New Jersey Court of Errors and Appeals

Between

ALEXANDER B. SHAW,
Complainant-Respondent,

and

STANDARD PIANO COMPANY, a corporation of the State of New Jersey,
Defendant-Appellant.

On Bill for Receiver.

On Appeal from Court of Chancery.

Brief for Appellant.

Abstract of the Case.

This is an appeal from two orders made in the Court of Chancery; one dated January 26, 1916, granting an injunction against and appointing a Receiver of the defendant corporation, and vesting the title of the property of the corporation in the Receiver; and another order dated February 21, 1916, denying the motion of the defendant to open the former order and to discharge the Receiver and continuing the former order in full force and effect.

Standard Piano Company was incorporated April 17, 1913. $40,000.00 par value of common stock was issued, and there was paid in cash and property from $5,000.00 to $10,000.00. The Company engaged in the business of selling pianos on the installment plan. H. P. Nelson was largely interested in the organization of the Company, and he was also largely interested in H. P. Nelson Company, an Illinois corporation, which manufactured pianos.

There is no evidence in the case which shows the condition of the business of the defendant during the year 1913. In the summer of 1914 the defendant was indebted to H. P. Nelson Company for pianos purchased. A large number of promissory notes were signed in blank by the president of the defendant and left with the treasurer of H. P. Nelson Co. at Chicago to be filled in and to be made payable over a long period of time, in amounts that it was assumed the defendant would be able to pay.

There is no evidence that H. P. Nelson Company had made up any account against the defendant, but there is evidence that H. P. Nelson Company had agreed to make certain deductions from invoice prices, and there is also evidence that the defendant at the request of H. P. Nelson Company had disbursed large amounts of money for the benefit of H. P. Nelson Company. The evidence shows clearly that no credit was given in making up these notes and that they were filled in in the total amount of the account of H. P. Nelson Company without any deduction from the invoice prices or for the indebtedness to the defendant. These notes were filled in for various amounts, and the first note was made payable December 1, 1914. A list of some of the notes is printed on pages 44 and 45. All the notes were made payable to H. P. Nelson Company, and some of them were endorsed by that Company and delivered to Fort Dearborn National Bank. Some of the notes were transferred to South Bend Banking Company, Logansport State Bank, Citizens Trust and Savings Bank of Chicago, Fort Dearborn Trust and Savings Bank, as Trustee, and Hamilton Investment Company. The total amount of these notes is not given in the evidence, but it appears that more than $44,000.00 of notes were paid during the year 1915. It is a fact that there are now outstanding notes of the face value as appears on the

ledger of the defendant of $97,244.02. These are notes which were originally signed in blank and filled in as hereinabove stated, and it is contended on behalf of the defendant and the stockholders and some of the creditors, that there has been an overcharge of about $35,000.00 on the piano account of H. P. Nelson Company, and $29,000.00 for cash advanced by the defendant at the request of H. P. Nelson Company; making a total of $64,000.00, which should be deducted from the notes. In other words, *the defendant contends that each one of these notes is subject to a defence of partial failure of consideration.*

Mr. Porter, the treasurer of H. P. Nelson Company, was made treasurer of that Company at the request of Fort Dearborn National Bank, and represented the Bank. There were extensive financial transactions between H. P. Nelson Company and Fort Dearborn National Bank. Mr. Patterson was a director of the Fort Dearborn National Bank, and vice-president and director of H. P. Nelson Company, and was acting for Fort Dearborn National Bank.

H. P. Nelson Company was in financial difficulties in the summer of 1914, when these notes were made, which difficulties led finally to bankruptcy proceedings, and that Company was adjudicated bankrupt in December, 1914. In January, 1915, Mr. Weissenbach, acting in behalf of Fort Dearborn National Bank and Hamilton Investment Co., who were holders of these notes of the defendant, called a meeting at his office, at which Mr. W. L. Herdien, who had been an officer of the defendant and vice-president of H. P. Nelson Company, was present, and the affairs of Standard Piano Company were discussed, and it was understood at that time that the defendant would probably not be able to meet its notes promptly as they fell due. There was a large stock

of pianos on hand at that time in January, 1915, and it was thought inadvisable to market them at a loss. *It was agreed at that meeting that the stock holdings should be turned over to Mr. Weissenbach as bailee until the pianos could be marketed, and that in the meantime, the promissory notes would only be sent forward for payment at times when the defendant was in funds to make the payments.*

This agreement was made on behalf of the defendant, with the consent of all the persons interested, and the affairs of the Company were put in the hands of Mr. Weissenbach as the representative of Fort Dearborn National Bank and others to dispose of the large number of pianos on hand, *and to pay the notes as conveniently as possible,* and then to make some arrangement to continue the business. In the meantime, it was discovered that the notes had been made out for too large a sum of money, and the treasurer of the defendant was requested to file a claim against the bankrupt estate of H. P. Nelson Company. No such claim was ever filed.

During the year 1915, as has been stated, over $44,000.00 was paid on these notes. *During the year 1915 over $200,000.00 of sales were made by the defendant represented by contracts of individual purchasers of pianos.* The net profit realized from these sales, as fairly appears from the evidence in the case, was fully $75,000.00.

The practice of the defendant was to borrow money by pledging the installment contracts as collateral.

In February, 1914, the defendant entered into an agreement with Federal Commercial Company, the purpose of which was to realize cash on its installment contracts. At this time, the books of the defendant show that contracts, which are called leases in the evidence and in the exhibits, had been assigned to Federal Commercial Company and are

now outstanding in the amount of $130,111.62. The indebtedness to the Federal Commercial Company is $51,029.93. The practice was to pay to defendant 70% in cash of the face value of an installment contract or lease and retain 20% as a regular reserve to cover losses by repossession of pianos and 10% as a bonus or brokerage. The percentages were calculated only upon the basis of thirty months, which means that if an installment contract was made to run more than thirty months to complete the payments, the amount over the total of thirty months payments did not enter into the percentage to be advanced. The excess over thirty months would be a special reserve payable to the defendant when collected.

The agreement with Federal Commercial Company contemplated the pledging of individual contracts which carried interest at 6% (p. 350, l. 20). *Presumably, all the individual contracts were made to carry interest.*

Defendant corporation also entered into an agreement with Commercial Security Company to the same effect as that with Federal Commercial Company, and under that agreement, contracts have been assigned to Commercial Security Company, and the amount of those now outstanding in the hands of Commercial Security Company, is $100,-193.45, and the indebtedness for moneys advanced by Commercial Security Company is $44,867.51.

The transactions with Commercial Security Company began in February, 1915, and Commercial Security Company has been represented by Leo J. Kelly, who was also made treasurer of the defendant.

The total amount advanced by Commercial Security Company from April 1, 1915, to December 31, 1915, was $48,199.21. Prior to that time, there had been advanced by that Company $13,699.44,

making a total of $62,898.65, which included an item of $3,000.00 relating to the bankrupt estate of Edisonia Company.

During 1915, defendant repaid to Commercial Security Company $15,501.82. It appears also that the defendant paid interest and paid brokerage charges. Some promissory notes were sent to Newark for collection during 1915, according to the testimony of Mr. Kelly, but only one note was produced in evidence which shows that it had been presented for payment and not paid, and that is the note which fell due August 1, 1915, for $3,002.00. *Undoubtedly, other notes were not presented and no action was taken to enforce the collection of the notes as they matured, for the reason that it had been agreed that payment should not be pressed; in other words, there had been an agreement for an extension of time.*

After the large number of pianos had been sold, new pianos were purchased from Stanley & Sons, a co-partnership in which Mr. H. P. Nelson was interested; and that concern supplied defendant with pianos, and at this time, the defendant owes Stanley & Sons about $7,000.00.

The Company also has on hand individual contracts in the sum of $4,820.00, which have not been assigned or pledged. In December, 1915, the Company was in such a satisfactory condition that Mr. Weissenbach, representing the banks and allied institutions, proposed that defendant should assign all its equity in the leases or piano contracts held by Federal Commercial Company and Commercial Security Company, *which equity was at that time estimated to be about $95,000.00,* to liquidate the outstanding promissory notes.

There was a meeting of the Directors of the defendant held at Chicago, and the Directors approved of such an assignment subject to the ap-

proval of the stockholders, but at a meeting of the stockholders, held on January 24, 1916, the action of the Directors was disapproved. There is evidence to show that it was the scheme of Mr. Weissenbach and Mr. Crandall, president of Commercial Security Company, and Mr. Kelly, treasurer of defendant, to get possession of the assets and business of defendant.

On January 24, 1916, the stockholders elected a new Board of Directors and ousted Mr. Kelly from his office as treasurer. On January 26, 1916, the bill of complaint in this cause was filed, in which Alexander B. Shaw appears as complainant, and it is alleged that he is the holder of more than $60,000.00 of the said promissory notes, and the bill is verified by the affidavit of Leo J. Kelly, the treasurer of the defendant company, *only*. The name of Mr. Shaw does not appear at any place on any of the books of the defendant, and he was not known by any of the stockholders of the defendant, and Mr. Kelly testified that he got the first information that Mr. Shaw held some notes, possibly a week before the complaint was made, *and he got that information from Mr. Weissenbach,* (p. 223, l. 33).

On the application, virtually of Leo J. Kelly, an order was made restraining the Company from transacting any business and appointing a Receiver and vesting the title of the property of the Company in the Receiver; *and without any notice to the defendant*. Upon application of the defendant, leave was given to file an answer, and there was a summary hearing and an application made to open the first order appointing the Receiver, and to discharge the Receiver, which was denied. Pending the hearing, the Receiver made a report, p. 195, and as that report was relied upon by the vice-chancellor in his opinion (p. 369), it is included in the printed case, and it shows, as will be contended,

read in connection with the other evidence in the case, that defendant was not insolvent within the rule as established in this State; that is—*the defendant was not unable to meet its pecuniary obligations as they matured, by means of either available assets or an honest use of credit.*

Specification of Grounds of Appeal.

1. The bill of complaint is insufficient in these respects:

(a) It is not verified by the complainant.

(b) It does not allege facts showing that defendant has become insolvent.

(c) It does not allege facts showing that defendant has suspended its ordinary business for want of funds to carry on the same.

(d) It does not allege facts showing that the business of the defendant has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders.

2. The order of January 26, 1916, does not adjudicate that the Court of Chancery was satisfied with the sufficiency of the application.

3. The order of January 26, 1916, does not adjudicate that the Court of Chancery was satisfied of the truth of the allegations contained in the bill.

4. The order of January 26, 1916, does not contain an adjudication that the defendant has become insolvent and is not about to resume its business in a short time thereafter.

5. The order of January 26, 1916, does not contain an adjudication that the business of the defendant has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders.

6. The order of January 26, 1916, is not in compliance with the statute, that is—section 65 as amended, P. L. 1912, 535 of the act entitled: "An Act concerning corporations," in that it does not contain an adjudication of either of the requirements of said statute before an injunction can be granted and a Receiver appointed.

7. The order of January 26, 1916, was made without any preliminary order directing a summary hearing of affidavits, proofs and allegations on behalf of the parties.

8. The order of January 26, 1916, was made without any notice to the defendant corporation and without giving it any opportunity to be heard.

9. The order of February 21, 1916, continuing the order of January 26, 1916, in full force and effect is illegal for the same reasons specified against the former order, in Nos. 2, 3, 4, 5 and 6.

10. The order of February 21, 1916, is erroneous, because upon the answer of the defendant the injunction should have been dissolved and the Receiver discharged.

11. The order of February 21, 1916, is erroneous, because the complainant failed to prove that the defendant has become insolvent and is not about to resume its business in a short time.

12. The order of February 21, 1916, is erroneous, because the complainant failed to prove that the defendant's business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders.

13. Upon the pleadings and proofs the defendant was entitled to an order vacating the order appointing the Receiver and discharging the Receiver.

14. The jurisdiction of the Court of Chancery to appoint a Receiver of an insolvent corporation to wind up such corporation and distribute its assets, is suspended by the National Bankruptcy Law of 1898 and the amendments thereto.

Brief of Argument.

1. As to insufficiency of Bill of Complaint.

The Act of 1912, P. L. 535, amending the act entitled: "An Act concerning corporations" (Rev. of 1896) reads as follows:

> 65. Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the Court of Chancery for a writ of injunction and the appointment of a receiver or receivers, or trustee or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and

agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order.

The same section before the amendment of 1912, reads as follows:

65. Whenever any corporation shall become insolvent or shall suspend its ordinary business for want of funds to carry on the same, any creditor or stockholder may by petition or bill of complaint setting forth the facts and circumstances of the case, apply to the court of chancery for a writ of injunction and the appointment of a receiver or receivers or trustees, and the court being satisfied by affidavit or otherwise of the sufficiency of said application, and of the truth of the allegations contained in the petition or bill, and upon such notice, if any, as the court by order may direct, may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties, and if upon such inquiry it shall appear to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts, or paying out, selling, assigning or transferring any of its estate, moneys, funds, lands, tenements or effects, except to a receiver appointed by the court, until the court shall otherwise order. (P. L. 1896, p. 298).

The statute prior to 1896 is found in Rev. of 1887, p. 189, section 70, and is the same as the Act of 1896, section 65, with this exception: the clause re-

lating to the action to be taken by the Chancellor, reads as follows:

> "Whereupon the Chancellor being satisfied of the sufficiency of the facts and allegations contained in the said petition or bill, by affidavit or otherwise, and upon giving, when so ordered, such reasonable notice, to be served or published as the Chancellor in an order to be made for that purpose shall direct the Chancellor may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered by or on behalf of the parties—"

The original Act of 1829 is found in Nixon's Digest, 1855, under title of "insolvent corporations," p. 345, sec. 5, p. 346, which section reads as follows:

> "Whenever any corporated company shall have become insolvent, it shall and may be lawful for any creditor or stockholder of the said company to apply by petition or bill of complaint to the Chancellor, etc."

and the remainder of the section is substantially the same as the subsequent Act. of 1887, sec. 70.

The original statute which authorized an application to the Chancellor for an injunction and receiver, required proof of *insolvency only* as the basis of an order for a summary hearing; but before an injunction could issue it must appear that the Company has become insolvent and shall not be about to resume its business in a short time thereafter with safety to the public and advantage to the stockholders.

> "No criterion of insolvency is furnished by the statute except the suspension of business."

Bedford v. *Newark Machine Co.*, 16 Eq., 1 C. E. Gr. 117.

The bill of complaint in this case does not allege that the defendant corporation has suspended its

business, but on the contrary, it does allege in paragraph 4, p. 2:

> *"The defendant corporation is now conducting its business of dealing in pianos in certain store premises leased by it at No. 584 Broad street, Newark, N. J."*

The criterion of insolvency furnished by the Act of 1912 is the same as the original act of 1829, as construed in the case cited. Therefore, the bill does not allege facts showing that the defendant corporation has become insolvent. If the further provision in the act of 1912 is to be interpreted as a criterion of insolvency, the bill fails to allege facts which show that the business has been conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders; and, therefore, it fails to show insolvency.

There is an allegation in the bill, paragraph 9, p. 4, that the business of the defendant corporation has never been conducted at a profit, but that allegation is not supported by any proof; the only affidavit being that of Leo J. Kelly, who did not become Treasurer of the corporation until March, 1915, about two years after the business was commenced, and consequently, has no personal knowledge of the facts alleged.

An analysis of the statements made in the bill of complaint, shows this situation (pp. 2, 3):

Alleged to be due and unpaid

Promissory notes	$16,000.00
Promissory notes	5,000.00
Also promissory notes	6,050.00
Assigned invoice	4,300.00
Gulbranson-Dickinson Co	1,879.50
Stanley & Sons	6,686.16
	$39,915.66

Assets available may be stated as follows:

Cash in Bank	$ 1,800.00
Equity in pledged leases	35,000.00
Merchandise on hand	5,000.00
Accounts receivable	500.00
Total	$42,300.00

Bearing in mind *that the business is going on and that the promissory notes to fall due are payable throughout a period of time of two years* (see par. 10, p. 4):—It is apparent *on the face of the bill,* that the Company is not insolvent and has not suspended its ordinary business for want of funds to carry on the same and has not conducted the business at a great loss and is not conducting it at a great loss.

Rule 119 of the Court of Chancery Rules 1910, p. 41, provides as follows: "Where an injunction is prayed and the facts which are relied upon for the injunction are not within the knowledge of the complainant, such facts shall be verified by the oath or affirmation of some person who has knowledge of the facts, unless under the peculiar circumstances of the case, the Chancellor or a vice chancellor, shall dispense with such additional verification."

This bill of complaint is not verified by the complainant, and it is apparent from a mere reading of the affidavit of Mr. Leo J. Kelly that he has no personal knowledge of all the facts alleged in the bill.

The rule requires verification by the complainant, unless the facts are not within the knowledge of the complainant. The bill is usually sworn to by the complainant; but if he be absent, or his affidavit for any reason cannot be procured, it may be sworn to by the attorney of the complainant, or by any person acquainted with the facts.

Youngblood v. *Schamp,* 15 Eq., 2 McC. 42, at p. 43.

The affidavit of the complainant is not annexed to the bill of complaint, and there is no affidavit annexed made by any person with knowledge of the facts.

The statute requires a petition or bill of complaint presented by a creditor or stockholder. The statute does not authorize an application by petition or bill of complaint to be made by the agent or the attorney of the creditor or of the stockholder.

There is no proof connected with this bill of complaint to show that the application is made by a creditor. The situation is similar to that of a petition for an order of discovery under the act in aid of executions, which statute provided that the judgment creditor shall present to the judge a petition verified by oath, in which he shall state the amount due on the exectuion, etc., and his belief that the judgment debtor has property, etc.

These particulars are most of them matters peculiarly within the knowledge of the creditor himself, and the Supreme Court has held that such petition must be verified by the creditor himself and cannot be verified by his agent.

Westphal v. *Dunning,* 50 Law, 21 Vr. 459.

My contention is, that the bill of complaint should have been verified by the complainant as to those facts within his own knowledge. This is the requirement of the statute and the requirement of Rule 119. No order was made dispensing with it.

2 & 3. As to necessity for Preliminary Order that the Court is satisfied of the sufficiency of the Application and of the Truth of the Allegations.

The statute contemplates proof of the sufficiency of the application and of the truth of the allegations contained in the bill.

The court must be satisfied of either of three essentials in order to assume jurisdiction:

(a) Insolvency; (b) Suspension of business for want of funds; (c) business carried on at great loss.

If the court is satisfied that either one of these essentials is proved, then the court may proceed in a summary way to hear the affidavits, proofs and allegations which may be offered on behalf of the parties. *How is the satisfaction of the court to be expressed?* The statute does not provide for a summary hearing unless the court is satisfied of the sufficiency of the application and of the truth of the allegations; and, therefore, if the court is not satisfied, the application would, of course, be denied.

There is not anything in the record in this case which shows that the court was satisfied, within the meaning of the statute. Certainly the making of an order granting an injunction and appointing a receiver without any summary hearing is not in compliance with the statute, *because the statute plainly says that the court may proceed to hear the proofs which may be offered on behalf of the parties,* and if upon such inquiry it shall appear to the court, etc., an injunction may be granted.

It is contended that in all cases the court must first satisfy itself of the sufficiency of the application and of the truth of the allegations contained in the bill before taking any further action; that the only action which the court can take after determining such satisfaction, is to proceed in a summary way to hear the affidavits, proofs and allegations, *which may be offered on behalf of the parties.*

4, 5, 6, 7 & 8. The Order of January 26, 1916, is Erroneous for the Reasons stated in Specifications 4, 5, 6, 7 and 8.

The adjudication (p. 14) is that said Standard Piano Company has become and is insolvent and without funds to continue its business with safety to the public and advantage to its stockholders.

This is not an adjudication in compliance with the Act of 1912, which requires that it must appear to the court either:

(a) That the corporation has become insolvent and is not about to resume its business in a short time thereafter; or, (b) That its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders so that its business cannot be conducted with safety to the public and advantage to the stockholders.

As this is purely a statutory proceeding, the statute must be complied with, and the court must determine insolvency and inability to resume business in a short time, or the other fact that the business has been and is being conducted at a great loss.

The bill seems to have been drawn and the order also, on the basis of the Act of 1896, and probably the Act of 1912 was not in the contemplation of the counsel or of the court when the order was made.

The case of *Catlin* v. *Vichachi Mining Co.*, 73 Eq., 3 Buch. 286, was decided in 1907 under the Act of 1896. That case held that a receiver could be appointed although a corporation had not actually suspended business for want of funds and that if either fact, insolvency or suspension, exists without the other, the court may entertain the bill and proceed in a summary way to hear the affidavits, etc.

The proof of suspension of business is only required as a jurisdictional fact to bring the matter at all before the Court of Chancery.

A receiver can only be appointed when insolvency and inability to resume business in a short time, *are both shown.* That is the exact situation in the early case of *Bedford* v. *Newark Machine Co.*, 16 Eq., 1 C. E. Gr. 117.

It may be observed that the jurisdictional requirements are stated in the disjunctive, and that the requirements in order to justify an injunction are stated in the conjunctive as to insolvency and resumption of business. An adjudication of want of funds to continue business is not an adjudication that the company is not about to resume its business in a short time, for the reason that the company may be able to resume the business *without funds, by the use of credit.*

If my contention is right as to the necessity for a preliminary adjudication before proceeding to a summary hearing, then this point is well taken, that the order of January 26th was made without any preliminary order directing a summary hearing.

The next question as to the making of the order without any notice to the defendant and without giving it any opportunity to be heard, does not seem to have been decided in any reported case.

Mr. Dickinson says, in his supplement of 1911, Dick. Ch. Prec. at p. 15, Note:

> "An application for an injunction and the appointment of a receiver may be made in several ways: First, Upon the filing of a bill, a notice may be served on defendant, that application will be made on one of the regular motion days for the appointment of a receiver. Second, A bill may be filed and an order made directing the defendant to show cause why a receiver should not be appointed. Third, An order may be made upon the filing of the bill appointing a temporary receiver of the defendant company and directing the company and its creditors to show cause why the appointment of said receiver should not be continued and an injunction issued according to the prayer of the bill. Fourth, An order for the appointment of a receiver may be made upon the filing of the bill without notice or the granting of a rule to show cause, *where it is apparent that no de-*

fence can be made to the application. This last method will only be pursued upon a very strong and clear case being shown by the bill."

The original statute of 1829 provided for reasonable notice and the change was made in the Act of 1896.

In *Pierce* v. *Old Dominion, etc., Smelting Co.,* 67 Eq., 1 Robb, 399, Vice Chancellor Stevens held at p. 409: "The court gains jurisdiction by the giving of 'reasonable notice' to the defendant corporation." That case was decided in 1904. The learned Vice Chancellor evidently was of the opinion that the Act of 1896 properly interpreted requires reasonable notice to be given.

It is difficult to understand how there can be a hearing of proofs *offered on behalf of the parties which must include the defendant,* without any notice. It may be conceded that it would be proper to grant an injunction without notice, or perhaps to appoint a receiver as custodian of the property, but is is contended that the order of January 26, 1916, appoints a receiver who takes the title to the property by virtue of the order and by virtue of the statute, and that such an appointment without notice, or without an opportunity to be heard, is in violation of fundamental law.

It is the settled and fundamental policy of the law in this State: "In every proceeding affecting the property of individuals, the owners of the property affected are entitled to notice of the proceeding, *although not directed by the statute under which the proceedings are had.*"

Vailsburg v. *Shannon, et al.,* 24 Law, 4 Zab. 740, Court of Errors, 1853.

State v. *Jersey City,* 24 Law, 4 Zab. 662, Sup. Ct., 1855.

In the last cited case, Justice Elmer says, at p. 666, speaking of notice of the time and place of

hearing of parties interested: "This is not in terms required by the Act, but it is a general principle of law of too much importance to be overlooked, that no person shall be bound by proceedings of a judicial nature affecting his person or property, without having an opportunity to be heard." And citing 15 Wendell 375, *Young* v. *Overseers of Hardiston,* 2 Gr. 520; *N. J. Turnpike Co.* v. *Hall,* 2 Harr. 337; *State* v. *Freeholders of Hudson, in Error,* 4 Zab. 718.

9. The Order of February 21, 1916, continuing the Order of January 26, 1916, in full force and effect, is illegal.

If the foregoing contention as to the errors in the order of January 26th are good, manifestly the subsequent order is also erroneous and no further argument need be made.

10. The Order of February 21, 1916, is erroneous, because upon the Answer of the Defendant the Injunction should have been dissolved and the Receiver discharged.

This point involves a discussion of the merits as disclosed in the bill and affidavits and the answer and affidavits.

Every material allegation in the bill relating to the financial condition of the Company is denied by the answer. The affidavit of the complainant, which was produced upon the motion based on the answer and which was not attached to the bill of complaint, is not competent to be read in support of the bill, except insofar as it may be a reply to any new matter set up in the answer, or in the affidavits annexed thereto.

Brundred v. *Paterson Machine Co.,* 4 Eq., 3 Gr. 294, at p. 309, where the court says:

"I have not looked into the affidavits made by the complainant since filing the bill, because it appears to me improper to allow them to be read."

"They have the opportunity at the time the bill is filed of subjoining their affidavits and they should do so and file them with the bill." The answer throws great doubt upon the title of the complainant to the promissory notes which he alleges he holds, and also shows that there is a fair dispute as to the consideration of those promissory notes.

The bill of complaint alleges at par. 11, p. 5, that two suits are pending against the corporation in this State, and the answer shows that one of them is for the sum of $58.00 and is a disputed claim, and that the other is an action based upon an alleged breach of covenant, and that the Company has a meritorious defence to it. The bill alleges and sets out a statement of assets and debts in paragraph 8, on p. 4, showing assets $182,400.00 and debts $246,700.00 and therefore, a deficiency of $64,300.00 in the general financial condition of the business.

The answer in the statement of assets, in paragraph 13, page 25, shows assets of $214,900.00 and liabilities of $170,329.00, making a surplus of $44,-571.00, and it must be observed that the complainant has not included in the statement of assets the item of "piano leases in possession of company $4,-100.00."

The principal difference in the statements, is in the item of "Notes Payable" and the defendant claims and so alleges in its answer, and the answer is supported by affidavit that there should be credited on the item of $94,000 of notes payable the sum of $29,000.00 in moneys advanced by the defendant for H. P. Nelson Company, and $35,000.00 for overcharges, making a total of $64,000.00.

The usual rule is, that when the equity of a bill is denied, an injunction will not go or will be dissolved.

It has been held in the United States courts in cases of this character, that no receiver will be ap-

pointed on preliminary application where all the grounds alleged are fully met by proper affidavits.

Brady v. *Bay State Gas Co.*, 106 Fed. 584.

Taylor v. *Cuban Land & Steamship Co.*, 106 Federal 437.

The court having permitted short notice to be given of the application to discharge the receiver, and having permitted the answer to be read, should have disposed of the motion upon the answer and affidavits, and the defendant was entitled to prevail in such motion.

As has been shown heretofore, the defendant had available assets sufficient to meet the debts alleged to be due and unpaid, *and this appears upon the face of the bill.* The answer shows that the defendant has $22,000.00 more available assets in the one item alone of piano leases; the complainant alleging (p. 4) $174,000.00, and the answer alleging (p. 25) $196,000.00. The answer also discloses piano leases in possession of the company $4,100.00, which increases the available assets, *because they can be pledged.* The only question raised upon the bill and answer and affidavits relates to the outstanding promissory notes.

The defendant denies that $16,000.00 of notes are past due and unpaid. This denial of course, goes to the amount of notes, said notes being subject to the defence of failure of consideration. No action has been brought upon any of the alleged past due promissory notes.

It is contended on behalf of the defendant that the fact that the notes have not been paid, it not appearing that they were protested, while it may be evidence of insolvency, is open to explanation, and that the explanation made in the answer is satisfactory and shows that the notes are subject to a legal defence.

In *Regina Music Box Co.* v. *F. G. Otto & Sons, et al.*, 65 Eq., 20 Dick. 582 at p. 590, Vice Chancellor Stevens says:

> "The fact that the notes of a manufacturing company have gone to protest may be and often is *prima facie* evidence of insolvency; but it is obvious that such evidence is open to explanation. The protest may have occurred by accident or because it was intended in good faith to contest their validity, or because it was without funds to pay through some unexpected delay on the part of one or more of its own debtors to make prompt payment. If the notes were paid or the claim successfully defended, it could hardly be asserted afterward that for this reason alone the company was insolvent. *And I do not think it could be said that if the company did not pay in cash, but had sufficient credit to renew its notes and did in fact renew them and went on with its business it should be regarded as insolvent if it also appeared that its assets exceeded its liabilities.*"

In this case there is a legal defence to the notes. It may be questioned whether that defence is available as against the complainant, but the complainant's affidavit is not legally before the court. If the complainant's affidavit is read, the court will perceive that a note came due in August, 1915, p. 44, and another one in September, and still another in October, November and December each, and that no action has been brought on those notes. Why has the complainant held such a large amount of notes without making himself known to the corporation or its officers? Why has he not demanded the money and taken some speedy action to protect his own individual interests as any reasonable person would do? Why was not his affidavit annexed to the bill of complaint? When did he get these promissory notes? He was very careful to

conceal the date when the notes were delivered to him.

Mr. Herdien, the former treasurer and principal stockholder of the company, states in his affidavit, at p. 30, that he does not know the complainant and never heard of him, and shows what the notes are that the complainant holds, if he holds any, and that they are subject to the defence of failure of consideration.

Mr. Frank W. Bonar, the president of the company, in his affidavit, at p. 38, says that he does not know the complainant and never heard of him, and that he has not presented to the company any demand for payment of any note or any claim whatever.

There being a doubt as to the validity of the notes and as to the *bona fides* of the transfer to the complainant there ought not to be any injunction, and therefore, the motion upon the bill and answer and affidavits should have been granted to discharge the receiver.

11, 12 & 13. Complainant failed to prove that Defendant has become insolvent and is not about to resume its business in a short time. Complainant also failed to prove that the Defendant's business has been and is being conducted at a great loss, etc.; and upon the pleadings and proofs Defendant was entitled to an order discharging the Receiver.

The evidence as to the financial condition of the defendant came from Leo J. Kelly, a witness in behalf of the complainant, and Walter L. Herdien, a witness in behalf of the defendant.

A statement of the financial condition made up by Mr. Kelly is set out in the bill of complaint (par. 8, p. 4).

A statement made by Mr. Herdien is set out in the answer (par. 13, p. 25).

At the hearing on February 4, 1916, Mr. Herdien testified, beginning at p. 108, that he is now the treasurer of Standard Piano Company and was elected January 4, 1916, and that he has one of the general ledgers covering a period from about May 1, 1915, to the middle of January, 1916, and that ledger prior to that time he did not have and never had in his possession. His further testimony relates to changes to be made in the statement of assets and liabilities set out in the answer, and he made out a new statement which he fully explains in his testimony, beginning at p. 110 and the statement was put in evidence and marked Exhibit D. 2, pp. 179 and 355. Exhibit D. 2 increases the assets, as stated in the answer, from $214,900.00 to $249,925.07, and decreases the liabilities from $170,-329.00 to $147,735.94. Mr. Herdien explains that he had had more time to examine the books and to make more accurate figures.

Mr. Kelly, at p. 179, testified as to the correctness of Exhibit D. 2. *He stated that the leases assigned are a liability and not an asset, although he had verified the bill of complaint, in which the leases assigned are given as an asset.* He verified the item of $4,820.00 for leases unassigned. In his statement in the bill of complaint he gave the leases assigned at $147,000.00 and at p. 182, l. 40, he explains that he took off from the records $191,000.00 as the amount of leases and figured on a deduction of ten per cent. for repossessions. At p. 252, on cross examination, l. 40, Mr. Kelly is asked to explain what the item of $139,000 money borrowed on security, in par. 8, in the bill of complaint, means, and he answered, "It represents the amount of money due on leases sold."

At l. 25, p. 253, he gives the figures to show how he ascertains the amount, and he states the total amounts of the leases assigned to Commercial Se-

curity Company as $100,193.45 and to Federal Commercial Company as $130,111.62.

It will be perceived that these figures agree exacly with those of Mr. Herdien in Exhibit D. 2.

Mr. Kelly estimated the merchandise on hand (p. 4) at $5,000.00 and Mr. Herdien makes the amount $4,000.00. They agree upon the item of automobile at $900.00. Mr. Kelly makes the amount of furniture and fixtures $200.00 and Mr. Herdien $400.00 and the receiver $551.00 (pages 204 to 206, $801.00 less the item of Ford car $250.00). Mr. Kelly makes accounts receivable $500.00 and Mr. Herdien $8,000.00. Mr. Kelly did not have in his statement the item of piano leases in possession of the company $4,100.00, which was afterwards shown to be more. As to accounts receivable, Mr. Herdien testified on cross examination p. 154, that he made up the item from statements issued by Mr. Kelly, that there were accounts receivable about $3,000.00, and he added to that amount a car load of pianos shipped to Engelhard-Seybold Co. which are charged to that concern on the books of the defendant. A statement of the pianos shipped to Engelhard-Seybold Co. is contained in Exhibit D. 6, p. 360, which shows the invoice price of the pianos.

It is very clear that Mr. Herdien's estimate was fair. There is a conflict in the testimony as to the value of these pianos, and the probability of making any collection, *but the fact is certain that the pianos constitute an asset and that the fair value of them is at least $5,000.00.*

Mr. Kelly in his original statement (p. 4) gave the amount of notes payable as $94,000.00 and the receiver reported notes payable $102,244.02, at p. 207, but no explanation has been made for the increase. The receiver states that he took the amount from the books of the company.

In Exhibit D. 2, Mr. Herdien makes the notes payable $34,300.00, which corresponds with the amount in the answer (p. 25). He afterwards increased this amount to $44,300.00, which appears in Exhibit D. 4, p. 359, after having made further examination of the books and found more notes outstanding.

Accounts payable $10,029.00 is more than the amount stated by the receiver (pp. 27, 28). The items relating to Edisonia Estate and H. P. Nelson Estate are in dispute and were not given at all by Mr. Kelly in his original statement.

The item of assigned invoice in Mr. Kelly's statement at p. 4, is included in Mr. Herdien's notes payable. The item of $51,029.93, debt to Federal Commercial Company in Exhibit D. 2, p. 355, is Mr. Herdien's result of an examination, and Mr. Kelly at p. 258, l. 10, stated that on December 31, 1915, Federal Commercial general account shows a debit balance of $44,044.32, which is less than Mr. Herdien's statement.

The item of $44,867.51 as the indebtedness to Commercial Security Company is substantially corroborated by the testimony of Mr. Kelly (pp. 255, 256) from which it appears that the amount is $46,-936.83.

Upon more careful examination of the books having further time to make the same, Mr. Herdien on February 17, 1916, produced a further statement, which is marked Exhibit D. 4, p. 359. *That statement was offered at p. 283 without objection.* The cross examination of Mr. Herdien on that statement relates principally to the item of accounts receivable, which includes the Engelhard-Seybold Company claim. He was also cross examined at p. 294 as to the item of "accrued interest estimated."

It is not contended that these items appear as stated on the books, but they are made up from facts appearing on the books.

The item of "accrued interest" is estimated upon the theory that the outstanding contracts with individual purchasers, carry interest, and as they were not produced it cannot be maintained that they do not carry interest. If interest has not been collected, it is the fault of the treasurer of the company *and it does not follow that the interest is not collectable.*

The total amount of liabilities stated in Exhibit D. 4 should be $153,265.94 (there being a mistake in the addition).

It is contended *that Mr. Herdien's statement has not been successfully attacked and that it shows clear net assets of at least $100,000.00.* Eliminating the item of accounts receivable and accrued interest, there would still be nearly $80,000.00 net assets. Even allowing the full amount of notes payable, the company has sufficient assets to liquidate all its debts. But as has been above argued, there is a substantial meritorious dispute as to the consideration of the outstanding notes, and it does not seem reasonable and equitable that such a dispute should be settled in a proceeding of this kind, which deprives the defendant of the benefit to be gained by performing its contracts with Federal Commercial Company and Commercial Security Company and its customers, and must result in ruining the company.

