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NOTICE OF APPEAL.

Filed March 28, 1930.

In Chancery of New Jersey

Between	
JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY, *Complainants,*	*On Bill, &c.*
and	*Notice of Appeal.*
CENTRAL LEATHER COMPANY, *et als.,* *Defendants.*	

The complainants, Mabel B. Ingraham, Frances T. Ingraham and Philip P. Getty, hereby appeal from the final decree made by the Chancellor on the advice of Vice-Chancellor John Bentley in the above entitled cause on February 25, 1930, and from the whole and every part thereof to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated March 24, 1930.

SMITH & SLINGERLAND,
Solicitors for and of Counsel with Complainants, Mabel B. Ingraham, Frances T. Ingraham and Philip P. Getty.

Notice of Appeal.

I conceive there is a good cause for appeal in the above-entitled cause.

FREDERIC W. SMITH,
Of Counsel with Complainants,
Mabel B. Ingraham, Frances T.
Ingraham and Philip P. Getty.

Service of a copy of the within notice of appeal is hereby acknowledged this 26th day of March, A. D. 1930.

PITNEY, HARDIN & SKINNER,
Solicitors for Defendants, Central Leather
Company and United States Leather Co.

BILL OF COMPLAINT.

Filed July 20, 1927.

IN CHANCERY OF NEW JERSEY.

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

The complainant, John Windhurst of Union City, New Jersey, for and on behalf of himself and all other preferred stockholders in the Central Leather Company who may come in and contribute to the expenses of this suit and the Central Leather Company humbly complaining shows unto your Honor:

1.

That the Central Leather Company is a corporation organized and existing under the laws of the State of New Jersey incorporated on the 12th day of April, 1905 under the provisions of an Act of the Legislature of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof for the manufacture and sale of leather and other purposes set forth and described in the certificate of incorporation, with an authorized capital stock of eighty million dollars ($80,000,000) divided into eight hundred thousand (800,000) shares of the par value of one hundred dollars ($100) each, four hundred thousand (400,000) of such shares being preferred stock and four hundred thousand (400,000) of such shares being common stock, as and by a certified copy of the certificate of incorporation hereto annexed and made a part hereof as Exhibt A, and to which reference is hereby made, will more fully and at large appear.

2.

That said certificate of incorporation of Central Leather Company provided, among other things, that the preferred stock as aforesaid shall be entitled to receive or to have set apart out of the surplus or net profits of the corporation, as and when declared by the Board of Directors of the corporation, a dividend at the rate of, but never exceeding, seven per cent. per annum, cumulative on all such preferred stock, outstanding at the time, which dividend shall be payable yearly, half yearly or quarterly, as the Board of Directors may from time to time fix and determine, and before any dividend shall be set aside or paid on the common stock. The said certificate of incorporation of Central Leather Company further provides that if the preferred stock be increased, the rate of dividend upon such increase shall be at such rate, not exceeding seven per centum per annum, as shall be fixed by resolution of the stockholders of the corporation authorizing such increase; that whenever a dividend is paid or declared on the preferred stock and all prior dividends on the outstanding shares shall have been paid or set apart the Board of Directors may, if in its judgment the surplus or net profits, after deducting the amount of dividends to accrue on the said outstanding preferred stock during the current year, shall be sufficient for such purpose, then or thereafter pay dividends on the common stock, payable yearly, half yearly or quarterly and payable then or thereafter out of any remaining surplus or net profits of the year then current or last past and of any previous year in which full dividends shall have been paid on the preferred stock; that in case of

liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall receive cash to the amount of the par value of such stock together with all accrued and unpaid dividends thereon (but no more), before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the company or the proceeds thereof after the payment in full at its par value, of the preferred stock then outstanding together with all dividends thereon accrued and unpaid; that the preferred stock and the common stock of the corporation may each or both be increased according to law; that at no time shall the preferred stock be increased without the assent of the holders of at least two-thirds in interest of the then outstanding preferred stock of the corporation.

That the said certificate of incorporation of Central Leather Company gave to it certain powers and authority to issue its bonds in payment for property, including the power to mortgage as will more fully and at large appear by the aforesaid certified copy of the certificate of incorporation hereto annexed as Exhibit A.

3.

That at and on or about the 24th day of August, 1909 there existed under and pursuant to the laws of the State of New Jersey a corporation known and styled as The United States Leather Company, having an authorized capital stock of one hundred twenty-eight million dollars ($128,000,000) divided into 640,000 shares of preferred stock of the par value of one hundred

dollars each and 640,000 shares of common stock of the par value of one hundred dollars ($100) each. That said preferred stock was entitled to cumulative dividends at the rate of eight per centum per annum before any payment should be made on the common stock; that in case of liquidation said stock should be paid in full at its par, together with all earned and unpaid dividends, before any payment should be made on the common stock and the said preferred stock was entitled to certain other privileges, preferences and rights as more fully and at large appear by the certified copy of the certificate of amendment of the certificate of incorporation of said The United States Leather Company dated May 2nd, 1893 attached hereto and marked Exhibit B.

That on or about said 24th day of August, 1909 there were unpaid dividends upon said preferred stock of $45.085 per share as your complainant is informed and believes.

That on or about said 24th day of August, 1909 the Central Leather Company was the owner and holder of fifty-seven million, eight hundred seven thousand two hundred dollars ($57,807,200) par value of the preferred stock and sixty-two million two hundred fifty thousand and seven hundred shares par value of the common stock of said United States Leather Company, leaving outstanding thereof, four million four hundred seventy-five thousand one hundred dollars ($4,475,100) of preferred stock and six hundred thirty-one thousand six hundred dollars ($631,600) of the common stock of said The United States Leather Company not owned by said Central Leather Company as your complainant is informed and believes.

That on or about said 24th day of September, 1909 there was consummated, under the laws of the State of New Jersey in such cases made and provided, a consolidation and merger of the said The United States Leather Company and the said Central Leather Company pursuant to which consolidation and merger the corporate organization and existence of the Central Leather Company continued and the corporate existence of the United States Leather Company was to cease and determine.

That at the time of said consolidation and merger there was issued and outstanding three hundred ten thousand six hundred fifteen (310,-615) shares of the preferred stock and three hundred eighty-four thousand five hundred ninety-nine and two one-hundredths (384,599.02) shares of the common stock of the said Central Leather Company and thirty-four million five hundred twenty-six thousand six hundred dollars ($34,526,600) of an authorized issue of forty-five million dollars ($45,000,000) first lien, twenty year, five per cent. gold bonds.

That under the terms of said consolidation and merger each share of the preferred stock of The United States Leather Company was exchanged for fifty dollars ($50) par value, first lien, twenty year, five per cent. gold bond of the Central Leather Company; fifty dollars ($50) par value seven per cent. cumulative preferred stock of the Central Leather Company with the rights, privileges and preferences above stated; twenty-three dollars and fifty cents ($23.50) par value of the common stock of the Central Leather Company and ten dollars ($10) in cash.

That immediately after the consummation of said consolidation and merger and on September 27, 1909 the said Central Leather Company or its officers, agents or employees caused to be organized under and pursuant to the laws of the State of New Jersey a new corporation named and styled The United States Leather Company with an authorized capital stock of one hundred thousand dollars ($100,000) divided into one thousand shares of the par value of one hundred dollars ($100) all being of one class, the objects of said corporation as stated in its certificate of incorporation being the same, or nearly so, as those of the Central Leather Company and the old The United States Leather Company, the existence of which latter company ceased and determined on the filing of the said Agreement of Consolidation and Merger in the Office of the Secretary of State of New Jersey. All of which more fully and at large appears from the certificate of incorporation of said The United States Leather Company dated September 27th, 1909 hereto annexed and marked Exhibit C.

About all of which your complainant is informed and believes.

4.

That the Central Leather Company has carried on the business for which it was organized with profit and advantage and has acquired a large amount of real estate and personal property to the benefit of and advantage of its preferred stockholders.

5.

That on the 1st day of October, 1926 a circular was issued to the stockholders of the Central

Leather Company by a Committee purporting to represent the holders of preferred stock, a committee purporting to represent the holders of common stock and Kuhn, Loeb & Co. and Bankers Trust Company of New York, Managers presenting a "Plan for Readjustment of Share Capital" of the said Central Leather Company (a copy of said Plan being annexed hereto and marked Exhibit D) under which plan it was proposed to organize a new corporation under the laws of such state as the Managers and the Committees of stockholders might approve, to acquire by purchase, consolidation or otherwise the properties or stock of the Central Leather Company, or if the managers so determined the Central Leather Company or some other existing corporation might be utilized as the New Company. The New Company was to issue its stock in lieu of or in exchange for the stock of the Central Leather Company as hereinafter shown and if the properties of the Central Leather Company were acquired to assume the First Lien Bonds and other indebtedness of the Central Leather Company.

Assuming the exchange of the entire stock of the Central Leather Company and the acquisition by the New Company of the properties of the Central Leather Company, the capitalization of the New Company was contemplated as follows:

Twenty-year First Lien Sinking Fund Six Per Cent Bonds, maturing January 1, 1945...	$13,868,000.
7% Cumulative Prior Preference Stock	16,649,525.

Class A. Participating and Convertible Stock without par value (Preferred Dividend $4 non-cumulative) .....249,743 shares
Common stock, without par value .....397,010 shares

Under the said Plan holders of the preferred stock of the Central Leather Company were to receive for each share of preferred stock

$5 in cash

$50 par value (½ share) 7% Cumulative Prior Preference stock of the New Company.

¾ of a share of Class A Participating and Convertible stock of the New Company.

The holders of the common stock were to receive for each share of common stock of the Central Leather Company one share of common stock of the New Company.

The said Plan contained in detail a description of the various classes of stock therein proposed as more fully and at large appears from the copy of said Plan hereto annexed and marked Exhibit D.

The said Plan also provided that all Prior Preference Stock and Class A stock of the New Company would be placed in Voting Trusts under each of which Messrs. Frank Altschul, Gayer G. Dominick and Charles S. Haight would be named as Voting Trustees. Such Voting Trusts to be for a period of ten years or such shorter period as the Preferred Stockholders Committee might determine and that the common stock of the New Company would be placed in a Voting Trust under which Messrs. Andrew J. Miller, Samuel L. Fuller and Henry

Rogers Winthrop would be named as trustees. Such Voting Trust to be for a period of ten years or such shorter period as the Common Stockholders Committee might determine. Under the said Plan Stockholders were requested to deposit their stocks with the so-called "Manager."

6.

That on the 20th day of May, 1927, a Special meeting of the stockholders of Central Leather Company was called to be held on the 22nd day of June, 1927 (1) To consider and adopt an Agreement of Merger and Consolidation, dated May 19, 1927, between the Central Leather Company and the directors thereof and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of the Central Leather Company at a meeting held May 19, 1927 to carry into effect and operation the so-called "Readjustment of Share Capital" proposed in said Plan. (2) to authorize all action necessary to carry out the provisions of said agreement, and (3) to transact such other business as may properly come before the meeting. A copy of said Notice of Special Meeting of Stockholders is attached hereto and marked Exhibit E.

7.

That the holders of a large number of the shares of the stock of Central Leather Company both preferred and common, accepted said Plan and became parties thereto by depositing their stock thereunder, so that on the 23rd day of May, 1927 holders of more than 88% of the preferred stock and 82% of the common stock had

deposited their stock under the said Plan, authorized the Managers to carry the Plan into practical operation and given to the Managers the right and proxy to vote the stock so deposited at any stockholders meeting. Under date of May 23rd, 1927 the Managers gave notice to the holders of certificates of deposit for stock deposited under the Plan for Readjustment of Share Capital of Central Leather Company above referred to that the Managers would cause the stock so deposited under the Plan to be voted in favor of the Merger and Consolidation of the Central Leather Company and the United States Leather Company above referred to. A copy of said Notice to Depositors is hereto annexed and marked Exhibit F.

8.

That there have been issued and were outstanding as your complainant is informed and believes on the 22nd day of June, 1927 three hundred thirty-two thousand and nine hundred ninety and five-tenths (332,990.5) shares of the preferred stock of the par value of thirty-three million two hundred ninty-nine thousand fifty dollars ($33,299,050) of the said Central Leather Company and that your complainant is now and was on the 22nd day of June 1927 the owner and holder of six hundred (600) shares of such preferred stock of the par value of sixty thousand dollars ($60,000), the form and manner of said certificates being as shown by the copy thereof annexed hereto and marked Exhibit G to which reference is hereby made for greater particularity.

9.

That on the 22nd day of June, 1927 a special meeting of stockholders was held at the office of the Central Leather Company at its office at No. 15 Exchange Place, in the City of Jersey City, County of Hudson, which meeting was held pursuant to notice as alleged in paragraph 5 of this bill of complaint.

That the said agreement for the merger and consolidation of the Central Leather Company and The United States Leather Company dated the 19th day of May, 1927, signed for the Central Leather Company by H. S. Brown, its President and a majority of its directors and attested by H. W. Hill, its Secretary was submitted for approval and ratification to the stockholders of said Central Leather Company at said meeting.

That your complainant was at the time of said meeting the owner of said 600 shares of the preferred stock of Central Leather Company which he caused be to voted at said meeting against the adoption and ratification of said agreement of Merger and Consolidation, at the same time causing his dissent and protest thereto to be duly recorded on the minutes of said meeting.

That the said agreement for merger and consolidation of the Central Leather Company and The United States Leather Company was nevertheless adopted by a vote of the stockholders owning more than two-thirds of the capital stock of said Central Leather Company.

10.

That, as your complainant is informed and believes; The United States Leather Company

has at a meeting of its stockholders called for that purpose approved the said agreement for the merger and consolidation of Central Leather Company and The United States Leather Company and the said agreement has been filed in the office of the Secretary of the State of New Jersey.

11.

That your complainant on application made on his behalf at the office of Central Leather Company has obtained a copy of the joint agreement dated May 19, 1927 entered into respectively by the President and directors of the Central Leather Company and The United States Leather Company for the merger and consolidation of the said two corporations; (a copy of which said agreement is hereto annexed and made a part of this bill of complaint as Exhibit H. and to which reference is now made for the terms thereof); that your complainant is informed and believes that the said agreement has been entered into by the two corporations pursuant to resolutions passed by their respective Boards of Directors and approved by stockholders owning more than two-thirds of the capital stock of said corporations, for the purpose of merging and consolidating said Central Leather Company and The United States Leather Company under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act concerning Corporations (Revision of 1896)," but your complainant charges and alleges the truth to be that the merger and consolidation of said corporations, in the manner indicated by such agreement, cannot lawfully be accomplished under the provisions of the Act aforesaid, and that all

proceedings looking thereto, and said agreement therefor are null and void and not authorized by law, and not capable of being completed by approval by the stockholders of said companies (which approval if given is a nullity) against the protest of your complainant which protest was made as above stated and is now made against the attempted merger and consolidation of said corporations as destructive of vested interests and contractual rights of your complainant, and contrary to law and morals.

12.

That as your complainant is informed and believes the directors and officers of the Central Leather Company are as follows:

President—Hiram S. Brown
First Vice-President—William H. Harkness
Second Vice-President—William McAdoo, Jr.
Third Vice-President—Madison J. Beach
Fourth Vice-President—Arthur T. Lynch
Secretary & Treasurer—Harry W. Hill
Directors:

Arthur T. Lynch
Charles Einsiedler
D. G. Ong
Charles S. Sargent, Jr.
E. H. Amory
Ernest Griess
Max J. H. Rossbach
William McAdoo, Jr.
William H. Harkness
Charles S. Haight
Oliver C. Hoyt
Boylston A. Tompkins
Louis L. Strauss
Madison J. Beach
Hiram S. Brown

That the officers and directors of The United States Leather Company are:

President—Hiram S. Brown
First Vice-President—William H. Harkness
Second Vice-President—William McAdoo, Jr.
Secretary and Treasurer—Harry W. Hill
Directors:

Arthur T. Lynch
E. H. Amory
William McAdoo, Jr.
William H. Harkness
Madison J. Beach
Hiram S. Brown
E. G. G. Booker
Harry W. Hill
R. H. Zinn

13.

That ever since its organization the new The United States Leather Company has been a subsidiary of the Central Leather Company subject to control through stock ownership by the common stockholders of the Central Leather Company. That The United States Leather Company has not to any extent prosecuted the business stated in its certificate of incorporation as the objects for which it was formed but has existed as a subsidiary of the Central Leather Company for the use and benefit of the common stockholders of said Central Leather Company. That The United States Leather Company is controlled and directed by the Central Leather Company and its common stockholders, that the President and one or more Vice-Presidents and Secretary and Treasurer have filled the same offices in both companies and so far as The United States Leather Company has had any separate business it has been conducted from the

same office and place of business as that of the Central Leather Company.

14.

That by the terms of the certificate of incorporation of the Central Leather Company and by the terms of the said certificate of preferred stock your complainant and his predecessors in interest are and were entitled to receive cumulative dividends at the rate of seven per centum per annum payable out of the net earnings of the company before any payment is made on the common stock and that in case of nonpayment in full of such dividends the unpaid portion thereof shall be a charge upon the earnings of the company, that the arrearages of dividends upon each share of preferred stock of the par value of $100 amounted to $43.75 per share on said 22nd day of June 1927 and the effect of the terms of said agreement of merger and consolidation is to cancel and wipe out said arrearages of dividends in violation of the contractual rights of your complainant.

15.

That your complainant has not deposited or surrendered his stock in the Central Leather Company under the provisions of the said Plan and Agreement and has never at any time assented thereto, or to any modification or change in his rights or status as a preferred stockholder of the Central Leather Company.

16.

That in the so-called agreement of merger and consolidation it is recited that the respective boards of directors of said corporations deem it advisable to the end that greater efficiency and

economy of management may be accomplished and otherwise and generally to the advantage and welfare of said corporations and their several respective stockholders that said corporations merge and consolidate, the name of the consolidated corporations to be The United States Leather Company, that the number of the first Board of Directors of the consolidated corporation shall be fifteen and their names follow:

Hiram S. Brown, Rye, N. Y.
Madison J. Beach, Ridgeway, Pa.
Charles Einsiedler, Sterling, N. J.
Ernest Griess, Cincinnati, Ohio
Charles S. Haight, New York, N. Y.
W. H. Harkness, New York, N. Y.
O. C. Hoyt, Stamford, Conn.
H. M. Lehman, New York, N. Y.
William McAdoo, Jr., Fort Washington, Pa.
A. J. Miller, New York, N. Y.
L. W. Perrin, New York, N. Y.
C. S. Sargent, Jr., New York, N. Y.
Lewis L. Strauss, Jr., New York, N. Y.
Boylston A. Tompkins, New York, N. Y.

That the first officers of the Consolidated corporation shall be:

President—Hiram S. Brown, Rye, N. Y.

First Vice-President—W. H. Harkness, New York, N. Y.

Second Vice-President—William McAdoo, Jr., Fort Washington, Pa.

Third Vice-President—Madison J. Beach, Ridgeway, Pa.

Fourth Vice-President—Arthur T. Lynch, New York, N. Y.

Secretary—Harry W. Hill, New York, N. Y.

Treasurer—Harry W. Hill, New York, N. Y.

That the capital stock of said consolidated corporation shall be 1,063,992 shares, divided into 166,496 of 7% Cumulative Prior Preference Stock of the par value of $100 each, 249,743 shares of Class A Participating and Convertible Stock without par value, 647,753 shares of Common Stock without par value.

That the rights, terms and conditions of the shares of said stock should be as follows:

"(a) The holders of the prior preference stock shall be entitled to receive, if and as declared by the board of directors, dividends from the surplus of the Company or from its net profits at the rate of seven per cent. (7%) per annum, and no more, from July 1, 1926, payable quarterly on dates to be fixed by the by-laws of the Company or by resolution of its board of directors. Such dividends shall be paid or declared and set apart for payment before any dividends shall be paid upon, or declared and set apart for, the class A stock or the common stock of the Company, and shall be cumulative, so that if in any quarterly dividend period dividends at the rate of seven per cent. (7%) per annum shall not have been paid upon, or declared and set apart for, the prior preference stock, the deficiency shall be fully paid or set apart for payment before any dividends shall be paid upon, or declared and set apart for, the class A stock or the common stock of the company.

(b) The outstanding shares of prior preference stock may be redeemed at any time, in whole or in part, at the option of the board of directors, on not less than thirty (30) days' notice to the holders of record of stock to be redeemed, given by mail and by publication in

such manner as may be prescribed by the by-laws of the Company or by resolution of its board of directors, by the payment in cash for each share of stock so to be redeemed of an aggregate amount consisting of one hundred ten per cent. (110) of the par amount thereof and in addition thereto a sum equal to all dividends accrued and unpaid thereon to the date of redemption, whether or not earned or declared, which aggregate amount is hereinafter called the redemption price. If less than all of the outstanding shares of prior preference stock are to be redeemed, the shares to be redeemed shall be selected by lot, in such manner as the board of directors shall determine. From and after the date fixed in any such notice as the date of redemption (unless default shall be made by the Company in providing moneys for the payment of the redemption price) all dividends on the shares of prior preference stock so called for redemption shall cease to accrue and all rights of the holders thereof as stockholders of the Company, except the right to receive the redemption price upon surrender of the certificates for the stock so redeemed, shall cease and determine. At any time after notice of redemption has been mailed to the holders of prior preference stock called for redemption, the Company may deposit the redemption price of all outstanding prior preference stock to be redeemed with any bank or trust company in the City of New York, named in such notice, for the pro rata benefit of the holders of said stock, and upon such deposit the holders of said stock shall cease to be stockholders with respect to said stock and shall have no interest in or claim against the Company with respect to said stock,

but shall be entitled only to receive their pro rata share of the moneys so deposited, without interest, upon surrender of the certificates for the stock so redeemed. Any moneys unclaimed at the end of six years from the date of any such deposit shall be repaid to the Company.

(c) In the event of liquidation or dissolution of the Company, whether voluntary or involuntary, the holders of the prior preference stock then outstanding shall be entitled to receive out of the assets of the Company the par value of their respective shares and an amount equal to the dividends accrued and unpaid thereon to the date of distribution, whether or not earned or declared, before any distribution shall be made to the holders of the class A stock or of the common stock of the Company. After such distribution to the holders of the prior preference stock, all further amounts distributable to the stockholders of the Company shall be divided among the holders of the class A stock and the common stock in the manner hereinafter provided. If the assets of the Company available for distribution to its stockholders shall not be sufficient to permit the payment in full of the sums payable as aforesaid to the holders of the prior preference stock upon any such liquidation or dissolution, then all such assets of the Company shall be distributed ratably among the holders of prior preference stock according to the amounts which they respectively would be entitled to receive, if such assets available for distribution as aforesaid were sufficient to permit the payment in full of said sums.

(d) Within three months after the end of each fiscal year the Company shall, subject to the provisions of this subdivision (d), out of

the net profits of the Company for such fiscal year remaining after deducting therefrom the amount required to pay full cumulative dividends upon the prior preference stock for such fiscal year, set aside as a sinking fund for the purchase or redemption of the prior preference stock a sum which shall be sufficient to retire at the redemption price thereof, five per cent. (5%) of the maximum par value of said stock at any time outstanding. In the event that the net profits for such fiscal year, after deduction as above provided, do not equal such sum, then the Company shall set aside as such sinking fund the total net profits for such fiscal year remaining after such deduction and, in addition, the board of directors, in its uncontrolled discretion, may set aside, as a part of such sinking fund, out of the earned surplus of the Company, at the end of such fiscal year, such further sum, if any, up to the maximum amount hereinabove specified, as it may deem advisable. No dividends shall be paid or declared on the class A stock or on the common stock in any fiscal year, unless there shall have been set aside for such sinking fund such part of the maximum sinking fund payment to be made hereunder out of the net profits of such fiscal year as is proportionate to the portion of such fiscal year elapsed prior to the date fixed for the payment of such dividend. The obligation of the Company to make payments to said sinking fund shall not be cumulative, so that if the profits for any fiscal year shall not be sufficient to permit the setting aside for such fund of a sum sufficient to retire said percentage of prior preference stock, the Company shall not be required to make up the deficiency from the profits of the succeeding

year or years or otherwise. The sum or sums set aside for the sinking fund in each year shall be applied, as promptly as in the judgment of the board of directors may be practicable, to the purchase of prior preference stock at public or private sale (or, if any of the prior preference stock shall be deposited under a voting trust agreement, under which voting trust certificates may be surrendered by the Company in exchange for prior preference stock, to the purchase of voting trust certificates issued under such voting trust agreement) at not exceeding the redemption price of the prior preference stock; and if and to the extent that the same cannot be so applied within four months from the date when the same shall have been so set aside, it shall thereafter be applied to the redemption of said stock by lot at the earliest date permitted by this Agreement and not inconsistent with any regulations of the New York Stock Exchange. Shares of prior preference stock purchased by the Company otherwise than by the operation of the sinking fund and cancelled shall be credited, at one hundred ten dollars ($110) per share, against the earliest sinking fund payment or payments due thereafter.

In case the Company shall begin business on any day other than the first day of its fiscal year, the provisions of this subdivision (d) shall apply to the net profits of the remainder of the fiscal year in which the Company begins business, but the maximum sinking fund requirement for such fiscal year shall be the same proportion of the maximum annual sinking fund requirement that the number of days between the date when the Company begins business and the end of such fiscal year is of 365.

Shares of the prior preference stock redeemed or purchased under any provisions of this Agreement shall be retired by resolution of the board of directors of the Company and shall not be reissued and no stock shall be issued in lieu thereof or in exchange therefor, and the authorized amount of prior preference stock shall be deemed to be reduced to the extent of the shares so retired. In every case of redemption the Company shall make compliance with the requirements of the laws of the State of New Jersey in such case provided. Any voting trust certificates in respect of prior preference stock purchased under any provisions of this Agreement shall forthwith be surrendered to the voting trustees who issued the same, in exchange for prior preference stock, and such prior preference stock shall be deemed to have been purchased hereunder.

(e) So long as any shares of the prior preference stock shall be outstanding, no funded debt and no stock ranking ahead of or on a parity with said stock shall be authorized or issued, nor shall the Company be a party to any merger or consolidation with any other corporation except in each case upon the affirmative vote, assent or consent of the holders of record of not less than two-thirds of the then outstanding shares of prior preference stock.

(f) After full cumulative dividends as aforesaid upon the prior preference stock for all past dividend periods shall have been paid or declared and set apart for payment, and after making payment of or provision for full dividends on such stock for the then current fiscal year and after the Company shall have complied with the foregoing requirements in respect of

any and all amounts then required to be set aside in respect of the prior preference stock sinking fund for such year, the holders of the class A stock shall, subject to the provisions of Article VI hereof, be entitled to receive or to have set apart for payment, from the remaining surplus or from the remaining net profits of the Company, if and as declared by the board of directors, preferential dividends up to but not exceeding four dollars ($4) per share per annum (or at that annual rate for any fiscal period of less than twelve months), payable annually, semi-annually or quarterly as may be determined by said board, before any dividends shall be paid upon or declared and set apart for the common stock in such fiscal year. Such preferential dividends on the class A stock (hereinafter called class A preferential dividends) shall be non-cumulative whether earned or not earned; that is to say, the holders of said stock shall be entitled to receive such dividends thereon in any fiscal year only to the extent declared by the board of directors, and if in any fiscal year dividends aggregating four dollars ($4) per share shall not be paid upon or declared and set apart for the class A stock, the deficiency shall not be made up in the succeeding year or years whether or not such dividends shall have been earned in such fiscal year, and whether or not the Company shall have any remaining surplus or net profits in such year.

(g) Subject to the provisions of the foregoing subdivisions (a) and (d), after class A preferential dividends up to four dollars ($4) per share per annum shall have been paid on the class A stock in any fiscal year, or declared and set apart for payment in such fiscal year, the

holders of the class A stock shall be entitled to participate equally with the holders of the common stock in all further dividends paid in such year (so that each share of class A stock shall receive, in addition to the class A preferential dividend, the same amount as shall be paid in dividends on each share of common stock), until the total dividends paid in any fiscal year on the class A stock, or declared and set apart for payment in such fiscal year, inclusive of the class A preferential dividend, shall equal six dollars ($6) per share and thereafter such stock shall have no right to participate in any further dividends paid in such year. In the event of any issue to the holders of common stock of additional common stock as a stock dividend, or of any subdivision of the outstanding common stock into a greater number of shares the aggregate amount thereafter payable as dividends on the common stock in any fiscal year shall not, until the class A stock shall have received the additional amount of two dollars ($2) per share in such fiscal year as provided in this subdivision (g), exceed the amount which would have been payable on the common stock under the foregoing provisions of this subdivision (g) if such additional stock had not been so issued or outstanding stock had not been so subdivided. Whenever the dividends on the class A stock paid in any fiscal year, or declared and set apart for payment in such fiscal year, aggregate six dollars ($6) per share, any additional amounts distributed in dividends in such fiscal year shall be distributed among the holders of the common stock.

(h) Any holder of the class A stock, at his option and at any time, may exchange all or

any of the shares of said stock held by him for shares of the common stock of the Company, share for share (such shares of common stock to be full-paid and non-assessable), by surrender to the Company of the certificate or certificates representing the class A stock so to be exchanged and upon such surrender shall be entitled to receive in lieu thereof one or more certificates for a like aggregate number of shares of the common stock of the Company; provided, however, that no shares of common stock shall be required to be so issued while the transfer books of the Company are closed for any purpose. In the event of the declaration by the Company of a dividend on its common stock, payable in stock of the Company of any class or in the event of any subdivision of the outstanding common stock into a greater number of shares, the Company shall give notice of the declaration of such dividend or of such subdivision by publication once a week for two successive calendar weeks (in each instance on any day of the week) in a daily newspaper published and of general circulation in the Borough of Manhattan, City and State of New York, the date of the last publication to be at least fourteen days prior to the date fixed for closing the transfer books or for taking a record of stockholders for the purpose of such dividend or of such subdivision, and by mailing a copy of such notice, at least fourteen days prior to the closing of the transfer books or such record date, to each holder of record of class A stock at his last address as it appears on the books of the Company. Shares of the class A stock so surrendered shall be retired and shall not be re-issued, and (except as aforesaid) no stock shall be issued in lieu there-

of or in exchange therefor, and the authorized amount of class A stock shall be deemed to be reduced to the extent of the shares so surrendred. So long as any of the class A stock is outstanding there shall be reserved unissued, out of the number of shares of common stock which the Company is authorized to issue, such number of shares as the holders of the class A stock are entitled to receive under the provisions of this paragraph (h).

(i) In the event of liquidation or dissolution of the Company, whether voluntary or involuntary, after payment of one hundred dollars ($100) per share together with accrued and unpaid dividends on the prior preference stock, two-thirds of all further amounts distributable shall be distributed pro rata among the holders of the class A stock; provided, however, that if at the time of such liquidation or dissolution the number of shares of class A stock outstanding shall be less than two hundred forty-nine thousand, seven hundred forty-three (249,743), each holder of class A stock shall be entitled to receive in respect of each share of stock then held by him, such portion, and such portion only, of two-thirds of the assets so distributable as shall be obtained by dividing said two-thirds by two hundred forty-nine thousand, seven hundred forty-three (249,743); and the holders of the common stock shall be entitled to receive, in proportion to the number of shares of common stock held by them respectively, all the remaining assets of the Company available for distribution to its stockholders.

(j) So long as any shares of the class A stock shall be outstanding, no funded debt and no stock ranking ahead of or on a parity with

said stock shall be authorized or issued, nor shall the company be a party to any merger or consolidation with any other corporation, except in each case upon the affirmative vote, assent or consent of the holders of record of at least two-thirds of the then outstanding shares of class A stock.

(k) Subject to the requirements of the laws of the State of New Jersey and the provisions of this Agreement, the holders of the prior preference stock, of the class A stock and of the common stock shall have equal voting powers except as follows:

At each election of directors the holders of the prior preference stock and of the class A stock, voting together share for share, shall have the right to elect two-thirds of the members of the board of directors of the Company; and the holders of the common stock shall have the right to elect the remaining members of the board of directors, provided, however, that at any election of directors occurring after prior preference stock to the amount of ten million dollars ($10,000,000) par value shall have been retired, if full dividends shall have been paid on the prior preference stock for all quarterly dividend periods ended prior to such election and dividends to the amount of four dollars ($4) per share shall also have been paid upon the class A stock in the fiscal year immediately preceding such election, that the holders of the common stock shall have the right to vote for the election of all directors, share for share with the holders of the prior preference stock and the class A stock; otherwise the directors shall be elected as above provided.

(1) "Dividends accrued and unpaid" or "accrued and unpaid dividends," whenever used in this Agreement shall be deemed to mean, with respect to any of the prior preference stock, that amount which shall be equal to seven per cent. (7%) per annum upon the par amount of such stock from July 1, 1926, to date, less the aggregate amount of all dividends paid upon such shares.

(m) For all purposes of this Article IV, the net profits and surplus of the Company shall be determined in accordance with good accounting practice, and, so far as permitted by law, shall be determined on the basis of a consolidated balance sheet and consolidated income account (eliminating intercompany items) of the Company and all corporations, at least ninety per cent. of the capital stock of which, except directors' qualifying shares, is owned by the Company and/or owned by any other corporation, at least ninety per cent. of the capital stock of which, except directors' qualifying shares, is owned by the Company.

That the manner of converting the capital stock of each of the said merging and consolidating companies should be as follows:

One thousand (1,000) full-paid and non-assessable shares of the common stock of the Company shall be apportioned among and issued to the stockholders of The United States Leather Company, one of the parties hereto of the second part, as hereinafter provided.

One hundred sixty-six thousand, four hundred ninety-five and a quarter (166,495.25) full-paid and non-assessable shares of the prior preference stock, two hundred forty-nine thousand, seven hundred forty-three (249,743) full-paid

and non-assessable shares of the class A stock and three hundred ninety-seven thousand, ten (397,010) full-paid and non-assessable shares of the common stock of the Company and the sum of one million, six hundred sixty-four thousand nine hundred fifty-two and fifty-hundredths dollars ($1,664,952.50) in cash shall be apportioned among and issued or paid to the stockholders of Central Leather Company, one of the parties hereto of the first part, as hereinafter provided.

Each share of stock of said The United States Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into one share of common stock of the Company, and stockholders of said The United States Leather Company, upon surrender of certificates for said stock, shall be entitled to receive one or more certificates for a like number of shares of common stock of the Company.

Each share of preferred stock of Central Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into one-half share of the prior preference stock of the Company and three-fourths of a share of the class A stock of the Company, and each holder of such preferred stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him (a) fifty dollars ($50) par value (one-half share) of the prior preference stock of the Company (b) three-quarters of a share of the class A stock of the Company, and (c) five dollars ($5) in cash.

Each share of common stock of Central Leather Company shall forthwith upon the filing of

this Agreement as required by law, be converted into a share of the common stock of the Company and each holder of such common stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him one share of the common stock of the Company."

17.

That your complainant and other holders of the preferred stock of the Central Leather Company have never surrendered their stock under the Plan and Agreement of October 1, 1926 and you complainant charges the truth to be that the purpose of the so-called consolidation and merger is to force your complainant and other stockholders who have refused to come in and surrender their stocks under said plan and agreement and take in exchange therefor the stocks of the consolidated company as aforesaid, to accept the very stocks that your complainant and other stockholders not acceding to said plan and agreement have heretofore refused to accept.

That the so-called consolidation and merger if valid and lawful accomplishes a substantial surrender of accrued dividends aggregating 43 and ¾ per centum of the par value of the preferred stock and a reduction of the face of the investment represented by the preferred stock for the alleged purpose "that greater efficiency and economy of management may be accomplished," whereas your complainant charges the truth to be that the consummation of said merger and consolidation is chiefly for the benefit of the holders of the common stock of the Cen-

tral Leather Company and to the detriment of your complainant and other preferred stockholders of Central Leather Company and that your complainant has refused to surrender his rights as a preferred stockholder in the surplus of the Central Leather Company to which he is entitled by the certificate of incorporation of Central Leather Company and by the terms of the contract expressed in the certificate of preferred stock and protests against being forced into a surrender of his contractual rights as such preferred stockholder as aforesaid; that as your complainant is informed and believes the stockholders committees which promulgated the plan of October 1, 1926 were formed by interesting large holders of the common stock of the Central Leather Company; that the preferred stockholders committee was not representative of the preferred stockholders but was composed of stockbrokers, bankers, directors of the Central Leather Company primarily interested in the common stock of the Central Leather Company and that the intention and effect of the plan and agreement and the so-called merger and consolidation is to confer large pecuniary benefits upon the common stockholders to the detriment and disadvantage of the preferred stockholders of the Central Leather Company.

18.

That after the Agreement of Merger and Consolidation between Central Leather Company and The United States Leather Company had been filed with the Secretary of State of New Jersey as aforesaid, the consolidated corporation caused to be published a notice "To holders of Certificates of Deposit of Bankers Trust Com-

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pany for Preferred Stock and Common Stock of Central Leather Company'' (a copy of which is annexed hereto and marked Exhibit I) notifying them to present their Certificates for Deposit and receive the Voting Trust Certificates provided for in the Plan and Agreement of October 1, 1926; the said publication gave further notice that the Board of Directors of The United States Leather Company (the consolidated company) had declared a dividend of 7% on the Prior Preference Stock of the Company, payable August 1, 1927 to stockholders of record of July 15, 1927.

19.

Your complainant is advised and believes that by the certificate of incorporation of the Central Leather Company and the certificates of preferred stock so issued to him as aforesaid your complainant became vested with certain contractual rights, and that whatever powers are conferred by statute upon the said Central Leather Company to consolidate or merge with any other corporation are subject to the duty and obligation of the said Central Leather Company to preserve said contractual rights so vested in your complainant as the holder of such preferred stock and that the alleged merger and consolidation of the Central Leather Company with The United States Leather Company as aforesaid is an invasion of the rights of your complainant as aforesaid and an impairment of the obligation of contract contained in said certificate of incorporation and said preferred stock certificate. Your complainant is further advised and believes that the only merger of corporations authorized by the laws of this State is a merger in good faith of corporations inde-

pendently organized and does not contemplate the use of the statutory merger to compel dissenting stockholders to come into a scheme not otherwise compulsory upon them and which involves a surrender of their contractual rights; that such plan and agreement and the agreement of merger and consolidation was offered to the stockholders, preferred and common of the Central Leather Company and its acceptance on their behalf was an entirely voluntary act without power given to any majority of their number, however large, to compel dissenters to come in; that the company so created represents those stockholders of the Central Leather Company who have assented to the said plan and agreement and agreement of merger and consolidation and the consenting stockholders of the said Central Leather Company are without power as stockholders of said Central Leather Company to compel your complainant and others dissenting from such plan and agreement and agreement of merger and consolidation to come in thereunder and cannot in their collective capacity as the Central Leather Company force your complainant and other dissenting stockholders to accept the exact terms of the plan and agreement and agreement of merger and consolidation, which as a stockholder of the Central Leather Company it is his privilege to reject; that to permit by indirection the accomplishment of this merger and consolidation against your complainant and other dissenting stockholders of the Central Leather Company would be a fraud on the act authorizing the merger and consolidation of corporations and contrary to equity and good conscience and prej-

udicial to the rights of your complainant as a stockholder of the Central Leather Company.

19.

That as your complainant is informed and believes the said plan and agreement, agreement of merger and consolidation and stockholders' committees were conceived in the interest and for the benefit of the common stockholders of the Central Leather Company and that the need for the readjustment of the rights of the stockholders of the said Central Leather Company referred to in the aforesaid circular stating a "Plan for Readjustment of Share Capital" was a mere pretense; and the whole scheme attempted to be accomplished through the alleged merger and consolidation is one for the diminution or extinguishment of the preferential rights which the holders of the preferred stock of the Central Leather Company then had and now have, in order that the holders of the common stock of the Central Leather Company might have and enjoy a larger share of the profits of said company than could be had if the preferred stock of the Central Leather Company should remain outstanding and that the said plan and agreement and the said consolidation and merger to make the same effective against the will of your complainant and other dissenting stockholders constitutes a gross and unconscionable violation of the rights of your complainant as the holder of the preferred stock of said Central Leather Company and your complainant further charges that the said Plan and Agreement of October 1, 1926 and Agreement of Merger and Consolidation of May 19, 1927 is but a continuation of a scheme or device consummated in part by the aforesaid Agreement of Merger and Consolida-

tion of September 24th, 1909 whereby the contractual preferences, rights and privileges conferred by the certificate of incorporation of the then existing The United States Leather Company to the preferred stock in that company were to be diminished and extinguished without adequate consideration to the holders thereof and that the consummation of said Agreement of Merger and Consolidation of September 24th, 1909 did diminish and extinguish without adequate consideration the contractual rights, privileges and preferences of preferred stock in said The United States Leather Company and that the consummation of the alleged agreement of Merger and Consolidation of May 19th, 1927 will further reduce without adequate consideration the rights, privileges and preferences of the preferred stockholders in the enterprise and business conducted by The United States Leather Company and after the Agreement of Merger and Consolidation by the Central Leather Company all for the benefit and advantage of the common stockholders in the said corporation and all of which is a gross and unconscionable violation of the rights of your complainant, contrary to law, equity, morals and good conscience, statute and public policy, illegal and violative of the property rights of your complainant as a preferred stockholder in the said Central Leather Company.

20.

That the circular, dated October 1, 1926 issued by the Company stating the proposed "Plan for Readjustment of Share Capital" included a Consolidated Balance Sheet of the Central Leather Company as of June 30, 1926 showing a deficit of $19,647,077 but did not disclose the additional

liability of the company for accrued and unpaid dividends on its preferred stock amounting at said time to $12,237,400.875.

That said circular however stated that the company's operations were approaching a more normal basis, that it was in a strong cash position, but because of the deficit (without reference to said unpaid dividends) the readjustment of its capital structure was essential prior to any resumption of dividend payments.

That the amount of the capital stock of Central Leather Company as aforesaid outstanding on the 30th day of June, 1926 was $73,000,080.50; that the value of its assets as shown by said consolidated balance sheet was $70,759,032.70 and that the amount of its liabilities including said capital stock was $90,406,109.78, resulting in the deficit as aforesaid.

That the agreement of merger and consolidation provides that the capital of the consolidated company shall be as follows:

Prior Preference Stock.....	$16,649,525.
Class A Stock.....	7,941,827.40
Common Stock.....	3,970,100.
Total Capital.....	$28,561,454.40

That based upon the figures of the balance sheet of June 30, 1926 submitted with said Plan for Readjustment of Share Capital and assuming no material change in the physical value of the properties of the corporation, an actual deficit of $19,647,077.08 at that time, would be made to appear now (subject to adjustment for the past year's figures) as a surplus of $23,126,595.47 solely through the medium of reducing the capital liability on the stock of said company from

$73,000,080.50 to $28,561,454.40, out of which fictitious surplus and in disregard of its present liability for accrued dividends on its preferred stock aforesaid of $12,327,400.875 the Central Leather Company proposes and is about to pay and will pay on the 1st day of August, 1927 a dividend of 7% on the new Prior Preference stock of the consolidated corporation.

21.

That as aforesaid the attempted reduction of the capital stock of the Central Leather Company is a mere pretense and a part of a whole scheme for the diminution or extinguishment of preferential rights which the holders of the preferred stock of Central Leather Company then had and now have, to compel a surrender of thir contractual rights, a fraud upon the laws of this State authorizing a merger in good faith of corporations independently organized, an attempt to do by indirection what law, good conscience, morals and the laws of this State prohibit and constitutes a gross and unconscionable violation of the rights of your complainant as the holder of the preferred stock of the Central Leather Company.

22.

That the payment of the dividend on August 1, 1927 to the holders of Prior Preference Stock of the consolidated corporation is in violation of law and good conscience and is or is about to be made out of the capital of Central Leather Company in violation of law and equity in such cases made and provided, is a waste of the assets of the Central Leather Company, is in violation of the contractual rights of your complain-

ant as a preferred stockholder of Central Leather Company, and contrary to law and morals.

23.

That the said attempted merger and consolidation and the payment of the proposed dividend is for the reasons above stated, and for other reasons, contrary to law and equity, statute and public policy, illegal and violative of the property rights of your complainant in the said Central Leather Company;

All of which actings and doings are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your complainant in the premises.

In consideration whereof, and for as much as your complainant 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 Central Leather Company, The United States Leather Company, their officers, directors, agents and employees, Kuhn, Loeb & Co., Bankers Trust Company and Gayer G. Dominick, Frank Altschul, Dewees W. Dilworth, Charles S. Haight, Harold M. Lehman and Max J. H. Rossbach being the so-called Preferred Stockholders Committee and Andrew J. Miller, Samuel L. Fuller, and Henry Rogers Winthrop being the so-called Common Stockholders Committee and Gayer G. Dominick, Frank Altschul, Charles S. Haight, Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop, Voting Trustees under the Plan and Agreement of October 1, 1926 may, but without oath which is hereby waived pursu-

ant to statute, to the best and utmost of their knowledge, remembrance, information and belief full true and perfect answer make to all and singular the matters aforesaid, and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereto;

And more especially that the said Central Leather Company may in the manner aforesaid answer and set forth, as of the said 22nd day of June, 1927, the amount of its capital stock, preferred and common, and the shares thereof issued and outstanding on said day, the number of shares of its capital stock, both preferred and common held by The United States Leather Company or by the officers, directors or agents of the Central Leather Company or The United States Leather Company, the number of shares of preferred stock of the Central Leather Company held, owned or controlled by the common stockholders of Central Leather Company whether of record on the books of the Company or otherwise, the number of shares preferred or common of the capital stock of the Central Leather Company owned or controlled by the members of any stockholders committee, or any business or firm they may be associated with or any customer of any such member of any stockholders committee or any business they may be associated with whether of record on the books of the company or otherwise, the number of shares, preferred or common, of the capital stock of the Central Leather Company owned or controlled by Kuhn, Loeb & Co. or the Bankers Trust Company of New York City or any business or firm they may be associated with or any customer of said Kuhn, Loeb & Co. or

Bankers Trust Company whether appearing on the books of the company or otherwise, the dividends that have been paid on said stock, preferred and common and when paid, the amount of its preferred dividends prescribed by its charter and the amount of preferred dividends if any in arrears, the amount of its assets and liabilities, the names of its directors and executive committee on the 1st day of October 1926 and at all times since, all corporate acts taken in connection with the said Plan and Agreement of October 1, 1926 and said Agreement of Merger and Consolidation of May 19th 1927; and if any agreements or writings between stockholders or committees thereof have been made relating to said Plan and Agreement or Agreement of Merger and Consolidation not set forth in this bill of complaint, may set forth a true copy thereof; and may fully disclose any and all actions taken by the said Central Leather Company, its officers or Board of Directors looking toward the accomplishment of said Plan and Agreement and Agreement of Merger and Consolidation; and that the said Central Leather Company may set forth and discover the matters and things aforesaid;

And that The United States Leather Company may answer and set forth for what purpose and what consideration the shares of its capital stock, issued by it for other purposes than under the alleged Agreement of Merger and Consolidation in the foregoing bill of complaint set forth and referred to, were issued, and how many shares were so issued and to whom and for what purposes; and what properties and assets the said The United States Leather Company has other than the property acquired by it through

the alleged Consolidation and Merger; the names of its directors and officers and the number of shares of stock preferred or common of the Central Leather Company, owned or controlled by them, whether of record on the books of the company or otherwise; and if any corporate action has been taken, either by its directors or executive committee with reference to said Plan and Agreement or Agreement of Merger and Consolidation, not set forth in the foregoing bill of complaint; that such corporate action may be disclosed and any agreement or writings relating thereto may be set out;

And that the said Central Leather Company and The United States Leather Company, their directors, officers and agents be enjoined and restrained from doing any act or thing under or in pursuance of said alleged Agreement of Merger and Consolidation, dated May 19, 1927, or doing any act or thing in furtherance or consummation thereof, including the transferring and selling, or otherwise disposing of any of the assets or property of the Central Leather Company, or the issuing, transferring, buying, selling or otherwise trading or dealing in any shares of stock or other securities of The United States Leather Company issued under said Agreement of Merger and Consolidation, or doing any act or thing in the furtherance or consummation thereof, including the transferring or selling of property and assets of the Central Leather Company, or issuing or transferring any certificates of stock issued as provided for in said Agreement of Merger and Consolidation, and why The United States Leather Company should not be enjoined and restrained from paying out any of the moneys or transferring any

properties received by it from the Central Leather Company by or pursuant to said Agreement of Merger and Consolidation, and from disbursing or paying out any moneys in payment of the dividend proposed to be paid on August 1, 1927, or any dividend, and from disposing of any of the properties of the Central Leather Company received by said United States Leather Company by virtue of or under or pursuant to the alleged Agreement of Merger and Consolidation and from acting in any way or manner under said Agreement.

And that said Agreement of Merger and Consolidation dated May 19, 1927 may be declared null and void, in all respects; and that all acts and things done or performed by the Central Leather Company and The United States Leather Company their officers, directors, agents, employees and others acting in their behalf or purporting to act in their behalf in executing said Agreement of Merger and Consolidation be declared null and void and of no effect in law, and that any and all acts and things done or performed by said companies, their officers, directors, agents, employees or any other party or parties in their behalf or purporting to act in their behalf under or by virtue of the provisions, terms or conditions of said Agreement of Merger and Consolidation be adjudged and declared null and void and of no effect and that the same may be set aside and vacated; that there may be ascertainment of the specific items of real and personal property and other assets owned by the Central Leather Company on the 22nd day of June, 1927 and that the same may be separated from the property of The United States Leather Company and be redelivered to the

officers and directors of the Central Leather Company; that there may be an ascertainment of the loss suffered by Central Leather Company by reason of the alleged merger and consolidation; that this honorable court issue a mandatory injunction to compel the doing of the aforesaid acts and things, and that The United States Leather Company may account for all the profits, income, properties and moneys derived by it from the assets of the Central Leather Company and that your complainant may have such other and further relief in the premises as the nature of the case shall require and as shall be agreeable to equity and good conscience;

May it please your Honor, the premises considered, to grant unto your complainant, not only the States writ of injunction issuing out of and under the seal of this Honorable Court to be directed to the said Central Leather Company, The United States Leather Company, their directors, officers and agents restraining them from doing any act or thing under or in pursuance of said alleged agreement of Merger and Consolidation or doing any act or thing, in the furtherance or consummation thereof as aforesaid, but also the States writ of subpoena, issuing out of and under the seal of this Honorable Court to be directed to Central Leather Company, The United States Leather Company, Hiram S. Brown, Madison J. Beach, Charles Einsiedler, Ernest Griess, Charles S. Haight, William H. Harkness, O. C. Hoyt, H. M. Lehman, William McAdoo, Jr., A. J. Miller, L. W. Perrin, C. S. Sargent, Jr., Lewis S. Strauss, Jr., Boylston A. Tompkins, Arthur T. Lynch, Harry W. Hill, D. G. Ong, E. H. Amory, Max J. H.

Rossbach, E. G. G. Booker, R. H. Zinn, Gayer G. Dominick, Frank Altschul, Dewees W. Dilworth, Charles S. Haight, Harold M. Lehman, Max J. H. Rossbach, Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop 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 as shall be agreeable to equity and good conscience.

And your complainant, as in duty bound will ever pray, etc.

SMITH & SLINGERLAND,
Solicitors for and of Counsel
with Complainant.

Exhibit "A."

CERTIFICATE OF INCORPORATION
OF
CENTRAL LEATHER COMPANY.

The undersigned, for the purpose of forming a corporation under and pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896)" and the acts amendatory thereof and supplemental thereto, do hereby set out and certify as follows:

ARTICLE FIRST: The name of the corporation is CENTRAL LEATHER COMPANY.

ARTICLE SECOND: The location of the principal office of the corporation in the State of New Jersey is at No. 15 Exchange Place, in the city of Jersey City, county of Hudson, in said State, which shall also be its registered office. And the name of the agent of said corporation in said State, who is in charge of said principal office and upon whom process against this corporation may be served, is the Corporation Trust Company.

ARTICLE THIRD: The objects for which the corporation is formed are as follows, viz:—

(a) To manufacture, produce and otherwise prepare, and to buy and otherwise acquire, sell, store, transport, distribute, dispose of and deal in and with (1) leather, lumber, belting, and any and all other merchandise and commodities of whatsoever nature and character, and (2) any and all materials machinery, appliances, products and supplies proper or adopted to be used in or in connection with or incidental to the manufacture, production or preparation of any of the articles, merchandise and commodities aforesaid, and, also (3) any and all commodities and things which result from or are by-products of the manufacture, production or preparation of leather, lumber, belting or other merchandise or article, or in the manufacture, production or preparation of which any of the said articles may be a factor or an ingredient or of which the same may be a component part;

(b) To engage in any other manufacturing, warehousing, trading or selling business of any kind or character whatsoever;

(c) To acquire, dispose of, lease and utilize, in the manner and to the extent permitted by

law, lands, timber, bark tanneries, mills, warehouses, plants, and other buildings and structures, machinery, supplies, and any and all articles and property, including good will, which the corporation may deem to be necessary or convenient to the attainment or furtherance of any of its objects;

(d) To hold, purchase or otherwise acquire, or be interested in, and to sell, assign, pledge or otherwise dispose of, shares of the capital stock, bonds or other evidences of debt issued or created by any other corporation, whether foreign or domestic and whether now or hereafter organized; and while the holder of any such shares of stock to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might do or could do;

(e) To apply for, obtain, register, lease or otherwise acquire, and to hold, use, operate, sell, assign, or otherwise dispose of, any trade-marks, trade-names, patents, inventions, improvements or processes used in connection with or secured under Letters patent of the United States or of any other country, or otherwise.

(f) To build, buy, lease or otherwise acquire and to maintain and operate, without the State of New Jersey, railroads, tramways, canals and terminals and all appurtenances, together with such other transportation facilities as the corporation may deem necessary for its business operations; and, to the extent permitted by law, to develop, improve and aid any properties, water powers, industries, manufacturing or merchandising enterprises or companies for transportation by land or water, in any of which this corporation may be interested; and

(g) To carry on any other lawful business whatsoever which the corporation may deem proper or convenient to be carried on in connection with or incidental to any of the foregoing purposes, or calculated directly or indirectly to promote the interests of the corporation or to enhance the value of its property; and to have, enjoy and exercise all the rights, powers and privileges which are now or hereafter may hereafter be conferred upon corporations organized under the Act herein mentioned; provided, always, that the corporation shall not construct, maintain or operate any railroad or telegraph or telephone lines in the State of New Jersey, or engage in any business hereunder which shall require the exercise of the right of eminent domain within said State, unless power in either or any of said respects shall hereafter be conferred upon it by law; nor shall anything herein set forth be construed to authorize or evidence the formation hereby of an insurance, safe deposit or trust company, banking corporation, savings bank, or other corporation deemed to possess any of the powers prohibited to corporations formed under the statutory provisions aforesaid.

The purpose of the corporation is from time to time to do any one or more of the acts herein set forth as within its authority.

The corporation may, from time to time, conduct its business in other States, and in the territories and dependencies of the United States, in the District of Columbia, and in foreign countries; it may have an office or offices and, except as otherwise required by law, keep its books, in whole or in part, at a point or points outside of the State of New Jersey and

it may hold, purchase, mortgage and convey real and personal property in any such State, territory, dependency, District of Columbia, or foreign country.

Without in any particular limiting or restricting any of the other objects and powers of the corporation, it is hereby expressly declared and provided (1) that the corporation shall also have power to issue bonds and other obligations in payment for property, including shares of stock and other securities, which may be purchased or acquired by it, or for money borrowed, or for any other lawful object in and about its business; to mortgage or pledge any property which may be owned or acquired by it, or in which it may be interested, to secure any bonds, guarantees or other obligations by it issued or incurred; to guarantee any dividends, bonds, contracts or other obligations to make and perform contracts of every kind and description; to declare dividends payable in cash or otherwise as may be permitted by law; and in carrying on its business, or for the purpose of attaining or furthering any of its objects or purposes; to do any and all other things and exercise any and all other powers which now or hereafter may be permitted by law, and (2) that, among its other powers, and without the assent or other action of the stockholders, the board of directors shall have power, by resolution of said board and for any lawful purpose, to authorize the execution of the bonds of the corporation not to exceed the principal sum of Forty Five Million Dollars ($45,000,000.), par value, at any one time outstanding, which bonds shall be in such form and issued and delivered at such times and for such purposes and under such

terms and conditions as said board may determine; and said board of directors shall also have power, by resolution of said board, to authorize the execution of an indenture, mortgaging and pledging all or any part of the property or assets of the corporation, then owned or which may thereafter be acquired by it, to secure the payment of said bonds and the interest thereon and the performance of the covenants in said indenture contained, which indenture shall be in such form and embody such provisions, covenants, agreements and conditions as said board may determine.

ARTICLE FOURTH: The total authorized capital stock of the corporation is eighty million dollars ($80,000,000), divided into eight hundred thousand (800,000) shares of the par value of one hundred dollars ($100) each.

Of said capital stock four hundred thousand (400,000) shares, aggregating forty million dollars ($40,000,000) par value, shall be preferred stock; and four hundred thousand (400,000) shares aggregating forty million dollars ($40.-000,000) par value, shall be common stock. From time to time the preferred stock and the common stock of the corporation may each or both be increased according to law, as now or hereafter enacted, provided, always, that at no time shall the preferred stock be increased without the assent of the holders of at least two-thirds in interest of the then outstanding preferred stock of the corporation. And said preferred stock and said common stock, as herein fixed, and any duly authorized increase of either or both, may be issued at such times and in such amounts and proportions as shall be de-

termined by the board of directors and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive or to have set apart, out of the surplus or net profits of the corporation, as and when declared by the board of directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative, on all such preferred stock outstanding at the time, which dividend shall be payable yearly, half-yearly or quarterly as the board of directors, may from time to time fix and determine, and before any dividend shall be set apart for or paid on the common stock. Provided, however, that if the preferred stock shall hereafter be increased, the rate of dividend upon such increase shall be at such rate, not exceeding seven per centum per annum, as shall be fixed by the resolution of the stockholders of the corporation authorizing such increase. Whenever a dividend is declared or paid on the preferred stock and all prior dividends on the outstanding shares of such stock shall have been paid or set apart, the board of directors may, if in its judgment the surplus or net profits, after deducting the amount of dividends to accrue on the said outstanding preferred stock during the current year, shall be sufficient for such purpose, then or thereafter declare and pay dividends on the common stock payable yearly, half-yearly or quarterly, and payable then or thereafter out of any remaining surplus or net profits of the year then current or last past and of any previous year in which full dividends shall have been paid on the preferred stock.

In case of a liquidation or dissolution or winding up (whether voluntary or involuntary) of

the corporation, the holders of the preferred stock shall receive cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon, (but no more) before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the Company, or the proceeds thereof, remaining after the payment in full, at its par value, of the preferred stock then outstanding, together with all dividends thereon accrued and unpaid.

ARTICLE FIFTH: The names and post office addresses of the incorporators, and the number of shares of stock for which, severally and respectively, the said incorporators do hereby subscribe (the aggregate of their said subscription being five thousand dollars ($5,000), which is the amount of capital stock with which the corporation is authorized to commence business), are as follows:

Name	Post Office Address	No. of Shares	Total Par Value
Howard K. Wood,	15 Exchange Pl., Jersey City, N. J.	20	$2,000
Kenneth K. McLaren,	15 Exchange Pl., Jersey City, N. J.	20	$2,000
Horace S. Gould,	15 Exchange Pl., Jersey City, N. J.	10	$1,000

ARTICLE SIXTH: The duration of the corporation shall be perpetual.

ARTICLE SEVENTH: The number of the board of directors of the corporation shall be fixed and may be increased or decreased as may be provided from time to time, in the by-laws.

In case of any increase in the number of said board of directors, the additional directors shall be elected as may lawfully be provided in the by-laws. In case of any vacancy in the board

of directors, the remaining directors may elect a successor to hold office for the unexpired portion of the term of the director whose place shall have become vacant and until the election of a successor.

The Board of Directors shall have power to hold their meeting outside of the State of New Jersey at such place or places as may be from time to time designated by the by-laws or by resolution of the board of directors.

The corporation shall not create any mortgage or other lien upon its real property or its shares of capital stock of any other corporation or its other assets, except as hereinbefore authorized, without the consent of the holders of at least a majority in amount of the entire capital stock of the corporation at the time outstanding, expressed either in writing or by vote at a meeting of the stockholders called for that purpose; but this restriction shall not be construed to apply to any mortgage or lien which may be made or created by the corporation on property purchased to secure the purchase-money therefor or part thereof.

The board of directors in its discretion, may submit any contract for the purchase or sale of property, the sale, exchange, incumbrance or other disposition of shares of stock, bonds or other obligations belonging to or issued by the corporation, or of any ther securities in which it is interested, or for the borrowing of money for the corporation, for authorization, approval or ratification by the stockholders at any annual meeting or at any special meeting called for the purpose of considering any such contract; and any contract, or act in connection therewith, which shall be authorized, approved or ratified

by the vote of the holders of a majority in amount of the entire outstanding capital stock of the corporation which shall be represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy), shall be as valid and as binding upon the corporation and upon all the stockholders as if the same had been authorized, approved and ratified by each and every stockholder of the corporation.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the Seventeenth Section of the Act concerning Corporations (Revision of 1896), any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or theretofore required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting, in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time, with or without cause, by an affirmative vote of two-thirds of the whole board of directors. Any other officer or employee may be removed at any time, with or without cause, by the vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by a vote of the board of directors.

The board of directors may appoint from the directors an Executive Committee of which committee a majority shall constitute a quorum; and, to such extent as may from time to time be

provided in the by-laws or authorized by a resolution of the board of directors, such committee shall have and may exercise all or any of the powers of the board of directors, including the power to cause the seal of the corporation to be affixed to papers.

The board of directors may appoint any other standing committees; and such standing committees shall have and may exercise such powers as may be conferred and authorized by the by-laws or by the board of directors.

The board of directors may appoint, not only other officers of the corporation, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, or by the board of directors, the persons so appointed, respectively, shall have and may exercise all the powers of the president and of the treasurer, and of the secretary, respectively.

The board of directors shall have power, from time to time, to fix and determine and to vary the amount of the working capital of the corporation, and to direct and determine the use and disposition of any surplus funds or net profits over and above the capital stock paid in.

Except as herein otherwise provided, the board of directors shall have power and authority to sell, assign, transfer convey and otherwise dispose of all or any part of the property and assets of the corporation on such terms and conditions as the said board of directors shall deem just and expedient, and to issue the bonds, debentures, notes and other obligations or evidences of indebtedness of the corporation.

With the consent of the holders of not less than two-thirds in amount of each class of the

capital stock of the corporation at the time outstanding, expressed either in writing or by vote at a meeting of the stockholders called for the purpose, but not otherwise, the board of directors of the corporation shall have power to sell, convey or otherwise dispose of all the property, rights and franchises of the corporation, as an entirety, upon such terms and conditions and for such considerations, whether in cash, stocks, bonds, or other property, as the board of directors may in its discretion determine.

No voluntary dissolution of the corporation or voluntary liquidation of its assets shall be had or made without the consent of not less than two-thirds in amount of the entire capital stock, and also of not less than a majority in amount of each class of the capital stock, of the corporation at the time outstanding, expressed in writing or by vote at a meeting of the stockholders called for the purpose, or expressed or given as required by law as now or hereafter enacted.

The board of directors, from time to time, to the extent permitted by law, shall determine whether and to what extent and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute, or authorized by the by-laws of the corporation or by the board of directors, or by resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, from time to time, may alter, amend, or repeal the same, in whole or in part; but any by-

laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of such special meeting.

IN WITNESS WHEREOF, we have hereunto set our hands and seals this twelfth day of April, 1905.

HOWARD K. WOOD (LS)
KENNETH K. McLAREN (LS)
HORACE S. GOULD (LS)

Signed, sealed and delivered in the presence of:

HARRY W. MEEN.

STATE OF NEW JERSEY,
COUNTY OF HUDSON. } *ss.*

Be it remembered, that on this twelfth day of April, A. D. 1905, before me, a Commissioner of Deeds within and for the County of Hudson, in the State of New Jersey, personally appeared, Howard K. Wood, Kenneth K. McLaren and Horace S. Gould, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

HARRY W. MEEN,
Commissioner of Deeds within and for the County of Hudson, in the State of New Jersey.

(SEAL)

REGISTERED in the office of the Company at Jersey City, in the County of Hudson, this 12th day of April, 1905.

THE CORPORATION TRUST COMPANY,
Registered Agent.
By Kenneth K. McLaren
Treasurer.

RECEIVED in the Hudson County, N. J. Clerk's Office, April 12th, 1905, and recorded in Clerk's Record, No..... on Page.....

John Rotherham
Clerk."

ENDORSED:

"FILED AND RECORDED APR 12 1905
S. D. DICKINSON
SECRETARY OF STATE."

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of the Certificate of INCORPORATION OF CENTRAL LEATHER COMPANY, and the endorsements thereon, as the same is taken from and compared with the original filed in my office on the Twelfth day of April A. D. 1905 and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my (SEAL) Official Seal at Trenton, this Fifteen day of July, A. D. 1927.

JOSEPH F. S. FITZPATRICK

Exhibit "B."

CERTIFICATE AMENDING THE ORIGINAL CERTIFICATE OF INCORPORATION OF THE UNITED STATES LEATHER COMPANY.

WHEREAS, THE UNITED STATES LEATHER COMPANY is a corporation organized under the provisions of an Act of the Legislature of New Jersey, entitled "An Act Concerning Corporations," approved April 7th, 1875, and the several supplements thereto and Acts amendatory thereof, its original Certificate of Incorporation having been filed in the Office of the Secretary of State of the State of New Jersey, on the twenty-fifth day of February, eighteen hundred and ninety-three, and desires to amend its said original Certificate of Incorporation pursuant to law.

NOW THIS IS TO CERTIFY That the said The United States Leather Company, with the assent of a majority in interest of its Stockholders, at a special meeting called for that purpose, and with the consent in writing, hereto attached, of each and all of the Stockholders, hereby amends its said original Certificate of Incorporation so that it shall read and be as follows:

"AMENDED CERTIFICATE OF INCORPORATION OF THE UNITED STATES LEATHER COMPANY."

"THIS IS TO CERTIFY, That We, Thornwell "Mullally, C. Adison Swift, Richard V. Linda- "bury, Augustus J. Brunson, J. Franklin New- "comb, do hereby associate ourselves into a "Company under and by virtue of the provisions

"of an Act of the Legislature of New Jersey, "entitled 'An Act concerning Corporations' ap- "proved April 7th, 1875, and the several supple- "ments thereto and acts amendatory thereof, for "the purposes hereinafter mentioned, and to that "end we do, by this our Certificate, set forth:

"First—That the name assumed to designate "such Company, and to be used in its business "and operations, is 'The United States Leather "Company.'

"Second—That the places in this State where "the business of such Company is to be con- "ducted are Elizabeth, in the County of Union, "Jersey City, in the County of Hudson, and "such other places as from time to time may be "deemed necessary or convenient.

"The principal part of the business of said "Company within this State is to be transacted "at Elizabeth, in the County of Union, and the "places out of this State where the same is to "be conducted, and where the Company proposes "to carry on operations, are the City of New "York, in the State of New York, the City of "Boston, in the State of Massachusetts, and the "States of New York, Massachusetts, Maryland, "Virginia, West Virginia, Pennsylvania, Ten- "nessee, Georgia, Kentucky, Wisconsin, Maine, "Michigan, Washington, California, Oregon, "North Carolina, Alabama, Illinois, Indiana, and "such other States and Territories of the United "States and Canada, and such other foreign "countries, as shall from time to time be deemed "necessary or convenient for any of the pur- "poses of the Company.

"That the objects for which the Company is "formed are the manufacture and sale of

"Leather, Lumber and Belting, including the ac-
"quisition disposition and use in the manner
"and the extent permitted by law, of all neces-
"sary and convenient lands, timber, bark, tan-
"neries, mills, plants, machinery, supplies and
"other articles and property necessary to or con-
"venient in connection with the manufacture
"and sale of Leather, Lumber and Belting, as
"aforesaid; and in general, the engagement in
"any and all lawful business whatever, which
"may be deemed necessary or convenient in con-
"nection with the business of manufacturing and
"selling Leather, Lumber and Belting as afore-
"said, in the State of New Jersey, and in the
"other States and Territories of the United
"States above-mentioned and elsewhere within
"the limits of the United States and in foreign
"countries.

"And also, to the extent deemed necessary to
"or convenient in connection with the business
"of the Company herein above mentioned, to
"purchase, acquire, hold, sell, assign, transfer,
"mortgage, pledge, exchange, or otherwise dis-
"pose of shares of the Capital Stock of any
"other Corporation or Corporations created
"under the Laws of this or any other State or
"Country, and to exercise while owners of said
"stocks, all the rights, powers and privileges
"including the right to vote thereon, which nat-
"ural persons being the owners of said stock
"might, could or would exercise.

"And also, to the extent deemed necessary to
"or convenient in connection with the business
"of the Company herein above mentioned, to
"purchase, acquire, hold, sell, assign, transfer,
"mortgage, pledge, exchange, or otherwise dis-
"pose of any securities or evidences of debt

"created by any other Corporation or Corpora-
"tions of this or any other State or Country,
"in the same manner and to the same extent as
"natural persons being the owners thereof,
"might, could or would do.

"The portion of the business of said Company
"which is to be carried on out of this State is
"a part of its financial business, and so much of
"the manufacture and sale of Leather, Lumber
"and Belting above mentioned, including the ac-
"quisition, disposition, and use in the manner
"and to the extent permitted by law, of all neces-
"sary and convenient lands, timber, bark, tan-
"neries, mills, plants, machinery, supplies, and
"other articles and property necessary to or
"convenient in connection with the manufacture
"and sale of Leather, Lumber, and Belting
"aforesaid, and also such other business, as may
"be lawful and as may from time to time be
"deemed necessary or convenient by reason of
"locality or other conditions or circumstances.

"That the principal office or place of business
"of said Company out of this State is to be
"situated in the City of New York, in the
"County and State of New York.

"THIRD—That the total amount of the Capital
"stock of said Company is One hundred thou-
"sand dollars, of which one-half shall be Pre-
"ferred Stock and one-half Common Stock, di-
"vided into shares of the par value of One hun-
"dred dollars each.

"That the Preferred Stock shall be entitled to
"a cumulative dividend of eight per centum per
"annum, payable out of the net earnings of the
"Company before any payment is made on the
"Common Stock, and in case of non-payment in

"full of any such yearly dividend, the portion "unpaid shall be a charge without interest upon "the earnings of the Company prior to the "claims of the Common Stock. In case of liqui- "dation, the Preferred stock shall be paid in "full at its par, together with all earned and "unpaid dividends before any payment is made "on the Common Stock.

"That the Common Stock is entitled to all "dividends declared and payable out of the net "earnings of the Company after the dividends "have been paid upon the Preferred Stock. In "case of liquidation, the Common Stock shall be "entitled to the entire assets of the Company "remaining after the payment in full at its par, "of the Preferred Stock then outstanding, to- "gether with all dividends thereon earned and "unpaid.

"That the amount with which said Company "shall commence business is One thousand dol- "lars, divided into ten shares of the par value "of One hundred dollars each.

"That the Company may create and issue its "Debentures to the amount of Ten Million Dol- "lars, and no Bond, no Debenture other than "those above mentioned, and no Mortgage shall "be made, assumed, or guaranteed by the Com- "pany, or by any Company, a majority of the "Capital Stock of which may be owned or con- "trolled by this Company, without the consent "of the holders of record of eighty per centum "of the Preferred Stock of this Company then "outstanding.

"That the Company may use and apply its "surplus earnings or accumulated profits au- "thorized by law to be reserved to the purchase

"and acquisition of property and to the pur-
"chase and acquisition of its own Capital Stock
"from time to time, and to such extent and in
"such manner and upon such terms as its Board
"of Directors shall determine, and neither the
"property nor the Capital Stock so purchased
"and acquired, nor any of its Capital Stock
"shall be regarded as profits for the purpose of
"the declaration or payment of dividends, unless
"a majority of the Board of Directors, or a
"majority of the stockholders shall otherwise
"determine.

"FOURTH—The names and residences of the
"Stockholders and the number of shares held by
"each, are as follows:

"THORNWELL MULLALLY, 62 West
"93rd St., New York, two shares,

"C. ADISON SWIFT, Elizabeth, New
"Jersey, two shares.

"RICHARD V. LINDABURY, Elizabeth,
"New Jersey, two shares.

"AUGUSTUS J. BRUNSON, North
"Plainfield, N. J. two shares.

"J. FRANKLIN NEWCOMB, Elizabeth,
"New Jersey, two shares.

"FIFTH—The period at which said Company
"shall commence business is the twenty-fifth day
"of February, eighteen hundred and ninety-
"three, and the period at which it shall termi-
"nate is the twenty-fifth day of February, nine-
"teen hundred and forty-three.

"In Witness Whereof, we have hereto set our "hands and seals the twenty-fifth day of Febru- "ary, eighteen hundred and ninety-three.

"THORNWELL MULLALLY (L.S.)
"RICHARD V. LINDABURY (L.S.)
"C. ADISON SWIFT, (L.S.)
"AUGUSTUS J. BRUNSON (L.S.)
"J. FRANKLIN NEWCOMB (L.S.)

"Signed, Sealed, &C
"In the presence of

"Frank Bergen."

"State of New Jersey, }
"County of Union. } *ss.*

"Be It Remembered, That on this twenty-fifth "day of February, eighteen hundred and ninety- "three, before me, FRANK BERGEN, A Master "in the Court of Chancery, in said State, per- "sonally appeared, THORNWELL MUL- "LALLY, RICHARD V. LINDABURY, C. ADI- "SON SWIFT, AUGUSTUS J. BRUNSON, J. "FRANKLIN NEWCOMB, who I am satisfied "are the persons named in and who executed the "foregoing Certificate, and I having first made "known to them the contents thereof, did each "acknowledge that they signed, sealed and deliv- "ered the same as their voluntary act and deed.

"FRANK BERGEN,
"M. C. C. of N. J."

In Witness Whereof, This Certificate so amending the original Certificate of Incorporation of The United States Leather Company has been signed by its President and attested by its Secretary under its Corporate Seal, this 29th day of April eighteen hundred and ninety-three.

Thomas E. Proctor
(seal) President.

Attest:
Josiah T. Tubby,
Secretary.

State of New York }
County of New York } *ss.*

Be It Remembered, That on this twenty-ninth day of April eighteen hundred and ninety-three, before me, Bradbury C. Chetwood, a Master in Chancery of the State of New Jersey, personally appeared THOMAS E. PROCTOR, to me known to be the President of The United States Leather Company, and JOSIAH T. TUBBY, to me known to be the Secretary of The United States Leather Company, who I am satisfied are the persons named in and who executed the foregoing Certificate and, I having first made known to them the contents thereof, did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

And the said Thomas E. Proctor being by me duly sworn, and the said Josiah T. Tubby, alleging himself to be conscientiously scrupulous of taking an oath, being by me duly affirmed on said Twenty ninth day of April 1893 say, that they did severally sign the foregoing Certificate and attach the Corporate Seal of The United States

Leather Company thereto, by the direction of the Board of Directors thereof and under and in pursuance and with the assent of a majority in interest of the Stockholders of said Company at a special meeting of said Stockholders called for that purpose, and in pursuance of the consent in writing hereto attached of each and all of the Stockholders of said Company.

B. C. Chetwood
Master in Chancery of New Jersey.

We, the subscribers, Stockholders owning the entire Capital Stock of The United States Leather Company, each to the extent represented by the number of shares set opposite to our respective signatures, hereto, do hereby assent to authorize and approve each and all of the amendments and provisions embodied in the foregoing Certificate, amending the original Certificate of Incorporation of The United States Leather Company.

In Witness Whereof, we have hereto set our hands and the number of shares owned by us respectively, this 29th day of April eighteen hundred and ninety-three.

Thomas E. Proctor owning two hundred shares
Mark Hoyt owning two hundred shares
James Horton owning two hundred shares
Norman Schultz owning two hundred shares
Geo. A. Vail, owning two hundred shares

Witness
Josiah T. Tubby

Bill of Complaint—Exhibit B.

State of New York }
County of New York } *ss.*

Josiah T. Tubby, alleging himself to be conscientiously scrupulous of taking oath, being duly affirmed, says, that he is the Secretary of The United States Leather Company, that Thomas E. Proctor, Mark Hoyt, George A. Vail, Norman Shultz and James Horton, the persons above named, are the Stockholders owning the entire Capital Stock of the said The United States Leather Company, and that he saw said Stockholders sign the foregoing assent as their voluntary act and deed, and that the deponent at the same time subscribed the same as an attesting witness.

Josiah T. Tubby

Affirmed and subscribed before
me this Twenty ninth day of
April eighteen hundred and
ninety-three

B. C. Chetwood
Master in Chy of New Jersey.

Received in the Clerk's Office of the County of Union, N. J., on the 2'' day of May A. D., 1893 at 8:30 o'clock in the forenoon, and Record in Book 6 of Incorporations for said County on pages 50 &c.

J. J. Gerber
Clerk.

''ENDORSED

FILED AND RECORDED MAY 2 1893
HENRY C. KELSEY
SECRETARY OF STATE.''

Bill of Complaint—Exhibit B.

STATE OF NEW JERSEY

DEPARTMENT OF STATE.

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of Certificate amending the Original Certificate of Incorporation of THE UNITED STATES LEATHER COMPANY, as the same is taken from and compared with the original Filed May 2, 1893, and now remaining on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my (SEAL) Official Seal at Trenton, this Fifteenth day of July A. D. 1927.

JOSEPH F. S. FITZPATRICK
Secretary of State.

NOTE: On the 2nd day of May 1893 the corporation filed in the office of the Secretary of State of New Jersey a Certificate of Increase of Capital Stock, thereby adding $119,900,000.00 and making the entire capital stock of said Company $120,000,000, represented by one half ($60,000,000.) 8% cumulative preferred and one half ($60,000,000) Comon. On August 1, 1895 the Capital stock was further increased to $128,000,000.

Exhibit "C."

CERTIFICATE OF INCORPORATION
OF
THE UNITED STATES LEATHER
COMPANY. (No 2)

THE UNDERSIGNED, for the purpose of forming a corporation under and pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby set out and certify as follows:

ARTICLE FIRST: The name of the corporation is THE UNITED STATES LEATHER COMPANY.

ARTICLE SECOND: The location of the principal office of the corporation in the State of New Jersey is at No. 15 Exchange Place, in the city of Jersey City, county of Hudson, in said State, which shall also be its registered office. And the name of the agent of said corporation in said State who is in charge of said principal office and upon whom process against this corporation may be served, is The Corporation Trust Company.

ARTICLE THIRD: That the objects for which the Company is formed are the manufacture and sale of Leather, Lumber and Belting, including the acquisition, disposition and use in the manner and to the extent permitted by law, of all necessary and convenient lands, timber, bark, tanneries, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacture and

sale of Leather, Lumber and Belting, as aforesaid; and in general, the engagement in any and all lawful business whatever, which may be deemed necessary or convenient in connection with the business of manufacturing and selling Leather, Lumber and Belting as aforesaid, in the State of New Jersey, and elsewhere in the United States of America and its territories, possessions and dependencies, and in foreign countries.

And also, to the extent deemed necessary to or convenient in connection with the business of the company herein above mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of the Capital Stock of any other corporation or corporations created under the Laws of this or any other State or Country, and to exercise while owners of said stocks, all the rights, powers and privileges, including the right to vote thereon, which natural persons being the owners of said Stock might, could or would exercise.

And also, to the extent deemed necessary to or convenient in connection with the business of the Company herein above mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of any securities or evidences of debt created by any other Corporation or Corporations of this or any other State or Country, in the same manner and to the same extent as natural persons being the owners thereof, might, could or would do.

The portion of the business of said Company which is to be carried on out of this State is a part of its financial business, and so much of

the manufacture and sale of Leather, Lumber and Belting above mentioned, including the acquisition disposition and use of all necessary and convenient lands, timber, bark, tanneries, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacture and sale of Leather, Lumber and Belting aforesaid, and also such other business, as may be lawful and as may from time to time be deemed necessary or convenient by reason of locality or other conditions or circumstances.

The corporation may, from time to time, conduct its business in other States, and in the territories, possessions and dependencies of the United States, and in foreign countries; it may have an office or offices and, except as otherwise required by law, keep its books, in whole or in part, at a point or points outside of the State of New Jersey; and it may hold, purchase, mortgage and convey real and personal property in any such State, territory, possession, dependency, or foreign country.

Without in any particular limiting or restricting any of the other objects and powers of the corporation, it is hereby expressly declared and provided that the corporation shall have also power to issue bonds and other obligations in payment of property, including shares of stock and other securities, which may be purchased or acquired by it, or for money borrowed, or for any other lawful object in and about its said business; to mortgage or pledge any property which may be owned or acquired by it, or in which it may be interested, to secure any bonds or other obligations by it issued or incurred; to make and perform contracts of every

kind and description; to declare dividends payable in cash or otherwise as may be permitted by law; and in carrying on its said business, or so far as may be necessary or proper for the purpose of attaining or furthering any of its said objects or purposes, to do any and all other things and exercise any and all other powers which now or hereafter may be permitted by law.

ARTICLE FOURTH: The total authorized capital stock of the corporation is one hundred thousand dollars ($100,000) divided into one thousand (1,000) shares of the par value of one hundred dollars ($100) each, all of one class.

ARTICLE FIFTH: The names and post-office addresses of the incorporators and the number of shares of stock for which, severally and respectively, the said incorporators do hereby subscribe, (the aggregate of their said subscription being five thousand dollars ($5,000), which is the amount of capital stock with which the corporation is authorized to commence business), are as follows:

Name	Post Office Address	No of Shares	Par Value
Samuel P. Davidge,	Short Hill, N. J.	20	$2,000
A. Augustus Healy,	198 Columbia Heights, Brooklyn, N. Y.	15	$1,500
John J. Lapham,	45 John Street, New York City, N. Y.	15	$1,500

ARTICLE SIXTH. The duration of the corporation shall be perpetual.

ARTICLE SEVENTH. The number of the board of directors of the corporation shall be fixed and may be increased or decreased, as may be provided from time to time, in the by-laws.

In case of any increase in the number of said board of directors, the additional directors shall be elected as may be lawfully provided in the by-laws. In case of any vacancy in the board of directors, the remaining directors may elect a successor to hold office for the unexpired portion of the term of the directors whose place shall have become vacant and until the election of a successor.

The board of directors shall have power to hold their meetings outside of the State of New Jersey at such place or places as may be from time to time designated by the by-laws or by resolution of the board of directors.

The corporation shall not create any mortgage or other lien upon its real property or its shares of capital stock of any other corporation or its other assets, without the consent of the holders of at least a majority in amount of the entire capital stock of the corporation at the time outstanding, expressed either in writing or by vote at a meeting of the stockholders called for that purpose; but this restriction shall not be construed to apply to any mortgage or lien which may be made or created by the corporation on property purchased to secure the purchase money therefor or part thereof.

The board of directors, in its discretion, may submit any contract for the purchase or sale of property, the sale, exchange, incumbrance or other disposition of shares of stock, bonds or other obligations belonging to or issued by the corporation, or of any other securities in which it is interested, or for the borrowing of money for the corporation, for authorization, approval or ratification by the stockholders at any annual meeting or at any special meeting called for the

purpose of considering any such contract; and any contract, or act in connection therewith, which shall be authorized, approved or ratified by the vote of the holders of a majority in amount of the entire outstanding capital stock of the corporation which shall be represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy), shall be as valid and as binding upon the corporation and upon all the stockholders as if the same had been authorized, approved and ratified by each and every stockholder of the corporation.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the Seventeenth Section of the Act concerning Corporations (Revision of 1896) any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting after notice to them given, or theretofore required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time, with or without cause, by an affirmative vote of two-thirds of the whole board of directors. Any other officer or employee may be removed at any time, with or without cause, by the vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by a vote of the board of directors.

The board of directors may appoint from the directors an Executive Committee, of which com-

mittee a majority shall constitute a quorum; and, to such extent as may from time to time be provided in the by-laws or authorized by a resolution of the board of directors, such committee shall respectively have and may exercise all or any of the powers of the board of directors, including the power to cause the seal of the corporation to be affixed to papers.

The board of directors may appoint any other standing committees, and such standing committees shall have and may exercise such powers, as may be conferred and authorized by the by-laws or by the board of directors.

The board of directors may appoint, not only other officers of the corporation, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries; and, to the extent provided in the by-laws, or by the board of directors, the persons so appointed, respectively, shall have and may exercise all the powers of the president, and of the treasurer, and of the secretary, respectively.

The board of directors shall have power, from time to time to fix and determine and to vary the amount of the working capital of the corporation, and to direct and determine the use and disposition of any surplus funds or net profits over and above the capital stock paid in.

Except as herein otherwise provided, the board of directors shall have power and authority to sell, assign, transfer, convey and otherwise dispose of all or any part of the property and assets of the corporation on such terms and conditions as the said board of directors shall deem just and expedient, and to issue the bonds, debentures, notes and other obligations or evidences of indebtedness of the corporation.

With the consent of the holders of not less than two-thirds in amount of the capital stock of the corporation at the time outstanding, expressed either in writing or by vote at a meeting of the stockholders, called for the purpose, but not otherwise, the board of directors of the corporation shall have power to sell, convey or otherwise dispose of all the property, rights, franchises of the corporation, as an entirety, upon such terms and conditions and for such considerations whether in cash, stocks, bonds or other property, as the board of directors may in its discretion determine.

No voluntary dissolution of the corporation or voluntary liquidation of its assets shall be had or made without the consent of two-thirds in amount of the entire capital stock of the corporation at the time outstanding, expressed in writing or by vote at a meeting of the stockholders called for the purpose, or expressed or given as required by law as now or hereafter enacted.

The board of directors from time to time, to the extent permitted by law, shall determine whether and to what extent and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute, or authorized by the by-laws of the corporation, or by the board of directors, or by resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws from time to time, may alter, amend, or repeal the same, in whole or in part; but any by-laws

made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of such special meeting.

In Witness Whereof, we have hereunto set our hands and seals this twenty-seventh day of April, 1909.

Samuel P. Davidge, (seal)
A. Augustus Healy, (seal)
John J. Lapham, (seal)

Signed, sealed and delivered in the presence of,

Kinsley Twining

State of New Jersey }
County of Hudson } *ss.*

Be It Remembered that on this twenty-seventh day of September, in the year of our Lord one thousand nine hundred and nine, before me, the subscriber, a Master in Chancery of New Jersey, personally appeared Samuel P. Davidge, A. Augustus Healy, and John J. Lapham, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed for the uses and purposes therein expressed.

Kinsley Twining
Master in Chancery of New Jersey.

ENDORSED

Received in the Hudson Co., N. J. Clerk's office 27 Sept. A. D. 1909 and Recorded in Clerk Record No.....on Page....

John Rotherham,
Clerk.

"FILED and RECORDED, SEPT. 27, 1909,
S. D. DICKINSON,
SECRETARY OF STATE,"

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, JOSEPH F. S. FITZPATRICK, Secretary of State of the State of New Jersey, do hereby Certify that the foregoing is a true copy of the Certificate of Incorporation of THE UNITED STATES LEATHER COMPANY, and the endorsements thereon as the same is taken from and compared with the original filed in my office on the Twenty-seventh day of September A. D. 1909 and now remaining on file and of record therein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my (SEAL) Official Seal at Trenton, this Fifteenth day of July A. D. 1927.

JOSEPH F. S. FITZPATRICK
Secretary of State

Exhibit "D."

