis Scharfman; that he and a certain Barney Apparto and others, in a suit brought by one Abraham Bortz against said Railroad Company, had testified falsely, and that they had been paid therefor by the employees of the Metro-

politan Street Railway Company. On two occasions thereafter the said Treadwell brought said Scharfman to the office of the District-Attorney and urged the prosecution of the employees, whose names had been given to the District-Attorney; but no action was taken, and soon thereafter said Scharfman and Apparto left the State of New York.

FIFTH:

In the year 1905 a committee, known as the Armstrong Committee, sent by the Legislature of the State of New York to investigate the condition of the Life Insurance Companies of New York City, through its counsel, developed hundreds of violations of the criminal law and disclosed beyond question that the insured in these companies had been defrauded out of millions of dollars. Great indignation existed in the community over these terrible wrongs, and with almost one acclaim the people demanded punishment of the officials of the companies, however high their position, however much wealth they possessed.

In the midst of this excitement Mr. Jerome was nominated by an independent body of citizens for the office of District-Attorney. The issue which he made was the sure punishment of these recreant officials in the Insurance Companies, especially those who had contributed money to campaign committees. On October 31, 1905, one week before election, he made a public statement of his intentions, as follows:

"I have felt all along in regard to these "insurance matters, that crimes have been

"committed and that the persons guilty of "these crimes must be prosecuted, and it is "my intention, as I have said on several "occasions, to prosecute to the bitter end "every person against whom it is possible "to obtain evidence showing the commission "of a criminal offense."

Again he said in that campaign:

"When Hughes is through with the in- "surance inquiry, justice must be done in "the land, and it must fall upon those who "are guilty, be their station what it may."

He assured the people that the attorneys in charge of the insurance investigation concurred in his delay until the investigation was completed. The investigation was completed in the latter part of December, 1905. Mr. Jerome, however, delayed taking any action against these officials until the March Grand Jury, and then, instead of presenting the facts to the Grand Jury in the usual manner and asking an indictment, he prepared a series of hypothetical questions, all of which, upon their face, must as a matter of law have been answered in favor of the men who had given over the trust funds of their several companies to the chairman of the national campaign committee, and he presented these hypothetical questions to the Judge in Part I of the Court of General Sessions, and asked him for an answer thereto. The learned Judge, sitting in that Part, declined to answer categorically those questions, but said to the jury:

"Was it an honest transaction, actuated

"by commendable motives, or did they act "under artifice, disguise and concealment? "From the facts you will get the character "of the intent. Did the parties concerned "sincerely believe that they were acting "for the best interest of the persons whose "property was intrusted to them? Was "their conduct in the proceeding that of "men actuated by commendable motives, or "did they proceed subtly, furtively, cor-, "ruptly, craftily, with duplicity, artifice, "deceit and concealment? These are all "questions which you may consider in de- "termining the character of the intent."

The District-Attorney seemed to regard these words as equivalent to an instruction to indict, and he said to the Presiding Judge:

"Your Honor has in substance so charged "this jury that, if they take your advice "rather than mine, they will indict these "people, and I want to place this thing, be- "fore so serious a step is taken, where a "Court of final resort can pass on it."

The March Grand Jury did not indict, and the April Grand Jury, with Recorder Goff presiding, received a charge upon the same matter similar to that of Judge O'Sullivan's. Before this Grand Jury, (the April Grand Jury) Mr. Jerome commented upon the great injury which an indictment would do the defendant if he was innocent; stated to them that he had talked with a number of judges of the Supreme Court and with competent lawyers, and had given much careful reflection and study to the matter,

and that it was perfectly plain that the facts did not constitute larceny; assured the jury that in the last Grand Jury not a single vote out of the whole Grand Jury to indict could have been procured; told them that an indictment would practically involve the chief financial officials of every great financial institution in the country; and that he should move before Judge Dowling for a special Grand Jury to consider these matters, and thus delayed action on the part of the April Grand Jury.

On or about the 27th day of March, 1906, Mr. Jerome placed before Joseph F. Moss, a City Magistrate of the First Division of the City of New York, an affidavit of Darwin P. Kingsley, Vice-President of the New York Life Insurance Company; an affidavit of Edwin D. Randolph, Treasurer of the New York Life Insurance Company, *and a letter of that date, written by George W. Perkins,* the defendant, who had paid upwards of $148,000 of stockholders' money to Cornelius N. Bliss, the Chairman of the National Republican Committee in 1904; *and upon this evidence, and this only,* a warrant was issued for the arrest of Mr. Perkins; a writ of *habeas corpus* and a writ of certiorari were at once issued, and Mr. Perkins and the record were brought before Mr. Justice Greenbaum to determine the sufficiency of the papers on which the arrest had been made.

The statement on which the arrest was based, made by Mr. Perkins, was unverified, *and was in the nature of a simple letter,* to the District-Attorney, and the following quotation is made from that letter:

"On December 30, 1904, a check to the "order of J. P. Morgan & Co. (of which "firm I was a member) was drawn by the "treasurer and assistant-treasurer of the "New York Life Insurance Company, by "order of the President, as I have since "learned, and was delivered to J. P. Mor- "gan & Co., and credited to my account. "Until the hearings before the Armstrong "Investigating Committee in September, "1905, I knew nothing of the bookkeeping "entries which had been made in the books "of the New York Life Insurance Company "with respect to such payment.

"When I made the advances above men- "tioned, and when I was reimbursed there- "for, it never occurred to me that there "could be any question as to the propriety "of such expenditure, which I believed to "be for the benefit of the Company. It has "come to me as a total surprise that the "legality of such payments should be ques- "tioned. While so asserting, it is not my "intention to dispute or to deny civil liabil- "ity to account to the Company for these "moneys.

"You may make such use of this state- "ment as you see fit. It is my purpose to "frankly state my connection with the "transaction, and advisedly and deliber- "ately I waive any right, privilege or im- "munity in connection with or in conse- "quence of my giving this information.

"I derived no personal advantage of any "kind from the transaction; and certainly "I had no intent other than to serve the "interests of the Company."

Thus, Mr. Jerome made, as the very foundation of his right to arrest Mr. Perkins, the statements of Mr. Perkins, apparently carefully prepared by his counsel, declaring his innocence, declaring his innocent intent, declaring that the illegality of such payments was a surprise to him, and which, taken as true, destroyed the felonious intent, the gravamen of the crime.

In the Court of Appeals, there being three dissenting judges, the four prevailing judges believed that, admitting these facts in this letter of Mr. Perkins to be true, as they must be regarded, the crime of larceny did not exist. Mr. Justice Gray, one of those four judges, said:

> "Furthermore, the prosecution in making "use before the magistrate of the relator's "letter to the District-Attorney, as an ad- "mission of the facts of the transaction "complained of, not only made the fact "clear that the moneys were paid out to "satisfy the relator's claim, but, also, "caused it to appear affirmatively that the "relator had acted in the honest belief that "he was benefitting the company and had "derived no personal advantage."

Mr. Justice Hiscock, one of the other four judges, writing a concurring opinion, said of this letter of Mr. Perkins:

> "It affirmatively disproves the existence "of any criminal intent upon the part of "the relator."

Every fact which would relieve the defendant Perkins from the penalties of the law was thus

placed in his letter and voluntarily submitted to the magistrate by the District-Attorney as the foundation of the criminal proceedings against Mr. Perkins.

(We herewith submit * for your Honor's examination a certified copy of the hypothetical questions and the charge of Judge O'Sullivan to the March Grand Jury; the charge to the jury on their return from time to time for instructions; a certified copy of the charge of Recorder Goff to the April Grand Jury; *and a certified copy of the comments which Mr. Jerome made to the April Grand Jury upon the action of Judge O'Sullivan and of Recorder Goff*).

SIXTH

On June 25th, 1904, the New York Life Insurance Company sent to Kidder, Peabody & Co., of Boston, $930,000, and on June 27th, 1904, Kidder, Peabody & Co., acknowledged the receipt of this money and stated that they were sending by registered mail to the Insurance Company $1,000,000 Mexican Central Railway Company, Limited, five per cent. gold bonds due July 21st, 1929, purchased with this sum of money. These bonds were purchased by the New York Life Insurance Company and were disposed of by Kidder, Peabody & Co. in August of the same year at a profit of $40,000. This $40,000 was, together with interest on the bonds and amounting to $40,193.60 transmitted

*Note—On the original, there appears in writing "not as part of this charge but"

by Kidder, Peabody & Co. to the New York Life Insurance Company on the 17th day of September, 1904.

The transaction appeared on the books of the New York Life Insurance Company as a purchase and a sale by them of these Mexican bonds but the books do not show any profits therefrom. The profits of $40,000 were turned over to George W. Perkins, and the transaction did not appear upon the books of his firm, J. P. Morgan & Co., or upon any books of George W. Perkins individually or otherwise, and when Mr. Perkins was asked, before the Armstrong Committee, as to his right to receive said $40,000 profits he was unable to give any reason except that he held the money for a fund called the "Nylic Fund," of which he was trustee, a fund created by the salaries and bonus of two hundred and twenty agencies and directors.

The New York Life Insurance Company had made contributions to the fund but they had always been made by a vote of the Board of Directors or the Governing body of the New York Life Insurance Company. This $40,000 profit upon the Mexican bonds was turned over to Mr. Perkins by the President of the New York Life without any action of his Company, and apparently without any knowledge on the part of the Company, and it was received by Mr. Perkins and used by him as his own money and no entry was made of the receipt as belonging to the "Nylic Fund," and no reason was given for its alleged diversion to that purpose.

This transaction was called to the attention of Mr. Jerome at least two years ago and no action has been taken by him to indict and

convict Mr. Perkins for this apparent crime of grand larceny.

SEVENTH.

Officers connected with the Equitable Life Assurance Society and the Mutual Life Insurance Company contributed in behalf of each of their companies, $50,000 to the National Republican Compaign Fund of 1904. Other sums, at different times, were paid by the officers thereof to Mr. Platt for political purposes.

James H. Hyde and his associates received syndicate participation profits where the Equitable Life Assurance Society was the real party and devoted them to their own purposes in the Lackawanna Steel Company in the amount of $26,563.11 (see pages 2009-2025 of Insurance Investigation Committee's Minutes). They received $18,542 which belonged to the Equitable Life Assurance Society in the syndicate for the sale of the Chicago, Burlington & Quincy bonds (see testimony pp. 1107, 2948, 2945-2965, Vol. 1 of Exhibits, pp. 259, 261-264; Exhibits 169-175).

In the Japanese Bond purchase Hyde and his associates received upwards of $20,000 of profits which belonged to the Equitable Life Assurance Society (see testimony of H. R. Winthrop, pp. 1152-1154, Exhibit 187, Vol. 1, of Exhibits, pp. 179-180).

In the syndicate for the purchase of the Pennsylvania, Baltimore & Washington Railroad bonds and the Long Island Railroad 4% bonds, they received other large sums of money

which belonged to the Equitable Life Assurance Society, which had made all the outlay and taken all the risks of the syndicate. (See testimony of H. R. Winthrop, pp. 1071-1149, 1152-1154; J. H. Schiff, pp. 1345, 1346; Exhibit 186, Vol. I of Exhibits, p. 278).

In the Rio Grande & Western Railroad Company 4% bond syndicate, J. W. Alexander, George H. Squier and other officers of the Equitable Life Assurance Society received considerable profits belonging to their Company.

In the Chicago & Northwestern 3½% bond syndicate, in the Baltimore & Ohio, the Pittsburgh, Lake Erie & Western syndicate Alexander and Squier received profits of the syndicate which belonged to their Company.

In the Metropolitan Securities Company syndicate, the Oregon Short Line bond syndicate, the Pennsylvania Railroad share syndicate and many other syndicates, Hyde, Squier and McIntyre received large profits which belonged to their Company and for which their Company had taken the entire risk. (See testimony of Jacob H. Schiff, p. 1332, of Vol. II of Legislative Insurance Investigation Committee.)

Millions of dollars were actually taken from the Mutual Life Insurance Company and from the New York Life Insurance Company through Andrew Hamilton, Andy Fields and President McCurdy and his son and his son-in-law by means of artifice and fraud and wrong perpetrated upon their respective companies, which practically amounted to grand larceny.

As one after another of these crimes were brought to light all the world looked to Mr. Jerome, as the District-Attorney of New York

County, to punish them through the criminal law. He excused his delay before January 1st, 1906, by saying that the Committee did not want him to prosecute these wrong doers criminally until they had completed their labor. At last in March, 1906, he submitted his hypothetical questions to Justice O'Sullivan, but refused to produce evidence before the Grand Jury. He repeated this performance in April. He then demanded a special Grand Jury and got it. He then concluded not to avail himself of the Grand Jury but to make an investigation himself and reported that he found "moral obliquity," not criminal acts. He then changed his mind and demanded another Special Grand Jury and got it. He then announced that he was intending to obtain the help of eminent counsel, who promptly declined. He then demanded another Special Grand Jury and got it, but through it all he did nothing practical and has done nothing practical until the present day except to convict Dr. Gillette, not for his offenses in connection with the Mutual Life Insurance Company, but for perjury because of his testimony before the Grand Jury at one time being contrary to his testimony given before the same Grand Jury at an earlier time.

During all this time public spirited citizens, leading newspapers in New York and in other parts of the United States have been urging the District Attorney to punish these criminals in the three large insurance companies and he has still avoided bringing any of them to trial and conviction, with the exception of Dr. Gillette.

EIGHTH.

By February, 1902, the affairs of the Metropolitan Street Railway Company had become so bad that dividends could no longer be paid out of the earnings, and some means must be devised whereby dividends could be paid without danger of violating the criminal law. Mr. William C. Whitney and Mr. Thomas F. Ryan and others owned large blocks of the stock of the Metropolitan Street Railway and if the true condition of affairs became known the stock would become of little value. To continue and to enable them to unload their stock Mr. Whitney, Mr. Ryan, Mr. Dolan, Mr. Widener and others formed a criminal conspiracy to continue the credit of the Railway Company, to unload their stock and to strip the Metropolitan St. Railway Company of upwards of $20,000,000 of securities, which it then held, before its bankruptcy was known. These men conspired criminally together, made the public statement that to pay off the unfunded debt of the Metropolitan Street Railway Company and to make improvements of the plant, would require $23,000,000. The company at that very time had securities which could have been sold in the open market for that amount. Notwithstanding this, the Metropolitan Securities Company was formed as a holding company; the stockholders of the Metropolitan Street Railway Company were graciously allowed to purchase about $23,000,000 of its stock of $30,000,000 at par, when the market value of the stock was considerably above par and for securing them to purchase that stock at that price and for the sale of the

remaining $7,000,000 or thereabouts to themselves, Kuhn, Loeb & Co. received $1,500,000.

The New York City Railway Company was incorporated, its stock being held by the Metropolitan Securities Company, and leased the Metropolitan Street Railway Company, the Metropolitan stockholders receiving in lieu of dividends interest upon the stock which they held at 7%. The insolvency of the Metropolitan Street Railway Company; the object of the Metropolitan Securities Company; the whole transaction, as we know it to-day, was fully disclosed by Mr. Amory to Mr. Jerome in 1903. The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the Railroad Company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money. Finally the Company destroyed its books existing before 1902, to hide the stealing, and that offense is said to be outlawed.

We herewith submit * a copy of the statement of Col. Wm. N. Amory, submitted in 1903 to Mr. Jerome, showing the condition of the Metropolitan Street Railway Company and the condition of its affairs as described above.

*Note—On the original, there appears in writing "not as part of this charge but for your examination."

NINTH.

In August, 1898, Anthony N. Brady arranged with the Central Trust Company of New York to purchase from it the securities and franchises of the Fulton, Wall Street & Cortlandt Street Ferries Railroad Company. He paid for the stock, bonds and franchises $200,000. Together with Thomas F. Ryan, who apparently was interested in the franchises, Brady borrowed $200,000 from the Central Trust Company for the purpose of paying for the franchises. In May, 1902, he sold these franchises to the Metropolitan Securities Company for $250,000, and on May 21st the papers connected therewith were delivered to the attorneys of the purchaser.