The legality of these notes ought to be settled in an action at law and their validity and the amount due, be beyond dispute before a receiver is appointed. There is one person who could have established the claim of the complainant if it is an honest claim, and that person is Alexander B. Shaw. His affidavit, as has been shown, is not legally before the court. He did not submit himself as a witness, although he was in Newark. The notes which it is claimed that he holds, must have been transferred to

him shortly before the bill was filed, and the question naturally arises: *"Why did he purchase notes to the amount of $67,000.00 without any inquiry as to the financial condition of the company?" and why did he purchase notes that were past due and unpaid?* It is so obvious that the complainant's name is simply being used for the purposes of this suit, that is is hardly worth while to argue the matter. That being so, the inference is irresistible that the notes were transferred so as to get them in the hands of an innocent holder if possible; and leads to the further inference that the Fort Dearborn National Bank and its allied concerns knew of the failure of consideration.

Mr. Fletcher testified, at p. 98, that Mr. Patterson is one of the directors of the bank, and Mr. Fletcher also testified, on p. 97, ll. 5 to 20, that he had no knowledge of the transaction with Mr. Shaw, or with the fact that the notes were passed over to Shaw, although he is the vice-president of the bank. None of the notes are endorsed by the bank, and they bear only the endorsement of H. P. Nelson Company, Frederick Porter, treasurer (p. 95).

Mr. Herdien testified at p. 111, l. 30, *et seq.*, that Mr. Porter was made treasurer of H. P. Nelson Company the middle of August, 1914, *as the representative of Fort Dearborn National Bank.* The evidence shows that these notes were signed in blank by Mr. Forbish, the president of Standard Piano Company.

It is a fair inference that when the notes were endorsed over by Mr. Porter, *he knew how the consideration was made up.* There is a question of fact whether Mr. Porter had knowledge, or whether Mr. Patterson had knowledge, and it is also a question of fact whether they in any way represented the Fort Dearborn National Bank, and those facts ought to be ascertained in an action to

be brought on the notes. It makes no difference what knowledge Mr. Herdien had, because while he may be personally estopped, (and that is not conceded), the other creditors of Standard Piano Company are not estopped and the other stockholders are not estopped.

It appears that when Mr. Herdien learned of the excess amount of notes he insisted that a claim should be made against the bankrupt estate of H. P. Nelson Company, and such claim has never been made.

It is respectfully contended that the complainant is not such a creditor as contemplated by the statute, and that his bill should not have been sustained. The Vice Chancellor overlooked two important facts. He says at p. 370, that the defendant has never realized a dollar from the so-called "reserve" in the notes and leases assigned by it.

It is respectfully submitted that the Vice Chancellor failed to take into consideration the fact, *that none of the leases which had been assigned had matured, and that the reserve is not payable until maturity.* These individual contracts were assigned and the defendant received 70% of the face of the contract up to an amount not exceeding thirty months installments. 10% was held back as a bonus or brokerage and 20% as a regular reserve. Any excess over thirty months is called a special reserve.

The contract with Federal Commercial Company is Exhibit D. 1, p. 349. The same form of contract was made with Commercial Security Company, and in addition to the contract a certificate was made out with each pledge of an installment contract or lease in the same form as Exhibit D. 1, of February 17, 1916, p. 356, to which was attached an assignment as shown on p. 357.

Without going into the question of the exact contractual relationship between defendant and these two companies from which it got money, as to whether the companies are pledgees or owners, it is sufficient to say that the papers show on their face that the companies were to collect and control the moneys collected until the individual contract had been paid in full. The reserve is not payable until that time. As the contract with Federal Commercial Company was not made until February 5, 1914, *it is apparent that none of the contracts assigned to it have yet matured, or had matured at the time of the appointment of the receiver, and consequently, no money was payable upon the reserve account.* This reserve account appears to be, as stated by the Vice Chancellor, $104,407.63, *and it is an absolute account, payment of which is merely deferred until the contracts mature.* If in the meantime, any individual debtor fails to pay, and the piano is repossessed, the defendant is obliged to make good by substituting a new contract which may either cover a new piano or a re-sale of the repossessed piano.

As no contract appears yet to have matured, of course there is no credit on the books for any payment on the reserve.

The transaction is very beneficial to the defendant, because it provides the means of obtaining money, and it is very profitable to the pledgees, because they get 6% on their money and an additional 10% for brokerage.

It is respectfully submitted that the general financial condition of the company has been shown to be that of a solvent going concern carrying on an installment business which depends upon periodical collections. As to the ability of the defendant to meet its maturing obligations, it is contended that the Vice Chancellor overlooked the testimony of

Mr. H. P. Nelson. Mr. Nelson testified (p. 267) that Stanley & Sons Company, of which he is a member, would extend credit to Standard Piano Company and that it had been selling pianos to the Standard Piano Company, and had then an account of some $6,000.00 against it and that his company was willing to ship more pianos and give credit. He says specifically (l. 34): *"We are willing to accept lease paper such as they take from their customers in payment of our pianos that we ship to them."*

An effort was made on Mr. Nelson's cross examination to discredit him, but without success. The fact is, that Stanley & Sons have been selling pianos to the defendant, and they are creditors according to the receiver's report (p. 207) in the sum of $6,686.16.

The law is settled in this State that *insolvency is a general inability to meet pecuniary obligations as they mature, by means of either available assets or an honest use of credit.*

Wright v. *American Finance & Securities Co.*, 96 Atl. 387.

The available assets of the company as shown by Exhibit D. 4, p. 359, are as follows:

Cash	$	1,500.00
Leases unassigned		4,820.00
Merchandise on hand		4,000.00
Accounts receivable		10,000.00
	$	20,320.00
Deducting disputed item Engelhard-Seybold Co.	$	5,000.00
Net available assets *exclusive of assigned leases*		15,320.00

Accounts payable are shown in the receiver's report at p. 207. They amount to	8,683.40
Deducting account of Stanley & Sons...	6,686.16
Leaves amount of accounts payable.....	1,997.24

This leaves a surplus of over $13,000.00 to meet the assigned invoice, although there is no proof of when it will be due, and to apply on the past due notes, *if necessary.*

Of course, this statement takes into account the credit to be extended by Stanley & Sons. *Is it not, therefore, apparent that this company could by means of its available assets and an honest use of credit, continue its business.*

The Vice Chancellor also found that the company was losing money and had been losing money, and it is respectfully contended that this finding is not based upon the facts. There is no evidence as to what business was done in the year 1913, but it is fair to assume that the business was profitable, or it would not have been continued.

Mr. Herdien had in court on February 4 (p. 120, l. 40) a statement which he had made up showing the condition of the business for 1914, which had been sent back to him, and he testified that he didn't have all the figures at the time and went into it further and discovered a statement later on, and that no statement had ever been filed.

On p. 121, he testified that he did not make up any statement for that year, but found a statement of the business for 1914, which was in his possession as secretary of the company. This paper, was found in the papers of the company, and was offered in evidence and excluded. Mr. Herdien did not know who had made up the statement. His letter to the Collector of Internal Revenue, Exhibit C.

2, p. 310, is relied upon as showing that the business of 1914 was conducted at a loss, but the amount of the loss is not stated. It appears from the letter, however, that the affairs of the company have been in the process of liquidation since January 1, 1915. There is no evidence that the company carried on business at a great loss and greatly prejudicial to its creditors or stockholders in the year 1914. It is possible, and perhaps a fair inference from the evidence that the apparent loss was occasioned by the excess charges in the notes that were issued to H. P. Nelson Company.

Certainly the company did not carry on business at a loss in the year 1915.

Mr. Bonar, the president of the company, testified (p. 102) that he has been connected with the company since November, 1914, and has been in the piano business for twenty years, and that the sales of the defendant amounted in 1915 to about $200,000.00, and over 900 pianos were sold, and that the average selling price of a piano was $200.00 (p. 104) and that the profit for 1915 was about $75,000 (p. 105, l. 22).

Exhibit D. 3 of February 17, 1916 (p. 358), which has not been in any manner discredited, is a statement showing the business from April 1, 1915 to January 1, 1916, and shows a profitable business.

Exhibit D. 5, (p. 359), shows that 687 pianos were sold between April 1, 1915, and January 1, 1916, and that 151 pianos were repossessed, exchanged or returned to be resold.

Exhibit D. 3 is fully explained in the testimony of Mr. Herdien at p. 305. It also appears in the evidence of Leo J. Kelly at p. 256, that since he became treasurer in March, 1915, the company paid to Commercial Security Company $15,501.82.

It also appears that the defendant paid notes to the amount of more than $44,000.00 during the year 1915.

This certainly does not show that business was being carried on at a great loss.

In conclusion, it is respectfully urged that while the complainant's motive is not material, if he has a legal right, there is so much uncertainty about his legal right that the defendant is justified in directing attention to the suspicious conduct of the complainant and Leo J. Kelly, the treasurer of the defendant.

It seems that the stockholders held a meeting on January 24, 1916, and ousted Kelly from his office of treasurer. In two days thereafter, Kelly appears as the only support of the complainant's bill. The affidavits annexed to the answer show that Kelly expected to get control of the business, and he has appeared as a witness in behalf of the complainant throughout the case. The case looks as though there was collusion between Kelly and the representative of the Chicago banks to get control of the business for Kelly's benefit, and it may be that it was the intention to compel a default by the company on the contract with Commercial Security Company, which would be greatly to the advantage of that company. Mr. Crandall, the president of that company, figures as a witness in behalf of the complainant, and made an affidavit which was so manifestly unfair that Vice Chancellor Howell remarked that it was unfair and ought not to be read, and that the lawyer who drew it did not know what he was about.

It is respectfully submitted that the receiver should have been discharged and the bill of complaint dismissed.

14. The jurisdiction of the Court of Chancery to wind up the affairs of an insolvent corporation is suspended by the National Bankruptcy Law.

This specification will be considered under three points, as follows:

Points.

1. The National Bankruptcy Law of 1898 and amendments thereto has deprived the State Court of any jurisdiction in so far as it deals with insolvent corporations under the General Corporation Act of 1896.

2. The Bankruptcy Act of 1898 has suspended State insolvency laws in so far as it operates upon the same subject matters, persons and rights.

3. The essential features of an insolvent law are the taking charge of the property, bringing suits in law or equity, discharging the liabilities, barring all claims not presented; and distributing the assets coming into the hands of the officer appointed by the Court under its provisions.

Argument.

I.

The National Bankruptcy Law of 1898 and amendments thereto has deprived the State Court of any jurisdiction in so far as it deals with insolvent corporations under the General Corporation Act of 1896.

A. THE JURISDICTION OF THE FEDERAL COURTS IS EXCLUSIVE AND NOT CONCURRENT.

Sturgis v. *Crownishield,* 4 Wheat 122.
In Re Watts v. *Sachs,* 190 U. S. 1.
Southern Railroad Co. v. *Railroad Commission of Indiana,* 236 U. S. 446, 35 Sup. Ct. 304.
In Re Macon Lumber Co., 7 A. B. R. 66.

Littlefield v. *Gray,* 96 Me. 422.

R. H. Herron Co. v. *Superior Court,* 8 A. B R. 493 (Sup. Ct. Calif.).

In Re Smith & Dodson, 2 A. B. R. 9 (D. C. Ind.).

Potts v. *Smith Mfg. Co.,* 25 Pa. Sup. Ct. 209.

Certain opinions of the courts, in a few of the cases cited above voice the rule of law on this point.

In *Watts* v. *Sachs,* 190 U. S. 1, Chief Justice Fuller said:

> "And the operation of the bankruptcy laws of the United States cannot be defeated by insolvent commercial corporations applying to be wound up under state statutes. The bankruptcy law is paramount, and the jurisdiction of the Federal courts in bankruptcy, when properly invoked, in the administration of the affairs of insolvent persons and corporations, is essentially exclusive. That the amendatory bankruptcy act of February 5, 1903, provided that acts of bankruptcy would exist if a person 'being solvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a State, of a Territory, or of the United States'; and that the intent of the bankruptcy law is to place the administration of affairs of insolvents exclusively under the jurisdiction of the bankruptcy courts."

In *Southern Railroad Co.* v. *Railroad Commission of Indiana,* 236 U. S. 446, Sup. Ct. 304, the court said:

> "If Congress have a constitutional power to regulate a particular subject, and they do actually regulate it in a given manner and in a certain form, it cannot be that the State legislatures have a right to interfere, and, as it were, by way of complement to the legislation

> of Congress, to prescribe additional regulations, and what they may deem auxiliary provisions for the same purpose. In such a case, the legislation of Congress, in what it does prescribe, manifestly indicates that it does not intend that there shall be any further legislation to act upon the subject matter. Its silence as to what it does not do is as expressive of what its intention is as the direct provisions made by it. * * * The will of Congress upon the whole subject is as clearly established by what it had not declared as by what it has expressed."

In *Re Macon Lumber Co.*, 7 A. B. R. 66, the court said:

> "In Griswold *v.* Pratt (9 Metc. 16) it was adjudged:
> 'While the bankruptcy law of the United States is in force, it destroys the validity of the operation of the State insolvency law, even though no proceeding be had under it at the time. The one system supersedes the other, for they would in their proceedings be repugnant to each other.' This would seem scarcely open to controversy in view of Section 711 of the revised statutes which provides in express terms that the jurisdiction of all matters and proceedings in bankruptcy in the courts of the United States shall be exclusive of the courts of the several States. It needs no elucidation to satisfy the mind that if jurisdiction of a particular topic is exclusively entrusted to the national courts, no other courts have any jurisdiction with regard to it. Here, however, we have seen not only that there is no concurrent or co-ordinate jurisdiction, but that the jurisdiction of the bankruptcy court is exclusive; that the State law is suspended, and that the State court has no jurisdiction at all."

In *Re R. H. Herron Co.* v. *Superior Court,* 8 A. B. R. 493 (Sup. Ct. Calif.):

> "There can be no concurrent jurisdiction in the two sovereignities over the same subject, and, as the people of the several States have yeilded to the United States the power to enact law upon this subject, it follows that when the United States has enacted a law the power of the State to enforce its own law upon that subject, whether it be similar or different, must yield to what is the supreme law of the land."

B. WANT OF JURISDICTION MAY BE RAISED AT ANY TIME DURING THE PROCEEDINGS.

In Moody v. *Clyde Development Co.,* 18 A. B. R. 275 (Sup. Ct. Me.).

Metcalf v. *Watertown,* 128 U. S. 586, 9 Sup. Ct. 173.

In *Moody* v. *Clyde Development Co.,* 18 A. B. R. 275, (Sup. Ct. Me.), the court said:

> "The very foundation of judicial proceeding is jurisdiction. The question of jurisdiction may therefore be raised at any stage of the proceedings by any suggestion that will apprise the court of the want thereof.
>
> Our court have said in *Powers* v. *Mitchell,* 75 Me. 364:
>
> When it appears to the court that they have no jurisdiction of the case before them, they will not proceed in the suit, but will stay all further proceedings, though the objection is not taken by plea to the jurisdiction."

In *Metcalf* v. *Watertown,* 128 U. S. 586, 9 Sup. Ct. 173, the court said:

> "Want of jurisdiction is a question that the court should consider whenever or however raised, even if the parties forbear to make it or consent that the case may be considered on its merits."

C. CONSENT CANNOT CONFER JURISDICTION:

In *Re Weedman Stave Co.,* 199 Fed. 948, the court said:

> "And the Supreme Court of this State has expressly recognized this rule in Hickman *v.* Parlin-Orendorff Co., 88 Ark. 519, 115 S. W. 371. In that case the question of jurisdiction of the Chancery Court was not raised in the trial court, nor upon appeal in the Supreme Court by either party; but the court, of its own motion, took notice of it, and held the decree of the Chancery Court absolutely void for want of jurisdiction. It requires no elaborate citation of authorities to sustain the proposition that consent cannot confer jurisdiction. Minnesota *v.* Northern Securities Co., 194 U. S. 48, 24 Sup. Ct. 598, 48 L. Ed. 870."

II.

The Bankruptcy Act of 1898 has suspended State insolvency laws in so far as it operates upon the same subject matters, persons, and rights.

Both operate upon the same subject matter, namely, the assets of the corporation; upon the same persons, namely, the corporation and its creditors; upon the same rights, namely, the pro rata distribution of assets among its creditors.

Moody v. *Port Clyde Development Co.,* 18 A. B. R. 275, (Sup. Ct. Me.).

Parmenter Mfg. Co. v. *Hamilton,* 172 Mass. 178.

Ketcham v. *McNamara,* 72 Conn. 709.

Palmer v. *Hixon,* 74 Me. 447.

Potts v. *Smith Mfg. Co.,* 25 Pa. Sup. Ct. 209.

Closser v. *Strawn,* 227 Fed. 139.

In *Re Macon Sash, Door & Lumber Co.,* 7 A. B. R. 66.

R. H. Herron Co. v. *Superior Court,* 8 A. B. R. 493, (Sup. Ct. Calif.).

In *Re Henry Gutwillig,* 90 Fed. 475 (D. C. N. Y.).

In *Re Charles F. Sievers,* 91 Fed. 366.

In *Re Theodore E. Curtis et al.,* 91 Fed. 737 (D. C. Ill.).

In *Re Weedman Stave Co.,* 199 Fed. (D. C. Ark.).

In *Re Smith & Dodson,* 2 A. B. R. 9 (D. C. Ind.).

Harburgh, Assignee v. *Costello,* 184 Ill. 110.

In *Re Salmon & Salmon,* 143 Fed. 395 (D. C. Mo.).

In *Re Merchants Ins. Co.,* 3 Biss. 162.

Carling v. *Seymour Lumber Co.,* 113 Fed. 483.

Littlefield v. *Gray,* 52 Atl. 925.

Mauran v. *Carpet Lining Co.,* 23 R. I. 324.

Westcott v. *Berry,* 45 Atl. 352 (Sup. Ct. N. H.).

In *Re F. A. Hall Co.,* 121 Fed. 992 (D. C. Conn.).

In *Re Pickens Mfg. Co.,* 20 A. B. R. 202 D. C. Ga.).

Van Nostrand v. *Barr,* 30 Md., 128.

Foley Bean Lumber Co. v. *Sawyer,* 76 Minn. 118.

Duryea v. *Muse,* 117 Wis. 399.

In *Re Parmenter Mfg. Co.* v. *Hamilton,* 172 Mass. 178, the court said:

> "The only saving clause affecting the jurisdiction of State courts provides for cases commenced in those courts before the passage of the act.
>
> The plain implication is that proceedings commenced in the State court after the passage of the act are unauthorized. This is in accordance with the earlier language giving the statute full force and effect from the time of its passage, except that the filing of petitions is to be postponed for a short time.
>
> We are of opinion that the language was chosen to make clear the purpose of Congress

that the new system of bankruptcy should supersede all State laws in regard to insolvency from the date of the passage of the statute."

In *Re Ketcham* v. *McNamara,* 72 Conn. 709, the court said:

"An action by a trustee in insolvency under Gen. Stat., Chap. 52, which is in the fullest sense an insolvency law, to set aside a fraudulent conveyance of goods by the insolvent since the Federal bankruptcy act of 1898 took effect, cannot be maintained, although the insolvent has not been declared a bankrupt, since the title of the trustee under the state insolvency law is not merely voidable by proceedings in bankruptcy, but is absolutely void.

Any different construction of the act of Congress would often lead to frittering away insolvent estates in legal expenses. One creditor would resort to the state insolvent court. Another, later, would institute bankruptcy proceedings in the district court of the United States. Costs would accrue in each tribunal, and in suits brought under the orders of each. Creditors proving claims in the state court would have to present them again in that of the United States, and yet the proceedings there, if taken more than four months after the act of bankruptcy, might result in nothing but a barren decree, adjudicating the debtor, indeed, a bankrupt, but affording no means of reclaiming property which he had previously made way with, or placed in the hands of a trustee in insolvency."

In *Re Closser* v. *Strawn,* 227 Fed. 139, the court said:

"It seems to be clear that the will of Congress, as expressed in the bankruptcy act and its various supplements, is that no other or additional bankruptcy act should be enforced in any of the states, and that no persons excepted from the operation of the bankruptcy

law of the United States should be subject to, or have the benefit of, any other bankruptcy law passed by any of the states. It is unnecessary to consider the cases in which this proposition has been considered to any extent. The insolvency act of Pennsylvania of 1901 is suspended, because the bankruptcy law of Congress and its supplements are in full force. Because the state insolvency law is not in force, the plaintiffs in this case have derived no authority by reason of any of the provisions of that law, and there was not extended to them by that law, or by the proceedings in court pursuant to that law, any other or greater powers than would exist in them under a deed of voluntary assignment at common law."

In *Re Henry Gutwillig,* 90 Fed. 475 (D. C. N. Y.), the court said:

"Both systems cannot operate side by side as respects the same estate; the one must necessarily supersede the other; and the State and voluntary systems must yield to the system established by Congress, pursuant to the Constitution."

In *Re Salmon & Salmon,* 143 Fed. 395 (D. C. Mo.), the court said:

"It can be neither disputed nor doubted but that the national bankruptcy act suspends the operations of all State insolvency laws over all cases coming within its scope and purview."

III.

The essential features of an insolvent law are the taking charge of the property, bringing suits in law or equity, discharging the liabilities, barring all claims not presented, and distributing the assets coming into the hands of the officer appointed by the Court under its provisions.

In *Re Weedman Stave Co.*, 199 Fed. 948.

Moody v. *Port Clyde Development Co.*, 18 A. B. R. 275.

In *Re Smith & Dodson*, 2 A. B. R. 9.

In *Re Weedman Stave Co.*, 199 Fed. 948, the court said:

> "What constitutes an insolvency law? The elements of an insolvency law are insolvency, surrender of property, its administration by a receiver or trustee, distribution of the assets among the creditors, and a provision for priorities or other matters not permissible in the absence of such a statute. A provision for the discharge of the debtor from the unpaid balances of his debts is not essential to make it an insolvency law. In re Curtis (D. C., Ill.), 1 Am. B. R. 440, 91 Fed. 737; in re F. A. Hall Co. (D. C., Conn.), 10 Am. B. R. 88, 121 Fed. 992; in re Salmon (D. C., Mo.), 16 Am. B. R. 122, 143 Fed. 395; Harbaugh *v.* Costello, 184 Ill. 110, 56 N. E. 363, 75 Am. St. Rep. 147."

In *Re Moody* v. *Port Clyde Development Co.*, 18 A. B. R. 275, the court said:

> "We regard it as a well settled rule of law that a State statute which authorizes the court to appoint an officer, whatever his title, to take charge of the estate with full power to bring suits in law or in equity, discharge the liabilities and distribute the assets either in full or upon a percentage of the claims proved, and which also bars all claims not proven within the time specified by the statute, or by the order of the court, is in effect and practical operation an insolvent law."

In *Re Smith & Dodson,* 2 A. B. R. 9, the court said:

> "The statute provides for the conversion of the assets into money, the collection of debts due the insolvent, the proof of claims by creditors, the distribution of the proceeds arising from the property assigned among the creditors according to their respective priorities, and for the final settlement of the trust estate and the discharge of the trustee. There is no provision for the discharge of the insolvent debtor. This statute constitutes an insolvency law, and regulates the making of an assignment, which must embrace all the property of the debtor, as well as every step to be taken in winding up the estate of the bankrupt, to the distribution of its proceeds among those entitled to share therein, all to be administered in a State court possessed of general jurisdiction at law and in equity. It embraces the same persons and the subject matter as the bankruptcy act, and, if the State law still remains in force, every insolvent's estate may be administered in a State court, and must be so administered, if it first acquires jurisdiction, because, if the State statute continues in force, there would be two courts (State and national) possessing concurrent jurisdiction over the same person and the same subject matter, and whichever of the two first acquired jurisdiction would retain it, and administer the estate of the insolvent, to the exclusion of the other. The bankruptcy act contemplates no divided jurisdiction. It would cease to possess any vital force or efficiency, if the State court, proceeding under our State insolvent law, may hold possession of the bankrupt's estate, collect in the debts, allow claims and make final distribution among those entitled to participate therein, leaving to this court nothing but the adjudication of bankruptcy and the discharge of the bankrupt. Such a construction is inadmissible, because it

> would render inoperative numerous express provisions of the bankruptcy act. The State statute and the bankruptcy act cannot stand together. The bankruptcy act is the supreme law of the land, enacted in pursuance of an express grant of constitutional authority; and, in so far as any State law is in conflict with it, such law is suspended and remains inoperative until the Federal enactment is repealed. All matters embraced in the bankruptcy act must be controlled and governed by its provisions. Among these are the right and duty of the Bankruptcy Court to have insolvent estates settled in and by it, under and in accordance with the provisions of the bankruptcy act."

The foregoing argument under Specification No. 14, was prepared by Mr. Walter L. Herdien, of the Illinois Bar.

The following cases in New Jersey touch upon the subject, but there does not seem to be any case which has decided the question.

> "Our State insolvent laws are not bankrupt laws and are not suspended by the passage of the National Bankrupt Act."
>
> *Steelman* v. *Mattix,* 36 Law 7 Vr. 344 Sup. Ct. 1873.

The original Act of 1829 to prevent frauds by incorporated companies, was essentially a bankrupt act, and the bankrupt features of the act and its re-enacted provisions have since been repeatedly recognized by our Court of Chancery.

> *Butler* v. *Com. Tobacco Co.,* 74 Eq. 4 Buch. 423, Court of Errors 1908.

In *Singer* v. *National Bedstead Manufacturing Company,* 65 Eq., 20 Dick. 290, 1903, Vice Chancellor Stevenson discusses the question involved quite extensively.

Respectfully submitted,

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New Jersey Court of Errors and Appeals

Between

ALEXANDER B. SHAW,
Complainant-Respondent,

and

STANDARD PIANO COMPANY, a Corporation of the State of New Jersey,
Defendant-Appellant.

On Appeal from Chancery.

Brief for Complainant-Respondent, Alexander B. Shaw.

Facts.

The Standard Piano Company, is a New Jersey corporation, formerly engaged in the selling at retail of pianos for cash and upon time payments. Where pianos were sold upon time payments, the customer would execute and deliver to defendant what is known as a conditional contract of sale, which provided for the manner in which the purchase price should be paid, and further provided that title to the instrument contracted for, should remain in the defendant, until all the terms of the contract were fulfilled.

Defendant had an authorized capital stock of One Hundred Thousand ($100,000) Dollars of which $60,000 was preferred stock and $40,000 common stock. As appears on page 146 of the record in the testimony of Walter L. Herdien the preferred stock was issued to one H. P. Nel-

son, but H. P. Nelson never paid for, and claims to have never subscribed for the said stock.

In the affidavit of Walter L. Herdien, on page 29 of the record, he states that he is the owner of 249 shares of the common stock of the defendant, that H. P. Nelson holds 150 shares of the common stock and Frank W. Bonar, one (1) share of the common stock.

On page 147 of the record in the testimony of Walter L. Herdien, it appears that H. P. Nelson never paid anything for the preferred capital stock issued to him, and that only about $5,000 or $10,000 was paid to the defendant corporation for the common stock issued to Nelson, Herdien and Bonar, and the payment of even this sum is not firmly established by Herdien's testimony. At all events the defendant corporation issued its entire authorized capital stock, but the total payment therefor in cash or property was not in excess of $10,000.

H. P. Nelson was, at the time of the formation of the Standard Piano Company, and up to the month of December, 1914, the President and a director of the H. P. Nelson Company an Illinois corporation, engaged in the manufacture of pianos, which said H. P. Nelson Company was adjudicated a bankrupt December 24, 1914, in the District Court of the United States for the Northern District of Illinois, Eastern Division (p. 268).

W. L. Herdien was secretary and treasurer and a director of the H. P. Nelson Company up to and until August, 1914, and was also a director and officer of the defendant corporation, as was likewise said Nelson a director of the defendant corporation.

The Federal Commercial Company is a Delaware corporation, having its principal place of business at Chicago, Ill. The business of the

Federal Commercial Company consisted of the purchasing, at a discount, of conditional sales leases upon pianos, from piano dealers. Both Herdien and Nelson herein referred to were stockholders and directors of the Federal Commercial Company and controlled the same.

The Commercial Security Company is an Illinois corporation having its principal place of business at Chicago, Ill., and its business consists exclusively of the purchase of conditional sales contracts on pianos from piano manufacturers and piano dealers.

The defendant corporation having practically no assets with which to commence business, entered into an agreement with the Federal Commercial Company on February 5, 1914 (p. 349 of the record) by the terms of which agreement the Federal Commercial Company agreed to purchase from the defendant such conditional sales contracts as the defendant might have and which would be acceptable to said Federal Commercial Company, the latter company agreeing to pay the defendant for all contracts so purchased 70% of the face value of such contracts upon delivery and "paying a further 20% of the unpaid face value of said contracts as above stated, as nearly as practicable in quarterly installments, but not to exceed 20% of the amounts that shall from time to time be thereafter collected and remitted to second party upon said contracts by first party or collector under the terms of this agreement, less any payments of principal and interest on contracts or any other obligation in default, until a total of 90% shall have been paid as the full purchase price of said contract." (p. 350 of the record). Under this agreement the defendant assigned and delivered to Federal Commercial Company, a large number of its con-

ditional contracts of sale, exceeding in face value the sum of $100,000.

No written contract was made between the defendant and Commercial Security Company, but the defendant sold and delivered to said Commercial Security Company, before the proceedings herein, a large number of its conditional contracts of sale, the face value of which was in excess of $100,000. The Commercial Security Company paid the defendant 72% upon delivery of the contracts and might be called upon in certain contingency to pay an additional 20% in like manner as was provided in the agreement with the Federal Commercial Company (*supra*).

The Federal Commercial Company sold and delivered to the Commercial Security Company the conditional sales contracts it had purchased from the defendant, so that the Commercial Security Company now holds all of the conditional sales contracts sold by the defendant to either the Federal Commercial Company, or Commercial Security Company. Two separate accounts were ~~presented~~ preserved on the defendant's books, however.

The Standard Piano Company bought pianos of the H. P. Nelson Company and gave notes amounting to more than $90,000.00. These were discounted at the Fort Dearborn National Bank in Chicago, through whom complainant derived title to the notes held by him.

On or about January 26, 1916, the complainant herein, being a creditor owner of notes for value bona-fide, filed his bill of complaint (pp. 1 to 13 of the record) alleging the insolvency of the defendant, etc., and praying the appointment of a receiver, etc. Vice Chancellor Howell, appointed Charles L. Farrell, Esq., receiver for the defendant (pp. 14 to 17 of the record). Thereafter the

defendant obtained an order for short notice (p. 18 of the record) returnable January 31, 1916, seeking to have the order appointing the receiver herein vacated. The defendant filed its answer (pp. 21 to 28 of the record) together with supporting affidavits by Walter L. Herdien and others (as appears in the record, pp. 28 to 42). On January 31, 1916, the proceedings were adjourned to February 4, 1916, and affidavits were filed by complainant to meet those of defendant (pp. 42 to 78 of the record) and testimony was had before Vice Chancellor Howell on February 4 and 5, 1916, and by consent of the parties the hearing was continued before Vice Chancellor Foster on February 16 and 17, 1916, resulting in an order made by Vice Chancellor Foster on February 21, 1916, (p. 361 of the record) denying the defendant's application to discharge the receiver and to modify the terms of the order appointing the receiver. Thereafter and on March 31, 1916, Vice Chancellor Foster filed his opinion herein (pp. 367 to 373 of the record) which will be found reported in 97 At., 281. From the order of Vice Chancellor Foster, made February 21, 1916, (*supra*) the defendant appeals to this court. Defendant also appeals from the order of Vice Chancellor Howell of January 26, 1916, appointing the receiver herein.

The opinion of Vice Chancellor Foster (p. 367) is a very careful and painstaking review of the evidence and answers every contention of appellant. We shall content ourselves with a brief reference to the record to show that no other decision was possible on the state of the case.

Point I.

THE DEFENDANT CORPORATION IS INSOLVENT WITHIN THE MEANING OF THE STATUTE AND ITS BUSINESS HAS BEEN CONDUCTED AT A GREAT LOSS AND GREATLY PREJUDICIAL TO THE INTEREST OF ITS CREDITORS AND STOCKHOLDERS AND CANNOT BE CONTINUED WITH SAFETY TO ITS CREDITORS, ITS STOCKHOLDERS OR THE PUBLIC.

The issue involved in the proceeding herein is as to whether the defendant corporation is insolvent within the meaning of the statutes and is in such a financial condition that it cannot successfully continue the operation of its business without damage and loss to its creditors and stockholders.

There is not a dispute of moment between the parties hereto as to the assets of the defendant corporation and its liabilities, except in three particulars. Other items are in dispute, but they cannot change the result.

(a) The defendant disputes its liability upon the promissory notes executed by the defendant and delivered to the H. P. Nelson Company, who in turn discounted the said notes with the Fort Dearborn National Bank. The remainder of said notes still unpaid are now a liability urged against the defendant.

(b) Mr. Herdien treats the items on the defendant's books totalling approximately $139,000, moneys paid to defendant by Federal Commercial Company and Commercial Security Company for conditional sales contracts or leases purchased by those companies and brokerage upon the sales, as liabilities of the defendant.

These are not properly liabilities as they are completed transactions. However, for the purposes of making a balance sheet, if they are included as liabilities the result will not be changed provided a corresponding item is placed on the assets side, as is virtually done by Herdien. Herdien, however, while keeping up the assets side of the account, attempts on his liability side to reduce the $139,000 figure shown on the books to approximately $95,000.

(c) The defendant also claims that its assets are materially greater than those the complainant has set forth in his bill, by reason of the alleged fact that there is a large sum of money to become due and payable to the defendant from conditional sales leases which the defendant sold and delivered to the Federal Commercial Company, and to the Commercial Security Company.

(a) The only testimony in this case bearing upon the alleged failure of consideration for the notes held by complainant and the Fort Dearborn National Bank, and the Hamilton Investment Company, is the testimony given by Walter L. Herdien, (beginning on p. 111 of the record). Herdien has arbitrarily undertaken to reduce the liability of the defendant corporation by stating that the notes in question were signed in blank by one Forbish, a former President of the Standard Piano Company, which notes were delivered to the H. P. Nelson Company, and that these notes were thereafter filled in by the H. P. Nelson Company in sums which did not represent the true indebtedness of the Standard Piano Company to the Nelson Company, and that therefore when these notes were discounted at the Fort Dearborn National Bank, they were discounted

for an amount not due from the defendant to H. P. Nelson Company, and that therefore there is a failure of consideration, because one Mr. Patterson, a director of the Fort Dearborn National Bank was also a director of the H. P. Nelson Company.

The law is well settled that notice received by an agent will not be applicable to his principal, merely because the relationship of agent and principal exist between him and his principal, and there is nowhere in the testimony of this case anything to show that Mr. Patterson ever knew that the notes in question had failed of consideration or that the Fort Dearborn National Bank, or any of its officers or agents ever had knowledge of any such failure of consideration, and without such showing on the part of this defendant it follows that the notes proved to be unpaid, are a correct liability of this defendant corporation.

As Vice Chancellor Foster says in his opinion in this case:

> "While it does not appear that Mr. Patterson ever had knowledge of any infirmity in complainant's notes, if he did, it would not be sufficient to charge the bank, and therefore complainant, who acquires from it some of the notes he now holds, with knowledge of the alleged infirmity, unless it further appeared that Mr. Patterson acquired this knowledge while acting as a member of the Board of Directors of the Bank convened in its official capacity—First National Bank *v.* Christopher, 40 N. J. L., 435—or that while acting as the agent of the bank and within the scope of his authority, he received the information at the time he was actually acting as agent in behalf of his principal.
>
> "*Hanford* v. *Duchastel,* 87 N. J. L., 205."