CENTRAL LEATHER COMPANY

PLAN FOR READJUSTMENT OF SHARE CAPITAL

COMMITTEES

For Holders of Preferred Stock
GAYER G. DOMINICK, Chairman
FRANK ALTSCHUL
DEWEES W. DILWORTH
CHARLES S. HAIGHT
HAROLD M. LEHMAN
MAX J. H. ROSSBACH

For Holders of Common Stock
ANDREW J. MILLER, Chairman
SAMUEL L. FULLER
HENRY ROGERS WINTHROP

KUHN LOEB & CO.
BANKERS TRUST COMPANY
Managers.

DEPOSITARY FOR ALL STOCK
BANKERS TRUST COMPANY,
14 Wall Street,
New York City.

SUB-DEPOSITARY
VERMEER & CO.
Amsterdam, Holland.

Bill of Complaint—Exhibit D.

I. INTRODUCTORY STATEMENT.

Central Leather Company, a New Jersey corporation, has outstanding $33,299,050 of 7% Cumulative Preferred Stock and $39,701,030 of Common Stock. Accrued unpaid dividends on the Preferred Stock, as of June 30, 1926, amounted to 36-¾%. The Company has a profit and loss deficit, amounting, as of June 30, 1926, to $19,647,077, resulting from losses due to unsettled conditions in the leather industry after the war.

The management of the Company states that its operations are now approaching a more normal basis. The Company is in a strong cash position, but, because of the large deficit and the accumulated preferred dividends, a readjustment of the Company's capital structure is essential prior to any resumption of dividend payments.

In an endeavor to meet this situation the Board of Directors, after consultation with the Bankers of the Company, Messrs. Kuhn, Loeb & Co. and Bankers Trust Company, suggested the organization of committees to represent the holders of Preferred Stock and of Common Stock of the Company for the purpose of considering and recommending plans for the readjustment of the capitalization of the Company.

The following Plan has been formulated by such Committees and Kuhn, Loeb & Co. and Bankers Trust Company. Kuhn, Loeb & Co. and Bankers Trust Company have agreed to act as Managers. The Plan has been approved by the Board of Directors of the Company.

The Board of Directors, the Committees and the Managers believe that the Plan is in the

interests of both classes of stock, and recommend its acceptance by stockholders. Holders of Preferred Stock will benefit by receiving, in respect of each share of stock, a cash payment of $5 and new Prior Preference Stock and Class A Stock (Voting Trust Certificates) together entitled to dividends up to $6.50 per annum before any payment is made on the Common Stock, and to participating dividends up to $1.50, a total of $8 per annum in respect of each share of the present Preferred Stock, $1 in excess of the maximum dividend on the present Preferred Stock. In addition they will have the right to control the Company by electing two-thirds of the directors, until the retirement of $10,000,000 of Prior Preference Stock. Holders of Common Stock benefit by the elimination of the accumulated dividends on the Preferred Stock and in the event of liquidation or dissolution will have the right, after provision is made for the new Prior Preference Stock, to participate with the new Class A Stock in distribution of assets, to the extent provided in the Plan.

As used in this Plan for convenience of reference the following terms have the meanings below specified, respectively:

The term "Present Company" means Central Leather Company.

The term "New Company" comprehends any corporation to be formed or now existing which may be used for the purpose of carrying out the Plan.

The term "Agreement" means the Agreement hereto annexed.

The term "Plan" includes the annexed Agreement, unless the context shall otherwise require.

The term "Preferred Stockholders Committee" means the Committee representing the preferred stockholders of the Present Company, as from time to time constituted. The term "Common Stockholders Committee" means the committee representing the common stockholders of the Present Company, as from time to time constituted. The term "Committees" means said two Committees.

II. CAPITALIZATION OF THE PRESENT COMPANY.

The capitalization of the Present Company as of June 30, 1926, is as follows:

Twenty-Year First Lien Sinking Fund Six Per Cent Bonds, maturing January 1, 1945	$13,868,000
7% Cumulative Preferred Stock	33,299,050
Common Stock	39,701,030
Total	$86,868,080

A balance sheet of the Present Company, as of June 30, 1926, is Exhibit A hereto.

III. PROPOSED METHOD OF READJUSTMENT.

It is proposed to organize a new corporation under the laws of such state as the Managers and the Committees may approve, to acquire by purchase, consolidation or otherwise the properties or stock of the Present Company. If the Managers shall so determine, the Present Company or some other existing corporation may be utilized as the New Company. The New Company is to issue its stock in lieu of or in exchange for the stock of the Present Company as hereinafter provided and, if it acquires the

properties of the Present Company, is to assume the First Lien Bonds and other indebtedness of the Present Company outstanding at the consummation of the Plan.

IV. PROPOSED CAPITALIZATION OF NEW COMPANY.

Assuming the exchange of the entire stock of the Present Company for stock of the New Company as contemplated by this Plan and the acquisition by the New Company of the properties of the Present Company, the capitalization of the New Company as of June 30, 1926, would be as follows:

Twenty-Year First Lien Sinking Fund Six Per cent. Bonds, maturing January 1, 1945	$13,868,000#
7% Cumulative Prior Preference Stock	16,649,525
Class A Participating and Convertible Stock without par value (Preferred Dividend $4 non-cumulative)	249,743 shares
Common Stock, without par value	397,010 shares##

#On June 30, 1926, there was $697,703.58 in cash in the sinking fund for these bonds. The Present Company had in its treasury, on September 23, 1926, $1,927,000 of the above bonds. The Board of Directors has determined to use available cash for the purchase and retirement of bonds, as market conditions warrant, so as to reduce the outstanding bonds to $10,000,000.

##Additional common stock will be authorized to provide for the conversion of the class A Stock.

V. TREATMENT OF STOCKS OF PRESENT COMPANY.

Holders of preferred stock of the Present Company will be entitled to receive, upon the consummation of the Plan, for each share of such preferred stock.

10 $5 in cash,

$50 par value (½ share) 7% Cumulative Prior Preference Stock of the New Company,

¾ of a share of Class A Participating and Convertible Stock of the New Company.

Holders of common stock of the Present Company will be entitled to receive for each share of such common stock one share of common stock of the New Company.

20 Voting Trust Certificates will be delivered in respect of all stock (See VIII, below).

Scrip-certificates, non-dividend bearing, but exchangeable, in amounts aggregating one or more full shares, for voting trust certificates, will be issued for fractional amounts of stock.

VI. DESCRIPTION OF STOCKS OF NEW COMPANY.

Prior Preference Stock

30 The Prior Preference Stock of the New Company will be entitled to cumulative dividends from July 1, 1926, at the rate of seven per cent. per annum, and no more, payable quarterly, if and as declared by the Board of Directors, before any dividends are paid on the Class A Stock or the Common Stock. The Prior Preference Stock is to be redeemable at any time at the option of the Company, in whole or in part, at $110 per share, together with all accrued un-

40

paid dividends to the date of redemption, whether or not earned or declared. In the event of liquidation or dissolution of the Company holders of the Prior Preference Stock will be entitled to receive $100 per share and all accrued and unpaid dividends, whether or not earned or declared, before any distribution is made on the Class A Stock or the Common Stock. After such distribution all further amounts distributed will be payable to the holders of the Class A Stock and Common Stock, as hereinafter provided.

An annual Sinking Fund is to be provided for out of the earnings or earned surplus of the New Company sufficient to retire annually five per cent. of the maximum par value of Prior Preference Stock at any time outstanding. Payments to the Sinking Fund are to be made or provided for, if earnings or earned surplus are available, before any dividend payment on the Class A Stock or the Common Stock, but are not to be cumulative. Prior Preference Stock purchased by the New Company and cancelled shall be credited against amounts thereafter due to the sinking fund. Moneys in the sinking fund will be applied to the purchase of Prior Preference Stock at not exceeding $110 per share and accrued unpaid dividends or to the redemption by lot of Prior Preference Stock. All Prior Preference Stock so purchased or redeemed will be retired and cancelled and shall not be reissued.

Provision will be made that, as long as any Prior Preference Stock is outstanding, no funded debt and no stock ranking ahead of or on a parity with the Prior Preference Stock shall be authorized or issued, nor shall the New Com-

pany be a party to any merger or consolidate with any other corporation except in each case upon the affirmative vote of the holders of two-thirds of the then outstanding Prior Preference Stock.

CLASS A PARTICIPATING AND CONVERTIBLE STOCK

After full provision for the dividend for the then current fiscal year and all accrued dividends on the Prior Preference Stock, and for sinking fund requirements for such year, the Class A Stock will be entitled to receive dividends, payable annually, semi-annually or quarterly, if and as declared by the Board of Directors, up to $4 per share per annum, in priority to any payment of dividends on the Common Stock. Such dividends shall be non-cumulative, whether earned or not.

After dividends up to $4 per share per annum have been paid on the Class A Stock in any fiscal year, or provided for, the Class A Stock will be entitled to participate equally with the Common Stock in dividends paid in such year (so that each share of Class A Stock will receive as additional dividends the same amount as paid in dividends on each share of Common Stock) until the Class A Stock shall have received an additional amount of $2 per share.* Provision will be made so that, in case of any issue of additional Common Stock as a stock dividend, the aggregate amount thereafter payable as dividends on the Common Stock shall not, until the Class A Stock shall have received the addi-

* The participating feature is so adjusted that the dividends payable on the stocks offered for each share of preferred stock of the Present Company (including the Class A participating dividend) amount to $8 per year, one per cent. in excess of the dividend rate on the present preferred stock.

tional amount of $2 per share, exceed the amount which would have been so paid if such additional stock had not been so issued.

The Class A Stock will be convertible at any time at the option of the holder into Common Stock, share for share. Stock so converted shall not be reissued.

In case of liquidation or dissolution of the New Company, after payment of $100 a share together with accrued unpaid dividends, on the Prior Preference Stock, two-thirds of all amounts distributable will be distributed among the holders of Class A Stock, provided, however, that, if any Class A Stock is retired, the portion so to be distributed among the holders of the Class A Stock shall be proportionately decreased. The remainder of all amounts so distributable shall be distributed among the holders of Common Stock.

Provision will be made that, so long as any Class A Stock is outstanding, no funded debt and no stock ranking ahead of or on a parity with the Class A Stock shall be authorized or issued, nor shall the New Company be a party to any merger or consolidate with any other corporation except in each case upon the affirmative vote of the holders of two-thirds of the then outstanding Class A Stock.

COMMON STOCK

Subject to the participation rights of the Class A Stock as hereinbefore specified, the Common Stock will be entitled to receive all amounts declared in dividends in any fiscal year after payment of, or provision for, the full dividends and sinking fund on the Prior Preference Stock and a dividend of $4 per share on the Class A Stock for such year.

VII. BOARD OF DIRECTORS AND VOTING POWER OF STOCK

The first Board of Directors shall be named by the Committees, two-thirds of the members thereof by the Preferred Stockholders Committee and one-third of the members thereof by the Common Stockholders Committee.

Successors to the first Board of Directors shall be elected by the stockholders. Provision will be made so that two-thirds of the members of the Board of Directors of the New Company will be elected by the holders of the Prior Preference Stock and Class A Stock, voting together, and the remaining members of the Board will be elected by the holders of the Common Stock, provided, however, that at any election of Directors occurring after Prior Preference Stock to the amount of $10,000,000 par value shall have been retired, if full dividends shall have been paid on the Prior Preference Stock for all quarterly dividend periods ended prior to such election and dividends to the amount of $4 a share shall also have been paid upon the Class A Stock for the fiscal year immediately preceding such election, then the holders of the Common Stock shall have the right to vote share for share with the holders of Prior Preference Stock and Class A Stock for the election of Directors; otherwise the Directors shall be elected as above provided.

In all other respects all classes of stock will have equal voting power, subject to the requirements of law and the provisions of the Certificate of Incorporation of the New Company, as herein provided.

VIII. VOTING TRUSTS

All Prior Preference Stock and Class A Stock of the New Company issuable hereunder will be placed in Voting Trusts under each of which Messrs. Frank Altschul, Gayer G. Dominick and Charles S. Haight will be named as Voting Trustees. Such Voting Trusts will be for a period of ten years or such shorter period as the Preferred Stockholders Committee may determine. The Common Stock of the New Company issuable hereunder will also be placed in a Voting Trust, under which Messrs. Andrew J. Miller, Samuel L. Fuller, and Henry Rogers Winthrop will be named as Voting Trustees. Such Voting Trust will be for a period of ten years or such shorter period as the Common Stockholders Committee may determine.

Any reference to stock or stock certificates of the New Company herein shall, unless the context otherwise requires, be deemed to mean Voting Trust Certificates representing such stock.

IX. SPECIAL PROVISIONS FOR CERTIFICATE OF INCORPORATION OF NEW COMPANY.

Provision shall be made in the certificate of incorporation of the New Company to the following effect, in substance:

1. That the New Company, in the uncontrolled discretion of its Board of Directors, shall have power to sell or otherwise dispose of any of the property of the New Company, which the Board shall deem non-essential for the conduct of the business of the New Company;

2. That the New Company shall not sell or otherwise dispose of, or in any manner liquidate, its entire business and assets, except with the approval of the holders of two-thirds of the outstanding shares of Prior Preference Stock and Class A Stock, taken together, and two-thirds of the outstanding shares of Common Stock; and

3. That the Board of Directors shall have the right, in its uncontrolled discretion, to use surplus funds of the New Company to purchase its securities, in the market or otherwise, for the purpose of cancellation and retirement; provided, however, that no Prior Preference Stock shall be so purchased (except through the sinking fund) so long as any of the First Lien Bonds of the Present Company remain outstanding, and no stock of any class shall be so purchased so long as any stock entitled to priority thereover remains outstanding, except that scrip for stock of any class may be purchased at any time in order to eliminate fractional shares.

X. METHOD OF PARTICIPATION IN PLAN.

Holders of Preferred Stock or Common Stock of the present Company may become entitled to the benefits of the Plan, subject to the provisions thereof, by depositing the certificates for their stock, duly endorsed in blank, or accompanied by transfer powers in blank duly executed, with BANKERS TRUST COMPANY, Depositary, at its office, No. 14 Wall street, New York City, or with Vermeer & Co., Sub-Depositary in Amsterdam, Holland, on or before Nov-

ember 15, 1926, or such later date as the Managers may prescribe. Certificates of deposit will be issued for all stock so deposited. Application will be made to the New York Stock Exchange for listing such certificates of deposit.

XI. DECLARING PLAN OPERATIVE.

It is contemplated that the Plan will not be declared operative unless substantially all outstanding stock of the Present Company, of both classes, is deposited hereunder. The Managers, however, may declare the Plan operative at any time, irrespective of the amount of stock of either class deposited.

XII. CONSTRUCTION, MODIFICATION AND ABANDONMENT OF PLAN.

The Managers and the Committees may construe the Plan and Agreement, and the construction thereof or action thereunder as determined by the Managers and the Committees shall be final and conclusive. The Managers and the Committees may supply any defect or omission or reconcile any inconsistency in such manner and to such extent as may be necessary in their judgment to carry out the Plan effectively.

The Managers shall have full power, with the approval of the Committees and of the Board of Directors of the Present Company, to modify the Plan, whether or not theretofore declared operative. If any such modification shall in the judgment of either Committee adversely affect depositors of the class represented by such Committee, such depositors shall be given an opportunity to withdraw as provided in the Agreement. The Managers shall have full power, with the approval of the Committees, to abandon the Plan at any time.

XIII. MANAGERS.

The Managers will be entitled to exercise all the usual powers of Managers as is more fully provided in the Agreement. The compensation of the Managers and the Committees and their counsel shall be fixed by the Board of Directors of the Present Company. All other compensations payable under the Plan will be fixed by the Managers, and approved by the Board of Directors of the Present Company. All compensations and approved expenses in connection with the readjustment will be paid by the New Company or, if the Plan is not consummated, by the Present Company.

XIV. GENERAL PROVISIONS.

There are annexed hereto, as Exhibit A, a consolidated balance sheet of the Present Company as of June 30, 1926, and, as Exhibit B, a consolidated profit and loss account of the present Company for the year ended December 31, 1925. The valuations to be placed upon the assets of the New Company on its books will be subject to the approval of its Board of Directors.

The statements and estimates contained in the Plan and in the accompanying balance sheet and profit and loss account have been compiled from sources believed to be trustworthy, but no statement, estimate or explanation contained in the Plan or in the Agreement or in any circular or advertisement issued or which may be hereafter issued by the Managers or by either Committee is intended or is to be accepted as a warranty or as a representation or condition of deposit under or assent to the Plan or the Agreement, and no defect or error shall release any deposit under the Plan, or affect or release

any assent thereto or payment made or action taken pursuant thereto, or in any manner subject the Managers or either Committee or any member thereof to any liability, and each depositor becomes such with the understanding as set forth above.

Neither Kuhn, Loeb & Co., nor Bankers Trust Company nor either Committee nor any member thereof nor any member of the firm of Kuhn, Loeb & Co., nor any director of the Present Company shall incur any personal liability for any action taken or suffered hereunder or in connection herewith, except for wilful malfeasance.

Except as otherwise specifically stated, any and all statements respecting the financial position of the New Company and the new stock are for convenience based upon the assumption that all of the stock of the Present Company will become subject hereto and that the New Company will acquire the properties of the Present Company. Such statements do not take into account any adjustments or changes that may be made in the exercise of the various powers conferred by the Plan and Agreement.

EXHIBIT A.

CENTRAL LEATHER COMPANY.

Consolidated Balance Sheet—June 30, 1926.

ASSETS

Property Account including Timber Lands, Railroads, Tannery Plants and plants engaged in Lumber, Glue and other allied Industrial Operations	$22,495,753.08
Investments	6,627,524.32
Sinking Fund—Cash with Trustee	679,703.58

CURRENT ASSETS:		
Inventories:		
Leather in Stores, Lumber and Other Finished Products	$10,496,467.26	
Hides and Leather, Raw and In Process, Bark, Extract and All Other Materials	17,110,619.21	
		$27,607,086.47
Accounts Receivable	3,641,238.17	
Bills Receivable	550,681.30	
Liberty Bonds	24,123.85	
Call Loans	6,050,000.00	
Cash in Banks and On Hand	1,608,642.17	
		39,481,771.96
Deferred Charges to Profit and Loss		1,474,279.76
Deficit		19,647,077.08
		$90,406,109.78

LIABILITIES

CAPITAL STOCK:		
Preferred	$33,299,050.00	
Common	39,701,030.50	
		$73,000,080.50
First Lien Sinking Fund 6% Bonds Issued	15,000,000.00	
Less: Retired through Sinking Fund	1,132,000.00	
		13,868,000.00
CURRENT LIABILITIES:		
Accounts Payable	810,835.58	
Interest Accrued on Bonds	416,040.00	
Discount Accrued on Bond	99,722.91	
		1,326,598.49
RESERVES:		
Fire Insurance	993,722.08	
Marine Insurance	101,290.27	
Liability Insurance	142,040.30	
Miscellaneous	974,378.14	
		2,211,430.79
		$90,406,109.78

EXHIBIT B.

CONSOLIDATED PROFIT AND LOSS ACCOUNT FOR YEAR ENDED DEC. 31ST, 1925

The total earnings of all properties after deducting expenses incident to operations, including those for repairs and maintenance ($1,495,070.37), and taxes amounted to	$6,195,771.36
Less Expenses and Losses of All Companies	3,879,394.77
	$2,316,376.59
Add Income from Investments	231,638.00
	$2,548,014.59
DEDUCT:	
Interest on Bonds	$1,082,938.60
Balance	$1,465,075.99

Note: Operations of the Present Company for the first half of the year 1926 did not show a profit, but the management believes that the remainder of the year will produce more satisfactory results.

Exhibit "E."

CENTRAL LEATHER COMPANY.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS

NOTICE IS HEREBY given that a special meeting of the stockholders of Central Leather Company, a New Jersey corporation, is called on the order of the Board of Directors of said Company, to be held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, New Jersey, on Wednesday, June 22, 1927, at ten o'clock in the forenoon, Eastern Standard Time, for the following purposes:

1. To consider and adopt an Agreement of Merger and Consolidation, dated May

19, 1927, between said Company and the directors thereof, and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of Central Leather Company at a meeting held May 19, 1927;

2. To authorize all action necessary to carry out the provisions of said Agreement; and

3. To transact such other business as may properly come before the meeting.

A copy of said Agreement of Merger and Consolidation, dated May 19, 1927, which provides for the consolidation of Central Leather Company and The United States Leather Company into a new corporation to be known as The United States Leather Company, is on file in the offices of Central Leather Company, No. 15 Exchange Place, Jersey City, New Jersey, and No. 17 Battery Place, New York City, and may be examined there by stockholders during ordinary business hours. A copy of said Agreement will be mailed to any stockholder on request. Enclosed herewith and marked Exhibit A is a copy of the provisions of Articles IV, V and VI of said Agreement containing a description of the several classes of stock of said new corporation, a statement of the capital thereof and a statement of the manner of converting the stock of Central Leather Company and The United States Leather Company into the stock of said new corporation.

The books for the transfer of shares of the preferred stock and of the common stock of Central Leather Company will be closed at the

close of business on Tuesday, May 31, 1927, and unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on Thursday, June 23, 1927.

By order of the Board of Directors.

Jersey City, New Jersey, May 20, 1927.

HIRAM S. BROWN, President. HARRY W. HILL, Secretary.

NOTE: Stockholders who do not expect to attend the meeting in person are requested to date and sign the accompanying proxy in the presence of a witness who should also sign, and return it in the accompanying stamped envelope.

Exhibit "F."

READJUSTMENT OF SHARE CAPITAL OF CENTRAL LEATHER COMPANY.

To Holders of Certificates of Deposit issued under the Plan and Agreement dated October 1, 1926, for the Readjustment of Share Capital of Central Leather Company.

Holders of more than 88% of the Preferred Stock of Central Leather Company and more than 82% of the Common Stock of Central Leather Company have deposited their stock under the Plan and Agreement. A special meeting of stockholders has been called for June 22, 1927, to authorize the consolidation of Central Leather Company with The United States Leather Company, a subsidiary. The new corporation formed by such consolidation, which will be named The United States Leather Company,

will succeed to the assets and assume the liabilities of the existing companies and will issue the stock provided for by the Plan.

The Managers will cause the stock deposited under the Plan to be voted in favor of the consolidation. *No action by depositors is required.*

Upon the consummation of the Plan

(1) holders of Preferred Stock of Central Leather Company deposited thereunder will be entitled to receive in respect of each share so deposited

(a) Voting Trust Certificates for $50 par value (one-half share) of 7% Cumulative Prior Preference Stock of The United States Leather Company, entitled to dividends from July 1, 1926;

(b) Voting Trust Certificates for three-fourths of a share of Class A Participating and Convertible Stock of said Company; and

(c) $5 in cash; and

(2) holders of Common Stock of Central Leather Company deposited thereunder will be entitled to receive in respect of each share so deposited, Voting Trust Certificates for one share of Common Stock of said Company.

Scrip will be delivered in lieu of Voting Trust Certificates for fractional shares. Such scrip, in amounts aggregating one or more full shares, will be exchangeable for Voting Trust Certificates.

Based on the earnings of Central Leather Company for the nine months ended March 31, 1927, the officers of the Company estimate that the earnings for the twelve months ending June 30, 1927 will be more than sufficient to cover full

dividends for the period from July 1, 1926 to June 30, 1927 on the Prior Preference Stock issuable in the readjustment. Mr. Hiram S. Brown, President of the Company, has advised us that it is the expectation of the Company that such dividends will be declared shortly after the consummation of the Plan.

Dated, New York City, May 23, 1927.

KUHN, LOEB & CO.
BANKERS TRUST COMPANY
Managers.

Exhibit "G."

A19384 100 Shares

INCORPORATED UNDER THE LAWS
OF THE STATE OF NEW JERSEY.
AUTHORIZED CAPITAL STOCK
PREFERRED STOCK $40,000,000
COMMON STOCK $40,000,000

CENTRAL LEATHER COMPANY

CERTIFICATE FOR 7% CUMULATIVE
PREFERRED STOCK

THIS CERTIFIES—JOHN WINDHURST—to be entitled to ONE HUNDRED shares full-paid of the par value of one hundred dollars each, of, the Preferred Stock of the CENTRAL LEATHER COMPANY, transferable only on the books of the said Company by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly endorsed. The holders of said Preferred Stock shall be entitled to receive, or to have set apart, out

of the surplus, or net profits of said company as and when declared by its Board of Directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative, on all such Preferred Stock outstanding at the time, which dividend shall be payable yearly, half-yearly or quarterly, as the Board of Directors may from time to time fix and determine, and before any dividend shall be set apart for, or paid on the Common Stock. In case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock, shall receive cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the Common Stock. The rights of the holders hereof are expressly declared and agreed to be subject to the terms and provisions of the Certificate of Incorporation and By-Laws of the said Company and of any amendments of either of them which may hereafter be lawfully made. In Witness Whereof said Company has caused its corporate seal to be hereunto affixed, and this Certificate to be signed by its President, or one of its Vice-Presidents, and by its Treasurer, or one of its Assistant Treasurers.

E. J. SMITH (Signed)
Asst. Treasurer

C. D. HOWARD (Signed)
Vice President.

Countersigned Jun 23 1927

THE EQUITABLE TRUST COMPANY
OF NEW YORK
Transfer Agent

By .....
Asst. Secretary

REGISTERED Jun 24 1927

UNITED STATES MORTGAGE AND
TRUST COMPANY
Registrar,

By .....
ASST. Secretary.

Exhibit "H."

AGREEMENT OF MERGER AND CONSOLIDATION, made and entered into this 19th day of May, 1927, by and between CENTRAL LEATHER COMPANY, a corporation of the State of New Jersey and the Directors thereof, parties of the first part, and THE UNITED STATES LEATHER COMPANY, a corporation of the State of New Jersey and the Directors thereof, parties of the second part.

WHEREAS, the principal and registered office of each of said corporations in the State of New Jersey is at No. 15 Exchange Place, in the City of Jersey City, County of Hudson, and The Corporation Trust Company is the agent therein in charge thereof upon which process against each of said corporations may be served within said State; and

WHEREAS, said Central Leather Company was heretofore incorporated under the laws of the

State of New Jersey, and whereas, under the certificate of incorporation of said corporation, filed in the office of the Secretary of State of the State of New Jersey on April 12, 1905, said corporation has an authorized capital stock of eighty million dollars ($80,000,000), divided into eight hundred thousand (800,000) shares of the par value of one hundred dollars ($100) each, of which four hundred thousand (400,000) shares are seven per cent. (7%) cumulative preferred stock and four hundred thousand (400,000) shares are common stock, and there have been duly issued and are now outstanding certificates for three hundred thirty-two thousand, nine hundred ninety and one-half (332,990.5) shares of said preferred stock and for three hundred ninety-seven thousand, ten and three hundred five thousandths (397,010.305) shares of said common stock; and

WHEREAS, said Central Leather Company has executed its indenture, dated January 1, 1925, to Bankers Trust Company, as Trustee, providing for an issue of its Twenty Year 6% First Lien Sinking Fund Gold Bonds for an aggregate principal amount of not exceeding fifteen million dollars ($15,000,000) at any one time outstanding, of which bonds on April 30, 1927, nine million, three hundred eighty-seven thousand dollars ($9,387,000), principal amount, were outstanding in the hands of the public, three million, thirty-seven thousand dollars ($3,037,000), principal amount, were held in the treasury of said Central Leather Company and two million, five hundred seventy-six thousand dollars ($2,576,000), principal amount, had been retired and cancelled; and

WHEREAS, the certificate of incorporation of said Central Leather Company was amended by certificate filed in the office of the Secretary of State of the State of New Jersey on August 19, 1909; and

WHEREAS, said The United States Leather Company was heretofore incorporated under the laws of the State of New Jersey, and whereas, under the certificate of incorporation of said corporation, filed in the office of the Secretary of State of the State of New Jersey on September 27, 1909, said corporation has an authorized capital stock of one hundred thousand dollars ($100,000), divided into one thousand (1,000) shares of the par value of one hundred dollars ($100) each, all of one class, and there have been duly issued and are now outstanding certificates for all of said shares; and

WHEREAS, said Central Leather Company and said The United States Leather Company were organized for the purpose of carrying on business of the same or a similar nature; and

WHEREAS, the respective boards of directors of said corporations deem it advisable, to the end that greater efficiency and economy of management may be accomplished, and otherwise and generally to the advantage and welfare of said corporations and their several and respective stockholders that said corporations merge and consolidate under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey entitled "An Act concerning corporations (Revision of 1896)" and the several acts supplemental thereto and amendatory thereof;

NOW THEREFORE, in consideration of the premises and of the mutual agreements, cov-

enants, provisions and grants herein contained, it is hereby agreed by and between said parties hereto, and in accordance with said Act of the Legislature of the State of New Jersey and the several acts supplemental thereto and amendatory thereof, that said Central Leather Company and said The United States Leather Company shall be and the same hereby are merged and consolidated into a single corporation which shall be a new corporation under the laws of the State of New Jersey to be formed by means of such merger and consolidation;

And the parties hereto do by these presents agree to and prescribe the terms and conditions of said merger and consolidation, and the mode of carrying the same into effect, the parties hereto do mutually and severally agree and covenant to observe, keep and perform, that is to say:

ARTICLE I.

The name of said new corporation, which is hereinafter referred to as the Company, shall be THE UNITED STATES LEATHER COMPANY.

ARTICLE II.

The objects for which the Company is formed or created shall be the manufacture and sale of leather, lumber and belting, including the acquisition, disposition and use in the manner and to the extent permitted by law, or all necessary and convenient lands, timber, bark, tanneries, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacture and sale of leather, lumber and belting, as aforesaid; and in general, the engagement in any and all lawful business

whatever, which may be deemed necessary or convenient in connection with the business of manufacturing and selling leather, lumber and belting as aforesaid, in the State of New Jersey and in the States of New York, Massachusetts, Maryland, Virginia, West Virginia, Pennsylvania, Tennessee, Georgia, Kentucky, Wisconsin, Maine, Michigan, Washington, California, Oregon, North Carolina, Alabama, Illinois, Indiana and elsewhere within the limits of the United States and Canada and in foreign countries.

And also, to the extent deemed necessary to or convenient in connection with the business of the Company hereinabove mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of the capital stock of any other corporation or corporations created under the laws of this or any other state or country, and to exercise while owner of said stocks, all the rights, powers and privileges including the right to vote thereon, which natural persons being the owners of said stock might, could or would exercise.

And also, to the extent deemed necessary to or convenient in connection with the business of the Company hereinabove mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of any securities or evidences of debt created by any other corporation or corporations of this or any other state or country, in the same manner and to the same extent as natural persons being the owners thereof might, could or would do.

The Company may from time to time conduct its business in other states, and in the territories

and dependencies of the United States, in the District of Columbia and in foreign countries; it may have an office or offices and, except as otherwise required by law, keep its books, in whole or in part, at a point or points outside of the State of New Jersey, and it may hold, purchase, mortgage and convey real and personal property in any state, territory, dependency, District of Columbia, or foreign country.

Without in any particular limiting or restricting any of the other objects and powers of the Company, it is hereby expressly declared and provided that the Company shall also have power to issue bonds and other obligations in payment for property, including shares of stock and other securities, which may be purchased or acquired by it, or for money borrowed, or for any other lawful object in and about its said business; to mortgage or pledge any property which may be owned or acquired by it, or in which it may be interested, to secure any bonds, or other obligations by it issued or incurred; to make and perform contracts of every kind and description; to declare dividends payable in cash or otherwise as may be permitted by law; and in carrying on its said business, or so far as may be necessary or proper for the purpose of attaining or furthering any of its said objects or purposes, to do any and all other things and exercise any and all other powers which now or hereafter may be permitted by law.

ARTICLE III.

The number of the first directors and officers of the Company, shall respectively, be fifteen and seven; and the names and places of residence of such directors and officers, who shall hold their

offices until their successors be chosen or appointed, as provided in Article VII hereof, are as follows:

Names of Directors	Places of Residence
Hiram S. Brown	Rye, N. Y.
Madison J. Beach	Ridgway, Pa.
Charles Einsiedler	Sterling, N. J.
Ernest Griess	Cincinnati, Ohio
Charles S. Haight	New York, N. Y.
W. H. Harkness	New York, N. Y.
O. C. Hoyt	Stamford, Conn.
H. M. Lehman	New York, N. Y.
William McAdoo, Jr.	Fort Washington, Pa.
A. J. Miller	New York, N. Y.
L. W. Perrin	New York, N. Y.
Max J. H. Rossbach	New York, N. Y.
C. S. Sargent, Jr.	New York, N. Y.
Lewis L. Strauss, Jr.	New York, N. Y.
Boylston A. Tompkins	New York, N. Y.

Office	Names of Officers	Places of Residence
President	Hiram S. Brown,	Rye, N. Y.
First Vice-Prest.	W. H. Harkness,	New York, N. Y.
Second Vice-Prest.	William McAdoo, Jr.	Fort Washington, Pa.
Third Vice-Prest.	Madison J. Beach,	Ridgway, Pa.
Fourth Vice-Prest.	Arthur T. Lynch,	New York, N. Y.
Secretary	Harry W. Hill,	New York, N. Y.
Treasurer	Harry W. Hill,	New York, N. Y.

ARTICLE IV.

The authorized capital stock of the Company shall be one million, sixty-three thousand, nine hundred ninety-two (1,063,992) shares, divided into one hundred sixty-six thousand, four hundred ninety-six (166,496) shares of 7% Cumulative Prior Preference Stock of the par value of one hundred dollars ($100) each (hereinafter referred to as the prior preference stock), two hundred forty-nine thousand, seven hundred forty-three (249,743) shares of Class A Participating and Convertible Stock without par value (hereinafter referred to as the class A stock) and six hundred forty-seven thousand, seven hundred fifty-three (647,753) shares of Common Stock without par value (hereinafter referred to as the common stock).

The rights of the holders of the prior preference stock, the class A stock and the common stock, respectively, and a description of said classes of stock, with the terms on which the same are created, shall be as follows:

(a) The holders of the prior preference stock shall be entitled to receive, if and as declared by the board of directors, dividends from the surplus of the Company or from its net profits at the rate of seven per cent. (7%) per annum, and no more, from July 1, 1926, payable quarterly on dates to be fixed by the by-laws of the Company or by resolution of its board of directors. Such dividends shall be paid or declared and set apart for payment before any dividends shall be paid upon, or declared and set apart for, the class A stock or the common stock of the Company, and shall be cumulative, so that if in any quarterly dividend period dividends at the rate of seven per cent. (7%) per annum

shall not have been paid upon, or declared and set apart for, the prior preference stock, the deficiency shall be fully paid or set apart for payment before any dividends shall be paid upon, or declared and set apart for, the class A stock or the common stock of the Company.

(b) The outstanding shares of prior preference stock may be redeemed at any time, in whole or in part, at the option of the board of directors, on not less than thirty (30) days' notice to the holders of record of stock to be redeemed, given by mail and by publication in such manner as may be prescribed by the by-laws of the Company or by resolution of its board of directors, by the payment in cash for each share of stock so to be redeemed of an aggregate amount consisting of one hundred ten per cent. (110%) of the par amount thereof and in addition thereto a sum equal to all dividends accrued and unpaid thereon to the date of redemption, whether or not earned or declared, which aggregate amount is hereinafter called the redemption price. If less than all of the outstanding shares of prior preference stock are to be redeemed, the shares to be redeemed shall be selected by lot, in such manner as the board of directors shall determine. From and after the date fixed in any such notice as the date of redemption (unless default shall be made by the Company in providing moneys for the payment of the redemption price) all dividends on the shares of prior preference stock so called for redemption shall cease to accrue, and all rights of the holders thereof as stockholders of the Company, except the right to receive the redemption price upon surrender of the certificates for the stock so redeemed, shall cease and determine. At any

time after notice of redemption has been mailed to the holders of prior preference stock called for redemption, the Company may deposit the redemption price of all outstanding prior preference stock to be redeemed with any bank or trust company in the City of New York, named in such notice, for the *pro rata* benefit of the holders of said stock, and upon such deposit the holders of said stock shall cease to be stockholders with respect to said stock and shall have no interest in or claim against the Company with respect to said stock, but shall be entitled only to receive their *pro rata* share of the moneys so deposited, without interest, upon surrender of the certificates for the stock so redeemed. Any moneys unclaimed at the end of six years from the date of any such deposit shall be repaid to the Company.

(c) In the event of liquidation or dissolution of the Company, whether voluntary or involuntary, the holders of the prior preference stock then outstanding shall be entitled to receive out of the assets of the Company the par value of their respective shares and an amount equal to the dividends accrued and unpaid thereon to the date of distribution, whether or not earned or declared, before any distribution shall be made to the holders of the class A stock or of the common stock of the Company. After such distribution to the holders of the prior preference stock, all further amounts distributable to the stockholders of the Company shall be divided among the holders of the class A stock and the common stock in the manner hereinafter provided. If the assets of the Company available for distribution to its stockholders shall not be sufficient to permit the payment in full

of the sums payable as aforesaid to the holders of the prior preference stock upon any such liquidation or dissolution, then all such assets of the Company shall be distributed ratably among the holders of prior preference stock according to the amounts which they respectively would be entitled to receive, if such assets available for distribution as aforesaid were sufficient to permit the payment in full of said sums.

(d) Within three months after the end of each fiscal year the Company shall, subject to the provisions of this subdivision (d), out of the net profits of the Company for such fiscal year remaining after deducting therefrom the amount required to pay full cumulative dividends upon the prior preference stock for such fiscal year, set aside as a sinking fund for the purchase or redemption of the prior preference stock a sum which shall be sufficient to retire at the redemption price thereof, five per cent. (5%) of the maximum par value of said stock at any time outstanding. In the event that the net profits for such fiscal year, after deduction as above provided, do not equal such sum, then the Company shall set aside as such sinking fund the total net profits for such fiscal year remaining after such deduction and, in addition, the board of directors, in its uncontrolled discretion, may set aside, as a part of such sinking fund, out of the earned surplus of the Company at the end of such fiscal year such further sum, if any, up to the maximum amount hereinabove specified, as it may deem advisable. No dividends shall be paid or declared on the class A stock or on the common stock in any fiscal year, unless there shall have been set aside for such sinking fund such part of the maximum sinking

fund payment to be made hereunder out of the net profits of such fiscal year as is proportionate to the portion of such fiscal year elapsed prior to the date fixed for the payment of such dividend. The obligation of the Company to make payments to said sinking fund shall not be cumulative, so that if the profits for any fiscal year shall not be sufficient to permit the setting aside for such fund of a sum sufficient to retire said percentage of prior preference stock, the Company shall not be required to make up the deficiency from the profits of the succeeding year or years or otherwise. The sum or sums set aside for the sinking fund in each year shall be applied, as promptly as in the judgment of the board of directors may be practicable, to the purchase of prior preference stock at public or private sale (or, if any of the prior preference stock shall be deposited under a voting trust agreement, under which voting trust certificates may be surrendered by the Company in exchange for prior preference stock, to the purchase of voting trust certificates issued under such voting trust agreement) at not exceeding the redemption price of the prior preference stock; and if and to the extent that the same can not be so applied within four months from the date when the same shall have been so set aside, it shall thereafter be applied to the redemption of said stock by lot at the earliest date permitted by this Agreement and not inconsistent with any regulations of the New York Stock Exchange. Shares of prior preference stock purchased by the Company otherwise than by the operation of the sinking fund and cancelled shall be credited, at one hundred ten dollars ($110) per share,

against the earliest sinking fund payment or payments due thereafter.

In case the Company shall begin business on any day other than the first day of its fiscal year, the provisions of this subdivision (d) shall apply to the net profits of the remainder of the fiscal year in which the Company begins business, but the maximum sinking fund requirement for such fiscal year shall be the same proportion of the maximum annual sinking fund requirement that the number of days between the date when the Company begins business and the end of such fiscal year is of 365.

Shares of the prior preference stock redeemed or purchased under any provisions of this Agreement shall be retired by resolution of the board of directors of the Company and shall not be reissued and no stock shall be issued in lieu thereof or in exchange therefor, and the authorized amount of prior preference stock shall be deemed to be reduced to the extent of the shares so retired. In every case of redemption the Company shall make compliance with the requirements of the laws of the State of New Jersey in such case provided. Any voting trust certificates in respect of prior preference stock purchased under any provisions of this Agreement shall forthwith be surrendered to the voting trustees who issued the same, in exchange for prior preference stock, and such prior preference stock shall be deemed to have been purchased hereunder.

(e) So long as any shares of the prior preference stock shall be outstanding, no funded debt and no stock ranking ahead of or on a parity with said stock shall be authorized or issued, nor shall the Company be a party to any merger or

consolidation with any other corporation, except in each case upon the affirmative vote, assent or consent of the holders of record of not less than two-thirds of the then outstanding shares of prior preference stock.

(f) After full cumulative dividends as aforesaid upon the prior preference stock for all past dividend periods shall have been paid or declared and set apart for payment, and after making payment of or provision for full dividends on such stock for the then current fiscal year, and after the Company shall have complied with the foregoing requirements in respect of any and all amounts then required to be set aside in respect of the prior preference stock sinking fund for each year, the holders of the class A stock shall, subject to the provisions of Article VI hereof, be entitled to receive or to have set apart for payment, from the remaining surplus or from the remaining net profits of the Company, if and as declared by the Board of Directors, preferential dividends up to but not exceeding four dollars ($4) per share per annum (or at that annual rate for any fiscal period of less than twelve months), payable annually, semi-annually or quarterly as may be determined by said board, before any dividends shall be paid upon or declared and set apart for the common stock in such fiscal year. Such preferential dividends on the class A stock (hereinafter called class A preferential dividends) shall be non-cumulative, whether earned or not earned; that is to say, the holders of said stock shall be entitled to receive such dividends thereon in any fiscal year only to the extent declared by the board of directors, and if in any fiscal year dividends aggregating four dol-

lars ($4) per share shall not be paid upon or declared and set apart for the class A stock, the deficiency shall not be made up in the succeeding year or years whether or not such dividends shall have been earned in such fiscal year, and whether or not the Company shall have any remaining surplus or net profits in such year.

(g) Subject to the provisions of the foregoing subdivisions (a) and (d), after class A preferential dividends up to four dollars ($4) per share per annum shall have been paid on the class A stock in any fiscal year, or declared and set apart for payment in such fiscal year, the holders of the class A stock shall be entitled to participate equally with the holders of the common stock in all further dividends paid in such year (so that each share of class A stock shall receive, in addition to the class A preferential dividend, the same amount as shall be paid in dividends on each share of common stock) until the total dividends paid in any fiscal year on the class A stock, or declared and set apart for payment in such fiscal year, inclusive of the class A preferential dividend, shall equal six dollars ($6) per share, and thereafter such stock shall have no right to participate in any further dividends paid in such year. In the event of any issue to the holders of common stock of additional common stock as a stock dividend, or of any subdivision of the outstanding common stock into a greater number of shares, the aggregate amount thereafter payable as dividends on the common stock in any fiscal year shall not, until the class A stock shall have received the additional amount of two dollars ($2) per share in such fiscal year as pro-

vided in this subdivision (g), exceed the amount which would have been payable on the common stock under the foregoing provisions of this subdivision (g) if such additional stock had not been so issued or the outstanding stock had not been so subdivided. Whenever the dividends on the class A stock paid in any fiscal year, or declared and set apart for payment in such fiscal year, aggregate six dollars ($6) per share, any additional amounts distributed in dividends in such fiscal year shall be distributed among the holders of the common stock.

(h) Any holder of the class A stock, at his option and at any time, may exchange all or any of the shares of said stock held by him for shares of the common stock of the Company, share for share (such shares of common stock to be full-paid and non-assessable), by surrender to the Company of the certificate or certificates representing the class A stock so to be exchanged and upon such surrender shall be entitled to receive in lieu thereof one or more certificates for a like aggregate number of shares of the common stock of the Company; provided, however, that no shares of common stock shall be required to be so issued while the transfer books of the Company are closed for any purpose. In the event of the declaration by the Company of a dividend on its common stock, payable in stock of the Company of any class, or in the event of any subdivision of the outstanding common stock into a greater number of shares, the Company shall give notice of the declaration of such dividend or of such subdivision by publication once a week for two successive calendar weeks (in each instance on any day of the week) in a daily newspaper pub-

lished and of general circulation in the Borough of Manhattan, City and State of New York, the date of the last publication to be at least fourteen days prior to the date fixed for closing the transfer books or for taking a record of stockholders for the purpose of such dividend or of such subdivision, and by mailing a copy of such notice, at least fourteen days prior to the closing of the transfer books or such record date, to each holder of record of class A stock at his last address as it appears on the books of the Company. Shares of the class A stock so surrendered shall be retired and shall not be reissued, and (except as aforesaid) no stock shall be issued in lieu thereof or in exchange therefor, and the authorized amount of class A stock shall be deemed to be reduced to the extent of the shares so surrendered. So long as any of the class A stock is outstanding there shall be reserved unissued, out of the number of shares of common stock which the Company is authorized to issue, such number of shares as the holders of the Class A stock are entitled to receive under the provisions of this paragraph (h).

(i) In the event of liquidation or dissolution [or winding up] of the Company, whether voluntary or involuntary, after payment of one hundred dollars ($100) per share together with accrued and unpaid dividends on the prior preference stock, two-thirds of all further amounts distributable shall be distributed *pro rata* among the holders of the class A stock; provided, however, that if at the time of such liquidation or dissolution the number of shares of class A stock outstanding shall be less than two hundred forty-nine thousand, seven hundred forty-three (249,743), each holder of class A stock

shall be entitled to receive in respect of each share of said stock then held by him, such portion, and such portion only, of two-thirds of the assets so distributable as shall be obtained by dividing said two-thirds by two hundred forty-nine thousand, seven hundred forty-three (249,-743); and the holders of the common stock shall be entitled to receive, in proportion to the number of shares of common stock held by them respectively, all the remaining assets of the Company available for distribution to its stockholders.

(j) So long as any shares of the class A stock shall be outstanding, no funded debt and no stock ranking ahead of or on a parity with said stock shall be authorized or issued, nor shall the Company be a party to any merger or consolidation with any other corporation, except in each case upon the affirmative vote, assent or consent of the holders of record of at least two-thirds of the then outstanding shares of class A stock.

(k) Subject to the requirements of the laws of the State of New Jersey and the provisions of this Agreement, the holders of the prior preference stock, of the class A stock and of the common stock shall have equal voting powers, except as follows:

At each election of directors the holders of the prior preference stock and of the class A stock, voting together share for share, shall have the right to elect two-thirds of the members of the board of directors of the Company; and the holders of the common stock shall have the right to elect the remaining members of the board of directors, provided, however, that at any election of directors occurring after prior

preference stock to the amount of ten million dollars ($10,000,000) par value shall have been retired, if full dividends shall have been paid on the prior preference stock for all quarterly dividend periods ended prior to such election and dividends to the amount of four dollars ($4) per share shall also have been paid upon the class A stock in the fiscal year immediately preceding such election, then the holders of the common stock shall have the right to vote for the election of all directors, share for share with the holders of the prior preference stock and the class A stock; otherwise the directors shall be elected as above provided.

(l) "Dividends accrued and unpaid" or "accrued and unpaid dividends," whenever used in this Agreement shall be deemed to mean, with respect to any of the prior preference stock, that amount which shall be equal to seven per cent. (7%) per annum upon the par amount of such stock from July 1, 1926, to date, less the aggregate amount of all dividends paid upon such shares.

(m) For all purposes of this Article IV, the net profits and surplus of the Company shall be determined in accordance with good accounting practice, and, so far as permitted by law, shall be determined on the basis of a consolidated balance sheet and consolidated income account (eliminating intercompany items) of the Company and all corporations, at least ninety per cent. of the capital stock of which, except directors' qualifying shares, is owned by the Company and/or owned by any other corporation, at least ninety per cent. of the capital stock of which, except directors' qualifying shares, is owned by the Company.

ARTICLE V.

The manner of converting the capital stock of each of the said merging and consolidating corporations into the capital stock of the Company shall be as follows:

One thousand (1,000) full-paid and non-assessable shares of the common stock of the Company shall be apportioned among and issued to the stockholders of The United States Leather Company, one of the parties hereto of the second part, as hereinafter provided.

One hundred sixty-six thousand, four hundred ninety-five and a quarter (166,495.25) full-paid and non-assessable shares of the prior preference stock, two hundred forty-nine thousand, seven hundred forty-three (249,743) full-paid and non-assessable shares of the class A stock and three hundred ninety-seven thousand, ten (397,010) full-paid and non-assessable shares of the common stock of the Company and the sum of one million, six hundred sixty-four thousand, nine hundred fifty-two and fifty hundredths dollars ($1,664,952.50) in cash shall be apportioned among and issued or paid to the stockholders of Central Leather Company, one of the parties hereto of the first part, as hereinafter provided.

Each share of stock of said The United States Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into one share of common stock of the Company, and stockholders of said The United States Leather Company, upon surrender of certificates for said stock, shall be entitled to receive one or more certificates for a like number of shares of common stock of the Company.

Each share of preferred stock of Central Leather Company shall forthwith upon the filing of this Agreement as required by law, be con-

verted into one-half share of the prior preference stock of the Company and three-fourths of a share of the class A stock of the Company, and each holder of such preferred stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him (a) fifty dollars ($50) par value (one-half share) of the prior preference stock of the Company, (b) three-quarters of a share of the class A stock of the Company, and (c) five dollars ($5) in cash.

Each share of common stock of Central Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into a share of the common stock of the Company and each holder of such common stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him one share of the common stock of the Company.

Upon the exchange hereinabove provided for certificates for fractional shares shall not be issued, but in lieu thereof there shall be issued to each stockholder a scrip certificate representing the fraction, if any, of a share of prior preference stock over and above the number of whole shares of said stock to which he is entitled and a scrip certificate representing the fraction, if any, of a share of class A stock over and above the number of whole shares of said stock to which he is entitled. Such scrip certificates shall be transferable by delivery and shall not bear dividends, and upon surrender of the same, on or before January 1, 1930, with other scrip certificates of like import, together representing

one or more full shares of the same class, the holder shall be entitled to receive a certificate or certificates for the number of full shares which such scrip certificates so surrendered shall aggregate. Holders of scrip certificates shall not be entitled to receive any dividends payable prior to the surrender thereof as aforesaid, and any scrip certificates not so surrendered on or before January 1, 1930, shall be void.

If the Company shall acquire, by purchase or in any other manner (other than by the surrender thereof as herein provided), any of the stock of Central Leather Company or of The United States Leather Company, such stock shall forthwith be canceled, and the board of directors of the Company may sell or otherwise dispose of the stock of the Company issuable in exchange therefore hereunder to such person or persons, corporation or corporations, and on such terms, as said board in its uncontrolled discretion may determine.

ARTICLE VI.

The capital of the Company at the date of the filing of this Agreement shall be an amount equal to the aggregate of one hundred dollars ($100) for each share of prior preference stock issuable hereunder, thirty-one and eighty-hundredths dollars ($31.80) for each share of class A stock issuable hereunder, and ten dollars ($10) for each share of common stock issuable hereunder (other than common stock issuable in conversion of class A stock). Any amount by which the value of the assets acquired by the Company hereunder, as determined by the board of directors of the Company, after deducting the payments to be made hereunder to

holders of preferred stock of Central Leather Company, exceeds the sum of (a) said capital, (b) all liabilities assumed by the Company hereunder and (c) any reserves set up by the board of directors of the Company, shall be surplus of the Company, available for the payment of dividends on the prior preference stock or, subject to the provisions of paragraph (d) of Article VIII hereof, for any corporate purpose other than the payment of dividends on the class A stock or the common stock.

ARTICLE VII.

Subject to the requirements of law and the provisions of Article IV and Article VIII of this Agreement, the directors of the Company and the officers thereof shall be chosen or appointed in the manner and at the time or times prescribed by the by-laws of the Company.

ARTICLE VIII.

(a) The number of directors of the Company shall be fixed by the by-laws thereof and may be increased or decreased by amending the by-laws as therein and as hereinafter in this Article VIII provided; provided, however, that so long as the holders of the prior preference stock and the class A stock are entitled to elect two-thirds of the number of directors, such number shall at all times be a multiple of three. If a vacancy or vacancies shall be created by any increase in the number of directors of the Company, or otherwise, such vacancy or vacancies may be filled by the affirmative vote of a majority of the directors then in office; provided, however, that so long as the holders of the prior preference stock and the class A stock are entitled to elect two-thirds of the directors (1) the succes-

sor to any director elected by the holders of the prior preference stock and the class A stock and two-thirds of the number of additional directors necessary to fill vacancies resulting from any increase in the number of directors shall be elected by the affirmative vote of a majority of the directors so elected then in office, and (2) the successor to any director elected by the holders of the common stock and one-third of the number of directors necessary to fill vacancies resulting from any increase in the number of directors, shall be elected by the affirmative vote of a majority of the directors so elected then in office. The person or persons elected to fill vacancies as aforesaid shall hold office for the unexpired portion of the term of the other directors then in office and until his successor or their successors shall be elected in accordance with the provisions of Article VII of this Agreement.

(b) In the event of any decrease in the number of the directors, the decrease in the number of directors elected by the holders of the prior preference stock and the class A stock, so long as the holders of said stocks shall be entitled to elect two-thirds of the directors, shall be twice the decrease in the number of directors elected by the holders of the common stock.

(c) The board of directors shall have power to make by-laws for the Company, not inconsistent with this Agreement, and from time to time to amend, alter or repeal the same, in whole or in part; but any and all by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting without previous notice, or at any special meeting, provided that notice of the substance of such

proposed alteration or repeal be given in the notice of such meeting. Until such time as the board of directors shall make and adopt by-laws for the Company, the by-laws thereof shall be the present by-laws of Central Leather Company, one of the parties hereto of the first part, except so far as such by-laws are inconsistent with the provisions of this Agreement.

(d) The board of directors shall have power in its discretion from time to time to fix and vary the amount of the working capital of the Company; subject to the provisions of this Agreement, to determine what, if any, dividends shall be declared and paid to stockholders out of the surplus of the Company or out of its net profits; except as otherwise expressly provided by this Agreement, to determine the time or times for the declaration and payment of dividends; to direct and determine, subject to the provisions of this Agreement, the use and disposition of any surplus or net profits over and above the capital paid in; and in its uncontrolled discretion to use or apply any surplus funds of the Company to purchase its bonds, stock or other securities, in the market or otherwise, for the purposes of cancellation and retirement; provided, however, that no prior preference stock shall be so purchased, except through the sinking fund above provided for, or in anticipation of a sinking fund payment due not more than one year after such purchase, so long as any of the Twenty Year 6% First Lien Sinking Fund Gold Bonds of Central Leather Company, one of the parties hereto of the first part, shall remain outstanding, and no stock of any class shall be so purchased so long as any stock entitled to priority thereover as to divi-

dends or assets shall remain outstanding, except that scrip certificates in respect of stock of any class may be purchased at any time in order to eliminate fractional shares.

(e) Subject to the provisions of this Agreement, the board of directors of the Company may, in its discretion, submit any proposal for the purchase or sale of property, the sale, exchange, encumbrance or other disposition of shares of stocks, bonds or other obligations belonging to or issued by the Company, or of any other securities in which it is interested, or for the borrowing of money for the Company, for authorization, approval or ratification by the stockholders at any annual meeting or at any special meeting called for the purpose of considering any such proposal; and except as otherwise provided by this Agreement or by law any contract or act in connection therewith which shall be authorized, approved or ratified by the vote of the holders of a majority of the shares of the capital stock of the Company then outstanding which shall be represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the Company and upon all the stockholders as if the same had been authorized, approved and ratified by each and every stockholder of the Company.

(f) The board of directors of the Company shall have power, in its uncontrolled discretion and without any action by stockholders, to sell or otherwise dispose of any of the property of the Company which the board of directors shall deem non-essential for the conduct of the business of the Company.

(g) The board of directors of the Company shall have power to sell, convey or otherwise dispose of, or in any manner to liquidate, all, or substantially all, the property, rights and franchises of the Company, as an entirety, upon such terms and conditions and for such considerations, whether in cash, stocks, bonds or other property, as the board of directors may in its discretion determine; provided, however, that no such sale, disposition or liquidation shall be made except with the approval of the holders of prior preference stock and class A stock, taken together, and not less than two-thirds of the then outstanding shares of the common stock (such approval to be expressed or given either in writing or by vote at a meeting of the stockholders called for that purpose or in any other manner required or permitted by law as now or hereafter enacted).

(h) Any officer elected or appointed by the board of directors of the Company may be removed at any time, with or without cause, by the affirmative vote of the majority of the whole board of directors. Any other officer or employee may be removed at any time, with or without cause, by the vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by a vote of the board of directors.

The board of directors may by resolution appoint, from time to time, an executive committee from among the members of the board, which committee, subject to the provisions of this Agreement and the by-laws, may exercise the powers of the directors in the management of the business, affairs and property of the Com-

pany during the intervals between the meetings of the directors, including the power to cause the seal of the Company to be affixed to documents and papers. A majority of said committee shall constitute a quorum thereof.

The board of directors may appoint any other standing committees, and such standing committees shall have and may exercise such powers as may be conferred and authorized by the by-laws or by the board of directors.

The board of directors may from time to time appoint, not only other officers of the Company, but also one or more vice-presidents, one or more assistant treasurers and one or more assistant secretaries; and to the extent provided by the by-laws or by the board of directors, the persons so appointed, respectively, shall have and may exercise all the powers of the president, of the treasurer and of the secretary, respectively.

The board of directors from time to time shall determine whether, and to what extent, and at what times and places, and under what conditions and regulations, the accounts and books of the Company, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the Company, except as conferred by statute or as authorized by the board of directors.

The board of directors may hold its meetings outside the State of New Jersey at such place or places as may from time to time be designated by resolution of the board.

Any meeting or meetings of the stockholders of the Company may be held at the office of the Company in the Borough of Manhattan, City and State of New York.

ARTICLE IX.

The Company shall pay all expenses of merger and consolidation.

ARTICLE X.

The Company shall have perpetual existence.

ARTICLE XI.

Upon the consummation of the act of merger and consolidation herein agreed upon, all and singular, the rights, privileges, powers and franchises of each of said corporations parties hereto, and all property, real, personal and mixed, and all debts due on whatever account, as well for stock subscriptions as all other things in action or belonging to each of said corporations, shall be vested in the Company; and all property, rights, privileges, powers and franchises and all and every other interest shall be thereafter as effectually the property of the Company as they were of the several respective former corporations, and the title to any real estate, whether by deed or otherwise, under the laws of the State of New Jersey, vested in either of said corporations, shall not revert or be in any way impaired by reason of the said merger and consolidation; and each of the said parties hereto agrees from time to time as and when requested by the Company or its successors or assigns, to execute and deliver or cause to be executed and delivered all such deeds and other instruments, and to take or cause to be taken such further and other action as may be necessary or desirable in order to vest in and confirm to the Company title to and possession of said property, and otherwise to carry out the intent and purpose of this Agreement, provided, that all rights of creditors and all liens upon the prop-

erty of either of said corporations, parties hereto, shall be preserved unimpaired, and said corporations may be deemed to continue in existence, in order to preserve the same; and all debts, liabilities and duties of either of said corporations shall after such consummation attach to the Company and may be enforced against it to the same extent as if said debts, duties or liabilities had been contracted by it.

The Company expressly assumes the due and punctual payment of the principal of and interest on all of the Twenty Year 6% First Lien Sinking Fund Gold Bonds of Central Leather Company, and agrees to perform all the covenants and conditions of the Trust Indenture, dated January 1, 1925, between Central Leather Company and Bankers Trust Company, as Trustee, under which such Bonds are issued.

ARTICLE XII.

The principal and registered office of the Company in the State of New Jersey is at No. 15 Exchange Place, in the City of Jersey City, County of Hudson, and The Corporation Trust Company is the agent therein in charge thereof, upon which process against the Company in the State of New Jersey may be served.

In Witness Whereof said parties to this Agreement have, pursuant to resolutions passed by the respective boards of directors of said corporations at meetings thereof duly and legally held, at which a quorum was present, caused these presents to be signed by the respective Presidents or Vice-Presidents of said corporations and their respective corporate seals to be hereunto affixed attested by their respective Secretaries or Assistant Secretaries, all thereunto

duly authorized, and a majority of the directors of each of said corporations have hereunto set their hands and seals, all as of the day and year first above mentioned.

FOR CENTRAL LEATHER COMPANY

H. S. Brown
President.

(Corporate Seal)

Attest:

H. W. Hill,
Secretary.

H. S. Brown	(L.S.)
D. G. Ong	(L.S.)
Ernest Griess	(L.S.)
Oliver C. Hoyt	(L.S.)
A. T. Lynch	(L.S.)
Wm. H. Harkness	(L.S.)
C. S. Sargent, Jr.	(L.S.)
Chas. Einsiedler	(L.S.)
Max J. H. Rossbach	(L.S.)
E. H. Amory	(L.S.)
Wm. McAdoo, Jr.	(L.S.)

Being a majority of the directors of Central Leather Company.

Signed, sealed and delivered in the presence of

Irving S. Olds
Leonard D. Adkins

FOR THE UNITED STATES LEATHER COMPANY

H. S. Brown,
President.

(Corporate Seal)

Attest:
H. W. Hill
Secretary.

H. S. Brown	(L.S.)
Roland H. Zinn	(L.S.)
E. H. Amory	(L.S.)
Wm. H. Harkness	(L.S.)
Wm. McAdoo, Jr.	(L.S.)
A. T. Lynch	(L.S.)
E. G. G. Brooker	(L.S.)
Harry W. Hill	(L.S.)

Being a majority of the directors of The United States Leather Company.

Signed, sealed and delivered in the presence of
H. A. Ketcham
Robert W. Wesley

Exhibit "I."

Readjustment of Share Capital of

CENTRAL LEATHER COMPANY

Under Plan and Agreement dated October 1, 1926.

To holders of Certificates of Deposit of Bankers Trust Company for Preferred Stock and Common Stock of Central Leather Company.

Holders of Certificates of Deposit of Bankers Trust Company for Preferred Stock and Common Stock of Central Leather Company may surrender their Certificates of Deposit on and after July 5, 1927 at the office of Bankers Trust

Company, No. 16 Wall Street, New York City, in exchange for Voting Trust Certificates for the stock of The United States Leather Company issuable in respect thereof, pursuant to said Plan and Agreement.

Holders of Certificates of Deposit for Preferred Stock will be entitled to receive for each share of stock represented by such Certificates of Deposit:

Voting Trust Certificates for fifty dollars ($50) par value (one-half share) of the 7% Cumulative Prior Preference Stock of The United States Leather Company;

Voting Trust Certificates for three-fourths of a share of the Class A Participating and Convertible Stock of The United States Leather Company; and

Five dollars ($5) in cash.

Voting Trust Scrip Certificates will be delivered in lieu of Voting Trust Certificates in respect of fractional shares.

Holders of Certificates of Deposit for Common Stock of Central Leather Company will be entitled to receive for each share represented by such certificates a Voting Trust Certificate for one share of Common Stock of The United States Leather Company.

Certificates of Deposit surrendered must be endorsed in blank or accompanied by assignments and transfers in blank, duly executed, and must also be accompanied by a letter of transmittal addressed to the Depositary and signed by the registered holder of the Certificate of Deposit. A copy of the form of such letter of transmittal is sent to you herewith and additional copies may

be obtained from the Depositary, No. 16 Wall Street, New York City.

If Voting Trust Certificates are to be issued in a name other than the name in which the surrendered Certificates of Deposit are registered the assignment must be guaranteed by a firm which is a member of the New York Stock Exchange or a bank or trust company in New York City or having a New York correspondent and must be accompanied by any papers required to place the surrendered certificates in transferable form, together with funds to cover New York State and Federal transfer taxes at the rate of four cents (4c.) in respect of each share or fraction thereof of new securities to be delivered.

The Board of Directors of The United States Leather Company has declared a dividend of 7% on the Prior Preference Stock of that Company, payable August 1, 1927, to stockholders of record at the close of business on July 15, 1927. Holders of Certificates of Deposit are urged to surrender their certificates promptly for exchange in order that they may receive said dividend without delay.

Dated, New York, June 29, 1927.

Kuhn, Loeb & Co. Bankers Trust Company.
Managers.

AFFIDAVITS ANNEXED TO BILL OF COMPLAINT.

IN CHANCERY OF NEW JERSEY.

JOHN WINDHURST,
Complainant,
against
CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.*,
Defendants.

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.*

JOHN WINDHURST, being duly sworn, according to law, deposes and says on his oath:

1.

That he is the complainant herein and resides at Union City, New Jersey, and is the owner and holder of six hundred (600) shares of the preferred stock of Central Leather Company and was such owner on and prior to the 22nd day of June, 1927. That said 600 shares of stock were on said 22nd day of June, 1927, represented by certificates numbered as follows, which were registered on the books of the Company in the name of CHARLES A. EDWARDS from whom deponent had purchased such stock prior to said 22nd day of June, 1927 for good and valuable consideration:

Certificate	No.	A 12414	for	100	shares
"	"	A 12415	"	"	"
"	"	A 12416	"	"	"
"	"	A 12417	"	"	"
"	"	A 12418	"	"	"
"	"	A 12419	"	"	"

That prior to the said 22nd day of June, 1927 deponent had caused the said 600 shares of preferred stock to be duly presented to the Central Leather Company at its office for the transfer of said stock to his name, and the same was denied and refused. That upon the refusal of the said Central Leather Company to transfer the said stock to deponent's name, he caused the said Charles A. Edwards to grant to Charles Hallett White a proxy authorizing the said White to attend a special meeting of stockholders of said company called to be held at the principal office of the company, 15 Exchange Place, Jersey City, New Jersey, on the 22nd day of June, 1927, for the purpose of considering and adopting an Agreement of Merger and Consolidation, dated May 19, 1927, between the Central Leather Company and the directors thereof and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of the Central Leather Company at a meeting held May 19, 1927, (2) to authorize all action necessary to carry out the provisions of said agreement, and (3) to transact such other business as may properly come before the meeting.

That deponent requested the said White to attend the aforesaid stockholders meeting on the 22nd day of June 1927 and protest at and dissent

to the adoption of the proposed Agreement of Merger and Consolidation.

That immediately after the said stockholders meeting of June 22, 1927, deponent again caused the said certificates for 600 shares of preferred stock to be presented to the company for transfer, and thereafter there were issued to deponent in the place and stead of the certificates so surrendered the following certificates, aggregating 600 shares:

Certificate	No.	A 19381	for	100	shares
"	"	A 19382	"	"	"
"	"	A 19383	"	"	"
"	"	A 19384	"	"	"
"	"	A 19385	"	"	"
"	"	A 19386	"	"	"

2.

That deponent has examined the published balance sheet of the Central Leather Company dated June 30, 1926, from which it appears that the Central Leather Company has carried on the business for which it was organized with profit and advantage and has acquired a large amount of real estate and personal property to the benefit and advantage of its preferred stockholders.

3.

That on the first day of October, 1926, a circular was issued to the stockholders of the Central Leather Company by a Committee purporting to represent the holders of preferred stock, a committee purporting to represent the holders of common stock of said company, and Kuhn, Loeb & Co. and Bankers Trust Company of New York, Managers presenting a "Plan for Read-

justment of Share Capital'' of the said Central Leather Company, under which plan it was proposed to organize a new corporation under the laws of such state as the Managers and the Committees of stockholders might approve, to acquire by purchase, consolidation or otherwise the properties or stock of the Central Leather Company, or if the managers so determined the Central Leather Company or some other existing corporation, might be utilized as the New Company. The New Company was to issue its stock in lieu of or in exchange for the stock of the Central Leather Company, as hereinafter shown, and if the properties of the Central Leather Company were acquired, to assume the First Lien Bonds and other indebtedness of the Central Leather Company.

Assuming the exchange of the entire stock of the Central Leather Company and the acquisition by the New Company of the properties of the Central Leather Company, the capitalization of the New Company was contemplated as follows:

Twenty-Year First Lien Sinking Fund Six Per Cent Bonds, maturing January 1, 1945	$13,868,000
7% Cumulative Prior Preference Stock	$16,649,525
Class A Participating and Convertible Stock without par value (Preferred Dividend $4 non-cumulative)	249,743 shares
Common stock, without par value	397,010 shares

Under the said Plan holders of the preferred stock of the Central Leather Company were to receive for each share of preferred stock

$5 in cash

$50 par value (1-½ share) 7% Cumulative Prior Preference Stock of the New Company.

¾ of a share of Class A Participating and Convertible stock of the New Company.

The holders of the common stock were to receive for each share of common stock of the Central Leather Company one share of common stock of the New Company.

The said Plan contained in detail a description of the various classes of stock therein proposed.

The said Plan also provided that all Prior Preference stock and Class A stock of the New Company would be placed in Voting Trusts under each of which Messrs. Frank Altschul, Gayer G. Dominick and Charles S. Haight would be named as Voting Trustees. Such Voting Trusts to be for a period of ten years or such shorter period as the Preferred Stockholders' Committee might determine and that the common stock of the New Company would be placed in a Voting Trust under which Messrs. Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop would be named as trustees. Such Voting Trust to be for a period of ten years, or such shorter period as the Common Stockholders' Committee might determine.

4.

That Kuhn, Loeb & Co. and Banker Trust Company of New York, the reorganization managers under the Plan aforesaid caused to be mailed to the stockholders of Central Leather

Company, a circular, dated May 23, 1927, from which it appears that the holders of a large number of the shares of the stock of Central Leather Company, both preferred and common, accepted said Plan and became parties thereto by depositing their stock thereunder so that on the 23rd day of May, 1927 holders of more than 88% of the preferred stock and 82% of the common stock had deposited their stock under the said Plan, authorized the Managers to carry the Plan into practical operation and given to the Managers the right and proxy to vote the stock so deposited at any stockholders' meeting. That by said circular, the Managers gave notice to the holders of certificates of deposit for stock deposited under the Plan for Readjustment of Share Capital of Central Leather Company above referred to, that the Managers would cause the stock so deposited under the Plan to be voted in favor of the Merger and Consolidation of the Central Leather Company and The United States Leather Company above referred to.

5.

That from the published statements of Central Leather Company, it appears that there have been issued and were outstanding on the 22nd day of June, 1927, three hundred thirty-two thousand nine hundred ninety and five-tenths (332,990.5) shares of the preferred stock of the par value of thirty-three million two hundred ninety-nine thousand fifty dollars ($33,299,050) of the said Central Leather Company.

6.

That although by the terms of the certificate of incorporation of the Central Leather Com-

pany and by the terms of the said certificates of preferred stock your complainant and his predecessors in interest are and were entitled to receive cumulative dividends at the rate of seven per centum per annum payable out of the net earnings of the company before any payment is made on the common stock and that in case of non-payment in full of such dividends the unpaid portion thereof shall be a charge upon the earnings of the company; that the arrearages of dividends upon each share of preferred stock of the par value of $100 amounted to forty-two dollars and seventy-five cents per share on the said 22nd day of June, 1927, and there is now accrued and unpaid on the preferred stock of Central Leather Company owned and held by deponent as aforesaid, dividends amounting to the sum of twenty-five thousand six hundred and fifty dollars ($25,650.00).

7.

That your petitioner has not deposited or surrendered his stock in the Central Leather Company under the provisions of the said Plan and Agreement and has never at any time assented thereto, or to any modification or change in his rights or status as a preferred stockholder of the Central Leather Company.

8.

That your deponent and other holders of the preferred stock of the Central Leather Company have never surrendered their stock under the Plan and Agreement of October 1, 1926 and your deponent charges the truth to be that the purpose of the so-called consolidation and merger is to force your deponent and other stockholders who have refused to come in and sur-

render their stocks under said Plan and Agreement and take in exchange therefor the stocks of the Consolidated company as aforesaid, to accept the very stocks that your deponent and other stockholders not acceding to said Plan and Agreement have heretofore refused to accept.

That the so-called Consolidation and Merger, if valid and lawful, accomplish a substantial surrender of accrued dividends aggregating 42.75 per centum of the par value of the preferred stock and a reduction of the face of the investment represented by the preferred stock for the alleged purpose "that greater efficiency and economy of management may be accomplished," whereas your deponent charges the truth to be that the consummation of said Merger and Consolidation is chiefly for the benefit of the holders of the common stock of the Central Leather Company and to the detriment of your deponent and other preferred stockholders of Central Leather Company and that your deponent has refused to surrender his rights as a preferred stockholder in the assets of the Central Leather Company to which he is entitled by the certificate of incorporation of Central Leather Company and by the terms of the contract expressed in the certificate of preferred stock and protests against being forced into a surrender of his contractual rights as such preferred stockholder as aforesaid.

9.

That deponent is advised and believes that the stockholders committees which promulgated the Plan of October 1, 1926, were formed by interesting large holders of the common stock

of the Central Leather Company, that the preferred stockholders committee was not representative of the preferred stockholders but was composed of stockholders, bankers, directors of the Central Leather Company primarily interested in the common stock of the Central Leather Company, and that the intention and effect of the Plan and Agreement and the so-called Merger and Consolidation is to confer large pecuniary benefits upon the common stockholders to the detriment and disadvantage of the preferred stockholders of the Central Leather Company.

10.

That after the Agreement of Merger and Consolidation between Central Leather Company and The United States Leather Company had been filed with the Secretary of State of New Jersey, as aforesaid, the consolidated corporation caused to be published a notice "To holders of Certificate of Deposit of Bankers Trust Company for Preferred Stock and Common Stock of Central Leather Company" as follows:

"Readjustment of Share Capital of

CENTRAL LEATHER COMPANY

Under Plan and Agreement dated October 1, 1926.

"To holders of Certificate of Deposit of Bankers Trust Company for Preferred Stock and Common Stock of Central Leather Company:

"Holders of Certificates of Deposit of Bankers Trust Company for Preferred Stock and Common Stock of Central Leather Company may surrender their Certifi-

cates of Deposit on and after July 5, 1927 at the office of Bankers Trust Company, No. 16 Wall street, New York City, in exchange for Voting Trust Certificates for the stock of The United States Leather Company issuable in respect thereof, pursuant to said Plan and Agreement.

"Holders of Certificates of Deposit for Preferred Stock will be entitled to receive for each share of stock represented by such Certificates of Deposit:

"Voting Trust Certificate for fifty dollars ($50) par value (one-half share) of the 7% Cumulative Prior Preference Stock of The United States Leather Company;

"Voting Trust Certificate for three-fourths of a share of the Class A Participating and Convertible Stock of The United States Leather Company; and

"Five dollars ($5) in cash.

"Voting Trust Scrip Certificates will be delivered in lieu of Voting Trust Certificates in respect of fractional shares.

"Holders of Certificates of Deposit for Common Stock of Central Leather Company will be entitled to receive for each share represented by such certificates a Voting Trust Certificate for one share of Common Stock of The United States Leather Company.

"Certificates of Deposit surrendered must be endorsed in blank or accompanied by assignments and transfers in blank, duly executed, and must also be accompanied by a letter of transmittal addressed to the Depositary and signed by the registered

holder of the Certificate of Deposit. Copies of the form of such letter of transmittal are being mailed to all holders of record of Certificates of Deposit and additional copies may be obtained from the Depositary, No 16 Wall street, New York City.

"If Voting Trust Certificates are to be issued in a name other than the name in which the surrendered Certificates of Deposit are registered the assignment must be guaranteed by a firm which is a member of the New York Stock Exchange or a bank or trust company in New York City or having a New York correspondent and must be accompanied by any papers required to place the surrendered certificates in transferable form, together with funds to cover New York State and Federal Transfer taxes at the rate of four cents (4¢) in respect of each share or fraction thereof of new securities to be delivered.

"The Board of Directors of The United States Leather Company has declared a dividend of 7% on the Prior Preference Stock of that Company, payable August 1, 1927, *to stockholders of record at the close of business on July* 15, 1927. *Holders of certificates of Deposit are urged to surrender their certificates promptly for exchange in order that they may receive said dividend without delay.*

Dated, New York, June 29, 1927.

KUHN, LOEB & CO.
BANKERS TRUST COMPANY.
Managers."

That from the published statements of the Central Leather Company it appears that on June 30, 1926 the company had a profit and loss deficit amounting to $19,647,077. That said published statement showed that the company's operations were approaching a more normal basis, that it was in a strong cash position, but because of the deficit aforesaid, a readjustment of its capital structure was essential prior to any resumption of dividend payments.

That the amount of the capital stock of Central Leather Company as aforesaid outstanding on the 30th day of June, 1926, was $73,000,080.50 that the value of its assets as shown by said published statement, was $70,759,032.70 and that the amount of its liabilities including its capital stock was $90,406,109.78, resulting in the deficit as aforesaid.

That the agreement of Merger and Consolidation provides that the capital of the Consolidated company shall be as follows:

Prior Preference Stock.....	$16,649,525.00
Class A Stock.....	7,941,827.40
Common Stock.....	3,970,100.05
Total Capital	$28,561,452.45

That as a result thereof, without any change in the physical value of the properties of the corporation, an actual deficit of $19,647,077.08 is made to appear as a surplus of $35,363,996.47, solely through the medium as aforesaid or arbitrarily writing off and cancelling all accrued and unpaid dividends on the preferred stock of the Central Leather Company, amounting to $12,237,400.875, as it existed prior to the attempted Merger and Consolidation and by arbi-

trarily reducing the capital liability on the stock of said company from $73,000,080.50 to $28,561,-452.40 out of which fictitious surplus the new consolidated The United States Leather Company proposed and is about to pay and will pay unless this Honorable Court shall intervene to prevent and enjoin, a dividend of 7% on the new Prior Preferred Stock of the Consolidated The United States Leather Company, as advertised and published by said company in the notice hereinabove recited.

That the payment of the said dividend on August 1, 1927, to the holders of Prior Preference Stock of the Consolidated corporation, unless prevented and enjoined by this Court, will be in violation of law and good conscience and will be made out of the capital of Central Leather Company in violation of law and equity in such cases made and provided, will be a waste of the assets of the Central Leather Company, in violation of the contractual rights of your deponent as a preferred stockholder of Central Leather Company, and contrary to law and morals and will result in irreparable damage to your deponent as the holder of 600 shares of preferred stock of Central Leather Company, as aforesaid.

And inasmuch as your deponent is without adequate remedy at law in the premises, deponent respectfully asks and prays that a Rule to Show Cause issue from and out of this Honorable Court requiring the defendants above named, and each of them, to show cause why the said Central Leather Company and The United States Leather Company, their directors, officers, agents and employees or any one acting in their behalf, and each of them, should not be en-

joined "and restrained from doing any act or thing under or in pursuance of said alleged Agreement of Merger and Consolidation, dated May 19, 1927, or doing any act or thing in furtherance or consummation thereof, including the transferring and selling, or otherwise disposing of any of the assets or property of the Central Leather Company, or the issuing, transferring, buying, selling or otherwise trading or dealing in any shares of stock or other securities of The United States Leather Company issued under said Agreement of Merger and Consolidation, or doing any act or thing in the furtherance or consummation thereof, including the transferring or selling of property and assets of the Central Leather Company, or issuing or transferring any certificates of stock issued as provided for in said Agreement of Merger and Consolidation, and why The United States Leather Company should not be enjoined and restrained from paying out any of the moneys or transferring any properties received by it from the Central Leather Company by or pursuant to said Agreement of Merger and Consolidation, and from disbursing or paying out any moneys in payment of the dividend proposed to be paid on August 1, 1927, or any dividend, and from disposing of any of the properties of the Central Leather Company received by said United States Leather Company by virtue of or under or pursuant to the alleged Agreement of Merger and Consolidation, and from acting in any way or manner under said Agreement," pending the further determination by the Court in the premises.

John Windhurst.

Affidavit of Edward W. Simms.

Sworn and subscribed to before
me this 18th day of July, 1927.

Joseph Maas.
Notary Public Kings County No. 136.
Register No. 8153.
Certificate filed N. Y. Co. No. 298.
Register No. 8282.

IN CHANCERY OF NEW JERSEY.

JOHN WINDHURST,
Complainant,
against
CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.*,
Defendants.

STATE OF NEW JERSEY
COUNTY OF ESSEX } *ss.*

EDWARD W. SIMMS, being duly sworn according to law, deposes and says on his oath:

That he is an attorney and counsellor at law of the State of New York, with offices at No. 32 Liberty Street, New York City, and resides at Montclair, New Jersey.

That on the 11th day of July, 1927, he personally examined the records of the Secretary of the State of New Jersey, at Trenton, and ascertained the following facts which are alleged upon his own knowledge:

Affidavit of Edward W. Simms.

1.

That the Central Leather Company is a corporation organized and existing under the laws of the State of New Jersey, incorporated on the 12th day of April, 1905 under the provisions of an Act of the Legislature of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)", and the several supplements thereto and acts amendatory thereof, for the manufacture and sale of leather and other purposes set forth and described in the certificate of incorporation filed in the office of the Secretary of State on the 12th day of April, 1905, with an authorized capital stock of Eighty million dollars ($80,000,000) divided into eight hundred thousand (800,000) shares of the par value of One hundred dollars ($100) each, four hundred thousand (400,000) of such shares being preferred stock and four hundred thousand (400,000) of such shares being common stock.

2.

That said certificate of incorporation of Central Leather Company provided, among other things, that the preferred stock as aforesaid, shall be entitled to received or to have set apart out of the surplus or net profits of the corporation, as and when declared by the board of directors of the corporation, a dividend at the rate of, but never exceeding, seven per cent per annum, cumulative on all such preferred stock outstanding at the time, which dividend shall be payable yearly, half yearly, or quarterly, as the board of directors may from time to time fix and determine, and before any dividend shall be set aside or paid on the common stock. The said certificate of incorporation of Central Leather Company further provides that

if the preferred stock be increased, the rate of dividend upon such increase shall be at such rate, not exceeding seven per centum per annum, as shall be fixed by resolution of the stockholders of the corporation authorizing such increase; that whenever a dividend is paid or declared on the preferred stock and all prior dividends on the outstanding shares shall have been paid or set apart, the board of directors may, if in its judgment the surplus or net profits, after deducting the amount of dividends to accrue on the said outstanding preferred stock during the current year, shall be sufficient for such purpose, then or thereafter pay dividends on the common stock, payable yearly, half yearly, or quarterly, and payable then or thereafter out of any remaining surplus or net profits of the year then current or last past and of any previous year in which full dividends shall have been paid on the preferred stock; that in case of liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall receive cash to the amount of the par value of such stock together with all accrued and unpaid dividends thereon (but no more), before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the Company, or the proceeds thereof after the payment in full at its par value, of the preferred stock then outstanding, together with all dividends thereon accrued and unpaid; that the preferred stock and the common stock of the corporation may each or both be increased according to law; that at no time shall the preferred stock be increased without the assent of the holders of

at least two-thirds in interest of the then outstanding preferred stock of the corporation.

That the said certificate of incorporation of Central Leather Company gave to it certain powers and authority to issue its bonds in payment for property, including the power to mortgage as will more fully and at large appear by the aforesaid certified copy of the certificate of incorporation hereto annexed as Exhibit "A".

3.

That at and on or about the 24th day of September, 1909, there existed under and pursuant to the laws of the State of New Jersey a corporation known and styled as The United States Leather Company, having an authorized capital stock of one hundred twenty eight million dollars ($128,000,000) divided into six hundred and forty thousand (640,000) shares of preferred stock of the par value of one hundred dollars ($100) each and six hundred and forty thousand (640,000) shares of common stock of the par value of one hundred dollars ($100) each. That said preferred stock was entitled to cumulative dividends at the rate of eight per centum per annum before any payment should be made on the common stock; that in case of liquidation said stock should be paid in full at its par together with all earned and unpaid dividends, before any payment should be made on the common stock and the said preferred stock was entitled to certain other privileges, preferences and rights.

4.

That on or about said 24th day of August, 1909 there were unpaid dividends upon said preferred stock of The United States Leather Company of $45.085 per share.

That on or about said 24th day of August, 1909 the Central Leather Company was the owner and holder of fifty seven million, eight hundred seven thousand, two hundred dollars ($57,807,200) par value of the preferred and sixty two million, two hundred fifty thousand seven hundred shares par value of the common stock of said The United States Leather Company, leaving outstanding thereof, four million, four hundred seventy five thousand, one hundred dollars ($4,475,100) of preferred and six hundred thirty one thousand, six hundred dollars ($631,600) of the common stock of said The United States Leather Company not owned by said Central Leather Company.

That on or about said 24th day of September, 1909, there was consummated, under the laws of the State of New Jersey in such cases made and provided, a Consolidation and Merger of the said The United States Leather Company and the said Central Leather Company, pursuant to which consolidation and merger, the corporate organization and existence of the Central Leather Company continued and the corporate existence of The United States Leather Company was to cease and determine.

That at the time of said consolidation and merger there was issued and outstanding three hundred ten thousand six hundred fifteen (310,615) shares of the preferred stock and three hundred eighty four thousand five hundred ninety nine and two one-hundredths (384,599.02) shares of the common stock of the said Central Leather Company and thirty four million five hundred twenty six thousand six hundred dollars ($34,526,600) of an authorized issue of forty-five mil-

lion dollars ($45,000,000) first lien, twenty year, five per cent gold bonds.

That under the terms of said consolidation and merger each share of the preferred stock of The United States Leather Company was exchanged for fifty dollars ($50) par value, first lien, twenty year, five per cent gold bonds of the Central Leather Company; fifty dollars ($50) par value seven per cent cumulative preferred stock of the Central Leather Company with the rights, privileges and preferences above stated; twenty-three dollars and fifty cents ($23.50) par value of the common stock of the Central Leather Company and ten dollars ($10) in cash.

That immediately after the consummation of said Consolidation and Merger, and on September 27, 1909, there was organized under and pursuant to the laws of the State of New Jersey, a new corporation named and styled The United States Leather Company, with an authorized capital stock of one hundred thousand dollars ($100,000) divided into one thousand (1,000) shares of the par value of one hundred dollars ($100), all being of one class, the objects of said corporation as stated in its certificate of incorporation being the same, or nearly so, as those of the Central Leather Company and the old The United States Leather Company, the existence of which latter company ceased and determined on the filing of the said Agreement of Consolidation and Merger in the office of the Secretary of the State of New Jersey.

5.

That The United States Leather Company has at a meeting of its stockholders called for that purpose, approved the said Agreement for the

merger and consolidation of Central Leather Company and The United States Leather Company, and the said Agreement has been filed in the office of the Secretary of the State of New Jersey.

6.

That deponent has examined the original Agreement of Consolidation and Merger between Central Leather Company and The United States Leather Company, dated May 19, 1927, which is on file in the office of the Secretary of the State of New Jersey, and that said Agreement purports to have been entered into by the two corporations pursuant to resolutions passed by their respective Boards of Directors and approved by stockholders owning more than two-thirds of the capital stock of said corporations, for the purpose of merging and consolidating said Central Leather Company and The United States Leather Company under and pursuant to the provisions of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations (Revision of 1896)".

7.

That the directors and officers of the Central Leather Company are as follows:

President—Hiram S. Brown
First Vice-President—William H. Harkness
Second Vice-President—William McAdoo, Jr.
Third Vice-President—Madison J. Beach
Fourth Vice-President—Arthur T. Lynch
Secretary & Treasurer—Harry W. Hill

Directors:

Hiram S. Brown
Arthur T. Lynch
Charles Einsiedler
D. G. Ong
Charles S. Sargent, Jr.
E. H. Amory
Ernest Griess
Max J. T. Rossbach
William McAdoo, Jr.
William H. Harkness
Charles S. Haight
Oliver C. Hoyt
Boylston A. Tompkins
Louis L. Strauss
Madison J. Beach

That the officers and directors of The United States Leather Company are:

President—Hiram S. Brown
First Vice-President—William H. Harkness
Second Vice-President—William McAdoo, Jr.
Secretary & Treasurer—Harry W. Hill

Directors:

Arthur T. Lynch
E. H. Amory
William McAdoo, Jr.
William H. Harkness
Madison J. Beach
Hiram S. Brown
E. G. G. Booker
Harry W. Hill
R. H. Zinn

8.