On May 22nd, 1902, the attorneys of the parties delivered to Mr. Brady a check of the Metropolitan Securities Company *in the sum of $965,607.19.* The check was accompanied by a memorandum stating that the difference between the amount due Brady for the franchise and the amount of the check was to be disposed of as follows:

Moore & Schley, Brokers.....	$134,028.92
William C. Whitney	111,652.79
Thomas F. Ryan.....	111,652.78
Thomas Dolan	111,652,78
P. A. B. Widener	111,652,78
William L. Elkins	111,652,78

The check, when found in the recent investigation, was accompanied with the following statement:

"The annexed check and voucher for $965,607.19 represents the amount paid to

Anthony N. Brady on May 22d, 1902, for the securities ($1,000,000 of stock and $1,000,000 of bonds) of the Wall & Cortlandt Street Ferries Railway Company, which owned a franchise from Wall Street Ferry to Cortlandt Street Ferry. The purchase was made by the Metropolitan Securities Company, pursuant to the contract of February 14, 1902, which provided for the acquisition of the securities of the Interburban Street Railway Company, the Wall & Cortlandt Street Ferries Railway Company, and other companies mentioned in said contract. The purchase was reported to the Board June 10, 1902."

On May 6th, 1902, Mr. Ryan was elected a member of the Board of Directors of the Metropolitan Securities Company. On October 21st, 1902, a check to the order of *cash* in the amount of $540,000 was drawn on the Metropolitan Securities Company and was paid to the President of the Company, H. H. Vreeland. This amount was then fraudulently entered in the books of the Metropolitan Securities Company as payment of certain alleged claims against the Wall & Cortlandt Street Ferries Railway Company. (See Record of Public Service Commission, pp. 1601-1818, pp. 1718-1721).

Mr. Jerome was furnished with two copies of the testimony taken before the Public Service Commission. He was in complete possession of all the facts in the case as above detailed. Eleven days after the $540,000 check transaction was brought to the attention of Mr. Jerome, a transaction indicating larceny, the statute of limitation intervened as to some of the parties, and no

action has been taken by Mr. Jerome. Thomas F. Ryan is a resident of the State of Virginia, and probably the statute has not run against his offense in taking this sum of money belonging to his company for that reason. Or, if it be held that the statute did run against him, while he was a non-resident, his absence from the State for a period since the crime occurred, of eighteen months, might be invoked. Mr. Widener and Mr. Dolan are still living and are residents of the State of Pennsylvania.

The District-Attorney has been urged by your petitioners again and again to prosecute Mr. Ryan, Mr. Vreeland, Mr. Widener and Mr. Dolan, but he has as yet taken no steps and maintains that such prosecution would probably be unavailing.

TENTH.

In the years 1902 and 1903 Thomas P. Fowler, Paul D. Cravath, Edward J. Berwind, George G. Haven, Herbert H. Vreeland, Edward W. Sayre, Mortimer L. Schiff, Thomas F. Ryan, Peter A. B. Widener, Thomas Dolan, John D. Crimmins entered into a combination and conspiracy to appropriate to the use of the Metropolitan Securities Company millions of dollars out of the capital of the New York City Railway Company without the Metropolitan Securities Company giving any consideration therefor, in which conspiracy all of the above named defendants either at these times or subsequently, joined and participated with full knowledge of the nature and purposes of said conspiracy. Pursuant to said conspiracy and

with the purpose and intent to rob the New York City Railway Company of its property, these defendants concocted and consummated the wrongful, illegal and criminal scheme hereinafter set forth to get from said New York City Railway Company, of which many of them were directors, the sum of $2,797,200.

This criminal scheme to rob the New York City Railway Company was accomplished in the following manner: Mr. Fowler, Mr. Cravath, Mr. Haven and Mr. Berwind, mentioned above, all of whom were directors of the Metropolitan Securities Company, were, together with four dummy directors and one director who has since died, the directors of the New York City Railway Company. An agreement had been made between the New York City Railway Company and the Metropolitan Securities Company, that the New York City Railway Company would issue $15,000,000 face value of ten year 3% debenture notes of the New York City Railway Company and sell them at 70% of their face value to the Metropolitan Securities Company, *with the right to the City Railroad, however, although they were ten year notes, to redeem them at any time.*

These two boards of directors being practically the same and acting in collusion and conspiring criminally together to take over the property of the New York City Railway Company to themselves, issued on or about the 23rd day of April, 1902, $3,300,000 face value of said ten year debenture notes of the New York City Railway Company to the Metropolitan Securities Company for $2,310,000, or 70% of their face value, and on July 8th, 1902, the same persons,

as directors of the two railway companies, provided for the redemption of said notes by paying therefor out of the capital of the New York City Railway Company $3,300,000, being the full face value of such notes. The difference, amounting to $990,000, was taken over by the Metropolitan Securities Company for the value of its money from April 23rd, 1902, to July 8th, 1902; or, in other words, the New York City Railway Company paid the Metropolitan Securities Company, through this conspiracy of the directors of both roads, $990,000 for the use of $2,310,000 for a period of less than three months. The same process of taking the property of the City Company was repeated on the 5th day of June, 1902, when $3,300,000 face value of said ten year debenture notes of the New York City Railway Company were issued to the Metropolitan Securities Company and were taken over by the Metropolitan Securities Company for $2,310,000 or 70% of their face value. And on the 8th day of July, 1902, $1,800,000 of these notes were redeemed at their face value by the New York City Railway Company, and on the 29th day of December, 1902, the remaining $1,500,000 were redeemed, again taking from the company thereby the sum of $990,000. The said sum being practically for the use of the money advanced by the Metropolitan Securities Company for this short period of time.

That shortly thereafter and during a period of time between the 12th day of November, 1902, and while many of the directors of the Metropolitan Securities Company were acting as directors of the New York City Railway Company and were controlling both companies, another loan

of the face value of $2,724,000 through said ten year notes was issued by the New York City Railway Company to the Metropolitan Securities Company out of which, by redeeming the same in a short period of time, the sum of $817,-200 was secured to the Metropolitan Securities Company, making all told the sum of $2,799,-200 thus procured by the Metropolitan Securities Company through the collusion of its directors with the same directors sitting upon the New York City Railway Company board and its control over both said companies.

We herewith submit * the bill of complaint of *Adrian H. Joline and Douglas Robinson, as Receivers of the New York City Railway Company, complainants against the persons whose names are given above,* recently brought in the United States Circuit Court for the Southern District of New York, for a complete description of this criminal conspiracy, wherein it will appear that not only did the Metropolitan Securities Company rob the New York City Railway Company of these millions of dollars, but they paid for the very notes which were issued to them out of the property of the New York City Railway Company.

This robbery of the New York City Railway Company by the directors of the Metropolitan Securities Company and of the New York City Railroad Company by collusion and conspiracy between them has been called to the attention of Mr. Jerome. The newspapers of New York have given great publicity to this action and

*Note—On the original, there appears in writing "not as part of this charge but for your examination."

the facts have been laid before him and he takes no action for the punishment of these conspirators.

ELEVENTH.

The annual reports filed by the Interurban Street Railway Company for June 30th, 1903, and the New York City Railway Company for June 30th, 1904, 1905 and 1906, with the State Board of Railroad Commissioners, falsely include among the enumeration of assets in the general balance sheet contained in each of said reports under the heading of Construction and Equipment, the sum of $4,500,000. This sum was the discount or loss that was to be suffered by the New York City Railway Company through issuing ten-year three per cent. debenture notes at 70, as described in subdivision Tenth last above to the amount of $15,000,000, which were to be redeemed at par. The said notes were not issued for construction or equipment, nor was the total amount of $15,000,000 at any time or ever issued. The discount represents a loss to the company incurred in issuing its notes, and never was properly chargeable as an asset. Such inclusion of the said amount of $4,500,000 in the balance sheet was for the purpose of concealing the true condition of the company.

If this fictitious amount had not been included as an asset in the general balance sheet in the annual reports for June 30th, 1905, and June 30th, 1906, it would have been apparent on the face of such reports that there was an accumulated deficiency amounting to more than the capital stock of the company, and that the com-

pany was insolvent and could not earn or be expected to continue to pay the rental to the Metropolitan Street Railway Company upon which the stockholders of that company were compelled to rely for their dividends.

These facts are all evidenced by public records, to which the District-Attorney of New York County has had access and copies of which have been in his possession, and his attention has been expressly called to these matters on numerous occasions.

The annual reports in question are verified in each instance by two of the officers of the New York City Railway Company, and were sworn to before a notary public in New York County. All of such officers were guilty of the crime of perjury; and this fact has been called to the attention of the said District-Attorney, but no action has been taken by him with respect thereto.

TWELFTH.

Upon the books of these corporations several hundred thousand dollars is carried in what is known as "Suspense Account." Hundreds of thousands of dollars have been paid to Mr. Vreeland for which no voucher is found and no explanation given. There is much reason to believe that a considerable portion of these large sums of money have been used for improper purposes. At least upon the books of the company these sums of money have been taken from the different companies and no explanation is given.

Mr. Jerome's attention has been repeatedly

called to this condition and yet no investigation has been made followed by an indictment of Mr. Vreeland, or of the parties guilty of taking these sums from the City Railway Company.

The undersigned and his Committee personally and through their attorneys have urged the investigation of these matters upon Mr. Jerome and have urged the punishment of the men guilty of stripping these railway companies of all their property and defrauding the public, but Mr. Jerome has assumed the attitude of their protector and their advocate, has avoided investigation, and instead of investigating the matter through persons acquainted with the facts, has subpoenaed the members of their stockholders' committee and their chairman before him, well knowing that they had no personal knowledge and could give him no aid, and this has been done for the apparent purpose of discomfiting them and deterring them from contending that the criminal law should be enforced.

THIRTEENTH.

Mr. Jerome, in the few attempts which he has made to procure indictments against the directors of the Metropolitan Securities Company and the other street railway companies has been in the habit of calling the parties accused of wrong before the Grand Jury, taking their statements as to whether they were guilty or not. This practice has recently received a severe rebuke at the hands of one of the Justices of the Court of Sessions, and we call your Honor's attention, in that connection, to the remarks of Mr. Justice Rosalsky as they appear in the New York Law

Journal of January 30th, 1908, in which, speaking of Mr. Jerome's subpoenaeing Thomas F. Ryan, and examining him before the Grand Jury, he says:

> "The practice of calling a probable defendant under a subpoena, or otherwise, before a Grand Jury and interrogating him should be condemned, and the law itself condemns it since even if successful at the outset in securing an indictment, a prosecution thereafter will result in a defeat of its purpose."

FOURTEENTH.

On October 8th, 1907, it was disclosed at a hearing before the Public Service Commission that, on June 9th, 1903, Thomas F. Ryan took $24,000 from the treasury of the Metropolitan Securities Company, and again, on August 7th, 1903, that he took the further sum of $28,500 (pp. 1623-1633).

On October 10th, 1907, it was disclosed before the Public Service Commission that $299,800 had been taken from the treasury of the Metropolitan Securities Company and paid by the said Company to the firm of A. A. Ryan & Bro., sons of Thomas F. Ryan, brokers, in payment of 2700 shares of Metropolitan Street Railway Company stock at a price in excess of its actual value (pp. 1716-1717).

These matters have been called to the attention of the District-Attorney and the Grand Jury, but no action, so far as the undersigned know, has been taken.

FIFTEENTH.

Mr. Jerome's statements covering a period of many years with reference to the Judges have been not only improper but scandalous in their nature and have tended to destroy the confidence of the people in the integrity of their Courts.

He was reported in the press of November, 1905, as saying at the City Club dinner given him after his election:

> "I have no reverence, I have not even every day common respect for the Justices of the Supreme Court of the First Department."

and again—

> "I do not think that the position of Judge should be elective. Take the Federal Judiciary and think how free from scandal it is. Any lawyer with any considerable practice will tell you that in New York it is a common thing to hear a brother lawyer say 'it would not do to let such and such a case go on with such and such a Justice, for he is identified with such and such a corporate interest."

Speaking of the charge of Judge O'Sullivan to the Grand Jury in Part I of the Court of General Sessions, in March, 1906, he said to the Grand Jury of April, 1906:

> "The instructions of the Court were such that I am informed by the March Grand Jury that they could not comprehend them. They were, in substance, that to steal is to steal, a proposition tolerably elementary and one on which I think no intelligent human being cared to have any information or advice from the Court."

Asked by the representatives of the daily press what he was going to do after Judge Rosalsky had handed down his opinion in the Cravath case, he said again and again:

> "No opinion of Judge Rosalsky would be sufficient to make me do anything."

Testifying in his case against the New York Evening Journal Publishing Company, when asked about the proceeding of the People on the complaint of *Louis E. Julien against Ambrose F. McCabe, heard before Judge Seabury,* he used this language with reference to Judge Seabury:

> "It was the most indecent exhibition I have ever seen in a Court of law in my life, and I have seen some pretty tough ones."

An examination of the Minutes of the Stenographer herewith submitted to your Honor will show the propriety of conduct and the intelligence of the Presiding Justice in that proceeding.

Mr. Jerome in one sense is a judicial officer. He, of course, appreciates the importance of framing his indictment with accuracy and stating the exact facts yet in general language he has made the expressions first above set forth with reference to the Judges of the First Judicial Department of New York without specifying their several offenses; without pointing out their several misconduct; without mentioning particular names and leaving each and every one of the Judges, however honorable, subject to such public suspicion as these general defamatory allegations will naturally excite.

We submit that these words of Mr. Jerome present a grave offense and tend strongly to show that he is unworthy to hold the position

of the criminal law officer of the County of New York.

SIXTEENTH.

On January 9th, 1902, at 8.20 o'clock in the morning, a collision occurred between a passenger train of the New York, New Haven & Hartford Railway Company and a train of the New York Central Railway Company between 56th and 57th streets in the tunnel of said New York Central Railway Company, whereby seventeen persons were killed and thirty were seriously injured.

Before the coroner's jury called to examine into the cause of the death of one of the persons killed James H. Franklin, manager and division superintendent at the Grand Central Station, and who had charge of this tunnel, testified that three hundred twenty-three scheduled trains passed through the tunnel every day, that no supervision, whatever, was exercised over the speed of trains in the tunnel, except as to whether they were on time; *that for ten years last past engineers had frequently reported to him, as such manager, that the smoke, steam and fog in the tunnel obscured the colored signal lights by which the trains solely regulated their motion.* This evidence before the Coroner's Jury was uncontradicted, and the Coroner's Jury returned a verdict:

"We further find faulty management on the part of the New York Central & Hudson River Railroad Co. and we hold said officials responsible for the reason that, during the past ten years said officials were re-

peatedly warned by locomotive engineers and other employees of the dangerous conditions existing in said tunnel."

The railroad commissioners of the State of New York also examined into the cause of the accident, and determined that:

"The New York Central & Hudson River Railroad Co. was grossly negligent in putting a new engineer in charge of the train in rush hours, and further were negligent and derelict in failing to take measures to increase terminal facilities."

But, notwithstanding these facts, neither Mr. Franklin nor any of the other officials of the New York Central Railway Co. were indicted, but the engineer of the locomotive of the New York Central Railway Co. which collided with the rear end of the passenger train alone was indicted, although the evidence clearly showed that a condition existed such as would not allow his seeing the signals and that he did not see the signals, because of the smoke and steam, until at the very time of the collision. The condition of the tunnel was a criminal nuisance upon the undisputed evidence, and the failure of Mr. Jerome as District-Attorney to indict and seek to convict some one of the officials of the Railroad Company was clearly misconduct.

SEVENTEENTH.

On the 27th day of January, 1902, a terrible explosion occurred in Park Avenue, immediately in front of the Murray Hill Hotel in the City of New York, killing several people, wounding many more, and destroying property to the

value of hundreds of thousands of dollars. The destruction came from the explosion of several hundred pounds of dynamite kept in a small hand magazine within ten feet of the curb in front of the Murray Hill Hotel. This small magazine was built of wood and attached to the supports of a large platform overhead, on which a steam engine and boiler were being operated for the purpose of removing debris from the excavations in the tunnel. When the engine was in operation, the shock of the machinery would shake the platform above the powder house and the burning coals from the hearth of the fire place underneath the steam boiler would fall upon the powder-house. This condition of affairs had existed for months before the explosion. And any one of intelligence would have known at a glance that a powder house containing dynamite attached to the supports of a platform on which there was running a steam engine and boiler, doing work of the kind in question, was criminally dangerous. The contractor John B. McDonald, the inspector of explosives of the Fire Department and the public officials having charge of the construction of the subway at this point, all knew, or ought to have known, of the danger.

On the morning of the 27th of January, 1902, several hundred pounds of dynamite, at least ten times more than the regulations of the Fire Department allowed, were stored away in this powder house. The powder house was so situated that wagons passing along between it and the curb were liable to hit the corner of it. An ignorant young negro, unable to read or write, with no experience, was in charge of the powder

house, and, under such circumstances, the explosion took place. One or two of the men in charge were indicted, but a discontinuance was entered by the District-Attorney, and nobody was punished.

When civil suits arose, and the important papers, which were taken by the District-Attorney for criminal prosecution, were needed in those suits, Mr. Jerome had lost them.