It appears from the record (p. 135) that Herdien was aware that notes of the defendant discounted by H. P. Nelson Company, with the Fort Dearborn National Bank, were being paid by the defendant and that said Herdien had, in fact, arranged with Joseph Weissenbach, Esq., attorney for said Fort Dearborn National Bank, that the notes of the defendant corporation should be paid at their several maturities. It further appears from the testimony of said Herdien (pp. 129 and 130 and 149 of the record) that as far as Herdien knew, neither the President, nor any of the Vice Presidents or other officers of the Fort Dearborn National Bank, ever had knowledge that any of the notes made by the defendant and delivered to H. P. Nelson Company, and by the latter company discounted with the Fort Dearborn National Bank, failed of consideration. The court's attention is further directed to the fact that nowhere in the record does it appear that notice of any kind was ever given by anyone to an officer or official of the Fort Dearborn National Bank, that the defendant's notes discounted with said Fort Dearborn National Bank, failed of consideration. In fact, Herdien claims that his first knowledge of the partial failure of consideration was after the bankruptcy of the H. P. Nelson Company (p. 163, l. 40), in or about January, 1915, and yet, after such date, being a director and a large stockholder in the defendant corporation, he permitted the defendant to pay its notes as they fell due (pp. 130 and 135). The defendant seeks to charge the Fort Dearborn National Bank with notice of the failure of consideration of the notes by claiming that Mr. Patterson, a director of the Fort Dearborn National Bank, was also a director of the H. P. Nelson Company, but the record in this case is devoid of any evidence that Mr. Patterson ever

had such knowledge, as is imputed to him. Even had it been shown that Mr. Patterson had been possessed of such knowledge, the Fort Dearborn National Bank, would not be chargeable with such notice.

Notice received by an agent will not be imputed to his principal merely because the relationship of principal and agent exists between him and his principal.

Barnes v. *Trenton Gas Light Co.*, 27 N. J. Equity, 33.

First National Bank v. *Christopher*, 40 N. J. L., 435.

Graham v. *Orange County National Bank*, 59 N. J. L., 225.

Tate v. *Security Trust Co.*, 63 N. J. Equity, 559.

Camden Safe Deposit & Trust Co. v. *Lord* 67 N. J. Equity, 489.

De Kay v. *Hackensack Water Co.*, 38 N. J. Equity, 158.

Clement v. *Young Shea Amusement Co.*, 70 N. J. Eq., 677, at 684.

A bank is not chargeable with knowledge that comes to its director unless he receives the information while acting as a member of the Board of Directors convened in its official capacity.

First National Bank v. *Christopher, supra.*

State v. *Sooy*, 41 N. J. L., 394.

Lanning v. *Johnson*, 69 Atl. 490.

The knowledge of an agent is chargeable upon his principal only when the agent is acting within the scope of his authority and is at the time he receives the knowledge actually acting as agent in behalf of his principals.

Hanford v. *Duchastel, supra.*

McCormick v. *Ocean City Association,* 45 N. J. Eq., 561; affirmed, 47 N. J. Equity, 599.

Martin v. *Jersey City Insurance Co.,* 44 N. J. L., 273.

Stanley v. *Chamberlain,* 39 N. J. L., 565.

Pomeroy's Equity Jurisprudence (3d Edition) Vol. 2, section 666, at page 1150; section 670 at page 1162.

Cook on Corporations (7th Edition) Vol. 3, section 727, at pages 2591 and 2593.

It will further be observed that while Mr. Herdien claims the outstanding notes represent an overcharge of $35,000, made by H. P. Nelson Company against the defendant, and $29,000 cash advanced by the defendant for the account of H. P. Nelson Company, the record is silent as to how those figures are arrived at, or for what the cash was advanced and is significantly silent as to any testimony by either Herdien or Nelson, officers and directors of the H. P. Nelson Company, Federal Commercial Company, and the defendant, as to any knowledge by them of the above mentioned alleged offsets.

The books of the defendant corporation as it appears from the testimony of Leo J. Kelley, treasurer of the defendant, until January 24, 1916, show the note liability of the defendant, including those owned by the complainant, to be $102,000 (Record, p. 298, l. 35).

See also the first report of Mr. Farrell, the Receiver, (Record, p. 207). Mr. Herdien (Record, p. 129, l. 30) found by reference to the books that the notes payable on November 30, 1915, amounted to $97,244.02. There was an additional note of $5,000, money advanced in December by the Fort Dearborn Bank.

Nowhere in the record does there appear any testimony to the contrary, except Mr. Herdien's arbitrary reduction of the note liability as aforementioned. It is clearly apparent that Mr. Herdien has attempted by the stretch of his imagination to reduce the note liability in furtherance of his efforts to show that the defendant is solvent.

That notes on their face bear inherent evidence of validity and cannot be discredited (for example, by showing want of consideration), by loose testimony, is apparent from the decision of this Court in *McCormack* v. *Williams,* 95 Atl. 978. In that case it was held that the mere presence of the note itself, properly offered in evidence, raised an issue of fact as to its validity, notwithstanding that the only oral testimony before the court on that point tended to the invalidity of the note. The learned Vice Chancellor, therefore, even if there had been no evidence to sustain the validity of the notes, and to show that no notice of any infirmity had ever been given, could properly have found as a fact, notwithstanding the testimony of Herdien, that the notes were given for a full consideration, or that the Bank was a holder in due course. It is to be remembered that the court below in deciding this question in favor of the complainant had the advantage of hearing and seeing the only witness to the alleged invalidity while he testified.

It is unnecessary to further argue in regard to the defendant's contention as to the partial failure of consideration of the outstanding notes, because the defendant has failed to give any testimony in support of such theory. The finding of Vice Chancellor Foster that the note liability of the defendant corporation is $102,000 is correct.

Counsel for the defendant in his brief at the bottom of page 3 says that there was an understanding with Mr. Weissenbach at the meeting in Chicago with Herdien that the defendant would probably not be able to meet its notes promptly as they fell due, and at the top of page 4 of the brief counsel says that it was agreed that the promissory notes would only be sent forward for payment at times when the defendant was in funds to make the payments. Further down on page 4 the statement is again printed in italics that the arrangement was "to pay the notes as conveniently as possible," and on page 6 again in italics the brief reads that the notes were not presented "for the reason that it had been agreed that payment should not be pressed; in other words, there had been an agreement for an extension of time." We have searched the testimony in vain for support for these statements. It is further significant, however, that counsel here concedes that the reason why the Bank did not sue the defendant upon the notes was some reason other than that the Bank knew of a defense thereto. It will be remembered that elsewhere in his brief counsel alleges that officers of the Bank knew of a partial failure of consideration. A reading of the numerous affidavits of the Bank officers (Record, pp. 61-69), and also the testimony of the various witnesses, including Mr. Herdien, who testified for the defendant, is entirely persuasive that no one connected with the bank knew of the alleged partial failure of consideration.

Conceding for the purpose of argument that there was an agreement on the part of the Bank to extend the payment of the notes (which agreement, however, appears nowhere except in the italicized statements of counsel in his brief) we

submit that *Regina Music Box Co.* v. *Otto,* 65 N. J. Eq., 582, cited in counsel's brief at page 23, is not at all in point. In that case a company was able to secure the credit necessary, and, in fact, had executed a mortgage and secured the funds to pay off its antecedent indebtedness. It also appeared that its assets exceeded its liabilities. As italicized by Mr. Bradner in quoting from the *Regina case,* the company in Vice Chancellor Steven's illustration "had sufficient credit to renew its notes and did, in fact, renew them."

Counsel for the defendant at pages 28 and 29 of his brief, urges that an action should have been brought on the past due notes at law, and complains because the Fort Dearborn National Bank, or the complainant, Shaw, has not so sued the company. The defendant, however, in these proceedings in the Court of Chancery has had opportunity of the amplest sort to put in its alleged defense. He could have presented any affidavit he saw fit of witnesses in Chicago, and further, could have taken, had he desired, the testimony of witnesses in Chicago by deposition if there had been any witnesses existent to prove that the bank had notice of any failure of consideration of these notes. Notice of Mr. Bradner's application to open the decree of insolvency was given on January 28, 1916, and the last hearing before Vice Chancellor Foster was on February 17, 1916. No attempt to present any testimony on the point of partial failure of consideration other than the mere word of Herdien was made.

Counsel repeatedly argues that there is something mysterious about the relation of Alexander B. Shaw, the complainant, to this suit. As appears by Mr. Shaw's affidavit on page 42 of the record, he is a resident of the city of Chicago, where he has resided for twenty years last past,

and is an attorney and counsellor at law of the State of Illinois. It appears from his affidavit that Mr. Shaw was in New York City for a few days preceding January 29th and was then on his way to Boston. This was a week before the hearings commenced before Vice Chancellor Howell, and Mr. Bradner's criticism of Mr. Shaw's failure to take the stand, although he was present in Newark, does not in the least indicate the complainant's unwillingness to undergo cross examination. Mr. Shaw's affidavit was submitted along with those of eleven others who resided in Chicago (printed in the Record, pages 46 to 78). None of these affiants were criticized for failure to take the stand.

(b) According to Exhibit D. 4 (Record, page 359), the tabulation prepared by Mr. Herdien from data which he had but not from the books of the company, the liability of the defendant to the Federal Commercial Company is $51,029.93, and to the Commercial Security Company is $44,867.51, making the total approximately $95,000 for these two items. As already shown these are not properly liabilities of the defendant company. The result of the balance sheet, however, is not affected, provided a corresponding item is entered under assets. But included in Herdien's corresponding items under assets totalling approximately $230,000, is an excess amount of approximately $44,000. To express it differently, and taking for the moment Herdien's own theory as to liabilities, he arbitrarily reduces the $139,000 figure regarded as a liability to $95,000. (This has nothing whatever to do with the "deferred payments" question discussed under point c.)

Counsel makes a point in his brief and italicizes his statement (near the bottom of page 27) that the statement D. 4 was offered at page 283 of the record without objection. It was accepted not of course as proving in any way what it contained, but as an accommodation to Mr. Herdien, so that he need not put in evidence a number of separate memoranda from which D. 4 had been compiled by him. This is evident by the colloquy of Mr. Bradner and the Court at page 287 of the Record, lines 17 to 25:—

> "*Mr. Bradner.* Exhibits D. 3, D. 4 and D. 5, February 17, 1916, are statements by Mr. Herdien. I am prepared to prove up each one of these items from the books.
>
> "*Court.* I understood that, and it was merely as a matter of convenience and to save time, we used the statement instead of going into detail."

Mr. Herdien was closely cross examined as to D. 4 in the Record, page 292, line 34, to Record, page 295, line 34, and it developed that very many of the items from D. 4 had not been taken from the books at all.

D. 4 is a recast by Mr. Herdien of D. 2, the figures as to the liabilities in question, namely, to the Federal Commercial Company and the Commercial Security Company, being identical. Counsel for the defendant says at page 25 of his brief that Mr. Kelley, at page 179 of the Record, testified as to the correctness of Exhibit D. 2. We cannot see how counsel reaches this conclusion. Mr. Kelley was asked:—

> "Q Will you examine this instrument (D. 2), Mr. Kelley, and tell the Court whether that is a true statement of the assets and liabilities of the Standard Piano Company?
>
> "A No, sir.

"Q What do you mean by that answer?
"A That is not a true statement."

Counsel is in error when at the bottom of page 25 of his brief, he says that the total amount of the leases assigned to the Commercial Security Company and Federal Commercial Company is $100,193.45 and $130,111.62, respectively. These figures given by Mr. Kelley are the face value of the leases, after crediting thereon all payments made on account thereof to these companies. These figures are identical with those given by Mr. Herdien in Exhibits D. 2 and D. 4 in his table of assets. Mr. Kelley says that the total of these two, or $230,000, is too high considered as an asset of the company by $91,000, namely, he puts the value of the leases at $139,000, subject to be slightly increased under certain circumstances. This difference is due to the different valuations placed by Herdien and Kelley upon the "deferred assets," as will be hereinafter shown under division (c). As will be shown, Mr. Kelley came to the conclusion that these deferred payments should be excluded as an asset altogether.

Returning to the question of the liability (to follow Herdien's theory) of the defendant company to the Federal Commercial Company and to the Commercial Security Company respectively by reason of the monies advanced by those companies on piano leases, we find that counsel for the defendant explains at page 5, at the top of page 6, and at the bottom of page 25 of his brief, how Mr. Herdien reached his results. From data which Herdien said he had, he attempted to find the exact sums advanced by these companies respectively, and gave the amounts above, viz. $44,867.51 and $51,029.93.

Counsel says:—"The item of $44,867.51 (Mr. Herdien's figure) as the indebtedness to Commer-

cial Security Company is substantially corroborated by the testimony of Mr. Kelley (pages 255-256), from which it appears that the amount is $46,936.82." How misleading this statement is will be seen from examination of the testimony. At Record, page 253, ll. 24-27, Mr. Kelley gave his figures by which he reached the amount due on leases to the Commercial Security Company, namely, $67,533.71. He took from the books the balance of payments due, according to the face of the leases after deducting payments

made on account		$100,193.45
From this he deducted the special reserve of	$10,735.28	
and the regular reserve of	22,924.46	
		33,659.74
getting		$ 67,533.71

(There is an error here in subtraction of $1,000.)

Continuing here with the same process as to the amount due the Federal Commercial Company, the face value of leases less payments made on account is $130,111.62

Deducting from this the special reserve of	$23,733.56	
and the regular reserve of	35,163.63	
		58,897.19
we get		$ 71,214.43

The total of these two balances is as follows:—

Commercial Security Company	$ 67,533.71
Federal Commercial Company	71,214.43
Total	$138,748.14

This figure is the figure approximately stated as $139,000 in the bill of complaint (Record, page 4, line 22).

It is to be noted that this $139,000 *is the balance due* these companies. See testimony at the bottom of page 252:—

"A It (the figure $139,000) represents the amount of money due on leases sold. * * *

"Q Can you tell me how much has been paid back to those two companies?

"A Off hand I cannot.

"Q Do you mean $139,000 is the balance due?

"A The balance due."

It is true that the $139,000 figure included the brokerage fee which was charged by the Federal Commercial Company and the Commercial Security Company respectively, for effecting the sales of the leases. Counsel in his brief has not in any way attacked these charges as proper charges paid by the defendant company.

Counsel for the defendant at page 256 of the record, line 15, ascertained from Mr. Kelley the amount of the monies remitted by the Standard as collector from customers to the Commercial Security Company to be $15,501.82. He then asked Mr. Kelley, at line 22, if the difference between this figure and $62,438.65 would show the indebtedness of the defendant to the Commercial Security Company. Mr. Kelley's answer was, "No, sir." This amount of money remitted had already been deducted before the balance of $100,193.45 above stated was reached on the books. Counsel for the defendant, however, disregarding this, asked Mr. Kelley, at page 256, line 26, to state what the difference between the two figures was. Mr. Kelley performed the subtraction and reached the result $46,936.83. The result of course showed nothing whatever, and yet Mr. Bradner in his brief, on page 27, as above stated, takes this figure as substantially corroborating Mr. Herdien's

figure for the alleged indebtedness to the Commercial Security Company of $44,867.51. Any such figure as this, as stated by Mr. Kelley, lines 32-34, would fail to include the broker's charges and the claims by way of repossessions. Of course Mr. Kelly did not mean that this exact figure of $46,-936.83 was the amount due upon leases sold to the Commercial Security Company less claims for repossessions and broker's charges. The figure meant nothing at all, and was simply the result of arbitrarily deducting a second time $15,501.82 which had already been deducted before the balance of $100,193.45 was reached on the books.

In a similar way in his brief at page 27, counsel attempts to support Mr. Herdien's item of $51,029.93 as the liability on January 26, 1916, of the defendant to the Federal Commercial Company as against Mr. Kelley's figure of $71,214.43 for the balance due upon leases sold above stated. The balance due to the Federal Commercial Company of $44,044.32 which was found on the "old general ledger" (testimony, page 258, line 10) was under date of December 31, 1914, as counsel for the complainant has ascertained from examination of this book itself, where the debit balance is given in the exact figure stated. The date 1915 in the Record, page 258, line 12, is the stenographer's error.

(c) In regard to the defendant's claim that its assets should be increased by reason of the deferred payments which it claims will be paid by the Federal Commercial Company and the Commercial Security Company, it appears by the Record that this result is arrived at by Mr. Herdien, by reason of his interpretation of the transactions between the defendant corporation and the Fed-

eral Commercial Company and the Commercial Security Company.

The Federal Commercial Company is a Delaware corporation having its principal office in the city of Chicago, and Mr. Herdien and Mr. Nelson are directors of the Federal Commercial Company. The defendant corporation under a written agreement made with the Federal Commercial Company, sold and delivered to the Federal Commercial Company, a large number of conditional sales contracts which the defendant had received in the course of its business. The method pursued in these transactions was that the Standard Piano Company would assign and deliver to the Federal Commercial Company conditional sales contracts, for example, having a face value of $100,000. The Federal Commercial Company would first deduct a ten per cent (10 per cent.) brokerage charge and also twenty per cent. of the face amount of the lease, which went into what is known as a reserve account. Therefore in the example taken the Standard Piano Company would receive the sum of $70,000 of the $100,000 of contracts assigned.

The defendant corporation would then have an interest in the $20,000 held as a reserve, which interest would become payable to the defendant corporation in quarterly installments. The amount in default on any contract would first be deducted however, and if the defaults were large, approaching the 20% reserve, it would be impracticable to make any quarterly payments, but such reserve as might accrue would be maintained until all of the moneys called for in the contracts sold to the Federal Commercial Company were first collected and received by the Federal Commercial Company. In other words, the twenty per cent (20 per cent.) retained

by the Federal Commercial Company was in the form of a guarantee fund for the payment of the contracts purchased by it from defendant. Similar transactions were had by the defendant corporation with the Commercial Security Company, an Illinois corporation, except that the amount deducted for brokerage by the latter company was eight per cent. (8 per cent.) in place of ten per cent. (10 per cent.) as deducted by the Federal Commercial Company. In case of default in payments by the customers of the Standard Piano Company, the latter company was obliged under the terms of its agreement with the Federal Commercial Company and the Commercial Security Company to pay such sums as were in default, and if the same were not so paid they were deducted from the reserve account. In the event that pianos were repossessed by the defendant corporation because of the non-payment by the customers of the installments due under the contracts sold, then the defendant corporation upon repossession of the pianos would be obliged either to pay the balance due on said contracts to the Federal Commercial Company and the Commercial Security Company, or else substitute another lease of equal value in place of the lease upon which the piano had been repossessed.

As appears by the testimony of Leo J. Kelley (page 180 of the record), former treasurer of the defendant corporation, and by the testimony of Mr. Herdien himself (page 174, lines 1-5), there have never been any payments made by either the Federal Commercial Company or the Commercial Security Company to the defendant corporation of any moneys whatsoever on account of the twenty per cent. reserve above referred to, and it further appears by the evidence of said Kelley (on pages 77 and 305 of the record) that the defendant corporation is in default upon the contracts

sold as aforementioned in a sum exceeding $35,000.

Counsel for the defendant makes the point in his brief at pages 30 and 31, again in italics, "that the reserve is not payable until maturity"; also "that none of the contracts assigned have yet matured," speaking of the contracts with the Federal Commercial Company made under the agreement of the defendant with that company of February 5, 1914. If the Court will turn to page 349 of the record, where this contract of February 5, 1914, is printed as Exhibit D. 1, the Court will find (Record, p. 350, l. 29) that the twenty per cent. "reserve" or "deferred payments" was payable to the Standard Piano Company "as nearly as practicable in quarterly installments, but not to exceed twenty per cent. of the amounts that shall from time to time be thereafter collected, and remitted to second party upon said contracts by first party or collector under the terms of this agreement, less any payments of principal and interest on contracts or any other obligation in default, until a total of ninety per cent. shall have been paid as the full purchase price of the said contracts."

Mr. Kelley explains all this (Record, page 303, line 8 to line 28, and pages 304 and 305). He explains (Record, page 304, line 9) that the reserve was returnable every three months, if any was due. As a matter of fact, the defaults on contracts by purchasers were in excess of the amount which might have been available as a reserve and this was the reason that nothing was remitted (Record, page 304, line 20). The defaults were over twenty per cent. (Record, page 305, line 18). This sufficiently explains why no quarterly payments were ever received by the defendant company. We have been able to discover nothing in Exhibit D. 1, whatever, providing that the reserve

is not payable until maturity of the leases assigned.

It is true that Mr. Kelley in the bill of complaint and in his affidavit thereto (Record, page 4, line 10, and page 10, line 21) put the value of the piano leases to the defendant as $174,000; that is, he estimated the value of the "reserves" or "deferred payments" at $35,000 over and above the figure of $139,000, the amounts due on leases assigned to the Federal Commercial Company and the Commercial Security Company (Record, page 4, line 22; page 9, line 40, and page 10, line 3). Afterwards Mr. Kelley, on further consideration, in his affidavit filed February 4, 1916 (Record, page 76, lines 12 to 38) revised his estimate and stated that by reason of the defaults, the reserves "will be practically nothing" (Record, page 76, line 18), and he further explained that he had put in the $35,000 item as an asset because the reserves appeared on the books as an asset. Mr. Kelley has been eight years in the business of selling pianos on the installment plan (Record, page 70, line 17) and therefore, has experience in the matter of these "reserves." Mr. Kelley further explains why he thought the $35,000 should be eliminated, in his oral testimony at the top of page 187.

It appears, therefore, that the statement of assets and liabilities in the bill of complaint (Record page 4), which included the $35,000 item as an asset in the figure of $174,000 and which shows an excess of liabilities over assets of approximately $64,000 is too favorable to the defendant.

Counsel in his brief on page 31 attempts to minimize the loss due to defaults by customers, so as to keep up the value of the "reserves." Counsel says that if any individual debtor fails to pay, the defendant is obliged to make good by sub-

stituting a new contract. It may well be understood that a repossessed or second-hand piano will bring very much less than when it was new, so that the substituted contract will be insufficient in amount to make up the loss occasioned to the "reserves" by the default. The Court will further understand the serious loss which the defendant company would suffer in addition in case of defaults through the expenses of cartage, repairing, resale, etc. Mr. Herdien admits that "repossessions entailed a great loss to the Standard Piano Company" (Record, page 157, line 25).

There can be no question, but that the defendant has no interest in the moneys accruing upon leases sold and assigned to the Federal Commercial Company and Commercial Security Company, until the moneys first advanced by these companies to the defendant is repaid with interest and all defaults in payments, repossessions, etc., are also paid by defendant. What such deferred fund will amount to, if indeed there ever may be such a fund, is indeed problematical and certainly cannot by the most vivid stretch of imagination, be considered as a present asset of the defendant corporation, applicable at this time to the payment of any indebtedness of the defendant. In this proceeding the Court can only be concerned with the present available assets, and the relation they bear to the liabilities of the defendant.

The result of our examination under the three topics above listed is as follows:—

Under point (a) the liability item "notes payable," as shown by Mr. Herdien, Exhibit D. 2 (Record, page 355, line 26) $34,300 should be increased by $68,000 to bring this item up to $102,000. (The corresponding item on Exhibit D. 4, page 359, line 21, of $44,300 would have to be increased by $58,000.)

Under point (b) Mr. Herdien's items of liabilities (assuming that it is correct to treat them as liabilities) to Federal Commercial Company and Commercial Security Company totaling $95,000 (see Exhibit D. 2 and Exhibit D 4) should be increased by $44,000, making the correct figures, $139,000.

Adding to Mr. Herdien's total of liabilities, shown on Exhibits D. 2 and D. 4, these further sums of $68,000 (or $58,000) and $44,000, gives total liabilities of approximately $255,000, a figure which is not far out of accord with the real situation, assuming that the amounts due on leases which have been sold should properly appear on the balance sheet.

Under point (c), Mr. Herdien's figures on Exhibits D. 2 and D. 4, under assets, of leases assigned to Federal Commercial Company and Commercial Security Company, totalling $230,000, should be reduced by $91,000, making the total assets, according to D. 2, approximately $153,000, and, according to D. 4, $172,000, assuming once more that the leases should figure at all on the balance sheet.

There are items shown by Mr. Herdien on exhibits D. 2 and D. 4, not heretofore referred to, which require comment.

The defendant claims an asset of $7,000 for certain electric pianos claimed by Herdien in behalf of the defendant, to have been sold to the Engelhardt Seybold Company, which is now a bankrupt. On page 155 of the record, Mr. Herdien testified that the defendant's books nowhere contain a record of a charge in favor of the defendant and against said Engelhardt Seybold Company. In an answer to a question by counsel for

complainant as to whether the pianos in question were shipped to the Engelhardt Seybold Company for repairs he replied (page 155): "That I don't know; I never heard the reason why they sent them there; I know the directors never ordered them." On page 286 of the record, Herdien testified that the defendant owns the pianos aforementioned, and which were shipped to the Engelhardt Seybold Company. (Also see the Record, pages 291 to 294.)

On page 184 of the record Leo J. Kelley, former treasurer of the defendant, testified that the electric pianos were sent to the Engelhardt Seybold Company for repairs, were not purchased by the Engelhardt Seybold Company and are still the property of the company. That there were twenty-three pianos and were not worth more than $20 each. It is therefore evident that this claim of the defendant for $7,000 should not be considered as an asset. It might further be stated that the receiver herein has taken possession of these electric pianos and ordered them shipped to Newark, N. J.

Counsel for the defendant values this lot of second-hand pianos, which were out of repair and could not be operated, at "at least $5,000." See his brief, page 26, near the bottom, where again emphasis is sought to be given to an unsupported statement by the italics in which it is printed.

Exhibit D. 4 (page 359 of the record) is the final statement offered in evidence by the defendant, in support of its claims as to its liabilities and assets. One of the items contained in this statement is "Accrued Interest Estimated $12,000." On page 294 of the record Mr. Herdien testified that this item of $12,000 claimed as an asset by defendant does not appear on the defendant's books, and that Exhibit D. 4 is not a

statement of the assets and liabilities as taken from the defendant's books. On page 296 of the record Mr. Herdien testified that the item of accrued interest had never been collected by defendant nor had an effort ever been made to effect such collection. On pages 298 and 299 of the record Mr. Kelley testified that the item accrued interest was never carried as an asset by the defendant. It therefore follows that this alleged asset is a fictitious item and should be disregarded.

Analyzing Exhibit D. 4 (*supra*) and leaving out of the schedule the claimed asset in the deferred payments in the contracts held by Commercial Security Company for the reasons hereinbefore mentioned, also deducting the $7,000 claimed as an asset from the Englehardt Seybold Company for the electric pianos (*supra*) and also the alleged asset of "Accrued Interest, Estimated $12,000" (*supra*) for the reasons hereinbefore set forth, the following assets and liabilities will be found to exist.

ASSETS.

Cash on hand and in bank	$ 1,500.
Leases unassigned	4,820.
Merchandise on hand	4,000.
Automobiles	900.
Furniture and fixtures	400.
Accounts receivable	3,000.
	$14,620.

LIABILITIES.

Notes payable	$102,000.00
Accounts payable	10,529.00
Edisonia Estate	2,539.50
	$115,068.50
Excess of liabilities over assets	$100,448.50

The Court is referred to Exhibit C. I, page 310 of the record, which is a letter from Mr. Herdien to the collector of internal revenue, in which he says amongst other things, referring to the defendant:

> "This corporation became involved in financial difficulties in the fall of 1914 and in the early part of January, 1915, it was deemed advisable to trustee the stock and the affairs of the company to better secure the holders of the note obligations of the corporation.
> * * *
> "The corporation did business for the year 1914 at a considerable loss and the affairs of the company have been in the process of liquidating its liabilities since the first of the year."

This letter was written October 5th, 1915, less than four months before the appointment of the receiver, and is certainly indicative of the insolvency of the defendant, even in October, 1915, and that Mr. Herdien recognized and admitted the defendant's insolvency and its inability to continue its business without damage to its creditors and therefore the defendant's business had been trusteed for the purpose of liquidation.

In the light of this letter the testimony of Mr. Herdien becomes liable to a very close scrutiny and comparison before being acted upon.

Exhibit C. 3 (page 311 of the record) is a letter written by Mr. Herdien to Mr. Forbish, a former president of the defendant corporation, on July 24, 1914, wherein Mr. Herdien states that the one hundred and five (105) non-active accounts "seemingly have no value." This letter is a corroboration of complainant's contention that the deferred payments upon the contracts held by

Commercial Security Company (*supra*) is of problematical value, if indeed there be any value.

On page 191 of the record Mr. Kelley testified that the defendant lost $11,226.41 in the operation of its business from April 1, 1915, to December 31, 1915.

Mr. Herdien attempts to meet Mr. Kelley's statement of the loss which the company had suffered by his tabulation marked "D. 3, February 17, 1916," printed in the record at page 358. Mr. Herdien showed an alleged profit from April 1, 1915, to January 1, 1916, of over $51,000. Counsel for the defendant refers on page 34 of his brief to Exhibit D. 3 as showing a profitable business. We would particularly ask the Court to read the testimony of Mr. Herdien on cross examination as to this exhibit (Record, page 282) where the Vice Chancellor questioned him and Mr. Herdien was unable to show where this profit had gone. See also the cross examination of Mr. Herdienn on page 309 where the uselessness of this statement, D. 3, was further shown. For example, Mr. Herdien had included $5,000 "accrued interest" as income, although he admitted that it had never been collected. He argues that if it ought to have been collected, it was income for the year. In the same way Mr. Herdien fails to include moneys actually paid out for brokerage (Record, page 309, line 2). This is a peculiar stand to take as to a profit and loss statement of a business conducted for a given period.

Mr. Kelley was questioned as to Exhibit D. 3 and pointed out many items that were incorrect (Record, page 300).

It is evident from the foregoing and from the record in this case that the defendant corporation is insolvent and has been insolvent for sometime past; that its business has been conducted at

a great loss and greatly prejudicial to the interest of its creditors and stockholders and that its business in its present condition cannot be conducted with safety to the public and advantage to its stockholders. The attempt of Mr. Herdien to show assets over liabilities is inconsistent with the evidence and also with the acts of Mr. Herdien and his expressions of the financial condition of the defendant as contained in Exhibit C. 2. The attempt made by Mr. Nelson in his testimony (page 267 to 277 of the record) to offer credit and money to the defendant corporation so it may continue its business is likewise a mere expression of opinion not based on fact, the effect of the testimony, however, to mislead is slight as to the solvency and credit of the defendant corporation. Taking into consideration the intermingling of the interests of Herdien and Nelson in the Federal Commercial Company, H. P. Nelson Company, and defendant corporation, and the evidence as supplied by the complainant, it can readily be seen that the conclusions of Vice Chancellor Foster as expressed in his opinion herein are correct. If the Nelson Company perpetrated a fraud upon the Standard Piano Company in the matter of filling in the defendant's notes for erroneous amounts that fraud must be charged to Herdien and Nelson as officers and directors of the H. P. Nelson Company and of the defendant corporation, and not to the Fort Dearborn National Bank.

The statement in defendant's brief that the evidence in this case shows a scheme on the part of Mr. Weissenbach, Mr. Crandall and Mr. Kelley, to obtain possession of the assets and business of the defendant, is totally untrue and false and is not supported in any manner by the record of the case.

Point II.

THE BILL FILED BY THE COMPLAINANT HEREIN WAS SUFFICIENT IN LAW AND FACT AND THE FINDINGS OF VICE CHANCELLOR FOSTER WERE IN CONFORMITY TO THE PLEADINGS, THE STATUTES AND THE EVIDENCE.

The defendant herein as the grounds of its appeal states several objections to the sufficiency of the complainant's bill, the order of Vice Chancellor Howell of January 26, 1916, and the order of Vice Chancellor Foster of February 21, 1916. The defendant further appeals on the ground that the complainant has failed to prove his case as required by the statutes. Complainant believes it is sufficient to refer the Court to the opinion of Vice Chancellor Foster filed herein on March 31, 1916, especially to that part of the opinion wherein the Vice Chancellor says, in reference to the defendant's objections upon this appeal, which were also urged before the Vice Chancellor:

> "It is further insisted that the receiver should not have been appointed without notice to the defendant; and because it must be made to appear, not only that the company has become insolvent, but that since the amendment to the Corporation Act of 1912 (P. L. 1912, p. 535, Ch. 300) it must also appear that the corporation is not about to resume its business in a short time thereafter, and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders.
>
> "If it were necessary to hold that all the elements mentioned in the amendment of 1912 must be established to give the court jurisdic-

tion, it would be sufficient to say that the evidence shows all of them present in the case at bar. The cases hold, however, that no such combination of circumstances as is contended for is required. Empire Trust Co. *v.* Fisher, 67 Eq. 602; Catlin *v.* Mining Co., 73 Eq. 286. In Bull *v.* International Power Co., 93 Atl., p. 86, Chancellor Walker held that by virtue of the amendment of 1912 a receiver could now be appointed, not only when the corporation had become insolvent or had suspended its ordinary business for want of funds to carry on the same as authorized by Sec. 65 of the Act Concerning Corporations (Revision of 1896) but also, if its business has been or is being conducted at a great loss and greatly prejudicial to the interest of the creditors and stockholders.

"On the question of notice, it is expressly provided by the Amendment of 1912 that the court may proceed in a summary way to hear affidavits, etc., upon such notice, if any, as the court may direct to be given.

"The evidence is convincing that the defendant corporation is insolvent; that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, and that its business in its present condition cannot be conducted with safety to the public and advantage to the stockholders; and the motion to open the order and discharge the receiver is therefore denied."

The argument of appellant is based on a strained construction of the statute and is in effect that insolvency alone is insufficient. A reading of the whole section renders it clear that the law includes insolvency as a basis for action, as held by this court.

Acting on this construction, appellant, at page 32 of his brief, endeavors to show that H. P. Nelson would have loaned money to continue. A reading of his testimony will convince anyone, if it were material, that his aid was not to be relied upon (276). He says: "I would want to see their security."

The case is fairly within the recent pronouncement of this Court in *Wright* v. *American Finance & Securities Co.*, 96 Atl. 387. (Pamphlet No. 6 for Feb. 24, 1916.)

Since the above was dictated, counsel for the complainant has thought it advisable to make application to the Court of Chancery to amend *nunc pro tunc* the order of insolvency so that it will include the following recitation,

> "and the court being satisfied by the proofs offered of the sufficiency of the application and of the truth of the allegations contained in the bill of complaint, and it appearing to the court that the defendant corporation has become insolvent and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders."

The bill of complaint and the decree of insolvency we have not the slightest doubt were sufficient under the decision in *Catlin* v. *Vichachi Mining Co.*, 73 Eq. 286, decided by Vice Chancellor Howell in 1907, before the amendment of 1912 to section 65 of the Corporation Act. In this case the corporation had not actually suspended its business. Counsel for the appellant appears to concede this point in his brief at page 17 and we are at a loss to see why he continues to argue the point. The bill of complaint and the order of

insolvency were also fully in accord with the amendment of 1912, and sufficient thereunder. Counsel for the appellant, on page 13 of his brief, concedes that the bill alleges that the business of the defendant corporation has never been conducted at a profit. There is the further allegation in the bill that

> "since the incorporation of the company, about three years ago, it has been conducted at an annual loss of approximately $20,000; during the period of its existence the corporation has become more and more heavily indebted until its affairs have become involved as above set forth."

(Record, page 4, lines 26 to 32.) The bill further alleges that the company was wholly unable to secure further loans or advances for the purpose of meeting its current obligations and is wholly without credit (Record, page 5, lines 4 to 11). There are other allegations in the bill (Record, page 5), which we need not extend this brief to quote here, which fully sustain the bill of complaint and the order of insolvency based thereon, under either the *Catlin case, supra,* or the amendment of 1912. It was expressly held by the Chancellor in *Bull* v. *International Power Co.,* 84 Eq. 209, 93 Atl. 86; affirmed by this Court *per curiam,* for the reasons stated in the opinion of the Chancellor in 96 Atl. 364, *second case,* that in a court of general jurisdiction, such as our Court of Chancery, recitation in the decree of the very words, the omission of which is complained of by our opponent, is immaterial.

In view of the fact, however, that the Court did grant the amendment asked in the *Bull case, supra,* we have thought it advisable to make the same application in this case. Such application is now pending and we have little doubt that it

will be granted before the argument of this appeal, in which case the amendment will be shown in the printed record. That the making of such amendment by the Court of Chancery, pending appeal, was proper, was expressly held in the *Bull case, supra,* affirmed by this Court. The amendment has been granted.

It was further held in the *Bull case* that there was no necessity that the decretal part of the order of insolvency should follow the statutory language and that its proper province is merely to prescribe the relief to be given.