That ever since its organization The United States Leather Company has been a subsidiary

of the Central Leather Company subject to control through stock ownership by the common stockholders of the Central Leather Company. Upon information and belief, that The United States Leather Company has not, to any extent, prosecuted the business stated in its certificate of incorporation as the objects for which it was formed, but has existed as a subsidiary of the Central Leather Company. That The United States Leather Company is controlled and directed by the Central Leather Company and its common stockholders, that the President and one or more Vice Presidents, and Secretary and Treasurer have filled the same offices in both companies, and so far as The United States Leather Company has had any separate business it has been conducted from the same office and place of business as that of the Central Leather Company.

That in the so-called agreement of merger and consolidation, it is recited that the respective boards of directors of said corporations deem it advisable to the end that greater efficiency and economy of management may be accomplished and otherwise and generally to the advantage and welfare of said corporations and their several respective stockholders that said corporations merge and consolidate, the name of the consolidated corporation to be The United States Leather Company. (Recital of provisions of Merger and Consolidation Agreement Omitted.)

Edward W. Simms

Subscribed and sworn to before
me this 19th day of July, 1927
Ethel A. Kann
A Notary Public of New Jersey

New Jersey State Library

Affidavit of Charles Hallett White.

IN CHANCERY OF NEW JERSEY

JOHN WINDHURST,
Complainant,

against

CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.*,
Defendants.

STATE OF NEW JERSEY
COUNTY OF ESSEX } *ss.*

CHARLES HALLETT WHITE being duly sworn according to law deposes and says;

1.

That he is an attorney and counsellor at law of the State of New York with offices at No. 32 Liberty Street, New York City, and resides at 120 West 59th Street, New York City,

2.

That deponent, at the special instance and request of John Windhurst, the complainant above named, and holding a proxy duly executed by Charles A. Edwards a stockholder of record in the Central Leather Company above named, to vote 600 shares of the preferred stock of said company at a special meeting of its stockholders appointed to be held on the 22nd day of June, 1927 at the principal offices of said company at 15 Exchange Place, Jersey City, New Jersey pursuant to notice, duly attended said meeting at said time and place;

3.

That at said special meeting of stockholders aforesaid an Agreement of Merger and Consolidation of the Central Leather Company and The United States Leather Company, dated the 19th day of May, 1927, executed for the Central Leather Company by H. S. Brown, its President and a majority of its directors and attested by H. W. Hill, its Secretary, and executed for The United States Leather Company by H. S. Brown, its President and a majority of its direcors and attested by H. W. Hill its Secretary was submitted for approval and ratification to the vote of the stockholders of said Central Leather Company. That thereupon deponent as proxy aforesaid duly cast his ballot and voted the said 600 shares of prefererd stock against the approval, adoption or ratification of said Agreement of Merger and Consolidation.

That the said Agreement of Merger and Consolidation was nevertheless approved, adopted and ratified at said meeting by a vote of the stockholders owning more than two-thirds of the capital stock of said Central Leather Company; whereupon your deponent caused to be spread on the minutes of said meeting his dissent and objection to the said action of the stockholders in approving, adopting and ratifying the said agreement as aforesaid.

That the 600 shares of stock, recorded on the books of the Central Leather Company in the name of Charles A. Edwards and voted by your deponent at said meeting as proxy aforesaid were represented by certificates Nos. A 12414, A 12415, A 12416, A 12417, A 12418 and A 12419 for one hundred shares each.

Charles Hallett White

Affidavit of Charles Hallett White.

Subscribed and sworn to before
me this 19th day of July, 1927.

Ethel A. Kann
A Notary Public of New Jersey.

RULE TO SHOW CAUSE.

Filed July 20, 1927.

IN CHANCERY OF NEW JERSEY.

Between JOHN WINDHURST, *Complainant,* *and* CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.*, *Defendants.*	*On Bill, &c.* *Rule to Show Cause.*

This matter being opened to the court by Smith & Slingerland, solicitors for complainant, and the court having read the bill of complaint in the above entitled cause and the affidavits thereunto annexed;

It is on this 20th day of July, 1927, ORDERED that the defendants, Central Leather Company, The United States Leather Company, and each of them, show cause before the Chancellor at the Chancery Chambers, First National Bank Building, in the City of Jersey City, on the first day of August, 1927, at the hour of ten o'clock in the forenoon (daylight saving time), or as soon thereafter as counsel can be heard, why the said defendants, or their or either of their directors, officers, agents and employees, should not be enjoined and restrained from doing any act or thing under or in pursuance of an alleged agreement of merger and consolidation between Central Leather Company and The United States Leather Company dated May 19,

1927, or doing any act or thing in furtherance or consummation thereof, including the transferring and selling or otherwise disposing of any of the assets or property of Central Leather Company or the issuing, transferring, buying, selling or otherwise trading or dealing in any shares of stock or other securities of The United States Leather Company issued under said agreement of merger and consolidation or doing any act or thing in the furtherance or consummation thereof, including the transferring or selling of property and assets or issuing or transferring any certificates of stock issued as is provided for in said agreement of merger and consolidation, and why The United States Leather Company should not be enjoined and restrained from paying out any of the moneys or transferring any properties received by it from the Central Leather Company by or pursuant to said agreement of merger and consolidation and from disposing or paying out any moneys in payment of the dividend proposed to be paid on August 1, 1927, or any dividend, and disposing of any of the properties of the Central Leather Company received by said The United States Leather Company by virtue of, or under or pursuant to, the alleged agreement of merger and consolidation, and from acting in any way or manner under said agreement, pending the further determination of this court in the premises.

And It Is Further Ordered that a true but uncertified copy of said bill of complaint and the affidavits thereunto annexed and of this order be served upon the said defendants within three days from the date hereof.

Rule to Show Cause.

And it is further ordered that until the further order of this court the said defendants be and they are hereby enjoined and restrained from making payment of said dividend.

E. R. WALKER,

C.

Respectfully advised

JAMES F. FIELDER
V.-C.

NOTICE OF MOTION TO VACATE TEMPORARY RESTRAINT.

Filed July 27, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN WINDHURST, *Complainant,* and CENTRAL LEATHER COMPANY, and others, *Defendants.*	*On Bill, &c.* *Notice of Motion to Vacate Temporary Restraint.*

Messrs. Smith and Slingerland, solicitors for complainant:

Gentlemen:

Please take notice that on Wednesday, July 27, 1927, at 10 o'clock in the forenoon (daylight-saving time) at the Chancery Chambers in the City of Jersey City, we will move the Chancellor for an order setting aside and vacating the temporary restraint against the payment of dividend payable August 1, 1927, on the Prior Preference Stock of United States Leather Company contained in the order made in the above entitled cause dated July 20, 1927.

Respectfully yours,

PITNEY, HARDIN & SKINNER,
Solicitors for defendant The United States Leather Company (formed by consolidation June 23, 1927).

Dated July 22, 1927.

PETITION.

Filed July 27, 1927

IN CHANCERY OF NEW JERSEY.

JOHN WINDHURST, *Complainant,* *against* CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.,* *Defendants.*	*On Bill, &c.* *Petition*

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

The petition of MABEL B. INGRAHAM of Pasadena, California and FRANCES T. INGRAHAM of Brooklyn, New York respectfully shows:

I. That your petitioners now own respectively 1115 shares and 1610 shares of the preferred stock of Central Leather Company, which stock has been owned and held by them, or by members of their family continuously for many years.

II. That at a special meeting of the stockholders of the Central Leather Company held at the offices of said company at 15 Exchange Place, Jersey City, New Jersey on the 22nd day of June, 1927, said shares of stock, aggregating 2725 shares, were voted on behalf of your petitioners, so petitioners had been informed and verily believe, by George S. Ingraham as personal attorney and proxy, against the adoption and ratification of the so-called Agreement of Merger and Consolidation of the Central Leather

Company and The United States Leather Company, dated the 19th day of May, 1927 and executed for the Central Leather Company by H. S. Brown, its President and a majority of its directors and executed for The United States Leather Company by H. S. Brown its President and a majority of its directors.

III. That under and pursuant to the terms and provisions of said Agreement of Merger and Consolidation, the vested contractual rights of your petitioners as preferred stockholders of the said Central Leather Company are unlawfully invaded and violated in that among other things they are foreclosed of any and all rights in or claimed to 43¾% dividends accrued and unpaid to date on their said preferred stock and further that the capital amount of their investment in said company is inequitably and unfairly diminished, and that their rights to receive dividends at the rate of 7% per annum on their capital investment in said company have been impaired and violated and that the terms and conditions of said Agreement of Merger and Consolidation are unfair, inequitable and illegal for the reasons aforesaid.

IV. That the said Agreement of Merger and Consolidation if allowed to stand will have the effect of depriving your petitioners of their property without due process of law in violation to them of the rights secured under the Constitution of the United States as amended by Article XIV.

WHEREFORE your petitioners, feeling aggrieved as aforesaid and having no adequate remedy at law, respectfully petition this court that they may be joined in the above entitled action as complainants on the bill of complaint therein

filed, upon their agreement to contribute to the expense of said suit as therein provided, and your *petioners* further pray that they be made complainants to said suit for the purposes of the rule to show cause made in the above entitled action on July 20th, 1927 and for the purposes of opposing the motion brought by the defendant The United States Leather Company to vacate the temporary restraint, returnable July 27th, 1927, and your petitioners further pray that they be granted leave to join in said action as party complainants for any and all purposes thereof as fully as though they had been made party complainants therein, and petitioners further pray for such other and different relief as to this court may seem just and proper in the premises:

And your petitioners will ever pray, etc.

SMITH & SLINGERLAND
Solicitors for and of counsel
with petitioners.

IN CHANCERY OF NEW JERSEY.

JOHN WINDHURST, *Complainant,* *against* CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.,* *Defendants.*	*On Bill, &c.* *Affidavit*

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*

GEORGE S. INGRAHAM, being duly sworn according to law deposes and says:

I. That he is an attorney and counsellor at law in the State of New York with offices at No. 16 Court Street, Brooklyn, New York City.

II. That deponent, at the special instance and request and on behalf of Mabel B. Ingraham of Pasadena, California and Frances T. Ingraham of Brooklyn, New York, petitioners named in the petition annexed hereto, and holding proxies duly executed by Whitehouse & Co., 111 Broadway, New York City and J. S. Oliphant Co. of 61 Broadway, New York City, as stockholders of record in the Central Leather Company above named, to vote 2725 shares of the preferred stock of said company at a special meeting of its stockholders appointed to be held on the 22nd day of June, 1927 at the principal offices of said company at 15 Exchange Place, Jersey City, New Jersey, pursuant to notice, duly attended said meeting at said time and place.

III. That at said special meeting of stockholders aforesaid an agreement of merger and

consolidation of the Central Leather Company and The United States Leather Company, dated the 19th day of May, 1927, executed for the Central Leather Company by H. S. Brown its President and a majority of its directors and attested by H. W. Hill, its Secretary, and executed for The United States Leather Company by H. S. Brown, its President and a majority of its directors and attested by H. W. Hill, its Secretary was submitted for approval and ratification to the vote of the stockholders of said Central Leather Company. That thereupon deponent as proxy aforesaid duly cast his ballot and voted the said 2725 shares of preferred stock against the approval, adoption or ratification of said Agreement of Merger and Consolidation.

That the said Agreement of Merger and Consolidation was nevertheless approved, adopted and ratified at said meeting by a vote of the stockholders owning more than two-thirds of the capital stock of said Central Leather Company; whereupon your deponent caused to be spread on the minutes of said meeting his dissent and objection to the said action of the stockholders in approving, adopting and ratifying the said agreement as aforesaid.

That the 2725 shares of stock, recorded on the books of the Central Leather Company in the name of Whitehouse & Co. and J. S. Oliphant Co. and voted by your deponent at said meeting as proxy aforesaid were to deponent's knowledge at the time aforesaid the absolute property of said petitioners, Mabel B. Ingraham and Frances T. Ingraham, who own respectively 1115 and 1610 shares as above stated.

IV. That your deponent is the personal attorney of the said petitioners and to his knowl-

edge the said 2725 shares of preferred stock voted by him as aforesaid against the adoption of the Agreement of Merger and Consolidation above mentioned has never been deposited or surrendered pursuant to the terms of said agreement and are still the property of the said petitioners.

Geo. S. Ingraham

Sworn to before me this 26th
day of July, 1927.

Jennie H. Goldstein
Notary Public Kings Co.
No. 78, Reg No. 8077

ORDER ADMITTING COMPLAINANTS.

Filed July 27, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN WINDHURST, *Complainant,*	*On Bill, &c.*
and	*Order Admitting Complainants.*
CENTRAL LEATHER COMPANY and THE UNITED STATES LEATHER COMPANY, *et al.*, *Defendants.*	

Upon reading and filing the petition of Mabel B. Ingraham and Frances T. Ingraham, duly verified, praying that they may be admitted as parties complainant in the above entitled suit, and it appearing that the said petitioners are holders of preferred stock of the defendant, Central Leather Company, and that they are willing to contribute to the expenses of this suit,

It is on this 27th day of July, 1927, ORDERED that the said Mabel B. Ingraham and Frances T. Ingraham be and they are hereby admitted as parties complainant in this suit.

Respectfully advised,

E. R. WALKER,
C.

JOHN BENTLEY,
V.-C.

NOTICE AND AFFIDAVITS

Filed July 27, 1927.

IN CHANCERY OF NEW JERSEY.

Between JOHN WINDHURST, *Complainant,* *and* CENTRAL LEATHER COMPANY, and others, *Defendants.*	*On Bill, &c.* *Notice.*

To: Messrs. Smith and Slingerland, Solicitors for Complainant.

PLEASE TAKE NOTICE that the affidavits (with the attached exhibits and schedules) of

Jacob J. Heinrich	Lewis L. Strauss
James D. McCauley	Boylston A. Tompkins
Hiram S. Brown	E. E. Beach
Harry W. Hill (2)	Gayer G. Dominick
Andrew J. Miller	Frank Altschul
Dewees W. Dilworth	

of which copies are herewith delivered to you, will be read on behalf of the defendant The United States Leather Company at the motion for the vacation of temporary restraint to be made on July 27, 1927, and also on the return of the

Rule to Show Cause made in the above entitled cause on July 20, 1927.

Dated July 26, 1927.

Respectfully yours,

PITNEY, HARDIN & SKINNER,
Solicitors for defendant The United States Leather Company (formed by consolidation June 23, 1927)

Service of the foregoing Notice and copies of Affidavits herein referred to is hereby acknowledged this 26th day of July, 1927.

SMITH & SLINGERLAND,
Solicitors for Complainant.

AFFIDAVIT OF GAYER G. DOMINICK.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.*

GAYER G. DOMINICK, being duly sworn according to law, on his oath, deposes and says:

1. I am a member of the firm of Dominick & Dominick, with offices at No. 115 Broadway, New York, N. Y., and am Chairman of the Committee for the Holders of Preferred Stock of Central Leather Company.

2. The Preferred Stockholders Committee was formed about the month of June, 1926, after several plans for the solution of the difficulties of the capital situation of Central Leather Company had been suggested and discarded. Said Committee was composed of persons who were primarily interested in the preferred stock of Central Leather Company and who were thor-

oughly representative of the preferrd stockholders. It was organized to work out, in the interest of the preferred stockholders, some method of readjusting the capitalization of Central Leather Company to permit the preferred stockholders to receive a return on their investment.

3. After the formation of the Preferred Stockholders Committee a Committee was also formed for the protection of the holders of common stock; negotiations were entered into between these two Committees and frequent meetings held during the period from June to October, 1926. The discussions between the two Committees were extremely vigorous, since the Preferred Stockholders Committee was insistent that the terms of readjustment should be as favorable as possible to the preferred stockholders. Compromise on some matters was, of course, inevitable, but your deponent verily believes that the plan of readjustment eventually agreed upon is fair and is as favorable to the preferred stockholders as any that could have been obtained.

4. On June 23, 1926, I was the holder of record of approximately 931 shares of preferred stock of Central Leather Company, which I held for the estate of Edward C. Hoyt, my father-in-law, a former president of Central Leather Company, and of no shares of common stock; on June 14, 1926, Mrs. Gayer G. Dominick was the holder of record of approximately 127 shares of preferred stock and no shares of common stock; on June 14, 1926, the firm of Dominick & Dominick was the holder of record of approximately 8,992 shares of preferred stock and 2,420 shares of common stock. On October 1, 1926, the ap-

proximate date on which the Plan for Readjustment of Share Capital of Central Leather Company was formulated, the holdings of the above-named persons were substantially the same as on June 23, 1926, and June 14, 1926, respectively, and on said date, to-wit, October 1, 1926, the firm of Dominick & Dominick was the holder of record of 13,164 shares of preferred stock and 2,250 shares of common stock. Said shares of preferred stock standing in the name of Dominick & Dominick were held for the account of members of my family, of members of the firm and of customers.

Gayer G. Dominick

Subscribed and Sworn this 26th day of July, 1927, before me, the Subscriber, a Notary Public of the County of New York in the State of New York duly commissioned and sworn, as witness my official seal hereto affixed.

(Seal) Mary M. Eccles
Notary Public, Kings County, N. Y.
Kings County Clerk No. 13
Kings County Register No. 8011
Certificate filed in New York County No. 206
New York County Register No. 8142.
Term expires March 30, 1928

AFFIDAVIT OF FRANK ALTSCHUL.

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.:*

FRANK ALTSCHUL, being duly sworn according to law, on his oath deposes and says:

1. I am a member of the firm of Lazard Freres, with offices at No. 120 Broadway, New York, N. Y., and am a member of the Committee for the holders of Preferred Stock of Central Leather Company.

2. Said Committee for the holders of Preferred Stock was formed on or about June 14, 1926, and on that date the firm of Lazard Freres and certain customers of said firm owned or controlled approximately 12,900 shares of Preferred Stock, representing at the then market price of $57.50 per share an investment of $741,750., and 3000 shares of Common Stock, representing at the then market price of $10.50 per share an investment of $31,500. On October 1, 1926, the approximate date on which the Plan of Readjustment of share capital of Central Leather Company was formulated, the firm of Lazard Freres and certain customers of said firm owned or controlled approximately 16,500 shares of Preferred Stock, representing at the then market price of $59. per share an investment of $973,500. and 5000 shares of Common Stock, representing at the then market price of $9.00 per share an investment of $45,000.

Frank Altschul

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a notary public of the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Seal) Leo T. D. Lyons
Notary Public, Kings County,
Kings Co. Clk's No. 170, Reg. No. 8185
Cert. filed in N. Y. & Queens Counties
N. Y. Co. Clk's. No. 4140 Reg. No. 8324
Queens County Clerk's No. 585
Commission Expires March 30, 1928.
My commission expires March 30, 1928.

AFFIDAVIT OF DEWEES W. DILWORTH.

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.:*

DEWEES W. DILWORTH, being duly sworn according to law, on his oath, deposes and says:

1. I am a member of the firm of E. F. Hutton & Co., with offices at No. 61 Broadway, New York, N. Y., and am a member of the Committee for the holders of Preferred Stock of Central Leather Company.

2. Said Committee for the holders of Preferred Stock was formed on or about June 14, 1926, and on that date the firm of E. F. Hutton & Co. was the holder of record of, and actually had in its possession, approximately 5,856 shares of preferred stock of Central Leather Company, representing at the then market price of $57.50

per share an investment of $336,720., and 3,615 shares of common stock of Central Leather Company, representing at the then market price of $10.50 per share an investment of $37,957.50; said shares of stock were held for the account of customers of the firm. On October 1, 1926, the approximate date on which the Plan for Readjustment of Share Capital of Central Leather Company was formulated, the firm of E. F. Hutton & Co. was the holder of record of, and actually had in its possession, approximately 3,406 shares of such preferred stock, representing at the then market price of $59. per share an investment of $200,954., and 1,230 shares of such common stock, representing at the then market price of $9. per share an investment of $11,070.

Dewees W. Dilworth

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a notary public of the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Notarial Seal) Edward E. W. Vogt
Notary Public Queens County
Queens County No. 1737
Certificate filed in New York County
New York County Clerk's No. 50
New York County Reg. No. 8041
Commission expires March 30, 1928

AFFIDAVIT OF HARRY W. HILL.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

HARRY W. HILL, being duly sworn according to law, on his oath, deposes and says:

1. I reside at 53 South Portland Avenue, Brooklyn, New York City, and am Secretary and Treasurer of the United States Leather Company (No. 3). Prior to the formation of that Company by the Consolidation Agreement dated May 19, 1927, I was for many years Treasurer of, and for several years also Secretary of, Central Leather Company. Prior to the election to the office of Treasurer, I had been for many years in the employ of Central Leather Company.

2. The Consolidation Agreement dated May 19, 1927, was adopted by the respective Boards of Directors of Central Leather Company and of the United States Leather Company (No. 2) at meetings held on May 19, 1927. Notice of the stockholders' meeting of Central Leather Company, called to be held on June 22, 1927, was mailed on May 20, 1927, to all of the holders of record of stock of Central Leather Company at the close of business on May 19, 1927. Thereafter until the transfer-books were closed on May 31, 1927, like notice was also mailed to each holder of stock who became a holder of record between May 19, 1927, and May 31. Notice of such meeting was also published.

3. With the notice sent to the stockholders of Central Leather Company, there was enclosed a copy of the provisions of Articles IV, V and VI of the Consolidation Agreement dated May 19,

1927. With the notice mailed to the stockholders, there was also enclosed a circular letter from the President of Central Leather Company dated May 20, 1927, of which a true copy is hereto annexed, marked Exhibit D. 1.

4. The stockholders of the United States Leather Company (No. 2) voted for the adoption of said Consolidation Agreement at a meeting held June 22, 1927. The meeting of the stockholders of Central Leather Company was also held June 22, 1927, at the principal and registered office of the Company in New Jersey.

5. At the meeting of the stockholders of the Central Leather Company the Consolidation Agreement was adopted by the vote of more than two-thirds of the holders of all of the outstanding stock of Central Leather Company, being also the holders of more than two-thirds of each of the two classes of stock of Central Leather Company. Out of 332,990 shares of preferred stock outstanding, there were voted in favor of the adoption of the Consolidation Agreement 301,841 shares, or approximately 90.6% of the total, and there were voted against the adoption of the Consolidation Agreement 9,635 shares, or approximately 2.9%; and out of the total of 397,010 shares of common stock outstanding, there were voted in favor of the adoption of the Consolidation Agreement 332,404 shares, or approximately 83.7%; no common shares being voted against the adoption of the Consolidation Agreement.

6. Charles H. White, Esquire, whose affidavit is annexed to the Bill of Complaint, was present at the Stockholders' Meeting on June 22, 1927, holding a proxy for Charles A. Edwards. Mr. White voted against the adoption of the Consoli-

dation Agreement and other resolutions adopted at the meeting. In so doing, he made the following statement:

> "* * * My name is Charles H. White, 32 Liberty Street, New York, proxy for Mr. Charles A. Edwards of 45 Wall Street, record owner of 600 shares of preferred stock. I wish to record on the minutes of the meeting a protest and dissent from the action of the company in adopting the agreement of merger and consolidation entered into between this company and its directors and the United States Leather Company and its directors, dated May 19, 1927, and reserve all rights secured to a dissenting stockholder under the laws of the State of New Jersey in such case made and provided."

7. The Consolidation Agreement, duly certified in accordance with the statute, was filed in the office of the Secretary of State of New Jersey at the opening of business on June 23, 1927. Considerable publicity was given in the financial press to the consummation of the consolidation on that date.

8. I am advised that upon filing same in said office, all of the properties and assets of the consolidating corporations, subject to the liabilities, forthwith became vested in the new company, The United States Leather Company (No. 3), without further or other conveyance or transfer.

9. The newly constituted Board of Directors of the new Company, United States Leather Company (No. 3) met on June 23, 1927, after the filing of the Consolidation Agreement aforesaid, and transacted the business necessary to

the immediate organization of the new Company as a going concern and the continuation by it of the business theretofore carried on by the consolidating corporations. The Board adopted by-laws, appointed additional executive officers, provided for the opening of bank accounts in the name of the new corporation, for the qualification of the new company to do business in certain states other than New Jersey, adopted forms of certificates for the new classes of stock, appointed transfer agents and registrars for such stock, approved the proposed forms of Voting Trust Agreements for the new classes of stock and authorized their execution on behalf of the Company, authorized application for the listing of the new stock on the New York Stock Exchange and authorized joint application with the Voting Trustees for the listing of the new Voting Trust Certificates on the New York Stock Exchange. The Board also approved a proposed form of Indenture supplemental to the Trust Indenture dated January 1, 1925, securing the Twenty Year 6% First Lien Sinking Fund Gold Bonds of the Company; said Trust Indenture required that in case of the consolidation of the Central Leather Company the successor thereto should expressly assume the payment of the bonds issued thereunder; said Supplemental Indenture provided for such assumption. Such Supplemental Indenture was executed, and delivered to the Bankers Trust Company, as Trustee, on or about July 9, 1927. Attention is here called to the fact also that the Consolidation Agreement dated May 19, 1927, in and by Article XI, also contains such an express assumption.

10. At said meeting of June 23, 1927, the Board of Directors also declared a dividend of

7% on the par value of the new 7% Cumulative Prior Preference stock, issuable under the Consolidation Agreement, for a yearly period ending June 30, 1927, payable August 1, 1927, to holders of record at the close of business on July 15, 1927 and on and after August 1, 1927, to persons receiving Prior Preference Stock pursuant to the Consolidation Agreement after July 15, 1927. The aggregate amount of such dividend, if all of the Prior Preference stock be issued in accordance with the Consolidation Agreement, would be $1,165,472.

11. The new company has made provision for the payment, in accordance with the Consolidation Agreement, of $5 per share to each holder of Preferred Stock of Central Leather Company surrendering his stock, in accordance with the Consolidation Agreement. The total amount which would be payable in accordance therewith, if all of the holders of preferred stock accepted such provision, would be $1,664,950.

12. The new company actually executed and delivered the three Voting Trust Agreements, dated as of July 1, 1927, on or about June 24, 1927. Copies thereof were filed in the principal office of the Company as required by law.

The Voting Trustees of the new Prior Preference and the new Class A stock are Messrs. Gayer G. Dominick, Frank Altschul and Charles S. Haight; of the new Common Stock are Messrs. Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop.

13. The new company has made application to the New York Stock Exchange for the listing of its new stock and joined in the applications for the listing of Voting Trust Certificates on the New York Stock Exchange, and has incurred

liability to the New York Stock Exchange, in accordance with its requirements, in a substantial sum for listing fees.

14. The new company has incurred the fees of the transfer agents and registrars for its new stocks in a substantial amount, and the cost of temporary certificates for its new stocks and other similar expenses.

15. The new company has paid stamp taxes on the issue of its new stocks, aggregating $13,-520.43, and has also paid amounts in excess of $29,000 in respect of stock transfer taxes involved in carrying out the readjustment.

16. On or about June 29, 1927, formal notice was given by the Managers under the Plan to the holders of certificates of deposit of the declaration of the dividend, payable August 1, such notice was published in a number of newspapers of wide circulation in the City of New York; notice of the declaration of the dividend was given by the Company to the New York Stock Exchange on June 24, and as I am informed and believe, this was broadcast over the ticker on June 24 or June 25.

17. Since the consummation of the consolidation on June 23, 1927, the new company has taken over the liabilities of the consolidating corporations, has continued the business in its name and has incurred sundry liabilities for the purchase of raw hides and otherwise in the prosecution of the business of the company and its subsidiaries. The new company and its subsidiaries have, as was necessitated by the consolidation, taken steps for the requalification to do business in various foreign states in which the business is carried on.

18. The United States Leather Company (No. 1) was incorporated in New Jersey in 1893. Its autohrized capital stock, as increased shortly after its organization, amounted to $128,000,000., consisting of 640,000 shares of 8% Cumulative Preferred Stock and 640,000 shares of Common Stock, all of the par value of $100. each. Within two years after its organization, there were issued 622,823 shares of Preferred Stock and 628,823 shares of Common Stock all of which remained outstanding until the merger of said company with Central Leather Company in 1909.

19. According to the records of said United States Leather Company, it never earned, except in a few years as much as 8% upon its outstanding Preferred Stock and it never paid in any year a dividend of 8% on its Preferred Stock. It never paid a dividend on the Common Stock. At the time of its merger into Central Leather Company, the deficiency in the Preferred dividends amounted to approximately 50%.

20. At the time of such merger, said United States Leather Company had a substantial surplus on its books. It also appears from the records of that company that, upon its organization, a very large valuation was placed upon goodwill and other intangible items acquired by it from the vendors whose properties and businesses were taken over by it.

21. Central Leather Company was organized in New Jersey in 1905. Its capital stock, as authorized by its Amended Certificate of Incorporation was $80,000,000, consisting of 400,000 shares of 7% Cumulative Preferred Stock and 400,000 shares of Common Stock,—all of the par value of $100 each.

22. Between the time of its organization and the merger in 1909, Central Leather Company, by exchange of its own securities, had acquired a large proportion of the outstanding Preferred and Common Stock of United States Leather Company. United States Leather Company No. 1 was merged into Central Leather Company under Agreement dated August 24, 1909, filed in the Office of the Secretary of State of New Jersey September 24, 1909. Under the provisions thereof, each holder of Preferred Stock of United States Leather Company was entitled to receive the following securities of Central Leather Company:

$50. in face value of First Lien 20-Year 5% Gold Bonds

$50. in par value of 7% Cumulative Preferred Stock

$23.50 in par value of Common Stock

and

$10. in cash.

23. Under the provisions thereof, the holders of Common Stock of United States Leather Company were entitled to receive for each share of Common Stock $30 in par value of Common Stock.

24. The total amount of Common Stock of Central Leather Company issuable thereunder to holders of Preferred Stock of United States Leather Company was $14,636,340, or something more than one-third of the total Common Stock.

25. Within a short time after that merger became effective, the Preferred Stock of Central Leather Company outstanding was 332,990½ shares, and the total amount of Common Stock outstanding was 397,010.305 shares, all of the par value of $100 each, which respective amounts

have remained unchanged from that time until the consummation of the Consolidation Agreement dated May 19, 1927.

26. In 1905, Central Leather Company created an issue of its First Lien 20-Year 5% Gold Bonds, due April 1, 1925, of which $36,764,150. face amount were issued. The amount outstanding in the hands of the public was reduced from time to time by the operations of the treasury of the company and through the operations of special funds. At the maturity thereof in April, 1925, the Company was able to refund the balance by a new issue of $15,000,000 20-Year 6% First Lien Sinking Fund Gold Bonds dated January 1, 1925, and to pay the amount not so refunded out of the treasury.

27. Notwithstanding the severe losses incurred in the business since the war, Central Leather Company for several years has been in a very strong cash position, through the maintenance of a strong current position, the liquidation of excess inventory, and otherwise. Since the issuance of its now outstanding bonds, the company has been able to reduce the amount outstanding in the hands of the public to slightly over $10,000,000 as at December 31, 1926, and since further decreased. For some time past, the company has had considerably more cash than is needed in the prosecution of its business. A summary of the cash position of Central Leather Company and subsidiaries, and of Central Leather Company alone, is shown on Exhibits numbered respectively D. 2 and D. 3 hereto attached. The new company is fully able to pay the dividend declared and payable August 1, 1927, as well as the cash payment of $5 per share to Preferred Stockholders of Central

Leather Company under the Consolidation Agreement, without impairing in the slightest the need for working capital in its business.

28. The capital of the new company, under the provisions of the Consolidation Agreement, is $28,561,452.40, and it therefore has a large surplus.

29. I attach hereto a copy of the condensed consolidated balance sheet of Central Leather Company and subsidiaries as of December 31, 1926, marked Exhibit D. 4. I also attach a copy of the condensed balance sheet of Central Leather Company alone as of September 30, 1926, May 31, 1927 and June 22, 1927, marked Exhibit D. 5.

30. I also attach a schedule of the net income available for dividends, or loss, as the case may be, of Central Leather Company and subsidiaries, upon a consolidated basis, for each calendar year beginning 1909, through 1926, marked Exhibit D. 6, which also shows the amount of interest on bonds, and dividends on Preferred and Common Stocks of that company charged in each year to income or surplus, and the surplus or deficit at the end of each year.

31. I also attach a schedule marked Exhibit D. 7 showing for the years 1910 to 1926, inclusive, a summary of the sales by the company and its subsidiaries of leather and of lumber, its principal products, and of the volume of business in dollars. The other principal products sold,—glue, grease and tankage—are essentially by-products.

32. The balance sheets of Central Leather Company, as well as of United States Leather Company (No. 1), and statements of profit and loss, submitted to their stockholders, were always

prepared on a consolidated basis. No other basis would have accurately reflected the operations of the business. Central Leather Company was primarily a holding company. The actual business operations were carried on chiefly through its subsidiary companies, although the parent company has customarily made the purchases of the principal raw materials, principally hides, and has financed the subsidiary companies to a large degree. Raw hides purchased by the parent company are tanned by subsidiary companies on a contract basis and are sold through subsidiaries.

33. United States Leather Company (No. 2) was organized in New Jersey on September 27, 1909, with a view to perpetuating in the trade the name and goodwill of United States Leather Company (No. 1) and for the purpose of acting as a selling company. United States Leather Company (No. 2) has so functioned, and, while it is true that its authorized and issued capital stock is only $100,000, all of which was held by Central Leather Company, it has nevertheless for many years been possessed of substantial assets and has, as such selling company, done a substantial business. A substantial part of the inventories of finished goods and of accounts receivable for leather sold have been possessed by United States Leather Company (No. 2). I attach hereto a condensed balance sheet as of September 30, 1926, May 31, 1927, and June 22, 1927, marked Exhibit D. 8, of said United States Leather Company (No. 2).

34. Gross sales of United States Leather Company (No. 2) for the years 1925 and 1926 and for 1927 to June 22, were as follows:

1925 .....$15,759,917.
1926 ..... 13,130,140.
To June 22, 1927..... 5,501,953.

35. The following named persons were holders of record on the dates below mentioned of the following number of shares of Preferred and Common stock of Central Leather Company:

		Preferred	Common
Max J. H. Rossback	June 14, 1926	655	None
" " " "	October 1, 1926	555	None
Charles S. Haight	June 14, 1926	None	100
" " "	October 1, 1926	None	100
Alice Hoyt (Mrs. Charles S.) Haight	June 14, 1926	4,225	None
" " "	October 1, 1926	4,225	None

Harry W. Hill

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York in the State of New York, duly commissioned and sworn as witness my official seal hereto affixed.

(Seal) W E F Smith
Notary Public.
Notary Public, New York County No. 409
New York Register's No. 9021
Commission expires March 30, 1929

EXHIBIT D. 1.

CENTRAL LEATHER COMPANY
17 Battery Place
New York City

May 20, 1927.

Dear Sir:

There is sent you herewith a notice of a special meeting of stockholders to be held on June 22, 1927, for the purpose of approving the consolidation of Central Leather Company with The United States Leather Company, a subsidiary corporation.

The Board of Directors of Central Leather Company has approved the Agreement of Merger and Consolidation by which the proposed consolidation will be effected. Copies of this agreement are on file in the Company's offices, No. 15 Exchange Place, Jersey City, New Jersey, and No. 17 Battery Place, New York City, and may be examined there by stockholders during business hours. A copy will be mailed to any stockholder on request.

The name of the company to be formed by the consolidation will be The United States Leather Company. This company will succeed to the assets and assume the liabilities of the existing companies.

Under the Agreement of Merger and Consolidation

(1) holders of Preferred Stock of Central Leather Company, upon surrender of the certificates for their stock, will be entitled to receive for each share of said Preferred Stock

(*a*) $50 par value (one-half share) of Prior Preference Stock of The United

States Leather Company, entitled to cumulative dividends at the rate of 7% per annum, from July 1, 1926;

(*b*) Three-fourths of a share of Class A Participating and Convertible Stock of The United States Leather Company; and

(*c*) $5.00 in cash; and

(2) holders of Common Stock of Central Leather Company, upon the surrender of the certificates therefor, will be entitled to receive for each share of said Common Stock one share of Common Stock of The United States Leather Company.

Scrip (non-dividend bearing and non-voting) will be issued in respect of fractional shares.

The Board of Directors and officers of the Company believe that the carrying out of the proposed consolidation will be of substantial benefit to the Company and its stockholders, and urge all stockholders to vote in favor of such consolidation at the meeting or, if they are unable to be present at the meeting, to sign and return the enclosed proxy as promptly as possible.

Based on the earnings of Central Leather Company for the nine months ended March 31, 1927, the officers of the Company estimate that the earnings for the twelve months ending June 30, 1927 will be more than sufficient to cover full dividends for the period from July 1, 1926 to July 1, 1927 on the Prior Preference Stock issuable under the Agreement of Merger and Consolidation. It is the present expectation that

such dividends will be declared shortly after the consummation of the consolidation.

Yours very truly,

HIRAM S. BROWN,

President.

EXHIBIT D. 2.

CENTRAL LEATHER COMPANY & SUBSIDIARIES

Cash Situation

	Cash	Call Loans
October 1st, 1926	$1,919,727.44	$6,600,000.00
June 22nd, 1927	1,687,322.72	7,500,000.00
*July 22nd, 1927	1,739,625.38	6,600,000.00

* The United States Leather Company (New).

New York, July 25th, 1927.

EXHIBIT D. 3.

CENTRAL LEATHER COMPANY

Cash Situation

	Cash	Call Loans
October 1st, 1926	$ 777,014.28	$6,600,000.00
June 22nd, 1927	566,357.19	7,500,000.00
*July 22nd, 1927	757,350.73	6,600,000.00

* The United States Leather Company (New).

New York, July 25th, 1927.

EXHIBIT D4 D5

EXHIBIT D5'

CENTRAL LEATHER COMPANY

Balance Sheet

A S S E T S

	September 30th, 1926		May 31st, 1927		June 22nd, 1927	
Property:-						
Canadian Tannery Option	$ 2,262.11		$ 5,096.14		$ 5,096.14	
Patents	1.00		1.00		1.00	
Personal Property	6,083.00	$ 8,346.11	8,735.10	$ 13,832.24	8,735.10	$ 13,832.24
Investments:-						
Company Securities	$ 342.46		$ 369.67		$ 369.67	
The Griess-Pfleger Tanning Company Stock	4,974,902.75		4,974,902.75		4,974,902.75	
Tanners Products Company Stock	470,784.78		470,784.78		470,784.78	
Tanners Supply Company Stock	7,075.00		7,075.00		7,075.00	
East Oregon Lumber Company Bonds					998.54	
Merril Boom Company Stock	1.00		1.00		1.00	
St. Louis Coliseum Stock	1.00		1.00		1.00	
Hilliard & Merrill, Mortgage			19,000.00		19,000.00	
Treasury Bonds	1,999,000.00	7,452,106.99	3,037,000.00	8,509,134.20	3,755,000.00	9,228,132.74
Sinking Fund		2,801.12		707,354.88		707,354.88
Current Assets:-						
Inventories:						
Hides in Process	$ 5,502,633.50		$ 8,063,495.70		$ 7,761,137.95	
Leather Freights	7,909.63		10,813.00		8,877.35	
Hides in Vessels and Stores	31,128.15	5,541,671.28	186,402.66	8,260,711.36	1,059,217.51	8,829,232.81
Accounts Receivable:						
The United States Leather Company	$ 731,661.28		$ 1,222,834.36		$ 1,398,425.35	
The United States Lea. Co. of Mass.	629,221.40		1,252,311.04		1,296,297.73	
N. R. Allen's Sons Company	1,360,958.61					
Union Tanning Company	10,334,219.70		10,325,282.71		10,422,937.50	
Rib Lake Lumber Company of Delaware	2,463,893.66		3,155,955.15		3,129,823.57	
Susquehanna & New York Railroad Co.	240,180.45		267,814.89		270,442.95	
Clarion River Railway Company	12.10					
Keystone Glue Company	9,349.36					
Sheffield Water Company	4,900.00		7,300.00		7,520.00	
Northeastern Coal Company	4,141.34		5,391.89		5,517.97	
Accrued Interest	57,045.19		108,527.43		132,087.05	
U. S. Government Tax Claim, 1919					2,550,000.00	
Sundries	135,770.94	15,971,354.03	70,342.88	16,415,760.35	90,621.78	19,303,673.90
Liberty Bonds	$ 24,123.85		$ 24,123.85		$ 24,123.85	
Call Loans	6,600,000.00		9,000,000.00		7,500,000.00	
Cash	777,014.28	7,401,138.13	473,045.45	9,497,169.30	566,357.19	8,090,481.04
Deferred Charges:						
Bond Discount	$ 1,247,200.00		$ 1,148,200.00		$ 1,138,200.00	
Reorganization Suspense			164,344.31		168,020.35	
Unearned Insurance	52,474.20	1,299,674.20	80,582.52	1,393,126.83	60,284.70	1,366,505.05
Inter-company Stock		18,805,666.90		19,670,637.19		19,673,008.43
do Bonds		18,097,300.00		16,629,300.00		16,629,300.00
do Notes		35,984,874.79		32,734,874.79		32,734,874.79
DEFICIT		19,342,434.65		17,699,457.07		17,455,772.22
		$92,296,534.40		$92,190,083.83		$94,686,151.24

New York, July 25th, 1927

Balance Sheet

LIABILITIES

	September 30th, 1926		May 31st, 1927		June 22nd, 1927	
Capital Stock:-						
Preferred - Issued	$33,298,550.00		$33,298,550.00		$33,298,550.00	
" - Reserved	500.00	$33,299,050.00	500.00	$33,299,050.00	500.00	$33,299,050.00
Common - Issued	$39,689,665.50		$39,689,665.50		$39,689,665.50	
" - Reserved	11,365.00	39,701,030.50	11,365.00	39,701,030.50	11,365.00	39,701,030.50
Bonds - Issued	$15,000,000.00		$15,000,000.00		$15,000,000.00	
" - Retired	1,801,000.00	13,199,000.00	2,576,000.00	12,424,000.00	2,576,000.00	12,424,000.00
Current Liabilities:-						
Accounts Payable:						
N. R. Allen's Sons Company	$		$ 846,864.64		$ 799,046.52	
N. R. Allen's Sons Leather Company	1,172,971.16		244,012.19		258,653.52	
Keystone Glue Company			44,837.30		40,255.42	
Central Pennsylvania Lumber Company	387,920.59		202,461.91		118,868.89	
Tionesta Valley Railway Company	67,901.37		133,513.28		133,337.68	
John Finnigan Company	126,933.80		350,503.31		356,472.59	
Elk Tanning Company	890,612.11		1,651,169.93		1,643,727.89	
Central Leather Co. Bond Interest	197,985.00		310,600.00		356,154.66	
Unpaid Taxes	2,305.50		7,803.05		550.05	
Tannery Drafts, etc.	40,947.48		117,879.68		167,700.40	
Deferred Dividends Received			15,845.50			
Sundries	43,491.43	2,931,068.44	391,546.40	4,317,037.19	508,082.09	4,382,849.71
Reserves:-						
Fire Insurance	$ 800,338.50		$ 961,636.64		$ 875,000.00	
Liability Insurance	166,407.69		127,389.16		100,000.00	
Marine Insurance	100,765.17		103,404.62		100,000.00	
The United States Leather Co. Stock	461.69		461.69		461.69	
The United States Leather Co. Bonds	1,157.50		1,157.50		1,157.50	
Cash Payable	100.00		100.00		100.00	
Railroad Property Depreciation	166,318.72		166,318.72		166,318.72	
General	66,804.94		62,804.94		62,438.28	
Contingencies	229,513.40		229,513.40		229,513.40	
Contingency No. 2	75,000.00					
Contingency No. 5	100,000.00					
Contingency No. 10	258,714.60		116,000.00		116,000.00	
Contingency No. 11	213,687.88		213,687.88		213,687.88	
Capital, Clarion River Railway Co.	80,000.00		80,000.00		80,000.00	
Finniga. Losses	103,956.19		91,206.15		91,206.15	
Consignments, Notes, etc. - J. F. Co.	17,000.00		17,000.00		17,000.00	
American Mfrs. Consolidated - Misc.	2,746.20		2,746.20		2,746.20	
do - Stock	5,199.00		5,199.00		5,199.00	
Upper Leather Tanning Company	47,000.00		67,000.00		67,000.00	
Against Notes and Accounts	77,500.00		7,432.00		6,728.35	
Tionesta Valley Ry. Co., for I. C. C.	23,853.41		34,101.68		34,101.68	
Noyes Land & Lumber Company	75,000.00					
Materials and Supplies	130,018.70		113,597.77		112,353.39	
Extract	38,208.79		38,208.79		38,208.79	
Loss - Materials and Supplies, Tools, &c.	135,917.80					
Sheffield Water Company - Plant & Equip.	10,000.00		10,000.00		10,000.00	
Hide Inventory, June 30th, 1926	240,715.28					
U. S. Government Tax Claim - 1919		3,166,385.46		2,448,966.14	2,550,000.00	4,879,221.03
		$92,296,534.40		$92,190,083.83		$94,686,151.24

New York, July 25th, 1927

EXHIBIT D. 4.

CENTRAL LEATHER COMPANY
Consolidated Balance Sheet
December 31st, 1926

ASSETS

Property Account, including Timber Lands, Railroads, Tannery Plants and Plants engaged in Lumber, Glue and Other Allied Industrial Operations		$21,749,057.10
Investments:		
Central Leather Company, First Lien Sinking Fund Bonds at face value	$ 2,943,000.00	
Other Investments	6,262,982.53	
		9,205,982.53
Sinking Fund:		
Cash with Trustee	$ 812,371.59	
Accrued	344,597.21	
		1,156,968.80
Current Assets:		
Inventories:		
Leather in Stores, Lumber and Other Finished Products	$ 7,752,952.72	
Hides and Leather, Raw and in Process, Bark, Extract and All Other Materials	15,200,955.99	
	$22,953,908.71	
Accounts Receivable	$5,217,103.33	
Bills Receivable	575,123.28	
Liberty Bonds	24,123.85	
Call Loans	7,800,000.00	
Cash in Banks and on Hand	1,525,201.49	
	15,141,551.95	
		38,095,460.66
Deferred Charges to Profit and Loss		1,390,641.27
Deficit		18,520,064.01
		$90,118,174.37

Affidavit of Harry W. Hill—Exhibit D. 4.

LIABILTIES

CENTRAL LEATHER COMPANY
Consolidated Balance Sheet (Continued)
December 31st, 1926

Capital Stock:			
*Preferred		$33,299,050.00	
Common		39,701,030.50	
			$73,000,080.50
First Lien Sinking Fund Six Per Cent Bonds:			
Issued		$15,000,000.00	
Less, Retired through Sinking Fund		1,801,000.00	
			13,199,000.00
Current Liabilities:			
Accounts Payable		$ 1,362,493.08	
Interest Accrued on Bonds		307,680.00	
Sinking Fund Accrual		344,597.21	
			2,014,770.29
Reserves:			
Fire Insurance		$ 875,000.00	
Marine Insurance		100,000.00	
Liability Insurance		100,000.00	
Miscellaneous		829,323.58	
			1,904,323.58
			$90,118,174.37

* Cumulative dividends are in arrears since April 1st, 1921.

New York, July 25th, 1927.

EXHIBIT D6

CENTRAL LEATHER COMPANY

Including The United States Leather Company (Original Company) and Other Subsidiaries

Annual Net Earnings, Bond Interest, Net Earnings after Bond Interest, Dividends, Surplus Adjustments and Surplus - to December 31st, 1926

Period	Net Earnings	Central Leather Company Bond Interest	Net Earnings after Bond Interest	Dividends			Total Bond Interest, Dividends and Surplus Adjustments	Surplus
				Preferred	Common	Total		
Twenty Months, 1893-4	$ 726,472.97	$	$ 726,472.97	$	$	$	$	$ 726,472.97
Year 1895	9,359,833.40		9,359,833.40	3,687,000.00		3,687,000.00	3,687,000.00	6,399,306.37
" 1896	2,017,037.49 x		2,017,037.49 x	663,780.00		663,780.00	663,780.00	3,718,488.88
" 1897	3,237,372.09		3,237,372.09	2,494,069.00		2,494,069.00	2,494,069.00	4,461,791.97
" 1898	1,821,921.31		1,821,921.31	2,960,250.50		2,960,250.50	2,960,250.50	3,323,462.78
" 1899	4,947,600.72		4,947,600.72	3,115,884.00		3,115,884.00	3,115,884.00	5,155,179.50
" 1900	2,281,510.55		2,281,510.55	3,736,188.00		3,736,188.00	3,736,188.00	3,700,502.05
" 1901	5,888,455.45		5,888,455.45	3,740,281.75		3,740,281.75	3,740,281.75	5,848,675.75
" 1902	4,595,588.61		4,595,588.61	3,736,938.00		3,736,938.00	3,736,938.00	6,707,326.36
" 1903	14,563,753.32		14,563,753.32	3,736,938.00		3,736,938.00	3,736,938.00	17,534,141.68
" 1904	4,402,807.33		4,402,807.33	3,736,938.00		3,736,938.00	3,736,938.00	18,200,011.01
" 1905	6,331,093.25	359,784.58	5,971,308.67	3,411,752.50		3,411,752.50	3,771,537.08	20,759,567.18
" 1906	6,552,697.34	1,692,591.39	4,860,105.95	2,431,128.50		2,431,128.50	4,123,719.89	23,188,544.63
" 1907	5,005,339.77	1,724,410.00	3,280,929.77	2,443,399.25		2,443,399.25	4,167,809.25	24,026,075.15
" 1908	5,276,099.68	1,726,330.00	3,549,769.68	2,442,811.00		2,442,811.00	4,169,141.00	25,133,033.83
" 1909	6,882,365.54	1,964,429.37	4,917,936.17	2,414,840.75		2,414,840.75	4,379,270.12	
							§22,993,496.02	4,642,633.23
" 1910	3,547,890.35	2,053,387.50	1,494,502.85	2,330,930.00		2,330,930.00	4,384,317.50	3,806,206.08
" 1911	2,304,649.36	2,009,467.50	295,181.86	2,330,930.00		2,330,930.00	4,340,397.50	1,770,457.94
" 1912	7,735,891.93	1,999,007.50	5,736,884.43	2,330,930.00		2,330,930.00	4,329,937.50	5,176,412.37
" 1913	6,269,079.83	1,882,735.17	4,386,344.66	2,330,930.00	793,998.80	3,124,928.80	5,007,663.97	6,437,828.23
" 1914	6,715,130.89	1,838,207.50	4,876,923.39	2,330,930.00	1,191,028.18	3,521,958.18	5,360,165.68	7,792,793.44
" 1915	8,465,104.04	1,838,207.50	6,626,896.54	2,330,930.00	1,588,037.62	3,918,967.62	5,757,175.12	10,500,722.36
" 1916	17,327,408.55	1,838,207.50	15,489,201.05	2,330,930.00	3,275,325.90	5,606,255.90	7,444,463.40	20,383,667.51
" 1917	16,243,062.26	1,838,207.50	14,404,854.76	2,330,930.00	3,573,081.00	5,904,011.00	7,742,218.50	28,884,511.27
" 1918	8,314,641.77	1,838,207.50	6,476,434.27	2,330,930.00	2,779,063.00	5,109,993.00	6,948,200.50	30,250,952.54
" 1919	16,126,688.78	1,838,207.50	14,288,481.28	2,330,930.00	3,573,081.00	5,904,011.00	7,742,218.50	
							§§8,126,149.12	30,509,273.70
" 1920	20,590,005.50 x	1,838,207.50	22,428,213.00 x	2,330,930.00	992,522.50 x	3,323,452.50	5,161,660.00	4,757,608.20
" 1921	9,230,486.33 x	1,838,207.50	11,068,693.83 x	582,732.50		582,732.50	2,420,940.00	xx 6,893,818.13
" 1922	3,366,416.70	1,838,207.50	1,528,209.20				1,838,207.50	xx 5,365,608.93
" 1923	5,434,035.44 x	1,838,207.50	7,272,242.94 x				1,838,207.50	xx 12,637,851.87
" 1924	1,353,900.85	1,838,207.50	484,306.65 x				1,838,207.50	xx 13,122,158.52
" 1925	2,695,814.59	*1,082,938.60	1,612,875.99	A 147,800.00		147,800.00	1,230,738.60	
							••7,397,891.06	xx 19,054,973.59
" 1926	1,494,919.58	812,010.00	682,909.58	A 148,000.00		148,000.00	960,010.00	xx 18,520,064.01
TOTALS	$146,561,946.05	$37,527,374.11	$109,034,571.94	$71,270,961.75	$17,766,138.00	$89,037,099.75	$•38,517,536.20 xx 126,564,473.86	$18,520,064.01

§ Amount Charged to Surplus to cover sundry adjustments.

§§ Amount Charged to Surplus in reduction of Property Account.

•• Amount Charged to Surplus, September 30th, 1925, in reduction of Fixed and Current Assets.

Memorandum of Revaluation	
Year 1903	$13,477,657.71
Year 1904	757,540.39
Total	$14,235,198.10

* Interest on Old Bond Issue (5%) $ 197,699.03
Interest on New Bond Issue (6%) 885,239.57
$1,082,938.60

x Loss

• Total of Surplus Adjustments.

A Discount on Bonds.

xx DEFICIT.

New York, July 25th, 1927

185

EXHIBIT D8

THE UNITED STATES LEATHER COMPANY

Balance Sheet

A S S E T S

	September 30th, 1926		May 31st, 1927		June 22nd, 1927	
Property:-						
Elizabeth Plant	$ 337,089.56		$ 312,716.05		$ 312,716.05	
Less Reserve	29,684.50	$ 307,405.06	33,774.40	$ 278,941.65	34,145.23	$ 278,570.82
Richmond Store	$ 25,000.00		$ 25,000.00		$ 25,000.00	
Less Reserve	374.94	24,625.06	708.30	24,291.70	738.85	24,261.15
Plants		268.03		298.53		298.53
Personal Property		4,839.38		8,597.80		8,682.14
Investments:-						
Manss-Owens Stock		1.00		1.00		1.00
Current Assets:-						
Inventories:						
Leather in Stores	$ 3,582,376.34		$ 2,836,609.17		$ 2,834,154.78	
Materials and Supplies	16,439.05	3,598,815.39	18,717.70	2,855,326.87	21,907.03	2,856,061.81
Accounts Receivable:-						
The United States Lea. Co. of Mass.	$ 1,105,311.59		$ 559,920.29		$ 629,443.87	
N. R. Allen's Sons Leather Co.	49,432.74		78,298.60		45,581.50	
Leather Customers	1,379,043.47		942,280.75		1,160,358.28	
Sundry	17,721.40	2,551,509.20	19,007.33	1,599,506.97	16,369.11	1,851,752.76
Suspense	$ 1,312.04		$ 16,354.78		$ 16,266.26	
Less Reserve		1,312.04	11,582.95	4,771.83	11,582.95	4,683.31
Bills Receivable		528.00		478.00		478.00
Cash		159,184.02		92,830.81		68,849.09
Prepaid Taxes				4,255.95		144.56
DEFICIT		11,144,790.75		11,432,014.70		11,417,564.87
		$17,793,277.93		$16,301,315.81		$16,511,348.04

LIABILITIES

Capital Stock		$ 100,000.00		$ 100,000.00		$ 100,000.00
Current Liabilities:-						
Accounts Payable:						
Central Leather Company	$ 731,661.28		$ 1,222,834.36		$ 1,398,425.35	
Union Tanning Company	164,270.91		164,397.01		164,699.26	
Elk Tanning Company	75,326.64		80,639.73		80,639.73	
N. R. Allen's Sons Company	612,785.96		643,849.27		663,403.09	
Northeastern Coal Company	95.68					
Current	50,590.43		53,506.09		59,944.93	
Accrued Discount	54,058.50		36,089.35		44,235.68	
Unpaid Taxes	4,488.53	1,693,277.96		2,201,315.81		2,411,348.04
Central Leather Company Note		16,000,000.00		14,000,000.00		14,000,000.00
		$17,793,277.93		$16,301,315.81		$16,511,348.04

New York, July 25th, 1927

EXHIBIT D. 7.

CENTRAL LEATHER COMPANY AND SUBSIDIARIES

Year	Summary of Sales of Leather—Sides	Lumber—Feet	Value of Business (In Dollars)
1910	10,054,439	203,127,476	$ 55,640,382
1911	9,794,812	180,010,176	52,991,240
1912	11,013,826	188,527,862	66,854,413
1913	8,844,194	173,466,287	59,586,498
1914	8,449,138	131,591,092	60,814,902
1915	8,835,431	202,270,470	68,917,939
1916	10,062,530	203,807,786	93,247,551
1917	7,271,831	199,749,310	91,731,547
1918	8,477,137	147,850,836	94,147,418
1919	7,985,862	152,509,517	118,959,634
1920	4,024,703	106,471,792	66,225,551
1921	4,761,546	89,373,130	43,189,551
1922	6,248,398	125,719,844	55,249,114
1923	5,707,972	128,163,188	52,826,919
1924	5,314,747	122,284,845	41,483,791
1925	4,109,737	153,238,685	41,122,551
1926*	4,304,704	146,752,710	37,904,584

* Not Published.

New York, July 25th, 1927.

A12414

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY.

100

AUTHORIZED CAPITAL STOCK

PREFERRED STOCK $40.000.000 * COMMON STOCK $40.000.000



CENTRAL LEATHER COMPANY

CERTIFICATE FOR 7% CUMULATIVE

PREFERRED STOCK

This Certifies *** CHARLES A. EDWARDS ***

to be entitled to **ONE HUNDRED** Shares full-paid of the par value of one hundred dollars each, of the Preferred Stock of the Central Leather Company, transferable only on the books of the said Company by the holder hereof in person or by duly authorized attorney upon surrender of this certificate properly indorsed. The holders of said Preferred Stock shall be entitled to receive, or to have set apart, out of the surplus or net profits of said Company, as and when declared by its board of directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative, on all such Preferred Stock outstanding at the time, which dividend shall be payable yearly, half-yearly or quarterly, as the board of directors may from time to time fix and determine, and before any dividend shall be set apart for, or paid on, the Common Stock. In case of the liquidation or dissolution or winding-up (whether voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall receive cash to the amount of the par value of such Preferred Stock, together with all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the Common Stock. The rights of the holder hereof are expressly declared and agreed to be subject to the terms and provisions of the Certificate of Incorporation and By-Laws of the said Company and of any amendment of either of them which may hereafter be lawfully made. In Witness Whereof said Company has caused its corporate seal to be hereunto affixed and this Certificate to be signed by its President or one of its Vice-Presidents, and by its Treasurer or one of its Assistant Treasurers.

The Equitable Trust Company of New York
TRANSFER AGENT.
ASST. SECRETARY.
COUNTERSIGNED
H K
by

REGISTERED
United States Mortgage and Trust Company
REGISTRAR
by
ASST. SECRETARY

[signature] ASST. TREASURER.

[signature] VICE-PRESIDENT.

100

SHARES $100 EACH

100

INTERNATIONAL BANK NOTE CO. N.Y.

NK

For Value received, hereby sell, assign and transfer unto

JOHN WINDHURST
25 BROAD STREET
NEW YORK CITY

Shares

of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

W. H. Haines, P. Hebenberger, C. Kraemer, C. Ahlheim, C. Conlin, P. Leahy, R. Smith, M. Taylor, W. Shearer, F. Ladd or T. Teuer

Attorney

to transfer the said Stock on the books of the within named Company with full power of substitution in the premises.

Dated, JAN 23 1920 1

In Presence of

Notice: The Signature to this Assignment must correspond with the name as written upon the face of the Certificate in every particular without alteration or enlargement or any change whatever.

G. N.

SIGNATURE GUARANTEED
UNITED STATES TRUST COMPANY OF NEW YORK
ASSISTANT SECRETARY

P.L.

AFFIDAVIT OF ANDREW J. MILLER.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

ANDREW J. MILLER, being duly sworn according to law, on his oath, deposes and says:

1. I reside at 299 Park Ave, New York, I am Chairman of the Committee for Common Stockholders of Central Leather Company in connection with the Readjustment of Share Capital of said Company. The other members of said Committee are Messrs. Samuel Fuller, Jr., and Henry Rogers Winthrop.

2. I am a member of the firm of Hallgarten & Co. and was, until recently, a member of the firm of Boissevain & Co. On October 5, 1926, there were registered in the name of Hallgarten & Co. for account of Bankierkantoor Van Mendes Gans & Co. and Banque de Mendes Cans & Cie, 5600 shares of common stock of Central Leather Company and no shares of preferred stock of Central Leather Company, and in the name of Boissevain & Co. for account of Adolph Boissevain & Co., 550 shares of such common stock and no shares of such preferred stock. There were also registered in the name of Hallgarten & Co. on said date 200 shares of said preferred stock and 630 shares of said common stock.

3. Mr. Samuel Fuller, Jr. is a member of the firm of Kissel, Kinnicutt & Co. There were registered in the name of Kissel, Kinnicutt & Co., for account of Vermeer & Co. on October 5, 1926, 3,700 shares of Common Stock of Central Leather Company and no shares of Preferred Stock of Central Leather Company.

4. Mr. Henry Rogers Winthrop is a member of the firm of Harris, Winthrop & Co. On

Affidavit of Andrew J. Miller.

October 5, 1926, as shown by the books of Central Leather Company, there were registered in the name of Harris, Winthrop & Co. 1,802 shares of Common Stock of Central Leather Company and 230 shares of Preferred Stock of Central Leather Company.

Andrew J. Miller

Subscribed and sworn to this 25th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Notarial Seal) Harry S. Ferguson
Notary Public Kings County
Certified in New York, Richmond and Nassau Cos.
Kings Co. Clerk's No. 262 Reg. No. 8318
N. Y. Co. Clerk's No. 748, Reg. No. 8049-A
Commission expires March 30, 1928

AFFIDAVIT OF HARRY W. HILL.

Filed July 27, 1927.

STATE OF NEW YORK }
COUNTY OF NEW YORK } *ss.:*

HARRY W. HILL, being duly sworn according to law on his oath, deposes and says:

1. I was the Secretary of Central Leather Company, a New Jersey corporation, and familiar with the stock records of said company.

2. On June 14, 1926, the firm of Lehman Bros. was the holder of record of approximately 5,302 shares of Preferred Stock and 600 shares of Common Stock of Central Leather Company, as shown by the books of said company. On October 1, 1926, the firm of Lehman Bros. was the holder of record of approximately 6,002 shares of Preferred Stock and 600 shares of Common Stock of Central Leather Company, as shown by the books of said company.

Harry W. Hill

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a notary public of the County of New York in the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Seal) W. E. F. Smith
Notary Public, New York County No. 409
New York Register's No. 9021
Commission expires March 30, 1929

AFFIDAVIT OF LEWIS L. STRAUSS.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

LEWIS L. STRAUSS, being duly sworn according to law, on his oath, deposes and says:

I. I reside at 25 East 76th Street, New York City. I am associated with the firm of Kuhn, Loeb & Co., one of the Managers under the Plan and Agreement, dated October 1, 1926 for Readjustment of Share Capital of Central Leather Company and was in general charge for that firm of all matters in connection with such readjustment.

II. I took an active part in the formulation of said Plan and in the negotiations in connection therewith. All through said negotiations, the interests of the Preferred Stockholders of Central Leather Company were represented not only by the Board of Directors of Central Leather Company but also by the Preferred Stockholders' Committee named in said Plan consisting of owners or representatives of large amounts of Preferred Stock.

III. Said Preferred Stockholders' Committee was represented by counsel and took an active and vigorous part in the negotiations on behalf of the holders of Preferred Stock.

IV. It was essential to work out a plan which would be fair to both classes of stock and would be accepted by a large majority of each class. To accomplish this, it was, of course, necessary for each class of stockholders to make concessions. The Plan places the holders of Preferred Stock in a position to receive immediately substantial dividends in respect of their holdings and by the establishment of a surplus

available for the payment of dividends on the new Prior Preference Stock gives reasonable assurance of the Company's ability to continue dividend payments in spite of temporary periods of depression. Moreover, the maximum dividend on the Preferred Stock is by the Plan increased from $7 per share per annum to $8 per share per annum and (in so far as Preferred Stockholders receive Class A Stock of the New Company) gives the Preferred Stockholders an opportunity to share in future prosperity of the Company through the right to convert Class A Stock into Common Stock. In my opinion, the position of Preferred Stockholders is greatly bettered by the Plan. It is much more to the advantage of a Preferred Stockholder to be in a position to receive current dividends immediately and to fund his accumulated dividends than to retain the right to accumulated dividends but to be required to wait for the payment of any dividends until the Company's earnings have been sufficient to wipe out the deficit which was approximately $19,000,000 as of June 30, 1926.

V. That the Plan is beneficial to the holders of Preferred Stock is shown by the increase in the market value of that stock since the promulgation of the Plan. There is attached hereto marked Exhibit A a statement compiled under my direction from the Commercial and Financial Chronicle showing (a) the high and low prices of the Preferred and Common Stock for the years 1919, 1920, 1921, 1922 and 1923 and for each month during the years 1924, 1925, 1926 and 1927, to and including July 20th; and (b) the high and low prices of the Certificates of Deposit issued under the Plan for each month from November 1926 to and including July 20,

1927. It appears from this statement that the Preferred Stock in 1923 reached a low price of 28-⅛; that in 1924 and 1925, its highest price was 71 reached in October 1925; that in June 1926, when negotiations looking toward a readjustment became active, the Preferred Stock ranged from a low of 49-⅝ to a high of 59-¾; and that in July 1927, the Preferred Stock reached a high price of 79-¾, equal to its highest price in the year 1923 and higher than any price since that time. On the other hand, it appears from said statement that while the market price of the Common Stock also increased as a result of the Plan, the highest price reached by the Common Stock was 17⅞ in May 1927, whereas the Common Stock sold from 18-½ to 23-⅝ in October 1925 and as late as February 1926, sold at 20-¼. In other words, the Preferred Stock has, as a result of the Plan, reached its highest point since 1923, whereas the Common Stock is still far below the price at which it sold in the latter part of 1925 and the beginning of 1926. This reflects the view of the market that the readjustment does not favor the Common Stock at the expense of the Preferred Stock.

VI. Voting Trust Certificates issuable under the Plan were traded in on a when-issued basis on the New York Stock Exchange from October 1926 to and including June 28, 1927, the total amount traded in, as shown by published reports, having been 59,300 shares of Prior Preference Stock, 105,760 shares of Class A Stock, and 2,200 shares of Common Stock. On June 29, 1927, Voting Trust Certificates were admitted to when-issued trading on the New York Stock Exchange. Upon that date, to and including July 22, 1927,

the amounts traded in on the New York Stock Exchange, as shown by published statements, were 5,900 shares of Prior Preference Stock, 34,500 shares of Class A Stock, and 2,500 shares of Common Stock.

VII. On October 1, 1926, and for several months prior thereto, neither I nor any member of the firm of Kuhn, Loeb & Co., nor said firm, owned any shares of stock of Central Leather Company, either Preferred or Common, except that there were registered in my name a few shares of Common Stock to qualify me as Director of Central Leather Company.

Lewis L. Strauss

Subscribed and sworn this 25th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York, in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

Harry S Ferguson
Notary Public.
Notary Public, Kings County
Cert. filed in New York, Richmond and Nassau Cos.
Kings Co. Clerk's No. 662 Reg. No. 8318
N. Y. Co. Clerk's No. 748, Reg. No. 9049 A
Commission expires March 30, 1928

Affidavit of Lewis L. Strauss—Exhibit A.

EXHIBIT A

Statement showing

(a) High and low market prices of Preferred Stock and Common Stock of Central Leather Company during the years 1919, 1920, 1921, 1922 and 1923, and during each month thereafter to and including July 20, 1927; and

(b) High and low market prices of Certificates of Deposit for Preferred Stock and Common Stock of Central Leather Company issued under Readjustment Plan for each month from November 1926, to and including July 20, 1927,

All as reported in Commercial and Financial Chronicle.

Yearly High and Low	Central Leather Common		Central Leather Preferred	
1919	56½	116½	104½	114
1920	30½	40¾	80¼	108½
1921	22⅛	43¼	57⅛	96
1922	29⅜	44⅛	63⅜	82¾
1923	9⅝	40½	28⅛	79¾
1924				
January	13⅜	17⅜	37½	44⅝
February	13⅝	17⅞	35⅛	44⅞
March	9⅞	15¼	29¼	44
April	10⅝	14	36	42¼
May	10¼	12½	36¾	43½
June	10⅞	13½	40⅝	47½
July	12¾	14⅜	44	49
August	13⅛	15⅞	47	52¾
September	13½	15¼	45½	50
October	13⅛	15¼	40¼	47⅜
November	13⅞	20⅞	45¼	54¼
December	18	21⅝	50⅝	58¼
1925				
January	18½	20¾	55	58⅝
February	18¼	21¾	55¾	66
March	14¾	19⅝	49¼	61¼
April	15	17¼	52	58⅛
May	16	20⅝	52⅞	64
June	16¾	19⅜	57⅜	63

Affidavit of Lewis L. Strauss—Exhibit A.

Yearly High and Low 1925	Central Leather Common		Central Leather Preferred	
July	17¼	20¼	59½	65½
August	17⅛	19¼	59	64⅛
September	17⅝	20¾	59¼	64¼
October	18½	23⅝	61	71
November	18¾	21⅝	62	70⅞
December	18⅜	20⅞	63	67½
1926				
January	18⅛	20½	62½	68¾
February	17½	20¼	60¾	67⅞
March	11⅛	17⅝	47⅛	63¾
April	8¼	13⅜	43¼	50⅞
May	7⅛	10⅜	44⅝	53⅜
June	9⅛	11	49⅝	59¾
July	8	9½	51	56⅞
August	7¾	11⅜	51½	60½
September	8½	10¾	56¼	60⅜
October	7⅞	9	50⅛	60¼
November	7	8½	49¾	54⅝
December	7¼	8⅛	51½	54½
1927				
January	8⅜	10¾	54	58¼
February	9¼	10¾	57	66½
March	8⅞	10½	61	71
April	9⅝	10¾	68½	72
May	9⅞	17⅞	70½	76½
June	14	16	72	77½
July	13⅜	16	72½	79¾
Yearly High and Low 1926	Central Leather Common Certificates		Central Leather Preferred Certificates	
November	7¾	8¾	50	53¾
December	7	7¾	51¼	54½
1927				
January	7¼	9⅞	54	57¼
February	8¾	9⅞	56⅜	62⅞
March	9	10¼	59⅝	67
April	9⅝	10¾	61¾	67
May	10	15½	62⅞	67⅞
June	13⅛	15¼	65	67½
July	13¾	15	72¼	78¾

AFFIDAVIT OF BOYLSTON A. TOMPKINS.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

BOYLSTON A. TOMPKINS, being duly sworn according to law, on his oath deposes and says:

1. I reside at 122 East 55th Street, in the City of New York.

2. I am Vice-President of the Bankers Trust Company, a trust company organized under the banking laws of the State of New York, with its principal office at 16 Wall Street, in the City of New York, and which company is one of the Managers under the Plan and Agreement dated October 1, 1926, for the readjustment of the share capital of the Central Leather Company. I was in general charge for that Company in all matters in connection with such readjustment.

3. I have read the affidavit of Lewis L. Strauss, Jr. verified July 25th, 1927, and all of the statements contained therein are true, as I believe, and I desire to adopt the said affidavit as my own, with the same force and effect as if the same were here repeated at length, and I particularly desire to represent to the Court that the said Readjustment Plan is, in my opinion, for the best interests of the preferred shareholders of the Central Leather Company.

Neither I nor the said Bankers Trust Company owned, either on October 1st or October 19th, 1926, shares of stock of Central Leather Company, either preferred or common, except that there were registered in my name five shares of common stock to qualify me as a director of the Central Leather Company.

Boylston A. Tompkins

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Notarial Seal) W. E. F. Smith,
Notary Public, New York County No. 409.
New York Register's No. 9021.
Commission expires March 30, 1929.

AFFIDAVIT OF E. E. BEACH.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } *ss.:*

E. E. BEACH, being duly sworn according to law, on his oath deposes and says:

1. I reside in 52 Mountain Ave., Summit, N. J. and am Asistant Secretary of Bankers Trust Company of New York City. Bankers Trust Company was and is depositary under the Plan for the readjustment of the share capital of Central Leather Company dated October 1, 1926. I was in general charge, for Bankers Trust Company, of the receipt of deposits of stock under said Plan.

2. Set forth below are the total number of shares of the Preferred and Common Stock respectively of Central Leather Company which had been deposited with said depositary up to the close of each calendar month beginning with October, 1926, and the percentages which such deposits respectively bear to the total number of outstanding shares of Preferred Stock, namely, 332,990, and of Common Stock, namely, 397,010—

Month	Preferred Stock Shares	Preferred Stock Percentage	Common Stock Shares	Common Stock Percentage
1926				
October	50,042	15.02%	35,541	8.95%
November	217,004	65.16%	253,797	63.92%
December	237,518	71.32%	292,570	73.69%
1927				
January	252,956	75.96%	302,640	76.22%
February	283,761	86.21%	308,806	77.78%
March	288,604	86.67%	317,334	79.93%
April	294,956	88.51%	324,067	81.62%
May	296,183	88.87%	326,878	82.33%
June	302,878	90.95%	329,480	83.01%
At close of business July 19th	308,141	92.53%	337,219	84.93%

3. All of the shares of Preferred and Common Stock deposited as aforesaid up to July 19, 1927, pursuant to the Consolidation Agreement dated May 19, 1927, have been surrendered in exchange for the cash and shares of new stock of the new company pursuant to the terms of the Consolidation Agreement. The shares of the Prior Preference Stock of the new company so issued in exchange were issued to the Voting Trustees under the Voting Trust Agreement for such stock dated as of July 1, 1927, and the shares of Class A Stock of the new company so issued were issued to the Voting Trustees under the Voting Trust Agreement covering such stock, dated as of July 1, 1927. The shares of Common Stock so issued were likewise issued to the Voting Trustees of the Voting Trust Agreement covering such stock dated as of July 1, 1927. Voting Trust Certificates are issued from time to time by the Voting Trustees pursuant to said Agreements in respect of the new stocks issued to the Voting Trustees, as aforesaid, and such Voting Trust Certificates (together with cash at the rate of $5 for each share of Preferred Stock of Central Leather Company) are

delivered from time to time to holders of certificates of deposit issued under said plan, against surrender of such certificates.

4. At the close of business, July 19, 1927, Certificates of Deposit for 251,870 shares of Preferred Stock of Central Leather Company and Certificates of Deposit for 127,090 shares of Common Stock of Central Leather Company had been surrendered for exchange as aforesaid.

5. The total amount of cash so disbursed to holders of Certificates of Deposit for Preferred Stock of Central Leather Company up to the close of business July 19, 1927, amounted to $1,259,350. Voting Trust Certificates (including scrip certificates) for 125,935 shares of new Prior Preference Stock and 188,902-½ shares of new Class A Stock and for 127,090 shares of new Common Stock had been delivered in exchange as aforesaid up to the close of business on July 19, 1927.

6. The total number of shares of Preferred Stock of Central Leather Company held by the Managers under said Plan surrendered pursuant to the Consolidation Agreement on or before July 1, 1927 (the date when certificates of stock of the United States Leather Company were first issued) was 302,878 shares; the total number of shares of Common Stock of Central Leather Company held by the Managers under said Plan surrendered pursuant to the Consolidation Agreement on or before July 1, 1927, was 329,480 shares.

7. Bankers Trust Company is transfer agent for the Prior Preference Stock, the Class A Stock and the Common Stock of The United States Leather Company (the New Company). At the close of business on July 19, 1927, there

had been issued and were outstanding 152,019-½ shares of such Prior Preference Stock, 228,029-¼ shares of such Class A Stock and 330,970 shares of such Common Stock, all of which, except 20 shares of Common Stock, is in the names of the Voting Trustees under said respective agreements.

E. E. BEACH.

Subscribed and sworn this 25 day of July, 1927, before me, the subscriber, a Notary Public of the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

RAYMOND J. LINDER,
(Notarial Seal) Notary Public.
Notary Public, Queens County 1052.
New York County Clerk's No. 453.
New York County Register's No. 9353.
My commission expires March 30, 1929.

AFFIDAVIT OF HIRAM S. BROWN.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

HIRAM S. BROWN, being duly sworn according to law, on his oath deposes and says:

1. I reside at Rye, New York. I am President and a director of The United States Leather Company, a New Jersey corporation, formed by the consolidation of Central Leather Company and The United States Leather Company under

Consolidation Agreement dated May 19, 1927. Said consolidation was consummated on June 23, 1927. Prior thereto I was President and a director of Central Leather Company, having been elected President in the year 1924. Prior thereto I had been associated with Sanderson & Porter, engineers and previously was a member of the firm of H. D. Walbridge & Co., public utility operators.

2. Central Leather Company, organized as a New Jersey corporation in 1905, merged with itself in the year 1909 a New Jersey corporation also known as The United States Leather Company which had been organized in 1893. The latter Company, United States Leather Company (No. 1), upon its organization acquired the business and properties of many tanners of leather, including tanneries, bark and timber lands, and thereafter operated the same directly and in part through subsidiaries until the merger of 1909. After its organization and prior to the merger of 1909 it had acquired other properties or subsidiaries. Some of the tanneries and much of the bark and timber lands originally acquired in 1893 are still operated by the present company; on the other hand many of the tanneries have been abandoned or closed and other holdings have been disposed of.

3. The United States Leather Company (No. 1) was capitalized at a large figure. Its earnings fell below expectations and it did not pay the full amount of its cumulative preferred dividends. At the time of the merger in 1909 these preferred dividends were in arrears to the extent of about 50%. Upon the merger of 1909 the capitalization was scaled down.

4. The business of Central Leather Company was fairly stable in respect of volume prior to the world war, but its earnings fluctuated. During the war there was a large increase in the earnings although not in the actual volume of business. The dividends on its preferred stock were paid regularly down to and including April 1, 1921 but no dividends on its preferred stock have since been paid. Dividends in varying amounts were paid on the common stock during the years 1913 to 1920, inclusive, but not in any other year.

5. The United States Leather Company (No. 1) and its subsidiaries and its successor, Central Leather Company and its subsidiaries, were the largest producers in this country of heavy leather, used largely for sole leather, in making shoes, as well as for belting and harness. By reason of the holdings of bark as well as other timber lands, timber has always constituted a substantial part of the business.

6. One of the principal agents used in tanning leather is tannin, which is found in a natural state in the bark of oak, hemlock and other trees. For many decades an extract or solution of bark was used in tanning leather. When the first company was formed the holding of bark lands, particularly if adjacent to the tanneries, was considered advantageous to a leather company, but in recent years this advantage is lessened by the progressive substitution of various chemicals for bark extract.

7. The chief raw material in the leather industry is, of course, raw hides and the cost of the hides forms a considerable part of the cost of the finished product. The price of raw hides tends to dominate the price of the finished

leather. Tanning is a slow process, involving many months, although of recent years it has been somewhat shortened by new methods. Because of the slowness of the process, the tanner is obliged to carry a heavy inventory of both raw hides, hides in process and finished leather. However, during the period between the purchase of the hides or contract for their purchase and the actual sale of the finished leather the price of hides often fluctuates largely with the result that the industry is at the hazard of serious loss from the fluctuation in the price of the inventories.

8. During the world war enormous inventories were accumulated by Central Leather Company and its subsidiaries, as well as by other companies in the industry. In 1920 severe and unprecedented decline in prices and almost complete disappearance of demand for finished product, resulted in a terrific loss for that year. The events of that year were reported by the then President of Central Leather Company to stockholders, in the Annual Report for 1920 as follows:

> "The Annual Report for the year 1920, prepared in the usual manner by the Committee appointed by your Board of Directors, gives in financial form the results of a year unprecedented in the history of the leather industry as well as in that of other basic industries. The very extensive losses, stated or anticipated, in all major industries are known and recognized; but it is deemed appropriate to refer briefly to the precipitate and unprecedented losses in the leather industry. The distinct advance in the prices of raw material and finished leather which

was resumed in December, 1919, continued and increased during the first two months of 1920. Our sales and advance orders in January and February of last year for active domestic consumption exceeded our supply and our production for some months in advance and raw material was therefore provided. The abnormally severe winter, the almost complete breakdown of the transportation system of the country, the delays in delivery, and the cancellation of orders with the cessation of retail buying, all worked to produce by early summer a condition of almost complete stagnation in our industry, in common with or possibly beyond that in others. This situation made impossible a liquidation so obviously advisable. Confronted by this condition,—which, in short, resulted in a precipitate fall in the price of raw material and practically no market for finished products,— the management decided on the drastic policy of almost complete closing of its tanneries. From May until November we reduced purchases of hides to a minimum and liquidated inventories where possible. Not until November, when prices had reached or passed pre-war levels, did we again purchase hides in quantity. During this period the prices of finished products declined on a very restricted market. The inventories of finished products,—necessarily large in a company of our size,—have been marked down successively to meet the market declines. The result has been an inventory loss on leather sold and unsold, which has absorbed a very great part of the surplus. On December

31st, 1920, this Company had practically no commitments for purchase of raw materials.

"The business of the Lumber Companies was profitable during the greater part of the year, but in the closing months the lumber industry experienced the extreme depression prevalent in other lines, with the consequent cessation of orders and declines in values. The business of the Glue Company also was profitable during the major part of the year, but with a similar though not so acute decline in the closing months."

9. Another severe loss occurred in 1921. The result of the operations of 1921-1922 was to wipe out the entire accumulated surplus of Central Leather Company and turn the same into a substantial deficit. There was a small profit (after interest) in 1922, followed by another severe loss in 1923. In the Annual Report for Stockholders for that year the then President of the Company reported to the stockholders as follows:

"The Annual Report for the year 1923, reflects the continued severe depression in the sole leather industry which has continued, with only a slight interruption, for over three years. In view of the heavy losses which the Company has sustained during the past twelve months, it is appropriate, at this time, to make a less formal statement than has been customary, for the purpose of explaining to the stockholders the great difficulties under which this Company and the entire sole leather industry are now laboring.

"The stockholders understand, of course, that the operations of the Central Leather Company comprise about one-third of the

tanning output of sole and belting leather in the country. We have numerous tanneries, in various parts of the country, which were being operated practically to their commercial capacity prior to and during the period of the war. Our average sales for the years 1910 to 1919, inclusive, were over 9,000,000 sides of leather per annum, those sales including an important export trade which we had carefully built up from the earliest days of the Company.

"It must also be kept in mind that the tanning business is one which, by its very nature, requires the purchase of raw material far in advance, since a large proportion of our hides must be bought in foreign countries, and the actual tanning process, even after the hides reach this country, is a matter of months under the most favorable conditions.

"When prices suddenly collapsed in 1920, all tanners found themselves in possession of large stocks of high priced leather and of equally high priced hides in process of tanning, and very heavy losses in inventory were absolutely unavoidable, but no one foresaw the long period of depression which has been encountered since that date. Every tanner was in a position which required the most economic manufacture possible, and no one was willing to increase his costs by drastically reducing his output, except as a matter of last resort. The Central Leather Company did cut down its workings materially but the trade, as a whole, acted upon the theory that the depression was temporary and that consumption and business con-

ditions generally would again become normal within a reasonably short period. General production was therefore maintained and, since the export trade has not revived at all, a serious over-production has resulted. At the end of 1921, the stock of finished sole and belting leather in the hands of American tanners amounted to about 11,500,000 sides. This was fully double the normal stock. This situation was further aggravated by the fact that some of the hide producers and dealers when hides accumulated excessively, converted their hides into leather under tanning contracts resulting in a further increase of finished leather to over 12,000,000 sides. Before really satisfactory conditions could be looked for, this surplus had to be worked off, but no substantial progress has been made in that direction during the last two years. On January 1st, 1923, according to Government statistics, the stock of sole and belting leather on hand amounted to approximately 9,600,000 sides; on July 1st, 1923, to 10,000,000 sides; and on December 31st, 1923, to 10,500,000 sides.

"At the beginning of the year 1923 there was a considerable demand for leather, and prices advanced, but, before the middle of the year, the demand again fell away and, with this large surplus on hand, prices again declined, disastrously.

The hide market has also been exceedingly unstable during the past year. The prices were high at the beginning of the year, only to be followed by a sudden and heavy drop, with the low prices lasting practically to

the end of the year. This drop in hides had the effect which it always has, of unsettling the market for finished leather.

"The conditions which prompted your Directors to curtail manufacture have at last brought about a generally reduced production but it was not until the latter part of 1923 that the rate of operations was sufficiently reduced to correspond reasonably with market conditions, and, because of the length of time of the tanning process, that reduction has not yet been reflected by a corresponding reduction in the finished stock."

10. In 1924 there was a small loss (after interest). In my report as President for 1924, I stated to the stockholders among other things:

"The entire tanning industry of the United States suffered from an over-capacity in tanning plants. In order to relieve itself of the burden of carrying excessive tanning capacity, for which no possible use exists now or prospectively, your company has arranged to abandon plants having an aggregate tanning capacity of 4,000 hides per day."

11. There was a small profit in 1925. In my report to the stockholders of that year, I called attention to the fact that the company owned plants capable of producing two-thirds of the entire heavy leather consumption of the United States, whereas its volume of business aggregated only one-third; and to the obvious effect on operating expenses of this excessive plant capacity.

12. In 1926 there was a still smaller profit. In my report to the stockholders for 1926 I said, among other things:

> "For over two and one-half years your Company has been confronted with the necessity of operating its manufacturing units at greatly reduced capacity, thus occasioning excessive costs, and of selling its product in a 'buyers' market' occasioned by the war-time accumulation of heavy stocks of finished leather much of which was of inferior quality. During a large part of this time your Company was also compelled to absorb the costs of maintaing numerous surplus idle plants and at the same time meet the expense of refunding the bond issue which matured on April 1, 1925. A personnel organized on a basis of war-time production had to be gradually reduced to proportions commensurate with the Company's peace-time volume of business * * *."

13. Another adverse condition from which the business suffers is the decline in consumption of heavy sole leather for men's shoes, which seems to be permanent; also the now frequent changes in the style of shoes.

14. The volume of the business of Central Leather Company since 1920 in respect to the sale of leather averaged only about one-half of the average for the years preceding the war and, notwithstanding the lessened value of the dollar, the gross business of the company in dollars was less than before the war.

15. The committees representing the stockholders were formed in June, 1926, after ex-

tended discussion among the directors and large holders of preferred stock as to the affairs of the company and the possibility of finding some means of resuming payments to preferred stockholders. Prior to the formation of the committees, there was no concerted action by common stockholders and the impetus to formulate and carry out some plan of readjustment came principally from a few large holders of preferred stock.

16. I deny flatly that the plan was formulated at the instance of common stockholders or that the preferred stockholders committee was formed in the interest of or dominated by the common stockholders. On the contrary, the gentlemen constituting the Preferred Stockholders' Committee were each and all directly or indirectly interested in and substantially representative of the preferred stockholders and had prior to June, 1926 been urging a readjustment of the Company's affairs. The number of preferred stockholders of the company is smaller than that of the common stockholders and the holdings of preferred stock are more concentrated than those of common stock. There was some difficulty in finding suitable representatives of the common stock to serve on the committee representing the common stock.

17. The Preferred Stockholders' Committee was formed prior to the formation of the Common Stockholders' Committee, and the Preferred Stockholders' Committee has been the more active and aggressive at all times in their efforts to carry through the Plan.

18. The preferred stock was deposited under the Plan more rapidly than the common stock

and a larger percentage of preferred stock has been deposited thereunder than of common stock.