The powder house itself was built at a place not allowed by the ordinances of the Fire Department; it was built in a manner not allowed by the ordinances of the Fire Department, and the structure and its use was a public nuisance and the men who permitted its continuance and the city officials from the fire department who had charge of it, were all guilty of continuing a nuisance dangerous to human life and of manslaughter.

EIGHTEENTH.

In the fall of 1905, when Mr. Jerome was speaking in his campaign for re-election to the office of District-Attorney, he said

"If re-elected, I will investigate the Ice Trust and other vast trusts. Rest assured, I will punish the enemies of the people."

Since that time, in an action brought in the United States Circuit Court for the Southern District of New York, entitled *Daniel W. Burrows, Complainant, against Interborough Metropolitan Company and others, Defendants,* Judge Holt of that Court held nearly a year ago that the complaint in that action, which alleged that the Interborough Metropolitan Company, Inter-

borough Rapid Transit Company, Metropolitan Street Railway Company, Metropolitan Securities Company and Manhattan Railway Company were a combination of corporations conspiring to commit acts injurious to trade or commerce and to prevent competition, and were contrary to the provisions of the Penal Code of said State, Section 168 thereof, set up a good cause of action. Notwithstanding this decision, Mr. Jerome has taken no proceedings in the Criminal Court to punish said combination of corporations, although they absolutely control the whole business of carriage of passengers in the City of New York.

It is true that the question of whether the American Ice Company is a monopoly in violation of law has been presented by Mr. Jerome to the Grand Jury; but we maintain that it has not been presented in good faith; that the cerificates of incorporation of the different companies, the contracts between them, the hundred or more contracts with independent dealers providing that they should not engage in the business, and the facts and circumstances which establish its existence as an unlawful combination, were not before the Grand Jury, and that the assistant presenting these facts was related to persons having, as we are informed, interests in the combination, and that no full and thorough examination was given.

We ask your Honor to procure, what we probably cannot procure, a certified copy of the minutes of the stenographer taken upon this examination.

NINETEENTH.

In the fall of 1903, through public hearings held for several weeks in the City of New York, it appeared that during the year 1902 the Mercantile Trust Company, together with the Commonwealth Company of New York, then called the Trust Company of the Republic, Louis W. Nixon, Daniel LeRoy Dresser, John W. Young, and divers other promoters, had entered into a criminal conspiracy for the flotation and sale to the public of certain illegal, worthless and fictitious securities of the corporation called the United States Ship-Building Company, and in pursuance of said scheme had issued a prospectus of the said company and caused the same to be widely advertised in the public press, which said prospectus contained numerous false and material statements with respect to said ship-building company, its securities and property, contrary to the Penal Code of the State of New York.

The value of said properties, the number of contracts for building ships which they had, the profit thereon, the amount of property to be purchased by said syndicate—each and all were misrepresented in said prospectus.

The bonds and stock of said company to the amount of many millions of dollars were sold to innocent purchasers on the faith of said fraudulent representations.

On February 17, 1904, an information and complaint of one John Young, a business man of small means, who had been swindled by the said conspiracy, was filed with Mr. Jerome, praying him to take action against the guilty

parties. At the same time evidence was placed before Mr. Jerome to the effect that the books of said Trust Company of the Republic had been falsified in connection with the carrying out of said conspiracy, and that large financial institutions had assisted in the said conspiracy by means of what is known as "wash-loans," and other fictitious and fraudulent methods; but Mr. Jerome refused to make any investigation into said facts and never instituted any prosecution against any of the persons guilty of said offenses.

TWENTIETH.

That in 1903 the New York Building Loan Banking Company, a corporation in which thousands of poor persons had invested their savings, failed as a result of the criminal mismanagement of its officials. Some of these officials were men of wealth and influential financial connections. In September, 1903, evidence of said offense was laid before Mr. Jerome, but he refused to take any proceedings, either by information or indictment, against the persons guilty of said offenses.

TWENTY-FIRST.

That for several years prior to May 23, 1905, the Merchant's Trust Company was a corporation engaged in the business of a trust company in the City of New York, and that its officers, directors and holding stockholders were men of wealth and financial connections in the City of New York; that said Trust Company failed and

closed its doors in May, 1905; that the total authorized capital stock of said Trust Company was $500,000, and that at no time during the years 1903 and 1904 did it exceed said sum. That during the year 1903 said Trust Company loaned out of moneys deposited in the sum of $1,200,000 to the Virginia Passenger and Power Company; that during 1903 and early in 1904 it invested in the securities of, and loaned to, the Hudson River Valley Railroad Company the sum of $850,000; and invested in the securities of, and loaned to, the Rutland Railroad Company and the Chippenden Development Company the sum of $400,000. That the whole of said loans and transactions exceeded three times the actual stock of said Merchant's Trust Company then paid in and possessed by said company, in violation of Section 595 of the Penal Code of the State of New York. That for several months prior to May, 1905, said Trust Company was insolvent, and said facts were known to the officers and directors thereof; but nevertheless said Trust Company continued to receive deposits until May 23, 1905, when it was closed by the order of the State Superintendent of Banking. That all of said facts were placed before Mr. Jerome, but he failed and refused to proceed against any of the parties guilty of said offenses, either by information or indictment.

TWENTY-SECOND.

That in Mr. Jerome's campaign in 1905, legitimate campaign disbursements were taken in by the Treasurer of the Committee on Nominations in the amount of $47,857.21. That in the

same office, but in another part thereof, Howard S. Gans, an Assistant District-Attorney, received contributions. That among the contributions received by the said Gans were many from men connected with large corporations seeking favors of the District-Attorney. That a sum, the amount of which is unknown, but considerably upwards of fifty thousand dollars, was paid to the said Gans. That among the contributors, either to Mr. Jerome directly or said Gans, was Samuel Untermeyer, the attorney for James H. Hyde, who contributed the sum of five thousand dollars. That said Hyde had been guilty of many misdemeanors and crimes in connection with the Equitable Assurance Company and was subject to prosecution, and the acceptance of a sum so large from Hyde's attorney was entirely improper and would naturally tend, if known, to reflect unfavorably upon the District-Attorney. That other large contributions were made, one being for $2,500 from a prominent banker, whose firm had been intimately connected with the Metropolitan Street Railway Company. That said Howard S. Gans has since left the office of the District-Attorney and has established himself in private law practice, and that unfortunately for the administration of the criminal law in New York County, however innocent Mr. Jerome may be of being subject to the influence of Mr. Gans, there is an impression quite popular at the bar and among the people acquainted with the situation, that Mr. Gans has undue influence in the District-Attorney's office. He is alleged to have been retained for the defendant in many celebrated cases, a few of which are as follows: Robert A. Grannis, under indictment

for offenses committed in the Mutual Life Association; Harry Thaw, George W. Perkins, President Montgomery of the Hamilton Bank, Mr. Heinze, Mr. Cravath and Magistrate Droege. Presumably the relations between Mr. Gans and Mr. Jerome are perfectly innocent, yet the existence of a belief to the contrary is detrimental to the due administration * of the criminal law in New York County, tends to impair the confidence of the people in its administration, and such relations ought to be a subject of inquiry to demonstrate their innocence, and to remove the District-Attorney's office from the breath of suspicion.

*Note—On the original, there appears in writing "and such relation ought to be the subject of inquiry." (These words stricken out with pen.)

TWENTY-THIRD.

By reason of the above facts which have been brought into marked prominence through the existing depressed condition of the country, Mr. Jerome has lost almost completely, we submit, the confidence of the people of the County of New York. His habit of becoming the advocate of the wealthy accused in many of the cases which have been detailed has tended very materially to impair the public confidence in him. A large proportion of the citizens of New York County, however unjust toward Mr. Jerome their feelings may be, have nevertheless, been led by these facts to believe that he is the friend and protector of the wealthy criminal and not the attorney and the protector of the

whole people. With confidence in him thus impaired, his great abilities make him all the more distrusted. With the loss of public confidence he has seemed to lose even interest in the enforcement of the laws, and those of his former close friends who are insistent upon their enforcement are regarded by him as his enemies, and no longer his friends. The undersigned was the Chairman of the Nominators' Committee who proposed him to the people in the last campaign. The members of this committee were then supporters of Mr. Jerome. We feel toward him no ill will, but we respectfully submit to you as the Governor of the State of New York that, by reason of his neglect of duty as above set forth, the days of his usefulness have passed.

Dated, New York, February 25th, 1908.

WILLIAM F. KING, as
Chairman of the Committee of
Metropolitan Stockholders.

I. BLUM,
Secretary & Treasurer.
GEORGE L. DEGENER,
NATHAN H. HEYMAN,
JOHN H. PARSONS,
WM. MAAS,
Committee.

Note—At foot of this page on the original is written:
"Presented February 27, 1908, at Albany, N. Y.
"William F. King,
"Chairman.
"I. Blum,
"Sec. & Treas."

"Mem.
Franklin Pierce }
Eugene G. Kremer }
Of Counsel."

(Certification by Governor Hughes)

"State of New York,
"Executive Chamber
"Albany, Feb. 28, 1908.

"The foregoing is a copy of the charges mentioned in the notice and summons and filed with me on the 27th day of February 1908.

"CHARLES E. HUGHES,
"Governor of the
State of New York."

Exhibit B. H. 2. for Iden.

State of New York
EXECUTIVE CHAMBER
Albany
November Twenty-ninth 1922.

Nathan L. Miller
Governor

Mr. William B. Beam
552 15th Avenue
Paterson, N. J.
Dear Sir:

I am in receipt of your letter of the twenty-second of November asking for a certification by me of copies of papers in this office relating to charges for the removal of district attorney Jerome before Governor Hughes in 1908.

This department is not an office of record and does not, therefore, certify papers such as requested.

Very truly yours,
NATHAN L. MILLER.

Exhibit B. H. 3. for Iden.

Second Edition

The Truth About Metropolitan

By W. N. Amory

3 William St., New York

THE TRUTH ABOUT METROPOLITAN.

Preface to the Second Edition.

This narrative was originally prepared as a contribution to a leading magazine; but through necessity, as the subject is a large and complex one, it exceeded the limits of a single publication, and it was found that the article would have to extend over two monthly issues of the magazine. As it seemed to me the whole truth should be laid bare in one publication, I decided to print the facts in pamphlet form.

The first edition of this pamphlet was issued early in January, 1906, and has been widely distributed. Copies have gone to every newspaper in the City of New York, to every member of the New York legislature, to public officials, to prominent bankers, to lawyers, to Metropolitan stockholders, and to many other persons.

The New York press has frequently referred to the conditions described in the pamphlet, and copious extracts have been printed, which have created a demand for the pamphlet from as far East as Bangor and as far West as Seattle.

The accusations made, and now re-published,

contain statements which are grossly libelous if untrue. Why have not those who are accused by name of stealing more than $30,000,000 from their own stockholders, attempted to vindicate themselves and to punish me for criminal libel? They have not dared to do so, for they know full well that such steps would be fatal to themselves, because the result would be that the truth about their crimes would be proved in a court of law.

Their policy is to ignore these charges. Their salvation depends upon the charges being ignored. But can the public, and particularly can the Metropolitan stockholders, afford to longer ignore them? Are the charges and the proofs of a nature to be ignored when lawyers of standing and expertness in criminal law, such as Ex-District Attorney Philbin and Ex-Assistant District Attorney Osborne, have investigated and gone upon public record as to their truth?

It may be asked, How is it possible that District Attorney William Travers Jerome can continue to ignore these charges? Without attempting to answer this question, I have only to declare that he has for several years been fully aware of the turpitude of the Metropolitan management, and has been protecting criminals instead of punishing them.

When the day of retribution comes, as it inevitably must come, and the Metropolitan wrongdoers are brought to justice the motives of the District Attorney will be laid bare. It will then be disclosed that there are other bribes than money bribes. I believe Mr. Jerome is incapable of doing a corrupt act for money.

W. N. AMORY,
3 William St.

New York, March 18th, 1906.

Amory's Disclosures of Metropolitan's Mismanagement.

THE METROPOLITAN MANAGEMENT.

Before describing the crimes of the Metropolitan it seems appropriate to state what the Metropolitan Management is. Two or three men in New York and an equal number in Philadelphia have for years comprised what is known as the Metropolitan Management. Here are the names of these eminent financiers who have made for many years the robbing of their own stockholders their chief business: William C. Whitney, Thomas F. Ryan, Herbert H. Vreeland, W. L. Elkins, P. A. B Widener, Thomas Dolan.

This practically completes the number, but these men have had confederates and willing tools, numerous lawyers, some with reputations, some without, secretaries and other officials of the companies in the system, claim agents, detectives, professional perjurers, and, as will be shown, robbers of the United States mails. And besides all these, a retired contractor, now the vice-president of a trust company on Wall Street, who has been described by a lawyer of my acquaintance as "always hanging round the kitchen door when there were any Metropolitan feasts, gratefully picking out the scraps from the financial garbage barrel."

It was the genius of William C, Whitney that conceived the possibilities of the Metropolitan railways, and erected this monument of infamous graft. It is the skill and unscrupulousness of Thomas F. Ryan to which many of the completed deals owe their success.

Previous to 1900, the Metropolitan President, H. H. Vreeland, was but a tool in the hands of these men, ready at all times to obey the dictates

of his masters, and not a partner in the division of the spoils. His chief business was to promulgate false statements, so that the insiders might safely carry on their system of graft, and he received a ridiculously inadequate salary for these services, only $10,000 a year.

But Mr. Vreeland was taken in as a partner in 1900 because he suggested the wreck of the Third Avenue R. R., and played his part of deceit in the nefarious business to the satisfaction of his employers. It was Mr. Ryan who conducted that masterly campaign in Wall Street which ruined scores of Third Avenue stockholders and nearly ruined James R. Keene. Mr. Keene was bled to the extent of several millions when he was caught short of Third Avenue stock. My authority for this statement is unquestionable, although I may not dissclose it. Mr. Ryan insisted upon his complete ruin, which was in his power to effect, but Mr. Whitney urged moderation, and his merciful counsel wisely prevailed. I say wisely, advisedly, for Mr. Keene is not a man to die tamely. Doubtless in his complete ruin, he would have strained at the pillars, and have pulled down crushing disaster upon others as well as himself.

This is the same Mr. Ryan who recently purchased control of the Equitable Life Assurance Society. That former President Cleveland is unaware of Mr. Ryan's true character is plainly indicated by his letter accepting the voting trusteeship of the Equitable Life, while his admonitions stand without parallel as an example of unconscious irony.

"We can better afford to slacken our pace", wrote Mr. Cleveland to Thomas F. Ryan in June,

1905, *"than to abandon our own simple American standards of honesty, and we shall be safer if we regain our old habit of looking at the appropriation to personal uses of property and interests held in trust in the same light as any other form of stealing."*

It is to laugh! The appropriation to personal uses of property and interest held in trust has been Mr Ryan's regular line of business.

One of the subtle tricks of the Metropolitan Management when accomplishing a new deal is to arrange for the association of men of the highest character, who are in ignorance of the moral turpitude of this band of financiers. This plan was sucessfully worked when the Interurban lease was put through in 1902. More recently still, Mr. Ryan has artfully made use of the scheme in connection with his purchase of the control of the Equitable Life. In addition to Ex-secretary of the Navy Morton, he induced Mr. Cleveland, Judge O'Brien and Mr. Westinghouse to lend him their names and reputations.

Mr. Ryan is the dominant factor in the Metropolitan Railway. He has been trying for 18 months to sand-bag the Interborough interests to buy out the Metropolitan by threats of competition in the Subway field of transit. This was a clever scheme and worthy of Mr. Ryan's best efforts, if successful.

He and his piratical crew, having for many years sailed the stormy seas of finance, looting and destroying all those they have come up with, are now preparing to desert the sinking ship and to turn over the command of the rotten hulk to others. They have, as they imagine, safely sequestered their spoils, and desire now to en-

joy them in peace. Time alone can show whether this last desperate effort of this truly wonderful man will result in complete success or dire failure.

Mr. Ryan is the Jonathan Wild of finance. He is a great man, a man of genius in his own calling.

As I review his list of achievements and consider his qualities amiable or detestable, worthy of admiration or abhorrence—I am convinced that Fielding with admirable prescience was drawing a true picture of Mr. Ryan, when he portrayed Jonathan Wild.

Lest I may be misunderstood, I hasten to declare that my feelings towards Mr. Ryan are impersonal. In 1899 before the Third Avenue Railroad was wrecked I sold Mr. Ryan some property and made nearly $40,000 profit in the transaction. One can't help having a sneaking kindness for even a horse or a jockey which has made him money.

My admiration for his genius in finance is surpassed only by my detestation of his criminal methods. But after all, Mr. Ryan is only the logical result of prevailing conditions. He is the chief representative of a corrupt system and a state of moral degeneracy that are a menace to the public.