We further note in brief of counsel for the appellant, pages 14 and 15, that stress is laid upon the fact that the bill of complaint herein is not verified by the complainant. The complainant was in Chicago at the time it became necessary to file the bill, and to obtain his verification would have meant serious delay. The complainant afterwards filed an affidavit (Record, page 42) in which he set forth his entire connection with the matter, namely, that he was a *bona fide* holder of the notes of the defendant company set forth in the list annexed to his affidavit, totaling over $67,000. In his absence from Newark at the time the bill was filed Mr. Kelley, who had been treasurer of the company for the preceding year, verified the bill. As remarked by Vice Chancellor Howell when this same point of the failure of the complainant to make verification was argued before him, it was hard to conceive of any one in better position to verify facts as to the insolvency of the company than the treasurer thereof. It is immaterial that a day before the bill was filed Herdien and Nelson, unknown to Kelley, attempted to oust him from his office. Mr. Kelley, in his affidavit annexed to the bill, duly set forth

(Record, page 9, lines 11 to 13) that the complainant was the holder and owner of promissory notes of the defendant corporation amounting to more than $60,000. The situation came squarely under rule 119 of the Court of Chancery quoted in counsel's brief at page 14, namely, inasmuch as the complainant was without knowledge of the facts relied on for the injunction, such facts had to be verified by the oath of some person who had knowledge of the facts. There is no requirement of the rule that an order is necessary to dispense with verification by the complainant. Our opponent apparently concedes this point at the bottom of page 14 of his brief, where he says,

> "The bill is usually sworn to by the complainant; but if he be absent * * * it may be sworn to, * * * by any person acquainted with the facts."

citing authority.

The situation is not at all analogous to that under the statute governing petitions for orders of discovery. There the judgment creditor has to make affidavit of his belief that the judgment debtor has property, etc. As to the complainant in a bill praying that a corporation may be decreed insolvent, all that must appear is that such complainant is a creditor or stockholder. This duly appears from Kelley's affidavit annexed to the bill, as above stated. None of the facts as to the condition of an insolvent defendant are necessarily within the complainant's knowledge nor were they in this case. As we have seen, the complainant, before any of the oral hearings, made affidavit to the facts that were within his knowledge.

The defendant complains because the order of insolvency was made without notice to it. This point was answered by Vice Chancellor Foster in

his opinion, where he pointed out that the statute reads that the court may proceed "upon such notice, *if any,* as the court by order may direct."

Whatever opportunity the defendant lost of defending itself from the charge of insolvency was fully made up on the defendant's application to open the decree. The defendant had its full day in court and every opportunity was afforded it to produce all the testimony available to it. The result was the order of February 21 (Record, page 361), which order in effect again decreed the defendant's insolvency.

The rights of the defendant having been fully protected, it is idle to argue that the order should be set aside for want of notice.

At the foot of page 20 of his brief, counsel for the appellant seeks to exclude from consideration the complainant's affidavit and the other proofs offered by complainant subsequent to the filing of the bill of complaint, and on this point counsel cites *Brundred* v. *Paterson Machine Co.,* 4 N. J. Eq. 294. This case is not in point. Notice had been given of an application for a full injunction (see page 299), which later came on for hearing. The complainant attempted to file additional affidavits at this hearing, and the court refused to consider them. There was a single application to the court. In our case, the complainant presented the proofs then available upon the filing of the bill and a decree of insolvency was signed. Thereafter counsel for the defendant moved to open the order. This was an entirely distinct proceeding on defendant's motion, and the complainant was certainly entitled to present such evidence as was then available to meet the defendant's attack. *No objection was made to the offering of the affidavits.*

At the foot of page 21 of his brief, counsel cites authority to the effect that no receiver will be appointed on *preliminary* application where all the grounds alleged are fully met by proper affidavits. It is futile to base any argument upon authorities such as these, which are entirely inapplicable to the present situation. The defendant's sworn answer if read before the appointment of the receiver might have resulted at that time in a delay in the appointment. Now, however, full hearing has been had and the affiant to the defendant's answer, Mr. Herdien, has undergone cross examination before both Vice Chancellor Howell and Vice Chancellor Foster, and the other witnesses presented by both sides have been heard, with the result that the insolvency of the defendant company has been held to be fully established. The defendant, therefore, has suffered not the slightest hardship. It has had its day in court.

All the other points raised by counsel for the appellant have, we believe, been fully answered in the opinion of Vice Chancellor Foster, which we would again strongly urge the Court to read carefully, as containing a fair and unbiased view of this case.

This case is unusual, in that two of the Vice Chancellors have passed upon the defendant's insolvency and found it as a fact. This Court should be slow to disturb a decision thus supported below.

Point III.

THE NATIONAL BANKRUPTCY ACT OF 1898 AND THE AMENDMENTS THERETO DO NOT APPLY IN THIS CASE.

The defendant seeks to have the final order made herein reversed upon the theory that State

courts have no jurisdiction over insolvent corporations by reason of the National Bankruptcy Act of 1898 and the amendments thereto. By the very cases cited by defendant in its brief in support of this contention, the absurdity of the theory will be seen. Defendant's counsel has allowed the cases cited to mislead him in believing that the estate of a bankrupt corporation can only be administered by a Court of Bankruptcy. What the cases do hold and what the law is, is that there can be no concurrent jurisdiction of State courts and the Federal Court of Bankruptcy in the administration of insolvent estate, and that a Court of Bankruptcy takes precedence over a State court in the administration of insolvent estates. Had a petition in bankruptcy been filed against defendant, then the State court would have to yield its jurisdiction to the Bankruptcy Court, but such petition has not been filed in the Bankruptcy Court, and the State court is competent and justified in entertaining these proceedings and administering defendant's estate.

THE ORDERS APPEALED FROM SHOULD BE AFFIRMED WITH COSTS.

PITNEY, HARDIN & SKINNER,
Counsel for Complainant-Respondent.

JOSEPH WEISSENBACH,
Of the Illinois Bar,

CORWIN HOWELL,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

ALEXANDER B. SHAW,
Complainant-Respondent,

and

STANDARD PIANO COMPANY, a corporation of the State of New Jersey,
Defendant-Appellant.

On Appeal from Court of Chancery.

Reply Brief for Appellant.

There are some statements in the brief of the respondent which I think are incorrect. They are as follows:

1. In the statement of facts, respondent says that both Herdien and Nelson, herein referred to, were stockholders and directors of the Federal Commercial Company and controlled the same.

Exhibit C. 4, p. 312, being an agreement between Federal Commercial Company and the Fort Dearborn Trust and Savings Bank, shows at p. 326, that Andrew P. Mackie was the president and William O. Heffernan, secretary of the company, in March, 1913; and Exhibit C. 5, which is another agreement between the same parties, shows at p. 348, that Joseph H. Strong was the president and W. O. Heffernan was the secretary in May, 1913; and Exhibit D. at p. 349, being the agreement between Standard Piano Company and Federal Commercial Company, of February 5, 1914, was ex-

ecuted (p. 352) by Joseph H. Strong, president of Federal Commercial Company.

Mr. Herdien testified (p. 137) as follows:

Q You were in charge of the affairs of the Federal Commercial Company, were you not? A I was acting as secretary and treasurer.

Q You were in charge of the affairs, were you not? A In charge of the books.

Q And in charge of all its dealings, were you not? A Not all its dealings, no, sir.

Q I am not speaking now of its clerical force? A There is a president of the company.

Q Did the president ever take any active part in the financial affairs or financial dealings of the Federal Commercial Company? A Yes.

Q In what particular? A You mean Col. Joseph H. Strong?

Q Yes? A Negotiated loans for the company and was in on every financial transaction, but he did not enter into the proposition of the purchase of contracts, except that he would confer with me on every purchase made.

Q But you had charge of the purchasing of contracts that was within the province of your proposition? A Well, we had both of us to do with that.

Q But didn't you in the largest measure do it? A As custodian of the books, yes.

Therefore, it does not appear that Mr. Nelson had any control whatever over the Federal Commercial Company, or that Mr. Herdien had full control of the same, and it does appear that there were other persons interested as directors and officers.

2. It is also stated in the brief as follows: "The defendant corporation having practically no assets with which to commence business, entered into an

agreement with the Federal Commercial Company on February 5, 1914," referring to p. 349 of the record.

It is alleged in the bill of complaint that the defendant corporation was organized April 17, 1913. *Exhibit C. 4, p. 312, shows an agreement made March 4, 1913, between Federal Commercial Company and Fort Dearborn Trust and Savings Bank, which shows that Federal Commercial Company was in existence before Standard Piano Company.*

The respondent does not take the trouble to explain how and from what source Standard Piano Company got any contracts or leases to assign to Federal Commercial Company on February 5, 1914, *unless it had been carrying on business with sufficient success to have on hand such contracts or leases.* The impression is given in the respondent's brief that the defendant assigned to Federal Commercial Company on February 5, 1914, contracts of sale exceeding in face value the sum of $100,000.00, and received money with which to commence business.

Where did Standard Piano Company get the conditional contracts of sale, if that company had not been selling pianos for almost a year?

3. Considerable argument is made in the brief relating to the claim of the defendant, that there was a partial failure of consideration for certain promisory notes, and it is stated under Point I, par. a, as a claim made by the defendant that there is a failure of consideration, because one Mr. Patterson, a director of the Fort Dearborn National Bank was also a director of the H. P. Nelson Company.

The testimony of Mr. Herdien and Mr. Kelley relating to the promissory notes, has been formulated by me in double columns and is annexed hereto, and there is a reference to the page in the printed case, at the top of each extract from the testimony.

The defendant does not rely entirely upon notice to Mr. Patterson as a director of both the bank and H. P. Nelson Co.

Defendant's argument in relation to the notes, will be found on p. 28 of brief for appellant, *and it is particularly pointed out now that Mr. Porter was made treasurer of H. P. Nelson Company at the request of Fort Dearborn National Bank and represented the bank.* It is insisted, that it was impossible for Mr. Porter to endorse these notes over to Fort Dearborn National Bank without knowledge of the consideration of them. It may be true, that there was no credit on the books of H. P. Nelson Company for the discounts and for moneys paid out by Standard Piano Company, but that does not alter the fact that the notes were made out for more than was due, *and it was Mr. Porter's duty as treasurer of H. P. Nelson Company to know the fact, and it was his duty as the representative of Fort Dearborn National Bank, also to know the fact and to communicate it to the bank.*

4. It is also stated in the brief of respondent, as follows: "We have searched the testimony in vain for support of these statements."

Respondent refers to statement on p. 6 of appellant's brief, *that the notes were not presented for the reason, that it had been agreed that payment should not be pressed, or in other words, that there had been an agreement for an extension of time.*

The testimony of Mr. Herdien and Mr. Kelley relating to the notes hereto annexed, shows that there was some agreement. Mr. Kelley says expressly: "There was an agreement between the Standard and the holders of the notes that the notes should not be presented through any bank here. Mr. Weissenbach said that he would have those notes

presented at such time when the Standard Piano Company was in possession of funds to meet them." See column testy. of Leo J. Kelley under heading of Notes.

The affidavit of Mr. Weissenbach (p. 46) also shows that some arrangement was made in relation to the outstanding notes, and that the stock of defendant corporation was deposited with him to be held in trust (p. 48) while the affairs of Standard Piano Company were being liquidated, and to be returned when all the indebtedness of Standard Piano Company had been paid.

5. It is also charged in the respondent's brief that it was the duty of defendant to take testimony of witnesses in Chicago by deposition, and that defendant had plenty of time to do so.

This is not true, because the hearing was summary and was pushed along as speedily as possible. The court appointed a receiver, and the receiver was in possession of the property and business of the defendant, and it was very necessary to expedite the hearing. Moreover, I do not know of any practice or of any statute giving a party on a summary hearing the right to take depositions out of the state. The affidavits presented on behalf of the respondent are merely negative and deny any knowledge of the failure of consideration of the notes. *Affidavit from Mr. Porter, who was in the control of the respondent, or from Mr. Patterson, who was a director of the Fort Dearborn National Bank, could have been presented, and it is significant, that no affidavit from either of those gentlemen was produced.* Mr. Nelson had no knowledge of the matter, and Mr. Herdien's knowledge and information are fully stated in his testimony.

6. It is also stated that:—"Counsel is in error, when at the bottom of p. 25 of his brief, he

says that the total amount of the leases assigned to the Commercial Security Company and Federal Commercial Company is $100,193.45 and $130,-111.62, respectively."

Respondent's brief points out that these figures are the face value of the leases after crediting thereon all payments made by the defendant to these companies.

Appellant did not state and did not intimate that those amounts were the original amount and represented the total amount of leases assigned, but are the present total amount of the outstanding leases that have been assigned.

The situation in regard to the outstanding leases is shown in the testimony of Mr. Herdien and Mr. Kelley, which I have also formulated in parallel columns and have annexed hereto under the title of "Leases."

The legal status of Commercial Security Company as holder of the assigned leases, is that of pledgee only, and possibly defendant will be entitled to deduct the brokerage and interest charges on the ground that the loans are usurious. Unquestionably, there is a large equity and it was considered of sufficient value to assign to Fort Dearborn Trust and Savings Bank, which assignment was not approved by the stockholders. The following cases relate to the subject matter:

In *Re Grand Union Company,* 219 Fed. Rep., 353, decided December 15, 1914, and reported also in U. S. Court of Appeals Reports, Vol. 135, p. 237.

Home Bond Co. v. *McChesney,* U. S. Sup. Court, "Advance Opinions," 1915 Law Ed., No. 6, p. 170, February 15, 1916.

7. It is stated in respondent's brief that Mr. Kelley testified that the defendant lost $11,226.41 in the operation of its business from April 1, 1915, to December 31, 1915. This testimony is entirely refuted by the profit and loss account of 1915, shown in Mr. Herdien's Exhibit D. 3, p. 358.

For further information and convenience of the court, I have attached hereto parallel columns of the testimony of Mr. Herdien and Mr. Kelley relating to the business of 1914 and 1915, under the headings "Profit and Loss 1914" and "Profit and Loss 1915," and I contend that this testimony shows that the business was not conducted at a loss in 1914, and was conducted at very considerable profit in 1915.

8. It is stated also in respondent's brief, that application will be made to amend the order or decree of January 26, 1916, and I submit that no such amendment can legally be made. *The error is a judicial one.* It would be manifestly unjust to amend a decree which deprived the defendant corporation of its property, and especially, six months after that decree was entered. The amendment has been made subject to approval of this court.

9. It is also stated that counsel for appellant appears to concede in his brief, at p. 17, that the case of *Catlin* v. *Vichachi Mining Co.*, 73 Eq. 286, was properly decided. It was not intended to make any such concession. I do not agree with that decision, except to the extent, that the court may entertain a bill upon proof of either insolvency or suspension of business. My point is, that proof of either is required as a jurisdictional fact to bring the matter before the Court of Chancery. *A receiver can only be appointed when insolvency and inability to resume business in a short time are both shown.*

10. Another point made in the respondent's brief is, that the defendant has had an opportunity to be heard, and therefore, cannot complain about the appointment of the receiver without notice.

If the order appointing the receiver, made on January 26, 1916, *is illegal, the defendant has never waived the illegality, but on the contrary, it has made every possible effort to have that order set aside.* It seems unreasonable for the respondent to insist that the defendant cannot now attack the order on the ground that it had no notice and no opportunity to be heard, *after its property has been taken away from it, and because it has made an effort to have the order vacated and the receiver discharged.* If the defendant had been given an opportunity to file an answer and affidavits before the order appointing the receiver was made, I venture to say that upon the pleadings and affidavits no injunction would ever have been granted or receiver appointed.

11. Respondent has many insinuations in his brief relating to Mr. Herdien which I think are entirely uncalled for. It is only necessary to read Mr. Herdien's argument under Specification No. 14 in the appellant's brief, to see that he is an able lawyer. That he is a competent business man, is also shown by his testimony. He is very deaf, and Vice Chancellor Foster referred to his infirmity in the course of taking testimony, and it was quite possible that he did not always comprehend the questions that were put to him.

In the statement entitled "Profit and Loss 1914," attached hereto, the testimony of Mr. Herdien relating to the business for that year, will be found. He says, that at the time he made up the letter to be sent to the Collector of Internal Revenue, he had made a hurried examination of the books in about half an hour, and did the work

very rapidly, and that he afterwards found that the statement was not correct, and that the statement was not sent to the collector. *It is produced by the respondent as though it had been sent to the collector, and in this respect, the court was probably misled.* Mr. Herdien afterwards found another statement of the business for that year, and produced it in court before Vice Chancellor Howell, who refused to admit it in evidence, because it had not been made up by Mr. Herdien, and he did not know who had made it up, but he had found it in the papers of Standard Piano Company at the office (p. 121).

12. The respondent disposes of the argument under Specification No. 14 relating to the jurisdiction of the court, by the mere declaration that it is absurd.

The question is a very important one, but possibly it will not be necessary for the court to pass upon it in this case, for the reason that the complainant has failed to show either a legal right to proceed, or that the defendant corporation is insolvent and is not about to resume its business in a short time, or that it has been or is carrying on business at a great loss, etc.

Respectfully submitted,

FRANK E. BRADNER,
Of Counsel with Appellant.

NOTES.

WALTER L. HERDIEN, a witness for Defendant, testifies:

Page 111.

I figure the notes payable at $34,300.00 after deducting about $35,000.00 of overcharge on the pianos and $29,000.00 on the cash advanced by the Standard Piano Company at the request and on behalf of the H. P. Nelson Company. These deductions apply to notes of $3,000. of $1,000.00 apiece, that were delivered to the H. P. Nelson Company signed in blank by W. W. Forbish, president of the Standard Piano Company. I do not know at what time the notes were filled up.

Page 111-112.

I know Mr. Porter, the Treasurer of the H. P. Nelson Company. He became treasurer of the H. P. Nelson Company about the middle of August, 1914. He represented the Fort Dearborn Natoinal Bank, but he was not an officer or director of the Fort Dearborn National Bank. He was put on the Board of Directors of the H. P. Nelson Company. I was on the Board of Directors at that time but I resigned when Mr. Porter was elected treasurer and director. Mr. Nelson was on the Board of Directors at that time.

L. J. KELLEY, a witness for Complainant, testifies:

Page 112-113.

At the time Mr. Porter was acting as Treasurer of the Company, Mr. Porter and Mr. Patterson came to me in reference to the Standard Piano Company. Mr. Patterson was a director of the Fort Dearborn National Bank and Vice-president and director of the H. P. Nelson Company. He was acting for the Fort Dearborn National Bank when he came to me. At that time there was nothing done in the way of transferring any notes to the Fort Dearborn National Bank but only a discussion in reference to the Standard Piano Company. This conversation took place about August 25th, 1914. About August 1st, 1914, some of the Standard notes had been turned over to the Fort Dearborn National Bank.

Page 119.

I know about a claim against the H. P. Nelson Company in favor of the Standard Piano Company. Mr. Kelley as Treasurer, was instructed to come to Chicago to go over with me the figures and adjustment of the account of H. P. Nelson Company for the purpose of filing a claim against the H. P. Nelson Company for overcharges on pianos and cash advanced by the Standard Piano Company to the H. P. Nelson Company for its benefit and at its request.

Page 119.

Mr. Kelley came to Chicago and he was there about a week. He came to me after some figures. I found out afterward that he did not file the claim.

Page 122.

The stock transfer is in Chicago in possession of Mr. Weissenbach. I delivered my stock certificate signed in blank to Mr. Weissenbach and the stock record about January, 1915, together with the minute book of the Standard Piano Company. I had an agreement with him.

Cross examination.

Page 129.

On page 50 of the ledger the Notes Payable Account stands under date of November 30th, $97,244.02. I did not at any time during my visits to the Standard Piano Company state to Mr. Kelley or to Mr. Bonar or to you that the notes, that were then owned by the Fort Dearborn National Bank, the South Bend Banking Company, the Logansport State Bank, the Citizens Trust & Savings Bank of Chicago, the Fort Dearborn Trust & Savings Bank, as Trustee, and Hamilton Investment Company, were not bona fide notes or that there was a partial or whole failure of consideration and that therefore the notes should not be paid.

Page 130-131.

I knew that the Standard Piano Company were paying notes from time to time. Mr. Nelson was President of the H. P. Nelson Company at the time the Standard notes were issued. I believe Mr. Nelson knew that the notes were being paid out of the proceeds of the money received for the Standard Piano Company from the sale of its pianos. I do not recollect who was Treasurer of the Standard Piano Company at the time the notes were issued. Mr. Woolhouse might have been or I might have been. I do not know whether the notes were all dated during the month of August, 1914, or not, but I know neither Mr. Woolhouse or myself executed notes for the Company.

Page 132.

I knew that certain notes were issued about August, 1914, or thereabout by Mr. Forbish when he was in Chicago and he left them with the bookkeeping department of the H. P. Nelson Company to be filled in for the right amount. He left a block of notes with the idea that they were to be filled out into thirty-six monthly notes.

Page 132.

I recall very distinctly meeting Mr. Weissenbach in his office in Chicago in January, 1916, at which time we discussed the affairs of the Standard Piano Company and its inability at that time to meet these notes.

Direct examination.

Page 188.

I paid the notes in the regular 136 course of business. I preferred no one. Some notes were presented and payment refused because the company didn't have the money to pay them. There

Page 132.

I did not agree at that time to turn over to Mr. Weissenbach the 250 shares of the common stock of the Company, which was the controling stock, and the only voting stock, in order that Mr. Weissenbach might have control of its financial affairs until all of the notes were liquidated and at the end of which time I was to receive back the stock.

Page 132.

I went to the office of Mr. Weissenbach, at his request, and we discussed the affairs of the Standard Piano Company. There was a large amount of pianos on hand and I agreed with Mr. Weissenbach that they should not be marketed at a loss. Mr. Weissenbach stated that if it was the policy of going ahead and marketing the pianos that he would not want any change in the policy, and he wanted me to deliver the stock over to him and let it rest in his hands as bailee until these goods could be marketed with the understanding that he would turn back the stock to me when these goods had been marketed which were already on hand and the new policy then adopted to continue the business.

Page 133.

I turned over the stock to him on that understanding. It was assigned in blank. I turned over one share of stock of Mr. Bonar at the time, together with the minute book, agreeing that a was an agreement between the Standard and the holders of the notes that the notes should not be presented through any bank here. I told Mr. Weissenbach that there were some notes being presented here at different times and that the Standard did not have the money to pay them and it was rather embarrassing for the Standard Piano Company to have banks call up and stating that they held notes and would like a check for it and couldn't pay them and Mr. Weissenbach said that he would have those notes presented at such time when the Standard Piano Company was in possession of funds to meet them.

young man in his office should act as Secretary of the Company and I would resign as Treasurer and Director, the reason for this being that Mr. Weissenbach did not want Mr. Nelson and myself in charge of the Company. It was not due to the Company not being able to meet its then present obligations. The Company was not insolvent. I gave Mr. Weissenbach permission to have William Weber examine the books of the Standard Piano Company then in my possession. It was not after Mr. Weissenbach had received the audit from Mr. Weber that he sent for me and told me that in order that the creditors' interests in the Standard Piano Company be considered that I had better turn the thing over to him and let him work it out for fear that the large stock of pianos on hand might be sacrificed and the creditors lose.

Page 135.

The Federal Commercial Company is the owner of certain notes executed by the Standard Piano Company to about $40,000. and these notes have been deposited with the Fort Dearborn Trust & Savings Bank as collateral under a trust agreement of March 1st, 1913. Some of these notes have been paid. Also some of the notes that have been sold by the Fort Dearborn National Bank to the Hamilton Investment Company have been paid. I remember that I discussed with Mr. Weissenbach that the notes of the Standard Piano

Company held by the Federal Commercial Company should be met promptly when they were due and Mr. Weissenbach agreed with me because the money was needed to meet the maturing obligations of the Federal Commercial Company on its collateral trust notes and bonds which had been certified by the Fort Dearborn Trust & Savings Bank.

Page 135-136.

I did not direct you or Mr. Kelley to refuse to pay the notes of the Standard Piano Company that were in the possession of the Hamilton Investment Company. I did not at any time during the year and three months that I saw Mr. Weissenbach frequently in connection with the affairs of the H. P. Nelson Company and Commercial Security Company and Standard Piano Company ever inform him or advise him that these notes failed in consideration either in part or wholly—see page 164, this question is correctly answered, also court's comment page 281.

Page 148-149.

Mr. L. B. Patterson, the director of the Fort Dearborn National Bank, knew that there was a failure of consideration of the Standard notes. I do not know whether any officer of the bank knew of the failure of the consideration of the notes.

Page 150.

No information ever came to me that Mr. Kelley refused

to sign an affidavit as Treasurer on a statement of claim against the H. P. Nelson Company because he was not familiar with the affairs of the company prior to his becoming Treasurer. I was not present at the office of Mr. Weissenbach when Mr. Kelley said, "No, I will not sign it because I know nothing about it." Mr. Weissenbach did not then and there ask me to sign as agent and the question did not arise as to whether it would be proper and I did not refuse to sign.

Page 162.

The general ledger shows the total amount of notes on page 50 under date of November 30th, 1915, as $97,-244.02. I placed the liabilities of notes payable at $34,-300.00 on the basis that the notes should not have been issued for more than the proper amount; that they are in excess of the actual liabilities of the Standard Piano Company; that there is about $35,000.00 due the Standard Piano Company on overcharges made by the Nelson Company. The Nelson Company was to ship the goods on a consignment basis with the understanding that when the notes were made out they would be made out for the regular wholesale price. Then the Nelson Company ordered the Standard to pay the taxes on their building and for other things in the amount of $29,000.00, making about $64,000.00 altogether. Now those notes should not have been filled out for any other amount than the

proper amount when left by Mr. Forbish in blank with the Nelson Company. I was not an officer of the Nelson Company when Mr. Forbish left those notes in blank. I believe I was either Treasurer or Secretary of the Standard Piano Company at that time. I did not know that the notes were issued in the amount for which they were issued. I did know at a certain time.

Page 163.

The Standard Piano Company did not sell any notes to the Federal Commercial Company. The Federal Commercial Company received these notes from the Nelson Company, Mr. Porter delivering these notes under an assignment to the Federal some time in September or October, 1914. I was an officer of the Federal Commercial Company at that time. The Federal Commercial Company paid full consideration for those notes to the Nelson Company. I first discovered the failure of consideration after the bankruptcy of the H. P. Nelson Company. I discovered it when your auditor, Mr. Weber, came over to audit the Standard Piano Company books and the question of the notes came up. Mr. Weissenbach took the matter up with me and asked me how it came that the Standard Piano Company owed so many notes and I told him that I would look into the matter and I explained to him later that I found that they had gone to work and filled out notes for

a greater amount than was due from the Standard Piano Company and I explained those items to him and that if the proper amount had been put in that the Standard Piano Company would not owe so many notes.

Page 164.

I told Mr. Weissenbach a short time after the examination by the auditor. It is not a fact that Mr. Weissenbach charged me with having knowledge of the fact that Mr. Forbish executed whole books of notes in blank and forwarded them to the Nelson Company and that I denied knowing anything about it.

Page 164.

Mr. Weissenbach took this matter up with me in the early part of January, 1915, and stated to me that the Standard Piano Company should file a claim against the Nelson Company for that amount and it was agreed upon between Mr. Weissenbach and myself that this should be done and Mr. Kelley came to Chicago in the last month having delayed up to the last month for that specific purpose.

Page 165.

I have not seen the account of the Standard Piano Company on the Nelson Company's books and I do not know anything about how they handled the transaction.

Re-direct examination.

Page 162.

Mr. L. B. Patterson, director of the Fort Dearborn Na-

tional Bank, had knowledge of the issuance of the notes by the Standard Piano Company and the delivery of them to the H. P. Nelson Company. Mr. Patterson participated in the transaction as vice-president and director of the H. P. Nelson Company.

Page 168.

I was at one time connected with the H. P. Nelson Company. I resigned from that company when Mr. L. B. Patterson was made director and vice-president, about the middle of August, 1914, and Mr. Porter was elected secretary and treasurer.

Page 168-169.

Mr. Porter was at one time employed in the auditor's office at Springfield, Ill., and had been employed by Mr. Tilden, a large stockholder of the Fort Dearborn National Bank, at different times. I did not know very much about the man until he entered into negotiations between the Fort Dearborn National Bank and the H. P. Nelson Company. There were negotiations between the bank and the H. P. Nelson Company at which time I was on the Board of Directors of the H. P. Nelson Company and I knew about the negotiations. Mr. Porter was elected Treasurer immediately upon my retirement.

Page 169.

I was an officer of the Federal Commercial Company when certain notes of the Standard Piano Company were taken by the Federal

Commercial Company. These notes were sent to the Federal Commercial Company by Mr. Porter. I had several conversations with Mr. Weissenbach in relation to the notes. In the early part of January, 1915, I took the matter up with him and then it was talked about that the Standard Piano Company should file a claim against the H. P. Nelson Company before the period would expire for the claim to be filed which would be December 24, 1915.

Page 170.

The H. P. Nelson Company were adjudicated bankrupt December 24th, 1914. I made an agreement with Mr. Weissenbach a little later on in reference to the notes. Mr. Weissenbach and I arranged that the Federal Commercial Company notes should be paid first, after that what was held by the Fort Dearborn National Bank and Hamilton Investment Company, with the understanding that the Standard Piano Company should file a claim against the Nelson Company for the overcharge on the pianos and the cash that was paid out in behalf of the Nelson Company at its request.

In my conversation with Mr. Weissenbach I knew that he represented the Fort Dearborn National Bank and the Hamilton Investment Company.

Page 170.

I expected by filing a claim against the Nelson Company to recover on the overcharges

and credits due the Standard Piano Company on pianos and cash that had been paid out by the Standard Piano Company at the request of the Nelson Company. That claim amounted to $64,000.00. Mr. Kelley went over with me the claim of cash paid out on behalf of the H. P. Nelson Company and he came to Chicago at the request of Mr. Weissenbach for the specific purpose of filing the claim. He stayed around Chicago about a week. I never knew anything about the claim not being filed until after he had gone. He was then Treasurer of the company.

Page 171.

Some of the notes have been paid which are excessive in amount. The notes were divided into thirty-six monthly notes and by dividing them up there was an excess on each note.

I know Frank G. Wright & Co. They have some of the notes. They are brokers. They are a commercial paper house. All of those notes have been paid. Mr. Weissenbach knew of them being paid.

Page 172.

I know the Logansport Trust & Savings Bank. They held some of the notes, all of which have been paid. All notes held by the Citizens State Bank were paid. They were paid because there could be no defense against those notes. They were discounted in the regular way for valuable consideration before maturity.

I know something about the making of a note by the H. P. Nelson Company for $90,000.00 to the Fort Dearborn National Bank. I was at the time out at the H. P. Nelson Company where I was looking after some legal matters for the concern. I have not ever seen the note. It is a note referred to by Mr. Fletcher and the note was made out after I had resigned. I was never Treasurer of the H. P. Nelson Company. I have no personal knowledge of the delivery of the Standard Piano Company's notes to the Fort Dearborn National Bank.

Page 173.

This statement that you show me is the agreement entered into between the Standard Piano Company and the Federal Commercial Company in reference to the lease contracts on pianos.

Marked "Exhibit D. 1."

Re-cross examination.

Page 175.

This document that you hand me is a trust agreement entered into between the Federal Commercial Company and the Fort Dearborn Trust & Savings Bank. The purpose of the trust agreement is that the company engages in the business of handling negotiable paper and accounts receivable and place these accounts receivable with the trustee and issue against them collateral trust notes payable at different times. At the time this agreement was executed I was secretary and treasurer of the Federal Commercial

Company. It was under this trust agreement that I deposited with the Fort Dearborn Trust & Savings Bank, as trustee, the notes of the Standard Piano Company.

Trust Agreement Marked "Three" for Identification.

Page 175-176.

This agreement you hand me is a trust agreement entered into between the Federal Commercial Company and the Fort Dearborn Trust & Savings Bank under date of May 1st, 1913. Under this trust agreement certain bonds were issued. About $43,000.00 of the Standard notes were deposited with the Fort Dearborn Trust & Savings Bank as collateral under the collateral trust agreement.

WALTER L. HERDIEN, recalled.

Direct examination.

Page 279.

I want to make certain corrections in my former testimony. On page 63 the question was asked, "Did you at any time during the year and three months that we have seen each other frequently in connection with the affairs of the H. P. Nelson Company and the Commercial Security Company and the Standard Piano Company ever inform me or advise me that these notes failed in consideration either in part or wholly?" The answer should be "Yes, sir." I understood the question a little later on and I answered it on page 164.

Page 280.

I want to make a correction on page 135 to the question, "Did you at any time in your visits to the Standard Piano Company produce to Mr. Kelley, the treasurer, or to Mr. Bonar, the president, or to me, who was acting for the benefit of the creditors, that the notes that were then owned by the Fort Dearborn National Bank and these various other banks, the South Bend Banking Company, Logansport State Bank, Citizens Trust & Savings Bank of Chicago, the Fort Dearborn Trust & Savings Bank, as trustee, and Hamilton Investment Company, were not bona fide notes or that were partial or whole failure of consideration and therefore the notes should not be paid?" I answered, "No, sir, I did not." I did not get the part, "or to me." If a man lowers his voice I cannot get what he says. See Comment Court, page 281.

I want to make the correction in this way, I did not say anything to Mr. Kelley or to Mr. Bonar in reference to the notes but I talked with Mr. Weissenbach several times about it.

Page 292-293.

Cross examination.

The item of $44,300.00 is not in the books. It is in the books at $97,000.00.

PROFIT & LOSS 1914.

WALTER L. HERDIEN, a witness for Defendant, testifies:

Page 120.

I was in Newark several months ago, but I do not recollect the date, and at that time I began to prepare a statement for the internal revenue office as I found out that no statement had been made. I did not state to Mr. Kelley that a statement of the condition of the business of the Standard Piano Company for 1914 showed that the company had sustained a loss of at least $15,000.00. I do not know as I exhibited a statement to him but I sent a statement to him which showed that during the year 1914 the company had sustained a loss of $15,-000.00; that statement was not sent to the government but was sent back to me.

Page 121.

I did not have all the figures at the time and I went into it further and discovered another statement later on. The statement has never been filed. I did not make up any further statement of 1914 but I found a statement of the business for 1914 in my possession as secretary of the company. I do not recollect who made it but it was made by one of the bookkeepers of the Standard Piano Company and sent to me.

Page 122.

I have personal knowledge of the business for the year 1914 and the business for that year was conducted at a profit.

Page 122.

The last I saw of the ledger needed to verify that statement it was in the hands of Mr. Kelley in Chicago at the time when he came to Chicago to make up the claim against the H. P. Nelson Company, in the early part of December, 1915.

Cross examination.

Page 141-142.

Mr. Kelley refused to file the income tax report on the ground that he was not treasurer in the year 1914. I did not file the report. I did not leave the report with Mr. Kelley but I sent it to him and he sent it back to me stating that he could not sign it and that it would be up to myself and Mr. Bonar to sign it.

Page 142.

I went into the feature of how the loss of $15,000.00 occurred but I did it hastily and I did it in about a half an hour's time and I was not satisfied with the report which showed a loss for year 1914.

Page 151.

There was no net loss on the pianos sold during 1914, but there was a gross and a net profit in 1914.

Page 153.

This is a letter addressed to the office of Internal Revenue by myself. It is my signature and I sent the letter.

Page 157.

This document that is handed to me appears to be a letter dictated by myself, not signed by myself, on July 24th, 1914, addressed to W. W. Forbish, president of the Standard Piano Company.

Page 159.

I do not know what the amount of repossessions were in the year 1914. I have made an effort to ascertain the amount of repossessions during the year 1914. I made a hurried examination of the books, I had only about half an hour to do it in and it was very rapidly done and I found many errors had been made after I had gone to Newark to make up the statement of it and then later on I found the profit and loss statement of 1914.

PROFIT & LOSS 1915.

WALTER L. HERDIEN, a witness for Defendant, testifies:

Cross examination.

Page 156-157.

I mean by my statement that every repossession is a loss; that if you sell an instrument and have to repossess it you are losing the selling cost of the instrument and in that event if it

L. J. KELLEY, a witness for Complainant, testifies:

cost you $35.00 to sell the instrument you have lost that $35.00. You may be able to sell the piano for more money the next time but it is not usually done.