19. The proportion of the preferred stock deposited under the Plan is, to my mind, remarkably high because the stock had paid no dividend since April, 1921. It is common knowledge that in the case of non-dividend paying stock many holders do not take the trouble to have the certificates registered in their own names, but hold the same and transfer and sell the same in "street" names. For that reason, in such case, there is difficulty in reaching many of the true owners of stock so held for the purpose of presenting a plan and obtaining consent. Notwithstanding that difficulty, over 92% of the preferred stock has actually been deposited under the Plan, and only a small percentage of preferred stockholders have indicated their dissent from the Plan. Other stockholders who have taken no affirmative step are deemed to have acquiesced in the result of the stockholders' meeting.

20. The conditions which faced the committees in the formation of a plan and the Board of Directors in their subsequent consideration of the property of the consolidation may be summarized as follows:

(a) The very large deficit made it a legal and financial impossibility to pay any dividends until the deficit had been wiped out. At the existing rate of earnings it appeared that it would be many years before this could be accomplished;

(b) Conditions in the industry, particularly those affecting the company, were materially and perhaps permanently changed to the disadvantage of the company, so that the capitalization

of the company appeared to be out of due proportion to its earning power. Doubts were expressed whether the company could earn sufficient to pay the regular annual dividend on the preferred stock;

(c) The accumulated unpaid dividends on the preferred stock were harmful to the prestige of the company and to the rating of its securities and would have constituted a serious obstacle in case any new financing were necessary;

(d) The feeling that, no matter what economies might be effected and what efforts might be exerted by the company to increase its earning power, the results would merely go to decrease the deficit and that no distribution could be made to stockholders for many years in the future, was a situation discouraging to the executive officers of the company and naturally a damper on their diligence and energies;

(e) Notwithstanding the adverse conditions and apparent diminished earning power the company was in a strong cash position, so that it was at the same time well able to pay out cash to its stockholders if the legal and financial barrier of the deficit could be removed;

(f) The preferred and common stockholders had like voting power per share, but the greater number of common shares outstanding placed the control, in case of a contest, in the class of stockholders having at the time much the smaller stake in the company;

(g) Any legal step effecting such readjustment of the capital structure as would eliminate the deficit and make a distribution possible, could be effected only with the consent of two-thirds of the holders of common stock, and it could not be hoped that a sufficient proportion of the

common stockholders would consent to a plan for the mere selfish benefit of the preferred stockholders alone, unless it could be shown to the common stockholders that the plan was advantageous to the company and its stockholders as a whole and would preserve at least an ultimate equity to the common stockholders in the company with some future possibility, although remote, of sharing in renewed prosperity;

21. The Board of Directors adopted the Consolidation Agreement on May 19, 1927. They did so in good faith and in the belief that the best interests of the company and its stockholders would be served thereby.

22. Ample notice of the terms of the Consolidation Agreement and of the date and place of the meeting was given to stockholders. I call attention also to the fact that in the notice to stockholders dated May 20, 1927, it was stated that it was expected that a dividend at the rate of $7 per share on the new Prior Preference Stock would be declared within a short time after the consummation of the consolidation. The consolidation was consummated on June 23, 1927, and the Board of Directors of the new company on the same day declared such dividend payable August 1, 1927.

23. The new company immediately became vested with the business and assets of the consolidating corporations and has since carried on such business in its own name and right. Although Mr. White, representative of the complainant John Winhurst, dissented from the consolidation at the stockholders' meeting, no notice whatever was ever received from the complainant that he made any such far-reaching assertions and claims as are set out in his Bill

of Complaint filed herein July 20, 1927, and he gave the new company and its Board of Directors and officers no warning that he would seek to undo the consolidation and all that has been done and consummated thereunder, if, indeed, it were possible to undo the same.

24. It elsewhere appears in more detail in other affidavits presented herewith that the new company has already issued upwards of 90% of its new Prior Preference and new Class A stocks and upwards of 84% of its new common stock; that there has been made and incurred large expenditures in connection with the issuance of the stocks and in other matters connected with the consolidation; that most of the new stocks issued have been deposited under voting trusts and that the Voting Trustees thereunder have issued their certificates against such stock as certificates of deposit have been surrendered; that the new voting trust certificates have been dealt in to a large extent on the New York Stock Exchange; whereby, as is believed, innocent investors have become the owners of some of such stock who should not become thus involved in a controversy between this complainant and his fellow stockholders in a company which has now passed out of existence. As I verily believe, the whole situation has so changed that if only the temporary restraint asked by complainant should be granted, the utmost confusion and embarrassment to the company would result and, as I believe, irreparable and almost incalculable damage would be suffered by the stockholders of the new company.

25. It should be remembered that the stockholders of the new company are those stockholders of the Central Leather Company who, to

a very large majority, have exchanged their stock for stock of the new company, or their assignees. None of the stock of the new company has been issued except in exchange for stock of Central Leather Company, and the authorized capital stock of the new company is such as to provide only for the exchange of the old stock under the Consolidation Agreement, and, in the case of the new common stock, to provide for conversion of the Class A stock into common stock.

26. While the United States Leather Company (No. 2), organized in 1909, had a small authorized capital stock, all of which was held by Central Leather Company, it is not true that that company was a mere "paper" company. It did the selling of leather for the Central Leather Company and subsidiaries in all states except Massachusetts; it possessed and carried on its books very large inventories of finished leather as well as accounts receivable arising out of its sales of leather, and, in fact and in truth, was a going concern with a substantial income and large assets, which were, of course, vested in the new company by the consummation of the consolidation.

27. It is my belief that the provisions in the Merger Agreement are fair and equitable to the stockholders, both preferred and common, of Central Leather Company, as well as advantageous to the corporation. I particularly mention the benefits to the preferred stockholders, which I summarize as follows:

(a) The stockholder who exchanges for the new stock receives two classes of stock, which, under the successful consummation of the consolidation, are, in my opinion, more readily mar-

ketable than the preferred stock of a company having a large deficit bearing large accumulated unpaid dividends;

(b) Such stockholder can sell either one of the two new stocks received. He may hold the Prior Preference Stock on which he is reasonably assured of steady dividends and sell the other, or hold the Class A Stock, which has speculative possibilities, and sell the Prior Preference Stock;

(c) Such stockholder immediately receives $5 per share in cash;

(d) Such stockholder immediately receives a full year's dividend on the new Prior Preference Stock equal to $3.50 per share on the old preferred stock;

(e) Such stockholder is reasonably assured of steady dividends at the rate of $7 per share on the new Prior Preference Stock, equivalent to $3.50 per share on the old preferred stock. With the scale-down of the preferential stock and the creation of a large capital surplus available for the payment of dividends on such Prior Preference Stock (but not for junior stocks) and with the strong cash position of the company, it is probable that the dividends on the Prior Preference Stock can be paid regularly and uninterruptedly;

(f) The Consolidation Agreement provides for the gradual retirement of the Prior Preference Stock by a sinking fund, to be created out of earnings for the purpose of purchasing in each fiscal year, at the rate of not exceeding $110 per share, Prior Preference Stock for retirement. The requirement is that the company devote sufficient earnings in any one year to purchase 5%

of the outstanding Prior Preference Stock at the redemption price. The authorized Prior Preference Stock is 166,496 shares. If all is issued, the sinking fund obligation is to provide sufficient to purchase 8,425 shares per annum at $110, equal to $926,750. Unless the holder of the Prior Preference Stock parts with his stock for less than $110, it is, therefore, likely to be ultimately purchased or redeemed at $110, a premium of $10 over par, which would be equal to $5 per share on the old Central Leather Company preferred stock;

(g) Each holder of one share of old preferred stock receives three-fourths of a share of new Class A Participating Convertible Stock, of which there are authorized 249,743 shares without par value. This stock is entitled to noncumulative dividends out of earnings at the rate of $4 per share in any one year in preference to the new common stock, which is equivalent to $3 per share on the old preferred stock. This stock is also entitled to share with the new common stock, share for share, all further dividends paid up to the amount of $2 per share in any year. That would be equivalent to $1.50 per share on the old stock. Under the old capitalization, after $7 per share was paid to the old preferred stock, all remaining dividends went to the common stock. Under the new capitalization, the Preferred Stockholder who exchanges enjoys the preferential rights of the Prior Preference Stock, the benefits of the sinking fund, the limited preferential rights of the Class A Stock and a limited right to participate with the common stock in any further dividends;

(h) The new Class A Stock is convertible into common stock at any time in the future at

the option of the holder. If, therefore, under much more prosperous conditions the common stock should acquire a substantial value in excess of its present value, the Class A stockholder can at any time convert his stock into an equal number of shares of common stock, which would, in effect, be equivalent to a right to convert into three-fourths of a share of common stock for each share of the old preferred stock;

(i) Under the old charter, the common stockholders had the voting control. Under the Consolidation Agreement, the holders of the stock newly issued in exchange for the old preferred stock have a right to elect two-thirds of the board of directors until such time as $10,000,000 par value of the prior preference stock shall have been retired, and, also, even thereafter, in case full cumulative dividends shall not have been paid on the prior preference stock, or dividends to the amount of $4 per share shall not have been paid on the Class A stock in the year preceding such election;

(j) The Consolidation Agreement contains other and further provisions for the protection of the Prior Preference and Class A stocks;

(k) New directors representative of preferred stockholders have been added to the board.

HIRAM S. BROWN.

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Notarial Seal) W. E. F. SMITH,
Notary Public.
Notary Public, New York County No. 409.
New York Register's No. 9021.
Commission expires March 30, 1929.

AFFIDAVIT OF JAMES D. McCAULEY.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

JAMES D. McCAULEY, being duly sworn according to law, on his oath deposes and says:

1. I reside at 151, 18-85th Drive, Jamaica, New York.

2. On the 25th day of July, 1927, I went to No. 25 Broad street, the address given of John Windhurst, appearing upon the reverse of stock certificate No. A-12,114 of Central Leather Company. I examined the directory of the tenants in the said building, which is a large twenty-story office building, and the said name does not appear in the said directory. The elevator starter of the building said that one John Windhurst was employed in Room No. 1037 in said building. I then went to the tenth floor of said building and I found the entrance to the office to have upon the door the name Barbour & Co., but not

the name of John Windhurst. I am informed that the said firm of Barbour & Co. is a firm doing business of stock brokers, and I have examined the Stock Exchange directory for 1927, and find the members of said firm to be Philip L. Smith and Charles Leonard King. I cannot find that the said John Windhurst is a member of said firm, but as I am informed he is an employe in said office.

JAMES D. McCAULEY.

Subscribed and sworn this 25th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York, in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Notarial Seal) JAMES McCARRON.
Notary Public, Kings Co. No. 75.
Certificate filed in New York Co., No. 204.
Register's Nos. Kings 8074, N. Y. 8148.
Commission expires March 30th, 1929.

AFFIDAVIT OF JACOB J. HEINRICH.

STATE OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

JACOB J. HEINRICH, being duly sworn according to law, on his oath deposes and says:

1. I reside at 9106 79th street, Woodhaven, Long Island, and am the Office Manager of the firm of Taylor, Thorne & Company, members of

the New York Stock Exchange, having their office at 49 Wall street, Borough of Manhattan, New York City.

2. That firm, as brokers, deal in the stocks listed upon the New York Stock Exchange, including the stock of the Central Leather Company.

3. On the 16th day of June, 1927, there was sold by the firm of Taylor & White, and delivered on that date by Taylor, Thorne & Company for the account of Taylor & White to Barbour & Co., stock brokers, having an office at 25 Broad street, New York City, 600 shares of preferred stock of the Central Leather Company, registered in the name of Charles A. Edwards, numbered A-12,414 to A-12,419, in certificates of 100 shares each. That a photostat copy of certificate A-12,414 is attached hereto, showing the signature of the said Charles A. Edwards endorsed thereon, and which is followed by the guaranty of the United States Trust Company and by Taylor & White, which is followed by the guaranty of the latter signature by deponent's said firm of Taylor, Thorne & Company.

4. That at the time of the delivery of the said six certificates for 100 shares each, there was attached to certificate No. A-12,414, in accordance with regulations, a sales slip, a photostat copy of which is attached to said photostat copy of certificate, which shows that the sale was completed on the 16th day of June, 1927, and that the transfer stamps covering said sale were affixed and cancelled on said date.

5. That prior to said time the said John Winhurst, whose name now appears upon the assignment appearing on the back of said stock certificate, had no interest in the said stock, to

deponent's knowledge, and deponent had never heard of him prior to the delivery of said certificates and receiving payment therefor.

6. That all of the said certificates are similar in form, both on the face thereof and with respect to the assignment, as certificate A-12,414, except that there was only one sales memorandum covering all of said 600 shares, a photostat copy of which is attached to said one certificate.

JACOB J. HEINRICH.

Subscribed and sworn this 26th day of July, 1927, before me, the subscriber, a Notary Public of the County of Queens in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

(Notarial Seal) JAMES D. McCAULEY,
Notary Public.

Queens Co. Clerk's No. 2487, Reg. No. 4540.
Cert's filed N. Y. Co. Clk's No. 237, Reg. No. 9168.
Cert's filed Kings Co. Clk's No. 24, Reg. No. 9090.
Cert's filed Bronx Co. Clk's No. 17, Reg. No. 2945.
Commission expires March 30, 1929.

OPINION ON RULE TO SHOW CAUSE.

Filed September 24, 1927.

IN CHANCERY OF NEW JERSEY.

Between

JOHN WINDHURST,
Complainant,

and

CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.*,
Defendants.

On Bill, &c.

Opinion.

Submitted July 27, 1927; decided July 29, 1927.

Smith & Slingerland, solicitors; White & Simms (of New York Bar) of counsel for the complainant.

Pitney, Hardin & Skinner, solicitors; John R. Hardin and Waldron M. Ward of counsel for the defendants.

BENTLEY, *V.-C.:*

On motion to dissolve a restraining order, heard on bill and affidavits and answering affidavits.

Two corporations of this State, known as the Central Leather Company and The United States Leather Company, entered into an agreement to submit to the stockholders of the respective companies a proposal of merger or consolidation, under the provisions of the General Corporation Act (revision of 1896). The second named company was organized in 1893, with an

authorized capital stock of $120,000,000 par value, divided equally between preferred and common stock. The Central Leather Company was incorporated in 1905. In 1909 these two companies were merged into the defendant, Central Leather Company, and the existence of the old United States Leather Company being thus terminated there was, immediately thereafter, created a new company of the same name which is the defendant United States Leather Company.

On June 23, 1927, the Central Leather Company and the last-named United States Leather Company caused the latter to be merged into the former, under terms and conditions hereinafter set out. From the time of the incorporation of the Central Leather Company in 1905 it prospered until the reconstruction period following the World War. It is a matter of general knowledge, which I think I may notice, that since the close of the war the leather industry has suffered perhaps more than any other class of business in America. In April, 1921, for the first time in its existence, the dividend on the preferred stock of the Central Leather Company was passed and it has never declared a dividend since.

The assets of the Central Leather Company exceeded its liabilities by about $53,000,000. Its capital indebtedness was very nearly $73,000,000, made up of a little more than $33,000,000 of the usual class of 7% cumulative preferred stock having the ordinary attributes of stock so denominated, while there are slightly more than $39,000,000 of common stock of the usual description, so that there is a capital deficit of $19,000,000 or $20,000,000.

There are arrears of dividends on the preferred stock of approximately 43%. To meet this situation and attempt to revive the financial condition of the company so that the constantly-mounting accumulation of arrears of dividends might be stopped and the stockholders again be permitted to enjoy the natural income of their holdings, two committees were appointed by the directors, one consisting of preferred shareholders and the other of owners of the common stock. As a result of the activities of these committees, assisted by two large firms of investment bankers, a plan was evolved for the merging of the two companies, and on the 20th day of May, 1927, notice of a corporate meeting was given, to be held on June 22, 1927.

The details of the plan, so far as pertinent to this discussion, proposed that the corporation about to be formed by the merger should be empowered to issue a class of stock to be known as 7% cumulative prior-preference stock with a par value of $100, to be entitled to cumulative dividends at the rate of 7% per annum, and to authorize the issuing of 160,496 shares. This stock was to have the usual preference as to dividends and rights upon dissolution, and could be repurchased by the company for retirement at not less than $110 per share. Its holders were also entitled to elect two-thirds of the directors of the new corporation, until such time as $10,000,000 of this stock shall have been so retired.

There was proposed a second new class of stock to be known as Class A participating and convertible stock. This was to be without par value and to draw dividends, in the discretion of the directors, whether earned or not, at the rate of $4 per share when, and if, declared, but only

after satisfaction of the dividend requirements of the prior-preference stock, and an additional dividend on the Class A stock not to exceed $2 per share when, and if, a dividend might be declared on the common stock. This extra dividend was to equal that on the common, up to $2, for any period.

Finally, there were to be authorized 647,753 shares of common stock without par value. This stock was to enjoy the equal dividend above $4 per share that might be declared on the Class A stock up to $2, and when all these requirements should have been met then the common stock was to be entitled to all further dividends.

The plan contemplated that there should be issued and exchanged by the new corporation for every share of the old preferred stock turned in for cancellation, one-half a share of the new prior-preference stock at a par value of $50, three-quarters of a share of the Class A stock, and the sum of $5 in cash. Thereupon, all accumulations of arrears of dividends on the old preferred stock were to be cancelled. It should have been said that a further privilege to the holders of Class A stock was the right to convert the same into common stock at any time, share for share. The value placed upon the Class A stock was approximately $31 per share.

At the meeting of June 22d, the complainant Windhurst (who originally filed this bill) and others, appeared, protested against the adoption of the scheme, and voted in the negative. The result of the election was the casting of slightly more than 90% of the preferred stock in favor of the proposed change, with something more than 9,000 shares, or about 3%, voted in opposition thereto. Of the common stock, upwards of

80% was voted favorably and none of it was voted adversely.

At the hearing of this motion, several additional parties complainant were admitted, and all the complainants together represent a little more than 3,000 shares of the old preferred stock. On the day following the meeting of stockholders, the certificate was filed in the office of the Secretary of State, and immediately thereafter a dividend was declared, payable August 1, 1927. Approximately 92,000 shares of preferred stock have been deposited for conversion, most if not all of the new stock issued therefor has been deposited with the members of a voting trust, and the certificates given in return therefor have been placed upon the market and are now being dealt in by the public.

A single ground is urged by the complainants for enjoining the payment of a dividend *pendente lite* and for the dissolution of the new company, although the point has two aspects. The complainants say that to permit a consummation of the scheme adopted at the meeting of the stockholders should be frustrated, because it deprives them of the accumulations of arrears of dividends on their old preferred stock. They charge, in the first place, that it is unfair, inequitable, and oppressive, and done in the interest of the holders of the common stock; in the second place, they say that the accumulations have vested them with property rights that it is absolutely illegal to take from them.

Without entering into any extended discussion, it does not appear that the plan under which the new company was formed is inequitable. Each share of preferred stock entitles its holder to one-half share of prior-preference stock upon

which he must be paid $3.50 with all accumulations before any earnings may be distributed to any other class. Next, such holder receives, in exchange for each old share, ¾ of a share of Class A stock and, finally, $5 in cash. The Class A stock has a second preference ahead of of the common stock up to $4 per share, or at the rate of $3 per share to each exchanging holder of the old preferred stock. Thus he must be paid, under the new plan, not less than $6.50 in any given year for the conversion of his old holdings before the common stockholders can share with him. It is true that this is fifty cents a year less, but that is a small item in saving a great industrial organization in which thousands of investors have placed their money, as the overwhelming majority seem to have thought when they voted.

It is equally true that a corrupt board of directors may pass dividends on the Class A stock until a vast surplus shall have accumulated which may then be utilized, in part, to enrich the common-stock holders. But certainly not until $10,000,000 worth of the prior-preference shares shall have been retired (which it is not apparent will be very soon) to say nothing of the right of the holders to convert Class A into common stock. It should also be borne in mind that for six long years no income has been enjoyed by the holders of any class of shares.

So far as the dissolution rights of the old preferred-stock holders are concerned, there is not the slightest prospect of that contingency ever materializing, and there is the further uncertainty as to the value of any of the shares if it does, as Vice-Chancellor Lane explained in the unreported case of Brugler *v.* United States Ma-

chinery Co. (June 4, 1917). There is disclosed in this case a situation requiring prompt attention, and while there may be some slight disadvantage to which the complainants will be placed if the new company is ever dissolved (which seems most unlikely) it is so remote a possibility that it does not seem to me the judgment of the managing officers of the company, the experienced bankers by whom the plan was devised, and the overwhelming majority of the stockholders should be overruled by a comparative handful controlling approximately one per cent. of the preferred stock. The advantages and privileges accorded the holders of the prior preference stock seem to at least offset the disadvantage.

It is impossible for me to enter into an extensive examination of the question of the legality of the attacked procedure because of lack of time if this matter is to be decided before a failure to decide will amount to an injustice. My first impression is that the underlying rationale of Day *v.* United States Cast Iron Pipe & Foundry Co., 96 N. J. Eq. 736, is applicable. There, the situation presented was the payment of a dividend on the common stock out of a working capital reserve earned during years when the dividend was passed on non-cumulative preferred stock. The case *sub judice* does not present that precise question, but it does involve the right to adopt a policy over the objection of any of the preferred stockholders whereby the holders of the common stock may be permitted to share in the earnings of the company without a literal enforcement of the rights of such preferred stockholders, as those rights were fixed at the time of the creation of the company.

Any vigilant, bona fide holder of a single share of such preferred stock, who is not in default himself, ought to secure the aid of this court to prevent any such interference with his contract rights. Chicago City Ry. *v.* Allerton, 18 Wall. 233. Vice-Chancellor Emery's opinion in Colgate *v.* U. S. Leather Co., 73 N. J. Eq. 72, strongly supports this view, and the pertinent part thereof was not criticized by the Court of Errors and Appeals, in reversing on other grounds, in 75 N. J. Eq. 229. But in that case the complainants were vigilant and filed their bill before the meeting of stockholders had even been convened, while here, the circumstances presently to be stated make it seem that this is a case where equity should refuse to interpose, and that position should be based squarely upon the situation that the complainants have permitted to arise without having previously invoked the aid of this court to prevent it, accentuated and exaggerated by the circumstances under which the complainant Windhurst made his entrance into the matter.

It will be recalled that notice of the proposed change in the capital arrangement of the company was given to the stockholders on May 20, 1927. It will be further recalled that Windhurst first acquired any holding on June 16th, or nearly a month thereafter and only six days before the plan was to be submitted to the stockholders. The messenger who delivered his certificates of stock was unable to find Windhurst's name in the directory of the building which he had given as his address. As the result of inquiry he appears to have delivered certificates to someone in the office of a firm of stockbrokers, and the certificates appear to have

found their way into the possession of that complainant. But no matter whether Windhurst is an employee of the firm mentioned by the messenger or not (and the proofs on that score consist only of hearsay), the fact remains that he became a stockholder before the meeting, attended the meeting, protested, voted against the resolution, and yet he allowed almost another month to elapse before filing his bill. No warning of this suit was given at the meeting. In the meantime, not only had the corporation changed its position but other rights had been created without the slightest notice of this complainant's objections. A dividend had been declared, payable in a few weeks. Large numbers of stockholders in the old companies had entered into the voting trust, spoken of above. The corporation had expended large sums of money in and about the completion of the consolidation, and the certificates issued by the voting trustees had been dealt in on the stock market and the public thus had become involved. The company had expended about $1,250,000 as a part of the consideration for the surrender of the old preferred stock, which included $5 in cash for each share so surrendered. If this be not laches, I do not understand that doctrine. Pom. Eq. Jurisp., Sec. 1440, 1442 (2d Ed.); Dana *v.* Am. Tobacco Co., 72 N. J. Eq. 44, aff'd 73 N. J. Eq. 736.

Sight has not been lost of the limitation upon the effect of an unexcused delay by the *actor,* where he enters equity to preserve a strict *legal* right. Prof. Pomeroy says that the preponderance of authority favors this exception to the doctrine. Pom. Eq. Jurisp., Sec. 1445(4th Ed.). If this were a matter solely between the com-

plainants and the defendants much might be said for it. But what is to be said as to the effect upon third parties in nearly all parts of the civilized world who are, and have been investing innocently in certificates brought into being as the result of the merger that is now attacked? Compliance with the prayer of the complainants would deny to them the receipt of the dividends upon which they have a right to count and would seriously diminish the benefits of their investments (or completely destroy them)—all without any fault upon their part. In these circumstances, and considering the hardship upon the defendants and their shareholders, it seems to me that the Chancellor should pause before disturbing an accomplished status, with a result so far-reaching and injurious.

I do not wish to be understood as placing this decision upon the discretion of the Chancellor in applications for injunctions *pendente lite*. Counsel for the defendants has argued as if he assumes this to be a preliminary hearing, which, of course, it literally is. In truth and in substance, however, it is really a final determination, as Vice-Chancellor Lane pointed out in Brugler *v.* United Shoe Machinery Co. (*supra*). The facts have been most completely presented. There is not a dispute as to them; and the completest opportunity for argument has been afforded. It is inconceivable that any additional facts could be proved at a subsequent hearing that would in any wise affect the determination of the cause.

I suppose that every suit of this sort must be judged upon its own particular facts and circumstances. It is not the case of enjoining an *ultra vires* act of the corporation, because the statute

expressly permits the merger and leaves the details of the operation to a two-thirds majority of each class of stock. Of course, if there was any question of fraudulently attempting to enrich one class of stockholders by the impoverishment of another class, the reports are filled with cases making it the duty of this court to protect the latter. But surely there must be some degree of common sense exercised in the application of principles and precedents. There isn't a circumstance to indicate any malevolent motive in the minds of the men who built up the plan to save a large industrial corporation that had, through no fault of its managers but through stress of circumstances, become helpless. The scheme adopted may not be perfect, but it would appear to me to make the condition of the company and its stockholders far better. If the position of the complainants appears worse on paper, it would seem that their actual condition will be far better than it was when they held certificates that the company was unable to convert into income-producing securities.

It might just as well be frankly said that there is no question in my mind that Windhurst bought into the situation for the purpose of commencing this suit or otherwise to compel the purchase of his stock at a price to be fixed by him. That apparently is not so in the case of the other complainants, but they have been as slothful as he had been, if not even more so. There is no use in mincing words. Lawyers do not necessarily lose all memory of the experience gained at the bar. It is quite amazing to me that only three other holders of preferred stock in the old companies have been induced to join in a suit where there is everything to be

gained and nothing to be lost, and one of those has made an election which bars him from participation. Chancellor Walker said, in Aldrich *v.* Union Bag & Paper Co., 81 N. J. Eq. 244, that where a bill is filed against a corporation (in that case to secure the appointment of a receiver) by the holders of a very small percentage of its shares, that fact may be given its due weight in balancing conveniences. That similar reasoning might be applied to a bill of the kind found here seems to me indubitable. Vice-Chancellor Lane said in General Investment Co. *v.* Bethlehem Steel Corp., 88 N. J. Eq. 237, that his decision was arrived at purely by considering the relative conveniences of the respective parties. While I cannot say that Windhurst is a "*professional* privateer" as the Vice-Chancellor said of Clarence Venner, still, it would seem from a mere statement of the circumstances of his expedition into the troubled sea of the defendants' affairs that his venture was not entirely free of a piratical character.

The complainants say that they could not have initiated this suit until after the adoption of the resolution at the stockholders' meeting, because of what was said by the Court of Errors and Appeals in Grausman *v.* Porto Rican-American Tobacco Co., 95 N. J. Eq. 223. There, a temporary restraint was allowed in this court, restraining the corporation from holding a meeting to vote on a proposed amendment of its certificate, and the appellate court said that the bill was prematurely filed. It did not say that the completion of the amendment could not have been enjoined, but placed its decision upon the possibility that if the meeting had been allowed to proceed enough of the stockholders

might have changed their minds, so that the resolution would have been defeated, or that a full discussion of its merits might have persuaded the objecting stockholders to vote for it. The complainants in the case at bar say that if it is premature to enjoin the meeting it would be equally premature to enjoin the completion of the amendment of the certificate, because that action might not be taken, even if authorized. I do not think that any extended answer to this argument should be necessary, and that it is sufficient to say that although the Court of Errors and Appeals raised the point upon which they decided the *Grausman Case* (p. 227) no such question was raised or decided by the court in the later case of General Investment Co. *v.* Am. Hide & Leather Co., 98 N. J. Eq. 326, where the members were permitted to assemble and vote on the question under consideration, but all subsequent proceedings thereon were stayed.

I feel, as Vice-Chancellor Lane felt in The Bethlehem Steel Case, (*supra*), that no relief should be afforded the complainants in this court. In view of their conduct, they should be left to their remedy at law. In view of the ability of the company to respond to any judgment that may be obtained, no bond appears to be necessary.

The determination to which I have come obviously makes it unnecessary to consider any of the other points raised on behalf of the defendants.

The order to show cause should be discharged, the temporary restraint should be dissolved, and the temporary injunction (which would, in effect, be a perpetual injunction) sought by the com-

plainants should be denied. In view of what I said in the supplemental opinion filed in Grausman *v.* Porto Rican-American Tobacco Co. (*supra*), commencing at page 166, it will be apparent that I have not lost sight of the grave consequences that might be entailed upon a party by depriving him of the right to review the court of first instance by allowing the subject matter of the appeal to be virtually destroyed. But even with those considerations in mind, it does not seem to me that the effect of this decision should be stayed under the 113th section of the Chancery Act. If it shall be determined that I have fallen into error, the appellants will not be deprived of redress, as Vice-Chancellor Lane pointed out in Brugler *v.* U. S. Shoe Machinery Co. (*supra*). On the other hand, to stay the effect of the dissolution would be disastrous, even in case of a reversal.

ORDER VACATING TEMPORARY RESTRAINT.

Filed August 1, 1927.

IN CHANCERY OF NEW JERSEY.

Between JOHN WINDHURST, *Complainant,* *and* CENTRAL LEATHER COMPANY, and others, *Defendants.*	*On Bill, &c. Order Discharging Order to Show Cause and Vacating Temporary Restraint.*

An order to show cause having been granted on July 20, 1927, returnable August 1, 1927, and the matter coming on in the presence of Frederic W. Smith and Charles H. White (of the New York Bar), counsel for complainant, and of John R. Hardin and Waldron M. Ward, counsel for defendants, Central Leather Company (in so far as it has corporate existence and can defend) and United States Leather Company (formed by consolidation June 23, 1927), and the court having read and considered the bill of complaint and the affidavits annexed thereto and the affidavits presented on behalf of said defendants, and having heard and considered the arguments of counsel,

It is on this first day of August, 1927, on motion of Pitney, Hardin & Skinner, solicitors for said defendants, ORDERED that complainant's application for a temporary injunction be and the same is hereby denied and the said order to show cause be and the same is hereby discharged

and the temporary restraint contained in said order dated July 20, 1927 against the payment of that certain dividend therein mentioned payable August 1, 1927 on the Prior Preference Stock of said defendant, United States Leather Company, be and the same is hereby vacated and set aside.

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V.-C.

AMENDMENT TO BILL OF COMPLAINT.

Filed November 18, 1927.

IN CHANCERY OF NEW JERSEY.

Between

JOHN WINDHURST, MABEL B. INGRAHAM and FRANCES T. INGRAHAM,
Complainants,
and
CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et als.*,
Defendants.

On Bill, &c.

Amendment to Bill of Complaint.

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

The complainants, Mabel B. Ingraham and Frances T. Ingraham, hereby amend the bill of complaint in this cause by adding thereto and inserting therein on the 39th page thereof and after the end of the first paragraph thereon, concluding with the words "as shall be agreeable to equity and good conscience," the following:

And if this court shall find that the complainants are not entitled to the relief hereinbefore specifically prayed, then in the alternative, that this court shall order and decree:

1. That the said agreement of merger and consolidation dated May 19, 1927 is null and void in so far as it affects the legal rights of the

complainants in this action, who have not consented thereto, and

2. That the transfer, assignment or sale of the assets of the Central Leather Company to the United States Leather Company under, by or pursuant to the alleged agreement of merger and consolidation dated May 19, 1927 was and is, as to these complainants, illegal, unauthorized and without warrant in law, and

3. That the alleged agreement of merger and consolidation dated the 19th day of May, 1927, as to these complainants constituted in fact and law a dissolution, liquidation and winding up of the business and affairs of the Central Leather Company, and

4. That by reason thereof the complainants are entitled to receive from the assets of the Central Leather Company transferred to the United States Leather Company, under, by or pursuant to the alleged agreement of merger and consolidation dated May 19, 1927, the amount of the par value of their shares of preferred stock of the Central Leather Company, together with all accrued and unpaid dividends thereon as in the contract of said stockholders provided.

5. And that the complainants be adjudged and decreed to have a lien upon all of the assets of the Central Leather Company transferred, assigned and set over to the United States Leather Company under, pursuant to or by virtue of the agreement of merger and consolidation dated May 19, 1927 to the amount of the par value of their shares of the preferred stock and the unpaid dividends thereon, and

6. That the said lien be foreclosed and that the Court award judgment in the sum of $165,-

312.50 to the complainant, Mabel Ingraham, and in the sum of $231,437.50 to the complainant, Frances T. Ingraham, and that the said the United States Leather Company be ordered and directed to pay the same from the assets transferred, assigned and delivered to it under and pursuant to said Agreement of Merger and Consolidation.

Complainants further pray that in the event that this Honorable Court shall find that the said alleged Agreement of Merger and Consolidation dated May 19, 1927, did not in fact and in law constitute a dissolution, liquidation or winding up of the affairs of the Central Leather Company, then that this court shall order and decree:

1. That the said agreement of merger and consolidation did not in fact or in law affect any of the contractual or legal rights of these complainants as holders of the preferred stock of the Central Leather Company, and

2. That as holders of the shares of said stock of the Central Leather Company the complainants are entitled to participate pro rata in any distribution or dividends paid by the said the United States Leather Company out of the assets or earnings of the said Central Leather Company to the same extent as said complainants would have participated therein had there been no such agreement of merger and consolidation, and

3. That the said the United States Leather Company be enjoined and restrained from paying any dividend and/or any distribution from the assets of the said Central Leather Company so transferred to it under the said agreement of merger and consolidation to stockholders of the United States Leather Company or Central

Leather Company other than the preferred stockholders of Central Leather Company (and/or the holders of the prior preference stock and the class A stock given in exchange for said preferred stock of the Central Leather Company) until the full amount of all accrued and unpaid dividends shall have been paid to the complainants herein and

4. That the United States Leather Company be directed by the order of this court to pay to the complainants the sum of $5 for each share of preferred stock owned or held by them to be applied on account of the accrued and unpaid dividends on said stock, and

5. That the United States Leather Company be directed to pay to the complainants the sum of $3.50 for each share of such preferred stock owned and held by them, such sum being by way of dividend and in the same proportions as the dividend declared to be paid to the holders of the prior preference stock of the United States Leather Company on August 1, 1927, and

6. That this court grant to the complainants herein such other further or different relief as may be appropriate in equity and good conscience and do full justice in the premises between the parties hereto.

SMITH & SLINGERLAND,
Solicitors for Complainants, Mabel B. Ingraham and Frances T. Ingraham.
Of Counsel.

Amendment to Bill of Complaint.

Consent is hereby given that the bill of complaint in this cause be amended as stated in the foregoing amendment.

PITNEY, HARDIN & SKINNER,
Solicitors for Defendant, United States Leather Co. and for Central Leather Co., so far as it has corporate existence and capacity to appear.

ORDER PERMITTING COMPLAINANTS TO AMEND.

Filed November 18, 1927.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN WINDHURST and others, *Complainants,*	*On Bill, &c.*
and	*Order Permitting Complainants to Amend.*
CENTRAL LEATHER COMPANY and others, *Defendants.*	

Application being made on behalf of complainants, Mabel B. Ingraham and Frances T. Ingraham, to amend the bill of complaint in this cause and it appearing that process of subpoena in said cause has not issued,

It is on this 18th day of November, 1927, on motion of Smith & Slingerland, solicitors for said complainants, ORDERED that they be permitted to amend the bill of complaint by adding thereto and inserting therein, on the thirty-ninth page thereof and after the end of the first paragraph thereon, the paragraphs as set forth upon the amendment hereto annexed.

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V.-C.

ANSWER OF CENTRAL LEATHER COMPANY AND UNITED STATES LEATHER COMPANY.

Filed January 10, 1928.

IN CHANCERY OF NEW JERSEY.

Between

JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM,

Complainants,

and

CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, and others,

Defendants.

On Amended Bill, &c.

Answer of Central Leather Company and The United States Leather Company.

The answer of the defendants Central Leather Company, a corporation of New Jersey, in so far as it now has corporate capacity to appear and answer, and the defendant The United States Leather Company, a corporation of New Jersey, formed by consolidation June 23, 1927.

These defendants above named, answering the Bill of Complaint, as amended, say that:

1. These defendants admit that Central Leather Company was, prior to June 23, 1927, a corporation organized and existing under the laws of the State of New Jersey, and was incorporated, as alleged in paragraph 1 of the Bill of Com-

plaint, with the authorized capital stock therein alleged, and that Exhibit A annexed to the Bill of Complaint is a copy of the Certificate of Incorporation of Central Leather Company, as filed April 12, 1905, in the office of the Secretary of State of New Jersey, but for greater certainty these defendants pray reference to the original or a certified copy thereof when produced. These defendants allege, however, that said Certificate of Incorporation of Central Leather Company was amended pursuant to the statute on August 19, 1909, and pray leave to refer to the original or a certified copy of such amendment when produced.

2. The defendants admit paragraph 2 of the Bill of Complaint, but for greater certainty pray leave to refer to the original or a certified copy of the Certificate of Incorporation of Central Leather Company.

3. The defendants admit paragraph 3 of the Bill of Complaint but for greater certainty pray leave to refer to the original or a certified copy of the Amended Certificate of Incorporation, when produced, of The United States Leather Company (a corporation of New Jersey, organized on or about February 25, 1893, and sometimes hereinafter referred to as The United States Leather Company No. 1). These defendants say that on or about August 24, 1909, the accumulated unpaid dividends upon the preferred stock of The United States Leather Company No. 1 amounted to about $50 per share, and not to $45.085 per share. And these defendants, for greater certainty, pray leave to refer to the original or certified copy of the Certificate of Incorporation, when produced, of The United States Leather Company (a corporation of New

Jersey, organized on or about September 27, 1909, and hereinafter sometimes referred to as The United States Leather Company No. 2).

4. These defendants admit that the Central Leather Company carried on its business and acquired a substantial amount of real and personal property, but say that such business was not at all times profitable and that in certain years said company sustained large losses.

5. These defendants admit paragraph 5 of the Bill of Complaint except that they say that said Plan was not issued by the so-called Readjustment Managers. And these defendants, for greater certainty, pray leave to refer to the original or a true copy of said Plan, when produced.

6. These defendants say that a Consolidation Agreement dated May 19, 1927, between Central Leather Company and The United States Leather Company No. 2, was adopted by the respective boards of directors of said corporations; that, on the same day, a special meeting of the stockholders of said Central Leather Company was called by its board of directors to be held on June 22, 1927, for the purposes set forth in the notice of such special meeting of stockholders; that said notice was duly and properly mailed to all stockholders of Central Leather Company on May 20, 1927, and was also published; that Exhibit E, annexed to the Bill of Complaint, is a copy of said notice, but, for greater certainty, these defendants pray leave to refer to such notice, when produced. These defendants deny that said Consolidation Agreement was approved by the Board of Directors of Central Leather Company to carry into effect and operation said Plan of Readjustment.

7. These defendants admit paragraph 7 of the Bill of Complaint but for greater certainty pray leave to refer to one of the notices dated May 23, 1927, from the Managers to the depositors under said Plan.

8. These defendants admit that there were outstanding on June 22, 1927, the preferred and common stock of Central Leather Company as alleged in paragraph 8 of the Bill of Complaint and that Exhibit G annexed to the Bill of Complaint is a copy of the form of preferred stock certificate of Central Leather Company then in use, but for greater certainty these defendants pray leave to refer to an original certificate. These defendants are advised that inasmuch as the complainant John Windhurst, has been dismissed as a complaint herein, it is not necessary for these defendants to answer the remaining portion of said paragraph.

These defendants say that on and prior to June 22, 1927, certificates for 2725 shares in the aggregate of preferred stock were registered in the names of Whitehouse & Co. and/or J. S. Oliphant Co., but that no shares of preferred stock were at that date registered in the names of either Mabel B. Ingraham or Frances T. Ingraham, the intervening complainants; and that these defendants have not knowledge sufficient to form a belief as to whether said intervening complainants, or either of them, were respectively the owners of 1115 shares and 1610 shares of said preferred stock.

9. These defendants admit paragraph 9 of the Bill of Complaint except that these defendants are advised that it is not necessary for them to answer the third sub-paragraph thereof. And these defendants say that the said Consolidation

Agreement was adopted at said stockholders' meeting of Central Leather Company by the following vote:

In favor of the adoption thereof:—301,841 shares of preferred stock, being 90.6% of the total outstanding preferred stock; 332,404 shares of common stock, being 83.7% of the total outstanding common stock.

Against the adoption thereof: 9,635 shares of preferred stock, being 2.9% of the total outstanding preferred stock; no shares of common stock.

Not voting: 21,514 shares of preferred stock, being 6.5% of the total outstanding preferred stock; 64,607 shares of common stock, being 16.3% of the total outstanding common stock.

And these defendants say that some of the Preferred Stock voted against the adoption of said Consolidation Agreement at said meeting has subsequently been deposited under said Plan, and converted under said Consolidation Agreement.

These defendants say that up to the close of business January 7, 1928, 319,082 shares of preferred stock of Central Leather Company, being 95.8% of the total shares formerly outstanding, and 368,110 shares of common stock of Central Leather Company, being 92.7% of the total common stock formerly outstanding, have been actually converted under and pursuant to the terms of said Consolidation Agreement, and that the holders thereof have thereby adopted said Consolidation Agreement and received the benefits and advantages thereof. These defendants further say that all of said shares of stock, both preferred and common, so converted, except 24 shares of common stock, were first deposited under the aforesaid Plan of Readjustment, al-

though none of the holders of such stock were under any compulsion thereto, and that all holders of stock, preferred or common, not deposited prior to June 23, 1927, under said Plan, could have converted their stock under said Consolidation Agreement without depositing the same under said Plan.

These defendants admit that at the said stockholders' meeting, one George S. Ingraham appeared with proxies from Whitehouse & Co. and J. S. Oliphant Co., as holders of the preferred stock aggregating 2725 shares, and that he, as said proxy, cast a ballot and voted the said 2725 shares of preferred stock against the adoption of said Consolidation Agreement.

10. These defendants admit paragraph 10 of the Bill of Complaint, and say that said Consolidation Agreement was filed in the office of the Secretary of the State of New Jersey on June 23, 1927, and that the same was thereby consummated. These defendants further say that thereupon this defendant, the United States Leather Company No. 3, was formed and came into being as a new and distinct corporate entity, and has continuously thenceforth existed as and has exercised its franchise to be a corporation under the laws of the State of New Jersey and has succeeded to the business formerly carried on by the defendants Central Leather Company and the United States Leather Company No. 2, as well as to their property, rights, privileges, powers and franchises.

11. These defendants admit that Exhibit H, annexed to the Bill of Complaint, is a copy of said Consolidation Agreement between Central Leather Company and the United States Leather Company No. 2, dated May 19, 1927, but for

greater certainty these defendants pray leave to refer to an original or certified copy thereof when produced. These defendants admit that said Consolidation Agreement has been entered into by said corporations pursuant to resolutions passed by their respective boards of directors and approved by stockholders holding more than two-thirds of all of the capital stock of both of said corporations for the purposes set forth in said Consolidation Agreement and pursuant to the provisions of the statute in such case made and provided. These defendants deny the remaining allegations of paragraph 11 of the Bill of Complaint, except that these defendants admit that the complainant, John Windhurst, made a formal protest at the stockholders' meeting of Central Leather Company held on June 22, 1927, against the adoption of said Consolidation Agreement; and these defendants admit that one George S. Ingraham at said meeting also made formal protest against the adoption thereof as the proxy for Whitehouse & Co. and J. S. Oliphant Co.; but neither said Windhurst nor said Ingraham nor the intervening complainants, at that time or at any other time prior to the filing of the Bill of Complaint in this cause, gave notice to these defendants, or to anyone on their behalf, of their claims as subsequently set forth in the said Bill of Complaint and later in the amendment thereto, and none of them gave notice that they claimed the right to or would seek injunctive or other like extraordinary relief, as subsequently prayed for in the Bill of Complaint and in the amendment thereto.

12. These defendants admit that prior to the consummation of said Consolidation Agreement the officers and directors of Central Leather

Company were as stated in paragraph 12 of the Bill of Complaint, except that Hiram S. Brown was also a director thereof. These defendants admit that at the time of the consummation of said Consolidation Agreement the officers and directors of the United States Leather Company No. 2 were as stated in paragraph 12 of the Bill of Complaint.

13. These defendants admit that ever since its organization in 1909, the United States Leather Company No. 2 has been a subsidiary of Central Leather Company, meaning thereby that all of the stock, except directors' shares, of the United States Leather Company No. 2 was owned by Central Leather Company and that Central Leather Company exercised its power to elect directors of the United States Leather Company No. 2 satisfactory to it, and that the business operations of the United States Leather Company No. 2 have been coordinated with those of Central Leather Company. These defendants deny that the United States Leather Company No. 2 did not to any extent prosecute its business, but say that it did actively and uninterruptedly prosecute the business for which it was organized and bought and sold leather and related products in large volume. These defendants deny that the United States Leather Company No. 2 was subject to control by the common stockholders of Central Leather Company or that it existed as a subsidiary of Central Leather Company for the use and benefit of the common stockholders of the latter, or that it was controlled and directed by the common stockholders of the latter. These defendants admit that certain officers of Central Leather Company have customarily been executive officers of the United

States Leather Company No. 2 and that its business has been conducted, in part, from the same office and place of business as that of Central Leather Company.

14. These defendants admit that under the amended Certificate of Incorporation of Central Leather Company the holders of preferred stock in that company were entitled to receive cumulative dividends at the rate of 7% per annum, payable, but only out of the surplus or net profits of the corporation as and when directed by the board of directors, before any dividend should be set apart for or paid on the common stock of Central Leather Company. These defendants particularly deny that such preferred dividends were charged upon the earnings of the said company. These defendants say that the last payment of dividend upon the preferred stock of Central Leather Company was made on April 1, 1921, and that no dividends were paid thereon any time thereafter, so that there was on June 22, 1927, an accumulation of unpaid preferred dividends amounting in the aggregate to 42% upon the par of the said preferred stock. These defendants deny that the effect of said Consolidation Agreement was to cancel and wipe out said arrearages of dividends in violation of the contractual rights of the complainants.

15. These defendants admit that the intervening complainants have not deposited or surrendered the preferred stock standing as aforesaid in the names of Whitehouse & Co. and J. S. Oliphant Co., and have not expressly assented to the said Plan of Readjustment or Consolidation Agreement or to any modification or change in their rights or status as holders of preferred stock of Central Leather Company,

except so far as such change or modification may have resulted from the adoption of such Consolidation Agreement pursuant to law and to the implied assent thereto given by the intervening complainants upon their acquisition of such preferred stock subject to the provisions of law and to all of the terms and provisions of the Amended Certificate of Incorporation of Central Leather Company.

16. These defendants admit paragraph 16 of the Bill of Complaint, but for greater certainty as to the provisions of said Consolidation Agreement pray reference to the same or to a certified copy thereof.

17. These defendants admit that the intervening complainants and a few other holders of preferred stock of Central Leather Company have never surrendered their stock or deposited the same under the Plan of Readjustment dated October 1, 1926. These defendants deny the remaining allegations of paragraph 17 of the Bill of Complaint.

18. These defendants admit that a notice was published, of which Exhibit I annexed to the Bill of Complaint is a copy, but for greater certainty these defendants pray reference to such published notice when produced. These defendants say that such notice was published by the managers under the said Plan of Readjustment. These defendants say that other published notice was given and was widespread to the effect that said Consolidation Agreement had been consummated and that holders of the preferred and common stock of Central Leather Company were entitled to receive thereunder the new stock and the cash to which they were entitled thereunder upon surrender of their certificates of stock.

These defendants admit that a dividend of 7% on the par value of the new Prior Preference stock of the United States Leather Company No. 3 was payable August 1, 1927, to stockholders of record as of the close of business on July 15, 1927. These defendants also say that the provision made for the payment of such dividend was such that a holder of preferred stock of Central Leather Company who failed to convert his stock under the Consolidation Agreement prior to July 15, 1927, did not lose his right to said dividend payable August 1, 1927, but that any such holder upon a subsequent conversion of his stock would receive such dividend.

These defendants also say that said dividend was declared by the board of directors of the United States Leather Company No. 3 immediately after the consummation of said consolidation, and that widespread publicity was given to that fact, and these defendants also say that it was stated that it was expected that such dividend would be declared, in case of the adoption of said Consolidation Agreement, prior to the special stockholders' meeting of June 22, 1927, such statement being contained in a circular letter which was mailed to all stockholders of Central Leather Company on May 20, 1927, together with the notice of such meeting. And these defendants say that such dividend was paid on August 1, 1927. These defendants further say that regular dividends on said Prior Preference stock have since been paid in two quarterly instalments at the rate of 7% per annum, namely, on October 1, 1927, and on January 1, 1928.

19. These defendants deny paragraph 19 of the Bill of Complaint, except that they admit that whatever contractual rights preferred stockholders of Central Leather Company possessed under the Amended Certificate of Incorporation of that company, properly construed, were subject to the effect of the statutory power of the consolidating corporations to convert the stock of such holders into stock or obligations of the consolidated corporation, subject to the right of such holders to dissent therefrom in the statutory manner and to have their stock appraised under the statute and to have the appraised value thereof paid to them in cash by the consolidated corporation. These defendants say that the intervening complainants did not so dissent in manner and form provided by the statute.

19—2. These defendants deny the second paragraph numbered 19 of the Bill of Complaint.

20. These defendants admit the first and second sub-paragraphs of paragraph 20 of the Bill of Complaint, except that defendants deny that the unpaid dividends on the preferred stock of either company constituted a liability of that company.

These defendants admit that the par value of the capital stock of Central Leather Company outstanding on June 30, 1926, was $73,000,080.50, and that the amount at which the assets were carried on its consolidated balance sheet was $70,759,032.70, and that the amount of its liabilities, including capital stock at its par value, was $90,406,109.78, and that it had a deficit of $19,647,077.08.

These defendants admit that the aggregate capital of the United States Leather Company

No. 3, as fixed and determined by the said Consolidation Agreement was $28,561,452.40.

These defendants admit that the United States Leather Company No. 3 on and after the consummation of said Consolidation Agreement had a large surplus resulting from the excess of the book value of its assets as determined by its board of directors over and above its liabilities, including the above stated capital, and that such excess was created, in part, by the earnings of the business of Central Leather Company and its subsidiaries during the period following June 30, 1926. These defendants deny that said surplus was fictitious or that the Central Leather Company was liable for accrued dividends on its preferred stock. These defendants say that the United States Leather Company No. 3 has paid the said dividend of 7% on its Prior Preference stock on August 1, 1927, and further dividends of 1¾% each on said class of stock on October 1, 1927, and on January 1, 1928 out of surplus and/or net profits lawfully available therefor. This defendant United States Leather Company No. 3 has paid no dividend on its Class A stock or on its common stock.

21. These defendants deny paragraph 21 of the Bill of Complaint.

22. These defendants deny paragraph 22 of the Bill of Complaint.

23. These defendants deny paragraph 23 of the Bill of Complaint.

24. These defendants deny the allegations of paragraphs III. and IV. of the petition filed in this cause by the intervening complaints, Mabel B. Ingraham and Frances T. Ingraham, on or about July 27, 1927.

25. This defendant, Central Leather Company, as prayed in the Bill of Complaint, states and answers that as of June 22, 1927

(a) its authorized capital was $80,000,000, consisting of 400,000 shares of 7% cumulative preferred stock and 400,000 shares of common stock, all of the par value of $100 each;

(b) the number of shares thereof issued and outstanding on said day was as follows:

Preferred stock ....332,990.5 shares;
Common stock .....397,010.305 shares;

(c) no shares of its capital stock were held by the United States Leather Company No. 2. It is unable to say how many shares of its capital stock were held by officers, directors or agents, of Central Leather Company or of the United States Leather Company No. 2;

(d) inasmuch as Central Leather Company had many thousand stockholders, and inasmuch as many of the shares of its stock were from time to time registered, especially since the cessation of dividends upon its stock, in the names of brokers, agents or other than the true owners thereof, this defendant is unable to state the number of shares of its preferred stock held under or controlled by holders of common stock;

(e) on said date there were registered in the name of the depositary under the Plan of Readjustment dated October 1, 1926, and/or its nominee or nominees, 295,571 shares of preferred stock and 327,076 shares of common stock.

Except to the extent aforesaid this defendant is unable to state what shares were owned or controlled by the members of any Stockholders' Committee and/or by any business or firm they may be associated with and/or by any customer

of any such member of any Stockholders' Committee and/or of any business they may be associated with.

(f) This defendant is informed and believes that neither Kuhn, Loeb & Co. or the Bankers Trust Company on said date owned any shares of Central Leather Company, other than 5 shares of common stock owned by Bankers Trust Company, but this defendant is unable to state to what extent, if any, shares were owned or controlled by any business or firm they may have been associated with and/or by any customer of either of them.

(g) Dividends on the preferred stock of Central Leather Company at the rate of 7% per annum were regularly paid from the organization of the company upon the stock from time to time outstanding to and including April 1, 1921, and no dividends were thereafter paid thereon. Dividends were paid on the common stock of said company only during the following calendar years and at the following annual rates in each such year:

1914	2%
1915	7%
1916	7%
1917	9%
1918	7%
1919	7%
1920	5¾%

(h) The preferred dividend prescribed by its Amended Certificate of Incorporation is a 7% cumulative dividend payable in preference to any dividend upon the common stock. The amount of unpaid preferred dividends accumulated on June 22, 1927 was 42% upon the par of the preferred stock.

(i) The amount of its assets as carried on its books on June 22, 1927 was $72,066,624.82, and the amount of its liabilities as carried on its books, including its issued and outstanding capital stock at its par value, was $89,522,397.04, leaving a deficit of $17,455,772.22.

(j) The names of its directors and of the Executive Committee of the board of directors on October 1, 1926, and at all times thereafter to June 22, 1927, except as otherwise noted, were as follows:

Board of Directors

Madison J. Beach
Hiram S. Brown
George W. Childs (died January 11, 1927)
Charles Einsiedler
Ernest Griess
Charles S. Haight
William H. Harkness
Oliver C. Hoyt
Arthur T. Lynch
William McAdoo, Jr.
Max J. H. Rossbach
Charles S. Sargent, Jr.
Lewis L. Strauss
Boylston A. Tompkins
D. G. Ong (from April 6, 1927)
E. H. Amory (from April 6, 1927)

Executive Committee

William H. Harkness, Chairman
Hiram S. Brown
William McAdoo, Jr.
Lewis L. Strauss
Boylston A. Tompkins

(k) This defendant is unable with definiteness and certainty to answer and set forth "all corporate acts taken in connection with said Plan and Agreement of October 1, 1926, and said Agreement of Merger and Consolidation of May 19, 1927" or with definiteness and certainty to set forth true copies of "any agreements or writings between the stockholders or committees thereof made relating to said Plan and Agreement or Agreement of Merger and Consolidation not set forth in this Bill of Complaint." Or with fullness and certainty to disclose "any and all actions taken by the said Central Leather Company, its officers or board of directors, looking toward the accomplishment of said Plan and Agreement and Agreement of Merger and Consolidation."

26. As prayed by the Bill of Complaint, this defendant, the United States Leather Company No. 3, answers and sets forth that

(a) no shares of its capital stock have been issued by it for other purposes than or except under the terms and provisions of said Consolidation Agreement;

(b) the properties and assets of this defendant consist of the properties and assets acquired by it as a result of said consolidation as the same now exist and subject to the changes in the form and nature thereof resulting from the active conduct of its business and the use of its properties and assets therein since June 23, 1927, together with such properties and assets as now represent the earnings of its business since that date;

(c) the names of its directors and officers are as follows:

Board of Directors

Hiram S. Brown
Madison J. Beach
Charles Einsiedler
Ernest Griess
Charles S. Haight
W. H. Harkness
O. C. Hoyt
H. M. Lehman
William McAdoo, Jr.
A. J. Miller
L. W. Perrin
Max J. H. Rossbach
C. S. Sargent, Jr.
Lewis L. Strauss
Boylston A. Tompkins

Officers

President.....Hiram S. Brown
First Vice-President...W. H. Harkness
Second " " William McAdoo, Jr.
Third " " ...Madison J. Beach
Fourth " " ....Arthur T. Lynch
Secretary .....Harry W. Hill
Treasurer .....Harry W. Hill

(d) This defendant is unable to state the number of shares of stock of Central Leather Company owned or controlled by said directors and officers, but so far as this defendant is informed and believes all of such stock formerly owned or controlled by them has been converted under and pursuant to said Consolidation Agreement;

(e) This defendant is unable to disclose and set forth with definiteness and certainty, without

violation of the rules of this honorable court governing the manner and form of pleadings, all corporate action taken by its directors or Executive Committee with reference to said Plan and Agreement or Agreement of Merger and Consolidation.

27. These defendants further answering say that The United States Leather Company No. 1 was organized under the laws of New Jersey in the year 1893, with a very large capitalization. It acquired a large number of leather tanneries, as well as large holdings of so-called bark lands, the bark stripped from the timber thereon being useful in tanning. It was unable to meet its preferred dividends in full and never paid a dividend on its common stock.

28. In 1905, the defendant, Central Leather Company, was organized under the laws of New Jersey, acquired certain leather tanneries and timber lands, and subsequently, in 1909, acquired the properties, assets, subject to the liabilities, of The United States Leather Company No. 1, through a merger of the latter company under a Merger Agreement dated August 24, 1909. It issued its securities in large part in exchange for outstanding preferred and common stock of The United States Leather Company No. 1.

29. The business of Central Leather Company, in general, has always consisted of the purchase of raw hides, tanning of the same for use as sole leather, and other forms of heavy leather, and the operation of its timber lands in conjunction with its tanning operations. Various processes in the business have been customarily carried on through subsidiary companies.

30. The United States Leather Company No. 2 was organized in 1909, with a small capitalization, but has always been active in selling the finished leather, and has had, and had on June 22, 1927, a substantial amount of property and assets.

31. Central Leather Company and The United States Leather Company No. 2 were organized for the purpose of carrying on the same business.

32. The tanning business involves the purchase of raw hides in a competitive world-wide market on a large scale; the tanning process is slow and the turnover of the business is slow, and the tanning companies at all times are obliged to carry on hand a large stock of raw hides, semi-finished and finished leather.

33. For many years in the past, the tanning industry has become more and more competitive as new and powerful factors have entered the business.

34. Dividends were paid regularly on the preferred stock of Central Leather Company until April 1, 1921. Since then, no preferred stock dividend has been paid. Dividends on the common stock were never paid except during the World War and for a short time thereafter.

35. Central Leather Company enjoyed a large and profitable business during the World War. One result of the war was to stimulate new tanning capacity in this country and abroad. As a result, a substantial export business enjoyed by the company prior to the war shrank to very small proportions after the war, and this business appears to have been lost in large part to the company by reason of the building of tanneries abroad during the war.

36. The business continued active for about a year or more after the end of the war and then a disastrous condition suddenly developed in the industry. It appeared that there had been accumulated an enormous over-stock of leather. Conditions developed most unfavorable to the tanners of leather, prices fell, demand shrank and production was greatly curtailed. There resulted to the Central Leather Company terrific operating losses in the calendar years 1920 and 1921, wiping out the company's surplus and creating a large operating deficit.

37. The influence of these unfavorable conditions continued to make themselves felt in the industry almost to the present time. The volume of the business of Central Leather Company has, since 1920, in every calendar year, been less than its normal business prior to the war. The company also had to contend with unfavorable trade conditions affecting the operation of its timber properties within recent years. It sustained losses not only in 1920 and 1921, but also in 1923 and 1924. Profits on the business for the years 1922, 1925 and 1926 were small. In no year since 1919 have the earnings equalled the annual dividend on its outstanding preferred stock.

38. In the early part of 1925, the company's then outstanding bond issue matured. This was refunded.

39. In 1925, because of continued idleness or part time operation of many of its plants, a large number of its plants were abandoned and production was concentrated in a smaller number of plants. The abandonment of these plants involved a loss of many millions of dollars.

40. During the entire period, 1921 to June 22, 1927, the company had no surplus or profits available for dividends on its preferred stock, but had a large deficit and it was, therefore, legally impossible to pay any preferred dividend. Nevertheless, in later years, the company had a large amount of cash in the treasury due principally to the gradual liquidation of inventory and decreased volume of business, and could have spared cash for the payment of dividends had there been no other obstacle in the way of dividend payments.

41. In the summer of 1926, dividends on the preferred stock had accumulated to 35% and upwards. Prominent holders of its preferred stock then determined that some adjustment should be attempted concerning the resumption of dividend payments on the preferred stock. There was, however, no reasonable expectation that the company could within the near future earn sufficient to wipe out the deficit, much less earn enough to make substantial payments on account of the arrears, and it was even doubtful whether the post-war earnings of the company would be sufficient in amount and stability to enable it to make regular payments of the current dividends only on the preferred stock. No reduction of its capital was legally possible without the consent of more than two-thirds in interest of the common stockholders. The preferred and common stockholders had equal voting rights, share for share, but there were a larger number of shares outstanding of the common stock than of the preferred stock. The company had many stockholders and the stockholders were widely scattered.

42. Two committees were formed—one to represent the preferred stock and the other the common stock. The Committees were representative of the two respective classes of stock. As a result of continued and earnest negotiations on the part of the two Committees, the Plan of Readjustment of October 1, 1926, was adopted.

43. All the stockholders were given opportunity to deposit their stock under the Plan and, as hereinbefore set forth, an overwhelming majority of both classes of stock did so. The Plan was declared operative in February, 1927.

44. The Consolidation Agreement dated May 19, 1927, was subsequently adopted by the Boards of Directors of the two Companies, parties thereto, and approved and adopted by an overwhelming majority of both classes of stockholders. A greater proportion of the preferred stockholders than of the common stockholders voted favorably thereon and have come in thereunder.

45. Under the Consolidation Agreement, no new stock or other securities have been issued, or authorized by the new corporation formed thereunder. All stock issued thereunder and payments made thereunder have been issued and made to former stockholders of Central Leather Company and/or The United States Leather Company No. 2, or assigns.

46. The Consolidation Agreement and the terms therein contained for the conversion of the outstanding stock of Central Leather Company, are fair and equitable and advantageous to each class of stockholders, as well as advantageous to the corporation. The Agreement provided for an immediate payment of cash to a preferred stockholder, in addition to the dividends received by him upon the new Prior Pref-

erence Stock. The reduction of the capital of the enterprise permitted, for the first time in many years, payments to preferred stockholders. The preferred stockholder receives the benefit of the new Sinking Fund for the gradual retirement of the Prior Preference Stock. He receives a regular dividend, with every prospect of continuity thereof on the new Prior Preference Stock. The Class A Stock received by him is a medium through which he may share in any increase in the prosperity of the new corporation, in preference to the new common stock. The Class A Stock is convertible at any time into new common stock, so that he may share in the ultimate equity in the earnings if he deems it advantageous to exercise that right. The new stock received by him is more marketable than the stock held by him prior to the consolidation. The voting control passes to the preferred stockholders as a class.

47. During the spring of 1927, the market price of the preferred stock of Central Leather Company gradually rose as the consolidation came nearer to consummation. Since its consummation, the market price of the stock received in its place, plus the cash payable, has rapidly and materially risen to an amount at least one-third more than the market value of the equivalent old preferred stock prior to the consolidation. In the aggregate, these advantages and benefits to the preferred stockholders of Central Leather Company have been very great. The advantages to the corporation itself have also been momentous.

48. And these defendants say that said consolidation was effected in good faith for the benefit and advantage of the stockholders and of

the corporation; that it was adopted and consummated in all respects in strict compliance with the law and pursuant to the rights and powers reserved to the corporation and its stockholders under the law of this State; that it was designed and carried out in good faith and without compulsion upon any stockholder except as provided by law, and that the terms and provisions of the Consolidation Agreement are fair and equitable in all respects under the circumstances and conditions existing at the time of its adoption, and that it preserved to the preferred stockholders of Central Leather Company the substance and all of the essential advantages of their preferential rights and privileges and was fair and equitable to them.

49. These defendants, further answering, say that the said Plan of Readjustment was adopted on October 1, 1926; that its adoption was given wide publicity in the financial press and otherwise; that its adoption and terms became widely known among the stockholders of Central Leather Company within a short time thereafter; that all stockholders of record were given an opportunity to deposit their stock thereunder; that on or about February 25, 1927, a large proportion of both the preferred and common stock having then been deposited thereunder, said Plan was declared operative; that on May 19, 1927, as aforesaid, the Boards of Directors of Central Leather Company and The United States Leather Company entered into said Consolidation Agreement; that on May 20, 1927, as aforesaid, notice of the call of the Special Meeting of Stockholders of Central Leather Company was mailed to all stockholders, together with extracts from the Consolidation Agreement, describing the stock of

the new corporation, the amount of its capital and the manner of converting the stock of the Central Leather Company into stock of the new corporation, together also with a letter from the President of Central Leather Company to all stockholders, summarizing the principal features of the Consolidation Agreement, and stating also, as aforesaid, the expectation that the new corporation would declare a dividend of 7% upon the new Prior Preference Stock of the new corporation, payable shortly after the consummation thereof; that at or about the same times, these facts were given wide publicity in the financial press; that proxies for both the original complainant, John Windhurst, and the intervening complainants, attended at the Special Meeting of Stockholders held June 22, 1927; that while they expressed their disapproval of the Consolidation Agreement and voted against the adoption of the same, neither of them, nor any one else on behalf of the complainants, at any time prior to the filing of the Bill of Complaint in this cause, give notice to these defendants, or any one else on their behalf, of the nature and extent of their claims as set forth in the Bill of Complaint and the amendment thereto; nor of their intent, if any they had at that time, to seek injunctive or other extraordinary relief; that on June 23, 1927, the Consolidation Agreement was filed in the office of the Secretary of State of New Jersey and was thereby consummated; That The United States Leather Company No. 3 was thereby formed and came into existence as a new corporation and became vested with the properties, rights, privileges and franchises of the Central Leather Company and The United States Leather Company No. 2; that it immediately took

over and thereafter conducted, as its own, the business theretofore carried on by said predecessor corporations; that its board of directors immediately met and organized its affairs; that it thereupon, among other things, expressly assumed the due and punctual payment of the outstanding issue of bonds of Central Leather Company, known as its First Lien Sinking Fund 6% Bonds, of which there had been issued $15,000,000. face value, of which there were then outstanding in the hands of the public about $8,500,000. in face value; that the dividend aforesaid of 7% on the new Prior Preference Stock of the new corporation was immediately declared payable August 1, 1927, to stockholders of record at the close of business on July 15, 1927; that the new corporation, in various respects, readjusted the affairs of the business to be carried on by it and organized one or more new subsidiary companies; that it has from that time forward, in the course of its business, paid and discharged sundry debts and liabilities of the predecessor companies, and has incurred new indebtedness to various creditors in large amounts; that it paid or incurred, prior to the filing of the Bill of Complaint herein, large amounts in meeting the expenses incident to the consolidation and the issuance of its new stocks, the preparation and delivery of the stock certificates and/or voting trust certificates therefor, the appointment of transfer agents and registrars, the listing of its new securities on the New York Stock Exchange, for transfer stamp taxes and the like; that a large proportion of the outstanding preferred and common stock of Central Leather Company was converted almost immediately into the new stocks of the new corporation, and the payment

of $5 per share of preferred stock of Central Leather Company was made to the holders thereof pursuant to the said Consolidation Agreement; that at the date of the filing of the Bill of Complaint herein, upwards of 92.5% of the preferred stock of Central Leather Company had been converted and the holders thereof had received the payment of $5 per share in cash pursuant to the Consolidation Agreement, and upwards of 84.9% of the common stock of Central Leather Company had been likewise converted; that from time to time thereafter, such conversion and/or payment has continued, and, as of the close of business January 7, 1928, upwards of 95.8% of preferred stock and 92.7% of common stock had been so converted; that no stock has been issued by the new corporation except in conversion of stock of Central Leather Company and/or The United States Leather Company No. 2 pursuant to the Consolidation Agreement; that at the close of business December 31, 1927, the new corporation had outstanding 159,461 shares of its Prior Preference Stock, 239,191½ shares of its Class A Stock and 367,513 shares of its Common Stock, and had, from time to time prior to that date, paid, in the aggregate, about $1,595,000 in cash to the holders of preferred stock of Central Leather Company pursuant to the Consolidation Agreement; that all of the stock of Central Leather Company heretofore converted, is stock which from time to time had been deposited under the Plan of October 1, 1926, so that, in accordance with said Plan, all of the stock of the new corporation, issued upon such conversion, except 24 shares of Common Stock, has become vested in and is held by the respective Voting Trustees for the several classes

of stock of the new corporation; that said Voting Trustees are respectively constituted and acting under Voting Trust Agreements dated July 1, 1927, and they have, in turn, issued their Voting Trust Certificates to the former holders of the deposited stock, or their assigns, and have assumed obligations and liabilities, as such Trustees, to the holders from time to time of such Voting Trust Certificates; and that a large part of such Voting Trust Certificates had been issued prior to the filing of the Bill of Complaint herein; that the new corporation has also paid regular quarterly dividends on October 1, 1927, and January 1, 1928, of 1¾% each upon its outstanding Prior Preference Stock; that it has also, as successor to Central Leather Company, elected to redeem, and has redeemed on January 1, 1928, all of the First Lien Sinking Fund 6% Bonds issued by Central Leather Company, at a premium of 5% on the face value thereof, and, to effect such redemption, has paid, or set aside for payment, to the holders of the outstanding bonds, upwards of $8,000,000 in cash.

50. The Bill of Complaint herein was filed by the original complainant, John Windhurst, on July 21, 1927; that the intervening complainants joined or intervened therein on July 27, 1927; that the amendment to the Bill of Complaint filed by the intervening complainants was filed on or after November 18, 1927, and that no subpoena was issued in this cause commanding any of the defendants to answer until November 29, 1927.

51. These defendants therefore say that the intervening complainants, as well as the original complainant, John Winhurst, have not been vigilant in seeking the extraordinary relief prayed for by them in this honorable court, but have

been and are in laches and should not be granted the extraordinary equitable relief prayed for by them.

52. These defendants, further answering, say that prior to the filing of the Bill of Complaint herein, the Voting Trust Certificates for the several classes of stock in the new corporation has been regularly listed on the New York Stock Exchange and had been freely and actively dealt in thereon, and that such dealings have continued in large volume; that other private transactions in connection with the sale or pledge of such Voting Trust Certificates have frequently taken place both before and after the filing of the Bill of Complaint herein; that many innocent investors have purchased such securities, both before and after the filing of the Bill of Complaint herein, in the bona fide belief that such securities were legally issued and that the said Consolidation Agreement was lawful and valid, and in reliance upon the legal right and financial ability of the new corporation to make payments as provided under the Consolidation Agreement, and to the dividends heretofore paid and to continue the payment of the same in the regular course; that the new corporation has become indebted to sundry creditors; that the assets and liabilities formerly of Central Leather Company and The United States Leather Company No. 2 are now so changed that it would be impossible to restore the situation existing at the time of the Consolidation; that to grant the relief prayed for by the intervening complainants would deprive many innocent persons who are not parties to this cause of rights vested in them, and would work irreparable and enormous damage to the new corporation, its stockholders, its creditors,

and other persons interested therein or dealing therewith.

53. These defendants say that the intervening complainants are therefore estopped in equity and good conscience to claim or enforce the relief prayed for by them.

54. And these defendants, further answering, say that this cause should not be heard and determined in the absence of the stockholders of The United States Leather Company No. 3, or their proper representatives, and, in particular, that the relief prayed for by the intervening complainants cannot and should not be granted in the absence of the said Voting Trustees, with whom the three classes of stock of said defendant now outstanding have been deposited, who have not been brought in as parties.

55. These defendants, further answering, say that this honorable court has no jurisdiction to declare null and void the Consolidation Agreement dated May 19, 1927, and those things done and performed thereunder or by virtue thereof, as is prayed for in the Bill of Complaint, or to enjoin the furtherance and consummation thereof as is likewise prayed for, or to grant any relief or make any decree predicated upon the claim that such Consolidation Agreement was or is null, void, or unlawful.

56. These defendants, further answering, deny that the intervening complainants are without an adequate remedy at law, and say that an adequate and complete remedy at law was open to them under the statutory provisions for the appraisal of and payment of the market value of their stock.

Replication.

57. And these defendants deny that the intervening complainants are entitled to the relief prayed for by them or any thereof.

PITNEY, HARDIN & SKINNER,
Solicitors for Defendants, Central Leather Company and The United States Leather Company No. 3.
(Common Replication Filed.)

REPLICATION.

Common Replication to Answer filed January 26, 1928.

PETITION.

Filed March 22, 1928.

IN CHANCERY OF NEW JERSEY.

JOHN WINDHURST, *Complainant,* *against* CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.,* *Defendants.*	*On Bill, &c.* *Petition.*

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

The petition of Philip P. Getty residing at No. 20 Cedar Place, Yonkers, New York respectfully shows:

I. That your petitioner is the owner and holder of 100 shares of the preferred stock of Central Leather Company which stock was owned and held by him prior to the 22nd day of June, 1927 and has been so continuously held by him.

II. That on the 22nd day of June, 1927 the said 100 shares of preferred stock of the Central Leather Company were registered upon the books of the company in the name of Fellowes Davis & Co. and that your petitioner holding a proxy executed by said Fellowes Davis & Co. as the holder of record of said stock attended a special meeting of the stockholders of the Central Leather Company held at the offices of the company at 15 Exchange Place, Jersey City, New

Jersey on the 22nd day of June, 1927 and voted said 100 shares on behalf of your petitioner against the adoption and ratification of the so-called Agreement of Merger and Consolidation of the Central Leather Company and The United States Leather Company dated the 19th day of May, 1927 and executed for the Central Leather Company by H. S. Brown its President and a majority of its directors and executed for The United States Leather Company by H. S. Brown its President and a majority of its directors.

III. That under and pursuant to the terms and provisions of said Agreement of Merger and Consolidation, the vested contractual rights of your petitioner as preferred stockholder of the said Central Leather Company are unlawfully invaded and violated in that among other things he is foreclosed of any and all rights in or claimed to 43¾% dividends accrued and unpaid to that date on his said preferred stock and further that the capital amount of his investment in said company is inequitably and unfairly diminished, and that his rights to receive dividends at the rate of 7% per annum on his capital investment in said company have been impaired and violated and that the terms and conditions of said Agreement of Merger and Consolidation are unfair, inequitable, and illegal for the reasons aforesaid.

IV. That the said Agreement of Merger and Consolidation if allowed to stand will have the effect of depriving your petitioner of his property without due process of law in violation to him of the rights secured under the constitution of the United States as amended by Article XIV.

WHEREFORE your petitioner, feeling aggrieved as aforesaid and having no adequate remedy at

law, respectfully petitions this court that he may be joined in the above entitled action as complainant on the bill of complaint therein filed, upon his agreement to contribute to the expense of said suit as therein provided and your petitioner further prays that he be made complainant to said suit and petitioner further prays for such other and different relief as to this court may seem just and proper in the premises:

And your petitioner will ever pray, etc.

SMITH & SLINGERLAND,
Solicitors for and of Counsel
with Petitioner.

IN CHANCERY OF NEW JERSEY.

JOHN WINDHURST,
Complainant,
against
CENTRAL LEATHER COMPANY, THE UNITED STATES LEATHER COMPANY, *et al.*,
Defendants.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

PHILIP P. GETTY being duly sworn according to law deposes and says:

I. That he resides at No. 20 Cedar Place, Yonkers, New York and is the owner and holder of 100 shares of preferred stock of the Central Leather Company standing in the name of Fellowes Davis & Co. and was the owner and holder of such stock on the 22nd day of June 1927.

II. That deponent holding a proxy duly executed by the said Fellowes Davis & Co. as stockholder of record in the Central Leather Co. above named attended a special meeting of stockholders appointed to be held on the 22nd day of June, 1927 at the principal office of said company at 15 Exchange Place Jersey City New Jersey pursuant to notice.

III. That at said special meeting of stockholders aforesaid an Agreement of Merger and Consolidation of the Central Leather Company and The United States Leather Company, dated the 19th day of May, 1927 executed for the Central Leather Company by H. S. Brown, its

President and a majority of its directors and attested by H. W. Hill, its Secretary and executed for The United States Leather Company by H. S. Brown, its President and a majority of its directors and attested by H. W. Hill, its Secretary was submitted for approval and ratification to the vote of the stockholders of said Central Leather Company. That thereupon deponent as proxy aforesaid duly cast his ballot and voted the said 100 shares of preferred stock against the approval adoption or ratification of said Agreement of Merger and Consolidation.

That the said Agreement of Merger and Consolidation was nevertheless approved, adopted and ratified at said meeting by a vote of the stockholders owning more than two-thirds of the capital stock of said Central Leather Company.

That the 100 shares of stock, recorded on the books of the Central Leather Company in the name of Jas. Fellowes Davis & Co. and voted by your deponent at said meeting as proxy aforesaid were at the time aforesaid, the absolute property of deponent.

PHILIP P. GETTY.

Sworn to before me this 20 day
of March, 1928.

(L.S.) GERTRUDE M. HEALEY,
Notary Public,
N. Y. County.

ORDER ADMITTING PHILIP P. GETTY AS COMPLAINANT.

Filed March 22, 1928.

IN CHANCERY OF NEW JERSEY.

Between JOHN WINDHURST, *Complainant,* *and* CENTRAL LEATHER COMPANY and UNITED STATES LEATHER COMPANY, *et als.*, *Defendants.*	*On Bill, &c.* *Order Admitting Philip P. Getty as Complainant.*

Upon reading and filing the petition of Philip P. Getty, duly verified, praying that he be admitted as a party complainant in the above entitled suit, and it appearing that the said petitioner is the holder of preferred stock of the defendant, Central Leather Company, and that he is willing to contribute to the expense of this suit,

It is on this 22nd day of March, 1928, ORDERED that the said Philip P. Getty be and he is hereby admitted as a party complainant in this cause.

Respectfully advised,

E. R. WALKER,
C.

JOHN BENTLEY,
V.-C.

TRANSCRIPT ON FINAL HEARING.

IN CHANCERY OF NEW JERSEY.

Between

JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,

Complainants,

and

CENTRAL LEATHER COMPANY, the UNITED STATES LEATHER COMPANY, and others,

Defendants.

On Bill, &c.

Transcript.

Transcript of the stenographic report of the proceedings taken in the above-stated cause, on final hearing at the Chancery Chambers in Jersey City on Thursday, March 22, 1928, 10 o'clock in the forenoon, before his Honor JOHN BENTLEY, Vice-Chancellor.

Appearances:

Smith & Slingerland, solicitors, by Frederic W. Smith, Esq., of counsel; White & Simms (of New York Bar), by Charles Hallett White and Edward W. Simms, also of counsel for the complainants.

Pitney, Hardin & Skinner, solicitors, by Waldron M. Ward, Esq., of counsel for the defendants.

Arthur R. Bailey, official shorthand reporter, 75 Montgomery street, Jersey City.

Mr. Smith: This, your Honor, is the final hearing. Your Honor will remember there was an order advised dismissing the bill of the complainant Windhurst in 1927, and the present suit is proceeding on behalf of the intervening complainants, the Ingrahams and Philip P. Getty. The appeal from the decision of your Honor, upon the application to your Honor for an injunction, we have agreed shall be held pending this hearing; and, with your Honor's permission, I am going to ask that Mr. White of the New York Bar refresh your Honor's recollection of the matter, if your Honor thinks that is wise, before the record is made. We have practically agreed with Mr. Ward as to the making of the record, with affidavits that we have submitted to each other, and no testimony is to be taken.

The Court: I think I remember the facts pretty well as to the main outline; Mr. White presented them so clearly.

Mr. Smith: Before doing that, I wish to present an order on behalf of Philip P. Getty, asking that he be permitted to be admitted as a party complainant in this suit. Mr. Ward says that he cannot consent to the order permitting Mr. Getty, who is the owner of 100 shares of stock, to be made a party complainant, and I would like to present this petition asking that he be permitted to be made a party at this time.

Mr. Ward: First, I want it on the record that I appear for the defendants the United States Leather Company and the Central Leather Company. There are individual defendants who have never been served with subpoena who have not appeared. We have had no advance notice

of the application on the part of Mr. Getty. We have received a telephonic communication from the Vice-President and General Manager, stating that Mr. Getty is not a registered holder of stock. It seems to me it is rather late for him to come in now, eight months after the suit is started. The statute contemplates, it seems to me, that stockholders shall make their election rather promptly; they should come in at the start or not more than thirty days afterwards.

The Court: But what great harm will be done? What you really have in mind affects more the weight to be given to the joinder of this new complainant than whether or not he can be heard.

Mr. Ward: Of course, we can't see what will be the result of the intervening complainant coming in. This new stock is now about 110 as compared with about 80 last summer, and we understand this man is not a stockholder.

Mr. Smith: The stock stands in another name, but he is the beneficial owner of it.

The Court: I will permit the joinder.

Mr. White: (Mr. White briefly stated the history of the litigation up to date.)

Mr. Simms: I wish to read into the record a stipulation, which I think Mr. Ward will consent to. The stipulation is as follows:

> It is hereby stipulated and agreed by and between the parties in the above-entitled cause, through their respective counsel, that the affidavits of GEORGE S. INGRAHAM, dated March 20, 1928, ARTHUR E. DELMHORST, dated March 20, 1928, BRICE A. FREY dated March 20th, 1928, FRANCES T. INGRAHAM, dated March 20, 1928, on

behalf of the complainants, and the affidavits of Hiram S. Brown, verified July 26, 1927, HARRY W. HILL, verified July 28, 1927, and a second affidavit of Harry W. Hill, verified July 26, 1927, ANDREW J. MILLER, verified July 25, 1927, LEWIS L. STRAUSS, verified July 25, 1927, BOYLSTON A. TOMPKINS, verified July 26, 1927, E. E. BEACH, July 25, 1927, GAYER G. DOMINICK, July 26, 1927, FRANK ALTSCHUL, July 26, 1927, D. W. DILWORTH, July 26, 1927, HARRY W. HILL, July 28, 1927, HIRAM S. BROWN, March 22, 1928, on behalf of the defendants, shall be admitted in evidence, subject to any objection which may be made thereto as to the relevancy or sufficiency thereof, and shall constitute a part of the record upon the final hearing of this cause with the same force and effect as if the affiants were respectively sworn and testified to the facts in said affidavit contained.

Mr. Ward: The stipulation is to cover affidavits on both sides?

Mr. Simms: Upon the part of the two defendants that are represented, so far as they go. I wish to then introduce the affidavit of GEORGE S. INGRAHAM, dated March 20, 1928.

The Court: That is a new affidavit taken since the hearing?

Mr. Simms: Yes.

The Court: Suppose you just file it in the ordinary way; Mr. Bailey will take them and mark them "Filed" and send them to the Clerk's office in Trenton.

Mr. Simms: Very well; also the affidavit of ARTHUR E. DELMHORST, of BRICE A. FREY and FRANCES T. INGRAHAM.

(The affidavits are marked "Filed Mar. 22, 1928, J. B., V.-C." by the stenographer.)

We wish to make a part of the complainants' case Exhibits A, B and C, which are certified copies of the Certificate of Incorporation of the Central Leather Company and the amended certificate of Incorporation of The United States Leather Company, and the Certificate of Incorporation of the United States Leather Company.

We also wish to offer in evidence the amended Certificate of Incorporation of the Central Leather Company, dated August 19, 1909, copy of which is attached to the bill.

(Admitted and marked Exhibit C. 1.)

I wish to offer as complainants' exhibit a copy of the Plan for Readjustment of Share Capital of the Central Leather Company, dated October 1, 1926.

(Admitted and marked Exhibit C. 2.)

I offer in evidence a Notice of Special Meeting of Stockholders of the Central Leather Company, dated May 20, 1927.

(Admitted and marked Exhibit C. 3.)

I offer in evidence a notice, dated May 23, 1927, to the Holders of Certificates of Deposit issued under the Plan and Agreement dated October 1, 1926, for the Readjustment of Share Capital of Central Leather Company, which notice contains a statement that the Managers under the plan would vote for the consolidation of the Central Leather Company and The United States Leather Company.

(Admitted and marked Exhibit C. 4.)

I wish to ask Mr. Ward to admit for the record at this time that the form and matter of the stock certificates, referred to in the complainant's affidavit, were the same in form and effect as the 7% preferred stock of the Central Leather Company issued and outstanding on June 22, 1921.

Mr. Ward: That is admitted.

I offer now a copy of the Agreement of Merger and Consolidation between the Central Leather Company and the United States Leather Company, forming the United States Leather Company, dated May 19, 1927.

(Admitted and marked Exhibit C. 5.)

I offer now a circular, dated June 29, 1927, to the holders of Certificates of Deposit of Bankers Trust Company for Preferred stock and Common Stock of Central Leather Company.

(Admitted and marked Exhibit C. 6.)

I offer the stenographic transcript of Proceedings at the Special Meeting of the Stockholders of Central Leather Company, held on the 22nd day of June, 1927.

(Admitted and marked Exhibit C. 7.)

I offer in evidence a condensed Consolidated Balance Sheet of the Central Leather Company, as of the 22nd day of June, 1927.

(Admitted and marked Exhibit C. 8.)

I offer a letter, dated March 21, 1928, addressed to Mr. C. Cameron, Treasurer, The United States Leather Company, signed by F. E. Bremner, Assistant Secretary of the Equitable Trust Company of New York, listing the names and the amounts of stock of the Central Leather Company, registered in the name of the officers and directors of the Central Leather Company,

and the Managers, under the plan, and Members of the Stockholders' Committee as of June 22, 1927.

(Admitted and marked Exhibit C. 9.)

I wish to offer, subject to its production by Mr. Ward, a list showing the voting-trust certificates for the preferred and common stock, deposited under the plan and dated October 1, 1926, registered in the name of the Directors and Officers of the Central Leather Company—the managers under the plan of the voting trustees and members of the stockholders' Committee. That is all I have to offer.

The Court: Now, Mr. Ward, do you wish to offer anything?

Mr. Ward: I do not recall whether Mr. Simms included in the stipulation the affidavits annexed to the bill of complaint?

The Court: I thought when he read that list of affidavits, verified last summer, it included the complainants' affidavits in the bill of complaint.

Mr. Ward: Your intention is, Mr. Simms, that the stipulation will include the affidavits in the bill of complaint?

Mr. Simms: Yes.

Mr. Ward: I wish to file the affidavit of HARRY W. HILL, verified July 28, 1927; also of Hiram S. Brown, verified March 22, 1928. Those are within the stipulation entered into.

(The same are marked "Filed Mar. 22, 1928.")

I offer in evidence a certified compilation of the number of shares of the 7% Cumulative Prior Preferred Voting Trust Stock in the United States Leather Company, transferred on

the books of the Voting Trustees between June 15, 1927, and March 19, 1928.

(Admitted and marked Exhibit D. 10.)

Mr. Simms: The Complainant objects to the relevancy and sufficiency of any of the facts contained in any of the affidavits or exhibits offered on behalf of the defendants, relating to the facts which have occurred subsequent to June 22, 1927.

The Court: But not to the form?

Mr. Simms: Not to the form, no.

The Court: I overrule the objection.

Mr. Ward: I offer a like compilation of the number of shares transferred between the same dates on the books of the Voting Trustees of the United States Leather Company, Class "A" Participating and Convertible Voting Trust Stock.