Mr. Ryan may successfully sell his gold brick to Mr. Belmont; very likely he will, but is that any reason why he should be allowed to escape with his millions of stolen money and go unpunished of his crime?

I hear men speak of Mr. Ryan's successes as if they were certain of being continuous. But I am reminded that even Jonathan Wild was

pinched at last and ended his career ignominiously, and that Napoleon met his Waterloo.

THE METROPOLITAN RAILWAY SYSTEM.

No complete proofs of Metropolitan crimes can be arrived at without some knowledge of the intricate relations existing between the companies constituting the system, and of the physical conditions of the railways themselves.

The Metropolitan System comprises all the surface roads in the Boroughs of Manhattan and The Bronx, excepting two single track horse roads in The Bronx, each about a mile and a half in length.

On February 14th, 1902, the Metropolitan Street Railway Co. and its leased lines were leased to the Interurban Street Railway Co., which was organized November 25th, 1901, for the single purpose of leasing the Metropolitan Railways.

On February 10th, 1904, the Interurban Co. changed its name to the New York City Railway Co. This company owns and operates about two miles of single track road in Mount Vernon, and leases the Peoples Traction Co. which owns no railways, but does own a valueless franchise in The Bronx. Outside of these possessions the New York City Railway Co. has the right to operate the Metropolitan lines under lease and guarantee of dividends, but this right can hardly be considered a valuable asset, because the earnings of the Metropolitan railways fall far short of the dividends which are guaranteed. The company has no earning capacity of its own, and is entirely dependent upon the earnings of Metropolitan lines to fulfil its guarantees.

The New York City Railway Co. guarantees 7% dividends on the $52,000,000 of Metropolitan

Co. stock. It also guarantees dividends at various rates on all the leased companies of the system, and is obligated to pay the principal and interest on all the bonds of the companies in the system whether leased or controlled.

The New York City Railway Co. includes in its reports to the Railroad Commissioners the physical statistics and results of operations of the Metropolitan Street Railway Co. and all the leased lines. The leased lines are required by law to report separately their financial condition, and costs incurred for construction or changes of motive power, but some of them have ignored the law. Controlled lines, that is to say, companies in the system which are controlled through ownership of stock, but which are not leased, report not only their financial conditions and construction costs, but separately report the results of operation. Such results whether profits or losses, are included in the statements of the New York City Railway Co. in that company's annual reports.

THE METROPOLITAN SECURITIES CO.

The New York City Railway Co. is in absolute control of the Metropolitan Securities Co. The same day in 1902 that the Metropolitan lines were leased to the Interurban Co., now the New York City Railway Co., the Securities Co. entered into a contract by the terms of which, the New York City Railway Co. turned over to it all of its outstanding stock and bonds and agreed to turn over any future issues of stock or other obligations. The control of the New York City Railway Co. and through it of Metropolitan

lines by the Securities Co., is therefore complete. The Securities Co. has no possession of value other than such control. The whole Metropolitan structure is rotten, founded upon fraud, and when once it begins to fall, as it inevitably must, it will go down like a house of cards. Leases must be revoked and guarantees withdrawn, and then it will be found that both the New York City Railway Co. and the Metropolitan Securities Co. are without assets of any value.

OVERCAPITALIZATION.

The Metropolitan Company has an enormous passenger business, the largest in the world. The railways in the system annually transport over 600,000,000 passengers. With a business such as this, it is hard to understand how the New York City Railway Co., the operating Company of the System, can be losing instead of making money.

Now the Companies constituting the Metropolitan Street Railway System have a total capitalization outstanding of $260,838,000 of which total $144,365,000 is stock and $116,473,000 Bonded indebtedness. A portion of the Securities are owned by Companies in the System, but most of these are pledged, under the different mortgages, and cannot be sold. The capitalization outstanding in the hands of the public is about $236,000,000. This is a larger capitalization than many of the great steam railway Systems, for instance The Chicago, Milwaukee & St. Paul R. R., or the Chicago &

Northwestern R. R., each operating more than 7,000 miles of railway, or even the New York Central R. R, omitting the Lake Shore collateral bonds. Water has been injected in such unlimited quantities that the railway system has fairly reached the bursting point.

The System is burdened with enormous fixed charges. Guaranteed rentals and interest on bonds which have to be paid amount to $11,452,950 per annum. About $11,000,000. have to be paid out annually for interest on bonds and guaranteed dividends on stocks owned by the public. The annual gross passenger receipts of all the Companies in the system in 1905 were $20,888,124.46. It is seen, therefore, that over 52 per cent. of gross receipts have to be paid out on guaranteed interest and dividends alone, to say nothing of taxes. The Company's business at the present time is falling off, but the guarantees must be maintained.

A LARGE PERCENTAGE OF METROPOLITAN LINES OPERATED BY HORSE POWER.

The Metropolitan management has time and again obtained the necessary funds through sales of stock and bonds to electrically equip all the railways in the system. Millions of dollars specifically provided by the Stockholders for such purpose have gone to swell the bank accounts of the insiders. As a result about 33 per cent. of all the surface railways on Manhattan Island are still operated by horse power.

The mileage is 100.44 miles of double track

electric railway and 48.20 miles of double track horse car lines. For confirmation of these figures see pages 168 to 172, Vol. 1, Report of the Railroad Commissioners for 1905.

More than 90 per cent. of all the horse railroads in the State are on Manhattan Island, and are a part of the Metropolitan System. East of the Bowery the city is a net work of horse car lines, while not less than a dozen horse car tracks cross Broadway. The largest city in America is almost the only large city in which horse cars are now operated.

NO ATTEMPT MADE TO GIVE A FULL LIST OF THEFTS.

All of the matters herein are related as samples of the methods which have been pursued in robbing Metropolitan stockholders. I have not attempted to give a full list of grafts, or to detail all the proofs in my possession, for it is obvious that such a course would extend this article to unreasonable lengths.

But that there may be no misunderstanding I declare that Mr. James W. Osborne was within the mark when he charged in open court in 1903 that the insiders have stolen $30,000,000. Mr. Osborne's accusations will be quoted further on in this article. Moreover, this is not all, for by methods perhaps not wholly outside the law, similar in some respects to those adopted by certain Life Insurance officials, and constituting a violation of trust, I estimate that the insiders have got away with not less than $60,000,000 additional.

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It may be claimed that some of the charges herein detailed are not new. There are two answers to this suggestion. The first is, that none of the charges has ever been disproved or successfully disputed. The second is, that half of the charges herein detailed are new, while also there are several new charges of considerable importance. Among these may be mentioned the theft of $7,000,000 preceding the Interurban Lease in 1902; the $6,000,000 graft when The Traction Co. went out of business in 1897; and the $6,000,000 deal in connection with the Houston St. Ry. bonds preliminary to the incorporation of the Metropolitan Street Railway Co. in 1893. These three steals alone sum up $19,000,000.

I have purposely avoided matters with which technicalities of accounting are concerned. The facts are so plain that no one can fail to understand them.

THE LAST DEGREE OF CORPORATE CORRUPTNESS.

Much has been heard recently of great corporations and of the fortunes accumulated by those who control them. Mr. Lawson writes entertainingly of the crimes of Amalgamated and of the millions won from the public through manipulations, stock deals and other sharp practices. But he makes no direct charge of *stealing*.

He does not disclose how immense sums of money were fraudulently obtained from Amalgamated stockholders for certain definite purposes, which the president of the Company swore

was to be used for those purposes, and then present proof that the money was deliberately stolen by a few insiders.

He does not tell of these things because they never hapened in Amalgamated. The system of the Amalgamated crowd is in all probability ruthless enough, but I have never heard it included a conspiracy the aim of which was to induce the stockholders to invest their money for improvements that the insiders might steal it.

The story of Life Insurance is bad enough. But no accusations have yet appeared of deliberate *stealing.* Greed has been displayed in its nakedness, and it has been developed that the contol of great coroporations has been selfishly used for the personal enrichment of a few individuals, yet the vulgar crime of direct theft is not included in the indictments.

The difference between these others and the Metropolitan crowd is this. It would appear that Insurance officials have become accustomed to believe they might do as they pleased with trust funds as long as they did not actually steal the money. Some have even boasted on the witness stand of their moderation in this regard.

But the Metropolitan Managers have engaged in a deliberate scheme of stealing trust funds, their own stockholders money. The thefts have amounted to scores of millions of dollars. The limits of financial depravity have been reached.

Their crimes comprise conspiracy, intimidation, bribery, corrupt court practices, tampering with the mails, perjury, subornation of perjury, false reporting, the payment of unearned div

idends year after year, the persistent thefts of stockholders money, carried on over a long period by a System constituting the basest kind of robbery, that is to say, the betrayal of associates, and finally, as a result, the wreck and ruin of a great corporation. All these offences have been commited that a few men might become multi-millionaires easily and quickly, and be able to hold on to their graft.

The proof of the crimes is indelibly written in records which can never be suppressed or destroyed, and is ready to be submitted to calm judgment.

THE PROOFS OF METROPOLITAN THEFTS CONTAINED IN THE COMPANY'S SWORN REPORTS.

The Metropolitan management has been publicly charged with monstrous crimes. It may be asked: How is it possible to ascertain the extent of the criminal practices and to prove them, having only the information contained in the company's reports and other public documents?

The answer is, that as no bookkeeper has ever been able to devise a scheme of falsifying books with safety, so likewise no plan of falsifying annual reports required by the New York laws can be indulged in without possible detection. The form of reports has been devised by skillful accountants to discourage fraud and to facilitate its detection when perpetrated.

I am well aware from my personal knowledge of the machinery of the office of the Railroad Commissioners that the falsification of Metropol-

itan reports neither could have nor has escaped the knowledge of the Commissioners.

Some of the methods pursued to conceal the thefts of millions of dollars of stockholders' money will be described. No facts will be stated that cannot be confirmed by anyone who will take the trouble to confirm them. Reference will be made to annual reports and other official documents containing full proofs.

THE FALSIFICATION OF REPORTS TO CONCEAL CRIMES.

For a period of years the Metropolitan Railway Company was permitted by the Railroad Commissioners to file annual reports in which no detail was given (although the form of reports called for such detail), of the expenditure of many millions of dollars for new construction. By June 30th, 1902, the sum of money which had been specifically unaccounted for reached a grand total of $30,650,159,61.

The method adopted was to carry forward in the reports from year to year the purported expenditures under the general head of "New Constuction on lines owned and leased, to be distributed." No details were given.

On this date, however, when the first annual report following the Interurban lease had to be filed by the Metropolitan Company, the company found itself obliged to distribute these many millions under the numerous heads provided by the Commissioners' form of reports. The task that confronted the management was to divide this enormous sum under the different heads so that

all the expenditures would, on critical examination, be found to be properly accounted for.

Now had these $30,000,000 been honestly expended no embarrassment would have ensued. But the graft had been so reckless that when the distribution of expenditures was made, the fraud could not possibly be concealed from anyone who should take the trouble to investigate.

Attention will first of all be briefly directed to one or two items in the detailed statements in the Metropolitan Report for 1902 (page 1109), as indicative of the straits the Metropolitan management was put to.

The sum of $1,284,309.72 was charged that year against leased lines for engineering and superintendence expenses in changing motive power, on less than 43 miles of double-track road. The charge under this head was at the rate of $30,000 a mile—enough to build and equip ordinary trolley roads.

The sum of $4,395,687.38 was charged in 1902 for track and Roadway Construction on leased lines, that is, for laying new rails. The costs reported under this head were at the rate of over $103,000 a mile, but the true cost could not have exceeded $22,000 a mile. The excess charged amounted to almost $3,500,000.

The sum of $19,584,780.52 is reported in 1902 as the total expenditures on Leased Lines for Additions and Betterments. An enormous discrepancy is found, for on examination of the sworn reports of Leased and Controlled Companies it appears that these companies report such expenditures as but $8,569,849.82, a difference of $11,014,930.70. The reports of both lessor and lessee companies are made under oath, and they ought to agree.

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THE SUM OF $3,000,000 WHOLLY UNACCOUNTED FOR.

In the Metropolitan Street Railway Company's Report for 1901 (see R. R. Com. Report 1901, Vol. 2, page 1071), there is an item reading as follows: "Amount due from Lessor Companies, June 30th, 1901, $2,245,598.78."

In the following year (1902, Vol. 2, p. 1109) appears the following language: "Balance due from Lessor Companies June 30, 1901, $5,245,-598.78."

By thus carrying forward a false balance of $3,000,000 as an examination of the Company's statement for 1902 will show, the Company has entirely avoided accounting in detail for exactly $3,000,000 of cash reported as expended on leased lines.

The Railroad Commissioners' form of report provides for the explicit detail of expenditures of leased lines with the intention of requiring the leasing Company to account for and explain all its expenditures.

It is plain that through the process of carrying forward a false balance of $3,000,000, this sum of money has been wholly unaccounted for. The task of accounting with plausibility for the expenditure of the full $30,650,159.61 was thus partially avoided by means of a perjurious statement, which doubtless it was hoped would be overlooked.

THE RAILROAD COMMISSIONERS' FORM OF REPORTS.

The form of annual reports adopted by the Railroad Commissioners, on which railway companies are obliged to report under oath, provides for the detailing of expenditures for construction and equipment on each company's own lines and leased lines under 15 different heads.

Here is the list as arranged in the Commissioners' printed forms in which must be distributed all expenditures for construction:

A.—Organization.
B.—Engineering and Superintendence.
C.—Right of way.
D.—Track and Roadway Construction.
E.—Electric Line Construction.
F.—Real Estate used in operation of Road.
G.—Buildings and Fixtures used in operation of Road.
H.—Investments Real Estate.
I.—Power Plant Equipment.
J.—Shop Tools, and Machinery.
K.—Cars.
L.—Electric Equipment of Cars.
M.—Miscellaneous Equipment.
N.—Interest and Discount.
O.—Miscellaneous.

The Railroad Commissioners have adopted and approvided a standard system of street railway accounting covering the classification of construction and equipment accounts.

This Standard System is separately published as a pamphlet, and is supplied to all street

railway companies by the Commissioners, and, as well as the volumes of Annual Reports, will be sent free of cost on application to anyone by the Commissioners.

The Standard System defines exactly what charges may be reported under the fifteen different heads. For example: "Account A.—*Organization.* Charge to this account all expenses incurred in effecting organization, including legal expenses."

"Account B.—*Engineering and Superintendence.* Charge to this account all expenditures for services of engineers, draftsmen, and superintendents employed on preliminary and construction work, and all expenses incident to the work."

So with all the different accounts, the charges, which are to be made against each, are carefully defined.

With respect to Account D, *Track and Roadway Construction,* the instructions are explicit and determine with exactness that the charges under this head comprise only the cost of rails, the cost of laying the rails, including labor, materials, tools, freight, hauling, distribution of material, and all other expenses incident to the work of laying rails, with the cost, if any, of removing old rails, *and nothing else.*

This Account D does not include any charges for Electric Line Construction or for cars or for power house equipment or other items incident to changes of motive power, all of which are charged for separately under other heads.

It has seemed necessary to set out all of the above that a clear understanding may be had of what follows.

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Attention will now be directed to false reporting done by Leased and Controlled Companies in the effort to account for millions never truly expended on construction work. These companies have the same officers and directors as the Metropolitan Street Railway Company.

THE THIRTY-FOURTH STREET CROSS-TOWN RAILWAY COMPANY.

The Thirty-fourth Street Railway in 1902 reports expenditures of $245,435.63 for laying new rails on 34th Street between Lexington Avenue and Broadway, on less than half a mile of street, to be exact, .48 of a mile (see R. R. Commissioners' Report for 1902, Vol. II, page 1329). This charge included nothing but the cost of the rails and other material incident to track laying, and the expense of removing the old rails and the labor incident to laying the new rails. The charge did not even include the track-crossing at Sixth Avenue and Broadway, which was not installed until the fiscal year 1904. The rails weighed 113 pounds to the yard. Their market value was about $36 a ton.

Yet in 1903 (page 1307) and 1904 (page 1242 of Reports), the 34th St. Railway Company reports additional expenditures of $51,347.64 for laying these same rails, making total reported cost for rails and laying them on less than half a mile of street, $296,783.27. It is accordingly found, after making ample allowance for labor, spikes, other material, etc., that the final cost of the rails must have been over $1,700 a ton.

But taking another view of the matter, it is

found that 170½ tons of rails, 113 pounds to the yard, were sufficient to complete the double-track road in 34th St. At $36 per ton, the market price, the cost of the rails would be $6,138. Now, if the market price was paid for the rails then according to the sworn report it must have cost the Company over $290,000 for labor and other incidentals in laying the rails on half a mile of street.