During the year 1914, there were a large number of repossessions of instruments theretofore sold by the Standard Piano Company and they entailed a great loss to the company. I have not accurately gone over the books to ascertain the amount of loss to the Standard Piano Company during the year 1915 on account of repossessions. On page 5 of the general ledge there is shown the items of repossessions:

Page 158.

May 1st, 1915	$ 5,159.50
June 30th, 1915	4,314.52
July 31st, 1915	3,305.20
August 31st, 1915	6,489.00
September 30th, 1915	5,058.50
October 31st, 1915	5,500.25
November 30th, 1915	6,367.15
December 31st, 1915	1,477.00
Total	$37,671.12

There is a journal entry every month which marks the total repossessions. Now this is not all a loss because you get the instruments back again and it might represent a loss of $10,000.00. In the account you would have to take every instrument that was sold again for the actual price and you would have to offset that against the repossession price and then you could determine the actual loss and it might not be $5,000.00. You could not approximate the loss. There were $37,000.00 of reposses-

sions between May 1st, 1915, and January 1st, 1916. I have no record here of the amount of repossessions between January 1st, 1915, and May 1st, 1915.

Page 159.

The $37,000.00 of repossessions would be charged off against the reserve held by the Federal Commercial Company and the Commercial Security Company. They have all been made good to the Federal and Commercial Security Company because there have been contracts coming in on the repossessions ever since May and there is an account in the ledger called "Current Account" for this purpose. All of the repossessions were made good so there is nothing charged against reserve of the Commercial Security Company.

WALTER L. HERDIEN, recalled:

Direct examination.

Page 281, &c.

I have, since Mr. Kelley's examination in which he gave a profit and loss account from April 1st, 1915, to January 1st, 1916, examined the books of the Standard Piano Company. I have made up a profit and loss for that period of time from the books. The paper that I produce shows a profit from April 1st, 1915, to January 1st, 1916, of $51,409.95. This statement is made up entirely by myself from the books, marked "Exhibit D. 3."

The profit of $51,000.00 increased the assets of the

Page 191-192.

I do not know whether the Standard Piano Company made a net profit during the year 1915. As far as I had been able to figure out they had not.

I should say a loss occurred in the business operations during the year 1915. I base this statement on the figures from April 1st to December 31st. The sales from April 1st to December 31st including cash sales, first payment and time sales amount to $147,761.25. Stock on hand at close of year $5,-440.00. Total, $153.201.25.

business during that period. Leases on pianos is the property acquired. The ledger does not show a profit and loss account. The ledger would practically give the the entire information concerning the profit of $51,-000.00.

Page 284.

I have also made a statement of the pianos sold from April 1st, 1915, to January 1st, 1916, and of the pianos purchased so as to show those on hand May 1st, 1915, and what was sold during April, 1915, 687 pianos from the books appear to have been sold during that period. I had to approximate forty-five pianos on hand December 31st, 1915, because I could not get at the books. They were not at the Standard Piano Company. 151 were repossessed during that time, 60 Edisonia pianos were purchased, 114 pianos from Stanley & Sons Co., 42 pianos from Shearer Piano Co., 42 pianos from Gulbranson, Dickinson & Co., making 258 pianos purchased, leaving a balance of 223 on hand. May 1st, there were 223 pianos. The pienos sold during April, 1915, were 100 pianos, making 323 pianos.

Statement offered in evidence and marked "Exhibit D. 5."

Page 285.

I have examined the books and find that the statement made by Mr. Kelley that the losses on repossessions, pianos repossessed including exchanges and resales and repurchases, $25,635.00. Stock on hand April 1st, according to the invoice price charged by the Standard Piano Company, $56,059.00. Total, $81,-694.00. Showing a gain on that transaction of $71,507.25. Miscellaneous rents, $99.99. Miscellaneous income, $788.23. Total gross income, $72,-395.47. The deduction for general expenses $72,466.92, that on building $2,625.03, losses on repossessions $40,-364.12, brokerage charge on leases $7,569.74, interest paid by bank $7.19, taxes $588.84, making a total deduction of $83,621.88 or a loss for the nine months of $11,226.41.

Page 221-222.

I cannot answer whether the company made profit or lost money in April, May, June, July, August, 1915.

Cross examination.

Page 235-236-237.

I have in my statement "losses on repossessions $40,-364.12."

The total repossessions in any one month was posted against the loss account and that is the way I made up the item of $40,000.00.

The $40,000.00 does not include any valuation of the piano that has been taken back. It does not include anything that I might have gotten on a sale of that piano. The alleged loss of $40,000 would have to be reduced to the extent of the values of the pianos repossessed. That the stock value would have to be deducted from the $40,000 in order to show the actual

turns, in the amount of $40,-364.12 does not represent the actual loss. Approximately I can tell what was the actual loss. I ascertain it by taking the difference between the balance due on the leases that became null and void from the repossessions and the resale price of that piano. If there was a balance of $175.00 due on the piano when repossessed it was resold for $250.00 there would be a profit not a loss. That is what I mean in answer to Mr. Bradner's question. I have ascertained that the actual loss on those repossessions were $7,845.37 plus the resale cost of the pianos, about $35.00 a piano on 151 pianos. I have investigated the shipment of pianos to Engelhart, Seybold Company.

Direct examination.

Exhibit "D. 3" is made up as follows:

Page 305-306.

I have taken the total sales from April 1st, 1915, to January 1st, 1916, from the record sales book — my figures and Mr. Kelley's practically agree—$147,761.25, as the total gross sales. I have taken the total repossession item for resales and repossessions and returns from April 1st, 1915, to January 1st, 1916, the total amount of $40,324.12 and I have checked off from the stock records from repossessions made during the period from April 1st, 1915, to January 1st, 1916, and sold during that period, the net sales of which subtracting $10,-loss. I thought about 125 pianos had been repossessed during the nine months.

They have all been sold within the nine months with the exception of a few. The 125 pianos repossessed during the nine months were pianos that had been sold during the nine months. There might have been some repossessed which were sold during the first three months, but I cannot state how many of them, but that would not enter into my calculation.

The profit and loss account includes repossession of pianos sold prior to April 1st. I do this on the theory that the pianos were repossessed during those nine months and resold.

Page 237.

Q But that would not be true, if you started with April first and entirely disregarded what had occurred prior to April first. You wouldn't have such a loss, would you? A Yes.

Q Suppose the business had started on April first, no sales had ever been made before that, what would your losses have been on repossessions from April 1st to December 31st? A The repossessions that had been made during that time.

Q How much is that? A $40,364.12.

Q You just said that that includes pianos sold before April 1st.

Court. Suppose it does, does that alter the situation very much, if the loss has been sustained during

489.00 is $137,272.25, stock on hand at close of the year $5,440.00. I subtract the item of $10,489.00 because those sales have become null and void during the period from April 1st, 1915, to January 1st, 1916, by either exchanges, returns or repossessions on goods sold during that period. Purchases is the same item as Mr. Kelley has—$25,635.00. Stock on hand I have taken at $25,000.00 according to the ledger on May 1st, 1915. I had no way of telling just what the stock on hand was on April 1st, and I had to do it in this way:

Page 306.

I took from the sales record as shown in Exhibit D. 5, the total number of pianos sold from April 1st, 1915, to January 1st, 1916, total amount being 687 pianos, to that I added the pianos on hand December 31st, 1914, making the total number of pianos on hand unsold 732 pianos, the number of pianos repossessed, exchanged or returned, to be resold were 151 pianos. If you take the 151 pianos from 732 it leaves a balance of 581 pianos.

There was purchased from Edisonia Estate, Stanley & Sons Co., Shearer Piano Company, Gulbranson, Dickinson & Company, the total number of 258 pianos. Purchase price of these pianos is $25,635.00 which is practically about $100.00 a piano. I take 258 pianos from 581 pianos and you have 323 pianos to account for. On that nine months period?

Mr. Bradner. It affects this situation of his as to the liability, because he is figuring on sales for nine months and is putting in his liability losses on sales for a previous time.

Court. But the loss was sustained during the period that the statement relates to.

Mr. Bradner. But he hasn't given us any credit for the sales prior.

Court. That is true.

Page 238.

The purchase in the amount of $25,635.00 were for the whole year.

The inventory price, stock on hand May first is $25,000. I have already stated that the inventory price for April is $56,059.00.

Q That would indicate sales of pianos at an inventory price of $31,059 for April, would it not, as per your books? A The sales during April?

Q Yes? A No, sir.

Q At the inventory price? A The difference between—

Q That is right? A Yes.

Q what is the fact as to your actual sales for April from your books at the sale price — net sales? A $20,-521.00.

Q When you sell a piano do you sell it at the inventory price? A No, sir.

Page 239.

Q About double, don't you? A Sometimes higher than that.

Q Your actual sale price then for April would indi-

hand May 1st, 1915, 223 pianos at a stock record price in the ledger $25,000.00. That practically harmonizes with the 258 pianos that were purchased for $25,-635.00. I know because the stock record so shows that 100 pianos were sold during the month of April and I estimate these pianos at $100.00 a piano, making it $10,000.00. I take the total purchases, stock on hand and stock sold in the aggregate amount of $60,325.00, from that I get a gross income of $82,077.25. I add to the accrued interest approximately of $5,000.00, as there is over $100,000.00 worth of leases this year drawing 6% a year. Rentals at $99.99, Mr. Kelley's figures. The other income $788.23—Mr. Kelley's figures. The general expense I put at $33,466.92—and agree with Mr. Kelley. I agree with Mr. Kelley on the rent on the building $2,625.03. The brokerage item I put at $1,-014.75. I arrived at that by taking the ledger and taking every brokerage charge that is made and I prorated it for the 30 months putting it on the nine months basis, because the cost of 8% goes over the entire thirty months. The interest item paid to banks is the same as that by Mr. Kelley. The taxes I reduce to $441.53 from $588.00 because I prorate that for the nine month period. All this makes the total expense of $36,555.52, which I deduct from the gross income, leaving a net income of $51,409.95.

cate an inventory price of about $10,000? A Possibly larger than that.

Pages 228-229-230-231.

The brokerage item of $7,-569.74 is the brokerage accumulated on the leases which have been sold during the year. In making up the figures I estimated the interest and brokerage for the whole time of the contract, not the thirty months alone but the whole time whatever the contracts might have been. I believe that it is the custom of the Commercial Security Company on each transaction to set their charge. I cannot answer whether it is the right thing to pro-rate the amount for a part of the year. I did not pro-rate any part of that interest or brokerage.

If I had pro-rated it it would have been a difference of about one-third. I could not show it by the ledger. I would have to take each individual lease. That it would mean taking off two-thirds of the amount of

Cross examination.

Page 308.

The $5,000.00 item for accrued interest is an approximate item. It has not been received by the company but the interest accrued on the contracts and the value is there if they collect it.

The item of $1,014.00 for brokerage is a bookkeeping item. The fact that the money was actually paid out for brokerage does not make it a legitimate charge against the income for the same year.

The stock record does not show pianos on hand May 1st, 1915, in the sum of $56,000.00. If the pianos cost $31,000.00 more you would deduct that sum against the gross income.

the total brokerage. The amount if pro-rated ought to be about $2,500.00. I charged the taxes for the whole year, because it was paid during the year. I did not believe it should be pro-rated. That the figures are based on the total sales for the nine months. I charge the taxes for the whole year because it was paid during the nine months.

Page 243.

Of the sales made in 1915 since I have been there, I should say at least 80 to 85 per cent. carry interest. The interest was figured as a part of the gross amount of the contract on the sale to the Commercial Security Co. It is not collected monthly. It is collected at the end of the lease, or toward the end of the lease. The interest collected from the customers would come to the piano company. The interest which is charged them on the leases sold would be paid out from the company. The interest collected from the customers would be included in the total income for the nine months if any were received, but nothing was collected during the nine months.

LEASES.

WALTER L. HERDIEN, a witness for Defendant, testifies:

Page 114-115-116.

The amount due the Federal Commercial Company is $51,029.93, which is arrived at from a statement prepared by myself.

The sum of $101,029.93 represents the money received by the Standard Piano Company from the Federal Commercial Company plus the cost of 10% and interest at 6%.

Total cash	$82,564.30
Cost of 8 and 2%	12,691.82
Interest	5,773.81
Total amount.....	$101,029.93

I deduct the cash received from the Standard and paid to the Commercial Security Company by me approximately in the amount of $50,000.00. I say approximately because I have a record of what has come to me as trustee and paid to the Commercial Security Company up to the middle of October, 1915, in the amount of $43,534.78. In November, 1915, there was remitted direct to the Commercial Security Company the sum of $3,233.95. December 31st, the amount of $2,051.90, total $48,820.63. These items appear on page 254 in the ledger of the Standard Piano Company. The average remittances per month have been about $2,000.00. No entries have been made for the month of January so I estimate $1,200.00 for Jan-

L. J. KELLEY, a witness for Complainant, testifies:

Page 185-Page 253.

$139,000.00 is the amount the Standard received from the Federal Commercial Company and the Commercial Security Company.

Page 243.

When a lease is sold the Commercial Security Company charge interest on the total amount of leases which they purchase, and they rebate the interest on the reserves, which are set up against the paper, the difference between the two figures representing the interest due them on the balance involved. The interest is figured on the running balance of the contracts less the collections that are sent in from time to time or less any reposessions which might have been exchanged.

uary, making an approximate sum of $50,000.00. I deduct the $50,000.00 that has been remitted which leaves a balance of $51,029.93 which is a liability of the Standard Piano Company to the Federal Commercial Company.

Page 117.

The next item is in the sum of $44,867.51, being the balance due the Commercial Security Company, made up from the figures in the ledger on page 98, as follows:

May 11th, 1915	$ 7,899.84
June 30th, 1915	2,307.96
July 31st, 1915	7,663.20
Aug. 31st, 1915	5,533.73
Sept. 30th, 1915	7,710.47
Oct. 31st, 1915	2,000.00
Nov. 6th, 1915	1,673.70
Nov. 11th, 1915	1,505.13
Nov. 30th, 1915	1,279.96
Nov. 29th, 1915	1,983.84
Dec. 31st, 1915	7,127.49
Total	$46,685.32

There is a pencil memorandum here on the book, "F. D. N. Bank," which would indicate to me is meant for Fort Dearborn National Bank in the amount of $4,925.67, but there is no cash folio and I do not know whether that is cash or not but I have added that into the amount, making the total $51,610.99. I have figured cost on the total amount of leases on hand with the Commercial Security Company obtained direct from the Standard in the amount of $100,000.00 at 8% which is $8,000.00, making a total of $59,610.99. I have added no interest as I understand the interest has been paid monthly in about the

Cross examination.

Page 254-255-256.

The records show that the Commercial Security Company have remitted to the Standard Piano Company $45,199.21 direct.

The figures that I gave you yesterday began April 1st and does not include cash February 20th to March 22nd. I make the total now from April 1st, $48,199.21.

The figures in the books prior to April 1st, $13,699.44, making a total of $62,898.65 as the total receipts of money from the Commercial Security Company. That there should be deducted about $460.00 from this amount due to be remitted to the Standard, which makes the amount $62,438.65. After examining the cash disbursements book, I find the cash remitted by the Standard to the Commercial Security Company on account of collections is $15,501.82.

The difference between the two accounts makes $46,936.83, but that the difference between these amounts does not show the indebtedness to the Commercial Security Company by the Standard Piano Company; that the figure does not take into consideration the repossessions or the broker's charges.

amount of $270.00 each month. I have deducted from this amount the cash sent to the Commercial Security Company by the Standard Piano Company which appears on page 100:

Page 118.

May 29th, 1915	$ 1149.60
June 30th, 1915	874.00
July 31st, 1915	1025.06
August 31st, 1915	2389.91
September 30th, 1915	1583.00
October 31st, 1915	1710.00
November 30th, 1915	3232.00
December 31st, 1915	2765.35
Total	$14728.82

Deducting this amount from $59,610.99, makes a total amount of $44,882.99.

Page 123.

Piano contracts or leases are assigned to the Federal Commercial Company and Commercial Security Company in accordance with a general written contract. A printed form is used by the Federal Commercial Company and the same form is used by the Commercial Security Company.

Page 124-125.

I have personal knowledge of the original transaction with the Federal Commercial Company as I was and I still am an officer of that company. I was an officer of the Federal Commercial Company when it received some piano contracts from the Standard Piano Company. The Federal Commercial Company advanced to the Standard Piano Company cash to the amount of 70% of the face of the contracts figured on a basis of

Page 257.

I said in the bill of complaint for money borrowed from the Commercial Security Company the sum of $67,533.71; that I arrived at the figure by taking the leases sold to the Commercial Security Company less reserve account; that the statement includes more money than was actually received from the Commercial Security Company but I take into consideration the brokerage charges.

thirty months. I take a contract face of $500.00 payable in installments of $10.00 a month. It will take fifty months to pay out on that contract. The rule of the company is not to accept paper longer than thirty months so that it would take only thirty months of that paper leaving a $200.00 special reserve deferred payment. I am talking about the Federal Commercial Company or the Commercial Security Company as both operate along the same lines. Now 70% of the balance of $300.00 would be paid to the Standard Piano Company by the Federal Commercial Company so that the Standard Piano Company on a $500.00 contract payable $10.00 a month would get $210.00 cash down on that contract. The regular reserve of 20% would be $60.00. On the contracts taken by the Standard Piano Company from its customers some of them would bear interest and some of them do not.

Page 126.

On page 102 in the ledger special reserve held by the Commercial Security Company on January 13th, 1916, is $10,735.28. On page 103 the regular reserve account on January 13th, 1916, $22,-924.46, total special and regular reserve $34,000.00 approximately. On page 255 the special reserve of the Federal Commercial Company as of December 3rd, 1915, is $23,733.56 and the regular deferred item Decem-

ber 3rd, 1915, is $35,163.63. These reserve funds are a credit in favor of the Standard Piano Company. I included the reserve funds in the calculation when I made up the state of the assets and liabilities.

Page 128.

After that there was a meeting of the stockholders called, notices having been sent out by Mr. Bonar. I received a notice. I know that Mr. Nelson received a notice. The meeting was held at Newark. Those present being Mr. Bonar, Mr. Nelson, Mr. Weissenbach, Mr. Kelley, Mr. Bradner and myself. At that meeting the stockholders carried a resolution disapproving and disaffirming the action taken by the Board of Directors as to the assignment of the equity in the piano contracts. No objection was made at the time by either Mr. Weissenbach or Mr. Kelley.

Cross examination.

Page 136.

As secretary of the Standard Piano Company, I negotiated the deal with the Federal Commercial Company and with the Commercial Security Company.

Page 137-138.

The Federal Commercial Company charged the Standard Piano Company 10% discount in addition to the 6% interest bargained for. After charging the Standard Piano Company the 10% we in turn sold these same contracts to

the Commercial Security Company on the basis of 8%. Prior to November of 1915, I had all the collections on these lien instruments sent to me from the Standard and I would remit to the Commercial Security Company. I did not deduct from these collections 2%. The Federal Commercial Company sent the cash to the Standard less 10%. To the best of my information and belief it was usury practiced by the Federal Commercial Company in its dealings with the Standard Piano Company.

Page 149.

I recollect the meeting of the directors of the Standard Piano Company held in the office of Mr. Weissenbach in December, 1915, at which were present Mr. Bonar, Mr. Nelson, Mr. Golberg, Mr. Jacobowsky, Mr. Weissenbach and myself. That meeting was called after a conversation between Mr. Weissenbach and myself with reference to the deferred assets then in the possession of the Commercial Security Company. At that time Mr. H. P. Nelson, Mr. F. W. Bonar and Mr. Golberg were the three directors of the Standard Piano Company.

At that meeting a resolution was presented and unanimously adopted assigning the reserve of the Standard Piano Company to the Fort Dearborn Trust & Savings Bank to protect the notes of the Standard Piano Company that had been deposited with

the Fort Dearborn Trust & Savings Bank as collateral by the Federal Commercial Company.

Page 150.

At the meeting of the stockholders in Newark, Mr. Golberg resigned as director and Mr. Bonar presented a resolution that had been agreed upon verifying the action of the Board of Directors of the making of this assignment of deferred assets to the Fort Dearborn Trust & Savings Bank and I then presented a resolution disapproving the act and the three stockholders present voted to disapprove of the action.

Pages 158-159.

The $37,000.00 of repossessions would be charged off against the reserve held by the Federal Commercial Company and the Commercial Security Company. They have all been made good to the Federal and Commercial Security Company because there have been contracts coming in on the repossessions ever since May and there is an account in the ledger called "Current Account" for this purpose. All of the repossessions were made good so there is nothing charged against reserve of the Commercial Security Company.

Page 180.

Since I became the treasurer of the Standard Piano Company it has not received either directly or indirectly any return on the reserve held by the Federal Commercial Company or the Commrcial Security Company.

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Bill of Complaint.

Filed January 26, 1916.

In Chancery of New Jersey.

To His Honor, Edwin R. Walker, Chancellor of the State of New Jersey.

The complainant, Alexander B. Shaw, of Chicago, Illinois, respectfully shows that:

(1) The complainant is a creditor of Standard Piano Company, and brings this suit for and on behalf of himself and all other creditors and the stockholders of said company who shall come in and contribute to the expense of this suit.

(2) Standard Piano Company is a corporation organized and existing under the laws of the State of New Jersey, its certificate of incorporation having been filed and recorded in the office of the Secretary of State of New Jersey on the seventeenth day of April, nineteen hundred and thirteen. Said Standard Piano Company has an authorized capital stock of $100,000 divided into 1,000 shares of the par value of $100 each. Of said capital stock 600 shares is preferred stock and the balance of 400 shares is common stock. All of said capital stock has been issued and is now outstanding. The objects for which said company was formed were, as stated in the certificate of incorporation, to manufacture, purchase, or otherwise acquire, to import, export, lease, sell, and generally deal in pianos, organs and musical instruments and otherwise, and also any and every other article and thing which may now or hereafter be conveniently manufactured, sold or dealt in in connection therewith or otherwise.

(3) The President of said corporation is Frank W. Bonar. The Vice President is Hans P. Nelson and the Treasurer is Leo J. Kelley. The corporation is now without a Secretary, the last Secretary, one Berthold Goldberg, having resigned and no Secretary having been appointed in his place. The agent of said corporation within this State upon whom process may be served is, according to the certificate of incorporation, F. E. Holtz, and the registered office of the company is there given as Broad Street and Central Avenue, Newark, New Jersey.

(4) The defendant corporation is now conducting its business of dealing in pianos in certain store premises leased by it at No. 584 Broad Street, Newark, N. J.

(5) The complainant is the holder and owner of promissory notes of the defendant corporation amounting to more than $60,000, of which notes approximately $16,000 are past due and unpaid. The defendant corporation is further indebted to the Fort Dearborn Trust & Savings Bank of Chicago, Illinois, upon promissory notes in the amount of $28,000, of which about $5,000 are now due and unpaid, and to the Fort Dearborn National Bank of Chicago, Illinois, upon promissory notes in the sum of $6,050, all of which notes are past due and unpaid, and upon an assigned invoice past due and unpaid in the amount of $4,300. The defendant is indebted to Gulbransen Dickinson Co., a corporation of the State of Illinois, in the sum of $1,879.75 for pianos purchased from said corporation, and to Stanley & Sons, a corporation of the State of Illinois, in the sum of $6,686.16 for pianos purchased. The defendant is also indebted locally upon merchandise accounts and otherwise in an amount in excess of $1,000. All

of the above claims are unsecured, and the total claims of unsecured creditors of the defendant corporation amount therefore to more than $107,000.

(6) The defendant corporation is further indebted to Commercial Security Company, a corporation of the State of Illinois, for money borrowed upon security, in the sum of $67,533.71, and to Federal Commercial Company, a corporation of the State of Delaware, but having its main offices in Chicago in the State of Illinois, for money borrowed upon security, in the sum of $72,000.12. The security held by both of the last mentioned creditors consists of leases of pianos made by the defendant corporation to various customers, said leases having been assigned by the defendant corporation in part to Commercial Security Company and in part to Federal Commercial Company as collateral for the money borrowed from each of said last mentioned corporations.

(7) The defendant company owns no real estate whatever and its only assets are the following: Cash in bank to the extent of about $1,800; the above mentioned piano leases, the equity of the defendant corporation in which, over and above the sums for which they are pledged as collateral, is worth not more than $35,000; the merchandise on hand, which is worth not over $5,000; furniture and fixtures in its store building, worth about $200; two automobiles, worth together not more than $900, and accounts receivable not exceeding $500. The total assets therefore available for the payment of debts of the defendant corporation aside from its good will, if any, amount to a sum not exceeding $43,000.

(8) A statement of the assets and debts of the defendant corporation using approximate figures is as follows:

ASSETS.

Cash in bank	$ 1,800
Piano leases	174,000
Merchandise on hand	5,000
Furniture and fixtures	200
Automobiles	900
Accounts receivable	500
	$182,400

DEBTS.

Notes payable	$ 94,000
Assigned invoice	4,300
Accounts payable	9,400
Money borrowed on security	139,000
	$246,700

(9) The business of the defendant corporation has never been conducted at a profit, and since its incorporation about three years ago it has been conducted at an annual loss of approximately $20,000. During the period of its existence the corporation has become more and more heavily indebted until its affairs have become involved as above set forth.

(10) The promissory notes of the defendant corporation held by the complainant, which are not yet due, amount to over $44,000. These notes are payable at short intervals through the next two years, some of said notes becoming due in the month of February, 1916, others in the month of March, 1916, and still others in the succeeding months. The defendant company is not only un-

able to pay its debt already due, but there is no hope or expectation whatever of its being able to take care of the notes held by the complainant and constantly becoming due in the future. The defendant company is wholly unable to secure further loans or advances for the purpose of meeting its current obligations and is wholly without credit.

(11) Two suits are now pending against the defendant corporation in the courts of this State and other suits are threatened.

(12) The defendant corporation is entirely insolvent and without funds to carry on its ordinary business; its business cannot be conducted so as to enable it to pay its just debts or carry on its operations with safety to the public or advantage to its stockholders, further prosecution by the company of its said business would necessarily tend to the sacrifice, injury and depreciation of the rights of its creditors and stockholders. While the defendant corporation has not actually suspended the operation of its business, it is losing money in carrying on the same, is embarrassed for want of funds to carry out the project for which it was organized, and is without available assets to pay its present indebtedness. Unless the assets of the said corporation are properly marshalled by a receiver to be appointed for the said corporation, the said corporation will be subject to vexatious or costly litigation and its assets affected by entry of judgments and levies of executions; and in the event of forced sales said assets will bring very much less than their fair and reasonable values. Unless this court, in view of the inability of said corporation to meet its due and maturing obligations, deals with the property of said corporation as a single trust

fund, this property will be dissipated to such an extent in all probability that the creditors of said corporation will be unable to collect their claims or any substantial part thereof. The intervention of this court is necessary to the protection of the stockholders and creditors of said corporation to the end that this property may not be dissipated by a multiplicity of suits to the detriment of the whole body of creditors of said corporation.

Complainant is without adequate remedy in the courts of law and therefore prays:

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

2. That the complainant and other creditors and the stockholders of said Company may be paid what is justly due them.

3. That the said Company may be enjoined and restrained from exercising any of its franchises and from receiving any debts due to it, and from paying and transferring any of its moneys or effects (except to a receiver appointed by this Honorable Court), and from continuing its said business.

4. That said corporation may be decreed to be insolvent, and that a receiver may be appointed, according to the form of the statute in such case made and provided.

5. That the assets of the said corporation and the rights of the complainant and all other creditors and of all the stockholders in the said company may be ascertained; and that the court may fully administer the funds in which the complainant is interested, being the entire assets of the said corporation, and will, for that purpose

marshal all of its assets, and ascertain all of the respective liens and priorities, if any existing, on any and all parts thereof, and enforce the liens and rights of all the creditors of the said company as the same may be finally ascertained.

6. That the complainant may have such further and other relief as the nature of the case may require and as may be agreeable to equity and good conscience.

7. That a writ of injunction, or the equivalent thereof, may issue directed to said Standard Piano Company, its officers, servants and agents, enjoining and restraining it and them, and each of them, from exercising any of the privileges or franchises of said Standard Piano Company, and from collecting or receiving any debts due to said corporation, and from paying out, selling, assigning or transferring any of the estate, moneys, funds, lands, tenements or effects of said corporation (except to a receiver appointed by this court).

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

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Complainant.

Affidavit of Leo J. Kelley.

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

LEO J. KELLEY, being duly sworn according to law, upon his oath says: I am treasurer of Standard Piano Company, the corporation defendant in the above entitled cause, and have been such treasurer since March, 1915. I have read the foregoing bill of complaint and know the contents thereof and the same are true to the best of my knowledge, information and belief.

The Standard Piano Company is a corporation of the State of New Jersey, its certificate of incorporation having been filed and recorded in the office of the Secretary of State on April 17, 1913. The company has an authorized capital stock of $100,000 divided into 1,000 shares of the par value of $100 each. 600 shares are preferred stock and 400 shares are common stock. All of the capital stock has been issued and is outstanding. The objects for which the company was formed were to manufacture, purchase, or otherwise acquire, to lease, sell, and generally deal in pianos, organs, and musical instruments, and otherwise, and also deal in other articles and things which might be conveniently manufactured, sold or dealt in in connection with pianos and other musical instruments.

The President of the corporation is Frank W. Bonar. The Vice President is Hans P. Nelson. I am the treasurer as above stated. The corporation is now without a Secretary, the last Secretary, one Berthold Goldberg, having resigned and no Secretary having been appointed in his place. According to the certificate of incorporation F. E. Holtz is the statutory agent. I do not know Mr.

Holtz, and to the best of my belief he is not now connected with the company. I have no knowledge of the appointment of any agent for service of process other than Mr. Holtz.

The defendant corporation is now conducting its business in certain store premises leased by it at No. 584 Broad Street, Newark, N. J.

The complainant is the holder and owner of promissory notes of the defendant corporation amounting to more than $60,000. Of these notes approximately $16,000 are past due and unpaid. The defendant corporation is further indebted to the Fort Dearborn Trust and Savings Bank of Chicago, Illinois, upon promissory notes in the amount of $28,000, of which about $5,000 are now due and unpaid, and to the Fort Dearborn National Bank of Chicago, Illinois, upon promissory notes in the sum of $6,050, all of which notes are past due and unpaid, and upon an assigned invoice past due and unpaid in the amount of $4,300. The defendant is indebted to Gulbransen Dickinson Co., a corporation of the State of Illinois, in the sum of $1,879.75 for pianos purchased from said corporation, and to Stanley & Sons, a corporation of the State of Illinois, in the sum of $6,686.16 for pianos purchased. The defendant is also indebted locally upon merchandise accounts and otherwise in an amount in excess of $1,000. All of the above claims are unsecured, and the total claims of unsecured creditors of the defendant corporation amount therefore to more than $107,000.

The defendant corporation is further indebted to Commercial Security Company, a corporation of the State of Illinois, for money borrowed upon security, in the sum of $67,533.71, and to Federal Commercial Company, a corporation of the State

of Delaware, but having its main offices in Chicago in the State of Illinois, for money borrowed upon security, in the sum of $72,000.12. The security held by both of the last mentioned creditors consists of leases of pianos made by the defendant corporation to various customers, said leases having been assigned by the defendant corporation in part to Commercial Security Company and in part to Federal Commercial Company as collateral for the money borrowed from each of said last mentioned corporations.

The defendant company owns no real estate whatever and its only assets are the following: Cash in bank to the extent of about $1,800, the above mentioned piano leases, the equity of the defendant corporation in which, over and above the sums for which they are pledged as collateral, is worth not more than $35,000; the merchandise on hand, which is worth not over $5,000; furniture and fixtures in its store building, worth about $200; two automobiles worth together not more than $900, and accounts receivable not exceeding $500. The total assets therefor available for the payment of the debts of the defendant corporation aside from its good will, if any, amount to a sum not exceeding $43,000.

The statement of the assets and debts of the defendant corporation given in paragraph 8 of the bill of complaint is a true one. While approximate figures are used, in each item under assets an outside value is given in the statement, and in the case of each item under debts a minimum figure is given. On the books of the company the piano leases as assets were carried at a considerably higher figure than is given as their value in the bill of complaint. I have not the slightest doubt, however, that the figure for these leases

given in the bill of complaint is higher than they are actually worth.

The business of the defendant corporation has never been conducted at a profit, and since its incorporation about three years ago it has been conducted at an annual loss of approximately $20,000. During the period of its existence the corporation has become more and more heavily indebted until its affairs have become involved as above set forth. Since my connection with the company as Treasurer, which commenced in March, 1915, I have personally observed that it has been constantly getting more and more into debt. By reference to the books, I am able to make the statement as above as to the financial condition of the company prior to my connection with the company.

The promissory notes of the defendant corporation held by the complainant, which are not yet due, amount to over $44,000. These notes are payable at short intervals through the next two years, some of said notes becoming due in the month of February, 1916, others in the month of March, 1916, and still others in the succeeding months. The defendant company is not only unable to pay its debts already due, but there is no hope or expectation whatever of its being able to take care of the notes held by the complainant and constantly becoming due in the future. The defendant company is wholly unable to secure further loans or advances for the purpose of meeting its current obligations and is wholly without credit.

Two suits are now pending against the defendant corporation in the courts of this State and other suits are threatened.

The defendant corporation is entirely insolvent and without funds to carry on its ordinary business; its business cannot be conducted so as to enable it to pay its just debts or carry on its operations with safety to the public or advantage to its stockholders; further prosecution by the company of its said business would necessarily tend to the sacrifice, injury and depreciation of the rights of its creditors and stockholders. While the defendant corporation has not actually suspended the operation of its business, it is losing money in carrying on the same, is embarrassed for want of funds to carry out the project for which it was organized, and is without available assets to pay its present indebtedness. Unless the assets of the said corporation are properly marshalled by a receiver to be appointed for the said corporation, the said corporation will be subject to vexatious or costly litigation and its assets affected by entry of judgments and levies of executions, and in the event of forced sales said assets will bring very much less than their fair and reasonable values. Unless this court, in view of the inability of said corporation to meet its due and maturing obligations, deals with the property of said corporation as a single trust fund, this property will be dissipated to such an extent in all probability that the creditors of said corporation will be unable to collect their claims or any substantial part thereof. The intervention of this court is necessary to the protection of the stockholders and creditors of said corporation to the end that his property may not be dissipated by a multiplicity of suits to the detriment of the whole body of creditors of said corporation.

I have been advised within the last few hours that certain of the other officers and employees

of the defendant corporation have removed certain of its merchandise, namely, pianos, from the above mentioned store premises at No. 584 Broad Street, Newark. In my opinion the need for an immediate decree of insolvency and appointment of a receiver is urgent.

LEO J. KELLEY.

Subscribed and sworn to before me
this 26th day of January, 1916.

ALEXANDER T. SCHENCK,
A Notary Public of New Jersey.

Order Appointing Receiver.

(Filed January 26, 1916).

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

On Bill for Receiver.

Order Appointing Receiver.

On reading and filing the bill of complaint in the above entitled cause and the affidavit attached thereto, by which it appears that the defendant corporation is insolvent and without funds to carry on its business, and cannot continue the same with safety to the public and advantage to its stockholders:

It is thereupon, on this twenty-sixth day of January, 1916, on motion of Pitney, Hardin & Skinner, Solicitors of the complainant, by Edwin R. Walker, Chancellor of the State of New Jersey, ORDERED, ADJUDGED and DECREED, and the said Chancellor, by virtue of the power and authority of this Court and of the statutes in such case made and provided, does hereby ORDER, ADJUDGE and DECREE that said Standard Piano Company, the corporation defendant in the above entitled cause, has become and is insolvent and without funds to continue its business with safety to the public and advantage to its stockholders.

Order Appointing Receiver.