Mr. Simms: I make the same objection as to all of the exhibits going in.

The Court: Your objection will be extended to all future offers made on behalf of the defendants of any transactions since the merger on June 22, 1927.

(Admitted and marked Exhibit D. 11.)

Mr. Ward: I offer a like compilation of the number of shares represented by the Common Voting Trust Stock of the United States Leather Company.

(Admitted and marked Exhibit D. 12.)

Mr. Ward: I offer a list, certified by the Transfer Agent, of the holdings of the preferred and common stock of the Central Leather Company, registered at the close of business June 14, 1926, in the names of the directors and officers and members of the stockholders' Committees appearing upon this list.

(Admitted and marked Exhibit D. 13.)

Mr. Ward: I offer a schedule showing high and low prices each week and the number of shares sold each week on the New York Stock Exchange between July 1, 1927 and March 16, 1928 of the United States Leather Company Voting Trust Certificates, for Prior Preference, Class A and Common Stock. And it is understood if any errors are discovered this compilation may be corrected by the defendants.

(Admitted and marked Exhibit D. 14.)

Mr. Ward: I offer a copy of the United States Leather Company 7% Cumulative Prior Preference Stock Voting Trust Agreement, dated July 1, 1927, between the United States Leather Company and Frank Altschul and others as Voting Trustees.

(Admitted and marked Exhibit D. 15.)

Mr. Ward: I offer in evidence the Voting Trust Agreement, dated July 1, 1927, between the United States Leather Company and Frank Altschul and others, as Voting Trustees, referring to Class A Participating and Convertible Stock.

(Admitted and marked Exhibit D. 16.)

Mr. Ward: I offer in evidence a copy of the Voting Trust Agreement of the United States Leather Company common stock, dated July 1, 1927, between the United States Leather Company and Andrew J. Miller and others as Voting Trustees.

(Admitted and marked Exhibit D. 17.)

Mr. Ward: If the Court please, there is a typographical error in the answer we filed, to which I called Mr. Smith's attention a few days ago, and I think it either admits or denies

some paragraph of the bill by the wrong number. I ask that that be changed in ink, or will it be necessary to take an order. The ancient way of making amendments in pleadings is by writing them on the pleadings.

The Court: I think you had better take an order, or you can accomplish it by a stipulation.

Mr. Ward: Then suppose we enter into a stipulation.

The Court: Yes, that is all right.

Mr. Ward: Then, it is stipulated that in the second line of paragraph 19 of the answer on file the numeral 18 be and is corrected and amended to read "19."

Mr. White: We wish to except to the Court's ruling accepting the offers in evidence on behalf of the defendants, and we ask that our exception be noted on the record.

The Court: You don't need any exception. The testimony and all other evidence taken is a part of the record as it was at common law, and it all goes to the appellate court, and every objection that is stated is taken by the stenographer verbatim and becomes a part of the record. Under our practice, Mr. White, you are completely protected.

Are you through with the submission of any further evidence?

Mr. Ward: With the exception of the list of stockholders which we are to prepare.

AFFIDAVIT OF GEORGE S. INGRAHAM.

Filed March 22, 1928.

County of Kings. }
State of New York. } ss.

George S. Ingraham being duly sworn according to law deposes and says:

That he is an attorney and counsellor at law in the State of New York with offices at No. 16 Court street, Brooklyn, New York.

That he is a brother-in-law of the intervening complainant Mabel B. Ingraham who resides at Hotel Maryland, Pasadena, California and a brother of the intervening complainant Frances T. Ingraham who resides at 379 Washington avenue, Brooklyn New York and that he has acted as their personal counsel and is familiar with all of the facts and circumstances herein stated.

That prior to the 8th day of September 1923 the intervening complainant Frances T. Ingraham acquired 1610 shares of the 7% preferred stock of the Central Leather Company. Such stock was acquired through the consolidation of The United States Leather Co. (No. 1) and the Central Leather Co. in 1905; through inheritance from her father William M. Ingraham who had also acquired such stock through such consolidation and by purchase.

That prior to January 16, 1924 for the purpose of convenience 710 shares of said stock were transferred to the name of Whitehouse & Co. and 900 shares of said stock were transferred to the name of J. H. Oliphant & Co. although said Frances T. Ingraham retained and still retains possession of the certificates repre-

senting said shares of stock and was and is the owner thereof.

That the numbers of said certificates are as follows:

Certificate No. 27353 for 90 shares
" " 27412 " 20 "
" " A11910 " 100 "
" " A14929—A14933 inclusive each for 100 shares

All in the name of Whitehouse & Co.

Certificates No. A15560 to A15568 inclusive each for 100 shares.

All in the names of J. H. Oliphant & Co.

That Mabel B. Ingraham is the widow of deponent's deceased brother Robert S. Ingraham who died October 22, 1924.

That said Robert S. Ingraham at various times during his life acquired 1115 shares of the 7% preferred stock of the Central Leather Co. Such stock was acquired through the consolidation of The United States Leather Co. (No. 1) and the Central Leather Company in 1905, through inheritance from his father William M. Ingraham who had also acquired such stock through such consolidation, and by purchase, so that at the time of his death in 1924 said Robert S. Ingraham was the owner of 1115 shares of such stock.

That under the will of said Robert S. Ingraham all of said stock passed to and became the property of the complainant Mabel B. Ingraham.

That prior to the death of said Robert S. Ingraham 900 shares of said stock were transferred to or put in the name of J. H. Oliphant & Co. and 215 shares in the name of Whitehouse

& Co., both of New York City although deponent as agent for said Robert S. Ingraham retained possession of said certificates of stock and has since his death retained possession of said certificates as agent for said Mabel B. Ingraham.

That the numbers of said certificates are as follows:

Certificate No.		27322	for	5 shares
"	"	27352	"	10 shares
"	"	A11908	"	100 shares
"	"	A11909	"	100 shares

All in the name of Whitehouse & Co.

Certificates No. A15569 to A15576 inclusive and certificate No. A15578 each for 100 shares.

All in the name of J. H. Oliphant & Co.

That the said 1115 shares of said stock and said 1610 shares were at all times and are now the property of said Mabel B. Ingraham and Frances T. Ingraham and have been owned and held by the intervening complainants' continuously as aforesaid.

That acting for and on behalf of the said Mabel B. Ingraham and Frances T. Ingraham deponent attended the special meeting of the stockholders of Central Leather Company held at the offices of said company on the 22nd day of June, 1927 and voted against the adoption and ratification of the Agreement of Merger and Consolidation of Central Leather Company and The United States Leather Company dated the 19th day of May, 1927.

That at the said meeting of June 22, 1927 the vote of the stockholders on the ratification of said agreement of merger and consolidation was taken and deponent acting under proxies exe-

cuted by Whitehouse and Co. and J. H. Oliphant and Co. the holders of record of said 1115 shares and 1610 shares of the preferred stock of the Central Leather Company owned as aforesaid by Frances T. Ingraham and Mabel B. Ingraham and acting on behalf of said Frances T. Ingraham and Mabel B. Ingraham duly recorded the vote of said 1115 shares and 1610 shares against the adoption of the said agreement of merger and consolidation.

That at the said meeting of stockholders on June 22, 1927 Hiram Brown, President of the Central Leather Company stated to the meeting in substance that it was unnecessary for those stockholders objecting to the agreement of merger and consolidation to state in detail their objections to the proposed agreement for the action of a stockholder in voting against the plan fully established his legal rights and that an objection made would give and retain to each objecting stockholder the benefit of all objections as if fully spread on the record.

That accordingly at said meeting of stockholders deponent merely stated his objection to said agreement of merger and consolidation on the ground that it was unfair to the preferred stockholders without spreading the grounds thereof in detail on the record.

That Whitehouse & Co. and J. H. Oliphant & Co. as stockholders of record of said stock at the request of deponent acting for and on behalf of the intervening complainants executed and delivered proxies to deponent authorizing him to attend the said meeting on behalf of the said 1115 shares and 1610 shares of the preferred stock of Central Leather Company which stock

New Jersey State Library

was registered in the name of said Whitehouse & Co. and J. H. Oliphant & Co.

GEO. S. INGRAHAM.

Sworn to before me this 20th day of March, 1928.

EDWARD A. INGRAHAM,
Com. of Deeds, City of N. Y.
Kings Co. Reg. No. 8010, Clerk's No. 24.

AFFIDAVIT OF ARTHUR E. DELMHORST.

Filed March 22, 1928.

STATE OF NEW YORK,
CITY OF NEW YORK,
COUNTY OF NEW YORK. } *ss.*

ARTHUR E. DELMHORST being duly sworn deposes and says that he resides at 85 Midwood street, Brooklyn, New York, and is a member of the firm of Whitehouse & Company, a partnership engaged in the business known generally as stock and bond brokers with offices at 111 Broadway, New York City.

That said Whitehouse & Company has acted as a broker for George S. Ingraham for over twenty-five years and during that time has bought and sold many securities for the account of said George S. Ingraham personally and through him for Frances T. Ingraham and Mabel B. Ingraham.

Prior hereto at the request of said George S. Ingraham said Whitehouse & Company caused to be transferred to its name Nine hundred and twenty-five (925) shares of the preferred stock

of the Central Leather Company represented by the following numbered certificates: A14929 to A14933 inclusive each for 100 shares, certificate No. 27353 for 90 shares, certificate No. 27412 for 20 shares, certificate No. 27322 for 5 shares, certificate No. 27352 for 10 shares and certificates No. A11908, A11909 and A11910 each for 100 shares.

That the purchase price of said certificates of stock has been paid and the certificates endorsed in blank and delivered to said George S. Ingraham and are not now and never were the property of the said Whitehouse & Company firm.

That upon information and belief the said certificates were received by said George S. Ingraham as the agent of and for the account of Frances T. Ingraham and Mabel B. Ingraham.

That at the request of George S. Ingraham a power of attorney was executed by said Whitehouse & Company as the holder of record of said Nine hundred and twenty-five (925) shares authorizing said George S. Ingraham to attend the special meeting of the stockholders to be held on the 23rd day of June, 1927 and to vote the said Nine hundred and twenty-five (925) shares at said meeting. That in executing and delivering said power of attorney said Whitehouse & Company asserted no right of ownership over said stock but acted merely as the record owner thereof.

ARTHUR E. DELMHORST.

Sworn to before me this 20 day
of March, 1928.

CLIFFORD F. POTTS,
Notary Public, Queens Co.
Queens Co. Clk's No. 3042.

AFFIDAVIT OF BRICE A. FREY.

Filed March 22, 1928.

STATE OF NEW YORK,
CITY OF NEW YORK, } *ss.*
COUNTY OF NEW YORK.

BRICE A. FREY being duly sworn deposes and says that he resides at 1112 Park avenue, New York City and is a member of the firm of Jas. H. Oliphant & Co., a partnership engaged in the business known generally as stock and bond brokers with offices at 61 Broadway, New York City.

That said Jas. H. Oliphant & Co. has acted as a broker for George S. Ingraham for over twenty-five years and during that time has bought and sold many securities for the account of said George S. Ingraham personally and through him for Frances T. Ingraham and Mabel B. Ingraham.

Prior hereto at the request of said George S. Ingraham said Jas. H. Oliphant & Co. caused to be transferred to its name Eighteen hundred (1800) shares of the preferred stock of the Central Leather Company represented by the following numbered certificates: certificates A15560 to A155568 inclusive each for 100 shares, certificates A15569 to A15576 inclusive each for 100 shares and certificate A15578 also for 100 shares.

That the purchase price of said certificates of stock has been paid and the certificates endorsed in blank and delivered to said George S. Ingraham and are not now and never were the property of the said Jas. H. Oliphant firm.

That upon information and belief the said certificates were received by said George S. In-

graham as the agent of and for the account of Frances T. Ingraham and Mabel B. Ingraham.

That at the request of George S. Ingraham a power of attorney was executed by said Jas. H. Oliphant & Co. as the holder of record of said Eighteen hundred (1800) shares authorizing said George S. Ingraham to attend the special meeting of the stockholders to be held on the 23rd day of June, 1927 and to vote the said Eighteen hundred (1800) shares at said meeting. That in executing and delivering said power of attorney said Jas. H. Oliphant & Co. asserted no right of ownership over said stock but acted merely as the record owner thereof.

BRICE A. FREY.

Sworn to before me this 20th day of March, 1928.

PETER G. SCHENERING, JR.,
Notary Public.
Queens Co. Clk's No. 2867.
Queens Co. Reg. No. 5337.

AFFIDAVIT OF FRANCES T. INGRAHAM.

Filed March 22, 1928.

STATE OF NEW YORK,
CITY OF NEW YORK, } *ss.*
COUNTY OF KINGS.

FRANCES T. INGRAHAM being duly sworn deposes and says that she resides at 379 Washington avenue, Brooklyn, New York.

That she is the owner and holder of the following numbered certificates of the preferred stock of the Central Leather Company of New Jersey:

Certificate No. 27353 for 90 shares in the name of Whitehouse
" No. 27412 " 20 " " " " " "
" " A11910 " 100 incl. " " " " " "
Certificates A15560 to A15568 for 100 shares each in the name of Jas. H. Oliphant & Co.
Certificates No. A14929 to A14933 incl. for 100 shares each in the name of Whitehouse.

FRANCES T. INGRAHAM.

Sworn to before me this 20th
day of March, 1928.

H. P. SCHOENBERNER,
Notary Public, Kings Co. No. 69.
Kings County Register's No. 8089.
New York County No. 784.
N. Y. Register's No. 2639.
Commission expires March 30, 1928.

Exhibit C. 1.

EXHIBIT C. 1.

AMENDED CERTIFICATE OF INCORPORATION OF CENTRAL LEATHER COMPANY.

THE UNDERSIGNED, for the purpose of forming a corporation under and pursuant to an Act of the Legislature of the State of New Jersey, entitled "An Act concerning Corporations (Revision of 1896)," and the acts amendatory thereof and supplemental thereto, do hereby set out and certify as follows:

ARTICLE FIRST.—The name of the corporation is Central Leather Company.

ARTICLE SECOND.—The location of the principal office of the corporation in the State of New Jersey is at No. 15 Exchange Place, in the city of Jersey City, county of Hudson, in said State, which shall also be its registered office. And the name of the agent of said corporation in said State, who is in charge of said principal office and upon whom process against this corporation may be served, is The Corporation Trust Company.

ARTICLE THIRD.—That the objects for which the company is formed are the manufacture and sale of leather, lumber and belting, including the acquisition, disposition and use in the manner and to the extent permitted by law, of all necessary and convenient lands, timber, bark, tanneries, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacture and sale of leather, lumber and belting, as aforesaid; and in general, the engagement in any and all

Exhibit C. 1.

lawful business whatever, which may be deemed necessary or convenient in connection with the business of manufacturing and selling leather, lumber and belting as aforesaid, in the State of New Jersey and in the States of New York, Massachusetts, Maryland, Virginia, West Virginia, Pennsylvania, Tennessee, Georgia, Kentucky, Wisconsin, Maine, Michigan, Washington, California, Oregon, North Carolina, Alabama, Illinois, Indiana and elsewhere within the limits of the United States and Canada and in foreign countries.

And also, to the extent deemed necessary to or convenient in connection with the business of the company herein above mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of shares of the capital stock of any other corporation or corporations created under the laws of this or any other State or country, and to exercise while owners of said stocks, all the rights, powers and privileges including the right to vote thereon, which natural persons being the owners of said stock might, could or would exercise.

And also, to the extent deemed necessary to or convenient in connection with the business of the company herein above mentioned, to purchase, acquire, hold, sell, assign, transfer, mortgage, pledge, exchange, or otherwise dispose of any securities or evidences of debt created by any other corporation or corporations of this or any other State or country, in the same manner and to the same extent as natural persons being the owners thereof might, could or would do.

The portion of the business of said company which is to be carried on out of this State is a part of its financial business, and so much of the

Exhibit C. 1.

manufacture and sale of leather, lumber and belting above mentioned, including the acquisition, disposition and use in the manner and to the extent permitted by law, of all necessary and convenient lands, timber, bark, tanneries, mills, plants, machinery, supplies and other articles and property necessary to or convenient in connection with the manufacture and sale of leather, lumber and belting aforesaid, and also such other business, as may be lawful and as may from time to time be deemed necessary or convenient by reason of locality or other conditions or circumstances.

The corporation may from time to time conduct its business in other States, and in the territories and dependencies of the United States, in the District of Columbia, and in foreign countries; it may have an office or offices and, except as otherwise required by law, keep its books, in whole or in part, at a point or points outside of the State of New Jersey, and it may hold, purchase, mortgage and convey real and personal property in any such State, territory, dependency, District of Columbia, or foreign country.

Without in any particular limiting or restricting any of the other objects and powers of the corporation, it is hereby expressly declared and provided (1) that the corporation shall also have power to issue bonds and other obligations in payment for property, including shares of stock and other securities, which may be purchased or acquired by it, or for money borrowed, or for any other lawful object in and about its said business; to mortgage or pledge any property which may be owned or acquired by it, or in which it may be interested, to secure any bonds, or other obligations by it issued or incurred; to make

Exhibit C. 1.

and perform contracts of every kind and description; to declare dividends payable in cash or otherwise as may be permitted by law; and in carrying on its said business, or so far as may be necessary or proper for the purpose of attaining or furthering any of its said objects or purposes, to do any and all other things and exercise any and all other powers which now or hereafter may be permitted by law, and (2) that, among its other powers, and without the assent or other action of the stockholders, the board of directors shall have power, by resolution of said board and for any lawful purpose, to authorize the execution of the bonds of the corporation not to exceed the principal sum of forty-five million dollars ($45,000,000), par value, at any one time outstanding, which bonds shall be in such form and issued and delivered at such times, and for such purposes and under such terms and conditions as said board may determine; and said board of directors shall also have power, by resolution of said board, to authorize the execution of an indenture, mortgaging and pledging all or any part of the property or assets of the corporation, then owned or which may thereafter be acquired by it, to secure the payment of said bonds and the interest thereon, and the performance of the covenants in said indenture contained, which indenture shall be in such form and embody such provisions, covenants, agreements and conditions as said board may determine.

Article Fourth.—The total authorized capital stock of the corporation is eighty million dollars ($80,000,000) divided into eight hundred thousand (800,000) shares of the par value of one hundred dollars ($100) each.

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Of said capital stock four hundred thousand (400,000) shares, aggregating forty million dollars ($40,000,000) par value shall be preferred stock; and four hundred thousand (400,000) shares, aggregating forty million dollars ($40,000,000) par value, shall be common stock.

From time to time the preferred stock and the common stock of the corporation may each or both be increased according to law as now or hereafter enacted, provided, always, that at no time shall the preferred stock be increased without the assent of the holders of at least two-thirds in interest of the then outstanding preferred stock of the corporation. And said preferred stock and said common stock as herein fixed, and any duly authorized increase of either or both, may be issued at such times and in such amounts and proportions as shall be determined by the board of directors and as may be permitted by law.

The holders of the preferred stock shall be entitled to receive or to have set apart, out of the surplus or net profits of the corporation, as and when declared by the board of directors, a dividend at the rate of, but never exceeding, seven per centum per annum, cumulative, on all such preferred stock outstanding at the time, which dividend shall be payable yearly, half-yearly or quarterly as the board of directors may, from time to time fix and determine, and before any dividends shall be set apart for or paid on the common stock. Provided, however, that if the preferred stock shall hereafter be increased, the rate of dividend upon such increase shall be at such rate, not exceeding seven per centum per annum, as shall be fixed by the resolution of the stockholders of the corporation

authorizing such increase. Whenever a dividend is declared or paid on the preferred stock and all prior dividends on the outstanding shares of such stock shall have been paid or set apart, the board of directors may, if in its judgment the surplus or net profits, after deducting the amount of dividends to accrue on the said outstanding preferred stock during the current year, shall be sufficient for such purpose, then or thereafter declare and pay dividends on the common stock, payable yearly, half-yearly or quarterly, and payable then or thereafter out of any remaining surplus or net profits of the year then current or last past and of any previous year in which full dividends shall have been paid on the preferred stock.

In case of a liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall receive cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon (but no more) before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the company, or the proceeds thereof, remaining after the payment in full, at its par value, of the preferred stock then outstanding, together with all dividends thereon accrued and unpaid.

ARTICLE FIFTH.—The names and post office addresses of the incorporators, and the number of shares of stock for which, severally and respectively, the said incorporators do hereby subscribe (the aggregate of their said subscription being five thousand dollars ($5,000), which is the amount of capital stock with which the cor-

poration is authorized to commence business), are as follows:

Name	Post Office Address	No. of shares	Total par value
Howard K. Wood	15 Exchange Pl., Jersey City, N. J.	20	$2,000
Kenneth K. McLaren	15 Exchange Pl., Jersey City, N. J.	20	2,000
Horace S. Gould	15 Exchange Pl., Jersey City, N. J.	10	1,000

ARTICLE SIXTH.—The duration of the corporation shall be perpetual.

ARTICLE SEVENTH.—The number of the board of directors of the corporation shall be fixed and may be increased or decreased, as may be provided from time to time in the by-laws.

In case of any increase in the number of said board of directors, the additional directors shall be elected as may lawfully be provided in the by-laws. In case of any vacancy in the board of directors, the remaining directors may elect a successor to hold office for the unexpired portion of the term of the director whose place shall have become vacant and until the election of a successor.

The board of directors shall have power to hold their meetings outside of the State of New Jersey at such place or places as may be from time to time designated by the by-laws or by resolution of the board of directors.

The corporation shall not create any mortgage or other lien upon its real property or its shares of capital stock of any other corporation or its other assets, except as herein before authorized, without the consent of the holders of at least

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a majority in amount of the entire capital stock of the corporation at the time outstanding expressed either in writing or by vote of a meeting of the stockholders called for that purpose; but this restriction shall not be construed to apply to any mortgage or lien which may be made or created by the corporation on property purchased to secure the purchase-money therefor or part thereof.

The board of directors in its discretion may submit any contract for the purchase or sale of property, the sale, exchange, incumbrance or other disposition of shares of stock, bonds or other obligations belonging to or issued by the corporation, or of any other securities in which it is interested, or for the borrowing of money for the corporation, for authorization, approval or ratification by the stockholders at any annual meeting or at any special meeting called for the purpose of considering any such contract; and any contract, or act in connection therewith, which shall be authorized, approved or ratified by the vote of the holders of a majority in amount of the entire outstanding capital stock of the corporation which shall be represented in person or by proxy at such meeting (provided that a lawful quorum of stockholders be there represented in person or by proxy) shall be as valid and as binding upon the corporation and upon all the stockholders as if the same had been authorized, approved and ratified by each and every stockholder of the corporation.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the Seventeenth Section of the Act concerning corporations (Revision of 1896), any action which theretofore required the con-

sent of the holders of two-thirds of the stock at any meeting after notice to them given, or theretofore required their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by, the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

Any officer elected or appointed by the board of directors may be removed at any time, with or without cause, by an affirmative vote of two-thirds of the whole board of directors. Any other officer or employee may be removed at any time, with or without cause, by the vote of the board of directors, or by any committee or superior officer upon whom such power of removal may be conferred by the by-laws or by a vote of the board of directors.

The board of directors may appoint from the directors an executive committee, of which committee a majority shall constitute a quorum; and, to such extent as may from time to time be provided in the by-laws or authorized by a resolution of the board of directors, such committee by a resolution of the board of directors, including the power to cause the seal of the corporation to be affixed to papers.

The board of directors may appoint any other standing committees, and such standing committees shall have and may exercise such powers as may be conferred and authorized by the by-laws or by the board of directors.

The board of directors may appoint, not only other officers of the corporation, but also one or more vice-presidents, one or more assistant treasurers, and one or more assistant secretaries, and to the extent provided in the by-laws, or by the board of directors, the persons

so appointed, respectively, shall have and may exercise all the powers of the president, and of the treasurer, and of the secretary respectively.

The board of directors shall have power from time to time, to fix and determine and to vary the amount of the working capital of the corporation, and to direct and determine the use and disposition of any surplus funds or net profits over and above the capital stock paid in.

Except as herein otherwise provided, the board of directors shall have power and authority to sell, assign, transfer, convey, and otherwise dispose of all or any part of the property and assets of the corporation on such terms and conditions as the said board of directors shall deem just and expedient, and to issue the bonds, debentures, notes and other obligations or evidences of indebtedness of the corporation.

With the consent of the holders of not less than two-thirds in amount of each class of the capital stock of the corporation at the time outstanding, expressed either in writing or by vote at a meeting of the stockholders, called for the purpose, but not otherwise, the board of directors of the corporation shall have power to sell, convey or otherwise dispose of all the property, rights and franchises of the corporation, as an entirety, upon such terms and conditions and for such considerations, whether in cash, stocks, bonds, or other property, as the board of directors may in its discretion determine.

No voluntary dissolution of the corporation or voluntary liquidation of its assets shall be had or made without the consent of not less than two-thirds in amount of the entire capital stock, and also of not less than a majority in amount of each class of the capital stock, of the corpo-

ration at the time outstanding, expressed in writing or by vote at a meeting of the stockholders called for the purpose, or expressed or given as required by law as now or hereafter enacted.

The board of directors, from time to time, to the extent permitted by law, shall determine whether and to what extent and at what times and places and under what conditions and regulations, the accounts and books of the corporation, or any of them, shall be open to the inspection of the stockholders; and no stockholder shall have any right to inspect any account or book or document of the corporation, except as conferred by statute, or authorized by the by-laws of the corporation, or by the board of directors, or by resolution of the stockholders.

Subject always to by-laws made by the stockholders, the board of directors may make by-laws, from time to time, may alter, amend, or repeal the same, in whole or in part; but any by-laws made by the board of directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice of such proposed alteration or repeal be included in the notice of such special meeting.

In Witness Whereof, we have hereunto set our hands and seals, this 12th day of April, 1905.

HOWARD K. WOOD, (L.S.)
KENNETH K. McLAREN, (L.S.)
HORACE S. GOULD. (L.S.)

Signed, sealed and delivered
in the presence of:

Harry W. Meen.

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STATE OF NEW JERSEY, }
COUNTY OF HUDSON, } *ss.*

BE IT REMEMBERED, that on this twelfth day of April, A. D. 1905, before me, a Commissioner of Deeds within and for the county of Hudson, in the State of New Jersey, personally appeared, HOWARD K. WOOD, KENNETH K. MCLAREN and HORACE S. GOULD, who I am satisfied are the persons named in and who executed the foregoing certificate, and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deeds.

HARRY W. MEEN,
Commissioner of Deeds within
and for the County of Hudson,
(SEAL) in the State of New Jersey.

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STENOGRAPHIC TRANSCRIPT OF PROCEEDINGS AT THE SPECIAL MEETING OF THE STOCKHOLDERS OF CENTRAL LEATHER COMPANY

PROCEEDINGS AT THE SPECIAL MEETING OF THE STOCKHOLDERS OF CENTRAL LEATHER COMPANY, a corporation of the State of New Jersey, held at the principal and registered office of the company, No. 15 Exchange Place, in the City of Jersey City, County of Hudson, State of New Jersey, on Wednesday, the 22nd day of June, 1927,

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Present:

Hiram S. Brown, Chairman,
Harry W. Hill, Secretary,
W. H. Harkness,
Wm. McAdoo, Jr.,
W. M. Ward,
L. D. Adkins,
Robt. W. Wesley,
Joseph N. Hartfield,
R. H. Zinn,
L. W. Perrin,
Walter H. Merritt.
Geo. S. Ingraham,
Chas. Hallett White,
Wm. H. Carey,
Geo. J. Rohdius, Jr.,
Walter E. Godfrey,
Benj. Graham,
Benj. B. Avery,
Wm. Helprin,
Philip P. Getty,
W. P. Clement, Jr.,
W. C. Kemp,
David J. Green,
Miss Emilie Klug.

Mr. Hiram S. Brown, the President of the Company, called the meeting to order and presided, and Mr. Harry W. Hill, the Secretary of the Company, kept the minutes.

Chairman Brown: Gentlemen, the meeting will come to order, please. This is a special meeting of stockholders of Central Leather Company called to be held on the 22nd day of June at 10 o'clock in the forenoon, Eastern Standard time, pursuant to notice duly given as required by the by-laws of the company and the laws of the State of New Jersey.

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I will ask the secretary to present to the meeting a full, true and complete list in alphabetical order, certified to by himself, of all the stockholders entitled to vote at the meeting, with the residence of each, the number of shares held by each, and an affidavit showing that said list had been made at least ten days before the date of this meeting, and at all times during the usual hours for business has been kept at the principal and registered office of the Company, open to the examination of any stockholder at said office. The Chairman directs that said list remain open during the meeting for the examination of any stockholder:

I would like the secretary of the meeting to take the names of the stockholders of the company present in person or represented by proxy and report the number thereof present. All who are present in person will please signify, and those who have proxies will signify the numbers and names. It might be easier to go to the inspectors of election and hand them your name.

The stockholders and those holding proxies then proceeded to file their names as requested with the inspectors of election, and the secretary then presented the return to the chairman.

Chairman Brown: It is difficult to get the exact number of shares. I am going to be conservative in the figures rather than otherwise. The secretary has made his report to the effect that the holders of upwards of 310,000 shares of the preferred stock out of 332-990-½ outstanding and the holders of upwards of 332,000 shares of the common stock out of the 397,010.305 shares of the common stock issued and outstanding, are present at the meeting and that the same are holders of more than two-thirds of all the capital

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stock of the company, and likewise are the holders of not less than two-thirds in amount of each class of the capital stock of the company at this time outstanding.

The secretary will now present to the meeting a copy of the form of the notice of the meeting and copy of the enclosure recited therein, together with an affidavit showing due mailing of a copy of said form of notice, with a copy of said enclosure, to each stockholder of the company entitled to vote at the meeting, to the last known postoffice address of such stockholder at least twenty days prior to the date of such meeting. He will also present to the meeting a copy of another form of notice of the meeting which differs from the first mentioned in this, only in having been adapted to the purposes of publication, and also affidavits showing the publication of such form of notice in accordance with the requirements of section two of article one of the by-laws of the company, in the New York Times, a newspaper of general circulation, published in the City of New York, to-wit, on the 21st and 27th days of May and the 8th and 15th days of June, 1927. They are here and I am going to direct that the secretary cause the originals of said affidavits to be filed and preserved among the records of the company and to incorporate in the minutes of this meeting copies of said forms of notice of meeting with a copy of the enclosure mentioned in the first mentioned form and copies of the affidavits showing mailing of the notice and the publication thereof as aforesaid. Here are the originals. Is it necessary that these should be read in full at the meeting? They are here and the affidavits are for the inspection of any stockholder who may wish to see them.

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Such copies are, respectively, as follows:

Central Leather Company
Affidavit of Mailing Of Notice of
Special Meeting of stockholders.

STATE OF NEW JERSEY }
COUNTY OF HUDSON } *ss.:*

Harry W. Hill, being duly sworn, deposes and says that he is Secretary of CENTRAL LEATHER COMPANY, a corporation of the State of New Jersey (hereinafter called the Company); that on May 20, 1927, which date was at least 20 days before the date set for the holding of the Special Meeting of Stockholders hereinafter mentioned he served upon each holder of record of the outstanding shares of the Preferred Stock and Common Stock of the Company at the close of business on May 19, 1927, a notice of the Special Meeting of Stockholders of the Company called to be held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, County of Hudson, State of New Jersey, on Wednesday, June 22, 1927, at 10 o'clock in the forenoon, Eastern Standard Time, by mailing in the Borough of Manhattan, City and State of New York, a copy of the form of notice, together with a copy of the enclosure therein recited, a copy of each of which is attached hereto, both enclosed in a postage prepaid envelope directed to him at his last known post office address; that, in addition thereto, he also served upon each holder of record of the outstanding shares of the Preferred Stock and Common Stock of the Company who became such holder after the close of business on May 19, 1927, and before the close

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of business on May 31, 1927, (which date was the date set for the closing of the books for the transfer of shares of the Preferred Stock and of the Common Stock of the Company for said meeting), on the day on which he became such holder, or on the next succeeding business day thereafter, a notice of said Special Meeting of Stockholders by mailing a copy of the above-mentioned form of notice, together with the enclosure therein recited, enclosed in a postage prepaid envelope directed to him at his last known postoffice address, each such notice having been mailed at least 20 days prior to the date of said meeting. (Signed) Harry W. Hill,

Subscribed and sworn to before
me at Jersey City, N. J., this
22nd day of June, 1927.

Harry W. Meen,
Notary Public,
N. J.

NOTARIAL SEAL
Harry W. Meen,
NOTARY PUBLIC
NEW JERSEY

CENTRAL LEATHER COMPANY

Notice of Special Meeting of Stockholders

Notice Is Hereby Given that a special meeting of the stockholders of Central Leather Company, a New Jersey corporation, is called on the order of the Board of Directors of said Company, to be held at its principal and registered office, No. 15 Exchange Place, in the City of

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Jersey City, New Jersey, on Wednesday, June 22, 1927, at ten o'clock in the forenoon, Eastern Standard Time, for the following purposes:

1. To consider and adopt an Agreement of Merger and Consolidation, dated May 19, 1927, between said Company and the directors thereof, and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of Central Leather Company at a meeting held May 19, 1927;

2. To authorize all action necessary to carry out the provisions of said Agreement; and

3. To transact such other business as may properly come before the meeting.

A copy of said Agreement of Merger and Consolidation, dated May 19, 1927, which provides for the consolidation of Central Leather Company and The United States Leather Company into a new corporation to be known as The United States Leather Company, is on file in the office of Central Leather Company, No. 15 Exchange Place, Jersey City, New Jersey, and No. 17 Battery Place, New York City, and may be examined there by stockholders during ordinary business hours. A copy of said Agreement will be mailed to any stockholder on request. For a description of the several classes of stock of said new corporation, a statement of the capital thereof and of the manner of converting the stock of Central Leather Company and The United States Leather Company into the stock of said new corporation, reference is made to Articles IV, V and VI of said Agreement.

The books for the transfer of shares of the preferred stock and of the common stock of Central Leather Company will be closed at the

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close of business on Tuesday, May 31, 1927, and, unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on Thursday, June 23, 1927.

By order of the Board of Directors.

Jersey City, New Jersey, May 20, 1927.

Hiram S. Brown, President. Harry W. Hill, Secretary.

CENTRAL LEATHER COMPANY

Notice of Special Meeting of Stockholders

Notice Is Hereby Given that a special meeting of the stockholders of Central Leather Company, a New Jersey corporation, is called on the order of the Board of Directors of said Company, to be held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, New Jersey, on Wednesday, June 22, 1927, at ten o'clock in the forenoon, Eastern Standard Time, for the following purposes:

1. To consider and adopt an Agreement of Merger and Consolidation, dated May 19, 1927, between said Company and the directors thereof, and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of Central Leather Company at a meeting held May 19, 1927;

2. To authorize all action necessary to carry out the provisions of said Agreement; and

3. To transact such other business as may properly come before the meeting.

A copy of said Agreement of Merger and Consolidation, dated May 19, 1927, which provided

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for the consolidation of Central Leather Company and The United States Leather Company into a new corporation to be known as The United States Leather Company, is on file in the offices of Central Leather Company, No. 15 Exchange Place, Jersey City, New Jersey, and No. 17 Battery Place, New York City, and may be examined there by stockholders during ordinary business hours. A copy of said Agreement will be mailed to any stockholder on request. Enclosed herewith and marked Exhibit A is a copy of the provisions of Articles IV, V and VI of said Agreement containing a description of the several classes of stock of said new corporation, a statement of the capital thereof and a statement of the manner of converting the stock of Central Leather Company and The United States Leather Company into the stock of said new corporation.

The books for the transfer of shares of the preferred stock and of the common stock of Central Leather Company will be closed at the close of business on Tuesday, May 31, 1927, and, unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on Thursday, June 23, 1927.

By order of the Board of Directors.

Jersey City, New Jersey, May 20, 1927.

Hiram S. Brown, President. Harry W. Hill, Secretary.

NOTE: Stockholders who do not expect to attend the meeting in person are requested to date and sign the accompanying proxy in the presence of a witness who should also sign, and return it in the accompanying stamped envelope.

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MEETING AND ELECTIONS CENTRAL LEATHER COMPANY.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS.

Notice is hereby given that a special meeting of the stockholders of Central Leather Company, a New Jersey Corporation, is called on the order of the Board of Directors of said Company to be held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, New Jersey, on Wednesday, June 22, 1927, at ten o'clock in the forenoon, Eastern Standard Time, for the following purposes:

1. To consider and adopt an Agreement of Merger and Consolidation, dated May 19, 1927, between said Company and the directors thereof, and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of Central Leather Company at a meeting held May 19, 1927.

2. To authorize all action necessary to carry out the provisions of said Agreement; and

3. To transact such other business as may properly come before the meeting.

A copy of said Agreement and Merger and Consolidation, dated May 19, 1927, which provides for the consolidation of Central Leather Company and The United States Leather Company into a new corporation to be known as The United States Leather Company, is on file in the offices of Central Leather Company, No. 15 Exchange Place, Jersey City, New Jersey, and No. 17 Battery Place, New York City, and may be examined there by stockholders during ordinary business hours. A copy of said Agreement

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will be mailed to any stockholders on request. For a description of the several classes of stock of said new corporation, a statement of the capital thereof and of the manner of converting the stock of Central Leather Company and The United States Leather Company into the stock of said new corporation, reference is made to Articles IV, V and VI of said Agreement.

The books for the transfer of shares of the preferred stock and of the common stock of Central Leather Company will be closed at the close of business on Tuesday, May 31, 1927, and unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on Thursday, June 23, 1927.

By order of the Board of Directors.

Jersey City, New Jersey, May 20, 1927.

Hiram S. Brown,
President.

Harry W. Hill,
Secretary.

STATE OF NEW YORK
CITY AND COUNTY OF NEW YORK } *ss.*

John O'Connor being duly sworn says he is the principal clerk of the Publisher of The New York Times a daily newspaper printed and published in the City and County of New York, that the advertisement hereto annexed has been regularly published in the said The New York Times once a week for two successive weeks commencing on the 8th day of June, 1927, to-wit on June 8-15, 1927.

John O'Conner.

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Sworn to before me this 15th
day of June, 1927.

George H. Leeman,
Notary Public.
New York County Clerk's No. 347.
Register's No. 9247.
Commission expires March 30, 1929.
NOTARIAL SEAL.

MEETINGS AND ELECTIONS CENTRAL LEATHER COMPANY.

NOTICE OF SPECIAL MEETING OF STOCKHOLDERS.

Notice is hereby given that a special meeting of the stockholders of Central Leather Company, a New Jersey Corporation, is called on the order of the Board of Directors of said Company to be held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, New Jersey, on Wednesday, June 22, 1927, at ten o'clock in the forenoon, Eastern Standard Time, for the following purposes:

1. To consider and adopt an Agreement of Merger and Consolidation, dated May 19, 1927, between said Company and the directors thereof, and The United States Leather Company, a New Jersey corporation, and the directors thereof, which was approved by the Board of Directors of Central Leather Company at a meeting held May 19, 1927.

2. To authorize all action necessary to carry out the provisions of said Agreement; and

3. To transact such other business as may properly come before the meeting.

A copy of said agreement and Merger and consolidation, dated May 19, 1927, which provides

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for the consolidation of Central Leather Company and The United States Leather Company into a new corporation to be known as The United States Leather Company, is on file in the offices of Central Leather Company, No. 15 Exchange Place, Jersey City, New Jersey, and No. 17 Battery Place, New York City, and may be examined there by stockholders during ordinary business hours. A copy of said Agreement will be mailed to any stockholders on request. For a description of the several classes of stock of said new corporation, a statement of the capital thereof and of the manner of converting the stock of Central Leather Company and The United States Leather Company into the stock of said new corporation, reference is made to Articles IV, V and VI of said Agreement.

The books for the transfer of shares of the preferred stock and of the common stock of Central Leather Company will be closed at the close of business on Tuesday, May 31, 1927, and unless otherwise ordered by the Board of Directors, will be reopened at the opening of business on Thursday, June 23, 1927.

By order of the Board of Directors.

Jersey City, New Jersey, May 20, 1927.

Hiram S. Brown, President. Harry W. Hill, Secretary.

STATE OF NEW YORK
CITY AND COUNTY OF NEW YORK } *ss.*

John O'Conner being duly sworn says he is the principal clerk of the Publisher of The New York Times a daily newspaper printed and published in the City and County of New York, that the advertisement hereto annexed has been reg-

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ularly published in the said The New York Times twice successive commencing on the 21st day of May, 1927, to-wit on May 21-27, 1927.

John O'Conner.

Sworn to before me this 27th day of May, 1927.

George H. Leeman.
Notary Public.
New York County Clerk's No. 347.
Register's No. 9247.
Commission expires March 30, 1929.
NOTARIAL SEAL.

Chairman Brown: Messrs. Herbert A. Ketcham, Edwin W. Bickford and Wallace S. Beagley are inspectors of election, appointed by the Board of Directors at the special meeting held thereon on May 19, 1927, to serve at this meeting of the stockholders of the company, as provided by the by-laws. They will now take and subscribe to the oath, of which the following is a copy:

"Oath of Inspectors of Election.

STATE OF NEW JERSEY }
COUNTY OF HUDSON, } *ss.:*

Herbert A. Ketcham, Edwin W. Bickford and Wallace S. Beagley, being severally sworn upon their respective oaths, do depose and say, and each for himself deposes and says, that he will faithfully, honestly and impartially perform the duties of Inspector of Election at a Special Meeting of the Stockholders of Central Leather Company, a corporation of the State of New Jersey, to be held at its principal and registered office, No. 15 Exchange Place, in the City

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of Jersey City, County of Hudson, State of New Jersey, on Wednesday, the 22nd day of June, 1927, at 10 o'clock in the forenoon, Eastern Standard Time, and a true report make of all votes that shall be canvassed by him thereat.

Herbert A. Ketcham
Edwin W. Bickford
Wallace S. Beagley

Subscribed and sworn to before
me at Jersey City, N. J. this
22nd day of June, 1927.

Harry W. Meen,
Notary Public,
(Seal) N. J."

Chairman Brown: This is the executed oath which I have just read. Now are the inspectors of election ready to present their certificate as to the shares represented? Before the inspectors of election present their report, if there is anyone who has not registered with the inspectors as present for the number of shares he personally represents and by proxy he has an opportunity to do so now. The lists are still being tabulated and all we can show in this report is a repetition of what I have already read. There are upwards of 310,000 shares of preferred and upwards of 332,000 shares of the common stock represented. The details will be tabulated of course and form a part of the minutes.

Said inspectors of election thereupon presented their first report which was accepted by the Chairman and of which the following is a copy:

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Special Meeting of Stockholders of
CENTRAL LEATHER COMPANY

First report of Inspectors of Election

Jersey City, N. J., June 22, 1927.

The undersigned, Inspectors of Election, duly appointed to serve at the Special meeting of the Stockholders of Central Leather Company, a corporation of the State of New Jersey, to be held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, County of Hudson, State of New Jersey, on Wednesday, the 22nd day of June, 1927, at 10 o'clock in the forenoon, Eastern Standard Time.

Do Report that stockholders holding upwards of 310,000 shares of the Preferred Stock of said Company out of 332,990.5 shares of Preferred Stock issued and outstanding, and upwards of 332,000 shares of the Common Stock of said Company out of 397,010.305 shares of Common Stock issued and outstanding, constituting more than two-thirds of all the capital stock of the Company and likewise constituting not less than two-thirds in amount of each class of the capital stock of the Company at the time outstanding, are present and entitled to vote thereat.

Respectfully submitted,

Herbert A. Ketcham
Edwin W. Bickford
Wallace S. Beagley
Inspectors of Election

The Chairman announces that a majority of the directors of the company have deemed it advisable that the company be merged and consolidated into and with the United States Leather Company, a corporation of the State of New

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Jersey, and that pursuant to resolutions of the board of directors adopted at a special meeting of the board held on May 19, 1927, an agreement had accordingly been executed, dated May 19, 1927, between the company and its directors and the United States Leather Company and its directors, providing for such merger and consolidation. I submit to the meeting said resolution and the agreement executed in accordance therewith. The agreement is here. I will read the resolution and announce that in anticipation of there being stockholders present who desire to vote against the resolution, that when the time comes for said votes to be cast we would like to take them in order and have them announce their names and addresses, the number of shares they personally represent, and the number of shares they represent by proxy, for the purpose of enabling the reporter of the meeting here to get an accurate record for the complete minutes.

The merger agreement has been submitted and is here. There are other copies available. The resolution to be presented I will read and will then ask that someone offer it and that it be seconded:

> WHEREAS a majority of the directors of this Company have deemed it advisable that this company be merged and consolidated into and with The United States Leather Company, a corporation of the State of New Jersey, and a form of Agreement providing for such merger and consolidation has been submitted to the Board of Directors of each of said two companies, and its execution on behalf of said two companies under their corporate seals has been duly author-

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ized by their respective Boards of Directors; and

WHEREAS, pursuant to such authorization, said two companies and a majority of the directors of each thereof have duly executed an Agreement, dated May 19, 1927, between this Company and its directors and The United States Leather Company and its directors, such Agreement being in substantially the form so authorized by the Board of Directors of this Company, and set forth in the minutes of its meeting held May 19, 1927, and the Agreement so executed has been submitted to the stockholders of this Company at this meeting;

RESOLVED that said Agreement, submitted to this meeting, providing for the merger and consolidation aforesaid, be, and it hereby is, adopted, approved, ratified and confirmed; that the resolutions of the Board of Directors of this Company submitted to this meeting, authorizing the execution of said Agreement, be, and they hereby are, severally adopted, approved, ratified and confirmed; that the Secretary of this Company be, and he hereby is, authorized and directed to certify upon said Agreement, under the seal of this Company, the fact of such adoption and to make acknowledgment of such certification; and that the officers of this Company be, and they hereby are, authorized to cause the Agreement so adopted and so certified, with the certification thereof so acknowledged, to be filed in the office of the Secretary of State of the State of New Jersey.

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Mr. Harkness: I move its adoption.

Mr. McAdoo: I second the motion.

Mr. Godfrey: Mr. President, as a proxy representing several stockholders, you said that the form of agreement passed by the directors was substantially the same as presented here today. Will you kindly tell us the differences that exist.

Chairman Brown: I do not think there is any difference other than grammatical, is there, Mr. Harkness?

Mr. Harkness: I think there were no changes.

Mr. Godfrey: The statement of the President was substantially, and I wanted to know if there are any differences.

Mr. Harkness: Nothing but typographical.

Chairman Brown: None that I know of that amount to anything. We had a draft before the directors' meeting and in reprinting it there might be a letter changed here or there. Substantially is a safe word to use, I should say.

Mr. Godfrey: Was the agreement presented here today passed by the board of directors different from the agreement in that it omitted articles 1, 2 and 3 as sent to the stockholders?

Chairman Brown: Articles 1, 2, and 3 are preliminary and introductory articles.

Mr. Godfrey: I mean they were eliminated from the ones sent to the stockholders?

Chairman Brown: They were. For the information of any stockholder present who may not have seen it, Article 1 states that the name of the company is The United States Leather Company. Article 2 states what the usual corporate objects of a leather company are, the

same charter provisions that are in the present company, Central Leather Company. Article 3 gives the names and addresses of the first board of directors. They were the omissions from the copy that went to the stockholders. The rest of it is included.

It is in order now that a vote on the preambles and resolution be taken by ballot. Will the inspectors please announce that the polls are open at 10:40 Eastern Standard Time.

Mr. Godfrey: Do I understand this is a vote to ratify the acts of the directors and not a vote to pass upon the resolution?

Chairman Brown: This passes upon the resolution. This is a resolution that effects the merger, and I will read it back if you did not get it:

> "That said agreement, submitted to this meeting, providing for the merger and consolidation aforesaid, be, and it hereby is, adopted, approved, ratified and confirmed."

Now that is an act of the stockholders ratifying it.

> "that the resolutions of the Board of Directors of this company submitted to this meeting, authorizing the execution of said Agreement, be, and they hereby are, severally adopted, approved, ratified and confirmed; that the Secretary of this Company be," and so forth.

Mr. Godfrey: Now I protest as a proxy for 2,927 shares against the presentation of this agreement to the stockholders for the reason that the agreement that was sent out to the stockholders was not the same agreement and did not contain all the articles as contained in

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the agreement presented here today, and the agreement passed upon by the directors at their meeting on May 19th, 1927.

Further I protest to the presentation of this agreement on the ground that the pooling agreement is not referred to in this agreement, which pooling agreement gave the opportunity to some prior to the entering into of the agreement presented here for adoption today of pooling their rights and votes and permitting others to vote their shares, not contained in the agreement presented here today.

I also would protest against the voting of the pooled stock under a prior agreement and arrangement on the ground that that was not submitted to the stockholders subsequent to the directors' meeting which adopted the agreement presented here today and opportunity was only given to join that pool to a few which had ratified and approved of it prior to the directors' meeting.

Chairman Brown: A record of your protest has been made. I presume your reference to the pooling agreement means—

Mr. Godfrey: The voting trust agreement.

Chairman Brown: Means the deposit agreement?

Mr. Godfrey: Yes.

Chairman Brown: A copy of which went to every stockholder.

Mr. Godfrey: Prior to the directors' meeting?

Chairman Brown: Yes, every stockholder of record received a copy of it. So if he did not get the opportunity I do not know what could have been done to have given him such an opportunity.

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Mr. Godfrey: But subsequent to the directors' and also at the directors' meeting the plan has been changed from a sale of the assets of Central Leather Company to a new company and taking in purchase thereof or exchange therefor stock of the new company, which has been changed to a merger and consolidation. Under the old arrangement there was no statutory provision in the State of New Jersey for the sale of the assets. It has been changed over to a merger and consolidation and the ones who deposited under the original agreement deposited on the sale of the assets and did not deposit on a merger and consolidation, although the original plan called for such other or changed plan as might be necessary.

Chairman Brown: Your protest has been entered, sir.

Mr. Ingraham: You spoke sometime ago about reading the list of the stockholders and the number of shares of stock that they represent. May we have that list read before the vote is taken?

Chairman Brown: It will take several hours to do it. The list is here.

Mr. Ingraham: Well, may I see it?

Chairman Brown: Yes, you are at liberty to examine it.

Mr. Ingraham: Is it in alphabetical order?

Chairman Brown: Yes.

Mr. Merritt: My name is Walter H. Merritt. I am proxy for A. Hicks Lawrence, a stockholder owning 250 shares of preferred stock. I was simply going to ask am I right that the vote on this motion is to be taken by the alphabetical order of the names of stockholders?

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Chairman Brown: It is to be taken by ballot filed with the inspectors of election. But those who vote contrary and who are present to vote contrary will be given an opportunity to stand up and state it and enter a protest on the record here, the minutes in full, in addition to voting. You can vote no out there before the inspectors and then come in here and in order we will take them around the room, so you may stand up and record your protest.

Mr. Godfrey: I put on record that I dissent from the action of the board of directors at their meeting held on May 19, 1927, in making an agreement to consolidate and merge Central Leather Company with The United States Leather Company.

Chairman Brown: Yes, that is entered. Now the polls are open, gentlemen, and if you will, go into the other room and vote. Ballots are available out there with the inspectors of election.

Mr. Merritt: You want it made after the vote?

Chairman Brown: The inspectors of election will render their report which will show how many shares have voted in favor and the number of shares that are voted against, and each one who has voted against will make his protest and it will be entered so that your position will be perfectly clear.

(The voting then proceeded.)

Chairman Brown: Gentlemen, has every stockholder present voted either in person or by proxy? If so, will the inspectors declare the polls closed please.

Inspector Ketcham: I declare the polls closed at 11:42 Eastern Standard Time.

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Chairman Brown: I will read the report of the inspectors:

"Second Report of Inspectors of Election.

Jersey City, N. J., June 22, 1927.

The undersigned, Inspectors appointed to serve at the Special Meeting of the Stockholders of Central Leather Company, a corporation of the State of New Jersey, held at its principal and registered office, No. 15 Exchange Place, in the City of Jersey City, County of Hudson, State of New Jersey, on Wednesday, the 22nd day of June, 1927, at 10 o'clock in the forenoon, Eastern Standard Time, having first taken an oath faithfully, honestly and impartially to perform the duties of Inspectors of Election at said meeting, thereafter canvassed the votes given thereat upon the preambles and resolution, the adoption of which at said meeting was duly moved and seconded, as set forth in Schedule A hereto attached

DO HEREBY CERTIFY

that holders of 301,841 shares of the Preferred Stock of the Company out of 332,990.5 shares of the Preferred Stock issued and outstanding, and holders of 332,404 shares of the Common Stock of the Company out of 397,010.305 shares of the Common Stock issued and outstanding, and entitled to vote thereon, voted in favor of said preambles and resolution, and holders of 9,634 shares of Preferred Stock and no shares of Common Stock voted against said resolution.

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The undersigned

DO THEREFORE REPORT

that said preambles and resolution were duly adopted by the affirmative vote of the holders of more than two-thirds of all the capital stock of the Company and likewise by not less than two-thirds in amount of each class of the capital stock of the Company at the time outstanding.

IN WITNESS WHEREOF, we have hereunto affixed our respective signatures this 22nd day of June, 1927.

Herbert A. Ketcham
Edwin W. Bickford
Wallace S. Beagley."

As Chairman I declare that the preambles and resolution set forth in Schedule A thereof as attached to this report have been duly adopted by the affirmative vote of the holders of more than two-thirds of all the capital stock of the company and likewise by not less than two-thirds in amount of each class of the capital stock of the company at the time outstanding; to wit., by the holders of 301,841 shares of the preferred stock and 332,404 shares of the common stock.

It is now in order to enter upon the record the formal protests of the 9,635 shares of preferred stock or such portion thereof as desire to be heard. I call attention to the fact that your action in voting against the plan fully establishes your legal rights and you can save the time of all of us by making your formal protests here as short as possible, but sufficiently explicit to satisfy yourselves. There is

no desire to muzzle anybody by making that remark.

Mr. Godfrey: May I proceed?

Chairman Brown: I would like to start right around the room, if I may.

Mr. Godfrey: All right.

Chairman Brown: I will first deliver to the reporter of the meeting a written statement signed by William H. Carey, a proxy for Lindenwood Female College, who voted 500 shares of preferred stock.

Secretary Hill: They did not vote. That account was closed out three years ago. They are not stockholders now.

Chairman Brown: Well, here is a written statement. We will have to file it with the minutes. It was presented here by Mr. Carey, so whether voted or not, it will have to be filed.

The statement is as follows:

"LINDENWOOD FEMALE COLLEGE, a body corporate, the holder of 500 shares of the preferred stock of Central Leather Company, a corporation of the State of New Jersey, votes against the Plan and the adoption of the Agreement of Merger and Consolidation, dated May 19, 1927, between said Central Leather Company and the directors thereof and The United States Leather Company, a New Jersey Corporation, and the directors thereof, which Plan and Agreement were approved by the Board of Directors of Central Leather Company May 19, 1927. Said Lindenwood Female College dissents from said Plan and Agreement and from

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any and all action necessary to carry out the provisions of said Agreement.

Dated, June 22, 1927.

LINDENWOOD FEMALE COLLEGE,

By William H. Carey,

Proxy."

Mr. Graham: My name in Benjamin Graham, and my address is 60 Beaver Street. I hold proxies for 600 shares of preferred stock of which 400 shares are in the name of Goodbody & Company and 200 shares in the name of Henry Heintze & Company. In voting against this plan I would like to point out that I consider the arrangement an undesirable one, both because it is unfair to the preferred stockholders and because it will tend to set up two dangerous precedents which may work unfortunate results for the stockholders as a whole.

The first precedent is that it apparently has resort to a new principle, namely that common stockholders are entitled to exploit and to make use of a deficit in order to force preferred stockholders to surrender a large part of their corporate rights in exchange or as a price for the assent of the common stockholders to the payment of dividends. Now it is true that a large majority of the preferred stockholders have assented to this arrangement. Nevertheless, I think it merely illustrates a well known fact, that most stockholders are not particularly intelligent and lack initiative in matters of corporate finance. However, those stockholders who have sufficient intelligence to recognize the injustice of this scheme should not be forced in my opinion either to accept the terms or to dispose of their stock at the current market price.

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Now in adopting this means of putting the plan into effect a second dangerous precedent is established I think, and one also injurious to the preferred stockholders, because it makes use of a mere artifice to compel those stockholders who dissent either to consent or to get out. I think this plan of merger is obvious, it is not an attempt at artifice, I don't believe any one claims it pretends to fulfill the ordinary means by which two businesses go together. It is merely a means of putting into effect a scheme of recapitalization, and one which will compel the stockholders who dissent from the terms of this plan to give up their rights.

On this account I think that it is in the interest not only of the preferred stockholders of Central Leather Company but all members of the financial community to protest against the establishment of an arrangement of this kind.

Mr. Rohdius: My name is George J. Rohdius, Jr., 233 Broadway, New York, representing E. Josephine Wilcox, owner of 53 shares of preferred stock. I protest on the ground that this arrangement is unfair and unreasonable to the preferred stockholders.

Mr. Ingraham: My name is George S. Ingraham, 44 Court Street, Brooklyn. I represent 825 shares in the names of James H. Oliphant, preferred stock, and 925 shares of preferred stock in the name of Whitehouse & Company, and think that the plan is unfair to the preferred stockholders.

Mr. Merritt: My name is Walter H. Merritt, 165 Broadway, Borough of Manhattan, City of New York, holding proxy for A. H. Lawrence of 50 Broad Street, Borough of Manhattan, City of New York. On behalf of A. H. Lawrence, a

stockholder holding 250 shares of the preferred stock of the Central Leather Company whose proxy I hold and have filed at this meeting and which stock I voted against the adoption of the resolution just voted upon and adopted, adopting, approving, ratifying and confirming the agreement of merger and consolidation, in order to comply with the provisions of the statutes made for the benefit of a dissenting stockholder I hereby record my dissent against the adoption of such merger and consolidation and the action of the stockholders at this meeting in adopting, approving, ratifying, confirming and authorizing the execution of the agreement of merger and consolidation dated May 19, 1927, and also dissenting against the action of the board of directors at their meeting held on May 19, 1927, in authorizing the execution of the agreement of merger and consolidation. And I do hereby give notice that he will refuse to convert his stock into any of the stock of the Consolidated company or to dispose of it in the manner or on the terms specified in the agreement of merger and consolidation.

Mr. Avery: My name is Benjamin Avery, 220 Broadway, representing George F. Upham, a stockholder. The Upham stock was voted against the agreement to merge and consolidate.

Chairman Brown: How many shares?

Mr. Avery: 100 shares of preferred. Mr. Upham dissents and does so under the provisions of the New Jersey statute provided for the protection of minority stockholders.

Chairman Brown: Mr. Godfrey.

Mr. Godfrey: I desire to renew the objection I made before the voting took place by the stock-

holders, and again object to the counting of the votes of the stock that was deposited with the managers on the ground that it was deposited under a plan of sale of the assets of the corporation and not on the plan of consolidation and merger, and on the further ground that the agreement sent out to the stockholders did not contain the entire agreement between the two consolidating and merging corporations, and further on the ground that the agreement referring to the consolidation and merger did not refer to the pooling plan giving certain stockholders prior to the directors' meeting a preference of permitting them to pool their stock with certain managers which was not given or not held open to them subsequent thereto; and further on the ground that the stock of this corporation was increased without proper proceedings being brought to increase it and not referred to in the plan and specified to stockholders so that they could understand it, and that of the increased stock only three-quarters thereof was given to the stockholders when they owned 100 per cent. of all the stock, and the other quarter being retained for purposes not stated by the managers or directors of this company or by the bankers. And further on the ground that the proceedings are not taken strictly in accordance with the statutory requirements. And I give notice to the Central Leather Company, its officers and directors, that the stock that I represent will refuse to convert any of their preferred stock into the stock of the consolidated company, and I hereby demand payment to these stockholders at the market price as the properties of the corporation will be valued at as of today of the preferred stock that I vote and control and

represent. And I further demand that the Central Leather Company refrain from transferring the assets of this corporation to the merged and consolidated corporation until that stock is either paid for or separate funds are set aside for the payment of that stock. And I hereby notify you that I intend to take court proceedings for the appointment of appraisers to value the actual properties of the corporation.

Chairman Brown: May we add to that the list of the names and number of shares?

Mr. Godfrey: Yes, that I voted here today?

Chairman Brown: Yes.

Mr. Godfrey: But that will not prevent me from representing others that I do that I have not brought proxies for.

Chairman Brown: This meeting is not supposed to muzzle anybody or stop them from anything. I would like you to read the names and number of shares that you represent so the stenographer's record will be complete.

Mr. Godfrey: They have them outside. The stenographer may put it in with my consent the number I voted here today.

Chairman Brown: All right.

(The number of shares represented and voted by Mr. Godfrey as proxy are as follows:)

Name	No. of Preferred Shares
Frances B. Ackermann	20
Frederick Ackermann	50
Ralph P. Barnard (Trustee for Theresa R. Sewall)	6
Berker B. Conable	50

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Louise W. Clarke	21
Grunlal Lunthal & Co.	1500
Herbert Gaytes	10
Mabon & Co.	20
Isabel C. May	50
Horace G. Prall	5
Arthur G. Parker	10
Mary E. Parker	10
Ettie P. Parker	40
Sallie W. Perkins	50
E. A. Pierce & Co.	1000
Herbert W. Schaff	50
Harry C. Smith	10
Carrie W. Tower	20
Walton H. Wilcox	6

Chairman Brown: Is there anyone in back of Mr. Godfrey, before we come to this side of the room?

Mr. White: My name is Charles H. White, 32 Liberty Street, New York, proxy for Mr. Charles A. Edwards of 45 Wall Street, record owner of 600 shares of preferred stock. I wish to record on the minutes of the meeting a protest and dissent from the action of the company in adopting the agreement of merger and consolidation entered into between this company and its directors and the United States Leather Company and its directors, dated May 19, 1927, and reserve all rights secured to a dissenting stockholder under the laws of the State of New Jersey in such case made and provided.

Chairman Brown: You, sir.

Mr. Clement: I wish permission to read this letter.

Chairman Brown: State your name and address.

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Mr. Clement: W. P. Clement, Jr., 150 Broadway, representing 50 shares of my own and 1930 shares for the account of Fred A. Schellin, a preferred stockholder:

"The undersigned, as holder of fifty (50) shares of the Preferred Stock of the Central Leather Company and as proxy for the shareholders mentioned below who are holders of the number of shares of Preferred Stock set opposite their names, votes at the meeting of stockholders held at the principal and registered office of the Company, No. 15 Exchange Place, Jersey City, New Jersey, on June 22nd, 1927, against the plan set forth in the 'Agreement of Merger and Consolidation' dated May 19th, 1927, and dissents from said plan. The undersigned personally attended said meeting of stockholders, and presented this letter to the Chairman of the meeting, with the request that it be filed with the minutes of the meeting.

Very truly yours,
Waldo P. Clement, Jr.
Fred A. Schellin."

Chairman Brown: Is there anyone who has not had the opportunity to file his formal protest? If so, stand up and talk. If there is not—

Mr. Merritt: Mr. Chairman, Mr. William C. B. Kemp, who sits on my left, has asked me to record his dissent as a holder of 20 shares of the preferred stock against the adoption of the preambles and resolution just adopted by the stockholders at this meeting and against the carrying into effect of the agreement of merger and consolidation dated May 19, 1927.

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Chairman Brown: May I ask Mr. Kemp's full name for the record.

Mr. Kemp: William C. B. Kemp.

Chairman Brown: And the address?

Mr. Kemp: 4 West 43rd Street, New York City.

Chairman Brown: Representing your ownership of 20 shares of preferred stock?

Mr. Kemp: Yes.

Chairman Brown: And I understand you have deposited that stock with the managers. Is that right?

Mr. Kemp: Yes.

Chairman Brown: And hold a certificate of deposit?

Mr. Kemp: Yes.

Mr. Merritt: Mr. Chairman, after stating to you a few minutes ago in his behalf as to whether he could dissent, because he had filed his stock, I told him what you told me, namely, that you are willing—

Chairman Brown: No, I said as far as I was personally concerned it made no difference to me if he took it out, but I could not speak with authority at all. That was purely a personal side talk with you, and had nothing to do with the legal position of the managers or the company.

Mr. Merritt: I misunderstood. I stated what I have just stated to this gentleman.

Chairman Brown: Now we have two other resolutions here that were not included in the original resolution because we did not want to complicate the discussion of the merger itself. I may say that in connection with these two resolutions, as they are merely the tag ends

of winding up the agreement, we will consider, unless otherwise advised by the stockholders present, that the vote taken on the main agreement will apply in exactly the same way on the two resolutions which I will read and unless there is some protest otherwise filed the record will so show.

The resolutions are:

RESOLVED that all action of every nature at any time taken by the directors or officers of this Company, or any of them, in connection with the merger and consolidation of this Company into and with The United States Leather Company, a corporation of the State of New Jersey be, and it hereby is, in all respects, authorized, adopted, approved, ratified and confirmed; and

RESOLVED that the directors and proper officer or officers of this Company be, and they hereby are, authorized and directed from time to time to take any and all such further action, including the execution of any and all such further instruments, as in their discretion they shall deem necessary or proper in order to carry said merger and consolidation into effect.

May we have that resolution offered?

Mr. McAdoo: I offer it and move its adoption.

Mr. Harkness: I second it.

Chairman Brown: I have a ballot in favor of the resolution signed by the total number of shares of preferred and common who have voted in favor of the previous preambles and resolution, and unless otherwise instructed and in order to save your time we will enter your vote against these resolutions exactly as indicated

by the previous record, if that is agreeable, otherwise we will go through the routine of having you make separate ballots for the whole business, if you want us to do it, but this record will stand otherwise.

Mr. White: Do you enter the dissenting votes as having been entered by ballot?

Chairman Brown: Yes, your previous ballots will cover these resolutions as well. If there is no protest that is the way the record will stand.

Mr. Avery: I understand that the objections against the main resolution stand against these?

Chairman Brown: Yes, sir. In other words we will assume that your one protest covers all.

Mr. Avery: Yes.

Mr. Godfrey: What is the other resolution?

Chairman Brown: There are no other resolutions.

Mr. Godfrey: I thought you had two.

Chairman Brown: I read them both. They are there together. Now, if there is no other business I will consider a motion that we adjourn to meet again at the same place and hour in the forenoon of Wednesday, the 29th day of June, 1927. May I have that motion?

Mr. McAdoo: I move that we adjourn to meet on that day at this place.

Mr. Harkness: I second the motion.

Mr. Godfrey: One moment. I would like to know if we can have information with reference to the company that you are merging with, the old United States Leather Company. We understand that there are 100,000 shares, or the capital is $100,000. I would like to know the names of

Exhibit C. 7.

the stockholders and directors of that company if it can be presented to me at some other time.

Chairman Brown: You have not been refused any information at our office.

Mr. Godfrey: No, I want to say you have been most courteous and willing.

Chairman Brown: The door is open for you to come in and any other stockholder and get any information.

Mr. Godfrey: I want to say you have been most courteous to me and have granted every request I have made, and the relationship has been most friendly, and I want to thank you for it.

Mr. Merritt: The 29th of June?

Chairman Brown: Yes. That is in case of an emergency making it necessary.

Mr. Merritt: At what hour?

Chairman Brown: The same hour and place.

Those in favor of the motion to adjourn say aye, those opposed no. The motion to adjourn is carried.

Whereupon, at 12:15 P. M. Eastern Standard Time, the meeting was adjourned to June 29th, 1927, at 10:00 A. M. Eastern Standard Time, at the principal and registered office of the corporation, 15 Exchange Place, Jersey City, New Jersey.

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EXHIBIT C. 8.

CENTRAL LEATHER COMPANY
Consolidated Balance Sheet
June 22nd, 1927.

ASSETS

Property Account, including Timber Lands, Railroads, Tannery Plants and Plants engaged in Lumber, Glue and Other Allied Industrial Operations		$20,910,783.77
Investments:		
Central Leather Company, First Lien Sinking Fund Bonds, at face value	$ 3,755,000.00	
Other Investments	6,262,907.53	
		10,017,907.53
Sinking Fund:		
Cash with Trustee	$ 709,392.02	
Accrued	421,432.25	
		1,130,824.27
Current Assets:		
Inventories:		
Leather in Stores, Lumber and other Finished Products	$ 7,153,545.72	
Hides and Leather, Raw and in Process, Bark, Extract and all other Materials	16,390,796.70	
	$23,544,342.42	
Accounts Receivable	$5,244,313.74	
Bills Receivable	588,962.40	
Liberty Bonds	24,123.85	
Call Loans	7,500,000.00	
Cash in Banks and on Hand	1,687,322.72	
	15,044,722.71	
		38,589,065.13
Deferred Charges to Profit and Loss Deficit		1,418,044.12
		17,455,772.22
		$89,522,397.04

* Bold face figures appeared in copy in red ink.

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CENTRAL LEATHER COMPANY

Consolidated Balance Sheet (Continued)

June 22nd, 1927.

LIABILTIES

	Capital Stock:		
	*Preferred	$33,299,050.00	
10	Common	39,701,030.50	
			$73,000,080.50
	First Lien Sinking Fund Six Per Cent. Bonds:		
	Issued	$15,000,000.00	
	Less, Retired through Sinking Fund	2,576,000.00	
			12,424,000.00
	Current Liabilities:		
	Accounts Payable	$ 1,556,495.53	
	Interest Accrued on Bonds	356,154.66	
	Sinking Fund Accrual	421,432.25	
			2,334,082.44
20	*Reserves:*		
	Fire Insurance	$ 875,000.00	
	Marine Insurance	100,000.00	
	Liability Insurance	100,000.00	
	Miscellaneous	689,234.10	
			1,764,234.10
			$89,522,397.04

* Cumulative dividends are in arrears since April 1st, 1921.

New York, September 28th, 1927.

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EXHIBIT C. 9.

THE EQUITABLE TRUST COMPANY
OF NEW YORK
Member of the Federal Reserve System

New York March 21, 1928.

Stock Transfer, Registration
and Dividend Disbursing
Departments

Mr. C. Cameron, Treasurer,
The United States Leather Company,
Park Avenue Building,
33rd St & Fourth Ave.,
New York City.

Dear Sir:

In accordance with verbal request of this day, we list below the names of certain stockholders as noted in memorandum form furnished by your Mr. Beagley, requesting the holdings of these stockholders in the Central Leather Company as at the close of business June 22nd, 1927:

Name	Preferred	Common
Madison J. Beach	....	1
Hiram S. Brown	100	1
George W. Childs	....	....
Charles Einsiedler	....	1
Ernest Griess	....	1
Charles S. Haight	....	1
William H. Harkness	....	1
Warren G. Horton	....	....
Oliver C. Hoyt	....	1
Arthur T. Lynch	....	1
William McAdoo, Jr.	....	1
Max J. H. Rossbach	....	....
Charles S. Sargent, Jr.	....	1
Lewis L. Strauss	....	1
Boylston A. Tompkins	....	1
Harry W. Hill	....	....
Edward L. Stabler	....	....
Carroll A. Redford	....	....

Name	Preferred	Common
Gayer G. Dominick	....	....
Dominick & Dominick	10	400
D. W. Dilworth	....	....
E. F. Hutton & Co	5	850
Harold M. Lehman	....	1
Lehman Bros.	200	....
Frank Attschul	....	....
Lazard Freres	....	....
Andrew J. Miller	....	2
Hallgarten & Co	....	20
Samuel L. Fuller	....	....
Kissel Kinnicutt & Co	....	....
Henry Rogers Winthrop	....	....
Harris Winthrop & Co	5	322
Kuhn Loeb & Co	....	....
Bankers Trust Co	....	....
Alice Hoyt Haight	....	....
Mrs. Alice Hoyt Haight	....	....

Very truly yours,

F. E. BREMMER,
Assistant Secretary,

ABC.EZ F. E. Bremmer.

AFFIDAVIT OF HARRY W. HILL.

Filed March 22, 1928.

STATE OF NEW YORK, }
COUNTY OF NEW YORK. } *ss.*

HARRY W. HILL, being duly sworn, according to law, on his oath, deposes and says:

1. I reside at 53 South Portland Avenue, Brooklyn, New York, and I am Secretary of The United States Leather Company (No. 3), a corporation organized and existing under the laws of New Jersey. Prior to the consolidation of Central Leather Company with The United States

Leather Company (No. 2), I was Secretary of Central Leather Company.

2. At the meeting of the stockholders of Central Leather Company, held on June 22, 1927, George S. Ingraham, attorney for complainants, Mabel B. Ingraham and Francise C. Ingraham, was present. Mr. Ingraham made no statement at said meeting of his dissent from the proposed consolidation, except as follows:

> "My name is George S. Ingraham, 44 Court Street, Brooklyn. I represent 1825 shares in the name of James H. Olyphant, Preferred Stock, and 925 shares of Preferred Stock in the name of Whitehouse & Co., and think that the plan is unfair to the Preferred Stockholders."

3. No communications have been received either by Central Leather Company or by The United States Leather Company from Mr. Ingraham or from said complainants whom he represents.

4. The books of Central Leather Company show no Preferred Stock registered in the name of Mabel B. Ingraham or in the name of Francise C. Ingraham.

HARRY W. HILL.

Subscribed and sworn this 28th day of July, 1927, before me, the subscriber, a Notary Public of the County of New York in the State of New York, duly commissioned and sworn, as witness my official seal hereto affixed.

HARRY S. FERGUSON,
(SEAL) Notary Public.
Notary Public, Kings County.
Cert. filed in New York, Richmond and Nassau Cos.
Kings Co. Clerk's No. 262 Reg. No. 8318.
N. Y. Co. Clerk's No. 748 Reg. No. 8049-A.
Commission expires March 30, 1928.

AFFIDAVIT OF HIRAM S. BROWN.

Filed March 22, 1928.

STATE OF NEW YORK,
COUNTY OF NEW YORK, } *ss.:*

HIRAM S. BROWN, being duly sworn according to law, on his oath says:

1. I am President of The United States Leather Company (No. 3).

2. As of March 10, 1928, 320,887 shares of preferred stock of Central Leather Company—being 96.37% of the total outstanding preferred stock—and 373,829 shares of common stock of Central Leather Company—being 94.16% of the total outstanding common stock—had been converted under the Consolidation Agreement dated May 19, 1927. Of said preferred and common stock all except a comparatively few shares of

the common stock had, prior to the conversion thereof, been deposited under the Plan of October 1, 1926. Therefore the new stock of The United States Leather Company (No. 3), issued upon conversion thereof, has been issued to and is held by the respective voting trustees for the several classes of stock of The United States Leather Company (No. 3) who have in turn issued their voting trust certificates representing the same.

3. The sum of $5 per share, in cash, has been paid to the holders of preferred stock of Central Leather Company who have converted the same, pursuant to the Consolidation Agreement.

4. The United States Leather Company (No. 3) has declared and paid the dividend of $7 per share for the period from July 1, 1926 to July 1, 1927, pursuant to said Plan, on the new prior preference stock of the new company, and has also declared and paid regular dividends at the rate of 7% per annum upon said prior preference stock outstanding, in quarterly installments on October 1, 1927 and January 1, 1928, and has also declared a like quarterly dividend thereon payable April 1, 1928. No dividends have been declared or paid upon the new Class A stock or common stock of The United States Leather Company (No. 3).

5. As of January 1, 1928, The United States Leather Company (No. 3) redeemed at a premium of 5% all of the then outstanding Twenty Year 6% First Lien Sinking Fund Gold bonds issued by the Central Leather Company, and to effect such redemption has paid or provided for the payment of upwards of $8,000,000 in cash to the holders of the bonds then outstanding and

not held in the sinking fund or in the treasury of the company.

6. The combined net income of the Central Leather Company for the period January 1 to June 23, 1927 and of The United States Leather Company (No. 3) for the period June 23, 1927 to December 31, 1927, was as follows (upon a consolidated basis):

Gross Income after provision for depreciation, all state and local taxes, repairs and maintenance		$4,041,734.37
Income from Investments		226,742.00
		$4,268,476.37
Deduct:		
Federal Taxes	$368,000.00	
Interest on Bonds (Net)	517,077.00	
Discount on Bonds	66,000.00	
		951,077.00
		$3,317,399.37

The foregoing net income is divisible as between the two periods and companies above named (upon a consolidated basis) as follows:

For period from January 1st to June 23rd	$1,064,291.79
For period from June 23rd to December 31st	2,253,107.58
Total	$3,317,399.37

7. Annexed hereto and marked Exhibit D. 9 is a true copy of the condensed and consolidated balance sheet of The United States Leather Company (No. 3) as of December 31, 1927 (giving effect to the retirement on January 1, 1928 of the Twenty Year 6% First Lien Sinking Fund Gold Bonds of Central Leather Company).

8. Of the preferred stock of Central Leather Company voted against the adoption of the Consolidation Agreement at the stockholders' meeting on June 22, 1927, a portion has since been

converted under the terms of the Consolidation Agreement. The holders of approximately 4,400 shares of preferred stock took proceedings under the provisions of Section 108 (a) of the New Jersey General Corporation Act for the appraisal of their stock. The Circuit Court of Hudson County, New Jersey, appointed Honorable Walter P. Gardner (a banker of Jersey City, New Jersey, and a former lay member of the Court of Errors and Appeals of New Jersey), Honorable John Milton (Prosecutor of the Pleas of Hudson County, New Jersey), and Peter A. Eckes, Esq., (a public accountant with offices in New York City) appraisers in said proceedings. Hearings were had before said appraisers and testimony taken and briefs filed on behalf of certain of the petitioning stockholders and the company. Before the matter was submitted to said appraisers, however, the holders of 950 shares withdrew from said proceedings.

Said appraisers filed their award in the Hudson County Circuit Court on or about January 20, 1928, fixing and determining the "full market value" of the preferred stock in Central Leather Company of the petitioning stockholders as of the date of the Consolidation Agreement at $71 per share. A motion is now pending and undetermined before the Hudson County Circuit Court to confirm said award.

9. The volume of the combined business of the Central Leather Company and subsidiaries and of The United States Leather Company (No. 3) and subsidiaries during the calendar year 1927 was about the same as the volume of business of Central Leather Company and subsidiaries in the calendar year 1926. The increase

or decrease in volume in the several departments of the business has been small.

10. In my affidavit made in this cause, verified July 26, 1927, I neglected to mention two factors affecting the volume and the profitableness of the business of the Central Leather Company in recent years as follows:

a. Prior to the World War American tanners exported in quantity to Europe. The war forced European countries to provide their own tanning facilities, and these have been maintained since the war. As a result the export business to Europe of the Central Leather Company, in leather, has since the war been almost entirely lost.

b. Within the past twelve to fifteen years the business of the company has been affected by increasing competition in this country. A number of the meat packers sometime ago entered the tanning business, certain of the large shoe manufacturers entered the tanning business, and others did likewise.

HIRAM S. BROWN.

Subscribed and sworn before
me this 22nd day of March,
1928.

W. E. F. Smith,
Notary Public, New York County No. 409.
New York Register's No. 9021.
Commission expires March 30, 1929.

EXHIBIT D. 9.

THE UNITED STATES LEATHER COMPANY

Consolidated Balance Sheet
December 31st, 1927

(Giving Effect to Retirement on January 1st, 1928, of the Twenty Year Six Per Cent. First Lien Sinking Fund Gold Bonds of Central Leather Company)

ASSETS

Current Assets:			
Inventories:			
(Cost or market whichever was lower)			
Leather in Stores, Lumber and other Finished Products	$ 6,066,577.68		
Hides and Leather, Raw and in Process, Bark, Extract and all other Materials	15,776,555.98		
		$21,843,133.66	
Accounts Receivable	$5,206,625.79		
Bills Receivable	80,595.07		
Cash in Banks and on Hand	828,129.57		
		6,115,350.43	$27,958,484.09
Investments:			
The U. S. Leather Company, Prior Preference Stock	$ 387,174.15		
(Acquired for Sinking Fund Purposes)			
Other Investments	3,021,260.93		
			3,408,435.08
Property Account:			
Real Estate, including Timber Lands, Railroads, Tannery Plants and plants engaged in Lumber, Glue and other Allied Industrial Operations			14,882,851.46
Deferred Charges:			
Prepaid Taxes, Insurance, etc.			186,735.20
			$46,436,505.83

LIABILITIES:		
Current Liabilities:		
Accounts Payable	$1,267,433.50	
Dividends Prior Preference Stock	354,786.25	
		$ 1,622,219.75
Reserves:		
Insurance	$1,075,000.00	
General	6,902,187.96	
		7,977,187.96
*Capital Stock:		
Prior Preference—166,495 Shares, Par $100	$16,649,525.00	
Class A—249,743 Shares, No Par.	7,941,823.43	
Common—397,010 Shares, No. Par.	3,970,103.05	
		28,561,451.48
Surplus:		
Surplus at date of Merger and Consolidation	$ 6,605,261.06	
Surplus earned since the Merger and Consolidation	1,670,385.58	
		8,275,646.64
		$46,436,505.83

*(Including Shares reserved for Stock of Central Leather Company not yet exchanged.)

AFFIDAVIT OF ROLAND H. ZINN.

Filed March 22, 1928.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } *ss.:*

ROLAND H. ZINN, being duly sworn according to law, on his oath, says:

1. I am Secretary of The United States Leather Company (No. 3).

2. In response to the request of the counsel for the intervening complainants in the above cause, for a list showing the certificates of deposit for Preferred and Common Stock, respec-

tively, of Central Leather Company, deposited under the Plan of Readjustment dated October 1, 1926, registered in the names of directors and officers of Central Leather Company, or of the Managers under the Plan, or of the Voting Trustees for the stock of The United States Leather Company No. 3, or of the members of the two Stockholders' Committees, as of June 22, 1927, an effort was made to obtain such list from the Bankers Trust Company of New York, the depositary under said Plan of Readjustment. We discovered, however, that in the interval between the consummation of the consolidation of Central Leather Company and The United States Leather Company No. 2 and the final hearing in the above cause, practically all of the records of the Bankers Trust Company relating to the deposit of stock and issuance of certificates of deposit against the same had been destroyed, inasmuch as (so we understand the certificates of deposit were securities of a temporary nature which had served their purpose when the Plan was consummated and the certificates of deposit were exchanged for the new securities, all in accordance with the usual practice in such cases. It was, therefore, impossible to obtain such list from the depositary. The only means therefore of constructing such a list was to ascertain from each of the persons or corporations concerned the amount of their respective holdings of certificates of deposit as of June 22, 1927, and we, therefore, circularized all such persons and corporations and have obtained from them the following information which is based not upon my own knowledge but upon written statements made by the persons and corporations hereinafter referred to.

3. *Frank Altschul* was a member of the Preferred Stockholders' Committee and is one of the Voting Trustees under the Voting Trusts for the 7% Cumulative Prior Preference Stock and for the Class A Participating and Convertible Stock of The United States Leather Company No. 3. Mr. Altschul is a member of the firm of bankers trading under the name of "Lazard Freres" of New York City. As of June 22, 1927, Mr. Altschul was the holder of certificates of deposit for no preferred stock and for no common stock. At said date Lazard Freres was the owner in its own right and not for customers of certificates of deposit for 7,760 shares of Preferred Stock and or no shares of common stock of Central Leather Company.

4. *E. H. Amory* was a director of Central Leather Company, having become a member of the Board on April 6, 1927. Mr. Amory was the holder of Certificates of Deposit aforesaid on June 22, 1927, for no shares of preferred stock and no shares of common stock of Central Leather Company.

5. *Bankers Trust Company* of New York City was one of the two Reorganization Managers under the Plan of October 1, 1926. It was the holder on June 22, 1927, of Certificates of Deposit for 600 shares of Preferred Stock of Central Leather Company and for no shares of Common Stock but said 600 shares of Preferred Stock was acquired and held as the result of a so-called arbitrage transaction in the ordinary course of business and the Trust Company had sold against said 600 shares the equivalent amount of the new Prior Preference and Class A Stock of The United States Leather Company

No. 3 represented by Voting Trust Certificates therefor when and if issued.

6. *Madison J. Beach* was a director and an officer of Central Leather Company and held, on June 22, 1927, Certificates of Deposit for 100 shares of Preferred Stock and 201 shares of Common Stock of Central Leather Company.

7. *Hiram S. Brown* was a director and the President of Central Leather Company and held, on June 22, 1927, Certificates of Deposit for 100 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

8. *George W. Childs* was a director of Central Leather Company until his death on January 11, 1927. His estate held, on June 22, 1927, Certificates of Deposit for no shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

9. *Dewees W. Dilworth* was a member of the Preferred Stockholders' Committee. Mr. Dilworth was a member of the banking firm of E. F. Hutton & Company, New York City, and neither he nor said firm for its own account held certificates of deposit for any shares of preferred stock or common stock of Central Leather Company on June 22, 1927.

10. *Gayer G. Dominick* was a member of and chairman of the Preferred Stockholders' Committee and is one of the Voting Trustees of the Voting Trust for the Prior Preference Stock and Class A Stock of The United States Leather Company No. 3. Mr. Dominick is a member of the banking firm of Dominick & Dominick of New York City and neither he nor said firm for its own account, held, on June 22, 1927, any Certificates of Deposit for either Preferred or Common

Stock of Central Leather Company, Mrs. Gayer G. Dominick on said date held Certificates of Deposit for 500 shares of Preferred Stock and no shares of Common Stock of Central Leather Company. Mr. Dominick was also a trustee under the Will of Theodore R. Hoyt, deceased, and in certain trusts under said will there were held at said date Certificates of Deposit for 1277 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

11. *Charles Einsiedler* was a member of the Board of Directors of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 150 shares of Preferred Stock and 1 share of Common Stock of Central Leather Company. Mr. Einsiedler was a member of the firm of Hiedelbach, Ickelheimer & Co., brokers of New York City, and on said date said firm was the holder in its own right of Certificates of Deposit for 500 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

12. *Samuel L. Fuller* was a member of the Common Stockholders' Committee and is one of the Voting Trustees of the Voting Trust for the Common stock of The United States Leather Company No. 3. Mr. Fuller is a member of the banking firm of Kissel, Kinnicutt & Co. of New York City. I have been unable to obtain information as to the holdings, if any, of Certificates of Deposit on June 22, 1927, of Mr. Fuller or of said firm.

13. *Ernest Griess* was a director of Central Leather Company and on June 22, 1927, was the holder of Certificates of Deposit for no shares of Preferred Stock and 200 shares of Common Stock of Central Leather Company.

14. *Charles S. Haight* was a director of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 1300 shares of Preferred Stock and 100 shares of Common Stock of Central Leather Company. His wife, Mrs. Alice Hoyt Haight, held on said date Certificates of Deposit for 5225 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

15. *William H. Harkness* was a director and a Vice-President of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 205 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

16. *Harry W. Hill* was Secretary and Treasurer of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 70 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

17. *Oliver C. Hoyt* was a director of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 354 shares of Preferred Stock and 1 share of Common Stock of Central Leather Company. He was also a trustee of the estate of Edward C. Hoyt, deceased, which on June 22, 1927, held Certificates of Deposit for 931 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

18. *Harold M. Lehman* was a member of the Preferred Stockholders Committee and a member of the banking firm of Lehman Brothers, New York City. On June 22, 1927, Mr. Lehman held Certificates of Deposit for no shares of Preferred Stock and 1 share of Common Stock of

Central Leather Company and said firm in its own right held Certificates of Deposit for no shares of Preferred and no shares of Common Stock. On said date various members of the family of which Mr. Lehman is a member held Certificates of Deposit for 4500 shares of Preferred Stock and no shares of Common Stock of Central Leather Company, all of which were registered in the name of said firm.