The true cost of taking up the old rails and purchasing and laying the new rails, instead of being over $296,000, was about $11,000. This is proved by the sworn annual report of the Central Crosstown R. R. Co. for 1902. That company, which in 1902 was not leased by the Metropolitan, but had its own board of directors, reported expenditures for Track and Roadway Construction of $10,881.29 as follows: "Track and Roadway Construction", described specifically in its report: "Taking up four tracks in 14th Street, between University Place and 7th Avenue, and laying two tracks with heavier rails in their place." (See Railroad Commissioners' Report for 1902, Vol. II, pages 1399 and 1400.)

The rails on 14th Street weighed 110 lbs. to the yard; on 34th Street, 113 lbs. (See Reports of the two companies, for confirmation.) The distance on 14th Street where 110-lb. rails were laid was 23 feet less than on 34th Street, where 113-lb. rails were laid. The distances have been measured on a city real estate map.

The Metropolitan's Chief Engineer, M. G. Starrett, on March 11th, 1902, estimated under oath that the full cost of changing the motive power to underground electricity on 34th Street, com-

plete in every detail, including power house equipment, generating apparatus, etc., would amount to $150,000. (See Application of March 11th, 1902, of the Metropolitan Street Railway Co. for the consent of the Railroad Commissioners to a mortgage to secure an issue of $65,000,000 of refunding bonds.)

Nevertheless, a few months later on, June 30, 1902, the 34th St. Railway Company reported costs of $831,224.04; and on June 30th, 1903, additional expenditures of $7,789.25; and on June 30th, 1904, the further sum of $228,970.91, making a grand total of $1,067,984.20, for changing motive power that the Chief Engineer declared under oath would cost but $150,000.

It cannot be claimed that a part of the expense reported in 1902 was for storage battery cars, for it appears from the report of the 34th Street Railway Company in 1901 that the 50 storage battery cars were owned by the Metropolitan Company and were charged to and included in the report of that company. (See Vol. II, Report of the R.R. Com. for 1901, page 1282.) There were other false items reported, of which two or three will be mentioned. In 1902 (page 1329) $5,844.30 was charged for Organization Expenses, although the report shows the 34th Street Railway Company was organized in 1896.

In the same report $82,080.64 is charged for Interest and Discount. This was more than half what Mr Starett swore the whole road could be reconstructed for.

In 1904 (page 1242) a total of $21,735.45 was reported for Engineering and Superintendence expenses in constructing a road a half a mile long.

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So much space has been given to the 34th Street Railway case, not because it is one of the most important, for indeed it is one of the least important, so far as amounts are concerned, but because it is a particularly simple object lesson of Metropolitan methods.

The full cost of the 34th Street Railway Company for road and equipment has been at the rate of over six million dollars per mile. Doubtless this is the most costly railroad in the world. For confirmation of cost see report of the 34th St. Ry. Co., Vol. II, Report of the Railroad Commissioners for 1904, page 1242.

THE CENTRAL PARK, NORTH & EAST RIVER RAILROAD COMPANY.

This company was twice charged for the cost of changing the motive power where no change of motive power had ever been made; which was also charged against the 42nd Street and Grand Street Ferry R. R. Co. (See Report for 1901, page 1418); that is, on 10th Avenue between 34th Street and 42nd Street. (See Report for 1900, page 1426, and for 1902, page 1455.)

The company was also charged three separate times, viz., in 1900 (page 1426), 1901 (page 1404), and 1902 (page 1455), for the cost of changing the motive power on First Avenue from 34th Street to 42nd Street, and, moreover, in 1901 was charged with the cost on 10th Avenue from 42nd Street to 59th Street; all of which had been built and paid for long before by another Railroad Company, and which cost

had already been charged against such other Railroad Company, namely, the 42nd Street, Manhattanville and St. Nicholas Railway Company. More than a million and a half of dollars was thus wrongfully reported as having been expended.

In the year 1902, this company was charged for Engineering and Superintendence expenses, $322,340.45. For the four years, 1899 to 1902, it is found upon an examination of the company's reports that the company was charged a total for Engineering and Superintendence of $341,731.39.

As the company actually changed its motive power upon but a mile and a half of streets, that is to say, on 59th Street from 1st Avenue to 10th Avenue, it is found that, according to the Chief Engineer's estimate, the sum charged for Engineering and Superintendence alone was nearly sufficient to have paid for the full expense of construction of the underground trolley electrical road, complete in every detail, including cars, power house and generating apparatus. It is probable that the true cost for Engineering and Superintendence did not exceed $1,500.

When this particular item of expenditure was questioned in 1903, the Metropolitan management sought a way out by declaring a mistake had been made, and in the Report of June 30th, 1903 (page 1416), attempted to correct it as follows: "Correction of error in 1902 in charging Track and Roadway and Electric Line Construction to Engineering and Superintendence, $262,787.90."

This merely transferred the amount from one item to two others. Taking the new figures as revised and the company's own reports, we then find that Track and Roadway Construction and

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Electric Line Construction (that is to say, laying new steel rails on a mile and a half of street, and installing the electric conduit between the rails—nothing else), must have cost the company $1,482,598.83. (See Company's Reports 1899 to 1903.) This sum was almost sufficient, according to the Chief Engineer's affidavit, to have constructed and equipped an electric underground trolley road with 10 miles of single trackage, complete in every detail, including cars and power house electric equipment.

It is found that this company was charged in the four years for changes of motive power, a grand total of $2,005,616.57; but according to the Chief Engineer's sworn estimate the full cost ought not to have exceeded a total of $462,000.

Chief Engineer Starrett declared in his affidavit of March 11th, 1902, that to change the motive power, complete in every particular, including equipment, line construction, generating apparatus, etc., on the 12.3 miles (single trackage), of the Central Park, North and East River R. R. still operated on that date by horses, would cost $1,845,000, or at the rate of $150,000 per mile.

The company has changed its motive power upon only a mile and a half of road (3.08 miles of single trackage) on 59th Street, and yet the full cost with which the company stands charged is over $2,000,000. This is at the rate of $650,000 per mile of single track road, or more than four times more than the Metropolitan Engineer swears the cost ought to be.

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THE 23RD STREET RAILWAY COMPANY.

This company was charged four times for the same construction work on 23rd Street, in each of four successive years. (See Company's Reports to the Railroad Commissioners, Vols. 2, 1899 to 1902.)

In 1899 (page 1436 of R. R. Reports), this company reported costs for changing motive power in 23rd Street from East River to the North River with equipment at a grand total of $1,110,932.52.

In 1902 (page 1472), the company reports further expenditures of $362,424.38 for the same work.

In the year 1901 (page 1443), the company once more reports expenditures of $373,401.64 for the same change of motive power.

In the year 1902 (page 1493) the company reports additional expenditures amounting to $225,-470.74 for the same work on 23rd Street.

The mileage for which these costs are reported was less than two miles of double track road, to be exact, 3.87 miles of single track road. (For confirmation see report of the Metropolitan St. R. R. Co. for the year 1901, Vol. 2, page 1076.)

The total cost charged in these four years is found to be $1,973,329.28. This is at the rate of $509,900 per mile of single track road.

On analyzing this company's reports we find among other things that the company is charged during these four years with a total of $618,-594.35 for Track and Roadway Construction, that is, for laying new rails on less than two miles of street. The true cost was about $47,000. The company is charged $243,926.73 for "Interest and

Discount charged to Construction", or nearly half as much for interest alone as the Chief Engineer of the Metropolitan system swears the road could be built for with complete electric equipment, including cars and power house generating apparatus.

2ND AVENUE RAILROAD COMPANY.

In 1898, the 2nd Avenue Railroad Company issued a new Consolidated Mortgage of $7,000,000 of which $1,960,000 were to retire outstanding obligations as they became due, leaving $5,040,000 for the express purpose of changing the motive power and to electrically equip the whole mileage of the company. The total length of road was 27.83 miles of single trackage, including turnouts and switches. The amount of money provided for changing motive power was at the rate of $194,000 per mile of single track road, much more than was ample for the purpose. (See Company's Report for the nine months ending March 31st, 1898, page 1358, Vol. 2, Report of Railroad Commissioners for 1898.)

It appears from the report above referred to (page 1357) that the change of motive power from horse to underground electricity, was put into complete operation April 3rd, 1898, upon a portion of the company's road, viz., from the northern terminus, at 1st Avenue and Harlem River, to Astor Place and Broadway.

The cost of this reconstruction and the amount paid for the same was $1,933,171.47, as appears from the report made for the period ending

March 31st, 1898 (page 1359), and from the report made for the period ending June 30th. (Railroad Commissioners' Report for 1898, page 1433.)

It further appears, that the number of miles of single track road reconstructed to electrical traction by April 3rd, 1898, was 12.70 miles (see page 1360).

It will appear from the company's own statistics of mileage furnished the Railroad Commissioners, that between 1898 and 1904 no additional portion of the 2nd Avenue Railroad Company was changed to the electric system. It will further appear that one-half of all the track mileage owned by this company is still operated by horse power.

Although the company reported under oath in 1898 the completion of the change of motive power from Harlem River to Astor Place, at the full cost of $1,933,171.47, yet between 1898 and 1900 $2,579,000 more of the bonds were issued and then on June 30th, 1900, the company reports under oath that it *expended the sum of $4,329,390.02 for this same work during the year 1900.* (See Report for 1900, Vol. 2, page 1463.) It is clear that some one made the difference between these two sums, or $2,396,218.55.

There were $5,040,000 of bonds authorized for the purpose of changing motive power on the whole railroad, and all of these bonds excepting $590,000 had by June 30th, 1904, been issued, with the railroad still only half completed. (See Report for 1904, Vol. 2, page 1360.)

The cost reported is found to be at the rate of more than $340,000 a mile of single track road, yet the Chief Engineer, M. G. Starrett, in his

affidavit of March 11th, 1902, already referred to, swore that the full cost of changing the motive power upon the 2nd Avenue Railroad, yet unchanged, twelve miles single trackage in length, would amount to $1,800,000 or at the rate of $150,000 per mile.

THE THIRD AVENUE COMPANY ROBBED OF MILLIONS.

In 1900, when the Third Avenue was leased by the Metropolitan, there were $35,000,000 of Third Avenue Bonds issued to pay the floating debt of the Company and its controlled lines. This required about $22,000,000. There remained about $13,000,000 to complete the construction of Third Avenue lines, and particularly to change the motive power on the Dry Dock Railroad and on the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway.

These millions have disappeared, and only a mile and a quarter of the Dry Dock has been reconstructed, while the Forty-second street railway still has a horse car mileage nearly as great as its electric road.

The Third Avenue has been looted and mismanaged with amazing recklessness. That Company and its controlled lines have had their floating indebtedness increased by over seven and a half millions since 1900. The Third Avenue Company has besides been obliged to issue $1,943,000 of new bonds. Since the Metropolitan leased the Third Avenue, it has run that Com-

pany and its controlled lines into debt to the extent of nearly $10,000,000.

The condition of the Third Avenue system is more deplorable and hopeless to-day than when acquired by the Metropolitan in 1900.

KNOWLEDGE POSSESSED BY THE RAILROAD COMMISSIONERS OF METROPOLITAN WRONGDOING.

The numerous acts of wrongdoing which the Metropolitan reports disclose could not possibly have escaped the notice of the R. R. Commissioners. The Commissioners have even been furnished with specific proof of false reports and have been requested to act thereon, but have refused to do so.

Among other things, it was discovered that four of the Metropolitan Leased lines had never made a report of the costs of changing motive power, although required by law to do so. The Companies are the 6th Avenue R. R., 8th Avenue R. R., 9th Avenue R. R. and the New York & Harlem River R. R. (City line.)

Now one interesting fact is to be noted, viz.: that these are the only leased lines which are not governed by Metropolitan directors. These four Leased Companies alone have retained their individualities by having their own Board of Directors. Such directors, of course, could not be cognizant of the expenditures made by the Metropolitan Management for changing motive power on their roads, which are entirely in the control of the Metropolitan, and would naturally look to the Metropolitan to be furnished with a statement of the expenditures upon which the direc-

tors might then make their Annual Reports as required by law.

During a period of four months in 1903, the Railroad Commissioners' attention was repeatedly called to the violation of the law upon the part of these four Companies. They were shown that the neglect to file correct reports constituted an offense against the criminal as well as the civil law, and references were made to the sections of law which apply, particularly to sections 57 and 158 of the Railroad law. The Commissioners were respectfully requested to take steps to have correct reports made and filed but they neglected to do so.

Finally, as the Commissioners did not act, the facts were laid before the respective presidents of these four companies, and their attention was called to the personal liabilities involved under Section 31 of the Stock Corporation Law and the penalties to which they were liable under the Criminal Code, Sections 416, 611 and 614. The four presidents then wrote to the Railroad Commissioners repudiating any responsibility, and placed the whole blame for the situation upon the Metropolitan Management. The Secretary of the Commissioners furnished the writer with copies of these four letters and wound up his letter of transmittal with this statement "I am instructed by the Board to inform you that it will not proceed further in this matter."

Yet the law requires the Railroad Commissioners, when their attention shall be called to errors in reports, to oblige delinquent corporations to file new and correct reports.

Now the reason why the Metropolitan Manage-

ment did not furnish the directors of these four Companies with a detailed statement of expenditures for changes of motive power so that accurate reports might be filed is not far to seek. They did not dare to do so for fear that the figures would be examined by the directors and their accuracy disputed and the fraud discovered. The safer way was to see that no reports were filed at all. The Railroad Commissioners permitted this to be done.

It is clear that the directors of the New York & Harlem River Railroad Company, for instance, would not have certified to the expenditures of $541,000 for engineering and Superintendence expenses on a mile and a half of railroad, nor would they have certified that the cost of laying new steel rails on a half mile of street amounted to over $296,000, or that over a million and a half dollars had been expended in changing motive power on a street where none had been made, and in payment for construction work actually paid for by another railway Company, or that over a million dollars charged against four leased Companies for Engineering and Superintendence was a correct charge.

The officers and directors of these four leased lines would not have been regardless of the fact, as the Metropolitan officers and directors have been, that the annual reports made to the Railroad Commissioners are made under oath, and that the making of false reports is a crime.

Amory's Disclosures of Metropolitan's Mismanagement.

FALSE STATEMENTS FURNISHED THE STOCK EXCHANGE.

On May 10th, 1904, the Metropolitan Company applied to the Stock Exchange for permission to list new bonds. In accordance with the rules of the Exchange, the Company was required to file a sworn statement of its financial condition. Such statement was perjurous and fraudulent, for it included among assets and the balance of surplus earnings, from which dividends are payable, a wholly fictitious sum of about $2,700,000.

In setting out the list of assets of the Company there were blocked together 14,000 shares of Broadway & 7th Av. R. R. Stock, and an item designated as "National Cable Construction Company license right and privileges." The total value of the two blocked items is then carried out at $5,522,015.32. Now these pretended license rights and privileges are the rights to operate cable roads, which have been forever abandoned. They are of no greater value than the right to operate cars with horse power, which has also been abandoned on Broadway and other streets. The Company in none of its other published statements has ever claimed any value for these rights, and they have none. Yet by the blocking process referred to, it has been sought to deceptively increase the assets and dividend paying capacity of the Company to the extent mentioned, that is by over $2,700,000.

The only value in these two items blocked together is that of the 14,000 shares of Broadway & 7th Av. R. R. stock which is guaranteed 10 per cent. dividend.

Amory's Disclosures of Metropolitan's Mismanagement.

The attention of the Stock Exchange was called on December 15th, 1904, to this attempt by the Metropolitan Company to make a fraudulent showing of assets in its formal application which was sworn to. But no action followed, and it is supposed that the influence of the Metropolitan has been exercised to prevent any action. Copies of the printed application can be held by applying to the Secretary of the Stock Exchange.

$7,0000.000 STOLEN AS A PRELIMINARY TO THE INTERURBAN LEASE.

During the quarter ending Sept. 30th, 1901, the Metropolitan Co. borrowed $1,000,000 and reported expenditures of $1,159,467.88 for new Construction.

In the course of the next three months the Co. borrowed $6,243.263.33, and reported expenditures of $5,740,996.38 for new construction. (See quarterly reports filed with the R. R. Commissioners, Sept. 30th, and Dec. 31st, 1901.)

The total amount of money borrowed in these two quarters was $7.240,263.33. The total reported expended on New Construction was $6,-900,464.26.

The only new construction was changing motive power on a small portion of leased lines. The change of motive power on the Company's own lines, with cars, power house and equipment had been fully paid for with the proceeds of $15,000,000 of new stock issued in 1898, and $7,000,000 issued in 1900. (See applications of

Amory's Disclosures of Metropolitan's Mismanagement.