And it is Further Ordered that Charles L. Farrell, Esq., be, and he is hereby appointed receiver for the creditors and stockholders of said defendant corporation, with full power to demand, sue for, collect and receive and take into his possession, all the goods and chattels, rights and credits, monies and effects, lands and tenements, books, papers, choses in action, bills, notes, franchises and property of every description of the defendant corporation, and to institute suits at law and in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation, and in his discretion to compound or settle with any debtor or creditor of the corporation, or the persons having possession of its property or in any way responsible in law or in equity to the corporation at the time of its insolvency or suspension of business, or afterwards, under such terms and in such manner as he shall deem just and beneficial to the corporation or any person, and to allow all just set offs in favor of such person in all cases in which the same ought to be allowed according to law and equity, with full power to sell, convey and assign all the said estate, rights, interests and franchises, and hold and dispose of the proceeds thereof under the direction of this court, and generally to do and perform all the duties imposed upon him and required by law.

It is Further Ordered that the said Charles L. Farrell, Esq., before he shall enter upon his duties as such Receiver, shall take the oath required by law and give bonds to the Chancellor of the State of New Jersey, in the sum of twenty-five thousand dollars, conditioned for the faithful performance of his duties, such bond to be approved as to the form and security thereof by one of the Special Masters of this Court.

Order Appointing Receiver.

And it is Further Ordered that the defendant be enjoined and restrained according to the prayer of the bill of complaint.

And it is Further Ordered, Adjudged and Decreed that all the real and personal property of the defendant corporation, wheresoever situated, and all its franchises, rights, privileges and effects shall be and the same are hereby vested in the said Charles L. Farrell, Esq., the Receiver appointed hereby, and that the said defendant corporation be and the same is hereby divested of the title thereto.

And it is Further Ordered that until the further order of this court the said Charles L. Farrell, Esq., Receiver as aforesaid, be and he is hereby authorized to continue the conducting of the business of the defendant corporation as heretofore, except that he shall make no sales or leases of merchandise upon the installment plan; and the urgency of the case having required the appointment of a Receiver without notice to the creditors and stockholders of the defendant corporation, it is further ordered that the creditors and stockholders of the defendant corporation have leave without further notice to apply to this Court on Tuesday the eighth day of February, 1916, at ten o'clock in the morning of that day at the Chancery Chambers in the City of Newark, upon good cause shown, for the removal of said Receiver and the appointment of another Receiver, or for the appointment of an additional Receiver, and that notice of this decree and order be mailed to all the creditors and stockholders of the defendant corporation at their last known post office addresses, within five days from the date hereof, and that a true, but uncertified copy of this decree and order and a true, but uncertified copy of the bill of complaint and affidavit annexed thereto be served

upon the defendant corporation, or its resident agent, or President, or other head officer, within said five days.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

Order for Short Notice.

(Filed January 27, 1916.)

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

On Bill, etc.
Order.

Application having been made to the court by Frank E. Bradner, of counsel with the defendant, for leave to apply to have the order appointing a receiver in this cause opened, so that the defendant may be heard, and it being represented to the court that the defendant is not insolvent and that this suit is not brought in good faith:

It is on this 27th day of January, 1916, ORDERED that the defendant may give notice of a motion to be heard at the Chancery Chambers, Newark, N. J., on Monday, January 31, 1916, at ten o'clock in the forenoon, of a motion to open the order appointing a receiver in this cause, and that such notice may be served on the solicitors of the complainant on January 28th, 1916, and that the defendant may also at the same time serve a copy of its answer and any affidavits which it desires to present in support of the motion.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

Notice.

Notice.

(Filed January 31, 1916.)

IN CHANCERY OF NEW JERSEY.

Between ALEXANDER B. SHAW, *Complainant,* *and* STANDARD PIANO COMPANY, *Defendant.*	*On Bill, etc.* *Notice.*

PLEASE TAKE NOTICE that application will be made to the Chancellor at the Chancery Chambers, Prudential Building, in the City of Newark, on Monday, January 31, 1916, at ten o'clock in the forenoon, or as soon thereafter as counsel may be heard, to open the order heretofore made in the above stated cause appointing a Receiver therein, and giving leave to the defendant to file an answer and affidavits; and at the same time a motion will be made to discharge the Receiver.

An answer of the defendant, together with affidavits annexed thereto, will be read in support of said motions. A copy of said answer and affidavits is served herewith.

Notice.

This notice is given at this time and for the day mentioned in pursuance of an order made on January 27th inst. specially directing that the motion may be made at the time stated.

Yours truly,

FRANK E. BRADNER,
Solicitor of Defendant.

Dated, January 28, 1916.

To PITNEY, HARDIN & SKINNER, ESQS.,
Solicitors of Complainant.

Answer of Standard Piano Company.

(Filed January 31, 1916.)

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

On Bill, etc.

THE ANSWER OF THE DEFENDANT, STANDARD PIANO COMPANY, A CORPORATION OF THE STATE OF NEW JERSEY.

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

1. This defendant has no knowledge of the complainant and has never heard of him and does not know that he exists, and says that there is nothing on the books of this defendant showing that the complainant is a creditor of this defendant; and that said complainant has never notified this defendant in any manner that he is the holder of any of the notes of this defendant, or that he is a creditor of this defendant.

2. Paragraph 2 is admitted, except that the 600 shares of preferred stock issued to H. P. Nelson were never subscribed for by him and have never been paid for.

3. The President of this corporation is Frank W. Bonar. Leo J. Kelly is not the Treasurer of this defendant, and ceased to be such Treasurer

on January 24, 1916. Berthold Goldberg did resign as Secretary on January 24, 1916, and Walter L. Herdien was appointed in his place. F. E. Holtz is not now the agent of this defendant and has not been the agent for this defendant for a long time. The agent of this defendant is Frank W. Bonar. The Treasurer of this defendant is Walter L. Herdien, who was elected Treasurer on January 24, 1916, in place of Leo J. Kelly, who was removed from his office on that date.

4. Paragraph 4 is admitted.

5. Defendant denies that the complainant is the holder and owner of promissory notes of this defendant corporation amounting to more than $60,000.00, and denies that it has any knowledge whatever that he is the holder of such notes, except as stated in the bill of complaint. Defendant denies that $16,000.00 of notes are past due and unpaid.

Defendant denies that it is indebted to Ft. Dearborn Trust and Savings Bank of Chicago, Illinois, upon promissory notes in the amount of $28,000.00, and denies that $5,000.00 are now due and unpaid on said notes.

Defendant denies that it is indebted to Ft. Dearborn National Bank of Chicago, Illinois, on promissory notes in the sum of $6,050.00, and denied that such notes are past due and unpaid.

Defendant denies that it is indebted to Ft. Dearborn National Bank of Chicago, Illinois, in the amount of $4,300.00 upon an assigned invoice past due and unpaid.

Defendant denies that it is indebted to Gulbranson Dickinson Company, a corporation of the State of Illinois, in the sum of $1,879.75, or any other sum of money.

Defendant admits that it has purchased from Stanley & Sons a partnership, certain pianos, and that the amount of the indebtedness to said Stanley & Sons has not yet been adjusted, so that the defendant is unable at this time to admit just what amount is due and owing. Defendant admits an indebtedness locally upon merchandise accounts to an amount of about $1,000.00.

Defendant denies that the claims of unsecured creditors amount to $107,000.00, and will set forth hereinafter a statement of its assets and liabilities.

6. Defendant denies that it is indebted to Commercial Security Company, a corporation of the State of Illinois, in the sum of $67,533.17.

Defendant denies that it is indebted to Federal Commercial Company, a corporation of the State of Delaware, in the sum of $72,000.12.

Defendant admits that both of said last mentioned corporations have in their possession certain piano contracts, commonly called leases, which were assigned to said corporation for money borrowed from each of said corporations; and defendant will hereinafter set forth a statement of the amount due to both of said corporations, and the amount of the piano contracts or leases held by them.

7. Defendant admits that it does not own any real estate. Defendant says that it has cash in bank and on hand in the amount of $1,500.00.

Defendant denies that the equity in the said piano leases assigned to Commercial Security Company and Federal Commercial Company is not worth more than $35,000.00, and will set forth hereinafter a statement showing the value of the equity.

Defendant admits that the merchandise now on hand is worth not over $5,000.00; defendant says that the furniture and fixtures are worth at least $400.00. Defendant admits that the two automobiles are worth not more than $900.00. Defendant denies that the accounts receivable do not exceed $500.00, and say that they are in excess of $8,000.00.

Defendant denies that the total assets of this defendant available for the payment of its debts aside from its good-will is a sum not exceeding $43,000.00.

8. Defendant denies the statement of assets and debts contained in paragraph 8 of the bill of complaint, and will set forth a statement hereinafter.

9. Paragraph 9 is denied.

10. Paragraph 10 is denied.

11. Defendant admits that a suit for $58.00 for a debt contracted by a man named Forbish, who was formerly the President of this Company, without the authority of the corporation, is pending in one of the District Courts of the City of Newark.

Defendant admits that a suit has been brought against it for breach of covenant for quiet enjoyment on a lease alleged to have been made by this Company to a Mr. Peter J. Miller, but this defendant says that said lease was never authorized by this corporation, and was made by said Forbish representing himself to be the President of the Company with authority to make the lease, and this defendant is advised that it has a just and legal defence to said action.

12. Paragraph 12 is denied.

13. Defendant alleges the following as a statement of its present assets:

ASSETS.

Cash in bank and on hand	$ 1,500.00	
Piano leases	196,000.00	
Merchandise on hand	4,000.00	
Furniture and fixtures	400.00	
Automobiles	900.00	
Accounts receivable	8,000.00	
Total	$210,800.00	
Piano leases in possession of company	4,100.00	
	$214,900.00	

LIABILITIES.

Notes payable	$ 34,300.00
Accounts payable	10,029.00
Commercial Security Company and Federal Commercial Company	126,000.00
Total	$170,329.00

Defendant alleges that its assets exceed its liabilities in the sum of $44,571.00. Defendant believes that upon a proper accounting with the holders of its paper, which was received from H. P. Nelson Company as hereinafter set forth, its liabilities will be still further reduced.

14. Defendant alleges that when it commenced business in the City of Newark it entered into a contract with H. P. Nelson Company for the purchase of pianos from that Company, and the pianos were to be sold to this defendant at the wholesale price. A large number of pianos, approximately 1,500, were sold by H. P. Nelson Company to this defendant. Notes were signed

in blank by W. W. Forbish, as President of this defendant, and delivered to H. P. Nelson Company. At the time of delivery of said notes, it was agreed that the actual amount of the indebtedness of this Company to H. P. Nelson Company should be ascertained and notes made out to cover that amount. Instead of inserting in the notes the actual amount of the indebtedness of this defendant to H. P. Nelson Company, no deduction was made for cash payments that had been made at the request of H. P. Nelson Company and for its benefit by this Company to an amount in excess of $29,000.00. The notes were filled up for an amount in excess of the wholesale price for the pianos which had been agreed upon ranging from fifteen to twenty-five dollars per piano, and the total excess overcharge is about $35,000. To the extent therefore of $64,000.00, the notes made payable to H. P. Nelson Company are without consideration. The face amount of these notes is $94,000.00, and they have been transferred by H. P. Nelson Company, some to Ft. Dearborn National Bank of Chicago, Illinois, and some to Federal Commercial Company.

In making the transfer of these notes from H. P. Nelson Company there was also transferred an invoice of $4,300.00, which is subject to the same adjustment as to the price charged. Defendant alleges in this connection that Ft. Dearborn National Bank and Federal Commercial Company had actual notice of the failure of consideration to the extent as aforesaid when they took said notes.

15. Defendant further alleges that the claims now held by Commercial Security Company aforesaid and Federal Commercial Company as aforesaid amount to $126,000.00 at this date. That

there was turned over to said two corporations piano contracts or leases, which have a face value at this date in excess of $196,000.00. That said companies charged this defendant and exacted from this defendant in some cases eight per cent. and in other cases ten per cent. for the use of the money which was advanced to this defendant, and that said exaction was contrary both to the law of the State of Illinois and the law of the State of New Jersey, and constitutes usury in both States. This defendant alleges that the claims of said two corporations will be reduced by reason of the usury charge the total amount of the interest that has been paid and exacted, and that they will not be entitled to any interest. The amount of $126,000.00 as aforesaid is subject to adjustment by deduction of the usurious interest charged.

Defendant further alleges that said Commercial Security Company has been receiving a further interest at the rate of six per cent. which has been paid monthly. Defendant is advised and alleges that it has a just and legal defence to any action that may be brought by either of said companies on their claims against this defendant, and that the total amount of credit to which this defendant will be entitled will be approximately $45,000.00.

16. Defendant further says that it is not indebted to Gulbranson Dickinson Company in any sum of money. That the said corporation without any order from this defendant, shipped to this defendant a number of pianos, and that on January 25, 1916, this defendant shipped back to said corporation sixteen instruments, consisting of thirteen pianos and three players, to the value of $1,650.00.

17. This defendant further alleges that the stockholders of this defendant, are as follows: H. P. Nelson, 150 shares; W. L. Herdien, 249 shares; and F. W. Bonar, 1 share; and that there are no other stockholders, and that none of the stockholders desire to have the corporation dissolved, or a Receiver appointed.

FRANK E. BRADNER,
Solicitor for and of Counsel with Defendant.

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

The answer of the defendant Standard Piano Company, was taken this twenty-eighth day of January in the year 1916 before me under the common seal of the said corporation as by their said seal thereunto affixed appears.

(L. S.) FRANK W. BONAR,
President.

WILLIAM TYACKE, JR.,
A Master in Chancery of New Jersey.

Affidavit of Walter L. Herdien.

WALTER L. HERDIEN, being duly sworn according to law upon his oath says: I am Treasurer of Standard Piano Company, the corporation defendant in the above entitled cause, and I was made such Treasurer on January 24, 1916. Leo J. Kelly ceased to be the Treasurer of said corporation on said last mentioned date, and has not since said date acted as the Treasurer of said corporation. I am entirely familiar with the business of Standard Piano Company. I was its Treasurer on

a former occasion. I am the owner of 249 shares of the common stock. H. P. Nelson holds 150 shares of the common stock. Frank W. Bonar holds one share. There are 400 shares of common stock, 600 shares of preferred stock were issued to H. P. Nelson, but he never subscribed for the same and makes no claim for said stock. The Company has been carrying on the business of selling pianos on the installment plan, and in my judgment, the business has been successful. Any difficulties that have arisen have been caused by the action of Ft. Dearborn National Bank of Chicago, Illinois, and its agents and associated concerns. The difficulties, with which I am entirely familiar, arose in this way:

H. P. Nelson Company of Chicago, Illinois, piano manufacturer, was indebted to Ft. Dearborn National Bank in quite a large sum of money. Arrangements were made between H. P. Nelson Company and the Bank for a certain bond issue and there were some financial transactions between that Company and the Bank, which resulted in the Bank getting possession and control of the assets of H. P. Nelson Company. Among those assets were notes of Standard Piano Company, which had been signed in blank by the President of Standard Piano Company. Those notes were to be filled in from time to time to cover the amount of the indebtedness of Standard Piano Company to H. P. Nelson Company, which last mentioned Company was selling pianos to the Standard Company. The agreement was and I know it to be a fact that H. P. Nelson Company was to charge for the pianos wholesale price. In fact, the charge that was made and entered in the notes included an excess of from fifteen to twenty-five dollars on each piano and player piano. The

sales amounted to about 1,500 instruments. In addition to that, the H. P. Nelson Company, or the Bank, when these notes were filled out, did not give the Standard Piano Company credit for a large amount of money that had been paid out by the Standard Piano Company for the benefit of H. P. Nelson Company and at its request. The Bank got possession of these notes and they were transferred to the Hamilton Investment Company, a corporation, some of the directors of which were acting as agents of the Ft. Dearborn National Bank. I am sure that Hamilton Investment Company had notice of the failure of consideration of these notes.

I do not know the complainant Alexander B. Shaw, and I have never heard of him. His name does not appear upon the books of Standard Piano Company to my knowledge. If he holds any notes of the defendant, he must have acquired them either from Hamilton Investment Company, or the Ft. Dearborn National Bank, as no other notes have been issued except as hereinafter stated. The face amount of the notes above referred to as taken by the Ft. Dearborn National Bank together with some other notes transferred by their agents to Federal Commercial Company, is about $94,000.00. The excess charges for pianos and piano players included in those notes, is about $35,000.00 and the amount of credit to which the Standard Piano Company is entitled for moneys paid for the benefit of H. P. Nelson Company, is about $29,000.00, making a total of excess amount in the notes of $64,000.00, which deducted from the $94,000.00 leaves an actual consideration for those notes of $30,000.00. In addition to that, there is a claim of $4,300.00, which is subject to the same adjustment.

Piano contracts or leases made by individual purchasers of pianos from Standard Piano Company which amount at this date in excess of $196,000.00, are held by Commercial Security Company, of Chicago. The amount actually due to Commercial Security Company and Federal Commercial Company on the face of the papers, is now $126,000.00, but this is subject to a deduction for charges of usurious interest. In some cases, there has been a charge of 8 per cent., and in other cases, a charge of 10 per cent., in addition to the regular 6 per cent. I am a member of the Bar practicing in the State of Illinois, and I know that the statutes of Illinois prohibit a charge of interest of more than 7 per cent. The penalty for usury in Illinois, is loss of interest.

I am familiar with the present financial condition of Standard Piano Company, and I say that the statement of assets and liabilities set forth in the answer of said Company, to which this affidavit is annexed, is a truthful and fair statement. That statement shows, and it is the fact that the assets are more than $44,000.00 in excess of the liabilities.

A Mr. Joseph Weissenbach, an attorney at law of Chicago has been acting as agent for Ft. Dearborn National Bank, and by arrangement with Mr. Nelson and myself and Mr. Bonar, was permitted to have a representative on the Board of Directors and Mr. Berthold Goldberg was such representative. Leo J. Kelly has never been a stockholder or a director of the Company. He was made Treasurer about April, 1915, at the request of the Commercial Security Company. He has been in very close association with Mr. Weissenbach. While he has been Treasurer, he seems to have made every possible effort to undermine the

Company and to get control of it himself. He has frequently repossessed pianos without any justifiable reason, thereby hurting the Standard Piano Company with its customers; he has been very extravagant in his expenditures. He purchased the automobile which appears among the assets of the Company, and for which it has no use whatever, and made the purchase without the authority of the Board of Directors, and uses it for his own personal pleasure. He has stated openly that he had an arrangement with Mr. Weissenbach and with Mr. Crandall, the President of Commercial Security Company, to get entire control and possession of the assets and business of Standard Piano Company, and that they were going to turn it all over to him. In pursuance of some such bargain, a notice was given to the stockholders of Standard Piano Company of a meeting to be held on January 24, 1916, at the principal office in Newark, New Jersey. The purpose of the meeting, as stated in the notice, was to approve a proposed assignment of the equity of Standard Piano Company in all the leases or piano contracts held by Commercial Security Company and Federal Commercial Company, and the equity was estimated at that time to be about $95,000.00. Mr. Weissenbach told me that he and Mr. Crandall had agreed to turn over the business to Mr. Kelly. Mr. Weissenbach had approached Mr. Bonar the President of the Company, and had requested him to resign and had offered him $2,000.00 if he would do so. It seems that Mr. Bonar claimed that there was $2,000.00 due him for commissions on sales, and Weissenbach said that he would pay that amount to him if he would resign. I heard Mr. Weissenbach say at the meeting of the Directors in Chicago, that he had asked

Mr. Bonar for his resignation, but that Bonar demanded that he should be paid $2,000.00 commissions due him. At the meeting held in Newark on January 24th inst., all the stockholders were present, and Mr. Weissenbach handed to the President of the Company on that occasion the resignation of Berthold Goldberg as Secretary and director. At that meeting, the stockholders voted unanimously their disapproval of the proposed assignment of the equity of the Company in the piano leases or contracts. After such action had been taken, Mr. Weissenbach and Mr. Kelly, who had been present, left the room and went out together. The stockholders thereupon agreed to have a meeting of the stockholders. A waiver of notice and a waiver of any provisions of the law requiring notice of any kind, was duly signed by all the stockholders and a meeting was held. At that meeting, the other Directors handed in their resignations and the stockholders thereupon proceeded formally to elect a Board of Directors, and an election was held, and H. P. Nelson, Walter L. Herdien and Frank W. Bonar were elected Directors. The Directors newly elected thereupon organized and elected Frank W. Bonar, President, and Walter L. Herdien, Secretary and Treasurer, of the Company.

On January 25, 1916, I, as Secretary of the Company, served upon the Essex County National Bank a certificate notifying the said Bank of the change of Treasurer, and that checks should be signed by the Treasurer and countersigned by the President of the Company, and as such Treasurer, I issued a check. The Bank made no objection whatever. I am informed that Mr. Farrell, who has been appointed Receiver in this cause is the President of the Essex County National

Bank, and that he was formerly an officer of the Ft. Dearborn National Bank of Chicago, Illinois, and is personally acquainted with and is a friend of Mr. Joseph Weissenbach.

There are two suits pending against the Company, one in the District Court for the sum of $58.00, and the other, a suit brought by Peter J. Miller alleging breach of covenant for quiet enjoyment. The Standard Piano Company never authorized the making of any lease to Miller and William W. Forbish, who was the President of the Company, executed the lease without authority. I am advised that the Standard Piano Company is not liable, although the Standard Piano Company did receive rent from Miller; that there was merely the relationship of landlord and tenant from which there was no implied covenant for quiet enjoyment, consequently, there is no liability.

Mr. Kelly says, at the foot of his affidavit, that pianos are being removed from the store, 584 Broad street. On January 25th the Directors of the Company determined that a number of pianos which had been shipped to the Company through Mr. Weissenbach without the authority of the Board of Directors and without any order, by Gulbranson Dickinson Company, should be returned to that concern, and they were shipped back to them, and those were the pianos which Mr. Kelly heard were being removed. I have been in Newark since Monday morning, January 24th, and no pianos have been taken out of the place of business except those shipped back to Chicago to said corporation Gulbranson Dickinson Company, except some individual deliveries to purchasers in this city.

Mr. Kelly also states in his affidavit that the business of the Company has not been conducted at a profit, and I say that that statement is not true; the business of the Company has been conducted at the usual profit made on pianos and the sales have been very large, the sales for 1915 being approximately $200,000.00. It is not true that the Company is unable to finance its business. If it were not for the collusion of Kelly and Weissenbach and Crandall, there would be no difficulty whatever, and I assert that these men are colluding together to get possession of the business of Standard Piano Company for their own benefit. The appointment of the Receiver has already done some harm and will do irreparable harm to the Company, and will be of no benefit whatever to the stockholders or creditors. Indeed, I am requested by Mr. Nelson to say for him, and I say for myself, that we do not desire the appointment of a Receiver, or the dissolution of the Company, and that we are entirely capable of carrying on the business and will liquidate the debts as they come due. The outstanding notes are spread over a long period of time, and they have been taken up as they have come due, and I am not aware that there has been a failure to pay any note or to carry it satisfactorily when it has come due.

I will also say that if any note should be presented to the Company *now,* it would be disputed and the holder of it would be required to bring an action at law to sustain his claim. As for the small merchandise accounts, the Company is in a position to pay them on demand. I am informed that Mr. Kelly has been endeavoring to buy small claims against the Company, and has stated that he wanted to get them to prevent the Company

from being put into bankruptcy, and has thereby injured the credit of the Company.

The Ft. Dearborn Trust and Savings Bank of Chicago, Illinois, is not the owner of any notes of Standard Piano Company, but does hold some notes in trust for Federal Commercial Company. I have read the answer of Standard Piano Company, to which this affidavit is annexed, and I say that the matters and things therein set forth, to the best of my knowledge and belief, are true.

WALTER L. HERDIEN.

Sworn and subscribed before me
this twenty-eighth day of January,
1916, at Newark, New Jersey.

WILLIAM TYACKE, JR.,
A Master in Chancery of New Jersey.

Affidavit of Frank W. Bonar.

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

FRANK W. BONAR, being duly sworn according to law, upon his oath says: I am the President of Standard Piano Company, the defendant in the above case. I first became President of said Company on November 1, 1914. I have been in the piano business for twenty years and I am entirely familiar with the business. I know that the business of Standard Piano Company during the year 1915 was excellent, and that the sales amounted to more than $200,000.00 and the net profit was at least $75,000.00.

Mr. Kelly became Treasurer of the Company in March, 1915, and was placed there by Mr. Joseph

Weissenbach, the representative of Chicago interests. In the summer of 1915, Mr. Weissenbach said to me and to Kelly that if we got rid of the merchandise then on hand, meaning the pianos, he would give us the Standard Piano Company. He also said at a subsequent time in January, 1916, that he was ready to turn over the Standard Piano Company to me and Kelly. I refused to make any bargain with him. There are some commissions due me from the Standard Piano Company, which have been held back by Mr. Weissenbach, who has had control of the finances of the Company. He offered to pay me the commissions if I would resign as President, and I refused to do so.

The transactions with the Bank and different companies in Chicago have been conducted by Mr. Weissenbach, and also by Mr. Herdien, who are more familiar with them than I am. An attempt was made by Weissenbach to have the equity of the Standard Piano Company in certain piano contracts assigned to one of the banks in Chicago, and a stockholders meeting was called for January 24, 1916, to approve of such assignment. Mr. Weissenbach was present at that meeting and handed to me the resignation of one Berthold Goldberg, Secretary and Director. The stockholders declined to approve of the proposed assignment, and passed a resolution to that effect. Mr. Weissenbach and Mr. Kelly, who were present, then left the room. The stockholders then by mutual consent executed a written waiver of notice and consent to a meeting and had a meeting, and I and Mr. Nelson resigned as Directors, and new Directors were elected. The new Directors are H. P. Nelson, W. L. Herdien and myself. The

new Board of Directors elected me as President and Mr. Herdien as Secretary and Treasurer.

In my judgment, the Standard Piano Company is solvent and can pay all demands as they mature. Every claim that has been presented to me has been paid, except a small claim of $58.00, now in suit in the District Court, which I dispute. Notes that have come due have been taken care of and no note has gone to protest.

I do not know Alexander B. Shaw, the complainant in this action, and I never heard of him, and he has not presented to the Company, that is to me as the President of the Company, or to the Company with my knowledge, any demand for payment of any note or any claim whatever. The business of the Company is in good condition, and there is sufficient ready money on hand to carry it on. Practically all sales are made on the installment plan and collections are made periodically from a large number of customers. I can see no difficulty whatever in carrying on the business. Arrangements were being made by the new Board of Directors for the purchase of pianos, and there would have been no difficulty in getting plenty of pianos so as to proceed with the business. A number of pianos were removed from the store on January 25th, which had been shipped to the Company by Gulbranson Dickinson Company, of Chicago, without my order, and were sent back to the concern.

The Standard Piano Company is not indebted to Gulbranson Dickinson Company in any sum of money. Pianos have been shipped by that Company by some arrangement between it and Mr. Weissenbach, but without any order being given by me as President, or by the Board of Directors.

Affidavit of Howard B. Wood.

As a stockholder of the Company, I am opposed to the appointment of a Receiver. The publication of the fact of the appointment of a Receiver has injured the credit of the Company and the continuance of a Receiver in possession will undoubtedly, in my opinion, result in the loss of many of the accounts due from customers, who will refuse to pay to anybody. The result will be that a large number of pianos will have to be repossessed and probably sold at auction at great loss.

FRANK W. BONAR.

Sworn and subscribed before me this January 28, 1916, at Newark, N. J.

WILLIAM TYACKE, JR.,
A Master in Chancery of New Jersey.

Affidavit of Howard B. Wood.

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

HOWARD B. WOOD, being duly sworn according to law, upon his oath says: I have been sales manager and salesman for Standard Piano Company for the last fourteen months. I have had seven years' experience in the piano business. I think that the business during the year 1915 of Standard Piano Company was very good and profitable. I heard Mr. Kelly, the Treasurer, say recently, that Nelson and Herdien were going out and he was to have the business and get ten per cent. of the receipts; this was before the stockholders'

meeting on January 24th inst. I saw Kelly on January 27th inst. He came to the store and demanded my key for the store and for the automobile. On January 28th, he drove up to the store in the automobile belonging to the Company. I understood from what he said that he had come from his home in the automobile.

HOWARD B. WOOD.

Sworn and subscribed before me this January 28th, 1916, at Newark, N. J.

WILLIAM TYACKE, JR.,
A Master in Chancery of New Jersey.

Affidavit of John A. Lyon.

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

JOHN A. LYON, being duly sworn according to law, upon his oath says: I have been the bookkeeper for Standard Piano Company since August 1915. I know Mr. Kelly, who was the Treasurer. Some weeks ago, Kelly told me that the Standard Piano Company would be no more after February 1st. About January 17th inst., Kelly told me that Standard Piano Company would be no more and that he would be in charge and would have charge of all the collections. He wanted to take me in with him. He said he would give me two dollars raise in salary on April 1st, and another increase the last of the year, and also a percentage of the net profits.

Affidavit of Richard Uhrlass.

On Tuesday, January 25th inst., Mr. Herdien told me that Kelly had been removed as Treasurer and would no longer have charge of the collections. About 1 o'clock on that day, Mr. Kelly came in. I told him at that time that he had been removed as Treasurer. He did not say anything, but he acted as though he already knew it. On January 27th inst., Kelly asked me if I wanted to stay with the Receiver, and said that he, Kelly would take care of me as he had already promised me. He also said: "I think you would rather work for a bunch of bankers than a bunch of crooks." I did not make any bargain with him.

JOHN A. LYON.

Sworn and subscribed before me
this 28th day of January, 1916,
at Newark, N. J.

WILLIAM TYACKE, JR.,
A Master in Chancery of New Jersey.

Affidavit of Richard Uhrlass.

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

RICHARD UHRLASS, being duly sworn according to law upon his oath says: I have been salesman for Standard Piano Company for about five months, and have been a salesman in the piano business for about six years. The sales during my connection with Standard Piano Company have been very good, as good as any in my experience.

On January 27th inst., Mr. Kelly, who had been the Treasurer of the Company, asked me if I was going to stay with the Receiver. I told him Mr. Bonar had treated me all right. He said: "If you stay, I will treat you right" and that I would be through on Saturday unless I decided to stay with the Receiver.

RICHARD UHRLASS.

Sworn and subscribed before me
this 28th day of January, 1916, at
Newark, N. J.

WILLIAM TYACKE, JR.,
A Master in Chancery of New Jersey.

Affidavit of Alexander B. Shaw.

(Filed January 31, 1916).

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

ALEXANDER B. SHAW, of full age, being duly sworn according to law, upon his oath says: I am an attorney and counselor at law of the State of Illinois, and a resident of the City of Chicago, Illinois, where I have resided for twenty years last past. I am the complainant in the above entitled cause and instructed Pitney, Hardin & Skinner, to file the bill of complaint in said cause.

I am a creditor of Standard Piano Company and a bona fide holder of notes of said company of the amount of sixty-seven thousand eight hundred fifty-seven dollars and 35/100. A list of said notes is appended hereto.

Affidavit of Alexander B. Shaw.

I have no security of any sort whatever for the payment of said notes.

Part of the above mentioned notes have been negotiated to me by the Fort Dearborn National Bank of Chicago, Illinois, and the remainder by the Hamilton Investment Company, a corporation of the State of Illinois. As far as I know the Fort Dearborn National Bank and the Hamilton Investment Company were bona fide holders for value of said notes, and I have succeeded to all their rights and interests therein. I know of no defenses whatever that may be made to any of the said notes.

I consider it essential to my interest that the Receiver appointed by the Court of Chancery for the Standard Piano Company should be continued in office for the purpose of collecting the debts due to said company and liquidating its assets for the benefit of myself and all other creditors.

I have been for a few days in New York City on business not related to the above mentioned notes, and am now on my way to Boston, where I expect to be until about next Wednesday.

ALEXANDER B. SHAW.

Subscribed and sworn to, before me,
this 29th day of January, 1916.

HOWELL M. STILLMAN,
Notary Public of New Jersey.

STANDARD PIANO COMPANY NOTES PAST DUE.

No.	Due Date.	Amount.	Interest.
1	8/ 1/15	$ 3,002.00	$ 86.57
2	9/15/15	1,010.00	21.55
3	10/ 1/15	3,002.00	56.04
4	11/ 1/15	3,002.00	40.53
5	11/15/15	1,010.00	11.28
6	12/15/15	1,010.00	6.23
7	1/ 1/16	3,002.00	10.01
8	9/ 6/15	210.95	
9	10/ 5/15	210.95	
10	11/ 5/15	210.95	
11	12/ 6/15	210.95	
12	1/ 5/16	210.95	
		$16,092.75	$232.21

Interest at 6% due, from maturity of notes to January 21st, 1916	232.21
Total	$16,324.96

STANDARD PIANO COMPANY NOTES NOT YET DUE.

No.	Due Date.	Amount.
1	March 20, 1917	$ 147.00
2	May 1, 1917	3,002.00
3	June 15, 1917	1,010.00
4	July 1, 1917	3,002.00
5	April 20, 1917	166.84
6	April 15, 1917	1,010.00
7	April 1, 1917	3,002.00
8	March 15, 1917	1,010.00
9	Feb. 20, 1917	147.00
10	Feb. 1, 1917	3,002.00

11	Jan.	20, 1917	147.00	
12	Jan.	15, 1917	1,010.00	
13	Jan.	1, 1917	3,002.00	
14	Dec.	20, 1916	147.00	
15	Dec.	15, 1916	1,010.00	
16	Nov.	20, 1916	147.00	
17	Nov.	1, 1916	3,002.00	10
18	Oct.	20, 1916	147.00	
20	Oct.	1, 1916	3,002.00	
21	Sept.	20, 1916	147.00	
22	Sept.	15, 1916	1,010.00	
23	Aug.	20, 1916	147.00	
24	Aug.	1, 1916	3,002.00	
25	July	15, 1916	1,010.00	
26	July	1, 1916	3,002.00	
27	June	15, 1916	1,010.00	
28	May	1, 1916	3,002.00	20
29	April	15, 1916	1,010.00	
30	April	1, 1916	3,002.00	
31	March	15, 1916	1,010.00	
32	July	20, 1916	147.00	
33	March	5/6, 1916	210.95	
34	April	5, 1916	210.95	
35	May	5, 1916	210.95	
36	June	5, 1916	210.95	
37	July	5, 1916	210.95	
38	Aug.	5/7, 1916	210.95	30
39	Sept.	5, 1916	210.95	
40	Oct.	5, 1916	210.95	
41	Feb.	5/7, 1916	210.95	
42	Feb.	1, 1916	3,002.00	
43	Feb.	15, 1916	1,010.00	
			$51,532.39	

Notes Past Due	$16,324.96
Notes Not Yet Due	51,532.39
Grand Total	$67,857.35

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Affidavit of Joseph Weissenbach.

(Filed January 31, 1916.)

STATE OF ILLINOIS, }
COUNTY OF COOK, } *ss.*

JOSEPH WEISSENBACH, being first duly sworn, upon his oath deposes and says that he is an attorney and counselor at law, duly licensed as such in the State of Illinois; that as such attorney and counselor at law, he represented certain creditors of the Estate of H. P. Nelson Company, an Illinois corporation, which said corporation was duly adjudicated a bankrupt, in the District Court of the United States, Northern District of Illinois, Eastern Division, on or about the 24th day of December, 1914, and Central Trust Company of Illinois is now Trustee of said Bankrupt; that the Standard Piano Company, a New Jersey corporation, defendant herein, was indebted to said H. P. Nelson Company in a large amount.

Your affiant is informed and believes the fact to be that the said Standard Piano Company, in and about the conduct of its affairs, issued its certain promissory notes, payable to the order of said H. P. Nelson Company, in an amount in excess of $150,000.00, in payment to said H. P. Nelson Company of merchandise sold to it by said H. P. Nelson Company; that the said H. P. Nelson Company discounted said notes or placed said notes as collateral with several banks and bankers, among which said banks and bankers are Frank G. Wright & Company, of Chicago, Illinois; Federal Commercial Company, of Chicago, Illinois, a Delaware corporation, and Fort Dearborn National Bank, of Chicago, Illinois; that said Fort Dearborn National Bank retained the services of this affiant for the purpose, among other things, of securing the payment of said

notes; that said Federal Commercial Company deposited the said notes so owned by it with the Fort Dearborn Trust & Savings Bank, of Chicago, as collateral security, under a certain Trust Agreement.