19. *Arthur T. Lynch* was a director and a Vice-President of Central Leather Company, and on June 22, 1927, held Certificates of Deposit for 10 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

20. *William McAdoo, Jr.,* was a director and a Vice-President of Central Leather Company, and on June 22, 1927, held Certificates of Deposit for no shares of Preferred Stock and 101 shares of Common Stock of Central Leather Company.

21. *Andrew J. Miller* was a member and chairman of the Common Stockholders' Committee and was a member of the banking firm of Hallgarten & Co. of New York City, and on June 22, 1927, Mr. Miller held Certificates of Deposit for no shares of Preferred Stock and 2 shares of Common Stock, and said firm held in its own right, Certificates of Deposit for 5000 shares of Preferred Stock and 100 shares of Common Stock of Central Leather Company. Mr. Miller is also one of the Voting Trustees for the Common Stock of the new Company.

22. *D. C. Ong* was elected a director of Central Leather Company on April 6, 1927, and on June 22, 1927, held Certificates of Deposit for no shares of Preferred Stock and 1 share of Common Stock of Central Leather Company.

23. *Max J. H. Rossbach* was a director of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 2500 shares of Preferred Stock and 1 share of Common Stock of Central Leather Company.

24. *Charles S. Sargent, Jr.,* was a director of Central Leather Company and on June 22, 1927, held Certificates of Deposit for 50 shares of Preferred Stock and no shares of Common Stock of Central Leather Company.

25. *Lewis L. Strauss* was a director of Central Leather Company and a member of the firm of Kuhn, Loeb & Co., one of the Reorganization Managers under the Plan of Readjustment, and on June 22, 1927, he was the holder of Certificates of Deposit for no shares of Preferred Stock and 5 shares of Common Stock of Central Leather Company. Neither said firm of Kuhn, Loeb & Co. nor other members thereof were the holders of any certificates of Deposit on said date.

26. *Boylston A. Tompkins* was a director of Central Leather Company and an officer of *Bankers Trust Company,* one of the Reorganization Managers under the Plan of Readjustment. Mr. Tompkins on June 22, 1927, was the holder of Certificates of Deposit for no shares of Preferred Stock and 5 shares of Common Stock of Central Leather Company.

27. *Henry R. Winthrop* was a member of the Stockholders' Committee and is one of the Voting Trustees for the Common Stock of The United States Leather Company No. 3 and is a member of the banking firm of Harris Winthrop & Co. of New York City. On June 22, 1927, neither Mr. Winthrop held nor did said firm hold

Exhibit D. 10.

any Certificates of Deposit for either Preferred Stock or Common Stock of Central Leather Company.

ROLAND H. ZINN.

Subscribed and sworn to before me this 17th day of July, 1928.

W. E. F. SMITH,
(SEAL) Notary Public, New York County No. 400.
New York Register's No. 9021.
Commission expires March 30, 1929.

EXHIBIT D. 10.

UNITED STATES LEATHER COMPANY

7% CUMULATIVE PRIOR PREFERRED VOTING TRUST STOCK

	Shrs.
June 15, 1927—June 18, 1927	0
" 20, 1927— " 25, 1927	0
" 27, 1927—July 2, 1927	0
July 4, 1927— " 9, 1927	847
" 11, 1927— " 16, 1927	33238
" 18, 1927— " 23, 1927	4577
" 25, 1927— " 30, 1927	2164
Aug. 1, 1927—Aug. 6, 1927	5295
" 8, 1927— " 13, 1927	2222
" 15, 1927— " 20, 1927	1588
" 22, 1927— " 27, 1927	4152
" 29, 1927—Sept. 3, 1927	3738
Sept. 5, 1927— " 10, 1927	9946
" 12, 1927— " 17, 1927	962
" 19, 1927— " 24, 1927	3538
" 26, 1927—Oct. 1, 1927	1932
Oct. 3, 1927— " 8, 1927	3609
" 10, 1927— " 15, 1927	1804
" 17, 1927— " 22, 1927	2090
" 24, 1927— " 29, 1927	4199
" 31, 1927—Nov. 5, 1927	2635
Nov. 7, 1927—Nov. 12, 1927	1507
" 14, 1927— " 19, 1927	1198
" 21, 1927— " 26, 1927	454

Exhibit D. 11.

			Shrs.
"	28, 1927—Dec.	3, 1927	1388
Dec.	5, 1927— "	10, 1927	23530
"	12, 1927— "	17, 1927	909
"	19, 1927— "	24, 1927	3147
"	26, 1927— "	31, 1927	566
Jan.	2, 1928—Jan.	7, 1928	1071
"	9, 1928— "	14, 1928	1380
"	16, 1928— "	21, 1928	1625
"	23, 1928— "	28, 1928	1806
"	30, 1928—Feb.	4, 1928	4375
Feb.	6, 1928— "	11, 1928	6068
"	13, 1928— "	18, 1928	1502
"	20, 1928— "	25, 1928	1451
"	27, 1928—Mar.	3, 1928	1432
Mar.	5, 1928— "	10, 1928	4317
"	12, 1928— "	17, 1928	844
"	19, 1928		132
		(Total)	147,238

The above certified to be the number of shares transferred weekly from June 15, 1927 to March 19, 1928 of the 7% Cumulative Prior Preferred Voting Trust Stock of the United States Leather Co.

BANKERS TRUST COMPANY

(Signed) By L. H. PLUMB
Assistant Secretary

EXHIBIT D. 11.

UNITED STATES LEATHER COMPANY

CLASS "A" PARTICIPATING AND CONVERTIBLE VOTING TRUST STOCK

			Shrs.
June	15, 1927—June	18, 1927	0
"	20, 1927— "	25, 1927	0
"	27, 1927—July	2, 1927	0
July	4, 1927— "	9, 1927	2081
"	11, 1927— "	16, 1927	24331
"	18, 1927— "	23, 1927	12117
"	25, 1927— "	30, 1927	8446

Exhibit D. 11.

		Shrs.
Aug. 1, 1927—Aug.	6, 1927	2993
" 8, 1927— "	13, 1927	4731
" 15, 1927— "	20, 1927	6506
" 22, 1927— "	27, 1927	2538
" 29, 1927—Sept.	3, 1927	5212
Sept. 5, 1927— "	10, 1927	1520
" 12, 1927— "	17, 1927	1809
" 19, 1927— "	24, 1927	1994
" 26, 1927—Oct.	1, 1927	9998
Oct. 3, 1927— "	8, 1927	3824
" 10, 1927— "	15, 1927	3756
" 17, 1927— "	22, 1927	3402
" 24, 1927— "	29, 1927	8464
" 31, 1927—Nov.	5, 1927	4864
Nov. 7, 1927— "	12, 1927	2060
" 14, 1927— "	19, 1927	2724
" 21, 1927— "	26, 1927	2615
" 28, 1927—Dec.	3, 1927	5124
Dec. 5, 1927— "	10, 1927	3294
" 12, 1927— "	17, 1927	5965
" 19, 1927— "	24, 1927	5800
" 26, 1927— "	31, 1927	2870
Jan. 2, 1928—Jan.	7, 1928	3601
" 9, 1928— "	14, 1928	8015
" 16, 1928— "	21, 1928	6217
" 23, 1928— "	28, 1928	21502
" 30, 1928—Feb.	4, 1928	28536
Feb. 6, 1928— "	11, 1928	23282
" 13, 1928— "	18, 1928	10530
" 20, 1928— "	25, 1928	12063
" 27, 1928—Mar.	3, 1928	8194
Mar. 5, 1928— "	10, 1928	11807
" 12, 1928— "	17, 1928	7275
" 19, 1928		2026
	(Total)	282,086

The above certified to be the number of shares transferred weekly from June 15, 1927 to March 19, 1928 of the Class "A" Participating and Convertible Voting Trust Stock of the United States Leather Co.

BANKERS TRUST COMPANY

(Signed) By L. H. PLUMB
Assistant Secretary

Exhibit D. 12.

EXHIBIT D. 12.

UNITED STATES LEATHER COMPANY

COMMON VOTING TRUST STOCK

		Shrs.
June 15, 1927—	June 18, 1927	0
" 20, 1927—	" 25, 1927	0
" 27, 1927—	July 2, 1927	0
July 4, 1927—	" 9, 1927	10
" 11, 1927—	" 16, 1927	3132
" 18, 1927—	" 23, 1927	1922
" 25, 1927—	" 30, 1927	1042
Aug. 1, 1927—	Aug. 6, 1927	1658
" 8, 1927—	" 13, 1927	2833
" 15, 1927—	" 20, 1927	7607
" 22, 1927—	" 27, 1927	2282
" 29, 1927—	Sept. 3, 1927	2978
Sept. 5, 1927—	" 10, 1927	1072
" 12, 1927—	" 17, 1927	4969
" 19, 1927—	" 24, 1927	2388
" 26, 1927—	Oct. 1, 1927	1895
Oct. 3, 1927—	" 8, 1927	12328
" 10, 1927—	" 15, 1927	10577
" 17, 1927—	" 22, 1927	4398
" 24, 1927—	" 29, 1927	5886
" 31, 1927—	Nov. 5, 1927	4393
Nov. 7, 1927—	" 12, 1927	6140
" 14, 1927—	" 19, 1927	6884
" 21, 1927—	" 26, 1927	3381
" 28, 1927—	Dec. 3, 1927	5390
Dec. 5, 1927—	" 10, 1927	4035
" 12, 1927—	" 17, 1927	2898
" 19, 1927—	" 24, 1927	4075
" 26, 1927—	" 31, 1927	4639
Jan. 2, 1928—	Jan. 7, 1928	3304
" 9, 1928—	" 14, 1928	4480
" 16, 1928—	" 21, 1928	5015
" 23, 1928—	" 28, 1928	4738
" 30, 1928—	Feb. 4, 1928	15206
Feb. 6, 1928—	" 11, 1928	7742
" 13, 1928—	" 18, 1928	3673
" 20, 1928—	" 25, 1928	6103
" 27, 1928—	Mar. 3, 1928	7962
Mar. 5, 1928—	" 10, 1928	8680
" 12, 1928—	" 17, 1928	6640
" 19, 1928		3450
	(Total)	185,805

Exhibit D. 13.

The above certified to be the number of shares transferred weekly from June 15, 1927 to March 19, 1928 of the Common Voting Trust Stock of the United States Leather Co.

BANKERS TRUST COMPANY

(Signed) By L. H. PLUMB
Assistant Secretary

EXHIBIT D. 13.

THE EQUITABLE TRUST COMPANY
OF NEW YORK
11 Broad Street

Member of the Federal Reserve System

New York March 20, 1928.

Stock Transfer, Registration
and Dividend Disbursing
Departments.
Mr. C. Cameron, Treasurer,
The United States Leather Company,
Park Avenue Building,
33rd Street & Fourth Avenue,
New York City.

Dear Sir:

In accordance with the verbal request of this day, we list below the names of certain stockholders as noted in memorandum form furnished by your Mr. Beagley, requesting the holdings of these stockholders in the Central Leather Company as at the close of business June 14, 1926:

Exhibit D. 13.

Name	Preferred	Common
Madison J. Beach	100	200
Hiram S. Brown	800	....
George W. Childs	28	....
Charles Einsiedler	150	....
Ernest Griess	....	200
Charles S. Haight	....	100
William H. Harkness	200	....
Warren G. Horton	1000	100
Oliver C. Hoyt	354	....
Arthur T. Lynch	10	....
William McAdoo, Jr.	....	100
Max J. H. Rossbach	555	....
Charles S. Sargent, Jr.	50	....
Lewis L. Strauss	....	5
Boylston A. Tompkins	....	5
Harry W. Hill	95	....
Edward L. Stabler	70	....
Carroll A. Redford	2	....
Gayer G. Dominick	....	....
Dominick & Dominick	8992	2420
D. W. Dilworth	....	....
E. L. Hutton & Co.	8149	3746
Harold M. Lehman	....	....
Lehman Bros.	5302	600
Frank Altschul	....	....
Lazard Freres	....	....
Andrew J. Miller	....	....
Hallgarten & Co.	200	700
Samuel L. Fuller	....	....
Kissell Kinnicutt & Co.	....	100
Henry Rogers Winthrop	....	....
Harris Winthrop & Co.	170	2092

Yours very truly,

(Signed) H. E. KEELER
Assistant Secretary,

EJS:JCC

H. E. Keeler

Exhibit D. 14.

EXHIBIT D. 14.

THE UNITED STATES LEATHER COMPANY (No. 3)

Voting Trust Certificates

NUMBER OF SHARES SOLD—HIGH AND LOW PRICES
per THE COMMERCIAL & FINANCIAL CHRONICLE

	Common			Class A			Prior Preference		
Week Ending	Sales	Low	High	Sales	Low	High	Sales	Low	High
July 1, 1927.....	....	....	....	800	27 6/8	28	600	95 4/8	96
" 8, 1927.....	....	....	....	2900	27 6/8	29	200	95	95
" 15, 1927.....	1100	14 4/8	14 5/8	9100	28 3/8	29 5/8	3100	89	97
" 22, 1927.....	1900	14	16	21700	29 6/8	34 7/8	2000	89 4/8	91 7/8
" 29, 1927.....	700	14	14 7/8	7500	32 5/8	34 2/8	1300	90 7/8	91 5/8
Aug. 5, 1927.....	1900	14	15	6100	33	34 4/8	2600	90 6/8	92
" 12, 1927.....	6600	14 2/8	16 6/8	22400	32	38 4/8	4000	90 4/8	92 6/8
" 19, 1927.....	9900	16 1/8	18 3/8	9700	37 4/8	40 3/8	2000	91 6/8	93 2/8
" 26, 1927.....	2300	16 4/8	17 7/8	7200	36 2/8	39 4/8	1200	92 2/8	94
Sept. 2, 1927.....	1500	16 4/8	17	2300	36 2/8	37	1100	95	95
" 9, 1927.....	5300	16 7/8	18 6/8	12100	37 7/8	40 2/8	1800	97 2/8	98 4/8
" 16, 1927.....	2300	17 4/8	18 3/8	2600	37 2/8	39 4/8	2700	95 6/8	97 4/8
" 23, 1927.....	5700	16 5/8	18 5/8	7120	36 2/8	40 2/8	1100	96	97
" 30, 1927.....	15500	18 1/8	19 6/8	34500	41	46 4/8	6900	97 1/8	99 6/8
Oct. 7, 1927.....	40900	18 1/8	23 7/8	15200	45 3/8	47 3/8	3700	100	102 4/8
" 14, 1927.....	4900	21 6/8	23	3400	45	46 7/8	800	102 4/8	102 7/8
" 21, 1927.....	8100	20 4/8	23 3/8	9900	44 4/8	48 6/8	1000	102 4/8	103
" 28, 1927.....	22200	21	24 5/8	22200	45 2/8	51	2900	102 4/8	104 6/8
Nov. 4, 1927.....	11600	22 5/8	24 5/8	11300	48	52 4/8	1900	103 6/8	106 4/8
" 11, 1927.....	8100	24 2/8	25 4/8	1400	51	51 7/8	300	106	106
" 18, 1927.....	8200	24 1/8	25 5/8	14800	49 3/8	53 5/8	1100	104	106
" 25, 1927.....	6800	24 1/8	25	5300	51 5/8	53 4/8	600	104	105 6/8
Dec. 2, 1927.....	7600	22 5/8	24 4/8	21800	50 5/8	54 5/8	1300	102 4/8	105
" 9, 1927.....	3400	21 7/8	23 5/8	3500	51 1/8	54 2/8	800	102 6/8	105
" 16, 1927.....	2900	22 1/8	23 1/8	34800	52	56 4/8	3000	102	105
" 23, 1927.....	3200	22 4/8	23 5/8	15300	53 4/8	56	600	104 4/8	105 2/8
" 30, 1927.....	2600	21 6/8	25 1/8	6800	51 4/8	55 3/8	1400	104 4/8	105 2/8
Jan. 7, 1928.....	5800	21 7/8	23 3/8	3300	52	53 2/8	1300	104 4/8	106 4/8
" 14, 1928.....	13400	22 2/8	24 7/8	27700	52 4/8	57 3/8	1200	105 4/8	108
" 21, 1928.....	5300	22 7/8	24 2/8	6600	53 5/8	56 6/8	500	107	108
" 28, 1928.....	6700	22 7/8	24 3/8	40000	54	59 4/8	1000	107	108 4/8
Feb. 3, 1928.....	26400	24 5/8	26 6/8	78200	59	64 6/8	800	107 4/8	108 3/8
" 10, 1928.....	7600	24 4/8	25 7/8	17100	61 3/8	64 4/8	1100	108 2/8	109
" 17, 1928.....	6300	22 4/8	25	8400	58	63 6/8	200	108	108 4/8
" 24, 1928.....	6300	22	24 6/8	14400	55	60 1/8	1000	108	108 4/8
Mar. 2, 1928.....	2500	23 3/8	24 3/8	5100	57 4/8	59 2/8	400	106	108
" 9, 1928.....	2700	23	24 3/8	7000	58 1/8	60 7/8	500	105 4/8	108
" 16, 1928.....	23400	23 1/8	25 3/4	21100	57 4/8	63 4/8	....	....	....
Totals 291600				540620			58000		

EXHIBIT D. 15.

Seven Per Cent Cumulative Prior Preference Stock Voting Trust Agreement
Dated as of July 1, 1927

Voting Trust Agreement between The United States Leather Company (No. 3), Holders of Seven Per Cent Cumulative Prior Preference Stock, and Frank Altschul, Gayer G. Dominick and Charles S. Haight, as Voting Trustees.

The Voting Trust Agreement provides, among other things, that it shall terminate in any event on June 20, 1937, but may be terminated at any time prior thereto, in the discretion of the Voting Trustees, by the vote of a majority thereof.

EXHIBIT D. 16.

Class A Participating and Convertible Stock Voting Trust Agreement
Dated as of July 1, 1927

Voting Trust Agreement between The United States Leather Company (No. 3), Holders of Class A Participating and Convertible Stock, and Frank Altschul, Gayer G. Dominick and Charles S. Haight, as Voting Trustees.

The Voting Trust Agreement provides, among other things, that it shall terminate in any event on June 20, 1937, but may be terminated at any time prior thereto, in the discretion of the Voting Trustees, by the vote of a majority thereof.

EXHIBIT D. 17.

Common Stock Voting Trust Agreement
Dated as of July 1, 1927

Voting Trust Agreement between The United States Leather Company (No. 3), Holders of Common Stock, and Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop, as Voting Trustees.

The Voting Trust Agreement provides, among other things, that it shall terminate in any event on June 20, 1937, but may be terminated at any time prior thereto, in the discretion of the Voting Trustees, by the vote of a majority thereof.

OPINION ON FINAL HEARING.

Filed February 19, 1930.

IN CHANCERY OF NEW JERSEY.

Between JOHN WINDHURST, *et als.*, *Complainants,* *and* CENTRAL LEATHER COMPANY, *et als.*, *Defendants.*	*On Bill.* *Syllabus.*

1. The merging of two corporations under our General Corporation Act is not equivalent in its effect upon the right of preferred stockholders to a dissolution under section 31 thereof.

2. The fact that such merger incidently reduces the value of the original rights of such preferred stockholders is no ground for equitable interference provided such merger is accomplished in compliance with the requirements of the act is not *ultra vires* fraudulent or inequitable.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN WINDHURST, *et als.*, *Complainants,*	*On Bill, &c.*
and	*64-697.*
CENTRAL LEATHER COMPANY, *et als.*, *Defendants.*	*Opinion.*

February 13, 1930.

Smith & Slingerland, Esq'rs., solicitors.

White & Simms, Esq'rs. (of the New York Bar), of counsel.

For the Complainants.

Pitney, Hardin & Skinner, Esq'rs., solicitors.

Waldron M. Ward, Esq., of counsel.

For the defendants.

OPINION.

BENTLEY, *V.-C.:*

On bill for specific performance.

This suit was instituted by the filing of a bill for an injunction of one Windhurst to prevent the consolidation or merger of two corporations, one the Central Leather Company, and the other The United States Leather Company. Upon the filing of that bill an order to show cause was allowed and an *ad interim* restraint was included. Upon a motion to dissolve the restraint, the same was vacated and the order to show cause discharged. The facts are contained in the opinion rendered on that motion and set out in detail in

101 N. J. Eq., 543. Thereafter, the bill was amended so as to include a prayer that in the event the injunction was denied then that the contract created by the purchase by the complainants of their preferred stock should be specifically enforced and that the defendant, Central Leather Company, should be decreed to pay to each complaint the par value of his respective shares of such stock together with arrears of dividends, amounting to $42.00 for each share. New parties complainants have been added and the original complainant has withdrawn.

The facts on the final hearing do not materially change the case, and an injunction should not be allowed, because of the *laches* upon which the preliminary motion turned.

The theory of the complainants is that the merger of the defendant corporations operated to dissolve the Central Leather Company, within the meaning of Section 31 of the General Corporation Act. With this reasoning I am unable to agree. When reading that act in its entirety, it is unescapable that the legislature intended to set up two methods for the dissolution of corporations, one voluntary, as described in Section 31, and the other involuntary, as described in Section 56 *et seq.* Where either of these methods is pursued, it forever puts an end to the exercise by a corporation of any of its powers, privileges or franchises and effectually ends the existence of the entity which we call a corporation, unless, of course, relief is secured pursuant to the 69th section. This is entirely apart from the idea of a merger under the 104th, and following sections, which provide for the precedure whereby the assets, privileges and franchises of two corporations engaged in a similar business may unite

either with one another or both into an entirely new corporation to be organized for that purpose. This operation does not result in the dissolution of either of the old corporations, but permits the carrying on of the activities of each of them in a new form and in union with each other.

It may appear, when superficially examined, as if the results and consequences of a merger are similar in some respects to a dissolution. For example, the name of one or both of the merging companies may be lost. The relation between the various stockholders of one of the corporations may be materially changed (as is the case here). But on the other hand, the language of those sections which deal with mergers show that these changes are incident to the uniting of the two corporations. The members of the board are not continued as trustees, and the act does not provide that either of the corporations shall be dissolved; it is not provided that the board of either shall proceed to wind up its business and affairs. There is no provision for liquidation and distribution. On the contrary, the act says that the stock shall be delivered up for conversion into shares of the capital stock of the new creation. The very provision for appraisal proves that dissolution does not result. The plain meaning of the act is that the corporations are to be continued as a joint or consolidated whole. It was not beyond the power of the legislature to permit a merger, because the corporation act was the same in this respect at the time of the incorporation of the Central Leather Company as it is at present, and, of course, it is elementary that every stockholder secured his shares with notice of those powers which the act

confers upon the corporation by which such shares have been issued.

In an attempt to legislate in general terms, to meet a subject so broad as the rights of corporations and limitations upon those rights, it is beyond human effort to foresee every one of the many and complicated situations which will subsequently arise and require an interpretation and application of the statute. For that reason every case similar to the one to be decided must to some extent, stand upon its own particular facts and circumstances as they are affected by the principles and doctrines of equity. Therefore, I have no fear that recourse may be had to the merger statute for the purpose of inequitably depriving one of his contract rights. One of the points decided upon the preliminary motion in this case was that the scheme or plan for converting the shares of the capital stock of the old corporations into those of the new Central Leather Company, were fair and equitable. Had the decision been otherwise, the result of a timely application by the present complainants would have been exactly opposite. Any dealings with the rights of stockholders of any class will be enjoined upon the application of any properly interested party, if the same is *ultra vires*, fraudulent or otherwise inequitable.

If it should be argued that such legislation invites fraudulent dealings by a corporation with regard to its preferred shares of capital stock, the answer of this Court is that any such attempt will be promptly frustrated, and in the case at bar there is not even a charge of fraud.

While I do not know of any case in this State where this question has been raised by a party, I am impressed with the reasoning of the opinion

written for the Court of Errors and Appeals by the Chief Justice in Riker & Sons Co. *v.* United Drug Co., 79 N. J. Eq., 580. There, under the form of a proposed dissolution of the defendant and the transfer by it of all its assets to an allied corporation, it was intended in effect to merge the two companies. Disregarding the form and examining the substance of the proposed transaction,

Chief Justice Gummere said:

> "Manifestly, the prime purpose of the scheme outlined in this communication is not the winding up of the New Jersey corporation and the distribution of its assets, or the proceeds of the sale thereof, among its stockholders, but the absorption of that company by the Massachusetts corporation, the transfer not only of its assets but of its business, to that corporation, and the future carrying on of that business by the Massachusetts corporation under the name of the defendant company. The scheme, in its essence, whatever it may be in form, is not a plan for the reorganization of the New Jersey company, nor even for the winding up of its business and its dissolution within the meaning of the latter word as used by our Corporation Act, but is a scheme for its merger into or consolidation with the Massachusetts corporation. State *v.* Atlantic City and Shore Railroad Co., 77 N. J. Law (48 Vr.), 466, 483."

It would be impossible to attempt to examine the immense number of citations contained in the elaborate and carefully prepared briefs. So far as those opinions from other jurisdictions are concerned which seem to declare that a

merger operates as a dissolution of any corporation merged into another, it is sufficient to say that the reasoning does not appeal to me for reasons already given.

In Lonsdale Securities Corporation *v.* International Mercantile Marine Co., 101 N. J. Eq. 554, there was a surplus of some $17,000,000 in which I felt the preferred stockholders had secured rights which could not be diminished or destroyed in the case of any one of them without his consent. No such situation appears in the case at bar. Upon the other hand the proofs disclose that there is a deficit of almost $20,000,000 which will continue to mount, year by year, unless some such corporate step should be allowed as the one these complainants wish to defeat.

When the elements of this case are considered, it seems to me the discretion of the court should not be exercised in favor of the complainants, as they rely upon their strict legal rights and urge that fact as a reason that the doctrine of *laches* should not be applied, and the defendants ask for a harsh preference over their fellows.

In view of what has been said above, the failure to apply to the Circuit Court for an assessment of the full value of their shares is their own fault.

In the brief filed on behalf of the defendants there is extended to the complainants the benefits and privileges of the plan they have attempted to enjoin. It is to be extended provided the offer is accepted before this decision is rendered. If the defendants will extend that option for a reasonable time, the bill will be dismissed. If on the contrary the defendants refuse so to do, I will consider an offer to argue as to whether

or not I should retain the bill for the purpose of having this court fix the compensation due to the complainants, if any.

While my mind is not clear upon the subject, and notwithstanding what has been said as to the complainants relitigating whatever remedy they may have at law, it would appear beneficial to all parties engaged to have this Court terminate all questions between the parties rather than leave them to protracted litigation at law.

I will advise a decree denying an injunction, denying specific performance but retaining the bill for the purpose of determining the subject of compensation.

EXTENSION TO INTERVENING COMPLAINANT OF RIGHTS, &C.

Filed February 24, 1930.

IN CHANCERY OF NEW JERSEY.

Between JOHN WINDHURST and others, *Complainants,* *and* CENTRAL LEATHER COMPANY and others, *Defendants.*	*Extension to Intervening Complainants of Rights Under Consolidation Agreement, &c.*

WHEREAS in the opinion of the court filed in the above entitled cause it is stated that the bill will be dismissed if the defendants extend for a reasonable time to the complainants the benefits and privileges of the Consolidation Agreement dated May 19, 1927,

NOW, THEREFORE, The United States Leather Company (No. 3) does hereby extend to the intervening complainants in the above entitled cause the right to convert shares of capital stock of Central Leather Company held by them into the capital stock of The United States Leather Company and to receive the payments in respect of preferred stock of Central Leather Company so converted as provided in Article V. of said Consolidation Agreement, upon surrender of their respective stock certificates as therein provided such capital stock of The United States Leather Company as shall be issued to them pursuant to such conversion to carry full dividends declared by the Board of Directors of

said The United States Leather Company, but without interest.

Said rights and privileges are hereby extended to April 1, 1931, or for such other period as shall be adjudged by the Court of Chancery of New Jersey to be reasonable, by order entered in the above entitled cause.

THE UNITED STATES LEATHER COMPANY

By PITNEY, HARDIN & SKINNER,
Solicitors.

FINAL DECREE.

Filed February 25, 1930.

IN CHANCERY OF NEW JERSEY.

Between	
JOHN WINDHURST and others, *Complainants,*	*On Amended Bill, &c.*
and	
CENTRAL LEATHER COMPANY and others, *Defendants.*	*Final Decree.*

This cause coming on to be heard in the presence of Frederic W. Smith and Charles Hallett White (of the New York Bar), of counsel with the intervening complainants, and Waldron M. Ward, of counsel with the defendants The Central Leather Company, and the pleadings and proofs having been read and considered, and United States Leather Company (No. 3) and the arguments of the respective counsel having been heard and considered, and an order having been entered heretofore, on or about January 10, 1928, dismissing the complainant John Windhurst as a party complainant, and it appearing to the court that the intervening complainants, Mabel B. Ingraham, Frances T. Ingraham and Philip P. Getty, are not entitled to the relief sought and prayed for by them in the Amended Bill of Complaint,

It is on this 25th day of February, A. D. 1930, by Edwin Robert Walker, Chancellor of the State of New Jersey, on motion of Pitney, Hardin &

Skinner, solicitors for said defendants, ORDERED, ADJUDGED AND DECREED, and the said Chancellor, by virtue of the power and authority of this court doth hereby ORDER, ADJUDGE AND DECREE that the Amended Bill of Complaint be and the same hereby is dimissed with costs.

And it is FURTHER ORDERED, ADJUDGED AND DECREED that the said intervening complainants do pay to the said defendant The United States Leather Company the costs of this suit to be taxed.

E. R. WALKER,
C.

Respectfully advised,

JOHN BENTLEY,
V.-C.

PETITION OF APPEAL.

Filed March 28, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between	
JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY, *Complainants,*	*On Appeal from the Court of Chancery.*
MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY, *Complainants-Appellants,*	*Petition of Appeal.*
vs.	
CENTRAL LEATHER COMPANY, *et als., Defendants-Appellees.*	

To the Honorable, the Court of Errors and Appeals in the Last Resort in All Causes:

The petition of Mabel B. Ingraham, Frances T. Ingraham and Philip P. Getty, the appellants in the above entitled cause, respectfully shows that:

1. Petitioners find themselves aggrieved by final decree made in the Court of Chancery by His Honor, Edwin Robert Walker, Chancellor, bearing date the 25th day of February, 1930, in a certain cause in said Court of Chancery wherein the said Mabel B. Ingraham, Frances T. Ingraham and Philip P. Getty were intervening

complainants and Central Leather Company, The United States Leather Company, their officers, directors, agents and employees, Kuhn Loeb & Co., Bankers Trust Company and Gayer G. Dominick, Frank Altschul, Dewees W. Dillworth, Charles S. Haight, Harold M. Lehman, and Max J. H. Rossbach, Preferred Stockholders Committee, and Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop, Common Stockholders Committee, and Gayer G. Dominick, Frank Altschul, Charles S. Haight, Andrew J. Miller, Samuel L. Fuller and Henry Rogers Winthrop, Voting Trustees, were defendants, in this respect, to wit: That the said decree adjudges as follows:

"ORDERED, ADJUDGED AND DECREED that the Amended Bill of Complaint be and the same hereby is dimissed with costs.

And it is FURTHER ORDERED, ADJUDGED AND DECREED that the said intervening complainants do pay to the said defendant, The United States Leather Company, the costs of this suit to be taxed."

II. And petitioners appeal from the decree of the Chancellor which decrees as aforesaid upon the ground that the same is erroneous in that:

1. The Central Leather Company had no power or authority under the General Corporation Act of New Jersey to merge or consolidate with The United States Leather Company, except upon terms that preserve the contract and charter rights of complainants and other preferred stockholders of the said Central Leather Company and that because the terms of the said merger and consolidation did not preserve said rights but were inconsistent therewith and destructive thereof, the said merger and consolida-

tion was, as to these complainants, illegal and void and the complainants have no adequate remedy at law.

2. The Central Leather Company had no power or authority under the General Corporation Act of New Jersey to reduce its capital stock, except in such manner as would carry into effect the provisions of its Certificate of Incorporation and its Certificates of Stock whereby the complainants and other preferred stockholders of the Central Leather Company had certain preferences applicable to principal as well as to income which could not be destroyed or impaired by any reduction of capital stock and because the Central Leather Company, having a capitalization of Eighty million dollars, employed the legal form of a merger and consolidation with its wholly owned subsidiary, The United States Leather Company, having a capitalization of only One hundred thousand dollars, solely to effect a reduction of its capital stock in order to absorb a shrinkage or impairment thereof in a manner so as to unlawfully compel complainants and other preferred stockholders of the Central Leather Company to bear an unequal proportion of said reduction, not to say the whole thereof, in violation of their contract and charter rights in the premises, the said reduction of capital stock effected by said merger and consolidation was, as to these complainants, illegal and void and complainants have no adequate remedy at law.

3. The said merger and consolidation prescribed terms and conditions and the manner of converting the capital stock of the Central Leather Company into the stock or obligations

of The United States Leather Company, which were illegal, unfair, inequitable and beyond the power of the directors of the said two corporations to prescribe, and because the said merger and consolidation was consummated over the dissent and protest of the complainants, was as to the complainants, illegal and void and complainants have no adequate remedy at law.

4. By the charter of the Central Leather Company, and the Certificates of Stock of said company, it was agreed by said company with its stockholders and with the complainants, as follows:

"The holders of the Preferred stock shall be entitled to receive, or to have set apart out of the surplus or net profits of the corporation, as and when declared by the Board of Directors, a dividend at the rate of, but never exceeding, 7 per centum per annum, cumulative, on all such Preferred Stock outstanding at the time, which dividend shall be payable yearly, half yearly or quarterly, as the Board of Directors may from time to time fix and determine, and before any dividend shall be set apart for or paid on common stock.

In case of a liquidation or dissolution or winding up (either voluntary or involuntary) of the corporation, the holders of the Preferred Stock shall receive cash to the amount of the par value of such Preferred Stock, together with all accrued and unpaid dividends thereon (but no more) before any payment is made to the holders of the common stock, and the holders of the common stock shall be solely entitled to the entire assets of the company, or the pro-

ceeds thereof, remaining after the payment in full, at its par value, of the Preferred Stock then outstanding; together with all dividends thereon accrued and unpaid."

It appears that at the time of the merger and consolidation there were accrued and unpaid dividends on the Preferred Stock amounting to 43% and that the assets of the company exceeded its liabilities (exclusive of capital stock) by Fifty-three million dollars, an amount more than sufficient to pay the preferred stockholders of the Central Leather Company par and accrued dividends, and notwithstanding the provisions of said charter and said certificates of stock the said merger and consolidation was consummated without any payment of cash or property to complainants as preferred stockholders for or on account of said accrued dividends on the said stock and without adequate compensation to complainants as said preferred stockholders for or on account of the principal of said stock, and without any provision for the recovery of the same or any part thereof, and complainants have no adequate remedy at law.

5. The said unlawful merger and consolidation of the Central Leather Company with The United States Leather Company, insofar as it related to these complainants, had the effect of terminating the existence of the Central Leather Company and operated as a distribution of its property and assets within the true intent and meaning of the charter of the company, and the Certificates of Stock of the complainants, and said merger and consolidation did not preserve to the complainants as preferred stockholders of the Central Leather Company the rights granted

to them on dissolution and liquidation by said charter and Certificates of Stock, and did not provide for compensation to the complainants for the full value of their shares on dissolution and complainants have no adequate remedy at law.

6. The said Court of Chancery decided in effect that the said merger and consolidation of the Central Leather Company with its subsidiary The United States Leather Company was authorized by an Act of the Legislature of the State of New Jersey, entitled "An Act to authorize corporations incorporated under the laws of this State to merge and consolidate their corporate franchise and other property" approved March 8, 1893 and re-enacted in an Act of the Legislature of New Jersey entitled "An Act concerning corporations," revision of 1896, and the said Act of the Legislature of New Jersey so enforced by said Court of Chancery would impair the obligations of the charter contract between the Central Leather Company and these complainants as preferred stockholders and deprive said complainants of their property without due process of law all in violation of the express provisions of the Constitution of the United States, Fourteenth Amendment thereof, Section 1, and also in violation of the Constitution and Statutes of the State of New Jersey and complainants have no adequate remedy at law.

7. In dissolving the temporary restraint contained in the Order to Show Cause, the said Court of Chancery decided that the terms of the merger and consolidation were fair and equitable and that the complainants were not entitled to injunctive relief because of laches in filing their Bill, although said Bill was filed within less

than thirty days after the adoption and filing of the agreement of merger and consolidation; the said Court of Chancery further decided upon the final hearing that the complainants were not entitled to receive par and accrued dividends for their said stock because the merger and consolidation did not result in a dissolution of the Central Leather Company within the meaning of Section 31. of the General Corporation Act and further decided that the complainants having failed to appeal to the Circuit Court for an assessment of the "full value" of their shares, had forfeited their "rights" under the so-called Appraisal Statute, and that if the defendants would again extend to the complainants the "benefits and privileges" of the merger and consolidation the Bill would be dismissed.

The said Court of Chancery, in its said decision, did not take cognizance of the provision in the Appraisal Statute allowing dissenting stockholders only the fair "*market value*" (not "full value") of their shares and that said statute was not intended to apply as a measure of compensation in the event of a consolidation which should illegally divest stockholders of valuable property rights as in the case at bar and the said Court of Chancery in said decision did not expressly or specifically determine whether or not complainants' contract and charter rights had been violated or whether or not complainants had been divested of their property without their consent nor did the said decision expressly or specifically determine whether or not complainants had any adequate remedy at law.

8. Before being compelled to either convert their stock into shares of the new consolidated company or resort to the Appraisal Statute,

complainants were entitled to join in a merger and consolidation on terms that were fair and equitable as to them; and inasmuch as the merger and consolidation of the Central Leather Company with The United States Leather Company divested complainants of their property without their consent and was on terms which were unfair, unjust and oppressive as to them, and inasmuch as the so-called "Appraisal Statute" was intended by the Legislature of New Jersey to apply only in the case of lawful merger and consolidation, and inasmuch as complainants had no adequate remedy under said Appraisal Statute, but could only recover thereunder, the assessed "market value" of their said shares without compensation for the loss of valuable property rights, said merger and consolidation should be held to be illegal as to complainants and equivalent in its effect to a dissolution and liquidation of the Central Leather Company entitling complainants to receive the full value of their pro rata share in the assets of the company—to wit; par and accrued unpaid dividends as fixed by their contract as preferred stockholders.

Petitioners therefore pray that the said decree of the said Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioners may have such other relief in the premises as to this Court shall seem proper.

SMITH & SLINGERLAND,
Solicitors for and of Counsel
with Appellants.

ANSWER TO PETITION OF APPEAL.

Filed March 28, 1930.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,

Complainants,

MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,

Complainants-Appellants,

and

CENTRAL LEATHER COMPANY and THE UNITED STATES LEATHER COMPANY,

Defendants-Respondents,

And others,

Defendants.

On Appeal from the Court of Chancery.

Answer to Petition of Appeal.

The answer of the respondents Central Leather Company (insofar as it has corporate capacity to appear and defend in the cause) and The United States Leather Company (formed by consolidation June 23, 1927) to the petition of appeal of the above named appellants:

These respondents not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, say and admit that a final

decree was on the twenty-fifth day of February, One Thousand Nine Hundred and Thirty, made and entered in the Court of Chancery in the cause for the purpose mentioned in the said petition as is therein stated.

And these respondents are advised and believe that the said decree is agreeable to equity and pray that the same may be affirmed with costs to these respondents.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel
with Respondents.

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New Jersey Court of Errors and Appeals.

On Bill, etc.

On Appeal from The Court of Chancery.

BETWEEN

JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,
Complainants,

MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,
Complainants-Appellants,

VS.

CENTRAL LEATHER COMPANY *et al.*,
Defendants-Respondents.

BRIEF OF APPELLANTS.

Statement of Facts.

This is an appeal by complainants, Mabel B. B. Ingraham, Frances T. Ingraham and Philip P. Getty from a decree in Chancery, dated February 25, 1930, dismissing a bill filed by them as preferred stockholders of the defendant Central Leather Company (Decree, p. 403). The prayer of the bill is in the alternative, asking that the Court either set aside the transfer of the properties, franchises, and assets of the Central Leather Company affected pursuant to a consolidation

agreement entered into by that company with its subsidiary, The United States Leather Company, on June 23, 1927, or to compel the payment to complainants of the actual value of their shares on a dissolution (Am'd Bill, pp. 254 *et seq.*).

At the time of the consolidation the complainants owned upward of $280,000 (par value) of the preferred stock of the Central Leather Company (Ingraham, p. 170; Getty, p. 295).

The company, a New Jersey corporation, was organized in 1905 with an authorized capital of $80,000,000, divided into 80,000 shares of the par value of $100 each, of which one-half was preferred stock and one-half common stock. At the time of the consolidation complained of, there was issued and outstanding $39,701,030 of common stock and $33,299,050 of preferred stock (Ans., pp. 273 *et seq.*).

The charter of the corporation, under which complainants purchased their stock, provided that the holders of preferred stock were entitled to receive each year out of the surplus, or net profits, of the corporation, a yearly dividend of 7%, if declared, before any dividend should be set apart or paid on the common stock. These dividends were to be *cumulative,* so that if in any year dividends amounting to 7% were not paid on the preferred stock, the deficiency was to be payable subsequently before any dividends were set aside or paid on the common stock. On dissolution, the holders of the preferred stock were entitled to receive cash to the amount of the par value of their stock, together with all accrued and unpaid dividends thereon *before any payment should be made to the holders of the common stock* (p. 52).

On April 1, 1921, the company, for the first

time, failed to pay dividends on its preferred stock and has paid none since (34 Ans., p. 279).

On May 19, 1927, the directors of the company entered into an agreement of merger and consolidation with one of its subsidiaries, The United States Leather Company (No. 2), which had an authorized capital of $100,000, represented by 1,000 shares of common stock ($100 par value), all of which stock was owned by the parent company (C-Exh. H, p. 105; p. 267 *et seq.*). At the time this agreement was made the Central Leather Company had a capital deficit of approximately $17,000,000 and the accrued dividends on its preferred stock amounted to 42% (id.).

The material provisions of the agreement were as follows:

> That the name of the new *consolidated corporation* should be The United States Leather Company.
>
> That the authorized capital stock should consist of 166,496 shares of 7% cumulative prior preference stock ($100 par), 259,743 shares of Class "A" participating and convertible stock, without par value, and 647,753 shares of common stock, without par value (p. 110).
>
> That the prior preference stock should be entitled to cumulative dividends at the rate of 7% per annum, should be redeemable any time at $110 per share, and on dissolution should be paid off at par with accrued dividends before any payment on other classes of stock (pp. 110 *et seq.*); that the Class "A" stock should be entitled to dividends of $4 per share (non-cumulative *whether earned or not*) before anything

should be paid on the common stock and should thereafter participate equally with the common stock in all further dividends up to an additional $2; should be convertible into common stock, share for share, and on dissolution receive two-thirds of the assets after all payments on the prior preference stock, the remaining one-third of the assets to go to the holders of the common stock (pp. 117 *et seq.*).

That the capital of the new company should be an amount equal to the aggregate of $100 for each share of prior preference stock, $31.80 for each share of Class "A" stock and $10 for each share of common stock (total capital, $28,571,427) (p. 124).

Article V. of the agreement, which deals with the *manner of converting* the capital stock of the consolidating corporations into the capital stock of the new corporation, reads in part, as follows:

"Each share of *preferred stock* of Central Leather Company shall forthwith, upon the filing of this Agreement as required by law, be converted into *one-half share* of the prior preference stock of the Company and *three-fourths* of a share of the Class 'A' stock of the Company, and each holder of such preferred stock shall be entitled, upon the surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him (a) fifty dollars ($50) par value (one-half share) of the prior preference stock of the company, (b) three-quarters of a share of Class 'A' stock of the company, and (c) five dollars ($5) in cash.

> "Each share of *common stock* of Central Leather Company shall forthwith upon the filing of this Agreement as required by law, be converted into *a share* of the common stock of the Company and each holder of such common stock shall be entitled upon surrender by such holder of the certificate or certificates representing said stock, to receive for each share of said stock so held by him one share of the common stock of the Company" (pp. 122 *et seq.*).

Article VI. of the agreement contains this significant provision:

> "Any amount by which the value of the assets acquired by the company hereunder, as determined by the board of directors of the company, exceeds the sum of (a) said capital, (b) all liabilities assumed by the company hereunder, and (c) any reserves set up by the board of directors of the company, shall be *surplus* of the company, *available for the payment of dividends on the prior preference stock,* etc." (p. 124).

At a special meeting of stockholders of the Central Leather Company, held on June 22, 1927, the agreement was approved and ratified over the protest and dissenting vote of complainants and other preferred stockholders (C-Exh. 7, pp. 328 *et seq.*). The following day (June 23) it was filed in the office of the Secretary of State of New Jersey (p. 285, fol. 30).

The complainants, Mabel B. Ingraham and Frances T. Ingraham, intervened in a suit filed on July 20, 1927, by one John Windhurst, a preferred stockholder of the Central Leather Com-

pany, seeking to have the consolidation adjudged invalid and defendants enjoined from acting thereunder (Order, p. 173). The bill alleged that the terms of the consolidation were manifestly illegal, unfair and inequitable, that they benefited the common stockholders at the expense of the preferred stockholders and that they violated the latter's charter and contract rights in the following respects, to-wit: (1) by unlawfully *extinguishing* 42% of accrued dividends on complainants' stock without providing any compensation therefor, (2) by unlawfully reducing the face value of complainants' stock from $100 per share to $73 per share, and unlawfully destroying the preferences of complainants' stock, both as to future dividends and on dissolution (Bill, pp. 34-36).

On the filing of the bill an order to show cause with *ad interim* restraint was granted (Rule, p. 163). An application to dissolve the restraint was argued before Vice-Chancellor Bentley on July 27, 1927 and after considering the case, as upon a final hearing, he dissolved the restraint and denied the injunction (First Opinion, pp. 238 *et seq.*). Following this decision the complainant Windhurst withdrew from the suit and on November 18, 1927, the complainants, Mabel B. and Frances T. Ingraham amended their bill to ask for alternative relief by way of compensation for the *actual value* of their shares on dissolution (p. 254). After the joinder of issue Philip P. Getty was permitted to intervene as a party complainant (Order, p. 297).

The basis of the prayer for alternative relief is that the consolidation was not *bona fide* within the meaning and intent of the statute, but was resorted to as a subterfuge in an attempt to compel non-assenting preferred stockholders to convert their stock on terms that were unfair and

inequitable as to them or in the alternative to force a sale of their stock to the company at its "market value"; that the consolidation, so called, was in its essence a reorganization of the capital shares and as such was a matter between the stockholders *inter sese;* that by the terms of the consolidation agreement the preferred stockholders were divested of their legal rights as fixed by their contract and that the filing of the consolidation agreement, over their protest and dissenting vote, worked a dissolution of the corporation as to them.

The case was argued before Vice-Chancellor Bentley on March 22, 1928 and on February 25, 1930, he rendered his decision dismissing the bill with certain reservations. The Vice-Chancellor's second opinion appears at pages 393 *et seq.* of the case.

We believe that the important questions to be decided on this appeal are as follows:

1. Were the terms of the plan for readjustment of the capital shares of the Central Leather Company (consolidation agreement) fair and equitable to the preferred stockholders of that company?

2. If the consolidation was not *bona fide,* do the appraisal provisions of the consolidation statute apply as to dissenting stockholders?

3. If complainants were deprived of their vested property rights without their consent, did the consolidation, as to them, work a practical dissolution of the Central Leather Company?

Argument.

We believe that the Vice-Chancellor misconceived the equities of the case as between the real parties in interest, *viz.*, the two classes of stockholders of the Central Leather Company.

From a reading of his first opinion, Vice-Chancellor Bentley appears to have been under the impression that the consolidation agreement was adopted as a practical means (using his own language) *"to save a large industrial corporation that had, through no fault of its managers * * * become helpless"* (Op., p. 248, fol. 10). Aside from the fact that a readjustment of its share capital, unless incidental to new financing, could be of no help to any corporation, the Central Leather Company was, at the time, over-capitalized and so far from being helpless, had more cash on hand than it could use in its business. On the other hand, the Court must have recognized the *real purpose* of the consolidation, for in its first opinion, after reviewing the capital structure of the Central Leather Company and calling attention to the deficit of about $19,000,000 and the arrears of 42% on the preferred stock, it said:

> "To meet this situation and attempt to *revise the financial condition of the company so that the constantly mounting accumulation of arrears of dividends might be stopped and the stockholders again be permitted to enjoy the natural income of their holdings,* two committees were appointed by the directors, one consisting of preferred stockholders and the other of owners of the common stock. As a result

> of the activities of these committees * * * a plan was evolved for a merger of the two companies" (Op., p. 240, fol. 10).

What the complainants objected to was the *drastic* terms upon which they were to be "again permitted to enjoy the natural income of their holdings". It could only have been because the Vice-Chancellor felt that the terms were "fair and equitable" that he applied the provision of the consolidation statute at all, for he said:

> "It is not the case of enjoining an *ultra vires* act of the corporation, *because the statute expressly permits the merger and leaves the details of the operation* to a two-third majority of each class of stock" (p. 247, fol. 40).

The foregoing statement is not strictly accurate because the consolidation statute requires not a two-third majority of *each class* of stock, but a two-third majority of all the stock, regardless of class (G. C. A., Sec. 105). We do not believe that this Court will subscribe to the proposition that a *total destruction of vested property rights* could be nothing more than a mere "detail of operation".

It is our contention that the General Corporation Act was never intended to authorize a consolidation, except upon the condition *that the duties and liabilities of each of the consolidating corporations should attach to the new company.* We further contend that as to the non-assenting stockholders the transfer by a corporation of all of its assets so as to deprive such stockholders of their vested property rights, affects a practical dissolution of the company as to them.

POINT I.

The agreement was not a *bona fide* consolidation but a readjustment of share capital between the stockholders *inter-sese from which the corporation derived no benefit whatever.*

There are cases, we admit, where all classes of stockholders may be justly called upon to make sacrifices even to the point of foregoing their strict contractual rights. This may be expected, for instance, where the very existence of the corporation may be at stake or even where its best interests are to be served thereby. But it must be borne in mind that in the instant case no such situation existed. It is true that the Central Leather Company had encountered severe losses back in 1921 during the period of the post-war deflation, but it had survived those hard times, and by 1927, it was again on its feet and making money. In fact it was so well situated financially that it had more cash capital than it could use in its business and it was looking for some means *of distributing dividends to its preferred stockholders.* Such a situation, we submit, is very different from that class of cases where a corporation is constrained to take some *extraordinary action,* to preserve its assets or to finance its operations. (*Lazear* v. *Am. Steel Foundries,* 86 N. J. E. 21; *Sewell* v. *East Cape Co.,* 50 N. J. E. 717.)

The Central Leather Company was certainly not in need of any additional capital, as we have seen, nor by the consolidation could it even be supposed to affect any economies in its operations.

It owned the entire stock of its subsidiary, The United States Leather Company, and the two companies had always been consolidated *in fact,* if not in law. The defendants in their answer admit that "the business operations of The United States Leather Company have been *co-ordinated* with those of the Central Leather Co." (p. 267), and,

> "(13) That certain officers of the Central Leather Company have customarily been executive officers of the United States Leather Company (No. 2) and that its business has been conducted in part, from the same offices and places of business as that of the Central Leather Company" (p. 267).

To this might be added the fact that the two companies had always made consolidated reports and always issued consolidated balance sheets. Obviously then, no greater "efficiency and economy of management" could have been made possible by the mere act of filing a consolidation agreement in the office of the Secretary of State.

More important, however, is the fact that the consolidation did not entail any change whatever in the financial situation of the Central Leather Company; the assets of the new consolidated company were identically the same, both in kind and amount, as those of the old companies before the consolidation; no new securities were issued except those exchanged for the old securities and the consolidated company had the same directors as the old companies; the only thing which was apparently changed by the consolidation was the charter of the Central Leather Company to the extent of reducing its authorized capital stock and reclassifying its shares.

What then, it may be asked, was the real purpose and object of a *consolidation,* and what exactly was it intended to accomplish? Upon the answers to these questions hinge the *equities* of the case. We submit that it was intended solely as a means of affecting a *readjustment* of the respective rights and equities of the stockholders of the Central Leather Company *inter-sese.* It resulted, as we shall show, from a situation in which the common stockholders took advantage of the existence of a capital defect to exact drastic concessions from the preferred stockholders.

It appears that the company had prospered enormously during the World War but during the subsequent period of deflation, which commenced in 1920 and lasted for about three years, it, like many other large industrial corporations in the United States, sustained very severe inventory losses co-incident with a substantial shrinkage in the volume of its business. These losses in a very short time changed a surplus into a capital deficit of $19,000,000 and the company was compelled to pass its preferred dividends on April 1, 1921 (p. 81). Beginning with the year 1924, however, business conditions improved materially and the company again started making money. By 1926 its earnings were rapidly approaching normal and its cash position was unusually good (p. 81). Under the circumstances the company was in a position to pay something on account of dividends to its preferred stockholders and would have done so but for the deficit mentioned. The capital impairment applied solely to the common stock and represented the depreciation of its equity in the assets of the corporation. To release earnings for the payment of dividends, however, it would first be necessary to reduce the capital stock of the corporation to an amount sufficient to absorb this

impairment. This could not be accomplished, it was thought, without the vote of at least two-thirds of the common stockholders. Regardless then of the equities of the situation, they were in a position to dictate the terms upon which they would give their consent to a reduction of the capital stock, so as to permit the resumption of dividends. The consolidation agreement represents the terms and conditions they exacted. To confirm the truth and accuracy of the foregoing version of the situation, we need only refer to the following allegations in the defendants' answer:

> "(40) During the entire period, 1921 to June, 1927, the company (Central Leather Company) had no surplus or profits available for dividends on its preferred stock but had a large deficit and it was, therefore, *legally impossible* to pay any preferred dividends. *Nevertheless, in later years, the company had a large amount of cash in the treasury* due probably to the gradual liquidation of the inventory and decreased volume of business, and *could have spared cash for the payment of dividends* had there been no other obstacle in the way of dividend payments" (p. 281, fol. 10).
>
> "(43) No reduction of its capital was legally possible without the consent of more than two-thirds in interest of the common stockholders. The preferred and common stockholders had equal voting rights share for share but there were larger numbers of shares outstanding of the common stock than of the preferred stock" (p. 281, fol. 30).

It is then alleged in the answer, that, with a view to devising a plan for *resuming dividends on*

the preferred stock, committees of representative common stockholders and representative preferred stockholders were appointed in June, 1926, and that as a "result of *continued and earnest negotiations* on the part of the two committees" *the Plan of Readjustment* of October 1, 1926, was adopted (Ans., p. 282).

Could there be any more conclusive evidence of the consolidation agreement having been a contract exclusively between the stockholders *inter-sese* from which the corporation itself could not derive any benefit except incidentally? And yet, strange to say, the learned Vice-Chancellor says:

> "Of course, if there was any question of fraudulently attempting to *enrich one class of stockholders by the impoverishment of another class,* the reports are filled with cases making it the duty of this court to protect the latter. But, surely, there might be some degree of common sense exercised in the application of values and precedents. There is not a circumstance to indicate a malevolent motive in the minds of the men who built up the plan *to save a large industrial corporation that had, through no fault of its managers but through stress of circumstances, become helpless*" (p. 248, fol. 10).

And in the second opinion of the Vice-Chancellor we find this remarkable statement:

> "Upon the other hand, the proofs disclose that there is a deficit of almost $20,000,000 which *will continue to mount* year by year *unless* some such corporate step should be allowed as the one these complainants wish to defeat" (p. 399, fol. 10).

Perhaps no statement could have been more inaccurate or evidenced a more complete misunderstanding of the facts of the case. What the Court failed to grasp was, that despite the lossess sustained during the years 1920-1923, the corporation had been operating since that time at a *steadily increasing profit* and that consequently, *without taking any action whatever,* the capital deficit would be eventually eliminated. The Vice-Chancellor had evidently confused the idea of "capital deficit" with "accrued dividends", whereas, in fact, they bore no relation whatever to each other. The inability of the corporation to pay dividends on its preferred stock, where they were cumulative (as in this case), would, it is true, result in *such dividends* "mounting year by year" but that would only represent an increasing indebtedness from the common stockholders to the preferred stockholders, to be met out of future earnings once the capital deficit were made up. Doubtless certain affidavits filed by the defendants were largely responsible for creating this confusion in the mind of the Court. The lengthy affidavit of the company's President, Hiram S. Brown (p. 215), depicted the conditions in the leather industry as so terrible, that in reading it, one might be warranted in concluding that the best course for the company to pursue would be a complete liquidation. This affidavit read in conjunction with the many others made by directors and stockholders of the company, not only stressed the horrible plight of the industry during the war, but undertook to show that conditions at the time of the consolidation were not as favorable as they had been fifteen years before. From this fact it was argued that there was no "reasonable expectation" of the earnings being sufficient either to wipe out the deficit in the "near future" or to

make "substantial payments" on account of accrued dividends.

But even assuming, for the purpose of the argument, that all of the statements contained in the affidavits were true, and that they reflected a fairly accurate picture of the situation, what bearing has all of this, we ask, upon the rights of the stockholders *inter-sese?* Do the defendants seriously contend that because the earnings of the company were *less* than they had been, it was therefore *equitable* to divide them on a different basis than was provided for in the contract between the two classes of stockholders? Certainly there could be no equity in such a proposition and we do not believe a court of equity would ever subscribe to it.

The rank injustice of such a scheme becomes even more apparent when we call to mind the nature of the preferred stockholders' contract. It was, in substance, that they should receive dividends at the rate of 7% a year, and, because they could never receive any greater return on their investment, no matter how large and prosperous the company might become, the common stockholders solemnly covenanted with them that if the company should meet with adversity in any year so as to be unable to pay the 7%, any arrears would be paid to them out of *future earnings* of the company before they (the common stockholders) should receive anything. Furthermore, the common stockholders solemnly covenanted and agreed that they would bear any losses of the corporation even, if necessary, to the *total extinction* of their investment before the preferred stockholders should be called upon to sacrifice a dollar of either principal or income. Strictly speaking, the common stockholders were the real owners of

the corporation and they primarily assumed the risks of the business. If it were unsuccessful they were to assume the losses, but if, on the other hand, it prospered, they were to be the beneficiaries. As a matter of fact in every year from 1914 to 1920 the common stockholders received dividends equal to those paid on the preferred stock, and in one year (1919) they received up to 9%.

It was in reliance upon the covenants of their contract, that complainants invested their money in the stock of the Central Leather Company and held it over a period of many years (p. 308). During the six years from 1921-1927 they received no income on their investment. They assumed, as they had a right to, that dividends would be resumed when the company's earnings were sufficient and that they would eventually be paid the accrued dividends on their stock. Discouraging as prospects were at times, these complainants had always had faith in the future of the company and they were encouraged in this by the marked improvement shown in the condition of its business from 1924 to 1927. It is a fact, which we wish to call attention to in passing, that in the year 1927 the Consolidated Company made net profits of over $3,000,000, almost *one and a half times the full annual dividend on its old 7% preferred stock* (Annual Report 1927).

In 1927, as we have seen, the company was in a position to pay something on account of dividends on its preferred stock. If the common stockholders had lived up to the spirit of their contract, they would have voluntarily consented to a reduction of the nominal or par value of their shares to absorb the deficit in order to make the resumption of dividends possible. But in-

stead of doing this, they withheld such consent until they were able to exact the most drastic and unconscionable terms from the preferred stockholders. Rather than accept such terms, complainants elected to stand upon their contract rights as fixed by the charter of the corporation.

POINT II.

The consolidation unjustly enriched the common stockholders at the expense of the preferred stockholders.

The actual financial condition of the Central Leather Company at the time of the consolidation was unusually strong considering the ratio of its assets to its liabilities. It appears in the consolidated balance sheet of the company, dated June 30, 1926, which was attached to the Plan for Readjustment of Share Capital (pp. 95, 96), that the current labilities of the company were $1,326,598.49 and that current assets, consisting of inventories, accounts receivable, call loans, and cash in banks, were $39,481,771.96. The bonded debt of the company at that time amounted to only $13,868,000. The total assets of the company, including property account and other items, exceeded total liabilities (exclusive of capital stock) by over $53,000,000. The nominal capital of the company, however, was $73,000,000, so that despite its sound financial condition there was a profit and loss deficit of approximately $19,000,000. In the year ending December 31, 1925, the company had made net profits of $1,465,075 (p. 97) all of which could have been made available for distribution on account of dividends on its pre-

ferred stock. Furthermore, by June, 1926, it was realized that, despite the capital impairment, there was actually more cash on hand than could be profitably employed in the business. Not only could it resume dividend payments but the company was in a position to make a *capital distribution* to its stockholders. If it is true that the deficit represented solely an impairment of the equities behind the common stock, would it not have been only fair and equitable for the common stockholders to have consented to a nominal reduction in the par value of their shares, so as to permit, at least, a distribution of the current profits? After going for six years without any return on their shares the preferred stockholders were surely entitled to that much consideration. While the common stockholders could not be *compelled by law* to assent to a reduction of their shares, certainly they were not entitled to stand upon a technicality to force an unfair agreement from the preferred stockholders as the price of giving their consent. As we have already pointed out, a reduction of the par of their stock would not have diminished their *equity* in the assets of the company. They seized the opportunity, however, to make their stock infinitely more valuable than it had been in many years. Among other things, they insisted upon the preferred stockholders reducing their capital in an amount sufficient to create a substantial surplus. But instead of distributing this surplus among the preferred stockholders, who were equitably entitled to it, the common stockholders insisted that it should be left in the corporation, (1) to supply the necessary funds to redeem all outstanding bonds and (2) to be *available for future dividends on the prior preference stock* of the new

corporation (pp. 124, 125, fol. 10). The iniquity and injustice of such a scheme may be seen in the results which it would affect. The preferred stockholders would receive dividends on their prior preference stock of the new corporation to be paid to them *not out of current earnings,* but out of the *capital* they had invested in the old company. The outstanding bonds were to be redeemed, and annual interest charges, amounting to well over a quarter of a million dollars, would be saved. It would seem that if this redemption were to be made with the preferred stockholders' capital, they, of all people, should receive the benefits of the resulting increase in income. But such was not to be the case. As already pointed out, dividends on their prior preference stock were to be paid to them out of capital surplus and all of the current earnings, augmented by the elimination of interest on the bonds, were to be made available for dividends on *the common stock* after a $4 payment on the class "A". To put it still another way, the old preferred stockholders were not only to be paid dividends out of their own capital, but they were to have only a limited share in the increase of earnings made possible by the employment of their capital in redeeming the bonds. We do not see how the common stockholders could have more unjustly enriched themselves at the expense of the preferred stockholders. Not satisfied, however, to reduce the rights of the preferred stockholders with regard to future earnings, they compelled them, in addition, to forego all right to the payment of over 42% *accrued dividends.* Is it any wonder, we ask, that out of such a large body of preferred stockholders there should be some (however few) to contest the equity and legality of such a plan?

And yet the Vice-Chancellor found that these terms were *"fair and equitable"*. He said that it was "quite amazing that *only three* other holders of preferred stock in the old companies have been induced to join in a suit *where there is everything to be gained and nothing to be lost"* (p. 248). But the Vice-Chancellor overlooked the fact that a *much larger number* of dissenting preferred stockholders brought an action under the appraisal statute to recover *par and accrued dividends for their stock.* (*Prall et al.* v. *The United States Leather Co.,; Hicks et ano.* v. *The United States Leather Co.; Lindenwood Female College, etc.,* v. *Central Leather Company*—decided April 30, 1928.) (Discussed under Point VIII.)

It has been held that the test of the fairness of a consolidation is the value of the "thing given in return for the thing given up" and that each case must be determined upon its own facts. (*Copeland* v. *United Shoe Machinery Co.,* 84 N. J. E. 276; *Brugler* v. *United Shoe Machinery Co.,* decided in June, 1927, by Vice-Chancellor Lane; *Colgate* v. *United States Leather Co.,* 73 N. J. E. 72, 75 N. J. E. 229; *Outwater* v. *Public Service Corp. of New Jersey,* opinion by Vice-Chancellor Backes; *Bingham* v. *Investment & Trust Co.,* 138 Atl. 659.)

The affidavits of Hiram S. Brown (the president of the Central Leather Company) and Louis L. Strauss (a director of the Central Leather Company) purport to show the *benefits* of the consolidation to the preferred stockholders (Brown, p. 215; Strauss, p. 205). In discussing these alleged benefits, we will take them in the order which they are referred to in paragraph 46

of the defendant's answer (p. 283). Defendants claim:

(1) *That the creation of a sinking fund for the gradual retirement of the prior preference stock inured to the benefit of the preferred stockholders.* This is a rather novel conception to us. When we read the opinion of Vice-Chancellor Backes in *Outwater* v. *Public Service Corp. of New Jersey, supra,* we find that he speaks of a similar provision in the consolidation under consideration in that case. He says:

> "But there is a further serious iniquity: the preferred stock lacks permanency. It is redeemable within three years at the option of the Electric & Gas Company. Thus the merger, in effect, is nothing less than a *forced sale,* by the majority stockholders to itself at a price fixed by it and payable at its pleasure. The preferred stock is but the equivalent of a 6% promissory note payable in three years at the option of the buyer. The merger legislation countenances no such perversion of the contractual obligations of the stockholders *inter sese.* Continued membership until dissolution, is an inherent property right in corporate existence."

It may be true that by the ultimate elimination of the prior preference stock some advantage could inure to the old preferred stockholders through their holdings of Class "A" stock, but the permanency of their original investment is none the less impaired and the scheme can hardly be called *a real benefit* to them.

(2) It is urged that under the new set-up the preferred stockholders will at least receive a *regular dividend* with a "prospect" of continuity thereof on the new prior preference stock. This can hardly be conceived as a benefit in the light of the price that is exacted for it. The old preferred stockholders are compelled to relinquish their right to receive 7% cumulative dividends from the net earnings of the company and in exchange they are to receive on their prior preference stock 3½% cumulative dividends to be paid to them at least for some time, out of their own capital. Can this be said to be a benefit?

(3) Defendants contend that the new Class "A" stock received by the old preferred stockholders is a medium through which they *may share in any increase* in the prosperity of the new corporation by reason of the convertible features of the stock. Is this not tantamount to saying that through the medium of the consolidation the *common stockholders* will be secured an opportunity to *immediately* share in the earnings of the company (because of the elimination of accrued dividends on the preferred stock) and that the old preferred stockholders, through their Class "A" stock, are to be permitted to participate in this advantage? If any "prosperity" were to be expected, why should not the additional earnings be applied in liquidation of accrued dividends?

(4) As a concluding proof of the fairness of the consolidation, it is pointed out that the new securities will be more marketable than the old preferred stock. It goes without saying, that an income producing stock is more readily marketable than a non-income producing one, but that is

little consolation to a preferred stockholder whose security has been made *non-income producing* through the unfair and inequitable position taken by the common stockholders. When we scrutinize them carefully, we find that the *alleged benefits* only accentuate the unfairness of the whole plan.

The defendants in this case have laid great stress upon the fact that after the consolidation the new securities issued to the preferred stockholders of the Central Leather Company sold at a much higher price on the New York Stock Exchange than did the old preferred stock surrendered by them. This, it seems to us, is a very thin argument to support the fairness of the consolidation. It is true that the old preferred stock sold at a low price on the Exchange, but was that not due to the fact that, without the consent of the common stockholders, dividend payments could not be resumed? Had dividends been resumed, as they might well have been without any so-called consolidation, it is safe to say that the old preferred stock would have sold at a much higher price than the new securities did. The "immediate" result of the consolidation, we admit, was to raise the stock market price of the new securities. But, at most, that could only be a temporary effect of the consolidation unless the plan were based upon sound investment principles. Would not the market value of the new securities *inevitably depreciate* when the surplus of the company, which was strictly a *capital* surplus, should be drained by the payment of dividends on the new prior preference stock? These dividends were to be paid *without regard to current earnings* and the *value of the assets* behind both common and preferred stock would neces-

sarily diminish, year by year, as this surplus disappeared. Pertinent to this, Vice-Chancellor Backes said (*Outwater* v. *Public Service Corp. of New Jersey, supra*):

> "However, fairness in mergers dictates that when obligations are given in exchange for stocks of the character here involved, they at least should bear a corresponding *permanent investment value.*"

In the *Brugler* case, *supra,* the complainants sought to enjoin a merger of the United Shoe Machinery Co. and the United Shoe Machinery Corporation, where the 6% preferred stock of the merging corporation was to be exchanged for a 6% preferred stock of the new corporation. In considering the fairness of the merger, Vice-Chancellor Lane pointed out that the mere fact of complainants receiving $35 on dissolution instead of $58 did not *of itself* show the proposition to be unfair. He did say, however, that whereas the statutory scheme of consolidation did not necessarily contemplate that the stockholders of a merging corporation should receive security identical in character with that which they surrendered, nevertheless *"they must be given something which is equal in value to it,* or which may fairly be said is equal in value to it."

Defendants have argued that the fact of over 90% of the preferred stockholders of the Central Leather Company having agreed to the consolidation is evidence of its fairness. We concede that there might be much force to this argument were it not for the situation of the stockholders that brought the agreement about. It must be remembered the consolidation was not the result of "free

and equal" dealings between the parties, as that expression is commonly used. The common stockholders held a lever by which they were in a position to force concessions not ordinarily possible where two parties are contracting on an equal footing. They were in a position where they could, and presumably did, say to the preferred stockholders:

> "Even though the situation of the company would permit of your receiving dividends on your stock, and even though under the terms of our contract we promised them to you when earnings were available for the purpose, nevertheless because of the capital deficit which exists we are in a position to prevent you from receiving them for a number of years, unless you accede to our terms, and here they are!"

It may be said that the common stockholders were within their *strict legal rights* in dictating terms, but if that is so, can they be heard to complain if the complainants, who refused to submit to such terms now rely upon *their strict legal rights?* While the courts in determining the fairness of a consolidation, have, as a rule, been influenced by the size of the majority favoring it, (*Brugler* v. *United Shoe Machinery Co., supra; Bingham* v. *Investments and Securities Trust Co.,* 146 Atl. 321), that rule has been followed only in cases where the terms of the consolidation were *not in themselves* illegal and violative of contractual rights. The Court of Chancery of New Jersey has repeatedly decided that regardless of the number of stockholders favoring a consolidation it will be enjoined upon the application of any single stockholder whose vested prop-

erty rights would be disturbed or impaired by it. (*Colgate* v. *United States Leather Co.*, 73 N. J. E. 72, 75 N. J. E. 229; *Day* v. *United States Cast Iron Pipe & Foundry Co.*, 95 N. J. E. 389, 96 N. J. E. 736; *Brugler* v. *United Shoe Machinery Co.*, *supra*; *Outwater* v. *Public Service Corp.*, *supra*).

In the *Colgate* case, *supra*, Vice-Chancellor Emery said (at p. 98):

> "The directors are bound under the Consolidation Act to propose an agreement which does not unfairly or inequitably impair the legal or equitable right of *any* preferred stockholder" * * *.

And in the *Brugler* case, *supra*, Vice-Chancellor Lane, while saying that the fairness of a consolidation scheme was not a question of law, but a "matter of business" also took pains to add that the "great majority of this stock having accepted this plan *would not prevent the Court for one moment from acting to protect the rights of individual stockholders.*"

POINT III.

The consolidation was adopted at the stockholders' meeting of June 22, 1927, over the protest of complainants and other preferred stockholders.

In paragraph 49 of their answer defendants allege that proxies for the complainants attended the Special Meeting of Stockholders held June 22, 1927, to vote upon the consolidation agreement,

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and that, while they expressed their disapproval of the consolidation agreement and voted against the adoption of the same (Ans., p. 285, fol. 20).

> " * * * neither of them nor anyone else on behalf of the complainants, at any time prior to the filing of the Bill of Complaint, in this cause, gave notice to these defendants, or anyone else on their behalf of the nature and extent of their claims as set forth in the Bill of Complaint and the amendment thereto: nor of their intent, if any they had at that time, to seek injunctive or other extraordinary relief."

This is an unusual charge for the defendants to make considering what transpired at the meeting. Their obvious purpose is to bring this case, if possible, within the facts of *Lazear* v. *American Steel Foundries,* 86 N. J. E. 21. In this way defendants apparently hope to spell out, if not approval, at least some form of *acquiescence* on the part of complainants. It will be seen, however, that nothing could be more foreign to the facts. The minutes of the stockholders' meeting show that complainants appeared by proxies to protest and vote against the consolidation (p. 328). So far from being afforded an opportunity to state the *"nature and extent of their claims"* they were curtly told to make their protests as short as possible. They were even assured that the mere act of casting a dissenting vote would be sufficient to protect all of their legal rights, *without any protest!*

Mr. Hiram S. Brown, the President of the company, acted as Chairman and after the formalities of convening the meeting were over, he pre-

sented the consolidation agreement and, without any preliminary discussion, read the proposed resolution of adoption, saying (p. 344, fol. 10):

> "I will read the resolution and announce that in anticipation of there being stockholders present who desire to vote against the resolution, that when the time comes for said votes to be cast, we would like to take them in order and have them announce their names and addresses, the number of shares they personally represent and the number of shares they represent by proxy *for the purpose of enabling the reporter of the meeting here to get an accurate record for the complete minutes.*"

After the resolution had been voted upon by ballot, and the results reported to the meeting, the Chairman made the following announcement (p. 352, fol. 30):

> "It is now in order to enter upon the record the formal protests of the 9,635 shares of preferred stock or such portion thereof as desire to be heard. I call attention to the fact that your action in voting against the plan *fully establishes your legal rights and you can save the time of all of us by making your formal protests here as short as possible,* but sufficiently explicit to *satisfy yourselves.* There is no desire to *muzzle* anybody by making that remark."

By this announcement the Chairman made it very emphatic that he did not want any of the time of the meeting taken up with the protests of dissenting stockholders. However, he reluct-

antly consented to their being sufficiently explicit *to satisfy themselves.* Assuming, as he obviously did, that the only rights of the dissenting stockholders would be to have their shares appraised under the Statute, the Chairman showed his absolute indifference as to any grievances they might have or any action they proposed to take. An exposition by a dissenting stockholder of his position, or a discussion of what he intended to do would have been regarded, under the circumstances, as a "threat", pure and simple. The Chairman must have realized the arbitrary manner in which he had cut short the protests of dissenting stockholders, when he hastened to add that he was not attempting to *muzzle* anybody. After such proceedings the present cry of defendants, that they were not "notified of the nature and extent" of complainants' claims or of any intent on their part to seek "extraordinary relief" should carry little weight with the Court. Nor can the defendants claim that they were not apprised of the dissenting stockholders' contention that the consolidation agreement was unfair and inequitable. One of the dissenting stockholders bitterly attacked the agreement on the very grounds set forth in complainants' bill. His protest, which is spread at length upon the record, reads as follows (p. 354, fol. 10):

> "In voting against this plan I would like to point out that I consider the arrangement an undesirable one, both because it is unfair to the preferred stockholders and because it will tend to set up two dangerous precedents which may work unfortunate results for the stockholders as a whole.
>
> The first precedent is that it apparently had resort to a new principle, namely that

common stockholders are entitled to exploit and to make use of a deficit in order to force preferred stockholders to surrender a large part of their corporate rights in exchange or as a price for the assent of the common stockholders to the payment of dividends. Now it is true that a large majority of the preferred stockholders have assented to this arrangement. Nevertheless, I think it merely illustrates a well known fact, that most stockholders are not particularly intelligent and lack initiative in matters of corporate finance. However, those stockholders who have sufficient intelligence to recognize the injustice of this scheme should not be forced in my opinion either to accept the terms or to dispose of their stock at the current market price.

Now in adopting this means of putting the plan into effect a second dangerous precedent is established I think, and one also injurious to the preferred stockholders, because it makes use of a mere artifice to compel those stockholders who dissent either to consent or to get out. I think this plan of merger is obvious, it is not an attempt at artifice, I don't believe anyone claims it pretends to fulfill the ordinary means by which two businesses go together. It is merely a means of putting into effect a scheme of recapitalization, and one which will compel the stockholders who dissent from the terms of this plan to give up their rights."

The officers and directors of the Central Leather Company did not intend to be deterred from their course by any protests of dissenting stockholders

regardless of the grounds of the protests. It apparently did not make any difference to them what the dissenting stockholders claimed or whether the consolidation agreement would, in fact, violate their contract rights. Having secured the statutory two-thirds vote ratifying the agreement, that was all they cared about at the time. They doubtless considered themselves fortunate to have gotten through tthe meeting without encountering an injunction and they saw to it that the agreement was filed within *twenty-four hours.*

The situation in the *Lazear* case, *supra,* was very different to say the least. There the company was greatly in need of raising additional capital ($3,000,000) for the purpose of its business. In order to do so it was found necessary to reorganize the capital structure of the company. The plan of reorganization provided for the conversion of the preferred stock into common stock and the elimination of accrued dividends. It appears that the company held eight separate stockholders' meetings to consider the plan, and that the complainants, who had received due notice of each, failed to put in an appearance at any meeting. When the plan was finally adopted *there was not a single dissenting vote.* Furthermore the company did not file the amended certificate until almost *three weeks* after the plan had been adopted. Moreover, complainants in that case took no action whatever for over three years and when they finally did file their bill it was to ask for a form of relief which the Court had not the power to award. Under the circumstances of that case the Court found that the company had a right to proceed upon the assumption that there was no objection to the plan and that the conduct of the

complainants had been tantamount to *acquiescence* in it. If there is any analogy between the *Lazear* case and the instant one we fail to see it.

POINT IV.

Unless the consolidation be treated as equivalent to a dissolution in its affect upon complainants it will result in an illegal reduction of their capital stock.

The authorities are universally agreed in holding that, as between preferred and common stockholders, where the preferences of the former are both as to income and principle, a reduction of the capital stock to absorb a shrinkage or impairment, must first be applied to the common stock.

Fletcher on Corporations (1919), Vol. 6, Sec. 3639; *In re Quevrada R. R. Land & Copper Co.*, Ch. Div. 363; *In re London & N. Y. Investment Corp.*, 2 Ch. Div. 860; *In re Agricultural Hotel Co.*, 1 Ch. Div. 396; *Paige* v. *Whittenton Mfg. Co.*, 211 Mass. 424, 97 N. E. 1006; *Continental Securities Co.* v. *Northern Securities Co.*, 66 N. J. E. 274; *Williams* v. *Western Union Tel. Co.*, 93 N. J. 162.

Fletcher, *supra*, states the rule as follows:

> "In like manner, on a reduction of the capital stock because of losses preferred stock must be reduced proportionately with common stock *unless* there is some special provision in the statute or the contract of the parties fixing a different rule. It has been held that this rule does not apply

> where the stock is preferred *not merely as to dividends but also as to capital,* and that in such cases the common stock *must be first resorted to even to the point of extinction* before the preferred stock can be compelled to contribute" (cases cited above).

It has been our contention throughout that the consolidation agreement was resorted to as a *legal form* in order to make a conversion compulsory upon dissenting stockholders regardless of the effect upon their contractual rights. We believe that in enacting the consolidation statute the Legislature of New Jersey did not intend thereby to authorize a corporation to do any act or thing which would impair the obligations of its contract with any single stockholder. If that be true, we feel that a court of equity will look through the form to the substance and to prevent such an illegal result, hold the transaction to be a dissolution in its effect upon dissenting stockholders.

The reduction of capital stock effected by means of the consolidation was not only sufficient to absorb the impairment of the capital but it also created a surplus of approximately $28,000,000. At the time the agreement was entered into the equity of the preferred stockholders in the assets of the company had not been impaired so that they had a vested right in the entire surplus thus created. Although this surplus was not needed for working capital, as we have seen, it was nevertheless retained in the company and made available for dividends on the new prior preference stock. We have elsewhere discussed the purpose and effect of this.

It has been held by the weight of authority that

upon the reduction of capital stock the resulting capital surplus is in the nature of a trust fund to be distributed among the stockholders at the time of the reduction or to be held by the company for them. While it is true that such a fund may be retained in the business for working capital *when necessity requires,* in the absence of any such need *it is the duty of the directors* to distribute such surplus *pro rata* among the stockholders whose capital stock has been reduced (*Continental Securities Co.* v. *Norther Securities Co., supra*).

In the *Continental Securities Co.* case, *supra,* the Court said:

> "By the reduction of the capital stock of a corporation, not impaired by losses, there must necessarily occur a surplus of assets to the extent of the reduction, and unless the rights of creditors will be affected thereby, or the capital impaired, *it becomes the duty of the directors to make an equitable distribution of such surplus or so much thereof as the carrying on of the business for the best interests of the stockholders may not require. Strong* v. *Brooklyn R. R. Co.,* 93 N. Y. 426; *Williams* v. *Western Union Tel. Co.,* 93 N. Y. 163; Morawetz Corporations, 453."

In the instant case the surplus was retained in the company for the purpose of making *current income available for dividends on the common stock.* We have seen that the old company, in spite of its $17,000,000 deficit, was *overcapitalized,* and under such circumstances, the surplus resulting from the reduction of the preferred stock should have been distributed to the preferred

stockholders as a *liquidating* dividend at the time the reduction was made. But, as we have seen, it was kept as a fund to be used for the payment of future dividends on the prior preference stock.

In *Theis* v. *Durr,* 125 Wisc. 651, the Supreme Court of that State said:

> "No reduction of authorized and subscribed for capital stock can be accomplished by voluntary surrender by subscribers *pro rata,* or some method which will not prefer one stockholder over another. The idea with which appellants started out that they could effectively use their superior voting power to obtain an advantage over the olders of full paid stock has no support in reason or law, and as we understand it, no connection with the case ventures to claim to the contrary. If the majority of stockholders of a corporation could so treat its assets and be *immune from judicial interference* in respect thereto, there would be no protection for the minority, but the conscience of the majority would be a very uncertain reliance. * * * We do not intend to suggest that a court of equity can supervise or revise corporate action within the scope of the corporate powers where there is no bad faith in the matter or only error of judgment. But where the act of either such body (stockholders or directors) *though lawful in itself* is designed to accomplish some illegitimate object—the mainspring of the contract is some ulterior motive—and the result if permitted to operate will be injurious to the corporation *or members not*

concerned in the transaction, such a member may successfully invoke equity jurisdiction for protection of the corporation where the proper officers will not do it."

POINT V.

Unless the consolidation be treated as equivalent to a dissolution in its effect upon the complainants it will result in illegally divesting them of their right to accrued dividends.

We have been unable to find in the reported cases a single instance in which this Court has ever been called upon to pass directly on the nature of the *right* to accrued dividends. The Court of Chancery, however, has frequently decided that it is a *vested property right* (*Lonsdale Securities Corp. et al.* v. *Int. Mercantile Marine Co.,* 139 Atl. 51; *Day* v. *U. S. Cast Iron Pipe and Foundry Co.,* 95 N. J. E. 389, 123 Atl. 540, 96 N. J. E. 736; *Colgate* v. *U. S. Leather Co.,* 73 N. J. E. 72; *Morris* v. *Am. Public Utilities Co.,* 122 Atl. 696).

That the right to accrued dividends does constitute a vested property right has been decided both in New York and Pennsylvania (*Roberts* v. *Roberts-Wicks Co.,* 184 N. J. 257, 77 N. E. 13; *Petry et al.* v. *Hardwood Electric Co.,* 280 Pa. St. 142, 158, 124 Atl. 302).

At the time of the consolidation in question the accrued dividends on the preferred stock amounted to 42% and under the terms of the

consolidation agreement this stock was converted into the shares of the new consolidated company *without any payment or compensation for these arrears.*

In the recent *Lonsdale Securities* case, *supra,* where the defendant proposed to amend its charter so as to extinguish certain arrears of dividends on its preferred stock, the Court said:

> "These complainants apply to this court for the only complete and adequate protection that can be afforded their property rights. Under the contract growing out of the section of the defendant's articles of incorporation which has been set out above, they have become vested with rights as against the holders of the common shares in a surplus of at least some $17,000,000 that the company has accumulated, *and also in future earnings and all the other property of the corporation.* To permit the contemplated change in the certificate of incorporation would result in divesting them of those rights in violation of our law. There are now due the preferred stockholders almost *$36,000,000 of accumulated dividends.* The purpose of the proposed change is *expressly to divest the preferred stockholders of all right to ever collect this existing claim.*
>
> It certainly requires no argument or explanation to show that any such change as is contemplated would result in impairing the investment value of the present preferred shares, and consequently would materially reduce the property rights of their respective holders. * * *

> Not only would the change result in an injury to the *future,* as well as the *past,* dividend rights of the preferred stockholders, *but it would also interfere with and materially diminish or abolish vested rights.*"

In *Colgate et al.* v. *United States Leather Company, supra,* there had been proposed a merger between the two defendant companies along somewhat similar lines to the case at bar and the merger contemplated the extinguishment of the arrears of dividends on the preferred stock of one of the companies. Vice-Chancellor Emery in this decision enjoining the merger says, at page 96:

> "This obligation of the company to pay the unpaid dividends of its earnings before the claims of the common stock, the express charge upon the earnings, prior to the claims of the common stock, is not an obligation which makes the proposed stockholder a technical creditor of the company and the holder of a debt of the company, but it does in my judgment create a liability or duty of the company to pay the unpaid dividends out of the earnings of the company, if any exist, before either these earnings or any of the property of the company representing them is distributed to the holders of the common stock by the consolidated agreement."

And that,

> "if this construction as to the rights of the preferred stockholders to a preference on the earnings of the company as they existed at the time of the consolidation, for

> the unpaid dividends, be correct, and this claim is one in the nature of a claim for liability or duty of the company, then the preferred stockholders have, *on the termination of the business by the consolidation,* the right to an account for at least so much or such portion of the apparent surplus as represents net earnings, and which is estimated to be about one-third and the provision in the consolidation agreement requiring the surrender of the shares without any reservation of the right to pursue the new company for this alleged debt or liability of the new company, *renders the proposed agreement illegal as against any person who declines to consent.*" * * *

In *Roberts* v. *Roberts-Wicks Co., supra,* Judge Gray, in speaking of the contract of a preferred stockholder with respect to accrued dividends, says:

> "In the charter and in the certificates issued to the preferred stockholders, it was stated, most explicitly, what was the nature of the preference, which was accorded to that class of stockholders; namely, to be paid 'out of the surplus profits arising from the business of the corporation * * * a dividend equal to six per cent. per annum on the preferred stock, payable in equal semi-annual payments, before any dividend shall be paid on the common stock; such dividend on the preferred stock shall be *cumulative* and in case of non-payment shall bear interest at the rate of six per cent. per annum from the date when payable'. This was a

valid contract between the company and the preferred stockholders, which was binding upon all other stockholders (*Kent* v. *Quicksilver Mining Co.*, 78 N. Y. 159, 180). Each class of stock was a part of the whole capital stock and both classes were made by the charter alike, in all respects, except in the one respect that the preferred stock was entitled to have 'surplus profits arising from the business' appropriated, in first order, to the payment of six per cent. dividends, cumulatively. *Now, this was as much an agreement of the common stockholders, as it was the agreement of the corporation* and the right of the preferred stockholder was inviolable. It assured to him in effect, that if the corporate earnings failed to show surplus profits sufficient to pay a dividend due on the preferred stock, to the extent of the default in payment and of the accruing interest thereon, there would be a specific charge upon all subsequent surplus profits gained by the company. *In other words, the dividends agreed to be paid upon such shares of stock were a charge upon the profits of the company for all time and all arrears of such dividends, with accrued interest, were to be paid out of any money applicable to such payment before any payment should be made to the common stockholders. Boardman* v. *L. S. & M. S. R. Co.*, 84 N. Y. 157; *Sturge* v. *E. N. R. R. Co.*, 31 Eng. L. & Eq. 406; *Henry* v. *G. N. R. Co.*, 3 Jurist (N. S.), Part I, 1117)."