Aug. 10th, 1898, and June 28th, 1900 to the R. R. Commissioners for permission to increase capital stock.)

On February 14th, 1902, the Metropolitan Company was leased by the Interurban Company.

The lease was not fully completed till near the end of March. The millions of dollars made available under this lease were not turned over to the Metropolitan management until the last quarter of the fiscal year, ending June 30th, 1902. This fact is disclosed by the Company's quarterly reports and Balance Sheets.

In this quarter ending June 30th, 1902, the Company's loans, which President Vreeland declared, in February, amounted to $11,000,000, including the $7,000,000 borrowed in the last two quarters of 1901, were fully paid off with funds provided by Metropolitan Stockholders through their subscriptions to Metropolitan Securities Co. Stock.

Expenditures of $2,107,056.13 were reported for New Construction in the last quarter of the fiscal year 1902. This sum was more than sufficient to pay for all the New Construction done during the whole year, as will now be proved.

In the year 1902 on the Broadway & 7th Ave. R. R. 3.55 miles of single track road were changed from horse power to Electricity at a cost reported by that Company of ..... $	667,337.10
(See page 1441, Report for 1902.) There were 1.25 Miles changed on the Central Crosstown R. R. reported at a cost of	237,858.00

Amory's Disclosures of Metropolitan's Mismanagement.

(See page 1400, Report for 1902.)
In addition there were 8 miles of single track road changed on the 9th Ave. R. R. during the year, unreported by that Company, (See Report for 1902, page 1479) but, according to the Chief Engineer's sworn estimate of March 11th, 1902, costing 1,200,000.00

The total is $2,105,195.10

This covers all the New Construction or changes of motive power during the year except a small amount of work done on 3rd Ave. lines and separately paid for with proceeds of 3rd Ave. Bonds. The Mileage for the year was exactly 12.80 miles of single track road. (For confirmation of these facts see Annual Reports of the Companies for 1902. See also interview with the Metropolitan President published in the Herald Nov. 23rd, 1902, wherein is shown all the changes of motive power during the year.)

Yet the Metropolitan management reports under oath expenditures of $8,543,736.39 for New Construction during the year of which it is pretended nearly $6,000,000 was expended in the three months ending December 31st, 1901. This expenditure would represent the change of motive power upon 57 miles of railway, according to the detailed estimate of the Metropolitan Co.'s Chief Engineer. (See affidavit of M. G. Starritt of March 11th, already referred to, in which he declares that the full cost of changing motive power on Metropolitan lines is $150,000 per mile

of single track road, including equipment, generating apparatus, etc.)

EXPENDITURES OF OVER $6,000,000 IN EXCESS OF SWORN ESTIMATES.

In 1902 the Metropolitan Company reported Cash expenditures of $13,310,977.87 for additions and betterments on its own lines, (See Report for 1902, page 1108) which the Company's Chief Engineer, M. G. Starritt, estimated under oath in two carefully detailed statements, which will be quoted, would cost but $7,243,380, a difference of over $6,000,000.

On August 10th, 1898, the Metropolitan Company made Application to the R. R. Commissioners to increase its Capital Stock by $15,000,000. Consent was granted and the Stock was issued and sold for Cash in 1898.

President Vreeland in the Application stated under oath that the $15,000,000 was to be used for the following purposes:

1. To redeem $6,000,000 of Debenture Bonds held by The Met. Traction Co. ..... $	6,000,000
2. To pay for power house construction and for Cars already ordered	4,000,000
3. The balance of the money ($5,000,000) to be held in the treasury and to be used when needed for completing change of motive power "upon the various railroads owned and operated by the Co."	5,000,000
Total ..... $	15,000,000

Amory's Disclosures of Metropolitan's Mismanagement.

In the same Application, Chief Engineer Starritt makes a careful detailed estimate in an affidavit showing that the following sums of money were needed for specific purposes:

1. For the Power House and Plant at 96th St., full cost, when completed, the sum of ..... $	2,975,580
2. Changes at the 50th St. Power House	600,000
3. 320 Cars already ordered at $2,500 each	800,000
Total, (estimated in great detail)	$4,375,580

Mr. Starritt at this time makes no estimate for change of motive power, but it is clear that after paying for the $6,000,000 Debentures and the other necessary expenses as just above detailed, there would remain, according to Mr. Starritt's figures, from the $15,000,000 a balance of $4,624,420 or, according to Mr. Vreeland's figures, about $5,000,000 available for changes of motive power "when needed."

On June 28th, 1900, another application was made and subsequently granted to further increase the Company's Capital Stock by $7,000,000. This Stock was sold in December, 1900, at a premium, realizing over $10,500,000. (See Report for 1901, page 1073.) Copies of both Applications may be had by applying to the Railroad Commissioners.

According to Mr. Vreeland's estimate at the time of the previous issue of New Capital, in August, 1898, there should remain $5,000,000 available for change of motive power, and ac-

cording to Starritt's estimate the sum of $4,624,420, after paying for Power House Completion and for the Debentures.

In the application of June 28, 1900, Mr. Vreeland declares that $3,000,000 would be required to pay for changing the Cable road to Electric power on the Company's own lines, as distinguished from leased lines.

In this application of 1900, Mr. Starritt has an affidavit in which he estimates in careful detail that the cost of changing from Cable to Electric power on the Company's own lines would amount to $2,867,800.

To recapitulate, Mr. Starritt in 1898 estimates the full cost of completing the Power House and Plant at 96th St. and 50th St. and the purchase of 320 cars at $4,375,580, and in 1900 the full expense on the Company's own lines of changing from Cable to Electricity $2,867,806, a total of $7,243,386.

Yet in 1902 the Metropolitan Company in its sworn report to the R. R. Commissioners sets out expenditures of $13,310,977.87 for the same purposes, a difference of over $6,000,000.

Mr. Starritt's estimates, made under oath, and the reported expenditures, also made under oath, are set out below so that they can be compared.

Amory's Disclosures of Metropolitan's Mismanagement.

CHIEF ENGINEER STARRITT'S SWORN ESTIMATES.

Affidavit of August 10th, 1898.

"Estimated cost of 96th St. Power house station and requirements for Engines and Boilers .....$	2,269,980
In addition to the above, putting up five engines, generators and boilers, making a total complement in said building of 11 Engines and 88 Boilers, the cost of such additional work being $705,600, *"Making the total estimated cost of the said Power house and plant, when completed* .....$	2,975,580"
Cost of reconstruction of Car house at 50th St. and 7th Avenue .....$	600,000
320 Electric Cars .....$	800,000
Total	$4,375,580

Affidavit of June 25, 1900.

Estimated cost of changing over the Metropolitan Cable railroad and Equipping the same to permit the operation of the cars by an underground current of Electricity:	
For the change on Broadway .....$	854,134
" " " " Columbus Av. ..	529,341
" " " " Lexington Av. .	652,331

Amory's Disclosures of Metropolitan's Mismanagement.

For installing high tension feeders necessary for the operation of said roads	407,000
For a change and re-equipment of Substations as follows:	
At Houston St.	275,000
One-third the total cost of 50th St. Station	120,000
One-third the total cost of 25th St. Station	30,000
Total .....$	2,867,806
Grand Total, estimates of Aug. 10th, 1898, and June 25th, 1900 $	7,243,386

Expenses Reported by Metropolitan Co., June 30th, 1902.

(*Page 1108, Vol. II, Reports for 1902.*)

Details of Additions or Betterments During the Year.

Changing from Cable to Electricity as motive power on Broadway, Lexington, Columbus and Ninth Avenues, including reconstruction of road and superstructure; erection of 96th Street power house and equipment of Electric Stations and sub-stations at 26th, 146th, 50th and Front Streets; also additions and improvements to car houses .....$	11,064,216.89
Cost of change of Cable Cars to Electric	1,481,789.17
New Electric Cars and Equipment	764,971.81
Total .....$	13,310,977.87

Amory's Disclosures of Metropolitan's Mismanagement.

THE PROCEEDS OF $6,000,000 OF BONDS UNACCOUNTED FOR.

The Houston, West St. & Pavonia Ferry R. R. Co. issued $6,000,000 of Second Mortgage of June 17th, 1893, to Railroad Commissioners in which appears as far as is known the first official statement of the existence of these Bonds.)

The Company, then owned and controlled by the men now known as the Metropolitan Management, never reported these Bonds in any of its sworn reports, although required by law to do so. (See annual Reports for 1891, 1892, 1893.) This constituted perjury, because the reports were made under oath and purported to correctly state all outstanding obligations.

On June 17th, 1893, the Company made application to the Railroad Commissioners to increase its Capital Stock by $6,000,000, for which, it was stated, the Bonds were to be exchanged. (See Application.)

No record of the Application or of the approval granted August 1st, 1893, was ever published in the Railroad Commissioners' reports, where they should have been published. Suppression of official records seems to have been carefully attended to throughout this transaction.

On Nov. 29th, 1903, the Company was consolidated into the Metropolitan Street Railway Co. The $6,000,000 of New Stock authorized was not issued and exchanged for the Bonds at the time of the consolidation. (See articles of consolidation for proof of this fact.)

The $6,000,000 of Bonds were actually exchanged for Metropolitan Stock, and not for

Houston, West St. & Pavonia Ferry R. R. Stock. This was an unauthorized and illegal transaction.

In the application of June 17th, 1893, it is stated under oath by President Vreeland that the Bonds "had been issued and disposed of for sums of money necessary for completing, furnishing or operating the railroads of your petitioner."

This statement is found on examination not to be true. The Company had no railroads upon which the sums of money represented by the $6,000,00 of Bonds could possibly have been so expended, as will be proved.

The railroads of the Houston, West St. & Pavonia Ferry R. R. Co. in 1893 were the following:

Its own lines, still operated by horse power, and the Broadway & 7th Ave. R. R., leased June 30th, 1890, including also the Broadway Surface R. R. Co. and the South Ferry R. R. Co., of which the Broadway & 7th Ave. R. R. was lessee. The Chambers St. & Grand St. F. R. R. merged January 27th, 1891. The 6th Avenue R. R. leased February 1st, 1892. The 9th Avenue R. R. leased April 20th, 1892. The 23rd Street Ry. (and Bleecker St. R. R. sub-leased) leased April 5th, 1893.

Reference to the report of the Broadway & 7th Avenue R. R. Co. on June 30th, 1894, shows that this Company in 1894 reported cash expenditures of $7,925,270.97, (proceeds from the sale of Bonds) for constructing and equipping the Broadway cable road to 59th Street, including real estate, power houses and equipment. On none of the other railroads was any new work done. The change of motive power on the leased lines was not made till several years later.

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On referring to the Metropolitan Street Railway Company's report for 1894, page 878, we find the following Statement: "Ten miles of the above lines on Broadway & 7th Avenue from 59th Street Central Park is at present operated by cable power, *and the other routes by horse power.*"

The Cable road on Lexington Avenue was constructed with the $10,000,000 of Stock and Bonds of the Lexington Avenue & Pavonia F. R. R. which were issued for "construction," and began to operate in 1895, and the Columbus Avenue Cable road was constructed with the $6,000,000 of Stock and Bonds of the Columbus & 9th Ave. R. R., also issued for "construction." The cable road on Columbus Avenue was opened Dec. 6th, 1894, and put in complete operation May 26th, 1895. This completes the list. (See Metropolitan Ry. Co. report for 1895, and Columbus & 9th Ave. R. R. report for 1896 for confirmation.)

It is accordingly seen that the proceeds of the $6,000,000 second mortgage Bonds could not possibly have been expended "for completing and furnishing the railroads of your petitioner."

Nor could the proceeds of the Bonds have been used for "operating the railroads of your petitioner."—To have paid operating expenses with the proceeds of bonds would have been illegal, and had the illegal practice been indulged in, it must necessarily have shown in the Company's sworn annual reports.

On June 21st, 1904, the Wall Street Journal published an article regarding these $6,000,000 of Second Mortgage Bonds, the title of which was, *Where Did the Money Go To?* But the Wall Street Journal did not attempt a complete an-

alysis, as has been done above, to prove that the $6,000,000 was never honestly expended, but was a piece of monumental graft.

THE INTERURBAN LEASE A FRAUDULENT ACTION.

On February 14th, 1902, the Metropolitan Railway Company was leased to The Interurban Street Railway Company.

This lease was arrogantly put through in the face of the protests of minority stockholders (see stenographic report of proceedings of stockholders of March 20th, 1902), to accomplish three distinct purposes.

FIRST: To enable the insiders to get safely away with the $7,000,000 which had been borrowed for the purpose of being stolen just before the lease was made.

SECOND: To conceal the bankruptcy and wretched financial condition of the Metropolitan Railway Co. by inaugurating a new leasing arrangement of Metropolitan lines with a guarantee of 7 per cent. dividends on Metropolitan stock.

THIRD: And finally, to hide the thefts and cheats which had taken place, by starting a new deal with a fresh pack of cards.

To accomplish these ends perjury and the grossest misstatements were indulged in. Among

other things President Vreeland declared that the indebtedness of the Metropolitan Co. amounting to $11,000,000 had "been incurred in the purchase of Third Avenue Stock." It was pretended that the lease was necessary, among other things, to provide for the payment of this indebtedness. He sent this false statement in a printed circular to Metropolitan Stockholders Feb. 14th, 1902.

Now this particular statement, among the rest, was false. The indebtedness for purchases of Third Avenue Stock, acquired in the spring of 1900, never exceeded $6,400,000 and had been wholly paid off in 1901 out of the proceeds of $7,000,000 of Metropolitan Stock which had been issued near the end of 1900 (see application of June 28th, 1900), and which stock had been sold at a premium, realizing over $10,500,000 in cash. (See Report for 1901, page 1073.)

The Company's own Balance Sheets filed quarterly with the Railroad Commissioners between 1900 and 1902 establish the fact that no indebtedness existed on Feb. 14th, 1902, which, as Mr. Vreeland falsely stated had "been incurred in the purchase of Third Avenue Stock."

The indebtedness had all been paid off. Mr. Vreeland was trying to conceal the $7,000,000 theft of borrowed money.

The proofs of Mr. Vreeland's false statement in this matter were so readily demonstrable from the Balance Sheets of the Metropolitan Company, filed with the Railroad Commsisioners, that I took pains in 1903 to see that the proofs were brought to Mr. Jacob Schiff's notice through a third party. I knew the Metropolitan Company's fiscal agents, Messrs. Kuhn, Loeb &

Co. had been deceived as well as Metropolitan Stockholders.

I was aware that both Mr. Whitney and Mr. Vreeland had told Mr. Schiff that the Metropolitan Company owed $11,000,000 for purchases of Third Avenue Stock. I had seen Mr. Schiff's testimony when he was examined in 1903 in the case of Emma W. F. Page against the Metropolitan Street Railway Co. This case was brought in the U. S. Courts, and all the papers ought to be on file in the Post Office Building. But this particular testimony has been withheld from public record; it cannot be found among the papers on file. Nevertheless, I have seen the testimony, and I was sure of my facts.

When there was brought to Mr. Schiff's notice the proof that he had been grossly deceived he obliged Thomas F. Ryan to forthwith relieve his firm of the holdings of the Metropolitan Securities Co. Stock, amounting to about $6,000,000. If Mr. Ryan had not been a very rich man indeed his embarrassment in satisfying Mr. Schiff's peremptory demands would have been extreme.

I do not include here the proofs from Balance Sheets which were thus brought to Mr. Schiff's notice because of the space they would occupy in this article, but the Balance Sheets themselves cannot be suppressed and the proofs are available at all times.

METROPOLITAN DIVIDENDS PAID WITH THE PROCEEDS OF METROPOLITAN BONDS.

As a part of the Interurban deal the Railroad Commissioners were persuaded to permit the issuance of $11,000,000 of Metropolitan bonds for the express purpose of changing motive power.

Amory's Disclosures of Metropolitan's Mismanagement.

(See application of March 11, 1902, for the consent of the Railroad Commissioners to a mortgage to secure an issue of $65,000,000 of Metropolitan refunding bonds.)

Both President Vreeland and Secretary Warren made affidavit, attached to said application, that the proceeds of the $11,000,000 were to be used solely for changing motive power on exactly 75.9 miles of single track road, still operated by horse power, as particularly detailed by Chief Engineer M. G. Starritt in his affidavit, also attached to the application.

But it was never really intended to use the money for the purposes declared by the two officials. Both Mr. Osborne and Mr. Philbin publicly charged in 1903 that the bonds were issued for the purpose of paying unearned dividends,—an illegal transaction.