Affiant further states that at the request of said Fort Dearborn National Bank, of Chicago, said Fort Dearborn Trust & Savings Bank and the said Central Trust Company, of Illinois, Trustee as aforesaid, early in the month of January, 1915, he made an investigation into the financial condition of said Standard Piano Company, and such investigation showed that the said Standard Piano Company was insolvent.

Affiant further states that he thereupon requested said Walter L. Herdien and said H. P. Nelson to come to his office in the City of Chicago, Cook County, Illinois, for the purpose of arriving at an adjustment of the affairs of said Standard Piano Company.

Your affiant further states that at said time your affiant was advised by said Walter L. Herdien that all of the capital stock of said Standard Piano Company had been issued and was of record in the names and in the amounts as follows:

H. P. Nelson, Preferred Stock.....600 Shares
H. P. Nelson, Common Stock.....150 Shares
Walter L. Herdien, Common Stock.....249 Shares
F. W. Bonar, Common Stock..... 1 Share

and is informed and believes the fact to be that the stock of record in the name of said H. P. Nelson had been assigned by said H. P. Nelson in blank, but was delivered by said H. P. Nelson to Federal Commercial Company aforesaid, in payment of certain stock of said Federal Commercial Company which had theretofore been issued to said H. P. Nelson.

Your affiant then and there demanded from said Walter L. Herdien the assignment of his stock, in order that the affairs of said Standard Piano Company might be controlled and managed by the several creditors of said Standard Piano Company, for the purpose of avoiding bankruptcy proceedings or any other litigation. Said Walter L. Herdien thereupon transferred and assigned in blank the following Certificates and shares of stock, all of which said stock is common stock of said Standard Piano Company:

Certificate No.	2	40 Shares
"	" 3	40 "
"	" 4	40 "
"	" 5	40 "
"	" 6	40 "
"	" 7	49 "

and he delivered said shares of stock so transferred and assigned, together with Certificate Number 9, evidencing the title to one share of the common stock of said Standard Piano Company in F. W. Bonar, which said last certificate of stock had been duly assigned and transferred, to your affiant, to be held in trust by your affiant for the following purposes:

To vote said stock at any regular or special meeting of the stockholders of said Company which might be held while the affairs of said Standard Piano Company were being liquidated; said certificates of stock to be returned to said Walter L. Herdien when all of the indebtedness of Standard Piano Company had been paid.

Affiant further states that coincident with the transfer of said Certificates of Stock as aforesaid, said Walter L. Herdien resigned as Treasurer and Director of said Standard Piano Company, and one James J. Fleming was elected to succeed him, all

of which will more fully appear in the records of the minute book of said corporation.

Your affiant further states the fact to be that the indebtedness of said Standard Piano Company has not as yet been paid and that said Standard Piano Company is indebted to its several creditors in a sum upwards of $100,000.00, and that the value of its assets is considerably less than the amount of said indebtedness.

Affiant further states that sometime in March, 1915, the said James J. Fleming resigned as Treasurer and Leo J. Kelley was elected Treasurer in his stead.

Affiant further states that Leo J. Kelley was elected Treasurer of said Company because of his expert knowledge of the methods of book-keeping and financing of the business of dealers in pianos and for the purpose of the protection of the creditors of said Standard Piano Company.

Your affiant further states that he has in his possession the certificates of stock, as transferred and assigned to him as aforesaid and that the stock issued in the name of H. P. Nelson and transferred and assigned by him is now in the possession of the said Fort Dearborn National Bank, of Chicago, as collateral of said Federal Commercial Company.

Affiant further states that the interests of the creditors of said Standard Piano Company will be imperiled if said Walter L. Herdien or said H. P. Nelson are permitted to manage its affairs and that the interests of said creditors will best be conserved under the careful management of a disinterested Receiver.

Further affiant sayeth not.

JOSEPH WEISSENBACH.

Duly verified.

Order for leave to file Answer.

Order.

Filed January 31, 1916.

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

On Bill, etc.

Order.

Upon application of the defendant, due notice having been given and in the presence of Frank E. Bradner, of counsel with the defendant, and William J. Morgan and Corwin Howell, of counsel with the complainant, and the plaintiff applying for a continuance of the motion to open the order appointing a Receiver, etc.,

It is on this 31st day of January, 1916, Ordered that the defendant may file its answer and affidavits annexed thereto. And it is further Ordered that the motion be, and the same is hereby continued to Friday, February 4, 1916, at the Chancery Chambers, in the City of Newark, at 10 o'clock in the forenoon, at which time the pleadings and affidavits now on file, together with such further affidavits as may be served, may be read and both sides have leave to examine witnesses orally.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

Affidavit of Roland A. Crandall.

Filed February 4, 1916.

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

ROLAND A. CRANDALL, being duly sworn according to law, upon his oath says:

I reside in the City of Chicago, Illinois. I am the President of Commercial Security Company, a corporation of the State of Illinois.

I have known Walter L. Herdien, one of the stockholders of the Standard Piano Company, for about three years. He was during the Spring and Summer of 1913 Secretary, and I think, Treasurer of the Standard Piano Company, a New Jersey corporation, and also Secretary of the Federal Commercial Company, a corporation, with offices in Chicago, Illinois. During the Summer and Fall of 1914 he was Secretary of the H. P. Nelson Company, an Illinois corporation, now bankrupt. During the Spring of 1913, Mr. Herdien, informed me that the Federal Commercial Company had purchased a number of contracts on pianos from the Standard Piano Company, and offered them to me as an officer of the Commercial Security Company, for sale, and produced the leases, showing an assignment of same in blank, also a certificate of assignment covering the leases in full consideration from the Standard Piano Company, to the Federal Commercial Company. These leases the Commercial Security Company, purchased from the Federal Commercial Company. Prior to the purchase by the Commercial Security Company, from the Federal Commercial Company, of the Standard Piano Company leases, there was a conference between Mr. Herdien, Mr. H. P. Nelson and Mr. J. H. Strong, the President of the Federal Commercial

Company, and myself, the President of the Commercial Security Company, at which time all matters were considered and H. P. Nelson represented himself as the majority stockholder in both the Federal Commercial Company, and the Standard Piano Company, and also executed and delivered an absolute guaranty of the contracts purchased by the Commercial Security Company, from the Federal Commercial Company, as aforesaid.

In December, 1914, the H. P. Nelson Company, became a bankrupt, and the Central Trust Company, of Chicago, was appointed Receiver, and later duly elected Trustee in the United States District Court, for the Northern District of Illinois, Western Division, and upon request of the Central Trust Company and practically all the creditors of the H. P. Nelson Company, I have acted and am now acting as the agent of the said Trustee in the liquidation of the estate of said H. P. Nelson Company, bankrupt.

In January or February of 1915, there was a conference held in my office, between the attorneys for some of the principal creditors and the attorney for the receiver of the H. P. Nelson Company. It was, at said time agreed that Joseph Weissenbach, the attorney of the Fort Dearborn National Bank, which bank held a large number of notes executed by the Standard Piano Company, and endorsed by the H. P. Nelson Company, should handle the Standard Piano Company assets, pay off the pressing liabilities, and from time to time, if possible retire the Standard Piano Company notes held by the Fort Dearborn National Bank, on which the H. P. Nelson Company was liable as endorser. It was my understanding that the notes of the Standard Piano Company, in favor of the H. P. Nelson Company and by them endorsed and delivered to said Fort Dearborn National Bank, amounted to

approximately $148,000. Mr. Weissenbach was unable to employ a competent person to assist him in the management of the Standard Piano Company, and upon request, I suggest he might secure the services of Mr. Leo J. Kelley which he afterwards did. At this meeting Mr. Herdien was present and sanctioned the proceedings. After that date the Standard Piano Company sold a number of old pianos which they had re-possessed, secured new pianos, and the leases on same were assigned and turned over to Mr. Weissenbach, as attorney for the Fort Dearborn National Bank, and these leases were guaranteed by the Fort Dearborn National Bank and purchased by the Commercial Security Company, its checks, being payable to the Fort Dearborn National Bank, in payment therefor; and to my knowledge these moneys were used for the retirement of the indebtedness of the Standard Piano Company for the purchase of goods and for the payment of operating expenses. And further to my knowledge this was done with the full knowledge and acquiescence of W. L. Herdien and H. P. Nelson.

At a conference in my office in Chicago, in December, 1915, with W. L. Herdien, in which the solvency or insolvency of the Standard Piano Company was taken up, I stated that I was unable to see how the Standard Piano Company could be so heavily in debt, having sold all its leases and not having paid the notes which were executed for its merchandise. We went over the figures of the assets and liabilities of the Standard Piano Company, and both concluded that the Company was insolvent, that its liabilities exceeded its assets by more than $60,000, Herdien explained this by a statement that the re-possessions and the numerous expenses under which the Standard Piano Company

had operated entailed a loss of approximately $25,000 a year which would fully account for the loss of the $60,000 and he further stated that there had never been more than $10,000 paid in for the stock of the Standard Piano Company, and that had been lost in the first month's operation due to the numerous expenses incurred by one Forbish, who was formerly President of the Standard Piano Company. He also explained to me that the reason for the organization of the Standard Piano Company, was the fact of the H. P. Nelson Company having a large claim against the Edisonia Company, a New Jersey corporation, which had gone into bankruptcy, and that the Standard Piano Company's mission was to protect the security the H. P. Nelson Company held on the claims against the Edisonia Company. This at a former and earlier conference was also stated to me by H. P. Nelson personally.

From the date of the bankruptcy of the H. P. Nelson Company the efforts of the Receiver and Trustee have been to do everything to conserve the assets of the Standard Piano Company, for the benefit of its creditors and under no other condition could the Standard Piano Company have paid ten cents on the dollar on its unsecured claims.

I have examined the affidavit in this case made by Walter L. Herdien wherein he criticizes the retention of Mr. Kelley, and in this connection will state that Mr. Herdien told me he sanctioned his retention and as late as December, 1915, praised the service that Mr. Kelley had rendered the Standard Piano Company. Mr. Herdien also acknowledged to me the sales made by the Standard Piano Company, during the year 1915 had been made through a puzzle contest plan, and that there had been no profit in the sales; that it had cost it more to sell

the pianos than on the former plan of doing business. But the advantage in the liquidation to the Standard Piano Company in making the sales on this plan was the turning over of re-possessed instruments they had into good contracts which would produce money to retire the outstanding indebtedness. I further state that the deferred payments on leases purchased by the Commercial Security Company, from the Federal Commercial Company, were assigned by the Federal Commercial Company, to the Fort Dearborn National Bank, and notice of such assignment served on me as an officer of the Commercial Security Company, by the Fort Dearborn National Bank. There is no equity in said leases due Standard Piano Company or Federal Commercial Company.

Regarding any collusions between Mr. Kelley, Mr. Weissenbach, and me, will say that I have no knowledge of any collusion. I can gain nothing in any event. Mr. Herdien, Mr. Nelson and Mr. Bonar, know that any statement to such effect is not true and without foundation. All my efforts have been to conserve the assets of the H. P. Nelson Company, so that the trustee of such Company may pay out as large a dividend as possible to its creditors, and such result will benefit the standing of said Nelson and Herdien as officers of said H. P. Nelson Company, bankrupt. I may state however, their honesty and integrity has been so much assailed that even if claims were paid in full, which is not probable, I doubt whether either could regain a good reputation for fair dealing.

In regard to that part of Mr. Herdien's affidavit in which he states that it was the custom of the Standard Piano Company, to execute notes in blank which were thereafter filled in as to the amount thereof by the H. P. Nelson Company, I state that Mr. Herdien on several occasions in conferences

with me in my office in Chicago, and in the presence of others, when accused by me of having had promissory notes for the Standard Piano Company, executed in blank and the amount thereof afterwards filled in by the H. P. Nelson Company, repeatedly and continually denied that such transactions ever occurred.

Insofar as my dealings with Mr. Herdien or Mr. Nelson are concerned in my capacity as agent for the Central Trust Company, of Illinois, the Trustee in Bankruptcy of the H. P. Nelson Company, I can only state that they have on almost every occasion misrepresented to me the true condition of the affairs, both of the H. P. Nelson Company, and the Standard Piano Company, and have upon every occasion when they have been confronted with any transactions in which they had a part and which transactions were not proper denied their participation therein.

There have been repeated conferences between Mr. Herdien, Mr. Weissenbach and me, and it was agreed that the Standard Piano Company, should liquidate at as small an expense as possible its outstanding accounts, paying all of the outstanding indebtedness as far as possible; and that upon the completion of such liquidation the Standard Piano Company should pass out of existence. To my knowledge an agreement was reached between Mr. Weissenbach and Mr. Herdien to the effect that Mr. Bonar was to resign as President of the Standard Piano Company, and the affairs of the Standard Piano Company, were to be turned over to Mr. Kelley for the purpose of having Mr. Kelley liquidate the affairs of said Standard Piano Company, at as small an expense as possible, so that the returns to the creditors of the said Standard Piano Company would be as large as possible; that to my

knowledge both Mr. Kelley and Mr. Bonar have been called to Chicago and taken part in conferences with Mr. Weissenbach and Mr. Herdien looking to the consummation of the arrangement as before set forth, and that the latest conference had in connection with the foregoing arrangement was had in Chicago in the early part of January, 1916, between Mr. Weissenbach, Mr. Herdien and Mr. Kelley. I was informed last week in Chicago, that the meeting held on the 24th ult. was for the purpose of having the stockholders and directors of the Standard Piano Company, consummate the arrangement for the liquidation of the Standard Piano Company, as aforesaid; that my information in regard to this meeting was received from Mr. Weissenbach, Mr. Bonar, Mr. Herdien and Mr. Kelley.

Insofar as that part of Mr. Herdien's affidavit is concerned in which he states that the Commercial Security Company is guilty of usury, I here state that such allegations are false and untrue and known to Mr. Herdien, to be false and untrue.

The purchase of contracts made by the Commercial Security Company, as herein set forth, were not transactions had between the Standard Piano Company, and the Commercial Security Company, but were in effect transactions had by and between the Federal Commercial Company, and the Commercial Security Company, and the Fort Dearborn National Bank, and at no time have there been any direct transactions between Standard Piano Company, and the Commercial Security Company.

In this connection I desire to state that in the early part of the year 1915 the Commercial Security Company made a checking of the accounts purchased by the Commercial Security Company, from the Fort Dearborn National Bank and the Federal Commercial Company; that at these times, Mr.

Herdien was under a $25,000 bond to the Commercial Security Company, for his faithful accounting to the Commercial Security Company of the collections made on the leases purchased by the Commercial Security Company, as aforesaid; that the result of such checking showed that there had been collections made and not remitted to the Commercial Security Company, re-possessions made which had not been accounted for to the Commercial Security Company in a sum in excess of $40,000 and that there still continues a shortage of $21,000 due to collections and re-possessions not reported, as aforesaid, such shortage having been reduced by reason of the good management of Mr. Joseph Weissenbach.

I have no interests in the proceedings now pending, except as the President of the Commercial Security Company, and as agent of the Central Trust Company, of Illinois, Trustee in Bankruptcy of the H. P. Nelson Company and am in no way otherwise connected with the Standard Piano Company, Mr. Weissenbach, Mr. Kelley, Mr. Herdien or Mr. Nelson.

ROLAND A. CRANDALL.

Duly verified.

Supplemental Affidavit of Roland A. Crandall.

Filed February 4, 1916.

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

ROLAND A. CRANDALL, being first duly sworn, on oath deposes and says:

With reference to the conditional contracts of sale or leases of the Standard Piano Company which were purchased by the Commercial Security Company of the Federal Commercial Company, during the year 1915 and prior thereto, will state that same were transferred by Bill of Sale to the Federal Commercial Company, under form hereto attached, made a part hereof and marked "Exhibit A" and that each conditional sale contract bore an assignment and transfer of all right, title and interest, per form hereto attached, made a part hereof and marked "Exhibit B" and were transferred in like manner and by the same forms as aforesaid, from the said Federal Commercial Company to the said Commercial Security Company and conditional contracts of sale or leases purchased under the guaranty of Fort Dearborn National Bank by the Commercial Security Company, were purchased under the same forms, hereinbefore referred to, as the forms under which the purchases from the Federal Commercial Company were made.

The Commercial Security Company, of which I am an officer, purchases conditional sale contracts of the character hereinbefore referred to, for ninety-two per cent. (92%) of the unpaid balances thereon, at the time of purchase, of which seventy-two per cent. (72%) is paid in cash and twenty per cent. (20%) is paid from time to time, in 20 per cent. collections received by Commercial Security

Company, less any amount in default upon the said contracts.

Commercial Security Company's form of operation is that it duly guarantees and deposits such contracts purchased, with a Trust Company and issues debentures against such securities, to the amount of eighty per cent. of the unpaid balances thereon, which debentures are certified by the Trustee and mature in from three to thirty months from the date of issue and are negotiated to various banks, bankers and investors throughout the United States and they have justly and deservedly obtained a high financial rating among the banks, bankers and investors throughout the country and in this manner has been able to finance the musical interests throughout the country to a very large degree, building up an extensive business by reason of its personnel and financial standing.

Unless through an error in the Accounting Department and without the knowledge of this affiant, who is the only officer of Commercial Security Company authorized to control its policy and has authority to authorize any such action binding the Company, no interest in excess of the legal rate of interest on the contracts purchased, was ever received or taken by Commercial Security Company from the said Standard Piano Company or any other party and affiant says that Commercial Security Company allowed interest on all deferred payments, at the rate of six per cent. (6%) per annum and only received the interest called for in the contracts purchased, which were never in excess of the legal rate of interest and any statements made in the answer of the defendant herein or by Walter L. Herdien in his affidavit, attached to such answer, that interest in excess of the legal rate of interest was ever received or taken by Commercial Security Company, are absolutely false

and untrue and such statements are known by said defendant and said Walter L. Herdien to be absolutely false and untrue.

ROLAND A. CRANDALL.

Duly verified.

Affidavit of Nelson N. Lampert.

(Filed February 4, 1916).

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

NELSON N. LAMPERT, being first duly sworn, on oath deposes and says:

I reside in the City of Chicago, County of Cook and State of Illinois. I am of legal age. I am one of the Vice-Presidents of the Fort Dearborn National Bank, and have been such Vice-President for over twelve (12) years last past.

I am familiar with the affairs of the H. P. Nelson Company, with reference to most of its trancaction had with the Fort Dearborn National Bank. I know H. P. Nelson and Walter L. Herdien.

I have had no notice of any kind whatsoever, nor have I ever had any knowledge directly or indirectly that the notes heretofore issued by the Standard Piano Company lacked consideration, or that there was a partial consideration for the issuance thereof.

I further state that in the many conversations I have had with the said H. P. Nelson and with the said Walter L. Herdien, neither has ever stated at any time that the said Standard Piano Company had any off-set of any kind whatsoever, legal or equitable, against the said notes. The first knowledge that I have ever had concerning any pretended

defense was had by me from reading a copy of the answer of the Standard Piano Company, defendant herein, and a copy of the affidavit of Walter L. Herdien, attached thereto, served upon the solicitors for the complainant herein.

NELSON N. LAMPERT.

Duly verified.

Affidavit of William A. Tilden.

(Filed February 4, 1916).

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

WILLIAM A. TILDEN, being first duly sworn, on oath deposes and says:

I reside in the City of Chicago, County of Cook, and State of Illinois. I am of legal age. I am the President of the Fort Dearborn National Bank, and have been such President for seven (7) years last past.

I have heard read that part of the answer filed by the Standard Piano Company, defendant herein, and have also heard read that part of the affidavit of Walter L. Herdien, which have reference to certain notes executed and delivered by the Standard Piano Company, some of which notes are now held by Alexander B. Shaw, complainant herein.

I hereby state that I have had no information and no information was ever imparted to me, as President of the bank, or otherwise, by any person whomsoever, that the said notes issued by the said Standard Piano Company included any amounts or any excess which was not due or owing by said Standard Piano Company.

Affidavit of William A. Tilden.

I further state that I was not aware, nor have I ever been informed, either directly or indirectly, that the claim of $4,300.00 against the Standard Piano Company is not a just amount due and owing by said Standard Piano Company. The first knowledge I have ever had concerning any pretended defense which might be made or had to any of said notes or said account, was such knowledge as I have gained from the reading of a copy of the answer of the defendant herein and a copy of the affidavit of Walter L. Herdien attached thereto.

That the following persons, during the two years last past, are the only persons authorized to loan, or who have loaned the money of the Fort Dearborn National Bank, or who are authorized to negotiate or to transact business incidental to loans made to customers of the said bank:

Nelson N. Lampert, Vice-President;
Henry R. Kent, Vice-President;
J. Fletcher Farrell, Vice-President;
Marcus Jacobowsky, Vice-President;
George H. Wilson, Cashier;
Frank M. Forrey, Credit Manager;
John Fletcher, Vice-President.

WILLIAM A. TILDEN.

Duly verified.

Affidavit of George H. Wilson.

(Filed February 4, 1916).

STATE OF ILLINOIS,
COUNTY OF COOK. } *ss.*

GEORGE H. WILSON, being first duly sworn, on oath deposes and says:

I reside in the City of Chicago, County of Cook, and State of Illinois. I am of legal age. I am the Cashier of the Fort Dearborn National Bank, and have been such Cashier for three (3) years last past.

I further state that I have never had any notice of any kind whatsoever, that the notes heretofore issued by the Standard Piano Company were not issued in due course and evidenced the face of the indebtedness, as appears from the said notes, and that prior to the filing of the affidavit of Walter L. Herdien, I had no knowledge of any kind whatsoever that said notes were subject to any defense for failures of consideration or for partial failure of consideration.

GEORGE H. WILSON.

Duly verified.

Affidavit of William E. Weber.

(Filed February 4, 1916).

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

WILLIAM E. WEBER, being first duly sworn, on oath deposes and says:

I am a resident of the City of Chicago, County of Cook, and State of Illinois. I am of legal age. I am a member of the firm of William E. Weber & Company, Public Accountants.

That at the request of Mr. Joseph Weissenbach, of Chicago, Illinois, I made an examination of the books and records of the Federal Commercial Company for the ten (10) months beginning July 1, 1914, and ending April 30, 1915; that such examination was completed on or about July 15, 1915; that from the records and books of such Company I found that said Company was organized under and by virtue of the laws of Delaware; that it had an authorized capital stock of $1,500,000, divided into $750,000 seven per cent. Cumulative Preferred Stock, and $750,000 Common Capital Stock; that H. P. Nelson received certain of the capital stock of the said Federal Commercial Company, and paid therefor in lieu of cash as follows:

600 shares of Preferred Stock of the Standard Piano Company	$ 60,000.00
150 shares of Common Capital Stock of the Standard Piano Company	15,000.00
Notes Receivable, personal	201,818.00
Notes, Sagestrom	15,538.74

That said examination of said books further disclosed that the said Company at April 30, 1915, was insolvent, and that its liabilities exceeded its assets by $6,569.34; that many of the assets listed

by the said Company were of doubtful value, and I here state that if a true valuation were placed upon the assets of said Company that said Company would have been found at said date to be wholly insolvent.

I further state that at the request of Mr. Joseph Weissenbach I made an examination of the books of the Standard Piano Company, doing business at Newark, New Jersey, and examined such books of the Company at the close of business on November 30, 1914; that such examination so made at that time from the books of said Company showed that the liabilities of the Company exceeded the assets of the Company by the sum of $51,740.39; that in arriving at such deficit I did not take into consideration any depreciation in reserve which said Company might have by reason of the sale by it of certain of its conditional sale contracts or leases to the Federal Commercial Company, doing business at Chicago, Illinois; that I am informed that the percentage of defaults in such leases is at least twenty per cent. (20%) and if such deduction were made by me at the time of making the said examination of said books, and due deduction made for other doubtful accounts such as Edisonia leases, the liabilities of said Company would have exceeded its assets by more than $70,000.00.

WILLIAM E. WEBER.

Duly verified.

Affidavit of J. Fletcher Farrell.

Affidavit of Henry R. Kent.

(Filed February 4, 1916).

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

HENRY R. KENT, being first duly sworn, on oath deposes and says:

I am a resident of the City of Chicago, County of Cook, and State of Illinois. I am of legal age. I am one of the Vice-Presidents of the Fort Dearborn National Bank, and have been such Vice-President for over ten (10) years last past.

I further state that I have never had any notice of any kind whatsoever, that the notes heretofore issued by the Standard Piano Company were not issued in due course and evidenced the face of the indebtedness, as appears from the said notes, and that prior to the filing of the affidavit of Walter L. Herdien, I had no knowledge of any kind whatsoever that said notes were subject to any defense for failure of consideration or for partial failure of consideration.

HENRY R. KENT.

Duly verified.

Affidavit of J. Fletcher Farrell.

(Filed February 4, 1916).

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

J. FLETCHER FARRELL, being first duly sworn, on oath deposes and says:

I am a resident of the City of Chicago, County of Cook, and State of Illinois. I am of legal age. I

am one of the Vice-Presidents of the Fort Dearborn National Bank, and have been such Vice-President for five (5) years last past.

I further state that I am not related in any manner whatsoever to Charles L. Farrell, the Receiver appointed in the above entitled cause for the Standard Piano Company, defendant.

I further state that I have never had any notice of any kind whatsoever, that the notes heretofore issued by the Standard Piano Company were not issued in due course and evidenced the face of the indebtedness, as appears from the said notes, and that prior to the filing of the affidavit of Walter L. Herdien, I had no knowledge of any kind whatsoever that said notes were subject to any defense for failure of consideration or for partial failure of consideration.

J. FLETCHER FARRELL.

Duly verified.

Affidavit of Marcus Jacobowsky.

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

MARCUS JACOBOWSKY, being first duly sworn, on oath deposes and says:

I am a resident of the City of Chicago, County of Cook and State of Illinois. I am of legal age. I am one of the Vice-Presidents of the Fort Dearborn National Bank, and have been such Vice-President for one (1) year last past, and in all have been connected with said Bank twenty-two (22) years.

I further state that I have never had any notice of any kind whatsoever, that the notes heretofore

issued by the Standard Piano Company were not issued in due course and evidenced the face of the indebtedness, as appears from the said notes, and that prior to the filing of the affidavit of Walter L. Herdien, I had no knowledge of any kind whatsoever that said notes were subject to any defense for failure of consideration or for partial failure of consideration.

Duly verified.

Affidavit of Frank M. Forrey.

(Filed February 4, 1916.)

STATE OF ILLINOIS, }
COUNTY OF COOK. } *ss.*

FRANK M. FORREY, being first duly sworn, on oath deposes and says:

I reside in the City of Chicago, County of Cook and State of Illinois. I am of legal age. I am the Credit Manager of the Fort Dearborn National Bank, and have been such Credit Manager for seven (7) years last past.

I am familiar with the notes of the Standard Piano Company, some of which are now held by Alexander B. Shaw. I know Walter L. Herdien and have had numerous conversations with him, relating to the affairs of the H. P. Nelson Company and the Standard Piano Company; said Herdien in such conversations at no time ever stated or even intimated to me that there was any defense of any kind to the said notes, or that the Standard Piano Company claimed or had any off-set thereto.

(Signed) FRANK M. FORREY.

Duly verified.

Further affidavit of Leo J. Kelley.

Further Affidavit of Leo J. Kelley.

(Filed February 4, 1916.)

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

LEO J. KELLEY, of full age, being duly sworn according to law, upon his oath says: I reside in Maplewood, N. J., where I have lived since last May. Prior to that time I lived in New York City. On January 26th, 1916, I verified the Bill of Complaint in this cause.

I have been familiar with the sale of pianos on the installment plan for at least eight years and know the methods employed. I became Treasurer of the Standard Piano Company in March, 1915. The plan under which leases were sold was if a sale of a piano was made to a customer, to have such customer enter into a contract of conditional sale or lease with it, the Standard Piano Company. Such contracts of conditional sale or lease were sold pursuant to an agreement made with the Standard Piano Company and Walter L. Herdien and H. P. Nelson. The Commercial Security Company of Chicago purchased said conditional sale contracts only by reason of the fact that the said contracts were guaranteed by the Fort Dearborn National Bank; the transactions of the Commercial Security Company with reference to the purchase of said contracts were had direct with said bank. The proceeds arising from the sale of said contracts were used for the purpose of paying current bills arising in the business of the Standard Piano Company and any balance was used for paying notes of the said Standard Piano Company, which had matured, so far as the same would reach.

Further affidavit of Leo J. Kelley.

The Standard Piano Company ceased to pay its notes as they were presented on or about the tenth day of November, 1915. I conferred with Mr. Bonar, the President of the Standard Piano Company regarding such notes, such notes having been presented in due course, and in view of the fact that there were no monies to the credit of the Standard Piano Company on hand with which to pay such notes and no way of procuring any, both Mr. Bonar and I decided that said notes of necessity must be returned to the holders thereof.

I know that from time to time during the year 1915 Mr. Bonar made reports to both Herdien and Nelson regarding the conduct of the business of the Standard Piano Company and the transactions of said Company; that Mr. Bonar never at any time stated to me that there was any question regarding the amount due upon any of the notes of the Standard Piano Company then outstanding, nor was there at any time any mention made by said Bonar to me that there was no consideration for said notes, or that the consideration for said notes had partially failed, or that there was any off set of any kind in favor of said Standard Piano Company against said notes in the hands of the then holders or any other holders who might obtain the same in due course.

I further state that I have had numerous conferences both in Newark and in Chicago, Illinois, with both Herdien and Nelson and in such conferences talked with them and each of them about the affairs of the Standard Piano Company. I referred to the fact and stated to them that certain of the notes of the Standard Piano Company were being paid, and at none of these conferences did either the said Herdien or the said Nelson state, either directly or indirectly, that the con-

sideration for any of the said notes had not been paid, or had partially failed, or that the Standard Piano Company was entitled to any deduction from the face amount of said notes together with the interest due thereon, or that said notes did not represent a just indebtedness incurred by the said Standard Piano Company; that these conferences and conversations were had with the said Herdien and Nelson after I was elected Treasurer of said Company.

I further state that early in December, 1915, Mr. Bonar was in Chicago and upon his return to Newark on or about the 13th day of December, 1915, he stated to me that he had attended a directors' meeting in Chicago; that besides the directors of said Company both Mr. Herdien and Mr. Weissenbach were present. Bonar further stated to me that the directors had assigned all the equity of the Standard Piano Company in the conditional sale contracts held by the Commercial Security Company, to the Fort Dearborn National Bank.

I further state that there is no logical way by which Mr. Herdien can arrive at the figure of $126,000 as being the amount due to the Federal Commercial Company and the Commercial Security Company; that neither the said Herdien nor have I taken into consideration the fact that there have been re-possessions of pianos by the Standard Piano Company and monies collected where due credit has not been given to either of said companies for the re-possessions of said pianos, nor for monies collected where, as a matter of fact, the said companies, above mentioned, are entitled to the value of said pianos and are entitled to all collections.

Further affidavit of Leo J. Kelley.

Relative to the items contained in the defendant's answer placing as an asset, accounts receivable in the sum of $8,000, I will say that the same is not based upon any books of the Company; that as I have heretofore stated the books of said Company are not now accessible to me, the same having been removed from the place of business of the Standard Piano Company prior to the morning of January 27, 1916, and are not now in the possession of the Receiver, nor are they in my possession; Bonar told me that he had removed the said books. According to my best recollection and from certain memoranda which I have, the accounts receivable, as shown by the general ledger on January 24, 1916, were approximately $3,000, which sum is subject to be reduced $2,500 by reason of a claim made against this Company by the Trustee of the Edisonia Company Estate for pianos sold by it to the Standard Piano Company, and the net amount which may be available will not exceed $500.

I further state to the best of my knowledge and belief that the item shown in said answer as "Piano leases in possession of the company, $4,100" represents leases not now in the possession of the Receiver. I am informed that the said leases were taken from the place of business of said Company by Walter L. Herdien.

I deny Mr. Herdien's assertion that while I have been Treasurer of the Company I have made efforts to undermine the said Company and get control of the same myself. I also deny that I have acted wrongfully in any way in re-possessing pianos or that I have been extravagant in my expenditures; that wherever expenditures have been made, including the purchase of the automobile referred to by Herdien, Mr. Bonar was

consulted by me and I only acted after having received his assent. It was agreed that the said automobile purchased by the said Company was necessary for the purposes of the business of said Company; there were two automobiles purchased, one of which was used by me for the purpose of obtaining collections due under contracts of the Standard Company with its customers, the other of said automobiles was used by said Bonar.

I further state that with relation to the pianos re-shipped by the Standard Piano Company on or about January 25th to the Gulbransen Dickinson Company; that prior to the said re-shipment there was due to said Gulbransen Dickinson Company for 21 pianos theretofore purchased by the said Standard Piano Company the sum of $1,879.75; that 16 pianos were returned; that out of the pianos so re-shipped 4 pianos had been actually paid for by the said Standard Piano Company; that the value of the pianos re-shipped amounted to $1,693.25, leaving a balance now due to the said Gulbransen Dickinson Company of $186.50.

I further state that at the time I entered the employ of the Standard Piano Company there were about 550 pianos on hand and in the possession of the said Standard Piano Company; that the liabilities of the said Company exceeded the assets at said time; that during the year 1915 all of said pianos were sold in due course of business, and the contracts received by reason of such sales were sold to the Commercial Security Company of Chicago; that the monies derived from such sales were applied toward current bills and to the reduction of the indebtedness of the said Standard Piano Company, and that while the indebtedness which was due and owing by

said Standard Piano Company in January, 1915, is less at the present time than it was in January, 1915, still the assets of the said Company are much less, and the Company is not now in any better financial condition as it was in January, 1915; that the method by which the pianos were sold during the year 1915 was by the so-called puzzle scheme; that it cost $45 to $50 to make each and every sale of every piano during the year 1915 by the Standard Piano Company; that the Company sold approximately 850 pianos during the year 1915. I give this amount approximately owing to the fact that the books are not now in the possession of the Receiver and I have not access thereto for the purpose of making an accurate and detailed statement regarding the number of pianos sold; that the monthly expenses of conducting the business of the said Standard Piano Company during the year 1915 for rent, clerk hire, insurance, telephone, freight, cartage and other expenses necessarily incurred in and about the conduct of said business and incident thereto, was approximately $4,000 per month; that this amount includes the sum above stated relative to the cost of selling pianos; that the statement contained in the affidavit of Walter L. Herdien of the Company that the Company made $75,000 during the year 1915 is misleading, because he does not say whether said profit is a net profit or a gross profit; that I can state from my knowledge of said business and from my knowledge gained from the books of said Company that the said Company did not make $75,000 net in said business, but I do state that said business was not conducted at any net profit, with the exception that in the event there be no defaults by customers under the sale contracts for pianos

sold during the year 1915, then any reserve which may be returned to the said Company by the parties to whom such contracts were sold may be considered as a net profit; that the amount of such reserve which may be returned is entirely problematical due to the fact that it is impossible to now determine how many defaults may be made by the persons who are obligated to make payments under said contracts; that the percentage of said defaults I can state is approximately 20 per cent. So that I can state that the so-called reserve or refund which the Company may be entitled to receive at some future date will be practically nothing and cannot be considered as an asset, although in the statement made in the bill of complaint entered herein I have set up such reserve for the reason that at the present time such reserve appears as an asset, but such amount was estimated and is not to be taken or considered as a true valuation of such reserve.

I have either read or heard read the answer of the defendant and the affidavits annexed thereto, which have been served upon Messrs. Pitney, Hardin & Skinner, Solicitors for the complainant herein. The statement of assets and liabilities given on pages 4 and 5 of said answer is inaccurate. The said piano contracts are valued therein at $196,000. As I stated in my former affidavit, the face value of these contracts is not over $174,000; that the reserve which might be considered an asset of the Standard Piano Company, in the event there were no defaults in the payments of the said contracts by the parties obligated therein respectively, would be about $35,000.

I further state that during the year 1915 it was necessary for the Standard Piano Company

to re-possess itself of pianos sold under contracts during the year 1914 and also during the year 1915. I further state that the aggregate unpaid balances on contracts for pianos re-possessed by the Standard Piano Company from the 1st of May to December 31, 1915 (due to default in contracts) was $37,000.