In *Morris* v. *American Public Utilities Co., supra,* which involved a charter amendment creating new classes of stock, certain accrued dividends on the preferred stock were to be extinguished. The Court said:

> "There is no question raised by the case as to the extent of the power reserved by the state to amend, alter or repeal the act under which the defendant holds its corporate charter. The sole question is as to the manner in which the corporation has exercised the powers which the state has conferred upon it. That a corporate charter is a contract has been long settled. In *Garey* v. *St. Joe Mining Co.,* 32 Utah 497, 513, 91 Pac. 369, 374 (12 L. R. A. (N. S.) 554), it is spoken of as a 'dual contract—one between the state and the corporation and its stockholders, the other between the corporation and its stockholders'. That there is a third aspect in which the contract may be regarded would appear clear, for not only is there a contractual tie binding in the two respects observed by the Utah court, but there is as well a contractual relation in many particulars existing between the stockholders *inter sese.* This third relationship found a practical recognition in *Pronick* v. *Spirits Distributing Co.,* 58 N. J. Eq. 97, 42 Atl. 586. With respect to the amendment of which the bill in this case complains, its effect in so far as contractual relationships are concerned would seem to bear just as much upon those existing between the stockholders *inter sese* as upon those existing between the cor-

poration and its stockholders. It not only *alters the corporation's obligation to the preferred stockholders by destroying accumulated dividends,* but it disturbs the inter-relationships theretofore existing between the stockholders themselves by giving the holders of other classes of stock certain newly created preferences, *by conferring a benefit upon the common stockholders through cancellation of accrued preferred dividends.* * * *

(b) Accumulated dividends to the amount of 24 per cent. are cancelled, * * *

With respect to (b) the point here made presents itself in another light. After careful consideration I am persuaded that *the attempt to destroy the right of an objecting preferred stockholder to accrued and unpaid dividends cannot be sustained.*

What is the nature of a preferred stockholder's right to accrued and unpaid dividends? Is it within the meaning of the word 'preferences' as the term is used in section 26 of the General Corporation Law of this state? If it is, then it would be arguable that any corporation into whose articles of incorporation this section is to be read, would have the right to destroy it. Though to so argue, one would have to deduce from the power 'to alter or change the preferences' the power to destroy them. I am not called upon, however, to examine such argument, for in the view which I take of the matter *the right of the preferred stockholder to accrued and unpaid dividends, though the same have never been declared, cannot be said to constitute a*

> *preference within the meaning of the section.* My attention has not been called to any case wherein the precise question now presented has been considered. There are cases, however, in which the right to preferred dividends in arrears has been discussed and the nature of the right considered in situations different from that here presented. *Roberts* v. *Roberts-Wicks Co.,* 184 N. Y. 257, 77 N. E. 13, 3 L. R. A. (N. S.) 1034, 112 Am. St. Rep. 607, 6 Ann. Cas. 213, was such a case."

In the foregoing language the Court found in substance that a right reserved by statute to change "preferences" did not operate retroactively so as to disturb *vested rights* that could hardly be called "preferences".

The Court continued:

> "While it is true that a holder of cumulative preferred stock is not a creditor of the corporation, so as to entitle him to bring suit at law against the corporation for dividends in arrear, but not declared (*American Steel Foundries* v. *Lazear et al.,* 204 Fed. 204, 124 C. C. A. 231) yet, considering the relations of the stockholders *inter sese* in such a case as the instant one, there is every reason to hold that *as soon as the agreed dividend which the preferred stockholder is to receive is matured by time, a right to its ultimate payment as against those who have agreed to its payment becomes a vested right. It is a present property interest.* The period of its enjoyment may be deferred by the directors

of the corporation in the legitimate exercise of their discretion in the management of the corporate affairs and thereby the privilege of asserting the right to the dividend in a suit or action may be postponed. This, however, does not in any wise impair the status of the preferred stockholder as the owner of a present right against the corporation assertable upon the arising of the proper contingency, viz, when the earnings are such as to justify the declaration of a dividend. Nor is the fact that the preferred stockholder may be required to await the contingency of adequate earnings sufficient to deprive him *of the right to be regarded in substance as a creditor as against the common stockholders.*

(5) If the foregoing views are sound, then it follows that the amendment in question disturbs the rights of the complainants, not in the enjoyment of a preference, but rather in the enjoyment of a *vested right.* It takes from an objecting stockholder *that which in a real sense is his individual property interest."*

In *Day* v. *U. S. Cast Iron Pipe & Foundry Co., supra,* the question arose as to the right of the defendant to pay a dividend on its common stock until the accrued earnings of prior years applicable to the preferred stock had first been paid. In that case the preferred stock provided for the payment of dividends at the rate of 7% per annum but they were not cumulative. In restraining the payment of dividends on the common stock until the payment of dividends on the preferred stock, the Vice-Chancellor said (p. 395):

"The preservation of the priority right

> of non-cumulative dividends it would seem, emphasizes the view here entertained that the Legislature intended that no profits were to be divided among common stockholders, whatever may have been their origin or however applicable, unless the company's obligation to the preferred stockholders was first discharged."

The decision was affirmed in the Court of Errors and Appeals and we quote from the opinion of Judge White as follows (pp. 743-744):

> "The most that can be said of it in behalf of the corporation's contention is, that it says that the board of directors may declare a dividend upon common stock out of the earnings of a fiscal year after the stipulated seven per cent. on the preferred stock for that year has been paid. But it does not anywhere say that this may be done while earned available but withheld dividends upon the preferred stock for previous years remain undistributed in the surplus of the corporation. That it must say this, in order to accomplish any such purpose (assuming that such purpose legally can be so accomplished, as to which we express no opinion), seems to us too plain to require argument. Such a provision would be in conflict with the secured priority idea underlying the legislative scheme or policy. It would, at least, to a marked extent, contradict the designation 'preferred' which the corporation used without qualification, and which the legislature said meant and secured a certain priority, which such a provision would destroy. * * *"

In the instant case we might ask, in the language of Judge White, "How much capital would have been invested in the preferred stock of the Central Leather Company if its charter had expressly provided that cumulative dividends might be wiped out at the pleasure of two-thirds of the stockholders and that the same majority might provide for the participation of the common stockholders in the assets on dissolution prior to the payment in full of the preferred stock?"

In *General Investment Co.* v. *Am. Hide & Leather Co.*, 98 N. J. E. 326, the plan of reorganization was to substitute for 3500 shares of the *unissued* 7% preferred stock, 3500 shares of an 8% cumulative prior preference stock having priority both as to principal and dividends over the outstanding preferred stock. There were accrued dividends on the preferred stock and the question arose, indirectly, as to what would be the right of the preferred stockholders to the payment of such arrears before the payment of dividends on the new prior preference stock. In this connection Judge White (whose opinion was concurred in by Judge Katzenbach) said:

> "This brings me to the only question in the case which has given me trouble, and that relates to the earned but unpaid dividends up to the present time upon the old preferred stock. * * * I incline to the view therefore that from a dividend standpoint all of the 140% of arrears of dividends must be theoretically taken not to have been availably earned up to the present time. But the question in my mind is, *is that sufficient to authorize the corporation to destroy the cumulative portion of the*

> *contract held by the preferred stockholders,* in a retroactive way, so that not only is that cumulative provision modified as to the future (which is a risk which all investors in preferred stock not secured by express contractual provisions undertake when they buy such preferred stock) but as to the past also? Can the rights of the preferred stockholders to receive compensation according to their contract; *even though at some future time,* be absolutely wiped out and destroyed? *I find myself unable to adopt this view.*"

Judge White in this opinion, after recalling the language of Vice-Chancellor Emery in *Morris v. Am. Public Utilities Co.,* 122 Atl. reports 696, says:

> "It seems to me, therefore, that as to the accrued unpaid dividends upon the preferred stock up to the present time, complainants cannot be deprived of their *vested present property right* to have those dividends paid to them *at some future time* out of the earnings of the corporation before the payment of any dividends which did not have priority over them at the time they, from time to time, accrued."

In that case Judge Black in a dissenting opinion (concurred in by Justices Clark and McGlennon) found that there was no power under the statute for the corporation to bring out a new class of stock which would have priority over the then outstanding preferred stock. He said:

> "Such a power, if it exists, should be expressed in such clear and precise language

that the man on the street may know what he is buying and that he will not be misled. * * * the word 'preferred' standing alone *means first in rank,* to set above something else, having the first claim—it has some advantage over another thing of the same character. It should not be construed to mean secondary, if so, the expression is pertinent. If such a power exists, it seems to me, it must rest upon the notion that words have no settled meaning or that language is powerless to express thought."

POINT VI.

The consolidation statute does not authorize a compulsory conversion or sale of stock on terms that would impair the obligations of a stockholder's contract.

We do not question the constitutionality of the consolidation statute, nor do we deny that it was a part of the charter of the Central Leather Company and consequently an integral part of the preferred stockholder's contract (*General Investment Co.* v. *Am. Hide & Leather Co.,* 98 N. J. E. 326). However, we do contend that the exercise of the power to consolidate was expressly limited by certain provisions embodied in the statute itself (General Corporation Act, Section 107).

Section 105 of the General Corporation Act, Subdivision 1, provides as follows:

"The directors of the several corporations proposing to merge or consolidate may

> enter into a joint agreement * * * for the merger or consolidation of said corporations, and *prescribe the terms and conditions thereof,* the mode of carrying the same into effect, the name of the new corporation * * * the number of shares of capital stock, whether common or preferred, and the amount or par value of each share of such new or consolidated corporation * * * and the *manner of converting* the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporations, etc., etc."

In *Colgate* case, *supra,* the Vice-Chancellor, speaking of the power conferred by the statute to prescribe *the terms and conditions* of the consolidation, said:

> "It cannot be held to be an *unlimited irresponsible power* but must be understood as authorizing only *lawful* terms of conditions and a lawful manner of conversion of the stock."

Section 107 of the statute provides that, upon the consummation of the consolidation, all rights, privileges, powers and franchises, of each of said merging corporations, and all property real, personal and mixed, shall be vested in the consolidated corporation,

> *"provided all debts, liabilities, and duties of either of said former corporations shall thenceforth attach to said consolidated corporation,* and may be enforced against it to the same extent as if said debts, liabilities and duties had been incurred or contracted by it."

We respectfully submit that the wording of the statute in reference to the *prescribing of the terms and conditions, and the manner of converting* must be read in connection with the succeeding provision limiting the exercise of such powers to a case where all the "debts, liabilities and duties" of the former corporations are *preserved.* The limitation thus imposed upon the exercise of the power to consolidate goes to the very essence of the matter. If the statute were intended to confer a power to change or impair contractual obligations, it would violate both the Federal and State Constitutions. It requires no extended argument or citation of authorities to establish that fact. But the very language of Section 107 imposes as a *condition precedent* to the consolidation, *viz.,* that all of the existing liabilities and duties of the merging companies shall be preserved. This provision of the statute is an unqualified one. Therefore if we are correct, in our contention that the Central Leather Company, by its contract with the preferred stockholders, was under a legal duty or obligation to apply the net earnings of the company to the payment of accrued dividends on the preferred stock before paying any dividends to the common stockholders, the preservation of that liability or duty was *mandatory* under the provisions of the consolidation statute.

Although not "technically a creditor of the corporation," the preferred stockholders did occupy a relationship of similar character to the common stockholders and a strict observance of the relative rights of the two classes of stockholders in the assets of the company as well as in the application of its income was as much the *duty* of the corporation as the preservation of its liabilities to creditors.

The preservation or perpetuation of all its duties and liabilities was a part of, or inherent in, the grant to the corporation of the power to consolidate.

The fact that the consolidation statute was a part of the charter of the Central Leather Company and of the contract of the preferred stockholders, has no bearing whatever upon the particular situation presented in this case. Under their contract the preferred stockholders were entitled to receive cumulative dividends at the rate of 7% per annum before anything should be paid to the common stockholders; and furthermore upon dissolution, or liquidation, they were to receive cash in an amount equivalent to the par value of their shares and all accrued unpaid dividends. The contract created mutual rights and obligations not only as between the stockholders *inter sese* but also between each class of stockholders and the corporation itself. To the extent that the consolidation statute was a part of this contract the rights and obligations referred to were subject to the right of the corporation to merge or consolidate with another corporation, *provided* that under the terms of any consolidation these liabilities and duties of the company to its stockholders be preserved. In the instant case what the Central Leather Company did was to bring a new corporation into existence by going through the *legal form* of a consolidation; it then transferred all of its assets to the new corporation on such terms as to *rid itself of the very contractual liabilities and duties which, under the consolidation statute, were required to be preserved.* Such action is not authorized by the statute, and consequently may be said to have been done without any legislative sanction (*Davis*

v. *Congregation Tephila Isreal*, 40 App. Div. 424; *People* v. *North River Sugar Refining Co.*, 121 N. Y. 582, 624). Viewed as a consolidation, strictly speaking, the agreement might be said to be *ultra vires*, as the corporation had no power to consolidate except upon the conditions imposed by the statute.

When, therefore, the Central Leather Company made a voluntary transfer of its assets to the new corporation and thereby divested itself of the power to ever make any payments under its contract with the dissenting stockholders, the effect of such action on them was a liquidation or dissolution of the corporation. Unless the consolidation be deemed to have been in effect such a liquidation or dissolution, the Central Leather Company, under the *form* of a consolidation, will have actually *destroyed the essence of complainants' contract* (*Colgate* v. *U. S. Leather Co., supra*; *Small* v. *Sullivan*, 245 N. Y. 343).

In the *Small* case, *supra*, the consolidation was affected in compliance with the formalities prescribed by the statute but was attacked on the ground that it had been accomplished for an illegal purpose. In discussing the *form* of the consolidation, the Court said:

> "I know of no forms of law, statutory or otherwise, which may not be used for the accomplishment of a fraud or for the illegal purpose of wrongfully obtaining money if people so desire to use them and I know of no form of law or statute which will prevent a Court of Equity from seeking out the fraud, looking beyond the forms to the actual facts and compelling restitution."

Elsewhere in the same case Justice Lehman, referring to this subject, said:

> "It is true that the time has passed when the courts will permit an unlawful result to be achieved, even by means which are in themselves legal. The law may not be circumvented by subterfuge and the courts will look behind the form to determine whether an act is inherently unlawful."

If treated as affecting a liquidation or dissolution of the Central Leather Company the transfer of its assets to the new consolidated corporation need not have any illegal results.

POINT VII.

To all practical intents and purposes the affect of the consolidation on the complainants was a dissolution of the Central Leather Company.

As we have seen, the Central Leather Company, under the consolidation agreement, transferred all of its assets to the new consolidated company without providing that its contractual liabilities and duties to the preferred stockholders attach to the new corporation. It would seem, therefore, that although the act of consolidating may have been lawful in itself, the transfer of the assets to the new corporation, in its effect upon dissenting stockholders, worked a dissolution of the company. If the Legislature did not intend to empower a corporation to rid itself of its liabilities and duties merely by going through the *form* of a consolida-

tion, then the transfer was literally without legislative sanction. We submit that in the instant case the Court should look through the form to the substance of the consolidation and judge of its effect accordingly (*Riker & Sons Co.* v. *United Drug Co.*, 79 N. J. E. 580).

Even where a consolidation has been made on terms that were fair and equitable it has been generally held that the result was a dissolution of the consolidating corporations (*Keokuk* v. *Missouri*, 152 U. S. 301, 308; *Adams* v. *Zazoo R. R. Co.*, 180 U. S. 1, 60 L. R. A. 33; *Atlantic & Gulf R. R.* v. *Georgia*, 98 U. S. 359; *Shields* v. *Ohio*, 95 U. S. 319; *Clearwater* v. *Meredith*, 1 Wall 25; *Jones* v. *Missouri Edison Electric Co.*, 144 Fed. 765; *Petry et al.* v. *Hardwood*, 280 Pa. 142; *Lauman* v. *Lebanon Valley R. R. Co.*, 30 Pa. 42, 72, Am. Dec. 685). The theory of these decisions is not difficult to understand, when we consider the nature and purpose of the consolidation statutes. Before any legislative enactment expressly permitting it, a corporation had no power to enter into a consolidation, for the reason that such an undertaking was deemed to be a new venture entirely separate and distinct from the one in which the stockholder had originally invested his money (*Kean* v. *Johnson*, 9 N. J. E. 401; *Zabriskie* v. *Hackensack N. Y. R. R. Co.*, 18 N. J. E. 178). Furthermore, it was considered that the act of embarking upon a wholly different enterprise, which a consolidation was presumed to be, was, in effect, a *dissolution* of the original corporation—a thing which could not be done without the unanimous consent of the stockholders. However, in the course of time, various statutes were enacted empowering corporations *to dissolve* upon a two-thirds vote of the stock-

holders. In each instance it was provided that the assets should be liquidated and the proceeds distributed pro rata among the stockholders in accordance with the terms of their contract. Once the Legislature had granted the power to dissolve on a two-thirds vote, the granting of a power to merge or consolidate on a similar vote was but a logical step. Upon reflection it will be seen that the consolidation statutes were passed more as a matter of *procedure than of substance.* Where a company had once dissolved there was no legal obstacle to one or more of the old stockholders forming a new corporation to take over or purchase the business of the dissolved company, provided, of course, the new corporation purchased the assets at a fair valuation and for cash. Moreover, if the stockholders who had voted for the dissolution were willing to take stock in a new corporation in payment for their share in the assets of the dissolved company there could be no valid objection to that, if provision were made for the payment of cash to stockholders not wishing to come into the new corporation. The consolidation statutes, we submit, were designed expressly to meet such a situation and to provide a method whereby the *two steps might be taken in one*—namely, the dissolution of the old companies and the incorporation of a new one. By their provisions two-thirds or more of the old stock could be paid off in stock of the new corporation and the balance of old stock, if any, could be liquidated in cash. The very fact that the statute requires the vote of two-thirds of the stockholders to effect a consolidation, and that dissenting stockholders shall have their stock appraised and be paid cash, strongly supports the theory of a dissolution of the old companies. Otherwise why should there be any necessity to pay the dissenting stockholders

the cash value of their shares and why should not the conversion be compulsory as in the case of a reduction or reclassification of capital shares?

The appraisal provisions of the consolidation statutes provide, in effect, for the cash liquidation of the stock of non-assenting stockholders in recognition of the fact that no stockholder should be compelled to go into a consolidation against his will.

If the provision for the payment to dissenting stockholders of the "appraised market value" of their shares was not intended to be a *liquidation* of their interest in the corporation, exactly what was it extended to be? Did the Vice-Chancellor really mean that the statute does not provide for the winding up of the business and affairs of the consolidated companies so far as dissenting stockholders are concerned? We hardly think so. When he speaks of the changes wrought by consolidation as being "incident to the uniting of the two corporations", he fails to grasp the fact that the new corporation comes into existence as a new entity by virtue of the grant of a charter from the State and not by virtue of the acts of the consolidating companies. The identity and existence of the latter are completely extinguished as corporate entities except as they are "deemed" to be in existence for the purposes mentioned in the statute.

In determining whether or not a consolidation has affected a legal dissolution of the consolidating companies, the courts have invariably sought the answer in the consolidation statute itself. Most, if not all, of these statutes, provide that a "new corporation" shall be brought into existence through the consolidation and that the

old companies shall be "deemed to be in existence" solely for the purpose of preserving the rights of creditors and all liens upon the property. From a reading of these provisions, which are quite uniform throughout the States, the consolidation statutes appear to have continued the existence of the old corporations only for the purposes specified and for none other. The General Corporation Act of New Jersey provides as follows:

> "Section 107: *Upon Merging or Consolidating, Rights, etc., to be Vested in a New Corporation.*
>
> Upon the consummation of said merger or consolidation, all and single rights, privileges and franchises of each of said corporations, etc., shall be vested in the consolidated corporation; and all property rights, privileges, powers, and franchises, and all and every other interest shall be thereafter as effectually the property of the consolidated corporation as they were of the several and respective former corporations, etc., *provided* that all right of creditors and all liens upon the property of either of said former corporations shall be preserved unimpaired and the *respective former corporations may be deemed to continue in existence, in order to preserve the same,*" etc.

From the foregoing language it would appear that the Central Leather Company did not exist after the consolidation, except for the limited purposes mentioned in the statute. The consolidated company is a creature of the statute, and its

existence comes as a grant from the State and not from the old corporations to whose property it succeeds. In *Bingham* v. *Savings Invest. & Trust Co.,* 138 Atl. 659, Vice-Chancellor Backes in discussing the nature and effects of a consolidation, says:

> "The reserve power to *repeal* charters is absolute. Every corporation accepts the corporate privilege with notice that it may be withdrawn at the will of the Legislature. *The extinction of a charter by merger* is nothing short of a repeal of the charter to a stockholder unwilling to go along with the merger. As to him the merger is not an alteration or amendment of the grant but *a complete destruction of it.* Destroying, the state has a care not to take away or destroy the stockholders' investment and safeguards it by providing compensation by appraisal at fair value."

Judge Noyes, in his book, *"A Treatise on the Law of Incorporate Relations",* says:

> "While the 'property, liabilities and stockholders of the new corporation may„ in the language of *McMahon* v. *Morrison* be 'derived from those passing out of existence', the proposition that legislative consent to consolidation has the effect of dissolving the old corporations and creating *eo instanti* a new corporation in their stead, is based upon the theory that the consolidated corporation derives its powers from the act authorizing the consolidation *and not from the constituent corporations.* As said by Mr. Justice Swayne in *Shields*

> v. *Ohio*: 'The new organization took the powers and faculties designated in advance in the acts authorizing the consolidation—no more and no less. It did not acquire anything *by mere transmission.* It took everything by creation and grant.' "

And, in a further note to the above, Judge Noyes says:

> "The rule is clearly stated in a note to *McMahon* v. *Morrison* in 79 Am. Dec. 424: 'The effect of consolidation upon former companies, except so far as the contrary may be provided by the statute authorizing consolidation is as a general rule to dissolve the old corporations and to create a new one assuming the liabilities and succeeding to the rights of the old companies.' "

One of the earliest cases upon the subject of statutory consolidations was *McMahon* v. *Morrison,* referred to by Judge Noyes, where it was held that the "effect of a consolidation by legislative authority was a dissolution of the original corporations, and at the same instant, the creation of a new corporation with property, liabilities and stockholders derived from those passing out of existence". This case was affirmed by the United States Supreme Court and its conclusions were adopted as applicable to different consolidation statutes in decisions from many states. Judge Noyes in his book refers to a long line of such cases from Georgia, Illinois, Indiana, Iowa, Louisiana, Maine, Missouri, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas

and Utah. In the case of *Georgia* v. *Atlantic & G. R. Co.*, 98 U. S. 359, the United States Supreme Court said:

> "Looking thus to the legislative intent appearing in the consolidation act, we are constrained to the conclusion that a new corporation was created by the consolidation effected thereunder in the place and in lieu of the two companies previously existing, and that whatever franchises, immunities or privileges it possesses, it holds them solely by virtue of the grant that act made. That generally the effect of consodidation as distinguished from a union by merger of one company with another, is to work a dissolution of the companies consolidating, *and to create a new corporation out of the elements of the former,* is asserted in many cases and it seems to be *a necessary result.*"

On the argument before the lower Court, defendant's counsel endeavored to distinguish the foregoing cases from the case at bar by stressing the fact that they involved the sovereign right to tax a corporation or to regulate a public utility and not the right of a non-assenting stockholder upon consolidation. It was argued by counsel, that for federal income tax purposes, a consolidation is regarded as a reorganization, as opposed to a dissolution, the holder of stock of the new company not being regarded as having realized upon his old stock. It was pointed out that the fees payable to the State of New Jersey upon consolidation are not those payable upon a dissolution and that the fees are not imposed with reference to the total authorized capital stock of

the consolidated corporation, but only on the excess over the capital of the merging corporations. Counsel argued that upon a consolidation there may be a *notional* or *theoretical* dissolution of the consolidating companies, but that as a matter of fact their existence continues as a *constituent of the new corporation.* In this connection the Vice-Chancellor in his second opinion, said (Op., p. 395, fol. 20).

> "The theory of the complainants is that the merger of the defendant corporations operated to dissolve the Central Leather Company within the meaning of Section 31 of the General Corporation Act. With this reasoning I am unable to agree. When reading that act in its entirety it is unescapeable that the legislature intended to set up two methods for the dissolution of corporations, one voluntary, as described in Section 31, and the other involuntary, as described in Section 56 *et seq.* Where either of these methods is pursued it forever puts an end to the exercise by a corporation of any of its powers, privileges or franchises and effectually ends the existence of the entity which we call a corporation," etc.
>
> This is entirely apart from the idea of a merger under the 104th and following sections which provide for the procedure whereby the assets, privileges and franchises of the two corporations engaged in a similar business may unite either with one another or both into an entirely new corporation to be organized for that purpose. This operation does not result in the dissolution of either of the old corpora-

> tions, but permits the carrying on of the activities of each of them *in a new form and in union with each other.*"

In reply to the foregoing contentions we quote the language of the United States Supreme Court in *Keokuk, etc., R. Co.* v. *Missouri, supra,* in which the Court undertook to give its reasons for holding that the consolidation effected an *actual* dissolution of the old companies.

> "It is impossible to conceive of a corporation existing without stock, or certificates representing the interests of the corporators in the organization. Now if the act provides that these certificates shall be surrendered and certificates of another company issued in their place, what becomes of the prior companies? Who are their officers? If the stock in the new company is sold, what interest in the prior companies passes by the sale? There can be but one answer to these questions: The property and franchises of the prior companies are gone as much as if they had formally surrendered their charters. The new company may doubtless receive by transmission from its constitutent companies their property, right, privileges and franchises *including any immunty from taxation;* but it receives them as one heir receives the estate of his ancestor or as the grantee receives the estate of his grantor by inheritance, succession or purchase. *The result is not a mere union or partnership of two companies nor the merger of the franchises of one into another but the extinguishment of one and the creation of another in its place.*"

The language above quoted does not sound as though the Supreme Court considered a consolidation as a "notional" or "theoretical" dissolution of the merging company, either for income tax purposes, public utility, regulation, or anything else. No form of expression could have contained a more lucid or forceful exposition of the Court's reasons for holding that a consolidation effected an *actual dissolution.*

As a matter of fact, the so-called "dissolution theory" is the only one compatible with the consolidation statutes. In almost every statute of the kind there is a provision for dissenting stockholders to receive the *actual value* of their stock as determined by *an appraisal of the assets of the corporation.* New Jersey and Pennsylvania appear to be the only States where the appraisal provisions of the consolidation statutes allow the dissenting stockholders the appraised *market value* of their stock instead of the *actual value* as measured by an appraisal of the assets. It is worthy of note, however, that in every case that has arisen in the State of Pennsylvania the Courts have held that the dissenting stockholders should not be limited to a recovery of the *market value* of their stock but that they should be entitled to its *actual value on dissolution.* (*Petry et al.* v. *Hardwood,* 280 Pa. 142; *Lauman* v. *Lebanon Valley R. R. Co.,* 30 Pa. 42; *Barnett* v. *Philadelphia Market Co.,* 218 Pa. 649.)

In the *Barnett* case, which involved a merger and consolidation, the Court referred to the statute as follows (p. 654):

> "It authorizes consolidation but does not take away the right of a stockholder

> to surrender his stock to a new corporation or to take anything less for it than its *actual value*, if his company is to be *practically dissolved* * * *.
>
> It is indisputable that no dividends could be paid on the preferred shares after the merger, and that the assets of the company, so far as those shares are concerned, have passed beyond their or their companies' control. Our conclusion is that the court below was correct in determining that the merger *worked a dissolution as to the preferred stockholders.*
>
> It is our judgment that the appellees are entitled to receive the real, actual value of their shares, and that *market value does not* measure this real, actual value."

Under the New York statute, the appraisal provision allows to dissenting stockholders the *actual value* of their shares and the Courts have universally held that a consolidation effects a dissolution. (*Matter of Clarke,* 131 Misc. 141; *Murrin* v. *Archibald Consolidated Coal Co.,* 232 N. Y. 541; *Matter of Timmis,* 200 N. Y. 177; *Matter of Dronnes,* 187 App. Div. 425; *People* v. *Ballard,* 134 N. Y. 269.)

In the *Clarke* case, the Court said:

> "The further contention that the sale of the assets was not a dissolution of the Van Burean Co. is without merit, for it has been held that *'this is a practical dissolution of the first corporation'.*"

In *Colgate* v. *United States Leather Co., supra,* Vice-Chancellor Emery says:

> "But this right to consolidate, terminat-

> ing as it does, the right to future dividends after consolidation, does not necessarily affect the right to dividends existing at the time of the consolidation, and *it is in reference to accrued unpaid dividends* that the question fairly arises as to whether, *on the termination of the business of the company by the consolidation,* the right to an account for the payment of them is not a *liability* or duty of the existing company," *etc.*

Throughout his opinion, Vice-Chancellor Emery refers to the *termination of the business by the consolidation.* So strong has been the conviction of the Courts that a consolidation effects a dissolution of the consolidating companies, at least as to the dissenting stockholders, that they have held the appraisal provisions not to be an exclusive remedy. In the *Barnett* case, *supra,* the Court said:

> "A dissatisfied stockholder voting against consolidation effected under the Act of 1910, 'may' have his damages ascertained and payment of the same secured in the mode pointed out in that Act, *but this remedy is not his only one.* He may adopt it if he prefers it to that which these appellees adopted; but he is not required to do so. The protection given the stockholder in *Lauman* v. *Lebanon Valley R. R. Co.* is still to be found in Chancery, *assuring him actual payment for his stock,* if he is compelled to part with it, instead of a judgment against the corporation for the value of it, to be collected 'as other judgments are by law recoverable'."

In *Winfree* v. *Riverside Cotton Mills,* 75 S. E. 309, the same question was presented as in the *Barnett* case and the Court said:

> "While this summary remedy (appraisal statute) is given by the statute, and the appellant might have pursued it, he was not bound to do so. Although the consolidating statute took away from him the right to defeat the consolidation by refusing to assent to it, it did not take away from him the right to refuse to surrender his stock for stock in the new corporation, or to refuse to take anything for it less than *its actual value at the date of consolidation.* (*Barnett* v. *Phila. Market Co.,* 218 Pa. 649, 67 Atl. 912; *Colgate* v. *U. S. Leather Co.,* 73 N. J. E. 72, 67 Atl. 657; 5 Thomp. on Corp. Section 6060.)"

In the only decision we have found holding that a consolidation does not effect a dissolution of the merging companies (*Mayfield* v. *Alton Gas Co.,* 198 Ill. 528, 65 N. E. 100) the Court pointed out that the terms of the consolidation were fair and equitable and that the consolidation was "lawful". Let us assume, however, that the Vice-Chancellor was correct in holding that the *idea* of the New Jersey consolidation statute was to permit two or more corporations to *unite* their activities, and that the payment to dissenting stockholders of the market value of their shares proved that a consolidation was not intended to effect a dissolution of the merging companies. What is to be said of the effect of a consolidation which was not *bona fide,* but which was resorted to solely for the purpose of effecting a readjustment of the capital shares of the company on terms that would

rid the corporation of its duties and liabilities under the preferred stockholders' contract? The consolidation statute provides that *all liabilities and duties* shall attach to the new corporation. Where all of the assets of the Central Leather Company were transferred to a new corporation under the guise of a consolidation without perpetuating such liabilities and duties was not such a transfer equivalent to a sale by the company of its assets for which it received in payment cash and took stock in the new company? Was not such a proceeding tantamount to a liquidation and distribution? Where the defendants have resorted to the form of a consolidation as a subterfuge to accomplish a purpose which was not intended by the consolidation statute they should be held to a strict accountability for the legal consequences of their acts.

In Corpus Juris, Vol. 14 A, at page 1063, we find the following:

> "Where a consolidation is effected without authority, or wrongfully, or where under the statutes or other matters constituting his contract with the corporation, it is not binding on a stockholder unless he assents, a dissenting stockholder is entitled to compensation for the actual value of his interest in the constitutent corporations."

Jones v. *Missouri-Edison Elect. Co.,* 233 Fed. 49, 203 Fed. 945, 144 Fed. 765; *Treat* v. *Hubbard-Elliot Copper Co.,* 4 Alaska 497; *Luehrmann* v. *Lincoln Trust Co.,* 192 S. W. 1026; *Owensboro Dep. Bank* v. *Barrett,* 13 S. W. 337, 11 Ky. L. 910; *Lazenby* v. *Int. Cotton Mills,* 174 App. Div.

906; *Matter of Seaech,* 170 App. Div. 686; *Barnett* v. *Phila. Market Co.,* 218 Pa., 649, 67 App. Div. 912; *Petry* v. *Harwood, etc.,* 280 Pa. 142, 124 Atl. 302; *Int. etc., R. Co.* v. *Bremond,* 53 Texas 96; *Winfree* v. *Riverside Cotton Mills,* 113 Va. 717, 75 S. E. 309; *Tanner* v. *Lindell R. Co.,* 180 Mo. 1, 79 S. W. 155; *Lauman* v. *Lebanon Valley R. Co.,* 30 Pa. 42; *Jackson* v. *Gardner etc., Co.,* 200 Fed. 113.

The effect of a consolidation which, by its terms, extinguished the right of the preferred stockholders to ever be paid their accrued dividends, was presented to the highest court of Pennsylvania in 1924 in the case of *Petry et al.* v. *Hardwood Electric Co.,* 280 Pa. 141; 124 Atl. 302 and in a unanimous decision affirming the lower Court, it was held that the consolidation worked a dissolution of the company as to the non-assenting complainants. The Court directed that their contractual rights on dissolution, as fixed by the certificate of incorporation, should be fully enforced. We feel that the striking similarity between the facts in that case and the one at bar justifies our quoting at length from the opinion of the Court. In the first place, the consolidation statute of Pennsylvania, like the consolidation statute of New Jersey, provides, among other things, that stockholders dissenting to a consolidation may apply to the Court for an appraisal of the *market value* of their stock. In the *Petry* case, as in the case at bar, the consolidation agreement provided for the cancellation of accrued and unpaid dividends on the preferred stock of one of the consolidating corporations. Some of the dissenting preferred stockholders instituted suit to enjoin the consolidation or in the alternative to

compel the payment to them of the *actual value* of their stock on dissolution. There was thus presented to the Pennsylvania Court the identical questions at issue here, namely (1) the legal effect of a consolidation that sought to deprive preferred stockholders of their right to accrued dividends, (2) the question of whether or not "under such circumstances" the statutory provision for paying the dissenting stockholders the appraised "market value" of their shares was an exclusive remedy, and (3) the question of whether or not the consolidation worked a dissolution as to the dissenting stockholders within the meaning of their contract with the company as defined in its certificate of incorporation.

A case more on "all fours" with the case at bar would be difficult to imagine. Both because of the decision being a unanimous one of affirmance by the highest court of the State and because of the distinguished counsel who appeared on both sides of the case (George Wharton Pepper and William J. Turner for the defendants and Owen J. Roberts and Robert C. Walker for complainants), we feel that the decision should be given great weight in determining the questions presented in the instant case. For the purpose of more closely following the reasoning of the Court in the *Petry* case, we take the liberty of quoting at length from the opinion of Mr. Justice Schafer. The Court stated the nature of the suit as follows:

> "This is a proceeding in equity by certain of the preferred stockholders of defendant company to enjoin its merger with other companies, or, failing that, to obtain the value of their stock. The court refused to enjoin the merger but determined that

> plaintiffs should be paid the par value of their shares. From the decree entered defendant appeals. In a separate action it was adjudged that plaintiffs were also entitled to payment of accumulated dividends. We dispose of that case in another opinion.
>
> As appellants' counsel say, the whole issue involved is the valuation of the shares of preferred stock owned by stockholders who dissented from the merger. *To decide this issue, it is necessary to first determine the effect of the merger, so far as the preferred stockholders are concerned.* Their position is that as to them it worked a dissolution of the company, and that they are to be paid as they would have been in event of a dissolution, whereas defendant argues that the merger did not work as a dissolution, and that the preferred stockholders are to be paid the *market value* of their shares as provided by the Merger Act of May 3, 1909, P. L. 408, 5 Purdon 5702."

The Court then went on to point out that the market value of the preferred stock had greatly depreciated at the time of the merger by reason of the failure to pay dividends on it for a number of years. The plaintiffs claimed that the failure to pay dividends resulted from the design of those who controlled the common stock with the purpose of ultimately effecting a merger and thereby acquiring the preferred stock at a figure much less than its actual worth. The defendants, on the other hand, contended that the market value of the stock was $20 per share and that on a dissolution its value would not be more than $26.40 per share. After noting these respective contentions, the Court directed attention to the provisions of

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the preferred stockholders' contract, respecting their rights on dissolution, saying:

> "'In case of the dissolution of the company, the preferred stock shall be first paid and redeemed at its par value, in preference to the common stock, out of the property or assets of the company.' We held in *Pardee* v. *The Harwood Electric Co.*, 262 Pa. 68, that this stipulation was a contract between defendant and the holders of its preferred stock. It should be noted that this proceeding is not under the merger act, *but to enforce the contract.*"

The Court referred to the fact that the complainants *were not proceeding under the Merger Act but were bringing their action in equity to enforce the contract.* Justice Schafer then proceeded to consider whether or not the consolidation effected a dissolution within the meaning of the preferred stockholders' contract.

> "Did the merger work a dissolution of the company so far as the preferred stockholders are concerned? That, in the domain of the practical, a dissolution resulted from the merger there can be no doubt; after it was accomplished the defendants' existence ended, so far as being a going, operating entity is concerned; its property and good will passed into the control and ownership of the new corporation and it ceased to do business. The effect was to wipe out the merging companies and fuse them all into the new one created."

The Court called attention to appellants' argument that a dissolution did not take place because

what resulted had "none of the attributes of a dissolution, as there was no liquidation and winding up of the company, no sale, no fund raised, no payment of indebtedness and no surplus for distribution among stockholders." These are identically the same arguments that were advanced by defendants' counsel in the case at bar and were in substance the reasons given by the Vice-Chancellor for his decision. The Court answered them with a quotation from the opinion of Chief Justice Lowrie's in the case of *Lauman* v. *Lebanon Valley R. R. Co.,* 30 Pa. 42, as follows:

> "By such an act the Lebanon Company loses its actual identity, abandons its name and therefore its legal identity and its corporate existence, and can no longer claim any legal recognition. This is called a merger of the Lebanon corporation into the other; *but such a merger is a dissolution,* destroying the actual identity of both, while the legal identity of one of them is preserved, as where a life estate is merged in a fee simple, one being destroyed and the other enlarged by the operation * * * (p. 46). Any stockholder may treat such a matter as equivalent to a dissolution, at least as regards him, and for such a case the law provides a means of securing to him his share of the property, or its value * * * (p. 48). *The contract of consolidation is an act of dissolution in form and substance of the Lebanon Company,* * * * (p. 49). The act of dissolution works a change in the form of the interests of its members, by destroying the stock and substituting the thing which the stock repre-

> sented; that is, a legal interest in the property, and leads the members to such a division of this."

Mr. Justice Schafer then discussed the provision of the Pennsylvania statute which allows dissenting stockholders only the appraised "market value" of their shares. He pointed out that it would be an unjust rule to limit the non-assenting stockholders to a recovery of only the market value of their stock, where the value as measured by assets was much the greater. He said:

> "It would be a very unjust rule, which would limit a non-assenting shareholder's right of recovery to *market value,* where value, as measured by assets, was much the greater. To state the extreme case, if preferred stock had no market value, although on dissolution it was manifest it had an actual value, could that actual value be disregarded and it receive nothing? *So far as appellees are concerned, the result of the merger should be the same as if the assets of the corporation had been sold for cash and not for securities of the merged company.* In *Barnett* v. *Phila. Market Co.,* 218 Pa. 649, while what was discussed was the market value of the shares which did not assent to the merger, it was nowhere said that market value was the only value to be fixed for them."

In the case at bar defendants' counsel argued in the lower court that complainants should not be allowed to recover par and accrued dividends for their stock for the reason that without an *actual sale of the assets for cash,* it would be impossible

to know whether or not the proceeds would be sufficient for such a purpose. In support of this argument counsel cited the opinion of Vice-Chancellor Lane in *Brugler* v. *U. S. Machinery Co.*, 138 Atl. page 774. In answer to this contention we quote further from the decision in the *Petry* case, where Mr. Justice Schafer said:

> "Still another potent reason exists to justify the decree of the court below. A merger could not be made and par and cumulative dividends on the preferred stock not be paid under the contract with the preferred stockholders, unless all the net corporate assets were first applied to the payment of their shares and accrued dividends. If there were not sufficient assets to pay the preferred stockholders par and accrued dividends then, as against the common stockholders, the preferred ones were entitled in the merger to get all of the stock distributable to the defendant company, and the common stockholders would not be entitled to receive any of it. As a matter of fact, the common stockholders received for their stock in the defendant company large holdings of stock in the merged company. They could not justly and equitably deny to the preferred stockholders that which was due to them and at the same time hold on to the stock of the new company which they had received because of their ownership of common stock in the defendant. *It was in effect recognized, by those responsible for the merger, that the assets of the appellant were more than sufficient to pay the preferred stock in full, by reason of the circumstance that they*

allocated shares of the new company to the common stockholders of the defendant.

Were it to be held that market value is the only method by which to measure payment to preferred stockholders in the event of a merger, *then preference shares would be a security with a false label,* as it is manifest that those in control of a corporation can so manage its finances as to cause the market value of preferred stock to bear no relation to its value as measured by the assets of the corporation —could do this by the means pursued here of refusing to pay dividends on the preferred stock, and by putting the earnings of the company, which should go to the preferred stockholders (voiceless in this and in many instances in management), back into the property to increase the value of the common stock.

"Our conclusion is, that the merger worked a dissolution, so far as the preferred stockholders are concerned, and they, therefore, are entitled to receive payment according to the terms of their contract out of the assets of the defendant."

In their brief in the lower Court defendants failed to cite a single case in which a consolidation was not either enjoined or held to be a dissolution where its terms were palpably unfair and inequitable. They referred to the case of *Brugler* v. *U. S. Machinery Co.,* 138 Atl. 774, as holding that a consolidation did not effect a dissolution. In that case Vice-Chancellor Lane said:

"So far as the dissolution rights of the old preferred stockholders are concerned

> there is not the slightest prospect of that contingency ever materializing and there is the further uncertainly as to the value of any of the shares if it does."

We wish to call attention to the fact that in the *Brugler* case the Court pointed out that the terms of the plan were fair and equitable and that under the merger complainants were actually receiving a better class of security than they were surrendering. As the Vice-Chancellor said, they were asked to surrender a 6% preferred stock, that had no preferences on dissolution, in exchange, share for share, for a 6% preferred stock which was entitled to be paid off at par on dissolution before anything could be paid to the common stock. The Court said:

> "He is offered in exchange for this preferred stock, preferred stock of the corporation, that is in reality a preferred stock ahead of all common stock and he is entitled to receive his dividends of 6%, and in case of dissolution his par of $25 plus $10."

In *Bealing* v. *Am. Tobacco Co.*, 72 N. J. E. 32, we find another case where complainants received more in the consolidation than they were required to surrender. Under the terms of the merger and agreement the preferred stockholders (complainants) received in place of their 8% preferred stock, 6% bonds maturing in 1940 in the proportion of $13,333 of face value of bonds to $10,000 of face value of stock, so that complainants would have precisely the same income that they would have had on their preferred stock, together with one-third more than the face value of their pre-

ferred stock investment. What a contrast between the terms and conditions of that consolidation and the one in the case at bar! In short, all of the cases discussed by defendants' counsel had to do with *bona fide* consolidations within the meaning and intent of the statute.

Attached to defendants' brief in the lower Court was a copy of the memorandum opinion of Judge Ackerson in the *"Matter of the Application of Horace G. Prall et al.;* stockholders of the Central Leather Company, *etc.,* for the appointment of appraisers to appraise the full market value of their stock." That was a proceeding growing out of the consolidation under consideration in the case at bar. It was instituted by a number of dissenting stockholders who sought to have the value of their stock appraised *under the consolidation statute.* They urged upon the Court that they were entitled to have their stock appraised at its value on dissolution, namely, par and accrued dividends. The appraisers allowed the petitioners only the "market value" of the stock on the date of the consolidation, to wit, $71 per share. In sustaining the award of the appraisers, Judge Ackerson held that the provisions of Section 108 A of the General Corporation Act, allowing dissenting stockholders only the appraised "market value" of their stock proved that the Legislature did not intend that they should receive the same value on a consolidation as they would have gotten on dissolution.

In that case, however, Judge Ackerson did not have an opportunity to consider whether or not the terms of the consolidation were unfair or inequitable, for, as he pointed out, the petitioners themselves invoked the appraisal statute and con-

sequently bound themselves by its provisions. He said:

> *"Inasmuch as these petitioners themselves applied for the appointment of the appraisers in this case* they certainly must be bound by the contractual obligations arising out of the provisions of the aforesaid section of the statute."

Complainants in the case at bar refrained from proceeding under the appraisal statute for the very reason that they did not believe it was intended to apply where the consolidation was, in its essence, a scheme for the reorganization of the capital structure of the Central Leather Company on terms that could not be made binding on any stockholder without his consent.

The Vice-Chancellor, in deciding that the consolidation did not work a dissolution, relied upon the opinion of Chief Justice Gunmere in *Riker & Sons Co.* v. *United Drug Co.,* 79 N. J. E. 580. But there again was a case in which there was no attempt to do anything unfair or inequitable and if we are correct in our understanding of that decision, the Chief Justice expressly undertook to look through the "form" to the "substance" of the plan of consolidation. He considered, as he said, the "prime purpose" of the scheme and found that the *intention* was *not to effect a reorganization* of the New Jersey corporation, but to continue it in the same form under a different name and by a Massachusetts corporation. He said:

> "The scheme *in its essence,* whatever it may be in form, *is not a plan for the reorganization* of the New Jersey company, *etc.*"

From this language it would seem that the Court was concerned solely, with the *essence* of the transaction and not with its *form*. It is not unreasonable to assume that had the Chief Justice found that the scheme in the *Riker* case was in its essence not such a consolidation as is contemplated by the statute, but in reality a plan to divest stockholders of their legal rights without their consent, he would have held it to be, in effect, a dissolution as to non-assenting stockholders. In the instant case, it is because the essence of the merger agreement *was to effect* a reorganization of the capital structure of the Central Leather Company so as to destroy the preferred stockholders' vested rights—and was a consolidation in form only—that we contend its effect on the non-assenting stockholders was a dissolution.

Defendants' counsel have sought to distinguish the case at bar from the *Petry* case, *supra,* and the *Missouri Edison Electric Co.* case on the ground that the consolidations attempted in the latter cases were fraudulent. We do not see a very great distinction between a consolidation which is an out and out fraudulent scheme and a consolidation which is resorted to as a manifest subterfuge to divest the non-assenting stockholders of their property right. In *Jones* v. *Missouri Edison Electric Co.,* 144 Fed. 765, the Court in speaking of the effect of the fraudulent consolidation of that company said:

> "*Its dissolution was wrought by the transfer,* by means of the contract and act of consolidation, of its franchises, powers and property to the new corporation."

POINT VIII.

Complainants' contract can be enforced as on a dissolution without disturbing the legal status of the consolidated company.

In their brief filed with the Vice-Chancellor defendants' counsel advanced a number of technical objections to the granting of the alternative relief prayed for in the bill. These objections, we believe, are more theoretical than practical. Before discussing the question of *laches,* which we will return to later, we will refer briefly to the various objections raised as to the *form* of the relief sought by the complainants. First they say that complainants' right to specific performance of their contract is, in effect, unilateral. Strictly speaking, this is not so, for on a dissolution of the company whether statutory or otherwise, in an action for specific performance complainants could have been compelled to surrender their certificates upon receiving payment of their share in the assets of the company. A further objection is that the contract of complainants is too uncertain and indefinite to warrant specific performance. In support of this contention counsel argue that dividends on the preferred stock were payable only "within the discretion of the directors" and that the preferred stock contract merely fixes the right of the preferred and common stockholders as between themselves in respect to any distribution of capital or earnings made by the corporation. The answer to this objection seems very simple to us. Obviously, if the Central Leather Company were deemed to be still in existence, *so that the contract of the preferred stock-*

holders remained unimpaired, there would be no right to sue for dividends until they had been declared by the directors. But, where the existence of the corporation has terminated and the contract of the non-assenting stockholders has been *extinguished,* their right to sue for principal and accrued dividends arises under the contract in the same manner as it would upon a dissolution. Still another objection advanced by the defendants' counsel is that specific performance would be difficult of enforcement because if the complainants are not bound by the consolidation and are entitled to the performance of their preferred stock contract, as if no consolidation had taken place, their rights to dividends are necessarily restricted by the existence of the deficit of the Central Leather Company. This objection might be a valid one if complainants were seeking to treat the consolidation merely *as if it had not taken place,* but such is not the case. On the contrary, complainants' contention is that the transfer of all of its assets by the Central Leather Company, where the consolidation was not a *bona fide* one within the purview of the statute, had the effect of a practical dissolution of the company so far as they were concerned. It is upon that basis and no other, that they seek to enforce their rights on dissolution both as to principal and accrued dividends. Finally defendants' counsel argues that a court of equity has no power to grant any relief based upon the proposition that the consolidation was illegal or void. In support of this contention they argue that the legality of the existence of the consolidated corporation can only be inquired into in *quo warranto* proceedings in the Supreme Court. But complainants, in this suit, are not *attacking the existence* of the consolidated corporation. The purpose of the

suit is to compel the new corporation to reconvey to the Central Leather Company the assets received by it pursuant to the consolidation agreement or in the alternative to pay to complainants the actual value of their shares on dissolution in accordance with the terms of their contract. The bill does not seek a *dissolution* of the *consolidated company,* nor in any way to nullify its charter. Its legal existence is one thing, but its equitable right to retain the possession of assets wrongfully transferred by the Central Leather Company is a very different matter. Since when has a court of equity lost the power to inquire into the legality of a transfer of property or to impose the terms upon which it may be sanctioned? In *Jones* v. *Missouri Edison Electric Co.*, 144 Fed. 765, the Court said:

> "The purpose of the bill is not the ouster of that corporation (consolidated company) but the restoration to the holders of the minority stock of the Edison Company of their shares of the property of that company, or its value. The prayer of the bill is not that the consolidated company be dissolved or deprived of its franchises and powers. * * * The end is the restoration to the minority stockholders of the Edison Company of their shares of the property of the latter corporation."

In further discussing the effect of the consolidation in the *Edison Company* case, the Court said:

> "The truth is, however, that the Edison Company was not so irrevocably dissolved that its rehabilitation is beyond the power of a Court of Chancery. Its dissolution was wrought by the transfer by means of

> the contract and act of consolidation of its franchises, powers and property to the new corporation. That transfer, that act, and that contract were voidable at the suit of a minority stockholder. A Court of Equity has plenary power to set them all aside and to restore to the Edison Company all its franchises, powers and property, if action so drastic becomes necessary in order to secure to them adequate relief."

In that case the Court undertook to state the character of the decree that a court of equity might make under the circumstances:

> "It may grant a decree *nise*, a decree that all its property, powers and franchises be restored to the Edison Company unless within a time certain, the defendants pay to the complainants and those who join him, the value of their share of the property transferred to the consolidated company."

But in the last analysis the practical answer to all of the foregoing objections is to be found in the *Petry* case *itself*, where the Court, in finding that the consolidation was unfair and effected a dissolution of the corporation as to non-assenting stockholders, decreed that they should be paid, out of the assets of the company, the par value of their shares and accrued dividends. No "form of decree" could be simpler or less complicated than that.

(A) *Laches.*

As we have pointed out before, the bill, as originally filed, did not contain any prayer for alternative relief. It sought only to compel a restoration of its assets to the Central Leather

Company and to enjoin the defendants from doing any acts or things pursuant to the consolidation agreement. This bill was filed on July 20, 1927, *less than thirty days* after the consolidation agreement was adopted at the stockholders' meeting. Ordinarily, we submit, such a period of time would not be considered fatal to the relief sought. When the matter came on for a preliminary hearing the defendants filed voluminous affidavits showing the progress that had been made within those thirty days in carrying out the terms of the consolidation agreement. To say the least, defendants lost no time in putting the consolidation into operation. The agreement was filed, as we have pointed out, within twenty-four hours after the stockholders' meeting, and within a comparatively few days the defendants had listed the voting trust certificates for the securities of the new company on the New York Stock Exchange with the result that they were traded in freely and actively by the public. It was further shown that during this period the corporation had incurred expenses in carrying out the consolidation and had distributed to the old preferred stockholders a little over a million dollars as consideration for the surrender of their old preferred stock for the new securities, which amounted to $5 in cash for each share so surrendered. Upon this showing the Vice-Chancellor found that complainants were guilty of laches in not having made an earlier application for the injunction. The Vice-Chancellor found that the terms of the consolidation agreement were *fair* and *equitable*. We assume that he must have meant as a *business proposition* for in the same opinion he expresses grave doubts as to the *legality* of the terms of the consolidation. On this point he said (Op., p. 244, fol. 20):

"It is impossible for me to enter into an

extensive examination of the question of the legality of the attacked procedure because of lack of time, if this matter is to be decided before a failure to decide will amount to an injustice. *My first impression is, that the underlying rational of Day* v. *U. S. Cast Iron Pipe & Foundry Co.,* 96 N. J. E. 736, *is applicable.* There the situation presented was the payment of dividends on the common stock out of a working capital reserve, earned during years when the dividend was passed on non-cumulative preferred stock. The case *sub judice* does not present that precise question, but it does involve the right to adopt a policy over the objection of any of the preferred stockholders *whereby the holders of the common stock may be permitted to share in the earnings of the company without a literal enforcement of the rights of such preferred stockholders as those rights were fixed at the time of the creation of the company.* Any vigilant *bona fide* holder of a single share of such preferred stock, who is not in default himself, ought to secure the aid of this court to prevent any such interference with his contract rights. *Chicago City Ry.* v. *Allerton,* 18 Wall. 233. Vice-Chancellor Emory's opinion in the *Colgate* v. *U. S. Leather Co.,* 73 N. J. E. 72, strongly supports this view, and the pertinent part thereof was not criticized by the Court of Errors and Appeals in reversing on other grounds in 75 N. J. E. 229."

Apparently it was because of this doubt in the Vice-Chancellor's mind as to the legality of the terms that he felt it incumbent upon him, in deny-

ing the injunction upon the ground of laches, to explain his position a little more fully. He pointed out that, as a result of complainants' delay in filing the bill, *the rights of innocent third parties had intervened* and that to enjoin the consolidation would work a great injustice as to them.

> "Sight has not been lost of the limitation upon the effect of an unexecuted delay by the *actor*, where he enters equity to preserve a strict *legal* right. Prof. Pomeroy says that the preponderance of authority favors this exception to the doctrine. Pom. Eq. Jurisp., Sec. 1445 (4th Ed.). *If this were a matter solely between the complainants and the defendants, much might be said for it.* But what is to be said as to the effect upon third parties in nearly all parts of the civilized world who are, and have been, investing innocently in certificates brought into being as the result of the merger that is now attacked? Compliance with the prayer of the complainants would deny to them the receipt of the dividends upon which they have a right to count and would seriously diminish the benefits of their investments (or completely destroy them), all without any fault upon their part. In these circumstances, and considering the hardship upon the defendants and their shareholders, it seems to me that the Chancellor should pause before disturbing an accomplished status, with a result so far-reaching and injurious" (Op., p. 246 f. 30).

If the Court can grant the alternative relief without disturbing the "accomplished status" of

the consolidation and without affecting the rights of innocent third parties who have invested in the securities of the new corporation, then defendants should not be permitted to interpose a defense of laches. Defendants assert that the plan for the reorganization of the capital structure of the Central Leather Company was worked out without any *malevolent intent* on the part of its officers and directors and that the consolidation was carried out in *good faith.* But however much this point may be urged, the ultimate facts speak for themselves, namely, that the consolidation was resorted to in order to secure benefits for the common stockholders at the expense of the preferred stockholders' contractual rights, and that the officers and directors were put on notice of that fact not only by the protest of the dissenting stockholders, but by the very terms of the agreement itself. It was therefore, with full knowledge, and in *deliberate disregard,* of the vested rights of the non-assenting stockholders that the officers and directors filed the consolidation agreement.

In *Lazear* v. *American Steel Foundries, supra,* which defendants have so much relied upon as authority for the legality of their actions, there existed an entirely different state of facts. In that case the officers and directors did not resort to the subterfuge of a consolidation, but openly proposed the plan of reorganization, claiming it was necessary for the purpose of raising additional funds to carry on the business. It is true that the plan provided for the elimination of accrued dividends, but the officers and directors did not attempt to file the amended charter until after the plan had been adopted *without a single dissenting vote.* Under such circumstances the directors and officers were warranted in proceeding

upon the assumption that the consent to the plan was *unanimous.* Even then the officers of the company waited for a period of some seventeen days before they filed the amended certificate. It was because of these facts that the Court held that the complainants had acquiesced and that they were barred by laches from seeking the aid of a court of equity after a lapse of *three years.* The Court said that it had not the power to reinstate the preferred stock (which would have been necessary to grant the particular relief sought) because such stock had been extinguished by the filing of the amended certificate. That decision was not equivalent to holding that the Court would have had no power to adjudicate that the filing of the amended certificate effected a dissolution, had the facts been similar to the case at bar. In other words, the complainants, by reason of their *acquiescence,* were held to have consented to the plan and consequently the question of a dissolution was not raised nor would it have been considered by the Court.

The rule in equity, applicable to the case at bar, is well stated in the following language from Corpus Juris, Vol. 21, page 230:

> "The doctrine of *laches* does not apply where defendant has acted in open and known hostility to plaintiff's rights and has been misled by no apparent acquiescence on plaintiff's part.
>
> When a hostile attitude is thus taken the challenged party may justly be expected, and reasonably be allowed, to be wary and deliberate in choosing his time and opportunity for attack. The law does not demand the utmost exertion of diligence in repelling

a hostile invasion of one's rights *deliberately undertaken with full knowledge of all the facts.*"

The memorandum opinion of Justice Garrison in the *Lazear* case, concurred in by Justices Parker, Wright and Gardner, is very pertinent to the question of laches in the case at bar. He said:

"I must dissent from the proposition that a preferred stockholder forfeits his right to dividends by his failure to surrender up his contract as a creditor of the common stockholder and become one of such debtor class. That is what the scheme in the present case amounts to. That such a change must be the voluntary act of each preferred stockholder deciding for himself is perfectly clear. The Vice Chancellor did not decide that such an exchange was or could be compulsory: this court has not so decided and *it is safe to assume that no court acting under our constitution and statutory provision will ever so decide.*

If the act of the preferred stockholder was purely voluntary, the doctrine of *laches* has no application. *Where there is no obligation to perform an act there is no right to penalize for its non-performance.*

As to *laches,* that is out of the question, unless and until the court that applies such doctrine first decides that a creditor of the corporation can be compelled *in invitum* to become a common stockholder *by the action of a sufficient number of such fellow creditors. To point out that such a doctrine receives no support from the decision of the present case, is the real object of this memorandum.*"

In the case at bar the three-fourths share of Class "A" stock of the consolidated company, offered in exchange for complainants' preferred stock, has no preference on liquidation or dissolution over the common stock and the opinion of Judge Garrison is applicable in that respect as well as on the point of laches.

POINT IX.

Complainants are entitled to relief in equity.

Defendants' counsel has endeavored to make it appear that in the present suit complainants are trying to procure an inequitable advantage over their fellow stockholders. It is claimed that they purposely "stood by" to escape the burden of the sacrifices made by other stockholders and now seek to profit by their mere "non-acquiescence". It is said that the result of granting the alternative relief would be to give them advantages they would not have had if there had been no consolidation. Finally, it is urged that complainants ask for a harsh preference over their fellow stockholders.

In the first place, the attitude of complainants was not mere "non-acquiescence", for they actively protested and voted against the consolidation. In the second place, so far as the common stockholders are concerned, they have been very successful in securing for themselves, through the consolidation, substantial advantages to which they were not entitled under their contract, and they should be the last ones to charge complainants with seeking an unfair advantage. As for

the preferred stockholders who were influenced by considerations of expediency or otherwise to convert their stock into the securities of the new company, it may be said that they have gotten what they were ready and willing to accept. In making the conversion they were presumably actuated by considerations which were personal to themselves. Many of them may have bought their old preferred stock at very low prices and to them the consolidation may have netted handsome profits. Others, owning small blocks of stock, may have found it more convenient and less expensive to accept the terms of the consolidation than to engage in any protracted litigation over the matter. Where the situation of no two stockholders is alike, there is no logical basis for arguing that the voluntary action of one should be compulsory upon another. The complainants, Mabel B. and Frances T. Ingraham, owned between them over a quarter of a million dollars (par value) of the old preferred stock upon which they had been compelled to forego any return for a number of years.

The General Corporation Act of New Jersey provides for the funding or satisfying of any arrears in dividends by the issuance of stock therefor or otherwise (Section 27). But in the instant case the common stockholders did not propose to do this and complainants were offered no alternative to a complete surrender of their rights to accrued dividends without any compensation. They were even to receive no distribution of their *pro rata* share in the surplus created by the reduction of their capital stock in the company. If, in refusing such a proposition, they have resorted to the only course open to them, namely, to seek the strict enforcement of their

contractual rights, is there anything unfair or inequitable in that? The situation has been created by the defendants and by their conduct they have themselves invited the suit.

There is an aspect of this case which transcends in importance even the interests of the respective parties. If it were held that accrued dividends could be taken away from preferred stockholders without their consent, then there is no such thing as a "cumulative" preferred stock. The public, who are annually solicited to invest their funds in this type of security, would be grossly deceived as it would mean that a preferred stock is "preferred" in name only.

Defendants' counsel stated in their brief before the lower Court that it was indeed strange that the theory of a dissolution resulting from the illegal destruction of the preferred stockholders' property rights had not been advanced before in any of the many cases which had come before the courts of New Jersey. This statement is not wholly accurate because that very contention was made by counsel for complainants in the *Colgate* case. We venture to say that one reason why it has not been more frequently advanced is that it would be difficult, if not impossible, to find in the reports a case of a corporate reorganization or consolidation on terms as drastic as those imposed in the case at bar.

POINT X.

The decree appealed from should be reversed with costs to the complainants and the relief prayed for in the original bill should be granted: or if the Court should deem that such relief would be too drastic or result in an injustice to innocent third parties, then, in the alternative the Court should direct that the defendant the United States Leather Company pay to the complainants, out of the assets received by it from the Central Leather Company pursuant to the consolidation, the actual value of their shares on dissolution to-wit, par and accrued dividends with interest thereon from the 22nd day of June, 1927.

Respectfully submitted,

SMITH & SLINGERLAND,
Solicitors for and of Counsel with Complainants.

WHITE & SIMMS
(New York).

CHARLES HALLETT WHITE,
Of Counsel.

MAY.1.1930

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New Jersey Court of Errors and Appeals.

BETWEEN
JOHN WINDHURST, MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,
Complainants,

MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,
Complainants-Appellants,

VS.

CENTRAL LEATHER COMPANY *et al.,*
Defendants-Respondents.

On Bill, etc.

On Appeal from The Court of Chancery.

APPELLANTS' REPLY BRIEF.

As to the Complainant Windhurst.

(Defendants' Brief, p. 2.)

Mr. Windhurst is not a party to the present appeal and we believe the allusion to the Vice-Chancellor's characterization of him as a "privateer" is irrelevant, unless it be intended thereby to create in the mind of the Court some doubt as to the good faith of the appellants in this case. To dispel any such idea the Vice-Chancellor, while saying that he believed Windhurst had bought his stock in order to bring suit, hastened to add "that apparently is not so in the case of the other complainants" (C., p. 248, fol. 30). We

feel that this reference to Windhurst is an unfortunate one inasmuch as it does not go to the merits of the present controversy.

I.

Defendants are mistaken as to the real issue.

(Defendants' Brief, pp. 3, 26 and 39.)

The important issue in this case is not the fairness or unfairness of the consolidation agreement as a business proposition nor is it the question of whether or not a *bona fide* consolidation under the Statute effects a dissolution of the consolidating companies—it is whether or not a corporation may, through the medium of a consolidation or otherwise, legally defeat the right of any preferred stockholder to have the future earnings of the company applied to the payment of accrued dividends before any distribution is made to the common stockholders. In other words the question is one of the *legality* of any reorganization or consolidation which attempts to affect such an object.

On page 3 of defendant's brief it is stated that complainants' bill is

> "* * * a bill substantially for the specific performance of the preferred stock clause of the Central Leather Company, on the theory that the consolidation was such an impairment of their contractual rights as to be null and void as to them and at the same time asking for relief based upon the

> wholly inconsistent theory that the consolidation, although inoperative, null and void, nevertheless worked a dissolution of the Central Leather Company * * * etc."

The foregoing is not a correct statement of complainants' contention. It is not the alleged consolidation—for there was no *bona fide* consolidation within the purview of the statute—but the act of transferring the assets, properties and franchises of the Central Leather Company to a new corporation so as to rid that company of its duties and contractual liabilities to non-assenting preferred stockholders that, it is claimed, worked a practical dissolution of the company as to them. Defendants have made the same mistake elsewhere when, after discussing the decision of *Lazear* v. *American Steel Foundries,* 86 N. J. E. 21, they state on page 26 of their brief:

> "If the contentions of the appellants in this case are maintained, they alone constitute a separate class of stockholders."

So far from making any such contention complainants base their argument that the transfer effected a dissolution because as a result thereof their preferred stock contract was *extinguished* in substance as well as in form. And so again the same misconception of complainants' case is to be found on page 39 of the defendants' brief, where it is said:

> "The appellants' case must rest upon the proposition that the consolidation is void as to them. If so, *they must be regarded as holders of a stock* in a company with a large deficit which can pay no dividends."

The foregoing statement begs the question, for defendants assume that the transfer effected a *bona fide* consolidation, when as a matter of fact that is a very real issue in the case. Complainants do not contend that they are stockholders in a *defunct* corporation nor do they seek to enforce their rights upon any such theory. However much the defendants have endeavored to obscure this point the distinction seems to us to be very clear.

II.

As to the defendants' claim that the consolidation agreement was fair and equitable.

(Defendants' Brief Point III, pp. 32 *et seq.*)

As we have already pointed out, this is not the paramount issue before the Court on this appeal. If the complainants have any vested right to the ultimate payment of their accrued dividends, and if, so long as the company is in existence, they are entitled to have all future earnings first applied to the payment of them, may such legal rights be taken away from them without their consent upon the gratuitous assumption of their fellow stockholders that it is to their best interest? On page 34 of their brief, defendants say *"The views of the overwhelming majority of stockholders are not to be lightly disregarded"*, quoting excerpts to that effect from the opinions of the Court in the *Brugler* and *Bingham* cases. But the distinction which defendants refuse to see is that in the cases they mention the sole issue before the Court was the question

of *fairness*—not the question of invading the *legal rights* of the complainants. This important distinction is clearly drawn by Vice-Chancellor Bentley in the case of *Lonsdale* v. *International Mercantile Marine Co., supra.* In that case it appeared that approximately 99% of the preferred stockholders had agreed to forego their rights to accrued dividends, and in enjoining the consolidation the Court said:

> "It has been urged that a proper spirit would cause these complainants to relinquish *their strict legal rights* in the common interest of the corporation and the other stockholders. Such an argument might well be addressed to the complainants by their fellow stockholders but cannot be adopted by the court. It is trite to say that one may be generous with his own property but it is scarcely generosity to deal lavishly with that of another."

In their brief defendants have said everything that could possibly be said for the fairness of the consolidation agreement and yet their arguments are not convincing. It is admitted in their brief that the plan for the reorganization of the share capital of the Central Leather Company had its inception in an attempt to devise some means of resuming dividends on the preferred stock (Defendants' Brief, p. 10). It is further admitted by the defendants that the only obstacle to a resumption of such payments was the capital deficit of Seventeen million ($17,000,000) Dollars. It is elementary that the rule of law prohibiting the payment of dividends where there is a capital deficit is solely to protect the creditors of a corporation. In the instant case, however, no interest

of the creditors was at stake, for as was pointed out in our main brief (p. 18), the Central Leather Company at the time of the alleged consolidation had an excess of assets over all liabilities to the extent of *Fifty-three million ($53,000,000) Dollars.* Furthermore, at that time, as appears from the consolidated balance sheet of June 22, 1927 (C., p. 365), the Central Leather Company had over One million six hundred thousand ($1,600,000) Dollars cash on hand and Seven million five hundred thousand ($7,500,000) Dollars *out on call loans* (*id.*). The total current liabilities amounted to only a little over Two million ($2,000,000) Dollars (C., p. 366). If, therefore, the only obstacle to the resumption of dividend payments was a capital deficit of Seventeen million ($17,000,000) Dollars, no attempt is made to explain in the defendants' brief why, in order to absorb such impairment, *it was necessary* to reduce the capital stock approximately *Forty-five million ($45,000,000) Dollars.* Moreover, it is not explained why, if the company could no longer earn a fair return on its original capital, the surplus resulting from such a tremendous reduction of capital should not have been distributed to the preferred stockholders as a *liquidating dividend.* If such a large capital was no longer necessary for the purpose of its business, and could not be profitably employed, what justification was there for withholding such funds from the stockholders whose capital was being reduced? We find absolutely no explanation in defendants' brief. They appear to rely upon the oft-repeated claim that there was *no fraud on the part of directors,* and no attempt to enrich one class of stockholders at the expense of the other!

In conclusion, on the point of fairness, we wish to call attention to the fact that under the terms

of the consolidation agreement the common stockholders exchanged their stock *share for share* into the common stock of the new corporation. As we pointed out in our main brief the preferred stockholders were not only required to sacrifice accrued dividends but also to consent to the payment of their future dividends out of capital. Sections 27 and 29 of the General Corporation Act provide a precise method by which the capital structure of a corporation may be changed or altered either by decreasing or increasing its capital stock or by changing the par value of any class or classes of its shares. The defendants have nowhere in their brief attempted to explain why, in view of the provisions of the foregoing sections, resort was had to the *form of a consolidation* to effect these objects. The consolidation of the Central Leather Company, an Eighty million ($80,000,000) Dollar corporation with its wholly owned subsidiary having a nominal capitalization of only One hundred thousand ($100,000) Dollars suggests the possibility that defendants had in mind either compelling the stockholders to convert their shares into the shares of the new corporation, or, in the alternative, compelling dissenting stockholders to take the *market value* for their shares in derogation of their contract rights.

III.

As to the defendants' contention that accrued dividends do not constitute a vested right unless there is a surplus.

(Defendants' Brief, Point III, pp. 15 *et seq.*)

This contention is not even indirectly supported by any case cited in the defendants' brief, nor was

it even upheld in the opinion of Vice-Chancellor Bentley in the lower Court. We call attention to the fact that the Vice-Chancellor in his first opinion found:

> "That the underlying rationale of *Day* v. *U. S. Cast Iron Pipe & Foundry Co.*, 96 N. J. E. 736, is applicable. * * * The case *sub judice* does not present that precise question but it does involve the right to adopt a policy over the objection of any of the preferred stockholders whereby the holders of the common stock may be permitted to share in the earnings of the company without a literal enforcement of the rights of such preferred stockholders if those rights were fixed at the time of the creation of the company. Any vigilant *bona fide* holder of a single share of such preferred stock, who is not in default himself, *ought to secure the aid of this court to prevent any such interference with his contract rights*" (C., p. 244, fol. 20).

In our main brief we have pointed out that whereas this Court has never passed directly upon the nature of the right to accrued dividends, nevertheless in New York, Delaware, Pennsylvania and other states the courts have uniformly held that such right was a *vested property right.* When we read the language of the preferred stockholders' contract, we cannot escape the conclusion that the *right* to the dividend accrues with a mere passing of time, and that it is only the *payment* that is deferred, either pending the earning of sufficient net profits or the dissolution and winding up of the company. In other words, the right to have the earnings of the company first applied

to the payment of accrued dividends is a vested one so long as the company remains in existence and the satisfaction of the right is mandatory upon the dissolution or winding up of the business. To place any other construction upon the preferred stockholders' contract would be to nullify its provisions.

IV.

As to the defendants' contention that the consolidation agreement in the instant case did not effect a dissolution of the Central Leather Company.

(Defendants' Brief, Point V, pp. 40 *et seq.*)

In support of this contention defendants argue under Point V, that the General Corporation Act makes a separate and distinct provision for the dissolution or winding up of a corporation and for its merger or consolidation with another company. They point to the fact that in the consolidation provision of the statute no mention is made of the word "dissolution" and that on the other hand there is no mention of the word "merger" or "consolidation" in the provision of the act relating to dissolution. This would seem to us to be a very fine distinction, made possible by the use of descriptive words as "labels". Defendants argue that upon dissolution the power to continue business is lost but that on a consolidation it passes to the new company. In our main brief we have dwelt at great length upon the argument that the new corporation comes into existence by virtue of a grant from the State and not through any process of transmission from the former corporation.

However that may be, we are concerned here principally with the "substance" of the matter rather than with metaphysical refinements.

Defendants rely on the case of *Riker & Son* v. *United Drug Co.*, 79 N. J. E. 580, as authority for the proposition that a consolidation does not of itself effect a dissolution under the General Corporation Act. As we pointed out in our main brief that, in coming to such a conclusion, Chief Justice Gummere looked through the *form* of the scheme to its *essence* and found that there was no attempt to affect a reorganization of the company, so that there could be no resulting dissolution. In the *Brugler* case referred to by defendants on page 42 of their brief, no question was raised as to the merger affecting a practical dissolution of the defendant company and the only question at issue was the *fairness* of the plan. There it will be remembered the preferred stockholders were given the full equivalent of their shares in the old corporation and there was no attempt to extinguish any *vested legal rights.* The same may be said of *Beling* v. *American Tobacco Co.*, 72 N. J. E. 32, where the preferred stockholders were given $13,333 par value of 6% bonds for every $10,000 par value of 8% preferred stock. The question in that case was the fairness of the plan rather than its *legality.* It is of interest to note, however, that in the *Beling* case as well as in the *Dana* case (72 N. J. E. 44) Vice-Chancellor Pitney advised a decree providing that the defendant American Tobacco Co. pay to the complainants, such a sum of money as might be ascertained by the Court to represent the proportionate share of the assets of the original American Tobacco Co. to which the complainants would have been entitled as the

owners of its preferred stock if the company were dissolved and its assets liquidated.

(A)

Prall v. *United States Leather Co.* (7 A. R. 873, 6 Misc. 967).

In the defendants' brief we find frequent discussion of this case wherein it is made to appear, if not directly, at least inferentially, that this Court has already passed upon the question of a dissolution in the present case. We wish to point out that such is not the fact. The *Prall* case involved the appraisal proceedings instituted by other dissenting preferred stockholders of the Central Leather Company under Section 108A of the General Corporation Act. That section provides in substance that upon a consolidation any dissenting stockholder *may* within thirty days apply to the Court for the appointment of appraisers,

> "* * * to appraise the *full market value* of his stock without regard to any depreciation or appreciation thereof in consequence of the said consolidation."

It was pursuant to this section of the consolidation statute that the petitioners, Prall and others, applied to the Court for the appraisal of their stock and it was duly found that the *market value* of the stock on the date of the consolidation was $71 a share. The petitioners strenuously urged that the statute did not confine them to the market value but that they were entitled to the value of their shares as upon a dissolution. In reviewing the finding of the appraisers, Judge Ackerson pointed out that the statutory provision for the

appraisal of the *market value* of the shares of dissenting stockholders precluded the idea that they were entitled to the value of their share as upon a dissolution. He said, however, that the Court could not consider the question of whether or not the consolidation actually affected a dissolution as to the petitioners for the reason that the latter had themselves invoked the appraisal provision of the statute and were consequently bound by it. The subsequent appeals merely affirmed the finding of the appraisers that the language of the statute "full market value" was intended to mean just what it said. It is of importance to note that in the case of *Petry* v. *Harwood,* 280 Pa. 142, 124 Atl. 302, upon the reasoning of which the complainants particularly rely, the Pennsylvania Supreme Court made specific reference in its opinion to the fact that the complainants in that case were not proceeding under the appraisal provision of the consolidation statute (the same in Pennsylvania as in New Jersey) and held in effect that they were not bound to do so where the consolidation attempted to deprive them of their vested property right.

(B)

Petry v. *Harwood,* 280 Pa. 142, 124 Atl. 302, 33 A. L. R. 1249.

This case is discussed under Point V of the defendants' brief beginning at page 54 and continuing to page 60 inclusive. On page 54 we find this admission:

> "It cannot be denied that the court upon the facts in that case (*Petry* case) ruled that 'in the domain of the practical a disso-

> lution resulted from the merger' and that 'the merger worked a dissolution so far as the preferred stockholders are concerned'."

From this point on the defendants' brief undertakes to distinguish the *Petry* case from the case at bar solely upon the theory, as we see it, that in the *Petry* case the only issue before the Court was the *value* of the preferred stock owned by the complainants. In this connection it is argued that the Court was influenced to disregard the provisions of the consolidation statute fixing the "fair market value" for dissenting stockholders, because it was found that a substantial amount of money, which should have been devoted to the payment of preferred dividends, had been diverted to other purposes and that this had resulted in an over-valuation of the assets for the benefit of the common stockholders (Defendants' Brief, pp. 55, 56). Defendants have endeavored to make it appear that this was the *sole ground* of the Court's decision. On page 58 of the defendants' brief we find this statement:

> "In the brief on behalf of the company (Harwood Electric Co.) upon its appeal, counsel consistent with the averments in the answer already referred to, state:
>
> > 'The whole issue involved in this appeal is the valuation of the shares of the preferred stock of the Harwood Electric Co. owned by stockholders who dissented from the consolidation and merger of that company with others in 1920, to form the Pennsylvania Power and Light Co.'
>
> The Supreme Court of Pennsylvania referred to this statement in its opinion

> agreeing that 'the whole issue involved is the valuation of the shares of preferred stock owned by stockholders who dissented from the merger' " (p. 302).

This limited or partial analysis of the *Petry* case is, to say the least, very misleading. While it is perfectly true that before the trial Court a great deal of testimony was taken as to the actual value of assets of the Harwood Electric Co., when the case came before the Supreme Court the issue of value was not controlling for the Court was influenced to make its decision on the theory that a dissolution had resulted by the merger. As we have pointed out in our main brief at page 71, the Court said:

> "As appellants' counsel say, the whole issue involved is the valuation of the shares of preferred stock owned by stockholders who dissented from the merger. *To decide this issue, it is necessary to first determine the effect of the merger, so far as the preferred stockholders are concerned.*"

The Court took particular care to say that the appellants contended that the merger worked a dissolution of the company *while the defendants argued that the merger did not work a dissolution* and that the preferred stockholders were to be paid only the market value of their shares as provided by the merger act. At page 75 of our main brief we have quoted at great length from the opinion of Mr. Justice Schafer, holding that *the very fact of the common stockholders' receiving securities of the new corporation, of itself, entitled the preferred stockholders to be paid par*

and accrued dividends for their shares, for he said:

> "It was in effect recognized, by those responsible for the merger, that the assets of the appellant were more than sufficient to pay the preferred stock in full, *by reason of the circumstance that they allocated shares of the new company to the common stockholders of the defendant.*"

No statement could be more conclusive that the Court was not primarily influenced in its decision by any valuation of the assets of the company, but on the ground that the consolidation worked a practical dissolution as to complainants.

V.

As to the defendants' contention that specific performance is an extraordinary remedy and that complainants are in laches.

(Defendants' Brief, Point VI, p. 63.)

It may be truthfully said that almost every form of equitable relief is in its nature *extraordinary.* Such remedies as a court of equity may grant are ordinarily conditioned upon the fact that the situation giving rise to the relief is in itself unusual, in the sense that there is no adequate remedy at law. When a court of equity refuses its aid to enforce a valid contract it must be because the party seeking to enforce it is himself guilty of some injustice or inequity or that the terms of the contract are oppressive or unconscionable. Only

one other ground exists for a court of equity to refuse to enforce a valid contract and that is where some public interest would thereby be prejudiced. Nowhere in the case at bar is there a scintilla of evidence of the existence of any of the above mentioned grounds for this Court to refuse the enforcement of the complainants' contract as preferred stockholders. When Vice Chancellor Bentley in his first opinion, denied the injunction despite the fact that he believed complainants were being deprived of their legal rights, he based his decision squarely upon the ground that he did not wish to disturb an accomplished status where the rights of *innocent third parties* might be seriously impaired. He said, in effect, that had the matter been solely between complainants and defendants, where the former were *seeking to enforce their legal rights,* much might be said in support of the rule that the doctrine of laches did not apply. (Pom. Eq. Jurisp. Sec. 1445, 4th Ed.)

Laches is in its essence an equitable defense and although it might be available to protect the rights of innocent third parties it can hardly be invoked by the defendants to escape the consequences of their attempt to deprive complainants of their contractual rights as preferred stockholders.

VI.

If the Legislature never intended, and the General Corporation Act does not provide, that a preferred stockholder may be deprived of his right to accrued dividends without his consent, then the transfer of the assets of the Central Leather Company pursuant to the consolidation agreement in the present case was equivalent to a practical dissolution as to non-assenting preferred stockholders and they are entitled to receive payment in accordance with the terms of their contract.

Respectfully submitted,

SMITH & SLINGERLAND,
Solicitors for and of Counsel with Complainants-Appellants.

WHITE & SIMMS (New York),
CHARLES HALLETT WHITE,
Of Counsel.

New Jersey Court of Errors and Appeals.

Between

JOHN WINDHURST,
Complainant,

MABEL B. INGRAHAM, FRANCES T. INGRAHAM and PHILIP P. GETTY,
Complainants-Appellants,

and

CENTRAL LEATHER COMPANY and THE UNITED STATES LEATHER COMPANY,
Defendants-Respondents,

AND OTHERS,
Defendants.

ON APPEAL FROM CHANCERY

BRIEF FOR RESPONDENTS CENTRAL LEATHER COMPANY AND THE UNITED STATES LEATHER COMPANY (NO. 3).

(Italics ours, unless otherwise noted).

The appellants are holders of preferred stock of Central Leather Company, a New Jersey corporation. That Company and another New Jersey corporation, The United States Leather Company (No. 2), were consolidated under the General Corporation Act on June 23, 1927. By the Consolidation Agreement a new corporation, The United States Leather Company (No. 3), was formed.

New Jersey State Library

Proceedings in the Court of Chancery.

The bill of complaint was filed July 20, 1927, nearly a month after the consolidation took effect, by a preferred stockholder of Central Leather Company named John Windhurst.

He was the holder of 600 shares (Case, p. 137). He had purchased the shares on or about June 16, 1927, that is, a week before the consolidation took effect (Case, p. 236). On the argument of the rule to show cause before the late Vice Chancellor Bentley he characterized Windhurst as a "privateer", if not a "professional" one (Case, p. 249, fol. 20).

The bill was an injunction bill designed to restrain the consolidation, which had already taken place, from being further carried into effect (Case, p. 45), and also to enjoin, among other things, payment of any dividends by the consolidated corporation and the disbursement by it of any moneys received from the Central Leather Company (Case, p. 44). Upon filing the bill, an order to show cause was made (Case, p. 163), with interim restraint against the payment by the new corporation of a dividend on its new prior preference stock (issued in exchange, with other securities and cash, for the old preferred stock of the Central Leather Company), payable August 1, 1927, but declared on June 23, 1927 (Case, p. 184, fol. 40), or nearly a month before the bill was filed.

Complainant Windhurst subsequently withdrew from the case by an order dismissing him as complainant, not printed in the State of Case.

The order to show cause was argued July 27, 1927. At that time the complainants, Mabel B. Ingraham and Frances T. Ingraham, intervened

as complainants (Case, p. 173). They held, together, 2,725 shares of the preferred stock of Central Leather Company of the par value of $100 each (Case, p. 167).

The Vice Chancellor discharged the order to show cause and dissolved the temporary restraint. His opinion on the motion is found at p. 238 of the Case. He was so strongly convinced of the lack of equity in the complainants' case that he refused to grant a stay pending appeal (Case, p. 251).

No further steps were taken until a radical amendment of the bill of complaint was filed November 18, 1927 (Case, p. 254). In effect the complainants abandoned their effort to enjoin acts or payments by the consolidated corporation, and turned the bill into a bill substantially for the specific performance of the preferred stock clauses of the Central Leather Company, on the theory that the consolidation was such an impairment of their contractual rights as to be null and void as to them, and at the same time asking for relief based upon the wholly inconsistent theory that the consolidation, although inoperative, null and void, nevertheless worked a dissolution of the Central Leather Company entitling them to be paid forthwith, in cash, the amount of the par value of, and accrued dividends in arrears upon, their preferred stock, to which under the preferred stock clauses they would have been entitled in the case of an actual dissolution of Central Leather Company and distribution of its assets.

No subpoena was issued until after this amendment. The answer of the corporate defendants, Central Leather Company and the new corporation, United States Leather Company (No. 3), is found at Case, p. 260, and contains a full statement of the facts and the equities asserted by the defendants.

The other individual defendants to the bill, directors and members of Stockholders' Committees, have not been served, nor have they appeared.

The case came on for final hearing before Vice Chancellor Bentley in March, 1928. In February, 1930, he filed his opinion, leading to a dismissal of the bill (Case p. 394).

The opinion imposed a condition upon the defendants, that they extend to the complainants the right to convert their stock under the Consolidation Agreement, which was immediately complied with (Case, p. 401). The final decree dismissing the bill is at Case, p. 403.

An appeal was taken about a month later (Case, p. 1).

The opinion of Vice Chancellor Bentley on the order to show cause is reported in 101 N. J. Eq. 543, and on final hearing in 105 N. J. Eq. 621.

Certain phases of the controversy, notably the question as to whether a consolidation works a dissolution of the consolidated corporations, have already been before this court in proceedings by certain other dissenting preferred stockholders of Central Leather Company. The case referred to is *Prall* v. *U. S. Leather Company,* 7 A. R. 873, affirming *per curiam* the Supreme Court, whose opinion is reported in 6 Misc. 967.

That case arose upon proceedings by stockholders for the appraisal of their stock under Section 108 (a) of the Corporation Act. The Circuit Court of Hudson County appointed Honorable Walter P. Gardner, Honorable John Milton and Mr. Peter A. Eckes (an accountant), as statutory appraisers. They found that the full market value of the preferred stock at the time of the consolidation was $71 per share. Their report was confirmed, after argument, by Judge Acker-

son in the Circuit Court. The proceedings were affirmed on *certiorari* in the Supreme Court, and its judgment unanimously affirmed in this court on appeal.

Summary of Facts.

The United States Leather Company (No 1) was organized under the laws of New Jersey in 1893, and then acquired a considerable number of tanneries variously located, but devoted chiefly to the tanning of sole leather. The company also acquired large holdings of bark lands. (Affidavit of Hiram S. Brown, Case, p. 215, *et seq.* Affidavit of Harry W. Hill, Case, p. 187, *et seq.**)

The capitalization of the original company was large.