The records now prove their charge to have been correct. The bonds were sold in July, 1902, at 90, realizing $9,900,000. (See Metropolitan report for 1903, page 1436.) The 75.9 miles of horse railway have not been changed to electric traction, but only a small portion thereof, while the proceeds of the bonds have wholly disappeared. (See report of the New York City Ry. Co. of June 30th, 1905, for confirmation.)

Metropolitan Railways have lost many millions of dollars through operation since 1902, nevertheless, Metropolitan dividends have continued to be paid. It is clear that the greater part of the proceeds of the $11,000,000 of Metropolitan bonds has been used in paying Metropolitan dividends to Metropolitan stockholders.

The stockholders were deceitfully induced to incur obigations of $11,000,000 that the Interur-

ban Co. (now the New York City Railway Co.) might fulfill its guarantee respecting the payment of 7 per cent. dividends,—a very pretty bunco game indeed.

THE METROPOLITAN TRACTION COMPANY AS A MEDIUM FOR GRAFT.

The Metropolitan Traction Co. was a New Jersey Corporation which was used by the Metropolitan management between 1893 and 1897, and till the Company was wound up in the latter year, to carry out numerous deals of graft. This Company's Capital Stock was always maintained at the same amount as that of the Metropolitan Street Railway Co. Whenever the Railway Company's capital was increased, the Traction Company's was increased accordingly.

As the Traction Co. was not obliged to publicly report its financial statistics and operations, not being a New York Corporation, it offered a convenient means by which the insiders were able to fleece Metropolitan Stockholders.

The Metropolitan insiders bought for control, large quantities of the Securities of railway Companies which became a part of the System. These securities were then sold to the Traction Co. at a profit of millions of dollars realized by the insiders. The Traction Co. then turned around and sold them to the Metropolitan Street Railway Company, and by this indirect process, the Metropolitan Railway stockholders were cheated of millions of dollars by the Metropolitan Management. In one deal like this in 1896, the insiders made about $4,000,000.

Amory's Disclosures of Metropolitan's Mismanagement.

In some instances, notably in the case of the Fulton St. R. R. and of the 28th St. and 29th St. Crosstown R. R., the Metropolitan Co. was burdened with railway properties at such excessive costs that they do not pay their fixed charges and occasion the Metropolitan Stockholders heavy annual losses. The Fulton St. R. R. lost $23,-104.32 last year, and the 28th and 29th St. R. R. $58,862.47. (See Report of the N. Y. City Ry Co. of June 30th, 1905.) I estimate that the Metropolitan management made for themselves not less than $1,000,000 by the sale of these two companies through the Metropolitan Traction Co. to the Metropolitan Railway Co. There were other similar transactions.

Another successful plan of graft was to have the Metropolitan Railway Co. pay the Metropolitan Traction Co. millions of dollars which it was pretended the Traction Co. had expended for the Metropolitan Railway Co. for property and for construction purposes. Two of these deals will be briefly described below.

The Traction Co. was dissolved in 1897 after it had served its usefulness. The Metropolitan management made strenuous efforts to buy in every single share of the Stock outstanding, for reasons that may be guessed, and finally accomplished it. I have heard Mr. John D. Crimmins describe with glee his success in buying up the last certificate outstanding.

TWO METROPOLITAN TRACTION STEALS.

In 1898 the Metropolitan Street Railway Co. issued $15,0000,000 of new stock, of which $6,-000,000 was used to redeem $6,000,000 of deben-

tures certificates, which the president of the Metropolitan Railway Co. declared under oath in an application to the Railroad Commissioners "had been issued in October, 1897, in payment for property purchased from the Metropolitan Traction Co. upon the dissolution of the latter Company."

Yet in September, 1896, only 13 months before, the Metropolitan Railway Company issued and turned over to the Metropolitan Traction Company $13,500,000 of Metropolitan Street Railway Co. Stock for property and Securities purchased from the Traction Company. The $6,000,000 was the final big clean up by the insiders on the winding up of the Traction Co., just as there was another clean up in 1902 of $7,000,000 when the Interurban became the leasing and operating company of the system. These two transactions with the Traction Company were carried through to enable the insiders to cheat the Metropolitan Stockholders of millions of dollars and to get safely away with the plunder.

The law was evaded, and no detailed statements were ever made in the Metropolitan Railway Company's annual reports, showing the expenditures of the proceeds of the $6,000,000 Houston St. Railway Bonds, or of the $6,000,000 used to redeem debentures, or of the $13,500,000turned over to the Traction Company.

Had detailed statements been required by the Railroad Commissioners the expenditures might have been traced, and possibly the full extent of the frauds long ago exposed. But suppression of facts has been a very necessary part of the dishonest deals of the Metropolitan management.

Amory's Disclosures of Metropolitan's Mismanagement.

MILLIONS STOLEN FROM LEASED COMPANIES.

Whenever the Metropolitan Co. has issued its own stock or bonds for the declared purpose of new construction or changes of motive power, it will be found that a large portion of the proceeds went to enrich the insiders.

The proceeds of bonds of leased Companies issued to change motive power have also been stolen. One case, in which the proofs are particularly clear, has already been described, viz: The Second Avenue Railroad.

This Second Avenue R. R. case was one of the matters submitted to the District Attorney with 11 or 12 pages of statements containing all the proofs of the dishonest transaction, and it was one of the matters which was dodged by Mr. Jerome's expert accountant when he reported on my charges in 1903.

INVESTMENTS REPORTED AT FALSE VALUATIONS.

In the item of Investments alone the Balance Sheets of the Company have been falsified to the extent of millions of dollars. This has even been done in the face of the dictum of the Company's own chartered accountants, who declared that *"As a matter of correct accounting, these investments should be held on your books at cost irrespective of their par or market value. No corporation of this character would undertake to write up or down the value of its investments*

to agree with the fluctuations of the market." See report of Stephen Little, Farquhar J. Mac Rae and Haskins & Sells, certified public accountants, to President Vreeland, April 25th, 1903.

Mr. Vreeland declared in a public statement in 1900 that Third Avenue Stock had cost the Metropolitan Co. about $80. a share, yet in schedule A of the Interurban Lease it is put in at $125 a share and carried at such valuation in Balance Sheets.

The Metropolitan management has not only done what the accountants say could not be done, but has sworn to false values, and has used perjury in these cases as a convenient way of concealing thefts and of showing profits for paying dividends which were fictitious.

METROPOLITAN RAILWAYS BANKRUPT.

The reports do not correctly describe the true financial condition of the Companies. They are false and designedly misleading. Many millions of Liabilities are omitted, while Assets are overvalued to the extent of other millions. Losses have been concealed, and fictitious profits claimed.

On June 30th, 1905, the New York City Railway Co. reported a deficit of $4,688,984.78. On Sept. 30th a deficit of more than $5,000,000 was reported. But the actual deficit of Metropolitan lines at the present time probably exceeds $20,000,000.

Among other things, the Company has failed

to include five years arrears of franchise taxes, estimated for all the companies in the system to amount to over $6,000,000. The Company is also liable to the City for heavy interest charges on taxes long over due, besides about $2,000,000 for paving between tracks.

These are legal Liabilities and ought to be included in Balance Sheets to make a true showing of the Company's financial condition.

Assets have been reported in excess of true values. One example has already been referred to in the case of the Statement of the Metropolitan Co. to the Stock Exchange, wherein a fraudulent claim of about $2,800,000 was reported.

The Metropolitan Railways on June 30th, 1905, had a total floating indebtedness of about $48,000,000. (See Annual reports for confirmation.)

The Companies, as their own reports will demonstrate, have no present or prospective means of paying their indebtedness for taxes, or to liquidate their floating indebtedness.

Losses are accumulating, floating indebtedness is increasing, and the condition of the Companies is growing worse day by day.

Equipment is deteriorating and will soon demand renewal. The Companies are already so overloaded with stock and bond issues that a limit seems to have been reached in that direction.

Of all the railways in the Metropolitan system, only two operate at a profit, and only one has a surplus, the Union Railway. Even this company has a deficit when the losses of the con-

trolled companies which it operates under guarantee are included. A surplus to be sure is reported for the Metropolitan Street Railway Company, but such surplus is fictitious.

Year after year, this Company has been reporting earnings which were never made and declaring dividends which were never earned. It has concealed its losses and grossly exaggerated the value of its securities. By these means a surplus of over $3,000,000 is shown in the Company's reports, while a deficit far in excess of this sum undoubtedly exists.

The condition of bankruptcy which prevails has three distinct causes. First, the unconscionable looting, to which attention has been directed; Second, the unlawful practice of paying dividends from Capital; Third, over-capitalization.

MILLIONS OF UNEARNED DIVIDENDS PAID.

The Metropolitan management has long pursued the ruinous policy of paying unearned dividends. The process of showing profits not actually earned is a simple one, although incidentally involving falsification of accounts and perjury, and ultimate ruin. It is to transfer from Operating Expense Account to Construction Account sums of money actually expended in operation. The practice if persisted in is as hopelessly fatal to a corporation as it would be for an individual to attempt to sustain life by feeding on his own blood.

Amory's Disclosures of Metropolitan's Mismanagement.

An ex-official of the Metropolitan Street Railway recently told me that in 1898 he was informed by one of the management that it had been decided to increase Metropolitan dividends from 5 per cent. per annum to 7 per cent., whereupon he protested on the grounds that the Company had not been earning even the 5 per cent. which had been declared by the directors, and that to increase dividends to 7 per cent. meant ultimate ruin to the Company and exposure. Nevertheless, my informant added, the policy determined on was carried into effect.

A few months later (in March, 1899), the insiders put up the price on the Stock Exchange to $269. a share. The public was induced to purchase at fraudulent prices, while the insiders no doubt unloaded their stock and cleaned up profits amounting to millions of dollars.

My study of the Metropolitan reports leads me to believe that the Metropolitan Management for a number of years has authorized and paid not less than an average of two million dollars a year of unearned dividends.

I have recently filed with the District Attorney an affidavit charging four of the Metropolitan officials with perjury in swearing falsely in the annual reports for 1902 and 1903 to the number of persons killed and injured by the cars and the amounts disbursed for damage claims. I demonstrated that under this head alone the accounts were falsified in the two years mentioned to the extent of more than a million dollars. I have asked Mr. Jerome to state what he is going to do about it, to which he has as yet made no response.

The Metropolitan railways have never ex-

pended a single penny of net income for additions and betterments. The wisdom, the very necessity, of devoting a portion of earnings to betterments is recognized by all railroad managers. Even the Brooklyn Rapid Transit Co. reports substantial payments from net income for additions and betterments. But not so with the Metropolitan managers. They have brought the railway companies to ruin by a financial policy which included among other things the criminal practice of charging off to additions and betterments millions of dollars which had really been expended on operating the roads.

ANNUAL LOSSES FROM OPERATION.

The Metropolitan railways have been steadily losing money since 1902. For the year ending June 30th, 1904, the New York City Railway Co. reported losses from operation on the railways in the Metropolitan System of $1,411,411.26 (See R. R. Reports for 1904, pages 1049 & 1050.) For the year ending December 31st, 1904, losses were $1,879,329. (See quarterly reports.) Losses are increasing all the time.

In the year ending June 30th, 1905, losses amounted to $3,751,091.80. In other words, expenses were $10,000 a day greater than receipts. (See Annual Report of the New York City Railway Company for the year ending June 30th, 1905, recently published in pamphlet form.)

The Report shows that only two of the Companies in the system made money; the others lost money.

Amory's Disclosures of Metropolitan's Mismanagement.

The railways of the Third Avenue System have lost an average of over a thousand dollars every day since they were leased by the Metropolitan in 1900. The Third Avenue Co. does not earn the interest on its own bonds. (See Annual Reports since 1900 for confirmation.) Dividends are being paid on Third Avenue Stock which that Company is wholly unable to earn. These dividends amount to $800,000 a year at present, and under the lease and guarantee are to be gradually increased to $1,120,000. Losses incurred through the operation under guarantee of Third Avenue lines were more than $1,000,000 in 1905.

LONG CONTINUED LOSSES IN PROSPECT.

Statistics show that when the Elevated roads were first built the business on north and south surface lines fell off to such an extent that some of the companies were near ruin. It took the surface roads 8 years to regain the traffic they had lost.

Every year between 1893 and 1899 the Elevated roads in turn lost enormously by reason of the competition of surface roads, which during this period had been equipped with electric power. It took the Elevated roads 6 years to recover their traffic. Metropolitan lines are now confronted with similar conditions.

It is quite certain that the Metropolitan railways are face to face with a period of long continued annual losses. It is extremely probable that with their present burden of fixed charges they will never be able to show a profit from

operation, provided honest reports are required in future and the fraudulent practice of charging construction account with expenditures actually incurred in operation be checked.

It must be remembered that, owing to the transfer system, the average receipts per passenger on Metropolitan lines is less than 3½ cents. There is undoubtedly a profit at these figures on a fair capitalization, but not on a capitalization which has been watered to the limits. Moreover, the difference between 5 cents and 3½ cents average fare may mark a difference as well defined as that between wealth and poverty. One may represent enormous profits and the other ruinous losses. On their traffic business last year Metropolitan lines lost nearly $4,000,000. Had 5 cent fares been received from each passenger, there would have been a profit of more than $5,000,000.

The only hope of the system is in reorganization with honest management, and the forced return to the treasury of the millions stolen by the insiders as well as the other millions paid out for unearned dividends. By these means only can the Metropolitan railways be established upon a profitable basis. I cannot see otherwise how even the propsed merger with the Interborough Company can save the Metropolitan.

THE TILLINGHAST CASE.

The recent developments in this case have aroused widespread public alarm. Evidence has been elicited to prove that a conspiracy has long

existed in the legal and claim department of the Metropolitan Railway to defraud plaintiffs in damage suits. Two of the conspirators, William H. Tillinghast and Stanley S. Bagg, have made written confessions that Tillinghast has been employed for several years to sit on juries and render verdicts favorable to the railway companies. At the present writing this scandalous piece of business is under investigation by a judge of the City Court, who felt impelled by a sense of public duty to take the matter up after the District Attorney confessed himself unable to find "legal corroboration." The existence of corrupt Court practices by Metropolitan attorneys is well known to the legal profession, and has for years constituted a public disgrace.

THE AFFAIR WITH JEROME.

In 1902, in response to an invitation from District Attorney William Travers Jerome, I furnished him with proofs of crimes committed by the officials of the Metropolitan Street Railway Company.

The matter came about in this way. Mr. Jerome and I had been upon very friendly terms for several years. He knew that I was familiar with street railway business in New York. He knew that the conduct of Metropolitan Railway affairs was corrupt. We had on numerous occasions discussed that point.

In the campaign of 1901, when he first ran for the office of District Attorney, Mr. Jerome made the following statements in a speech published in the "Herald" of October 27th, 1901:

Amory's Disclosures of Metropolitan's Mismanagement.

"When corporate interests use their great wealth to debauch this community, to buy the authorities in every direction and to buy the Legislature of the State of New York it is quite time that plain people said something on the subject.

"I wage no war with corporate interests. But ask any lawyer in large practice in the City of New York, whether there are not judges on the Supreme Court of the State of New York, in the County of New York, that they would rather not be before if the interests of the Metropolitan Street Railway Company were involved. I do not desire to name any of these Judges, but if I am pressed too hard, I will name them."

"Let me tell you that if I am elected I shall make it my business to follow the trails of wrong-doing and corruption, not only when they lead into tenement houses, but I shall follow them even if they lead into the office of the Metropolitan Street Railway Company."

"No one knows better than I do that when I am attacking the Metropolitan Street Railway Company, I am arraying against myself the most dangerous, the most vindictive and the most powerful influences at work in this community."

I saw Mr. Jerome the next day. He requested me to bring him proofs of Metropolitan wrongdoing when he became District Attorney, if he should be elected. This invitation was several times repeated during the campaign. Accordingly after Mr. Jerome became District Attorney in 1902 I brought him the desired information. This occurred on November 23rd, 1902.

Amory's Disclosures of Metropolitan's Mismanagement.

The charges were voluminous. Mr. Jerome first examined a part of them and expressed himself satisfied as to their truth. He assurred Mr. J. Coleman Drayton and myself that he would do his duty without fear or favor. He declared it was "the most important matter ever in the District Attorney's office; a bigger thing than St. Louis, etc., etc."

He then turned the matter over to one of his assistants for a thorough investigation. This Assistant District Attorney devoted six weeks to the investigation, to the exclusion of all other business. He subsequently informed me, as well as ex-District Attorney Philbin, that I "had made good on every one of the charges."

In February, 1903, Metropolitan officials learned there were charges on file, and, without informing me, the District Attorney furnished them with a partial list of the charges.