The original company tanned perhaps 60% of the sole and heavy leather (used for harness, belting, etc.) in this country at the time of its organization. Notwithstanding the acquisition of additional plants at the time of the formation of the successor company, Central Leather Company, the proportion of the company's output to the total output in this country has declined. Within recent years the packers have themselves undertaken the tanning of leather through subsidiary companies, and some of the powerful shoe manufacturers have also become tanners. President Brown estimated the company's present output at 30% of the American output. (*Idem;* also Case, p. 374)

The industry is highly competitive. The tanner purchases his principal raw material, the raw hide, in a competitive international market. He has no control over the volume of hides coming into the market or over the price of the hide. De-

*The affidavits read on the return of the order to show cause were in evidence, by stipulation, on final hearing (Case, pp. 300, 301).

mand and supply both of the raw material and of the finished product is evidently based on conditions which are world-wide in their operation, and demand and supply fluctuate, at times violently. (*Idem*)

The process of tanning is slow, so that the turn over is slow. Because of this large working capital is needed. The spread of time between the purchase of the hide and the sale of the finished product, results in the carrying of heavy inventories, and subjects the tanner to the risk of extreme fluctuation in the market price of the goods carried in the inventory. (*Idem*)

Formerly the tanneries were for the most part located near the available sources of bark, that is, in remote districts. The ownership of large areas of timber lands, together with the tanneries, represents a heavy investment in fixed capital. (*Idem*)

The enterprise appears to have derived but slight benefit from the combination of many plants under single control. This Company has gradually scrapped many of its tanneries, for the most part at a heavy loss, but still carries on operations through about twenty-five different plants. (*Idem*)

The United States Leather Company (No. 1) paid dividends on its preferred stock in irregular amounts, and fell into arrears. This led to the formation of the Central Leather Company in 1905, pursuant to a plan for reorganization with a view to the readjustment of the arrearages. Central Leather Company, through the deposit of stock under that plan, became the owner of most of the preferred and common stock of the old United States Leather Company, and also, about the time of its organization, acquired some additional plants, and was for a time both a holding and operating company. A proposal to merge the

old company into Central Leather Company resulted in litigation (*Colgate* v. *U. S. Leather Co.*, 75 N. J. Eq. 229), which was not terminated until 1909, when the merger was carried through. Immediately thereafter another company, United States Leather Company (No. 2), was organized, no doubt to perpetuate the name in the business. It had a small authorized capital stock, of which Central Leather Company was the owner. It has, however, actively marketed the products of Central Leather Company and subsidiaries and had substantial assets. Central Leather Company actually operated through various subsidiaries, making, however, hide purchases in its name, financing the subsidiaries, etc. The testimony as to the operations and as to the balance sheet of Central Leather Company has treated same on a consolidated basis (on which basis the company has always reported to its stockholders), and all figures referred to herein are on that basis. (*Idem*)

In connection with the earlier reorganization, certain bonds were issued which matured in the spring of 1925, and were refunded early in that year. Under the earlier reorganization the amount of preferred stock issued was $33,299,050 (332,990.5 shares of the par value of $100) and the amount of common stock was $39,701,030 (397,-010.3 shares of par value of $100). The Preferred Stock was a 7% cumulative preferred stock, preferred as to assets as well as to dividends. Both preferred and common stock had voting power, as to which it will be noted that the common stock exceeded in amount the preferred stock and therefore could outvote the preferred. (*Idem*)

Central Leather Company paid dividends on its preferred stock regularly until April 1921. The company enjoyed extraordinary prosperity during the War. Dividends on the common stock were

paid in varying amounts for the only time in the history of the enterprise in the years 1913 to 1920 inclusive. The result of the War was the accumulation of enormous inventories, and under changed conditions there was created an excess tanning capacity. In 1920 the situation created a "buyers' market", resulting in terrific operating losses in 1920 and 1921, due to idleness of plants and shrinkage in inventory. There was a slight recovery in 1922 and another heavy loss in 1923. 1924 also showed a loss, and 1925 and 1926 but small profits. (See Ex. D. 6, Case, opp. p. 198) The first company had materially appreciated the value of its timber lands on its books in 1903. In the earlier reorganization a material part of intangible values was written off against surplus, and the balance of the intangibles were written off in 1919, also against surplus (such surplus having been created in part by write-ups of timber lands). In 1925, following continued idleness or part time operation of many plants, it was decided to abandon a large number of plants, and this was done. The machinery was salvaged as far as possible. The land sold for small figures, largely because of its remote location. There were no buyers for tanneries as such. The principal purpose of this step was, of course, to concentrate production and reduce maintenance expense and repairs. The company wrote off the abandoned plants. The total write-off was approximately $10,300,000., of which approximately $7,400,000. was written off against surplus, and $2,900,000. against Special Depreciation Reserve. (*Idem*)

The losses of 1920, 1921 and 1923 (without giving effect to the adjustment of surplus in 1925) wiped out the surplus and resulted in a large operating deficit. ($18,520,064 at Dec. 31, 1926; Ex. D-4, Case, p. 197).

Special conditions in the lumber industry resulted in low prices for lumber during the building activity of 1925 and 1926. The company suffered a severe loss by fire in 1926. (*Idem*)

One of the permanent effects of the War was the stimulation of the industry in Europe, which had theretofore been a large importer of American tanned leather, and this company has suffered a permanent and substantial loss of export business. (*Idem;* also Case, p. 374)

Dividends upon the preferred stock of Central Leather Company ceased with the payment of April 1, 1921, and it became legally impossible, because of the ensuing deficit, to pay any dividend, notwithstanding the company's cash position continued such that dividends could have been paid had it not been for the deficit.* By April, 1927, accrued, unpaid dividends on the preferred aggregated $42. per share. (*Idem*) The accumulation of arrears must necessarily have continued until the deficit was wiped out. This is not disputed. The prospects for this were not bright, as in no year from 1920 to 1926 inclusive had the earnings equalled the annual dividend on the outstanding preferred stock, and the volume of business is now less than it was fifteen years ago. (See Ex. D-7, Case, p. 200)

The market value of the preferred stock reflected the company's condition during this period of depression prior to the consolidation. It reached a low price of 28⅛ in 1923 and its highest price, until the Plan was declared operative, was 71, reached in October 1925, after which it again declined. The common stock sold under $10 a

*This case is unlike *Goodnow* v. *American Writing Paper Co.*, 73 N. J. Eq. 692, where, although the original capital stock was not full-paid, the corporation had *earnings* available for dividends.

share in 1923, again in March 1924, and again in 1926. (Case, p. 209)

Owing to the new conditions, the capitalization of the company appeared to be out of due proportion to its earning power, and the unpaid dividends and existing deficit were harmful to the prestige of the company and to the rating of its securities and would have constituted a serious obstacle in case any new financing were necessary.

In the summer of 1926, the burden of evolving a plan for the readjustment of the capitalization of the company to meet the changed conditions and to make possible the resumption of payments to preferred stockholders was undertaken by a committee representing preferred stockholders and a committee representing common stockholders, with the assistance of the bankers for the company, Kuhn, Loeb & Co. and Bankers Trust Company. (*Idem*)

A plan was formulated, dated October 1, 1926, and was announced at or about that date. Under the plan a large proportion of both the preferred and common stock was deposited. At June 22, 1927, 90% of the Preferred and 83% of the Common had been deposited (Case, p. 213). Considering the very large capitalization of the Company, the widely scattered holdings of stock, and the large number of stockholders, this was a very large percentage of assent to be obtained from the stockholders; and especially so in view of the fact that no dividends had been paid on either class of stock for years. (*Idem*)

The plan was declared operative in February, 1927. On June 23, 1927, Central Leather Company and United States Leather Company (No. 2) consolidated to form a new corporation, United States Leather Company (No. 3). Both companies were engaged in similar business, both were active, go-

ing companies with substantial assets. (The large debt of United States Leather Co. No. 2 was an intercompany debt which was extinguished by the consolidation.) Neither one was created as a mere instrument for the purpose of effecting a change in capitalization. (*Idem*)

The preferred stock of Central Leather Company was entitled to 7% cumulative preferential dividends, and entitled to par and accrued dividends, in case of dissolution (Case, pp. 321, 322).

Under the Consolidation Agreement each share of preferred stock of Central Leather Company of the par value of $100 was converted into and/or entitled to:

$5 in cash;

$50 par 7% cumulative prior preference stock, entitled, to par and accrued dividends, on dissolution, and, also, among other things, to the benefit of a sinking fund; and carrying dividends from July 1, 1926;

three-fourths of a share of (non-redeemable) participating convertible Class A no par stock, entitled in preference to common stock to non-cumulative dividends at the rate of $4 per share annually; entitled, also, to participate equally with the holders of common stock in all further dividends in any year until a total of $6 per share is paid upon the Class A stock; and convertible, at the option of the holder, at any time, share for share, into common stock; and entitled, upon dissolution, to a pro rata amount of two-thirds of the assets after the preferential claims of the prior preference stock had been met.

Under the Consolidation Agreement each share of old common stock was convertible into one share of new no par common stock.

The Consolidation Agreement also provided that holders of prior preference stock and Class A stock, voting together, should be entitled to elect two-thirds of the Board of Directors until prior preference stock to the amount of $10,000,000 had been retired (whereas, under the Central Leather charter, the common stockholders outvoted the preferred stock). (Ex. H, Case, p. 122, *et seq.;* p. 110, *et seq.*)

By the Consolidation Agreement, the capital of the new corporation was fixed at an amount much less than that of the Central Leather Company (Ex. H, Case, p. 124), thus creating a capital surplus, and permitting the payment of dividends to holders of the new stock issued in exchange for the old preferred stock.

Nothing has been paid by the new corporation to holders of old or new common stock.

The holders of more than 90% of the preferred stock and of more than 83% of the common stock (indicating a greater interest on the part of the preferred stock in the consummation of the plan) voted for the consolidation at the stockholders' meeting. (Case, p. 182, fol. 20)

As of the date of the final hearing, more than 96% of the preferred stock and more than 94% of the common stock had accepted the new securities and cash under the provisions of the Consolidation Agreement. (Case, p. 370, fol. 30)

Immediately after the consummation of the consolidation various corporate steps were taken pursuant thereto, including the issuance of the new stock in exchange, the payment of cash as therein provided, the declaration of a dividend on the new prior preference stock, the deposit of the new stock

under Voting Trust Agreements, and the listing of the Voting Trust Certificates on the New York Stock Exchange. Consequently, the new corporation, of course, incurred various expenditures in execution of the Consolidation Agreement, and the securities of the new company were dealt in and purchased by investors. (Case, p. 184 *et seq.;* Answer, Case, p. 284)

The market value of the securities issued in exchange for shares of preferred stock of Central Leather Company increased, following the consummation of the consolidation, to a point substantially in excess of the market value of the old preferred stock. (Case, p. 206 *et seq.,* Ex. D 14, Case, p. 390)

The Plan itself was inherently advantageous. No other conclusion can be drawn from the overwhelming approval of the Plan by holders of an enormous amount of stock in the Company.

It is true the Plan involved the surrender of a nominal or paper right to receive accumulated dividends, at some remote period in the future when, if and as the Company could (1) earn enough to wipe out the deficit; (2) earn enough to accumulate some surplus; (3) earn enough to resume current dividends on the Preferred Stock (although the Company had not earned the full dividend requirement any year since the war, and had fallen short thereof in several years before the war); and (4) could earn enough to pay something on account of arrearages.

By the Plan the Preferred Stockholders surrendered an abstraction and got a reality in the form of immediate cash payments of $8.50, a half share of a Prior Preference Stock which could be expected to pay (and has paid) dividends, and also three-fourths of a share of Class A stock which has a dividend priority over the Common Stock

and an additional participating right and which is convertible into Common Stock, so that, in case of substantial improvement in earnings, the Class A stock would share in the benefits. The Preferred Stockholder also got the benefit of a sinking fund for the Prior Preference Stock and also the security of control of two-thirds of the Board of Directors.

We wish to emphasize that this case is absolutely barren of any fraud, actual or constructive. See Vice Chancellor Bentley's opinion on preliminary motion (Case, p. 238) and on final hearing, when he said, (Case, p. 397, fol. 35)

> "In the case at bar there is not even a charge of fraud."

The readjustment of the capital stock was born of the necessities of the situation, and designed for the benefit of all parties interested; but actually operated chiefly to the advantage of the preferred stockholders, who, under the existing situation, were deprived of dividends and any near prospect of resumption of dividend payments. It was not intended for the purpose of the enrichment of directors or officers, or of one class of stockholders at the expense of the other. It was not carried into effect by the overpowering vote of one class or group of stockholders. It involved no transfer of assets to a favored or controlling group, through sale or otherwise. It resulted from the *bona fide* exercise by stockholders of their relative voting rights under statutes in existence at the time of the formation of the corporation.

The arguments of the appellants, therefore, are based entirely on technical legal grounds, and, whatever their form, do not, in substance, appeal to the conscience of a court of equity.

POINT I.

The Consolidation was Lawful.

Admittedly the consolidation was carried out in strict accordance with the express authority of the legislature. (P. L. 1896, p. 309, 2 Comp. St. 1659-1660; section 104 amended, P. L. 1918, p. 1013). Both constituent companies were organized subsequent to 1896 under the laws of this state for the purpose of carrying on business of the same nature. The merger and consolidation provisions of the law became "an integral part of the stockholders' contract, and, so, *is binding upon every stockholder.*"

General Investment Co. v. *American Hide & Leather Co.,* 98 N. J. Eq. 326, 331; also S. C. in court below, 97 N. J. Eq. 214, 224.

The court below said in the case at bar:

> "It is not the case of enjoining an *ultra vires* act of the corporation, because the statute expressly permits the merger and leaves the details of the operation to a two-thirds majority of each class of stock." (Case, p. 247, fol. 40).

See also *Bingham* v. *Savings Investment & Trust Co.,* 101 N. J. Eq. 413; affirmed on rather narrow grounds, 6 A. R. 368.

POINT II.

No vested rights of appellants were impaired by the consolidation in this case.

A. *The case at bar is sui generis in that there was no surplus of Central Leather Company in which the preferred stockholders could have vested rights.*

We submit that a careful reading of the authorities will disclose that in the case of the merger or consolidation of such a corporation under the statute the only grounds for equitable relief are fraud (admittedly not present here) and unfairness. The right to object on the ground of "unfairness" is a special equitable right which can be administered in an equitable and orderly manner only where timely application is made for an injunction before the corporate act is consummated. The question of laches in this case is dealt with later.

When there is neither fraud nor unfairness, dissenting stockholders will be left to their remedy at law.

> *Brugler* v. *United Shoe Machinery Co.* (Vice Chancellor Lane, June 1917, unreported);
> *Beling* v. *American Tobacco Co.*, 72 N. J. Eq. 32;
> Opinion below, Case, p. 250, fol. 30.

In the *Brugler* case *supra,* Vice Chancellor Lane was of the opinion that the sole question to be determined in merger cases (an opinion expressed on timely application for injunction) is whether or not it appears to the court that the scheme is unfair. While it is true that no question of unpaid cumulative dividends was presented in that case, the provision of the certificate upon which the complainants relied was one providing that, upon dissolution, the preferred stockholders would share pro rata with common stockholders in the assets of the company, so that each share of preferred stock would be worth approximately $56 if the assets of the company were converted into cash, whereas by the terms of the

merger the preferred was to receive in dissolution only $35. This alteration in their rights he held not unfair or inequitable.

In *Bingham* vs. *Savings Investment & Trust Company,* 101 N. J. Eq. 413, 421, Vice Chancellor Backes said:

> "The plan must be free from unfairness before the complainants can be put to their election of joining their associates or taking compensation in lieu. *Colgate* v. *United States Leather Co.,* 73 N. J. Eq. 72."

This Court went farther in the *Bingham* case and said that the majority should not be deprived of their statutory power unless the proposed action was "without legal authority." 6 A. R. 368, 369.

In the case of *Lonsdale Securities Corporation* v. *International Mercantile Marine Co.,* 101 N. J. Eq. 554, the defendant company had accumulated a surplus and V. C. Bentley accordingly said:

> "It seems to me notwithstanding the disagreement of the learned counsel for the defendant, the situation is controlled, so far as the rights of the preferred stockholders in the *surplus* is concerned, by the decision in *Day* v. *U. S. Cast Iron Pipe & Foundry Co.,* 95 N. J. Eq. 389."

And again:

> "At the present time the holders of the existing preferred stock would be entitled to all of *the existing surplus* if the directors should decide to declare a dividend. If that stock is retired in accordance with the proposed plan, then it is readily seen that the requirements of the relatively few shares of no par value preferred stock might be satisfied out of a portion of the surplus, and the balance thereof devoted to a payment on the

> no par value common stock which would represent and stand in the place of the present common stock. This would be an indirect means of accomplishing a result that is now beyond the power of the corporation.
>
> "Not only would the change result in an injury to the future, as well as the past, dividend rights of the preferred stockholders, but it would also interfere with and materially diminish or abolish vested rights."

In the *Lonsdale* case, the attempt was made by amendment practically to completely wipe out the preferential status of the complainants as to existent surplus in an arbitrary manner.

For the same reason the case of *Colgate* v. *United States Leather Co.*, 73 N. J. Eq. 72, is distinguishable. In that case there was a substantial surplus to which the so-called "charge" of the preferred stockholders was thought to attach irrevocably. The following language of Vice Chancellor Emery's opinion, page 96, makes it clear that the Vice Chancellor had clearly in mind the necessity of the existence of "earnings applicable to dividends," whether such earnings were invested in property or assets of the company or not:

> "And the unpaid dividends being *expressly charged* upon the earnings of the company, these earnings, or the property or assets of the company representing them, or in which they have been invested, will, in my judgment, be taken over by the consolidated company (which takes all the assets of the United States company), subject to the liability or duty to account for these earnings or the property in which they have been invested, thus taken over for the payment of the accrued dividends and *to the extent to which the earnings applicable to dividends* have been unpaid."

We have not overlooked the language at page 97 that "in view of the *nature* of the claim to accrued dividends, the decision of the court, in reference to the inequitable character of the agreement, is not dependent on the question of fairness or advisability of the offer of $23.50 of the common stock as a business proposition." But, we submit, the reason that he felt that the fairness of the plan was not for the decision of the court was because of the peculiar language of the preferred stock clause making unpaid dividends "a *charge* upon the earnings of the company prior to the claim of the common stock," which caused him to treat the preferred stockholders substantially as if they had been creditors. (That language is absent from the charter of Central Leather Company.)

In *General Investment Co.* v. *American Hide & Leather Co.,* 98 N. J. Eq. 326, 331, Chief Justice Gummere limited his remarks with reference to the accrued, unpaid dividends to those "which now remain in the treasury of the company." In that case there was a surplus of $5,000,000 and dividends in arrears in a much greater amount.

And the late Judge White, who was a vigorous proponent of the rights of preferred stockholders, admitted in his opinion in that case that New Jersey corporations should have ample latitude in making readjustments under proper conditions (page 338), and that new stock might be created having priority over the old preferred as to *future* dividends and as to payment of principal on dissolution.

An analogous line of reasoning has been adopted in the cases in this state in the construction of charter clauses relating to dividends payable on non-cumulative preferred stock. In *Bassett* v. *U. S. Cast Iron Pipe & Foundry Co.,* 75

N. J. Eq. 539, there had been earnings available to dividends, in part on the preferred stock and in part on the common. These had been allocated to a reserve fund by action of the directors but were later employed to pay dividends. Chief Justice Gummere said (p. 541):

> "So far as that fund is made up from moneys which would otherwise have been paid to the preferred stockholders, we concur in the conclusion of the vice chancellor that it is available for the purpose of paying the dividend, which is the subject-matter of this controversy."

Later, in *Moran* v. *U. S. Cast Iron Pipe & Foundry Company,* 95 N. J. Eq. 389, Vice Chancellor Backes, in construing section 18 of the Corporation Act of 1896 with reference to the same charter, said (p. 392):

> "These profits belong primarily to the preferred stockholders, and the directors are in nowise restricted, either as to amount, time or occasion, when distribution shall be made."
>
> Affirmed 96 N. J. Eq. 698.

See also Judge White's opinion in *Day* v. *U. S. Cast Iron Pipe & Foundry Co.,* 96 N. J. Eq. 736 (Decree of Court of Chancery affirmed because of an equally divided Court of Errors).

To the extent of the earnings *available* preferred stockholders have, under these cases, a claim which must be recognized before the common stockholders can be paid any dividends.

The decisions of our courts in the *Cast Iron Pipe & Foundry Co. cases,* however, are opposed to the views of other courts, notably the recent sweeping and unanimous decision of the United States Supreme Court in *Wabash R. R. Co.* v. *Barclay,* 280 U. S. 197, 74 L. ed. 181, Virginia (*Nor-*

wich Water Power Co. v. *Southern Railway Co.,* not officially reported), and have been freely criticized by bankers and counsel specializing in corporate practice. See also 7 Rul. Cas. Law 287.

At all events, those cases dealt with actual *distribution of earnings* according to the existing stock contract.

When we come to the exercise of the stockholders' statutory power to *convert* stock upon a consolidation, a broad and elastic power, we submit that no narrow and restrictive limitations upon that power should be imposed.

As Justice Van Syckel said (speaking of *preferred* stock) in *Berger* v. *U. S. Steel Corporation,* 63 N. J. Eq. 809, 813:

> "Complainant * * * has no *vested right* to retain her shares in opposition to any lawful method of retiring them."

The statute contemplates that the stock of complainants shall be compulsorily converted into stock or obligations of the consolidated corporation. The only alternative contemplated by the statute is appraisal at the option of the stockholder.

There may be read into the statute some limitation upon the power of the majority to prescribe the terms of conversion. We assume that the terms must be such as to give preferred stockholders a reasonable equivalent for their stock, considering the relative rights of stockholders *inter sese,* the value of their stock at the time and, above all, the financial and business conditions of the merging corporations at the time, and the status of their capital and surplus accounts. With those considerations in view, the stockholders have not, in this case, exceeded their powers.

The appellants can succeed only on the view that no change whatever may be made by such conversion, and any preferences or rights to which the old stock was entitled must be perpetuated or repeated in the charter contract of the consolidated corporation—a view which would defeat the statute, and the rights of a preponderant majority.

> *Berger* v. *U. S. Steel Corporation,* 63 N. J. Eq. 809;
> *General Investment Co.* v. *American Hide and Leather Co.,* 98 N. J. Eq. 326, 329;
> *Bingham* v. *Savings Investment & Trust Co.,* 6 A. R. 368, 369.

Suppose the Central Leather Company had been in worse plight than it was—had less assets, less earning power, greater arrearages of preferred dividends,—and suppose the value of the preferred stock were even less. On the appellants' view, the consolidated corporation must have then accorded preferred stockholders even a greater stock interest.

The perpetuation of the preferred stockholders' stock interest in the consolidated corporation at par and accrued dividends would have been of doubtful legality.

> *American Malt Corp.* v. *Bd. of Pub. Util. Comm.,* 86 N. J. L. 668, 672.

But Vice Chancellor Emery, in the *Colgate* case, was of the opinion that all that need be perpetuated was the *charge* on *existent* surplus, and that the right to *future* dividends could be terminated by merger (page 90). In the *Brugler* case, Vice Chancellor Lane was of the opinion that the possibly valuable right to share ratably on dissolution need not be perpetuated.

Cases Cited under Appellants' Point V.

Morris v. *American Public Utilities Co.*, 14 Del. Ch. 136, 122 Atl. 696.

This case, we submit, expressly supports the distinction drawn by us. The court held that, under the Delaware statute and charter, substantial preferences and rights of the preferred stock could be altered by a mere amendment, but that the right to accumulated unpaid preferred dividends, being vested, could not be extinguished by a mere amendment.

The case, however, involved no reduction of capital stock, and it is clearly inferable that the corporation had an existing surplus to which the preferential rights attached. This appears from the facts that the amendment did not reduce the capital stock, and that immediately after the amendment dividends were declared—necessarily from an existing surplus.

The opinion expressly approved the earlier case of

Peters v. *U. S. Mortgage Co.*, 13 Del. Ch. 11, 114 Atl. 598,

holding that by mere amendment the rate of dividends on the preferred stock could be reduced.

The case of

Roberts v. *Roberts-Wicks Co.*, 184 N. Y. 257, 77 N. E. 13, 3 L. R. A. (N. S.) 1034, 112 Am. St. 607,

involved, in substance, the effect of a reduction of capital upon arrears of dividends on the reduced preferred capital stock, where it did not appear that the reduction purported to, or attempted to, extinguish the arrearages.

The case of

Petry v. *Harwood Electric Co.,* 280 Pa. 142, 124 Atl. 302, 33 A. L. R. 1249,

is fully discussed by us at p. 55 *et seq.* of this brief.

B. *The same readjustment could have been accomplished by a reduction of the preferred capital stock.*

If so, the argument based upon the assertion that the consolidation was a "subterfuge" must fail.

At the time of the organization of the Central Leather Company, Section 27 of the Corporation Act provided (P. L. 1896, p. 285) that any corporation

> "may * * * decrease its capital stock, change the par value of the shares of its capital stock * * * make such other amendment, change or alteration, as may be desired * * *"

and Section 29 provided (P. L. 1896, p. 286; Comp. Stat. 1616):

> "The decrease of capital stock may be effected by retiring or reducing any class of the stock * * * or by reducing the par value of shares * * *."

Of these sections it was said (speaking of preferred stock) in

Berger v. *U. S. Steel Corporation,* 63 N. J. Eq. 809, 814,

> "A liberal, and not a narrow, construction must therefore be given to the language of the 27th and 29th Sections of the Act of 1896 in order to give effect to the intent of the

> Legislature manifested in this broad and comprehensive grant of authority to retire shares of stock."

And as was said in that case of another section of the Act (p. 825),

> "It is difficult to perceive how any substantial force can be accorded to it, unless some amendment may be made which may affect the rights of stockholders inter sese to some extent."

In the case of *Lazear* v. *American Steel Foundries,* 86 N. J. Eq. 21, (aff'd. *per curiam* for the reasons stated in the opinion of Vice Chancellor Stevens, 86 N. J. Eq. 252), the company had cumulative preferred stock which had ceased to pay dividends in 1902. By an amendment adopted in 1908 the capital stock was decreased and in lieu of the two classes of stock a single class was created, the holders of the preferred stock receiving common stock to the extent of 77% of the face value of their preferred shares, debentures to the extent of 20% thereof and $3 in cash for each share. The complainants having brought an action of assumpsit in the Federal Court for accrued preferred dividends subsequent to 1902 (after a dividend was declared by the company on the new common stock) and the Circuit Court of Appeals for the Third Circuit having ordered that judgment be entered for the defendant (204 Fed. 204), they filed their bill in the Court of Chancery praying that the company be required to declare and pay them their accrued dividends and that the company be enjoined from paying any dividend upon the new common stock while dividends upon the preferred stock remained unpaid. The bill was dismissed, the court saying:

> "The position of the complainants is this: We, as executors, made a contract with the company by which we were to be paid cumulative dividends at the rate of six per cent. We have never agreed to any change in it; consequently, it, as to us, remains intact. We do not ask that the proceedings, so far as it respects the assenting stockholders, be adjudged ultra vires, or that it be set aside. We stand merely on our own right. If this position be sound, there are still two classes of stockholders—the preferred, insignificant in point of numbers, and the common, alone recognized in the amended certificate."

(If the contentions of the appellants in this case are maintained, they alone constitute a separate class of stockholders.)

After referring to the provisions of the Corporation Act relating to the reduction of capital stock, Vice Chancellor Stevens cited the case of *Berger* v. *United States Steel Corporation,* 63 N. J. Eq. 809, and, while deciding the case on the ground that the complainants' delay was fatal, said:

> "Justice Van Syckel, speaking of the method of retiring stock that was adopted in the present case, says that it is compulsory and must operate equally upon all holders. The amended certificate of incorporation so provides. It does not and could not save the right of those who do not come into the plan. It constitutes a single class of stock and that unpreferred. If the court should give judicial recognition to two classes of stock, it would not only disregard the charter as amended, but it would assert in effect that the method adopted was not compulsory and was not to operate upon all alike."

The changes made in the preferred stockholders' contract in the *Lazear* case, *supra,* were more

radical than those made in the instant case. And, in that case, the company was paying dividends on the new common stock. In this case, no disbursement has been made as yet to the old common stockholders.

Our statutes, in terms, have for years granted to corporations most extensive powers in respect to amendments including powers to alter the status of stockholders *inter sese*. The frequent amendments of section 27 of the act have from time to time extended the scope of this power.

It is, we submit, clear that the same readjustment might, in this case, have been reached by reduction of the capital stock. We cannot subscribe to the view that upon any reduction of capital stock the reduction must apply exclusively to the common capital stock, and find no case to that effect. If that were so, it would be impossible to obtain a favorable vote by common stockholders in many cases where there is preferred stock also outstanding. The statute authorizes a reduction partly applicable to the preferred stock if the result of a fair bargain between the two classes of stock holding out advantage to each class and to the corporation.

The common stockholders are entitled to some *quid pro quo* for their assent to a reduction which on the whole is distinctly favorable to the preferred stockholders.

It is submitted that the cases cited in appellants' brief at page 33 do not support their contention.

As to the English cases, it will be remembered that a reduction in capital stock under the English Companies Act must be confirmed by the court.

In the case of

In re Quebrada Railway Land & Copper Co., 40 Ch. Div. 363, 58 L. J. Ch. 332,

the preference stock was entitled to preference as to dividends but not as to capital. Capital having been impaired by losses, it was proposed to write down the par value of the ordinary shares, and such resolution was passed at a shareholders' meeting. The notice of the meeting was deficient.

North, J., criticized the proposal on the ground that the preference and ordinary shares ought to be reduced ratably, and that the proposal produced an inequality among the shareholders.

Subsequently, however, after a further communication to the stockholders more fully explaining the proposal, followed by the receipt of written assent from a large majority of the ordinary shareholders, North, J., confirmed the resolution without further opinion.

The case of

> *In re Agricultural Hotel Co.* (1891), 1 Ch. 396, 60 L. J. Ch. 208,

involved reduction of the ordinary shares in a case where the preference shares had preferential rights both as to dividends and capital. It was objected that the reduction fell upon the ordinary shares only, but Kekewich, J., confirmed the resolution, saying,

> "All I say is, that if the Company desires to reduce, and has, by proper resolution, purported to reduce, the whole of its ordinary capital, that may be done, and may be sanctioned by the court, notwithstanding that there is, outside and above that, preference capital."

The next case cited is

> *In re London & New York Investment Corporation* (1895), 2 Ch. 860, 64 L. J. Ch. 729.

In this case there were three classes of stock, ranking, respectively, in the following order: Preference, Ordinary and Founders. Losses having been sustained, it was proposed to reduce, in effect extinguish, the rights of the Founders shares and throw the remainder of the reduction next upon the Ordinary shares.

Held, by Stirling, J., that there was nothing in the proposed reduction unjust or inequitable, or requiring the court to abstain from confirming it.

A later case, not cited by appellants, is

Welsbach Incandescent Gaslight Co. (1904), 1 Ch. 87, 73 L. J. Ch. 104.

In this case there were three classes of stock: Preference, Ordinary and Deferred, ranking, respectively, in that order both as to capital and dividends. The Company having sustained losses, a reduction of capital stock was proposed by reducing the par value of each class of stock in the following respective proportions:

Preference shares—From 20s to 13s, that is, 7/20ths.

Ordinary shares—From 20s to 5s, that is, 15/20ths.

Deferred shares—From 20s to 1s, that is, 19/20ths.

Confirmation of the resolution was objected to by the holders of Preference shares. The court of appeal sustained the confirmation of the resolution.

In the opinion of Stirling, L. J., it was said,

> "The same document which confers a preference on these classes of shares contains also provisions which make the rights and priorities of the Preference shareholders capable

of alteration; and unless it can be established that such a stipulation is forbidden by law, effect must be given to it as well as to the other conditions * * *

"The only point which strikes one with regard to the fairness of the arrangement is this—that it does at first sight seem as if the rights of the preference shareholders had been somewhat seriously trenched upon; but when we find such a clause in the articles of association as article 52, and when we find that these alterations in the rights of the various classes of shareholders have been considered, first of all, by a committee consisting of business men, chosen by the shareholders themselves, and that they have been sanctioned by large majorities at the various meetings which have been held, it would require a very strong case for this Court to interfere. I quite agree with what has been said both by Mr. Justice Buckley and in this Court on the present occasion, that in all these cases the Court is not under an obligation to confirm any scheme, by whatever majorities it may be sanctioned, but has a discretion which it is bound to exercise in a proper case; but, at the same time, in exercising that discretion, where we find that the determination of such questions as the variations in rights to attach to different classes of shareholders has been left to be decided by the shareholders themselves, the Court ought to be very careful not to interfere with the *bona fide* judgment of business men on a matter of business in which they themselves are largely interested."

The English law on this point is stated in *Halsbury's Laws of England,* Vol. 5, p. 105, as follows:

"Reduction of capital can only be effected in accordance with the Act of 1908. Where the reduction does not involve the diminution of liability on any shares or the return of paid-up capital to any shareholder, the only questions for the court are (1) whether confirma-

tion should be refused out of regard to the interest of those members of the public who may be induced to take shares; and (2) whether the proposed reduction is fair and equitable as between the different classes of shareholders.

"Speaking generally, a reduction of capital need not be spread equally or rateably over all the shares of the company. If there is nothing unfair or inequitable in the transaction, the shares of one or more shareholders may be extinguished without affecting other shares of the same or a different class, although a reduction scheme which does not provide for uniform treatment of shareholders whose rights are similar is narrowly scrutinised.

"In the case of a reduction of capital lost or unrepresented by available assets, the reduction should, *prima facie,* be effected as between preference shares having a priority as to return of capital in winding up, and shares deferred in this respect, at the expense of the latter. But a reduction is not necessarily made on this basis where as part of the scheme, the preference shareholders, under a power in the articles, consent to a modification of their rights as to capital. All round reductions are also confirmed where the preference shares only confer a priority as to dividends."

The case (cited by appellants),

Page v. *Whittenton Manufacturing Co.,*
211 Mass. 424, 97 N. E. 1006,

involved a reduction of capital stock thrown entirely upon the common stockholders. In an injunction suit by a common stockholder, the court held that this was a lawful method of reduction.

The cases of

Continental Securities Co. v. *Northern Securities Co.,* 66 N. J. Eq. 274,

and

Williams v. *Western Union Telegraph Co.*, 93 N. Y. 162,

involved no controversy betwen different classes of stock. Both of the cases are authority solely for the proposition that a statutory reduction of capital stock gives rise to a surplus which may lawfully be distributed among stockholders.

The case of

Theis v. *Durr*, 125 Wis. 651, 104 N. W. 985, 1 L. R. A. (N. S.) 571, 110 Am. St. 880,

was also one where there was only one class of stock. The proposed reduction was carried by the vote of the majority holders, and for the purpose of, and with the effect of, relieving them from full payment for stock subscribed for by them.

It is seen, therefore, that no case cited by appellants under this point supports the proposition that a reduction in capital stock must be thrown entirely upon the common stockholders, regardless of the relative rights and equities of both classes of stockholders.

POINT III.

The Consolidation Agreement was fair and equitable.

The learned Vice-Chancellor passed upon the fairness of the Plan, saying (101 N. J. Eq. 543; Case, p. 242, fol. 40):

> "Without entering into any extended discussion, it does not appear that the plan un-

> der which the new company was formed is inequitable."

And again (Case, p. 244, fol. 10):

> "The advantages and privileges accorded the holders of the prior preference stock seem to at least offset the disadvantage."

And (Case, p. 248, fol. 10):

> "There is not a circumstance to indicate any malevolent motive in the minds of the men who built up the plan to save a large industrial corporation that had, through no fault of its managers, but through stress of circumstances, become helpless. The scheme adopted may not be perfect, but it would appear to me to make the condition of the company and its stockholders far better. If the position of the complainants appears worse on paper, it would seem that their actual condition will be far better than it was when they held certificates that the company was unable to convert into income producing securities."

And he remained of the same view after final hearing (Case, p. 393).

At the time of the final hearing the cash and securities to which the appellants became entitled under the Plan had a total market value of about $111.50 for each share of the preferred stock of Central Leather Company held by them (Ex. D14, Case, p. 390). In addition, dividends had been declared and paid on the prior preference stock of the new company in an amount equivalent to $6.13 for each share of such stock to which they were entitled, or a total value of about $117.63. This is to be compared with the market value of the Central Leather preferred in June, 1927, which ranged in the 70s, and a valuation of $71 placed upon the stock by the appraisers appointed under

Section 108a of the Corporation Act, as "the full market value of the stock without regard to any depreciation or appreciation thereof in consequence of the consolidation * * * ," confirmed by the court in the *Prall* case.

The many advantages to the preferred stockholders of Central Leather Company are set forth in the affidavits, particularly those of Hiram S. Brown and Lewis L. Strauss. They need not be repeated at length here. No class of stock having priority over the preferences of the classes, prior preference and Class "A", to which appellants became entitled, was created. The relative position of old preferred and common stock was substantially maintained in the new company and for the rights yielded there were substituted a cash payment, and resumption of dividend payments, including a full year's dividend on each share of prior preference stock, equal to $3.50 for each share of Central Leather preferred, the market value of their holdings was largely increased, and they obtained voting control of the corporation (at least pending the retirement of $10,000,000 of the prior preference stock).

The views of the overwhelming majority of stockholders are not to be lightly regarded.

See opinion below, Case, p. 244, fol. 10.

In the case of *Brugler* v. *United Shoe Machinery Co.* (decided in June, 1927, not reported) Vice Chancellor Lane said:

> "The fact that the great majority of this stock have accepted this plan while, of course, it would not prevent this court for one moment from acting to protect the rights of individual stockholders, no matter how many or how few shares they hold, yet is rather cogent evidence that the ordinary business man who has held this stock has conceived that this plan is a plan which is fair to preferred stockholders. I am not only asked to

> reverse the judgment of the directors of this company, but I am also asked to reverse the judgment of at least 2119 holders of preferred stock."

In *Bingham* v. *Savings Investment & Trust Co.*, 101 N. J. Eq. 413-421, Vice Chancellor Backes said:

> "By way of preliminary observation, it is permissible to say, that the vote of the holders of 85 per cent. of the stock, in favor of the merger, is not calculated to impress the court that the plan is inimical to the interests of stockholders, and it is not persuasive that, in the march of progressive banking, this great body of stockholders, voting for the merger, is, and the complainants are not, out of step."

And see opinion of this Court in same case, 6 A. R. 368, 369

See also:

> *General Investment Co.* v. *American Hide & Leather Co.*, 97 N. J. Eq. 214, 224.

As was said by this court in

> *Berger* v. *U. S. Steel Corporation*, 63 N. J. Eq. 809, 826,

paraphrasing the language of certain English cases approved by the court:

> "The original articles of the Company do not constitute such a fast-bound contract, between the stockholders *inter sese*, as to create vested rights which could not be unfavorably affected by an alteration of the articles in pursuance of the power given by" (the statute).

POINT IV.

The appellants seek an inequitable advantage at the expense of the stockholders of the new company and are not entitled to equitable consideration.

If the Plan adopted had been unfair, as appellants contend it was, they could, by a timely bill, have enjoined the consolidation. Other remedies were available to them which we will hereafter refer to. Some readjustment was essential, in effecting which the preferred stockholders of Central Leather Company would necessarily yield some part of their preferential rights. Prior to the meeting of stockholders on June 22, 1927, no one of the appellants had expressed disapproval of the plan in any way and their dissent* expressed at the meeting was not notice of an intention to attempt to have the consolidation declared unfair or illegal and was such dissent as would be expressed pursuant to section 108a of the Corporation Act as a basis for appraisal proceedings.

We will hereafter argue that the appellants are barred by laches from obtaining *any* equitable relief. For the present we emphasize the lack of equity in their case and the inequality that would result if it were adjudged, as prayed by the amended bill, that appellants "have a lien upon all of the assets of the Central Leather Company transferred to The United States Leather Company pursuant to the consolidation to the amount of the par value of their shares of the preferred stock and the unpaid dividends there-

*Appellant Getty did not dissent. Mr. Ingraham merely made a mild protest at large. "I think that the plan is unfair to the preferred stockhoders" (Case, p. 355, fol. 30).

on'' and that such be foreclosed. Indeed, if any relief be granted to them, they will have been given advantages which have not been enjoyed by either those stockholders who have converted their stock or those who have obtained an appraisal, and which would not have been enjoyed by complainants *if no consolidation had taken place.* Appellants seek to advance their interests *by mere non-acquiescence.*

They must be deemed to have realized that a two-thirds vote of their class was a prerequisite of any readjustment and that their affirmative vote was not needed for that majority. If they applied for injunctive relief prior to the meeting, as they might, and their contentions, now made, are sound, the consolidation would have been prevented. In that event the hopeless position of their investment would have continued, perhaps indefinitely. It is fair to assume that very little, if any, increase of market value of the preferred stock would have occurred. If the Plan had been blocked, the stock would probably have declined. Admittedly, also, a dissolution was out of the question. The results of a dissolution were wholly speculative. Vice Chancellor Lane said in the *Brugler* case:

> ''It cannot be said that the statutory scheme contemplated that there should be given to the stockholders of the merged corporation a security identical in character with that which they held. They must be given something which is equal in value to it, or which may fairly be said is equal in value to it. Obviously to say that the preferred stock of the company is now worth $56 is absurd. The mere fact that if the company should be dissolved today and if its assets could be realized upon and make their book value, then the stock would be equal to $56, is far from saying that it is really worth at this time $56.''

And see opinion below, Case, p. 244, fol. 10. Appellants are in the position of having waited until the consolidation, which was an assured fact before the meeting, had been effected, and of now asking this court to treat it as tantamount to a dissolution and to assume that there would have been obtained in dissolution sufficient to pay them par and their accrued dividends, or in the alternative to treat it as a nullity which, notwithstanding its nullity, effected a reduction in capital liability so as to enable dividends to be paid to them. In this way the actual losses of a forced liquidation and the expenses of dissolution were avoided while the appellants, after standing silently by, now rest on what they seek to maintain are their strict legal rights.

Apparently having sized up and magnified the concessions that the preferred class was about to make, they sought to escape sharing the burden *and at the same time demand larger benefit than their costockholders who made the sacrifice.* The holders of preferred stock who pursued their statutory remedy have been awarded $71 per share. Those who made the exchange have received cash, securities and dividends worth (at the time of final hearing) an approximate total of $117 a share. The appellants ask $142 (the amount *now* is about $156) at the expense of the properties now owned in part by their former costockholders and in part by innocent investors who bought into the new company in ignorance of the appellants' present demands and on the assumption that the consolidation had been legally effected.

No citation of authorities is necessary to support our contention that there is no equity in such a claim for inequality as between stockholders of the same class.

Defendant, The United States Leather Company, notwithstanding the inequitable contention of the appellants, has offered and repeats its offer to extend to them the benefits and privileges of the Reorganization Plan and/or Consolidation Agreement exactly as if their shares of preferred stock of Central Leather Company had been exchanged immediately after the consolidation was effected. (Case, p. 401). This offer includes the cash payment of $5, one-half share of the prior preference stock and three-quarters of a share of the Class "A" stock for each share of Central Leather preferred held by appellants, and also the dividends that would have been received by the appellants if they had made prompt exchange, to wit, a dividend of $7 a share paid to the holders of the prior preference stock as of July 15, 1927, (equal to $3.50 on each share of Central Leather preferred), and the regular quarterly dividends that have been paid on the prior preference stock since the consolidation.*

If the appellants convert their stock under the consolidation agreement the consolidation will have operated upon all alike, as intended by the statute.

Lazear v. *American Steel Foundries Co.*,
86 N. J. Eq. 21, 25; affirmed *id.* 252.

The appellants' case must rest upon the proposition that the consolidation is void as to them. If so, they must be regarded as holders of stock in a company with a large deficit which can pay no dividends. At the same time they claim the benefit of the establishment by the consolidation of the capital of the new company at a figure much lower

*There has also been paid on the Class "A" Stock $4 per share in 1929. See Poor's Manual for 1929, p. 1687.

than the par of the stock of the old company, thus enabling the *new* company to pay dividends out of *its* surplus to *its* stockholders. But they cannot at once deny the efficacy of the consolidation and accept its benefits. See the decision of the Circuit Court of Appeals in the *Lazear* case, 204 Fed. 204.

POINT V.

The Consolidation was not a dissolution of Central Leather Company within the meaning of Article IV of the Certificate of Incorporation.

The provision of the charter relating to the dissolution of Central Leather Company must, of course, be read in the light of the statutes in force at the time of its organization. *McGregor* v. *Home Insurance Co.*, 33 N. J. Eq. 181, 186. At that time the act embodied, as it does now, title V relating to "Winding Up" and title XI relating to "Merger of Corporations." The titles contained independent and adequate provisions for two quite different purposes having equally different results. This difference is now so well recognized by the courts of this state that it will suffice to refer only in the briefest manner to the provisions of the two titles.

By the terms of section 54 the directors of a corporation are created trustees of a corporation upon its "dissolution" and are empowered to settle its affairs, collect the debts, sell the property and divide the moneys and other property among the stockholders after payment of debts. In whatever wise "dissolved", corporations are continued as bodies corporate for the purpose of suit, disposition of property and division of capi-

tal, "but not for the purpose of continuing the business for which they were established" (section 53).

By the terms of section 106, it was provided that merging or consolidating corporations should "be one corporation * * * possessing all the rights, privileges, powers and franchises" of the constituent companies. By those of section 107, "the rights, privileges, powers and franchises" of each of the constituent companies "and all property, real, personal and mixed, and all debts due on whatever account" became vested in the consolidated corporation. By amendment passed in 1902 (P. L. p. 700) stockholders of ordinary business corporations were extended the appraisal right in case of merger or consolidation.

"Dissolution" is nowhere mentioned in the merger title, nor "merger" nor "consolidation" in the title relating to dissolution.

In dissolution, the power to continue business is lost; in consolidation, it passes, *ipso facto,* to and continues in the new or absorbing company. If a consolidation worked a dissolution, it would be impossible for the consolidated company to continue the business because that power would then have been lost by the consolidation. (See *Friendship Telephone Co.* v. *Newark Telephone Co.,* 88 N. J. Eq. 562, 565).

In *Riker & Son Co.* v. *United Drug Co.,* 79 N. J. Eq. 580, the Court of Errors and Appeals drew a very clear distinction between dissolution, on the one hand, and merger or consolidation, on the other. Chief Justice Gummere said:

> "Manifestly, the prime purpose of the scheme outlined in this communication is not the winding up of the New Jersey corporation and the distribution of its assets, or the proceeds of the sale thereof, among its stockhold-

> ers, but the absorption of that company by the Massachusetts corporation, the transfer not only of its assets but of its business, to that corporation, and the future carrying on of that business by the Massachusetts corporation under the name of the defendant company. *The scheme, in its essence, whatever it may be in form, is not a plan for the reorganization of the New Jersey company, nor even for the winding up of its business and its dissolution within the meaning of the latter word as used by our Corporation act, but is a scheme for its merger into or consolidation with the Massachusetts corporation. State* vs. *Atlantic City and Shore Railroad Co.*, 77 N. J. Law (48 Vr.) 466, 483."

In the *Brugler* case, supra, it will be remembered that the complainants objected that upon the merger they would receive stock having a right upon dissolution limited to $35, as against a then book value of assets equal to $56 a share. Vice Chancellor Lane did not regard the merger as tantamount to a dissolution. He said:

> "The mere fact that, if the company should be dissolved today and if its assets could be realized upon and make their book value, then the stock would be equal in value to $56 is far from saying that it is really worth at this time $56. The complainants, the minority stockholders, have no right to insist upon a dissolution. A dissolution may never occur."

In *Copeland* v. *United Shoe Machinery Co.*, 84 N. J. Eq. 276, certain stockholders applied to restrain a proposed merger of the same two companies involved in the *Brugler* case, *supra.* A *preliminary* injunction was granted to restrain the merger on the ground, *inter alia,* that it *might* appear at the hearing that the terms of the merger were unfair to the preferred stockholders *in the event of liquidation or dissolution.*

In *Beling* v. *American Tobacco Co.*, 72 N. J. Eq. 32, 42, Vice Chancellor Pitney remarked that, strictly speaking, merger proceedings do not amount to a legal winding up, although he conceived that the only difference to the complainant was that he did not receive the share of the proceeds of the winding up which he would have got under formal proceedings under the statute.

As to the *Beling* case, it must be remembered that the American Tobacco Company was incorporated before the first merger statute of general application (1893). Hence the complaining stockholder had never given his consent to a merger. As to him, it was not *de jure,* and was legally destructive of the business enterprise in which he was a stockholder. *That* consolidation, effected by *vis major,* not under the law embodied in the stockholders' contract, might readily have been viewed as a dissolution as to such non-consenting stockholder.

Of course, in the *Beling* case, the company had a surplus and was prosperous. None of the peculiar facts of this case were present.

The opinion below on this point is clear and convincing, Case, p. 395 *et seq.*

The question is deemed to have been set at rest by *Prall* v. *United States Leather Co., supra.*

In an opinion filed (Apr. 30, 1928) by Judge Ackerson, in *Prall* v. *United States Leather Co.,* on motion to confirm the Appraisers' Report, he said, in respect to the same contention:

> "And so, although it may be true that the preferred stock certificates, or the certificate of incorporation, may provide that 'in case of the liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation' the owners of the preferred stock are to receive 'cash to the amount of the par value of such preferred stock, together with

all accrued and unpaid dividends thereon (but no more) before any payment to the holders of the common stock, etc.' nevertheless, these provisions are to be read in connection with the other terms of the contract arising out of the incorporation, which include the provisions of Section 108a above quoted. Hence the 'liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation' referred to in the certificates of preferred stock or the certificate of incorporation, does not include the status arising from a merger or consolidation, and it was never intended that the 'full market value' specified in Section 108a of the General Corporation Act, should mean the par value of stock with all accrued and unpaid dividends thereon, as otherwise the specification that dissenting stockholders should receive 'full market value' would have been entirely unnecessary, and it is never to be presumed that the legislature expressly gave a distinct standard of valuation for no purpose whatsoever.

"This being so it remains for the court to interpret the meaning of 'full market value' as applied to the stock of the dissenting stockholders in this case.

"Certainly the legislature never intended that dissenting preferred stockholders, upon the merger or consolidation of their corporation with another corporate body, should receive back their investment in full with accrued but undeclared dividends, regardless of the market value of their investment at the time of merger or consolidation, as otherwise the statute would have been so worded, instead of providing specifically that the appraisal of the stock should be at its 'full market value.'

"Clearly the book value of stock is not an accurate guide as to what participation the stock may have in the funds realized from the liquidation of the assets of the corporation. Experience justifies the assertion that upon

> the winding up of a corporation and the sale of its assets, much less is realized for stockholders than the book valuation of the assets would apparently justify. Under the statute, these dissenting minority stockholders could never have insisted upon an actual dissolution of the old company and a liquidation of its assets, and as its charter was perpetual, who could say at any given time, with any degree of certainty, what the stockholders would receive upon actual liquidation? And certainly a merger or consolidation of the corporation with another corporate body under the provisions of the statute does not contemplate that the assets of the merging or consolidating company shall be reduced to money and distributed to the minority stockholders. So we may conclude that, although the preferred shares of stock involved in this controversy might possibly have had a book valuation on June 23, 1927 of $143.57 per share, this is no proof of its real value at that time."

The petitioners, in the *Prall* case, strenuously argued the same proposition on *certiorari* in the Supreme Court, and on appeal to this Court, but completely failed to win the assent of either court with their views.

In the case of *In Re Interborough Consolidated Corporation,* 277 Fed. 455, Judge Mayer held, in accordance with the great weight of authority, that neither an action at law nor in equity will lie for the recovery of the value of the stock of a constituent company which has consolidated with another pursuant to law. In his opinion the decisions in the cases of *Barnett* v. *Pennsylvania etc. Market Co.* 218 Pa. 649, 67 Atl. 912 and *Winfree* v. *Riverside Cotton Mills Co.* 113 Va. 717; 75 S. E. 309 (the former of which cited the *Lauman* case, *supra,* with approval and later, with the *Lauman* case, was cited with approval in the *Petry* case,

and both of which have been cited by the appellants) cannot be accepted as sound in principle if construed as contrary to the prevailing authority. Judge Mayer was also of opinion that a minority holder of cumulative preferred stock upon which dividends were in arrears had no lien upon the assets of his company. In this connection the case is of unusual value in the instant case because, as here, the constituent company had sustained severe losses through the shrinkage in the value of its assets, arising, in that instance, from the collapse of Metropolitan Securities Company and Metropolitan Street Railway Company and, as in the case of Central Leather Company, the directors of Interborough-Metropolitan Company would not have been justified in paying any dividends upon the preferred stock. The facts of the Interborough consolidated case are so similar to those in the case at bar, and the opinion of Judge Mayer so pertinent, that we quote from the decision at some length:

> "When the statute here concerned was originally adopted in 1890, it carried with it the provision for a remedy to the dissenting stockholder. This was on the theory that, having deprived him of the right to prevent a consolidation, and having abrogated the rule at common law requiring unanimous approval to a consolidation, he would have a remedy in the event that he disapproved the consolidation.
>
> "The theory of the statute was that a dissenting stockholder would be protected, so far as his legal rights were concerned, if procedure was established by which he could obtain the value of his holding in the event that he was not agreeable to the proposed consolidation. A corporation being the creature of the state, brought into being only by virtue of the state's permission, it is fundamental,

as pointed out supra, that the statute is a part of the contract and that, when a person buys stock, he buys the same with all the obligations imposed by the statute. Colby *v.* Equitable Trust Co., 124 App. Div. 262, 108 N. Y. Supp. 978, affirmed 192 N. Y. 535, 84 N. E. 1111.

"It has been held in various jurisdictions that an action at law or in equity will not lie for the recovery of the value of the stock. Mayfield *v.* Alton Gas Co. 198 Ill. 528, 65 N. E. 100; Mansfield *v.* Brown, 26 Ohio St. 223; Bish *v.* Johnson, 21 Ind. 299; Noyes on Intercorporate Relations, pp. 90, 91. The Mayfield Case, supra, contains an admirable exposition of the particular question here discussed. Without analyzing what may be the difference between the principle as set forth in the cases just cited and that of the Pennsylvania decisions (Barnett *v.* Phila., etc., Market Co., 218 Pa. 649, 67 Atl. 912, and Winfree *v.* Riverside Cotton Mills, 113 Va. 717, 75 S. E. 309), the latter cannot be accepted as sound in principle, if construed as contrary to the Mayfield Case and to the observations well stated by former Judge Noyes in section 46 of his book on Intercorporate Relations. In addition to the views here expressed is the authority of the New York Supreme Court, per Mr. Justice Hotchkiss, for whose opinions I entertain great respect. In a suit brought by this plaintiff against Inter-Met., Mr. Justice Hotchkiss said in the course of the argument:

" 'The statutes which provide for the consolidation of corporations have to that extent deprived minority stockholders of certain common-law rights; that is, it deprives them in a sense, for they are made subordinate to the right of the prescribed majority to carry the corporation and its assets over into the amalgamated corporations. But a minority stockholder has his rights protected under the statute. He does not need to go into the consolidation if he protests. By all the

statutes I have ever had occasion to examine, it is provided that if a stockholder objects a commission shall be appointed to determine the value of his distributive share of the assets. * * * Your rights were protected by the provision of law, which permitted you to have appraisers appointed and to be paid the value of your holdings. That you did not do. Whether you have irretrievably lost your right to do that I do not pretend to say. But, having failed to object to the consolidation, your rights have been determined by virtue of the statutory proceedings to which you were a party, and the benefit of which was extended to you. But you have not done that. You have remained silent.'

"I think the foregoing is all that need be said upon this point.

"In respect of the claim filed for cumulative dividends on the preferred stock, it appears that at the time of the consolidation no assets whatever of Inter-Met. were segregated or set apart for the dividends on the preferred stock. Again, Mr. Justice Hotchkiss said all that is necessary on that point:

" 'There is nothing in the complaint to show that there was ever a dollar of the estate of the Interborough-Metropolitan Company segregated or set apart for dividends for the preferred stockholders. Until that was done they were all general assets, on which you had no lien, but an inchoate right.'

"Further, on the facts as they existed, the directors would not have been justified in paying any dividends, and might have subjected themselves to personal liability, if they had done so."

It may be that upon consolidation there is a notional or theoretical dissolution of the merging company, although we maintain to the contrary. What becomes of the old company? Its existence continues as a constituent of the new. When a

chemical element combines with another to form a new compound, it is not *dis*solved. *Dis*solution connotes a falling apart, a *dis*tribution, the opposite of a *con*solidation. *Re*organization is the opposite of *dis*organization.

For Income Tax purposes, a consolidation is regarded as a *re*organization, as opposed to a dissolution. The holder of stock is not regarded even as having parted with or realized upon his stockholdings.

The fees payable to the State of New Jersey upon consolidation are not those payable upon a dissolution; and the fees are not imposed with reference to the total authorized capital stock of the consolidating corporation, but only on the excess thereof over the capital of the merging corporations. Corp. Act. Sec. 114.

The mere dissolution of a corporation in many instances is regarded as a breach of its executory contracts; thereby it disenables itself from continued ability to perform. But we know of no cases holding that a mere consolidation has this effect.

But the question here is not whether there is a notional extinguishment of the old corporation. What appellants must rely upon is the preferred stock clauses of Central Leather Company (disregarding for the moment the effect which we contend should be given to the statutory power to merge and to convert their stock). Those clauses provide for preferential payment in case of

"a liquidation or dissolution or winding up"

Noscitur a sociis. The language means *actual* dissolution with its normal result, sale and distribution. This has not taken place.

Further, no payment must be made to preferred stockholders except as a condition of payment to common stockholders. No distribution

of any kind has been made or is contemplated on the common stock.

The case of

> *Mayfield* v. *Alton Railway etc. Co.*, 100 Ill. App. 614, 625, affirmed 198 Ill. 528, 65 N. E. 100

(cited with approval by Judge Mayer, *supra* in the *Interboro Consolidated* case), involved a merger of two corporation, each with a capital stock of $250,000, all of one class. Plaintiff protested against the merger and argued that upon "the winding up" of the corporation the liability upon its paid-up stock became payable to the stockholder, that in such a case the stockholder has a right to have the assets converted into money for the purpose of raising a fund for such payment and that a merger is a "winding up" of the constituent corporation. A demurrer to the declaration was sustained, the lower court saying:

> "The winding up stage of the constituent corporations within the meaning of these words, as applied to the time for distribution of the corporate assets, is not accelerated by the consolidation and therefore the mere fact of the consolidation will not give the stockholder the right to have the corporate assets converted into money; nor is such consolidation a winding up of the constituent corporations within the proper meaning of these words as applicable to the state of case set up in appellant's declaration."

The appellate court stated the question to be:

> "Does the lawful consolidation * * * give a dissenting stockholder * * * a lawful right to demand of the new or consolidated company payment in cash for his shares of stock?"

and answered the question in the negative. The case is squarely opposed to the result of the *Petry* case in Pennsylvania.

Certain cases cited by counsel for the appellants in Point V are readily distinguishable. The cases of *Atlantic and Gulf R. R. Company* v. *Georgia, Yazoo and Mississippi Valley R. R. Company* v. *Adams* and the *Keokuk & Western R. R. Company* v. *State of Missouri,* are all cases involving the right of the Consolidated Corporation to succeed to the constituent company's right to exemption from taxation; and *Shields* v. *Ohio* involves a related problem, namely, the right of the State of Ohio to regulate the rate of fare charged by the consolidated corporation.

It will be seen at once that there is a wide distinction between cases involving the sovereign right to tax a corporation, or to regulate a public utility, and the rights of a non-assenting stockholder upon consolidation of his company with one or more other companies. As stated in the *Keokuk* case, "the taxing power of the state should never be presumed to be relinquished unless the intention to do so be declared in clear and unambiguous terms".

In other words, every inference is to be drawn in favor of the power of the sovereign government to tax, or to regulate public utilities. The essential question in these cases was whether there was an identity of existence between the consolidated corporation and the legal entity to which the tax exemption was granted. It was enough for the purposes of these decisions to consider that there was a notional as distinguished from an actual dissolution of the prior corporations.

In

Keokuk & Western R. R. Co. v. *State of Missouri,* 152 U. S. 301, 38 L. Ed. 450,

it should be noted that at the time of the formation of the new corporation by consolidation there existed a constitutional provision in the state of incorporation forbidding any exemption from taxation.

The case of

Yazoo & Mississippi Valley R. R. Co. v. *Adams,* 180 U. S. 1, 45 L. Ed. 395,

was also a case in which at the time of the formation of the new corporation by consolidation the constitution of the state forbade, in effect, the tax exemption claimed.

The case of

Shields v. *Ohio,* 95 U. S. 319, 24 L. Ed. 357,

involved the succession by the consolidated corporation of a special charter power to fix rates. Such a grant, however, would have been unlawful at the time of the formation of the new consolidated corporation. The law permitting the consolidation was not in effect at the time of the grant of the charter. In this, as in the other cases on this point, the central question would seem to be not the fate of the constituent corporations, but the rights and status of the new consolidated corporation under the law as existing at the time of its creation.

The case of

Atlantic & Gulf R. R. Co. v. *State of Georgia,* 98 U. S. 359, 25 L. Ed. 185,

involves the same legal question—whether the consolidated corporation is subject to the law existent at the time of its creation. The opinion of the lower court, reported in 55 Ga. 312, upheld

the tax in question on the authority of an earlier case,

Central R. R. & Banking Co. v. *State,* 54 Ga. 401.

It is noted that in the latter case the local court reached the same result, without reference to the question as to whether the old constituent corporations were or were not dissolved by the consolidation.

That the question is one of legislative interpretation is supported by the trend of the later cases on the subject. Thus, in

Wright v. *Georgia R. R. Banking Co.,* 216 U. S. 420, 54 L. Ed. 544,

the following summation of the cases is approved:

> "* * * A statute authorizing or directing the grant or transfer of the 'privileges' of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity."

The case of

Clearwater v. *Meredith,* 1 Wall. 25, 17 L. Ed. 604,

involved a controversy between private parties. The essential question was whether the defendants had fulfilled their guarantee that certain stock would be worth par at a certain future date. The plaintiff, holder of the stock, had exchanged it upon a consolidation of the corporation for stock of the new corporation. Thereafter, of course, the old stock could not have any separate value—hence it was held the defendants' guarantee did not extend to the new stock, and that by the act of the plaintiff in exchanging the stock the subject matter of the guarantee had ceased to exist.

The cases* of

In re Clark's Will, 131 Misc. 151, 226 N. Y. Supp. 141, affirmed *per curiam,* 237 N. Y. Supp. 745;

Murrin v. *Archbold Consolidated Coal Co.,* 232 N. Y. 541, 134 N. E. 563;

People v. *Ballard,* 134 N. Y. 269, 32 N. E. 54, 17 L. R. A. 737; on rehearing 136 N. Y. 639, 32 N. E. 611;

In re Timmis, 200 N. Y. 177, 93 N. E. 522;

In re Drosnees, 187 App. Div. 425, 175 N. Y. Supp. 628,

all involved, not a consolidation, but the sale of all the assets or an integral asset of the corporation.

The case of

Small v. *Sullivan,* 245 N. Y. 343, 157 N. E. 261 (cited by appellants at p. 53),

was argued upon the sufficiency of the complaint in a case brought by a bondholder attacking a consolidation which effected a reduction of capital injurious to the rights of creditors, and which, if accomplished directly, would have violated the Corporation Law in reducing the amount of the capital below the debts of the corporation; and which was alleged to be fraudulent in fact.

The appellants rely mainly upon the case of *Petry* v. *Harwood Electric Co.,* 280 Pa. 142, 124 Atl. 302, 33 A. L. R. 1249. It cannot be denied that the court, upon the facts in that case, ruled that "in the domain of the practical a dissolution resulted from the merger" and that "the merger worked a dissolution, so far as the preferred stockholders are concerned".

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* Cited at p. 65 of Appellants' brief to the proposition that "the Courts have universally held that a consolidation effects a dissolution".

In reaching this result, the court relied heavily on the earlier case of *Lauman* v. *Lebanon Valley R. R. Co.*, 30 Pa. 42, 72 Am. Dec. 685. That case was decided in 1858, and the merger there was made under an act passed "last year". A reading of that opinion clearly indicates that the merger was not effected under a pre-existing statute which was a part of the stockholders' contract.

We think it obvious that the language and reasoning of the *Petry* case is in conflict with the law of this state. Furthermore, the facts were unusual and lead the court practically to find that the merger was fraudulent and unfair as to the preferred stockholders and carried out as the result of a long continuing intent to freeze them out.

We have examined the record and briefs on appeal in the *Petry* case. The charter provided that:

> "The holders of the preferred stock shall be entitled to receive cumulative dividends at the rate of 6% per annum, *which must be declared by the Board of Directors, when earned,* to the extent of, and only from the undivided net earnings."

The bill of complaint filed before the stockholders' meeting on behalf of the holders of 1409 out of 6880 shares of preferred stock, prayed for an injunction against the merger "without the express consent of all of the holders of the defendant company's preferred stock", or, in the alternative, that the merged company "pay to the complainants the full real and actual value" of their shares, "said value to be ascertained in such manner as the court shall approve".

The bill further averred that the value of the preferred stock was greatly in excess of $86.25 per share (the amount offered for it by those interested in effecting the merger). No immediate restraint seems to have been applied for at the

time of the filing of the bill; certainly, none was granted. The stockholders' meeting was held and the merger approved. The bill was then amended by asserting that the merger was unfair and inequitable to the minority stockholders and by adding a prayer that the court should order "that the defendant corporation has no right to merge with any other corporation on any basis or in any manner that is unfair and inequitable to the minority stockholders." On the hearing on the return of the order to show cause for a preliminary injunction (subsequent to the meeting), the order was discharged but the defendant was required to give a bond "conditioned upon payment to the complainants of such sum or sums as might by final decree be adjudged to be due them."

By its answer the defendant company denied that the value of the preferred stock was greatly in excess of $86.25 per share but added:

> "We aver that the value of said preferred stock is a matter to be adjudicated *in these proceedings* in such manner as the court may direct."

and concluded with a prayer for dismissal of the bill save as related to,—

> "*the ascertainment and payment* to the complainants of the value of the shares of preferred stock of defendant company owned and held by them * * *."

Thus, the defendant joined with the complainants in seeking an ascertainment of the value of the shares in the equity suit. The required bond having been posted, much testimony was presented both on behalf of the complainants and on behalf of the defendant company as to the value of the assets and, hence, of the preferred stock, and also,

in the companion suit simultaneously tried, (see 124 Atl. 307) touching the earnings and depreciation and amortization charges, etc. of the company, particularly during the years 1917, 1918 and 1919.

It appeared that the company had been organized in 1912, as a result of a merger, with a capitalization of $3,688,000 consisting of 6880 shares of preferred and 30,000 shares of common stock of a par value of $100 each. The securities of the constituent companies had a value of $1,070,-635 but were entered on the merged company's books at $3,998,884.34, almost $3,000,000 more than they were worth. Dividends were paid on the preferred stock until 1914 when they were discontinued. Thereafter certain preferred stockholders brought suit to compel the payment of dividends but in 1917 the court held that, under the circumstances, the relief sought should be denied. (*Pardee* v. *Harwood Electric Co.,* 262 Pa. 68, 105 Atl. 48). It so happened that in 1917, 1918 and 1919 the net operating revenues of the company greatly increased and in the two latter years there was also a large nonoperating revenue.

Upon the evidence adduced, the trial court found, *inter alia,* that during the years 1917, 1918 and 1919 the sum of $227,000 "which should have been devoted to the payment of preferred dividends, had been diverted to the amortization of the overvaluation of securities owned by defendant, that this application of the earnings was not warranted, and that they should have been applied to the payment of dividends on the preferred stock" (124 Atl. 307). The trial court further found that said sum of $227,000, so set aside, should have been added to the net earnings of $11,350 appearing upon the books of the defend-

ant, making net earnings available for dividends, for the three years in question, of $238,350. Accordingly, the court held that there had been earnings to the extent of $34.64 upon each of the 6880 shares of preferred stock outstanding during the period in question available for the payment of dividends.

The practice of amortizing the overvaluation of asests had, of course operated for the benefit of the common stockholders whose holdings had, at the outset, represented little more than pure water, and the complainants contended that such was the purpose of the refusal to pay dividends on the preferred stock.

In the brief on behalf of the company, upon its appeal, counsel consistently with the averments in the answer, already referred to, stated:

> "The whole issue involved in this appeal is the valuation of the shares of preferred stock of The Harwood Electric Company owned by stockholders who dissented from the consolidation and merger of that company with others in 1920, to form the Pennsylvania Power & Light Co."

The Supreme Court of Pennsylvania referred to this statement in its opinion agreeing that "the whole issue involved is the valuation of the shares of preferred stock owned by stockholders who dissented from the merger" (p. 302). It further appears, as the court stated, that it was "admitted that throughout all the period during which there was a diversion of earnings to the amortization of the overvaluation of securities owned, the merger was in contemplation by those who controlled the defendant company" (p. 304). The common stock alone had the voting power.

The Appellate Court approved the finding of the Lower Court that the net assets of the com-

pany immediately preceding the merger were ample to pay par on the preferred stock, as well as his finding that $227,000 had been diverted from the payment of dividends, as aforesaid. Judge Schaffer said that the Lower Court would have been justified in holding that the shares were worth par because of the very amortization of fictitious valuation, "as their market value undoubtedly would have been (par) had there been the proper application of earnings." He also thought it was significant that the policy of amortizing the overvaluation of securities had been discontinued since the merger, and in his opinion the Lower Court would have been justified in finding also that "*undue* sums had been diverted and charged to depreciation of property and plant." During the five months of 1920, just prior to the merger in question, "the company had showed large earnings" which in the opinion of the appellate court, "were properly appropriable to the preferred stock." The court's reasoning makes reasonably apparent that if there had been a second suit to enforce a declaration of preferred dividends, it would have succeeded with respect to a large part, if not all, of the period of the company's prosperity subsequent to the decree in 1917 in the *Pardee* suit.

Counsel for the defendant in the *Petry* case apparently took the view that in the light of the mandatory provision of the preferred stockholders' contract and the history of the earnings of the company it was wiser to submit the question of the valuation of the complainants' preferred stock to the court and to rely on defendant's evidence respecting the valuation of the assets and income of the company than to seek to sustain the fairness and equity of the merger against the attack made. No issue was made of the contention that the

merger was tantamount to a dissolution. Apparently the complainants were content with the opportunity to evaluate their shares thus afforded, and the court felt that it was relieved from the necessity of enjoining the merger, which was one of public utility corporations, by rectifying the unfairness to the complainants through the process of valuation.

There can be little doubt but that a proposed merger of corporations of this state, upon similar facts, would be enjoined as unfair at the instance of dissenting stockholders acting promptly.

The cases cited at page 68 of the appellants' brief involved either actual fraud or action *ultra vires* the corporation in question. In a number of them no consolidation or merger was entailed. Thus, *Lazenby* v. *International Cotton Mills Co.*, 174 App. Div. 906, 160 N. Y. S. 1, involved a fraudulent sale of the assets of a New York corporation, after its dissolution.

In *Jones* v. *Missouri-Edison Electric Co.*, 233 Fed. 49, the court had found that the plan of consolidation was inequitable and a breach of trust effected by majority stockholders controlling both consolidating companies in which a grossly unfair adjustment of the relative values of the properties of the constituent companies had been made to the damage of the minority stockholders of one of them. For the complete facts, see the opinions, in the same case, of Judge Sanborn, 144 Fed. 765, and Judge Munger, 199 Fed. 64.

Jackson v. *Gardiner Inv. Co.*, 200 Fed. 113 presented facts similar to those in the *Jones* case, *supra,* except that the unfair adjustment was not accomplished by a consolidation but by a transfer of all of the assets of the Jackson Co. to another company in exchange for the issuance to the stockholders of the former of an inadequate percentage of the shares of the latter.

Deposit Bank of Owensborough v. *Barrett,* 11 Ky. L. 910, 13 S. W. 337, involved a consolidation held *ultra vires* because the statute was passed subsequent to the incorporation of the constituent railroad company the stock of which was owned by complainant. It was directed that the court's opinion should not be officially reported.

In the case of *International & G. R. R. Co.* v. *Bremond,* 53 Tex. 96, neither constituent railroad company was authorized by charter to consolidate.

The cases of *Barnett* v. *Phila. Market Co.* (Pa.) 67 Atl. 912, and *Winfree* v. *Riverside Cotton Mills Co.,* 75 S. E. 309, were disapproved in the case of *In re Interborough Consolidated Corporation,* 277 Fed. 455, *supra.*

The question whether consolidation effects a dissolution is, of course, entirely independent of the fairness or equity of the terms of the consolidation. The result can be reached only on a strict technical view which does not involve consideration of the equities. If this be a dissolution, every preferred stockholder, regardless of the fairness or equity of the terms of the consolidation, has a right not only to seek an injunction on the ground of unfairness and inequity, not only to accept the new securities, not only to have his stock appraised at market value, but also to claim, as a further alternative, the right to par and accrued dividends. This result, of course, is contrary to the intent of the statute, as well as the intent of the stockholders' contract.

In

N. J. & Hudson River Railway Co. v. *American Electric Works,* 82 N. J. L. 391,

this court, speaking through Chancellor Pitney, said that the purpose of the appraisal provisions was

> "to provide a simple and prompt remedy for what might otherwise be a serious injustice to the minority stockholders" (p. 398).

That conclusion would be *non sequitur* if the consolidation worked dissolution in the sense claimed by the appellants and gave rise to the rights asserted by them, for a consolidation could work no injustice.

Judge Mayer in

> *In re Interborough Consolidated Corporation,* 277 Fed. 455, supra,

evidently regarded the remedy of appraisal as the only alternative to acceptance or preliminary injunction upon timely application.

The very purpose of the appraisal provision of the statute was to provide a method whereby dissentient stockholders might obtain compensation. Further than that, the protection from fraud and unfairness (on timely application) afforded to them by the Court of Chancery suffices.

In the case of *Hale* v. *Cheshire R. Co.,* 161 Mass. 443; 37 N. E. 307, the court held that a consolidation pursuant to statute was binding upon the stockholders of the constituent company and said that "if the plaintiffs had any ground for complaint as to the terms of the plan of consolidation, they should have tried to prevent its going into effect * * * and cannot now maintain a claim for better terms to themselves than have been voted."

POINT VI.

Appellants are not, in equity, entitled to specific performance.

(A) *Appellants are in laches.*

Appellants were held in laches by the court below (Case, p. 246) at the time of the application for preliminary injunction. Surely the laches is greater as of the date of the final hearing and it is clear that they are not entitled to the remedy orginally prayed, that is, for injunction against further consummation of the consolidation and its consequences.

The appellants Ingraham did not intervene until the hearing on the motion over a month after the consolidation was effected. Notwithstanding the court held them in laches at that time, they did not promptly continue the diligent prosecution of the suit. The amendment to the Bill of Complaint adding prayers for alternative extraordinary relief was not filed for three and one-half months later, and no subpoena to answer was issued until even later.

Appellant Getty intervened at the final hearing and until that time took no step towards obtaining any relief.

Since the hearing on the motion, the new company has continued its business and of course much of the property received from the old corporation has been sold, exchanged or converted and new liabilities and contractual relationships have been created. The new company has expended over $8,000,000 in cash for the redemption of the outstanding bonds of the Central Leather Company. The new company has made the payments provided by the Consolidation

Agreement to stockholders who have converted their stock, has also paid the dividend which was sought to be enjoined, and has since paid regular quarterly dividends upon its Prior Preference Stock. Additional stock has been converted under the Consolidation Agreement. The investing public has widely dealt in the securities of the consolidated corporation. The latter has incurred and paid the various expenses in carrying through the Plan and Consolidation.

The slightest delay in seeking injunctive relief will bar that relief in a case of this nature.

Bell v. *Pennsylvania S. & N. E. R. R. Co.* (N. J. Ch.) 10 Atl. 741 (although in that case the consolidation was charged to be fraudulent).

Rabe v. *Dunlap,* 51 N. J. Eq. 40 (although in that case the consolidation statute was passed after the charter of the company was granted and was therefore not a part of the charter contract, and the consolidation effected a change in the corporate objects).

Also

Lazear v. *American Steel Foundries,* 86 N. J. Eq. 21, 252, *supra;*

Beling v. *Amer. Tobacco Company,* 72 N. J. Eq. 32, *supra;*

Dana v. *Amer. Tobacco Company,* 72 N. J. Eq. 44; Affirmed 73 N. J. Eq. 736.

Specific performance is an extraordinary equitable remedy and laches is a strong defense. It is thoroughly settled that the applicant for a specific performance "cannot call upon a court of equity for a specific performance unless he has shown himself ready, desirous, prompt and eager."

Milward v. *Earl of Thanet,* 5 Ves. Jr. 720, Note b, 31 Eng. Repr. 824.

This often quoted statement of the rule by Lord Alvanley has been often applied in this state.

Van Doren v. *Robinson,* 16 N. J. Eq. 256, 263;
City of Newark v. *Lindsley* (N. J. Ch.) 114 Atl. 794;
B. & B. Investment Company v. *Kaufman,* 100 N. J. Eq. 411, 414.

One reason why the defense of laches is strictly applied in specific performance cases is that the subject matter of the performance frequently fluctuates in value and it is not equitable to permit the complainant to stand silent, watching the result and speculating thereon, then to seek this extraordinary relief when it appears to complainants that it is more advantageous to do so than to accept the situation without seeking such relief. See *Rabe* v. *Dunlap* (supra). This reason is especially forceful in cases involving sale or purchase of corporate stock. 36 Cyc. 729.

As said by Vice-Chancellor Buchanan in *Massie* v. *Asbestos Brake Company,* 95 N. J. Eq. 298, at 318 (Affirmed per curiam)—

> "Specific performance is extraordinary relief, and the award thereof rests in principle upon the inadequacy of other remedies to afford complainant that measure of relief to which he is equitably entitled under the circumstances * * *."
>
> * * * "Furthermore, the equitable principles governing this extraordinary relief of specific performance limit its award to those who seek it promptly. *Cf. Fry Spec. Pref.* (6th Ed.) Sec. 1102; *Van Doren* v. *Robinson,* 16 N. J. Eq. 256, 263. I take this still to be a requirement or limitation in specific performance cases, notwithstanding it is frequently lost sight of because the great majority of such cases are between vendor and vendee on contracts of sale, and in those

> cases the doctrine of trust or equitable title rather strongly motivates the court in somewhat the opposite direction. The complainants have certainly in the present case been quite the reverse of prompt in bringing suit, and if they thereby lose the right to this additional relief which they might perhaps otherwise have had, it is their own fault."

And specific performance in cases relating to the sale or purchase of corporate stock is sparingly awarded and only in cases where the stock has no established market value, for, if there be a market value, the complainants' damage can be readily measured and ascertained at law.

> *Bronston* v. *Shupe,* 98 N. J. Eq. 67; Affirmed per curiam, 99 N. J. Eq. 449; and cases cited.

Other cases applying the rule that the right to specific performance is in the discretion of the court, are

> *Johnson* v. *Hubbell,* 10 N. J. Eq. 332;
> *Migel* v. *Bachofen,* 96 N. J. Eq. 608;
> *DeGheri* v. *Carobine,* 6 A. R. 290 (reversing 100 N. J. Eq. 493).

(B) *The appellants' alleged right to specific performance is, in effect, unilateral.*

It is of course well established that specific performance can be granted only where there is mutuality of obligation. While certain optional contracts become mutual upon the exercise of the option, the doctrine of laches is applied with special strictness in such cases.

> *Cooper* v. *Carlisle,* 17 N. J. Eq. 525, 534;
> *Milmoe* v. *Murphy,* 56 Atl. 292; Affirmed per curiam, 65 N. J. Eq. 767.

The preferred stock contract, as construed by the appellants is, in effect, unilateral as there is no obligation on the part of the appellants which might be enforced by specific performance at the suit of the defendants.

This doctrine is peculiarly applicable to this case because of the other remedies which appellants might have pursued. They might have filed a bill for an injunction on the ground that the terms of the consolidation were unfair and inequitable. That right seems to us to rest upon the power of the court of equity to enforce the duty of good faith on the part of the majority stockholders towards their fellow stockholders. It is a right of such a highly equitable character that there should be the utmost promptness in application for such relief. The only appropriate equitable remedy in that case is an injunction issued before the action alleged to be unfair and inequitable is executed. After the action has been carried into effect without protest, the power to review should be deemed to be lost as the *ex post facto* determination of the fairness and equity of that which has been accomplished involves a remedy too drastic to be equitable.

Appellants might have and may still accept the terms of the consolidation.

Appellants might have adopted the beneficent statutory remedy of appraisal.

The award of specific performance rests principally upon the inadequacy of other remedy. There is no inadequacy in the other remedies between which appellants might have made a choice.

(C) *The alleged contract as applied to the facts of the case, is too uncertain and indefinite to warrant specific performance.*

There is no obligation on the Central Leather Company to pay dividends. The declaration of

dividends was within the discretion of the directors; even if profits were available. The preferred stock contract expresses the rights of the preferred and common stockholders as between themselves in respect to any distribution of capital or earnings made by the corporation. There is no definite clear-cut obligation on the part of the corporation which can be adequately and clearly expressed in a decree requiring performance by the defendant corporation. There is no doubt that if it were held that appellants were entitled to specific performance, much debate might take place as to the exact rights of the appellants and terms of the decree.

See *Michael* v. *Cayey-Caguas Tobacco Co.*, 190 App. Div. 618, 180 N. Y. Supp. 532 (1920).

The Company's preferred stock clauses provided that

> "in case of liquidation or dissolution of the company * * * the surplus assets and funds of the corporation shall be applied to the payment in full par value of the * * * preferred stock and all other accrued and unpaid dividends thereon, * * *"

Upon a dissolution it appeared that the corporation had no surplus or net profits over and above the par of the preferred and common stock, and the question was whether the preferred stockholders were entitled to the arrearages of preferred dividends which had not been earned.

The court, in a full and well reasoned opinion, held that the preferred stockholders were not entitled to a sum equal to the arrearages of preferred dividends out of the assets on hand.

The court called attention to the provisions of Section 28 of the Corporation Law of New York, providing that

> "the directors of a stock corporation shall not make dividends, except from the surplus profits arising from the business of such corporation, nor divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital of such corporation."

This compares with Section 30 of the Corporation Act of this state, reading as follows:

> "The directors of a corporation shall not make dividends except from its surplus, or from the net profits arising from the business of such corporation, nor shall it divide, withdraw, or in any way pay to the stockholders or any of them, any part of the capital stock of such corporation * * *." (Comp. Stat. 1617.)

After citing English cases, the court concluded,

> "There being no accumulated profits, when the preferred stockholders received the full par value of their stock they had received all that they were entitled to, in view of the fact that the amount remaining in the hands of the Company was not sufficient to pay the par value of the common stock. In other words, there was no surplus; the amount on hand not being sufficient to pay the debts and repay the capital."

A contrary view was reached in the case of *Johnson* v. *Johnson & Briggs, Inc.*, 138 Va. 487, 122 S. E. 100 (1924).

In that case the charter provided that

> "in case of liquidation or dissolution or distribution of the assets of the corporation, the holders of the preferred stock shall be paid the par amount of their preferred shares, and the amount of dividends accumulated and unpaid thereon before any amounts shall be payable to the holders of common stock * * *."

Holding that the preferred stockholders were entitled upon a dissolution to arrearages of dividends which had not been earned, the court says, *inter alia:*

> "There has, as it seems to us, been too much refinement of reasoning and literal construction in some of the cases. The case cited in the opinion of the arbitrator (*Michael* v. *Cayey-Caguas Tobacco Co.*, 190 App. Div. 618, 180 N. Y. Supp. 532) supports the contrary view, and there have been several English cases which are cited in the extended note in 6 A. L. R. 822, with the same tendency, though the language slightly differs in each case. All agree, however, that the solution of the question depends upon the proper construction of the contract in the particular case; and in *Spear* v. *Rockland-Rockport Lime Co.*, 113 Me. 285, 93 Atl. 754, 6 A. L. R. 793, it is said that such contracts are construed most strongly against the corporation."

The amended charter of Central Leather Company provided as follows (Case, p. 322, fol. 20):

> "In case of a liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation the holders of the preferred stock shall receive cash to the amount of the par value of such preferred stock, together with all accrued and unpaid dividends thereon * * *."

It is at least doubtful, therefore, whether the appellants are entitled, upon dissolution, to more than $100 per share, the par value of their stock, as contrasted with their claim to par value and the full amount of unpaid dividends, which have not been earned by Central Leather Company and could not have been paid by it as a going concern.

But no case has been cited which entitles appellants to par and accrued dividends upon a con-

solidation (other, perhaps, than the *Petry* case, which we have completely distinguished).

Should the contentions of the appellants be completely sustained, the utmost relief to which they are entitled would be the *actual value* of their stock at the time of the consolidation—a remedy awarded in some cases involving fraud or illegality. This is the effect of the cases cited by appellants at page 68 of their brief. But in this case the court below has not found the actual value of their stock, although the market value (which, under many decisions which space does not permit to be cited, is held equivalent to actual value) has been determined by the appraisal in *Prall* v. *U. S. Leather Company* to be $71 per share.

(D) *Remedy by specific performance would be difficult of enforcement.*

If appellants were held to be entitled to specific performance, the only decree which we can conceive could be entered would be one along the lines of the decree suggested by Vice-Chancellor Pitney, in *Beling* v. *Amer. Tobacco Company* (Supra), but such a decree as applied to the facts of this case would be difficult of performance. For, if appellants are not bound by the consolidation and are entitled to the performance of their preferred stock contract as if no consolidation had taken place, their rights to dividends are necessarily restricted by the existence of the deficit of the Central Leather Company. Their only right would be to dividends out of what could properly be regarded as surplus earnings of Central Leather Company. And they would necessarily have to wait until the earnings of the business had aggregated an amount sufficient to wipe out the deficit.

This might take from five to ten years, so that the actual enforcement of the decree might be postponed for many years, and would require an accounting in order to determine the actual extent to which any payment should be made to appellants under such a decree.

(E) *Appellants have an adequate remedy at law.*

Appellants have already waived one legal remedy,—that of appraisal. But, if they are correct in their interpretation of the preferred stock contract, and in their contention that the consolidation is illegal and ineffective as to their rights, they would seem to have a remedy at law by way of action for damages.

We submit, on the whole, that the contentions of the appellants are based upon their alleged *legal* rights and that they exhibit a case totally devoid of any appeal to equity.

(F) *It is doubtful whether a court of equity has power to grant any relief logically based upon the proposition that the consolidation was illegal or void.*

The legality of the existence of the new corporation cannot be inquired into by a court of equity. This is the province of the Supreme Court in *quo warranto.*

This is true whether the legality of the corporate existence is attacked on the ground of defects in its organization, non-compliance with the statute, or fraudulent purpose.

To enjoin the exercise by a corporation of its rights and powers is equivalent to the annulment of its franchise.

The Consolidation Agreement in this case created a new corporation and it is clear that this court has no power to set aside the Consolidation Agreement or to deny the legality of the existence of the corporation whether at the suit of the attorney general or of an individual stockholder.

There is no distinction, in effect, between annulling the consolidation Agreement and declaring that it is a nullity as to the appellant stockholders.

As the Court of Chancery lacks power to declare the same null and void, or question the legality of the existence of the new corporation and its right freely to exercise its powers, it would seem that it cannot indirectly do so by granting relief to the appellants based necessarily upon the same hypothesis, namely, the nullity of the consolidation proceedings.

See

Bell v. *Pennsylvania, S. & N. E. R. R.*, 10 Atl. 741;

National Docks R. R. Company v. *Central R. R. Co.*, 32 N. J. Eq. 755;

Terhune v. *Midland R. R. Co.*, 38 N. J. Eq. 423;

Stout v. *Zulick*, 48 N. J. L. 599;

Vanneman v. *Young*, 52 N. J. L. 403;

Attorney General v. *Amer. Tobacco Company*, 55 N. J. Eq. 352; Affirmed per curiam, 56 N. J. Eq. 847;

Sisters of Charity v. *Morris R. R. Co.*, 84 N. J. L. 310.

POINT VII.

The decree should be affirmed, with costs.

Respectfully submitted,

PITNEY, HARDIN & SKINNER,
Solicitors for Respondents Central Leather Company and The United States Leather Company (No. 3).

May, 1930.

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Of Counsel.