Mr. Jerome had previously told Mr. James W. Osborne, as well as myself, that he was satisfied as to the truth of the charges. Nevertheless, about this time he seemed anxious to drop the matter. When asked for an explanation, his response was "that he feared he would be able to punish only the little Metropolitan thieves and not the big ones, if he should proceed in the matter." He made this statement to Mr. Osborne, as well as to me.

In March and April, 1903, the Vreeland libel case was heard, wherein I had summoned the president of the Metropolitan to court on a charge of criminal libel.

As a defense to my charges of wrong-doing, he unjustly published me in the newspapers as a blackmailer and stockjobber, whereas my real

New Jersey State Library

offense was that I had presumed to furnish the District Attorney with proofs of Metropolitan corruption.

In the course of the trial, the Metropolitan management was publicly accused of monstrous crimes by two experts in criminal law; one, Mr. James W. Osborne, who had been Mr. Jerome's own assistant, the other, Mr. Eugene A. Philbin, who had been Mr. Jerome's predecessor in office.

The nature and publicity of these charges will be demonstrated by quotations from newspapers, which follow:

NEW YORK TIMES, April 16th, 1903.

Osborne says he will prove $30,000,000 Steal.

NEW YORK WORLD, April 16th, 1903.

$30,000,000 Stolen from Metropolitan.

James W. Osborne declares this Charge will be proved.

NEW YORK TRIBUNE, April 16th, 1903.

Theft of Millions. Osborne after M. S. R.

No expert can explain away the theft of millions which is so palpable from these figures.

NEW YORK PRESS, April 16th, 1903.

Thirty Millions stolen by Metropolitan, Osborne tells Nicoll.

NEW YORK TRIBUNE, April 17th, 1903.

Bond issue to pay dividends.

One of Philbin's many startling charges against M. S. R. Osborne says millions were reported as paying Third Avenue debt already paid.

NEW YORK HERALD, April 23, 1903.

Osborne leads new attack on Vreeland's management, alleging huge misappropriations.

Amory's Disclosures of Metropolitan's Mismanagement.

NEW YORK PRESS, April 26th, 1903.

Mr. Osborne's statement:

"We have produced evidence before Magistrate Barlow which shows a crime has been committed, and now it is up to the District Attorney to say whether he will avail himself of that evidence and proceed against those who have committed the crime.

"We have charged in open court that $30,000.00 has been stolen, and that never has been disproved by the Metropolitan Co. or its counsel. I told Mr. Nicoll, counsel for Mr. Vreeland, openly, he would not be able to disprove my charges."

Yet the District Attorney took no notice and made no move.

During the course of the Vreeland trial two lawyers, one Mr. Jerome's own ex-law partner, and the other confessedly a Metropolitan attorney, were called as witnesses, and testified to such facts as convinced every unbiased hearer in the court room that they had collusively attempted to bribe me with a large sum of money to withdraw the charges. (See daily papers of April 29th and 30th, 1903, for confirmation of this allegation.)

That Mr. Jerome was convinced of his ex-partner's guilt is proved by his action, for, after examining the evidence, he summarily required his ex-law partner to remove his (Jerome's) name off his office door.

Subsequently Mr. Jerome's ex-law partner, on charges preferred, was convicted of the attempt at bribery by the Grievance Committee of the Bar Association, a crime specifically described

in Sec. 113 of the Penal Code. He got word of his conviction and escaped punishment by resigning from the Association before the conviction could be formally put in writing. (See Report of the Grievance Committee, in the Annual Report of the Association of the Bar, January, 1904, page 105.)

The last paragraph of the Committee's Report is proof that the District Attorney was advised of all the facts, but he took no action.

THE DISTRICT ATTORNEY PERMITS THE METROPOLITAN OFFICIALS TO ESCAPE.

In April, 1903, Mr. Jerome employed an accountant to report on my charges. He did not take the trouble to speak to me about it, although it is obvious that my knowledge of the matter would have been of value to the accountant, had the investigation been undertaken in good faith.

But it was not undertaken in good faith. It was a deliberate whitewash. I have documentary evidence to prove it.

Early in May, 1903 (see daily papers of May 5th, 1903), Mr. Jerome gave the Report of his expert to the press. The "Tribune" referred to the Report as "An incomplete, inconclusive, superficial document." Accompanying it was a carefully prepared statement of the District Attorney, which contained willful misstatements.

Among other things he refers to *"verbal charges"* against the Company, implying that my charges were not in writing, when as a matter of fact they were all in writing, covering about 80 pages of typewriting.

Amory's Disclosures of Metropolitan's Mismanagement.

He says that his accountant's report "is very clear and full and takes up each charge". He says that "the specific charges so far as they involve criminal wrong-doing are entirely without foundation."

As a matter of fact, Mr. Jerome's accountant *did not* take up and report on each charge. His report *was not* "clear and full." The specific charges *did* involve criminal wrongdoing.

There were 27 distinct written charges against the Metropolitan management filed by me with Mr. Jerome. Of these his accountant reported on but 7, and these of minor importance, involving chiefly technicalities of accounts and not serious crimes: *while 20 of the charges were not reported on or even referred to by Mr. Jerome's accountant.* These 20 charges were the all important charges. They involved the proofs of the commission of great crimes.

It is clear from the record that the District Attorney furnished his accountant with only a few of the minor charges and wholly suppressed the 20 others.

THE REVENGE OF THE METROPOLITAN.

At the end of the Vreeland case, in which I was defeated by influences, which Mr. Jerome has so eloquently described as "the most dangerous, the most vindictive and the most powerful influences at work in this community", I challenged the Metropolitan president to arrest me for criminal libel for charges which I caused to be widely published, in which I accused him and

his associates of specific crimes, including the theft of $30,000,000. (See daily papers of May 3rd, 1903.)

But the Metropolitan officials were aware that I had proofs in my possession of their guilt, so they avoided the issue.

Their only response was a despatch from Philadelphia, published in Wall Street, two days later, May 5th, 1903. Here is a copy of the despatch:

"AMORY TO BE PROSECUTED.

"(Special Despatch to the New York News Bureau.)

"PHILADELPHIA.—W. N. Amory, who made the charges against the Metropolitan Street Railway, is to be prosecuted. The Metropolitan management will spare no expense in the case. 'Amory', said a prominent interest in the company, 'will be prosecuted to the bitter end, if it costs us a million dollars.'"

The same day the New York MAIL and EXPRESS published a copy of this despatch.

When I read this, I appreciated it was notice that I was to be punished by every means known to my antagonists because I had dared to furnish evidence of their guilt to the criminal authorities.

I have made a study of street railway affairs in this city for twenty years. Moreover, I learned something of Metropolitan methods between 1895 and 1900, when I was connected in an official capacity with the Third Avenue R. R. Co. I knew well what to expect.

Now I was being dogged by Metropolitan de-

tectives the whole time I was engaged in arranging the proofs respecting Metropolitan crimes for the District Attorney's information, and I was perfectly well aware of it.

The Metropolitan detectives bribed shopkeepers in the neighborhood of my house, and made their stores convenient places for spying. They occupied a house near my residence as headquarters.

They bribed one of my servants. They shadowed me constantly. They followed members of my family to their great annoyance. For a considerable period they followed everyone who called and left my house.

Before the Vreeland libel case was tried, they had begun to rob my mail. My telegrams were opened and read before delivery. They had my telephone wire tapped. I had to stand these things, because I was powerless to stop them. There was nothing to do but to grin and bear it, and wait.

THE MAILS ROBBED.

I have evidence that my mail for a period of more than two years was opened and examined by Metropolitan agents in the Post Office, before it was delivered to me. They even broke the seals and opened registered letters. They stopped at nothing.

But I intend to relate here in detail only one incident of mail-robbing. In this case the Metropolitan agents furnished me with written evidence of their criminal practices.

Amory's Disclosures of Metropolitan's Mismanagement.

On the morning of December 4th, 1903, my attorney, Mr. Wm. R. Brinkerhoff, of 68 William Street, received a letter addressed to me in his care. The letter was post-marked "Washington, D. C., Dec. 3rd." Mr. Brinkerhoff put the Washington letter into a plain square envelope of his own, securely closed the envelope, and addressed it to me at my residence. Mr. Brinkerhoff then personally posted the letter at about 11.30 A. M., December 4th.

About 5 o'clock that afternoon Mr. Brinkerhoff's letter was received at my house. When I opened it, I found it contained nothing but a blank sheet of paper.

Several hours later that evening there was delivered by a postman another letter in a plain square envelope, which was addressed to my wife. On opening the envelope, she discovered the Washington letter which Mr. Brinkerhoff had forwarded. The original envelope of the Washington letter had been opened and the letter extracted. The letter had then not been replaced in its envelope, but placed alongside of it, and in this shape had been enclosed in the envelope addressed to my wife. The purpose of this was doubtless to make certain that the Washington letter would be read by my wife.

Now, this Washington letter was signed in an assumed name by a young woman typewriter employed in one of the Government Departments, whose services as a typewriter had been engaged by me in a legal matter in Washington in the preceding month of October. The letter was written on Department paper. Possibly the fact that it was signed in an assumed name attracted the suspicions of the Metropolitan agents, when

they opened it in the mail and read it, and doubtless with the intention of intimidating me, they sent the letter to my wife.

Beginning the very next day, it was noticed that the detective service became more thorough than ever. They began to follow my wife persistently. Two or three detectives were her constant shadows. The explanation was presently supplied.

On the afternoon of January 27th, 1904, my wife received an anonymous letter by mail signed with the initials M. R. These are the initials on the stock ticker, which designate the Metropolitan Street Railway Company. A copy of the letter follows:

> "MRS. AMORY,
>
> "A letter from 'Peggy' from Washington to your husband was sent to you in December early. We know you received it.—You have taken no steps yet. We have copy; also every evidence for you and will bring it forward and produce the girl at the smallest sign from you.
>
> M. R."

Here was the confession of the theft of a letter while in the U. S. Mails. The reason for the increased activity of the detectives became apparent. They were watching to see what my wife was going to do about that Washington letter. They were going to bring "every evidence" if, as doubtless they hoped, she should go and see a lawyer about the matter. Can anyone suppose that criminals who had robbed the mails would hesitate at perjury and false evidence?

This anonymous letter was in handwriting, plainly disguised, on typewriting paper which was torn to a size to exactly fit the envelope. It is noticeable that the letter was punctuated with extreme exactness. The envelope is postmarked N. Y. Station O, Jan. 27, 1904, 2.30 P. M. Station O is situated at 122 Fifth Avenue.

On May 10th, 1904, the Metropolitan agents evidently became impatient, for another letter was received from M. R. This letter was also posted at Station O.

It would appear that the self-confessed criminals feared lest the letter of December had not been received by my wife, for *an exact duplicate* of the Washington letter was enclosed. The copy which was traced was so exact that it was at first mistakenly believed to be an original duplicate. There was also enclosed an exact copy of the original Washington envelope, showing the post-mark. The envelope had been skilfully copied, even to the waving lines of cancellation. It was the work of an artist in India ink.

A copy of the second anonymous letter follows:

> "MRS. AMORY,
>
> "Why don't you go to investigate for yourself at Washington from persons with evidence connected with Room 239 occupied during first trip important—See Sunday breakfast waiter.
>
> M. R."

The handwriting was the same as in the first letter.

It thus appears that the threat of May 5th, 1903, which had been telegraphed from Philadelphia, in which the Metropolitan Management announced its intention to spend a million dollars to get even with me, had taken this shape.

I have been asked why I have not attempted to punish these criminals by laying the facts before the Post Office authorities. I did consult a Post Office Inspector, who informed me that the fact that the Metropolitan detectives were posting yellow envelopes on top of such letters as I mailed (a practice which I observed was being indulged in) indicated collusion with Post Office employees, and an understanding with higher Post Office officials. He said the yellow envelope scheme was one adopted by Government detectives who were attempting to obtain evidence against important criminals, counterfeiters, for instance. When this was explained, I recognized the hopelessness of seeking redress in that direction, for I appreciated that if the influence of the Metropolitan management was so great that it extended into the Post Office Department, as it undoubtedly did, it was also powerful enough to balk any successful inquiry and the detection and punishment of the guilty.

That there must have been complete Post Office collusion is indicated by the fact that similar tampering with mail matter occurred when I was served through the branch Post Office at Third Avenue and 68th Street, as well as when later my mail was distributed through the branch Post Office at Eighth Avenue and 123rd Street.

It has seemed necessary to set out the foregoing at such considerable lengths, in order that the Metropolitan matter and my connection with it may be understood.

CONCLUSION.

If these things are not true, then I ought to be punished for criminal libel or locked up in a lunatic asylum. But if I can "make good", to use a favorite expression of Jerome's, then some eminent financiers ought to be sent to State's prison.

What my motives are is of no importance. It is a matter of grave consequence whether my charges are true, and, if true, whether the proper action be taken on the facts. Yet I should like to make my position plain.

First of all, I again assert that it never occurred to me to expose Metropolitan wrongdoing until Mr. Jerome invited me to do so. I then undertook the matter in good faith. But Jerome deserted me at the critical moment in the contest which he had induced me to engage in, thereby acquiescing in the ruin of a man who had been his friend and ally. My motives were questioned and my reputation injured. I then resolved never to abandon the undertaking.

Doubtless many have believed that the Metropolitan President had some justification when he accused me of having "undertaken a bear raid upon Metropolitan Stock, of using the District Attorney's office for stock-jobbing purposes, and of making malicious and unscrupulous attacks

for the purposes of extorting money." Not only were these accusations false, but the Metropolitan President made them with a consciousness of their falsehood, and Jerome knew they were false.

These were grossly libelous charges, the imputation of which I will not forever rest under. Calumny once circulated is more or less forever current. I understand fully that to cope with the calumny I must prove the truth about the Metropolitan.

All the accusations of the Metropolitan President were unfounded. I never made a dollar out of Metropolitan Stock, nor ever attempted to profit by the information which was entrusted to the District Attorney. Even if I had, it would have constituted no crime described in the Penal code. It is enough to say that I refrained.

Two months before the Metropolitan's accusations against me were published, I was offered the profits on thousands of shares of Metropolitan Stock if I would disclose the information which I had placed in the District Attorney's hands. I declined this as well as other offers. But I declare I have now no scruples against profiting by the knowledge I possess of Metropolitan affairs and of the real value of the Metropolitan Securities.

At the very time I was unjustly published to the world as a stockjobber and a blackmailer, I had written evidence in my possession proving that Metropolitan attorneys had unsuccessfully attempted to bribe me with $200,000 in cash, the consideration being the withdrawal of the charges

filed with the District Attorney, and the abandonment of my efforts to expose the wrong-doing which I had unearthed. Several other attempts to buy me off have since been made.

But, failing in these efforts, and not satisfied with a campaign of slander in order to discredit me, these monumental grafters have first publicly threatened and then subjected me to a persecution so revolting, against which as a single individual I have been powerless, that my own self respect demands my best efforts to effect their punishment. They have not stopped short even at attempting to destroy the peace and happiness of my household. Others may submit to such intolerable tyranny, but I am resolved never to submit. It is my privilege to vindicate myself. It is a duty to expose crimes and cause the guilty to be punished. Privilege and duty therefore go hand in hand.

I may be asked—Why have I delayed so long? I have been waiting as patiently as possible for the psychological moment. I believe it has arrived.

The time has come to apprize the public fully of the criminal methods of this dangerous organization of Capitalists.

If the Managers of great public corporations can betray their trusts with impunity and rob their own stockholders of millions of dollars, and, through the exercise of their pernicious influence, get safely away with the spoils and escape the penalties for their guilty acts, then such a state of affairs becomes a peril to the community. If these things be allowed to exist, and if the guilty be permitted to go unpunished of their crimes, what security has any person

who may invest in the stocks and bonds of corporations controlled by men such as these? It is clear there is no security.

There is another consideration, too. Have things come to such a pass in New York that no man may dare to lay before the District Attorney evidence of wrong-doing by the directors of a corporation without the certainty of subjecting himself and his family to intolerable persecution on the part of the accused?

I cannot do better than quote here Charles Francis Adams Jr.'s closing paragraph in his preface to "A Chapter of Erie."

He wrote, "I can only add as a reason of this republication, my own belief that neither the American nor any other people can afford to glance in the columns of the daily press at such transactions in their history as those here narrated, and then dismiss them forever from memory. They contain matter for a great deal of reflection, since at many points they touch very nearly the National Life."

THE REMEDY.

The whole remedy is in the hands of the Metropolitan Stockholders themselves, who, certain of the endorsement of the public, shall with uncompromising spirit organize and institute proceedings to force restitution of the stolen millions and the return to the Metropolitan treasury of other millions paid out for unearned dividends, and incidentally effect the punishment of the guilty.