I further state that in the month of November 1915, Walter L. Herdien came to the City of Newark and exhibited to me an Income Tax return which he desired to have made to the Income Revenue Collector for the Fifth District of the United States on behalf of the Standard Piano Company, which return he told me was required under the laws of the United States; the said statement showed, that during the year 1914 the Company had sustained a loss of at least $15,000, and had no income on which a tax was payable; I stated to said Herdien that I had not been with the Company during the year 1914 and was not familiar with its books, nor with the business transacted during that year, and that I would not sign any affidavit, which might be required by the government relative to the income of the said Standard Piano Company; that Herdien stated to me in explanation of the loss which had been sustained by the Company in its business during the year 1914 that the same was due to the necessity of the Standard Piano Company's re-possessing pianos theretofore sold under contracts.

I am of the opinion that the method heretofore pursued in the sale of pianos known as the puzzle contest plan is no longer available and certainly not profitable. I firmly believe that the Company is wholly insolvent and cannot continue its business at a profit, and I am sure that there is abso-

lutely no chance of the Company conducting its affairs and business, excepting at a great loss and prejudice to the interest of its creditors.

I further state that H. P. Nelson was in the City of Newark on the 24th day of January, 1916, and remained in Newark and in the vicinity thereof on the 25th, 26th and 27th days of January, 1916, and was personally present at the store of the Standard Piano Company when the Receiver appointed by this Court took possession thereof, such possession having been taken by the said Receiver on the morning of the 27th of January, 1916.

L. J. KELLEY.

Duly verified.

Affidavit of Henry A. Heiser.

(Filed February 4, 1916.)

(Refiled February 16, 1916.)

CITY AND COUNTY OF NEW YORK, *ss.*

HENRY A. HEISER, being duly sworn, deposes and says, I am attorney and counselor at law, duly admitted to practice in all the courts of the State of New York; that I know Walter L. Herdien, H. P. Nelson and Frank W. Bonar who have made affidavits in this proceeding in behalf of the defendant. That I am not in any manner connected or associated with either the plaintiff or the defendant, and have no interest in these proceedings; that I have known the Standard Piano Company for the past two and one-half years, by reason of my connection with the closing up of the Estate of the Edisonia Company, Bank-

rupt, and also by reason of having represented the H. P. Nelson Company in certain matters in connection with the Edisonia Estate and also the Central Trust Company of Illinois, as Trustee in Bankruptcy of the H. P. Nelson Company, in like manner. That I knew W. W. Forbish, formerly president of the Standard Piano Company and also T. L. Woolhouse, formerly Chief Bookkeeper of the defendant corporation.

That I have read the affidavit of Walter L. Herdien in this proceeding, especially that part wherein said Herdien states that the Standard Piano Company executed promissory notes in blank which notes were sent to the H. P. Nelson Company and thereafter filled in by said H. P. Nelson Company; that heretofore and in the City of Chicago, Illinois, I had heard rumors regarding such conduct in the business of the Standard Piano Company and conveyed such information to Mr. R. A. Crandall, the agent of the Central Trust Company in the H. P. Nelson Company, now bankrupt, and to Mr. Vowall, of the Central Trust Company; that thereafter Mr. Herdien called at Mr. Crandall's office and in my presence and in the presence of Mr. Crandall and Mr. Vowell and Mr. Culver, an attorney of Chicago, said Herdien was asked by Mr. Crandall why the Standard Piano Company had executed notes in blank, which were thereafter filled in by the H. P. Nelson Company and discounted. That Mr. Herdien denied that such practice had been in effect and insisted that there had never been an occasion when notes in blank had been sent to H. P. Nelson Company and the amounts filled in by said H. P. Nelson Company, and said Herdien has denied such practice up to the time of the making of the affidavit by him herein.

Affidavit of Henry A. Heiser.

I represent the Central Trust Company of Illinois, as Trustee in Bankruptcy of the H. P. Nelson Company, bankrupt, and that there is due and owing to the estate of said Nelson Company from the defendant herein a sum approximately $10,000, which is due on open account in addition to the notes referred to in plaintiff's petition so that this sum should be added to the liabilities of the defendant corporation.

That in addition to the liabilities already set forth in this proceeding, there is a large amount of money due to the estate of the Edisonia Company, Bankrupt, and also to various secured creditors of said bankrupt, by reason of large sums of money collected by the defendant corporation upon accounts belonging to the Edisonia estate and the re-possession and disposition thereof by defendant corporation of a large number of pianos belonging to the said estate, and that neither said money nor such instruments or the value thereof have been accounted for and such liabilities exists on the part of the defendant corporation and is in an amount of upwards of $25,000.

I further state that I am now engaged in making a check of such moneys collected and instruments re-possessed without the authority of the United States District Court in this district and for which the defendant corporation will be called upon to account. These collections and these re-possessions were made without any authority on the part of the defendant corporation and were made at the direct instigation of the said Herdien and said H. P. Nelson; that such instructions were given by said Herdien and said Nelson to Mr. Forbish and Mr. Woolhouse; that I have spoken to Mr. Herdien on a number of occasions about these collections and re-possessions and Mr.

Herdien informed me that he had fooled the United States District Court by having had the Nelson Company give a bond to cover such collections and re-possessions and that he would not ever account to the court for anything done by the defendant corporation under his instructions.

I have been for a number of years legal representative of a large number of piano manufacturers, and retailers, and am familiar with the conduct of business in the piano trade. That since the presidency of Mr. Bonar of the defendant corporation the business of the defendant corporation has been done almost exclusively by reason of what is known as puzzle schemes. That the assets of the defendant corporation at the time Mr. Bonar became president consisted almost exclusively of instruments received by the defendant corporation from the H. P. Nelson Company and the business of the defendant corporation has consisted in the main for the past year and one-half of the disposal of such instruments and also such instruments as have been re-possessed upon accounts in default, and that it is only within the past few months that any new goods have been purchased by the defendant corporation, and such new goods have all practically been purchased from a new company of which company, H. P. Nelson is the President and said Herdien is Secretary and Treasurer.

That in the many conversations I have had with said Herdien, he has expressed to me his satisfaction of Mr. Kelley's conduct of the affairs of the defendant corporation as Treasurer, and at no time has ever voiced any dissatisfaction with Mr. Kelley. I was present at a conference in the office of Mr. Crandall in Chicago, at which Mr. Herdien and Mr. Crandall were present, at which

time the affairs of the defendant corporation were discussed, and Mr. Herdien stated that Mr. Weissenbach was handling the affairs of the defendant corporation to the entire satisfaction to himself and of Mr. Nelson. That said Herdien upon being approached by me in Chicago in regard to the illegal collections and re-possessions heretofore set forth, at which time I told Herdien that the defendant corporation would have to account, he informed me that the defendant corporation was insolvent and need not account and would not so account.

I am personally acquainted with Mr. Weissenbach referred to in Mr. Herdien's affidavit and have on a number of occasions had interviews with Mr. Bonar, Mr. Kelley and Mr. Weissenbach; that at such conferences Mr. Bonar has stated that he did not think the business of the Standard Piano Company could be continued; that the name of the Standard Piano Company had become a bad one in Newark, by reason of the fact that the public believed it was a continuation of the Edisonia Company, and also that as the defendant corporation had so many liabilities with no assets to meet the same, he, Bonar, thought the business should be wound up and then he and Mr. Kelley would start a business under the name of Kelley and Bonar, and do business upon their own responsibility. That said Bonar has conferred with me as to whether or not I thought Mr. Crandall's company would purchase such leases as he and Mr. Kelley might obtain, Bonar also has such conversations with Mr. Crandall in my presence. That at no time has either Mr. Kelley or Mr. Weissenbach made any statement or taken any action which had not been for the benefit of the affairs of the Standard Piano Company, its cred-

itors and stockholders, and Mr. Crandall whom I represent has never at any time taken part in any proceedings intending an injury to the Standard Piano Company. That I in the great number of conversation I have had with Herdien, said Herdien has never questioned the validity of the notes executed by defendant. I verily believe that the defendant corporation is insolvent, that it will be unable to continue business at a profit, and I further believe that the said Herdien and said Nelson are attempting to control the affairs of the Standard Piano Company for their own purposes, and the detriment of said Company.

HENRY A. HEISER.

Duly verified.

Affidavit of Walter L. Herdien.

(Filed February 16, 1916.)

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

WALTER L. HERDIEN, being duly sworn according to law, upon his oath says:

I know Roland A. Crandall. I was Secretary of the Federal Commercial Company in the Spring and Summer of 1913. I was also at that time Secretary of Standard Piano Company, but not the Treasurer. I have never been Secretary of H. P. Nelson Company. I was present at a conference with Mr. Crandall and Mr. Nelson prior to the transfer of certain Standard Piano Company contracts by Federal Commercial Company to Commercial Security Company, but Mr. J. H. Strong was not there, and he has not been present

at any conversation that I have ever had with Mr. Crandall. I was not present at any meeting when it was suggested or arranged that the services of Mr. Leo J. Kelly should be procured. I have talked to both Mr. Weissenbach and Mr. Crandall separately about employing Mr. Kelly, and I knew that he was to be employed.

I have no knowledge whatever of the allegation of the facts stated in Mr. Roland A. Crandall's affidavit, that the Standard Piano Company assigned and turned over to Mr. Weissenbach, as attorney for the Ft. Dearborn National Bank, any piano contracts or leases, or that the leases were carried by the Ft. Dearborn National Bank and purchased by the Commercial Security Company; my first information of that alleged fact was obtained from the affidavit of Mr. Crandall in this case.

I did not at a conference with Mr. Crandall in his office in Chicago in December, 1915, or at any other time, agree with him that the Standard Piano Company was insolvent, or that its liabilities exceeded its assets by any sum of money; Mr. Crandall asserted that the Standard Piano Company was insolvent, and I denied it, and I did say that there had been a good many repossessions and exchanges made, which would entail some loss, but that I did not know the exact amount. I did say to Crandall that as much as $10,000.00 had been paid in for the stock of Standard Piano Company, but I did not tell him that that money had been lost, and that the loss was due to the expenses incurred by Forbish, the former President of the Company.

I never praised Mr. Kelly's services to Mr. Crandall. I did not at any time say to Mr. Crandall that the Standard Piano Company during

the year 1915 have been making sales on a puzzle contest plan, and that there had been no profit, or that it had cost more to sell the pianos than on the former plan of doing business; but on the contrary, Mr. Crandall made that statement to me.

It is true that the Federal Commercial Company has assigned its interest in the contracts which were assigned to it by the Standard Piano Company, to the Ft. Dearborn National Bank, but it is not true that the Standard Piano Company has made any assignment of its interest in the deferred payments in those contracts assigned to Federal Commercial Company. There is considerable equity in the said contracts or leases due to the Standard Piano Company from Federal Commercial Company.

As to the paragraph in Mr. Crandall's affidavit, in which he attacks the honesty and integrity of Mr. Herdien and Mr. Nelson, I need only say, that when this portion of the affidavit was read in open court, Vice-Chancellor Howell characterized it as unfair and stated that the lawyer who drew it did not know what he was doing. It is impossible to answer such an allegation.

I have never stated to Mr. Crandall that it was the custom of the Standard Piano Company to execute notes in blank, but I did on one occasion say to Mr. Crandall, that in August, 1914, Mr. Forbish was in Chicago and was in a great hurry to get away, and signed a number of notes in blank, and left those notes in the possession of H. P. Nelson Company. I have never misrepresented to Mr. Crandall the true condition of the affairs either of the H. P. Nelson Company, or of the Standard Piano Company, and on the contrary, have always given him all information within my knowledge. The fact is, that Mr.

Crandall is acting as the agent for Central Trust Company of Illinois, the Trustee in Bankruptcy of H. P. Nelson Company, and has access to the records and books of H. P. Nelson Company, from which he could get all necessary information. I did not agree with Mr. Crandall and Mr. Weissenbach that the Standard Piano Company should liquidate, and I did not agree that Mr. Bonar should resign as President of the Company, and I did not agree that the affairs of the Company should be turned over to Mr. Kelly for any purpose. The fact is, that after a meeting in Chicago of the Directors of Standard Piano Company, at which the Directors adopted a Resolution subject to the approval of the stockholders to assign to Fort Dearborn Trust and Savings Bank the equity of Standard Piano Company in deferred payments from Commercial Security Company to secure certain notes held by Federal Commercial Company, which notes it had been agreed should be paid, Mr. Weissenbach informed me that he was going to turn the business over to Mr. Kelly. This information was in direct conflict with the understanding at the Directors' meeting, when the assignment of the deferred payments was authorized, which understanding was that the business should go on.

I did not at any time tell Mr. Crandall and he did not obtain the information from me that the meeting held on January 24, 1916, was for the purpose of having the stockholders and Directors of the Standard Piano Company consummate any arrangement for the liquidation of the Standard Piano Company.

In answer to the allegation in Mr. Crandall's affidavit, that I was under a $25,000.00 bond to

the Commercial Security Company for faithful accounting to said Company of collections made on leases, I deny that the result of checking up the accounts showed that there had been collections made and not remitted to the Commercial Security Company. I have nothing to do with any repossessions and was not called upon and could not be called upon to account for the same. I deny that there was any shortage in my accounts, or that there is now any shortage due to any cause whatsoever. In this connection, I produce a letter from Mr. Charles E. Bennett, Superintendent of the Bond Department of Aetna Life Insurance Company, dated February 8, 1916, which Company is a surety on my bond for $5,000.00 to Commercial Security Company (the statement in Mr. Crandall's affidavit that the bond was $25,000.00 is incorrect). I have attached hereto Mr. Bennett's original letter and a copy of the bond. I say further that the matters and things set forth in Mr. Bennett's letter are true, and I do not know of any claim ever having been made, and certainly none has been made to me by Mr. Crandall or anybody else.

In answer to the affidavit of Henry A. Heiser, I wish to say that I am advised that his affidavit is illegally verified and ought not to have been read in this cause, and I am advised that a motion will be made to strike it off the files.

The allegation in Mr. Heiser's affidavit, that I stated to Mr. Culver, or to Mr. Vowell, or Mr. Crandall, that there never had been any notes in blank made by Standard Piano Company, is not correct; I did deny to Mr. Crandall that any notes had ever been sent to H. P. Nelson Company made in blank and the amounts filled in by H. P. Nelson Company, but I stated to Mr. Crandall

certainly on one occasion, that in the summer of 1914, Mr. Forbish was in Chicago, and was in a great hurry to get away, and signed some notes in blank, as I have heretofore stated in this affidavit.

I deny that there is $10,000.00, or any sum due to H. P. Nelson Company from Standard Piano Company. I deny that I ever at any time said to Mr. Heiser, or to any other person, that I had fooled the United States Court by having had the Nelson Company give a bond to cover collections, and that I would not ever account to the court for anything done by the Standard Piano Company. The fact is, that the H. P. Nelson Company, was authorized by the Referee in Bankruptcy of Edisonia Company to make collections, and a bond was given by H. P. Nelson Company. And that bond was drawn by the counsel of the Trustee in Bankruptcy of Edisonia Company. I did not prepare the bond, or take any part in its preparation. I have never talked with Mr. Heiser about Mr. Kelly at any time. I did not state to Mr. Crandall, or to Mr. Heiser, at any time, that Mr. Weissenbach was handling the affairs of the defendant corporation to the entire satisfaction of myself and Mr. Nelson; I never have mentioned the matter, or expressed any opinion either one way or the other. I did not tell Mr. Heiser at any time that the defendant corporation was insolvent, or that it need not account or would not account. I have never spoken to Mr. Heiser about the notes of Standard Piano Company and there was no reason why I should say anything to him, as it was none of his business. I cannot conceive of any reason for the statement in Mr. Heiser's affidavit, which reads as follows: "I further believe that the

said Herdien and said Nelson are attempting to control the affairs of Standard Piano Company for their own purposes and to the detriment of said Company;" unless the notion was put into his head by some information that he has gotten at Chicago, that such an attempt was being made by the representatives of Ft. Dearborn National Bank and Commercial Security Company.

WALTER L. HERDIEN.

Sworn and subscribed before me this
fifteenth day of February, 1916, at
Newark, N. J.

HENRY G. PILCH,
Master in Chancery
of New Jersey.

AETNA LIFE INSURANCE COMPANY
Casualty Insurance
Surety Bonds

THE AETNA ACCIDENT & LIABILITY CO.,
of Hartford, Connecticut.

Chicago, Ill., February 8th, 1916.

Mr. Walter L. Herdien,
Attorney at Law,
1414 Westminster Building,
Chicago, Ill.

Dear Sir:

Referring to your favor of February 8th, which reads as follows:

"Your attention is respectfully directed to a certain bond of $5,000.00 executed by myself on February 13th, 1914, to take effect February 5th, 1914, for one year, indemnifying the Commercial

Security Company against loss by reason of default on my part to faithfully account to the Commercial Security Company for collections made on leases acquired by the Commercial Security Company from the Federal Commercial Company.

Will you kindly inform me if the Commercial Security Company has ever made any claim on said bond or given you any notice of any kind whatsoever that there has ben any default or defalcation on my part during the life of said bond or at any time thereafter up to the date of this letter.

In giving reply I would appreciate to receive a copy of the bond executed by myself.

Thanking you for your prompt consideration, I am''

We beg to advise that no claim of any kind has ever been made on said bond, and that there has not, to the writer's knowledge, been any default or defalcation during the life of the bond up to the date of this letter.

We are enclosing a copy of the bond as requested.

Yours very truly,

CHARLES E. BENNETT,
Superintendent Bond Department.

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

Transcript of shorthand notes of testimony taken in the above entitled cause on Friday, February 4, 1916, at Chancery Chambers, Newark, New Jersey, before Hon. James E. Howell, Vice Chancellor.

Appearances:

Mr. William L. Morgan, Mr. Corwin Howell and Mr. Joseph Weissenbach (of the Illinois bar), for the complainant.

Mr. Frank E. Bradner, for the defendant.

JOHN FLETCHER, sworn.

Direct examination by Mr. Weissenbach.

Q Where do you live? A Chicago.

Q Chicago, Illinois? A Chicago, Illinois.

Q What is your business? A Vice-president of the Fort Dearborn National Bank.

Q How long have you been vice-president of the Fort Dearborn National Bank? A Since a year ago the 1st of August.

Q What was your business prior to that time? A I was president of the Drovers National Bank of Chicago.

Q And how long had you been president of the Drovers National Bank of Chicago? A About a

year; I was connected with that bank as vice-president and active head for five years.

Q Prior to that time? A Prior to that time.

Q Are you familiar with the dealings of the H. P. Nelson Company and the Federal Commercial Company with the Fort Dearborn National Bank?

A Yes, to some extent.

The Court. Now, I call attention of counsel to this one thing. The issue in the case is solvency or insolvency, and I do not want counsel to travel outside of the point any more than is absolutely necessary.

Q Are you familiar with the transaction between the H. P. Nelson Company and Federal Commercial Company and Fort Dearborn National Bank at the time there was deposited with the bank as collateral to a note a series of notes of the Standard Piano Company? A Yes.

Q Will you plesae state to the Court just what that transaction was? A May I use this for memorandum?

The Court. The witness is using memorandum for the purpose of refreshing his memory.

A Actual record I am using, I merely want to use this. I had gone into the Fort Dearborn National Bank in the supervision of credits on the 1st of August; on the 31st of August a credit was made through the discount department through loans of $90,000 with which were certain notes as security. When this list of notes was presented at my desk for approval I noted the large number of Standard Piano Company notes included therein, and I went to other officers of the bank, one or two, and made some inquiry as to what these Standard Piano Company notes were, and I was assured from two or three sources—

Mr. Bradner. I object to that.

The Court. No.

A (Continuing). I was told—

The Court. No; don't insert conversations with other people.

Q Well, were the notes, so far as you knew or could ascertain, genuine notes? A There was no question about it.

Mr. Bradner. Objected to.

Q Were the notes filled in or were they in blank? A The notes were regular notes, of course.

Q Already filled in? A Certainly.

Q And had not been filled in by you or any officers of the bank? A Gave a credit of $90,000 against collateral.

Q And actually received credit? A Actually received credit on H. P. Nelson Company's books, secured by a large percentage of Standard Piano Company's notes as collateral.

Q How much of the $90,000 of which the H. P. Nelson Company was given credit was represented by collateral of the Standard Piano Company? A Over $70,000, over $72,000.

Q What became of that collateral? A I don't know that I know.

Q Was that the collateral sold to the Hamilton Investment Company? A Yes, I think part of it was, I think the Standard Piano Company's notes were.

Q You have a list of the notes? A List of the notes right here, yes.

Mr. Weissenbach. We have all the notes here.

The Court. Are the complainant's notes here?

Mr. Weissenbach. Yes, sir, including those that are not due. We desire at this time, if the Court pleases, to offer in evidence, together with the affidavits of Mr. Shaw, the notes, the original notes.

Fifty-five notes, twelve past due, forty-three not yet due, past due are $16,324, and not yet due, $51,530.39, offered in evidence and the fifty-five marked as one exhibit, Exhibit C 1.

Q At the time these notes were taken by the Fort Dearborn National Bank as collateral to the ninety-thousand dollar note of the H. P. Nelson Company had you any knowledge, or to your knowledge did any officer of the bank have any knowledge that these notes were not given by the Standard Piano Company to the H. P. Nelson Company for a good and sufficient consideration? A Certainly not, or they would not have been taken.

Cross examination by Mr. Bradner.

Q Mr. Fletcher, when did you become connected with the Fort Dearborn National Bank? A A year ago, about the middle of August, about the 1st of August.

Q Do you know Mr. Porter? A Yes.

Q Was he one of the directors of the bank at that time? A Not to my knowledge.

Q Was he connected with the bank? A I think not.

Q An officer of the bank? A No, I don't recall any Porter, no, sir, connected with the bank in any way.

Q Do you know Mr. L. P. Pattison? A Yes.

Q Was he an officer of the bank? A No, sir.

Q Mr. Thomas Hardy? A I know a Hardy, yes.

Q Was he a director or officer of the bank? A I don't know any Thomas Hardy, no, sir, I don't think.

Q Was Mr. Pattison either a director or officer of the bank? A Mr. Pattison was director in the bank.

Q He was then? A Yes, I think so.

Q Do you know Mr. Frederick Porter? A Yes.

Q I observe on these notes that are produced here that they are endorsed H. P. Nelson Company, Frederick Porter, treasurer, all of them, I believe, H. P. Nelson Company, Frederick Porter, treasurer; you knew him? A Yes.

Q And you knew he was treasurer of the H. P. Nelson Company at that time? A I assumed that he was.

Q Didn't you know it? A Not specially.

Q Can you identify this package of notes, fifty-five notes, Exhibit C 1? A I think I could identify them from this list; I would have to go through each one, but they are apparently the same notes that are on this list.

Mr. Bradner. Will it be admitted that these notes came from the Fort Dearborn National Bank to Mr. Shaw?

Mr. Weissenbach. No, it will not, because they did not come from the Fort Dearborn National Bank to Mr. Shaw.

Mr. Bradner. Then I want to check them up to see whether the bank had them.

Q Have you got another list of notes? A No, I haven't got it here; this is the only one I brought with me.

Q All these notes are on your list except what ones? Can you pick out those that are not? There are fourteen notes of pink color that are not on

your list? A Yes, fourteen notes, $210.95 each that are not on this particular list that I have here.

Q Look at those fourteen notes and tell me whether any of them are past due; there are some past due? A Yes, there are some past due.

The Court. How many?

Mr. Bradner. There are five of them past due.

The Court. And what do they aggregate?

A $210.95 apiece, something over a thousand dollars.

Q Mr. Fletcher, is there anything on those five notes to indicate that they have ever been presented for payment? A No, sir.

Q There is not. And here is another note which will be due on February 5th, for $210? A Yes.

Q In the natural course of banking that note would be in the bank for collection today, wouldn't it? A If they were handled by a bank, yes, not necessarily.

Q Now, take the notes which are found on your list. Can you tell me when those notes went out of the possession of the Fort Dearborn National Bank? A No, sir, I can not.

Q When did you make up your list? A This is a list of collateral at the time the notes were taken; that is the only list I have.

Q Those notes went out of the possession of the bank? A Very probably, yes.

Q Has the bank endorsed them? A No.

Q None of them? A None of them.

Q What is that? A No, they are not endorsed.

Q Do you know Mr. Shaw? A Yes.

Q Who is he? A He is an attorney in Chicago.

Q In whose office? A In his own, I think, Pattison and Shaw.

Q Is Mr. Pattison one of the directors of the Fort Dearborn Bank? A No, sir.

Q That isn't that Pattison? A No.

Q Do you know anything about the transaction with Mr. Shaw whereby these notes were passed over to him? A No, I didn't handle them.

Q Who handled them? A I don't know.

Q Do you know when it was done? A No; I have no recollection of it.

Q Never heard of it, did you? A What of?

Q Of the notes being passed over to Shaw? A Yes; no, I haven't heard of any definite transaction with anybody, no, I can't say that I have.

Q Do you know that the bank has turned over to Mr. Shaw practically $60,000 worth of paper of the Standard Piano Company? A I don't know it.

Q Don't know it from your own knowledge or from the records of the bank? A No, I don't know; I haven't got the records here, I haven't looked them up.

Q The H. P. Nelson Company was indebted to the Fort Dearborn National Bank in the sum of $90,000, do you say? A No, sir; I said that these notes were taken as collateral to a note for $90,000 for which credit was given on August 31, 1914; that is the record that I have here, that I can state.

Q You mean that the note for $90,000 was discounted and put to the credit of H. P. Nelson and Company? A Yes; it was not discounted because it was a demand note; it was credited to his account.

Q Have you got that note? A No, sir, I haven't got it with me.

Q Well, is it in existence? A Certainly, I assume it is in existence.

Q Hasn't it been destroyed? A Not to my knowledge, not unless it is paid.

Q Was that note made by or signed by Mr. Porter as treasurer of H. P. Nelson Company? A I have no recollection of that.

Q And the Standard notes were taken over with that major note as collateral? A Correct.

Q Did you have anything to do with the bargain with the H. P. Nelson Company whereby the ninety-thousand dollar note was made and the Standard notes were turned over as collateral? A No, sir.

Q Who did that? A I don't know; one of the officers.

Q Mr. Pattison? A I don't know; couldn't have been Mr. Pattison, he is not an officer.

Q He is one of the directors? A Director, but the directors didn't.

Q Somebody did it? A Unquestionably somebody in our bank.

Q And you don't know who it was? A No, five or six officers; it might be any one of them.

Re-direct examination by Mr. Weissenbach.

Q How many of the notes that were deposited as collateral by the H. P. Nelson Company, and which you have just identified, are past due? Referring now to the white notes, of which you have checked off your list? A I will have to look them over again; I can tell from this record.

Q I think you will find them assorted there, Mr. Fletcher? A There are eight.

Q What is the total of those notes?

The Court. Total of the notes that are unpaid?

Mr. Weissenbach. Unpaid, yes, sir.

The Court. And overdue.

A Over $18,000.

John Fletcher, re-direct.

Q Will you examine those notes and see whether you find any marking, or is there anything on those notes by which you would be able to ascertain whether any of them had ever been presented in the usual course of business by whoever the holder was for payment? A Yes, there is one of $3,002 due August 1st, indicates that it has been forwarded to the Union National Bank of Newark, New Jersey.

Q Anything else? A By the Hamilton Investment Company.

Q Will you examine the list, the record you have of the notes that were deposited as collateral, the notes of the Standard Piano Company that were deposited as collateral, and see whether there were any notes issued prior, that were due prior to August 15, 1915, on that list? A Yes, here seems to be one May 1, 1915, for $3,000, and one July 1, 1915, for $3,000. What was this date? A August 1st, that is the one we just had up, I think.

Q Prior to August 1st? A Yes, January 20, 1915, $147; February 20, 1915, $147; May 15, 1915, $1,010; June 15, 1915, $1,010.

The Court. What have you just been speaking of?

Mr. Bradner. Speaking of notes that are past due.

Mr. Weissenbach. Speaking of notes that were past due and then seeing whether there were any notes on this list of banks, record of notes of the Standard Piano Company that were due prior to the first maturity of this list of notes, and there appears to be some,—merely along the line of cross examination, or rather re-direct.

Q *(By Mr. Bradner).* Do you know whether any of those notes that appear to be past due were paid or not? A I do not.

John Fletcher, re-cross.

Q One note you say evidently was presented for payment through the Union National Bank of Newark? A Yes, apparently that note has not been paid, certainly.

Q Is there anything upon it to indicate what happened to the note after it was presented for payment? A The Union National Bank erased its endorsement, which would indicate to anybody connected with a bank, of course, that they returned it.

Q Doesn't it indicate to you, or would it indicate to you as a banker, the erasure of that endorsement, that the note had evidently been presented for payment and the payment not made and note returned? A Yes.

The Court. That is all guesswork, isn't it?

Mr. Weissenbach. It is, but simply being the custom of banks to so erase an endorsement.

Re-cross examination by Mr. Bradner.

Q The note that you say has gone through apparently for collection to the Union National Bank is dated August 1, 1914, is due August 1, 1915, for $3,002, made to the order of H. P. Nelson & Company, is not payable anywhere, and made for the Standard Piano Company, by W. W. Forbish, president; that is correct, isn't it? A Yes.

Q It is not made payable at any place in the note, is it? A No.

Q It is endorsed by H. P. Nelson Company by Frederick Porter, treasurer, is that so? A Yes, it is endorsed by Frederick Porter, treasurer.

Q The next endorsement on it is "Pay to the order of Union National Bank, Newark, N. J., Hamilton Investment Company, Chicago, Ill."? A Yes, sir.

Q Is that correct? A Yes.

Q Do you know the Hamilton Investment Company? A Yes, I know them, yes.

Q Is it connected with the Fort Dearborn National Bank in any way? A No, sir.

Q Not in any way? A No, sir.

Q To your knowledge did the Fort Dearborn National Bank turn over this particular note to the Hamilton Investment Company? A No, sir, I have no definite knowledge.

Q That is one of your original notes, isn't it, on your list? A Yes.

Q You don't know how it got out of the hands of the bank? A Well, notes are going in and out of the hands of the bank all the time one way and another; it went out in the regular course of business.

Q You did not bring anything here to show what disposition you had made of the notes, did you? A No.

Q Mr. Fletcher, if a note was sent through for collection and then recalled the collecting bank would erase its endorsement, wouldn't it? A The collecting bank hasn't any endorsement on here.

Q This note had evidently been sent through to the Union National Bank for collection? A Yes; their endorsement is not on it.

Q That order to the bank would be taken off if the note had been recalled? A It would be by anyone that released the note, yes.

Q By the Hamilton Investment Company? A Yes, it should be.

Q As that note stands now, and it was once the property of the Fort Dearborn National Bank according to your list, there is nothing on it to indicate that the Fort Dearborn National Bank ever owned it? A No, not necessarily.

Frank W. Bonar, direct.

Further re-direct examination by Mr. Weissenbach.

Q Is there anything on any of the notes—

The Court. Don't the notes speak for themselves? Why encumber the record with any such questions as those?

A. There isn't any.

Mr. Howell. There is another one of our witnesses, Mr. Kelley, who I can not put my finger on now. I want to know whether we can not have him testify not only in rebuttal but in chief.

The Court. Is he subpoenaed?

Mr. Howell. We can get him in a very few minutes, but I didn't know you wanted to delay at this time.

The Court. You want to rest and reserve the right to call Mr. Kelley?

Mr. Weissenbach. Yes. It is my fault that he was not here this morning.

FRANK W. BONAR, sworn.

Direct examination by Mr. Bradner.

Q You are the president of the Standard Piano Company? A I am.

Q And how long have you been connected with the company? A Since last November, a year ago.

Q How many years have you been in the piano business? A About twenty years.

Q What doing, manufacturing or selling? A Selling pianos.

Q During the year 1915 can you tell me about what the sales of the company, Standard Company, amounted to? A They amounted, Mr. Bradner, to about $200,000.

Q Was there any profit in that? A I think there was a goodly profit.

Mr. Weissenbach. I object to what the witness thinks, your Honor.

The Court. I would suppose there would be books of account that would show all those transactions. If there are books of account they ought to be referred to in some way or other.

Q Have you taken from the books of the company a statement of the business for the year 1915? A I took from the sales book.

Q When did you do it? A I got it from the sales book after the first of this year.

Q And I show you a paper. Can you tell me what that is? A I want to explain this. This is report from the sales book; this may not be exactly correct with the ledgers from the fact that there may have been some pianos that were sold, you understand, that for some reason were not sent out immediately, and may have been countermanded, you understand; that is why I say this is not absolutely correct, but it is very nearly.

Q That is correct of all the sales that appear on the books? A Yes, all that appear on our sales books.

Q That statement shows how many pianos you sold for the year? A 959, but I presume 900 would be more nearly right.

Q Why do you say that? A From the fact that there were some sales that were made that the pianos were not delivered.

Q Oh, you did not carry out the contracts? A Yes, that is the idea.

Q And according to the books what is the total volume of the business? A Of about over $200,000.

Q What is the exact amount on this statement? A On the statement there is about $210,000.

Mr. Weissenbach. I object to the witness testifying of the condition of the statement that he has already said is an incorrect statement of the facts.

The Court. That is not quite what he said about it. He said this was taken from the books and it is as correct as the books are. Now he is testifying to what is on the books.

Q Who made up this statement? A I had my stenographer make it up.

Q (*By the Court*). Oh, you did not make it up yourself? A I did not.

Q Did you compare it with the books? A I compared the number of sales here, but I did not go over every item to see if it was exactly correct. I presume it is very nearly correct.

Q You compared the number of sales? A Yes.

Q Then can you say there was as many as 900 pianos sold? A I think about 900 pianos.

Q And what is the average selling price of the pianos? A The average selling price of a piano would run, probable average price, $200, $225; of course, some of them sold much higher than that, $250.

Mr. Bradner. I felt that that testimony is so uncertain, the books if they are here would speak for themselves.

The Court. I called for the books and they have not been produced.

Q You were connected with the Standard Piano Company all through the year 1915? A Yes, sir.

Mr. Bradner. I would like to see that note that came due last August. (Paper handed Mr. Bradner by counsel on the other side.)

Q I show you a note marked Exhibit C 1. Have you ever seen that before?

The Court. Put a description of that note in your question.

Q Exhibit C 1 for $3,002, dated August 1, 1914, made by the Standard Piano Company, payable in one year? A I don't remember ever seeing that note before.

Q Was it ever presented for payment at the store that you know of? A I don't remember it ever being presented to me.

Q Was there a profit in the business last year? A Yes.

Q About how much? A I would think about $75,000.

Mr. Weissenbach. I object to what the witness thinks.

The Court. I do not see, Mr. Bradner, how that kind of testimony is going to do me very much good.

The books must show about it; the permanent record which this man has made or which the people have made under his supervision ought to show what the profits are.

Mr. Bradner. I should think the president of the company ought to know whether the business is being carried on at a profit or loss. The allegation is that we have been losing $20,000 a year, that is the allegation in the bill.

The Court. Well, there has been no proof of it.

Mr. Bradner. That is all, then.

Cross examination by Mr. Weissenbach.

Q Mr. Bonar, will you swear that you never saw that note before? A I say I don't remember seeing the note.

Q Will you swear you never did see it? A I swear I never remember seeing that note.

Q Did you know of any of these notes of the Standard Piano Company that were owned by the Fort Dearborn National Bank, some by the Federal Commercial Company, some by the Logansport State Bank, some by the Hamilton Investment Company, having been presented for payment and paid? A Do I know of it?

Q Yes? A I have heard of those notes being out.

Q And presented for payment by the Standard Piano Company and paid? A You understand the arrangement, you and Mr. Herdien took care of these—

Q Answer my question. Do you know? Don't you know that notes of that character were paid, notes of the Standard Piano Company? A I know we took up notes at the bank after we had received the money from the Commercial Security Company, Mr. Kelley and a number of them.

Q The notes of the Standard Piano Company? A Yes.

Q And those notes were turned over to the treasurer of the company or whoever was authorized to hold them for the company, Standard Piano Company? A Yes.

Mr. Weissenbach. Again I must ask the indulgence of the Court, not being familiar with the practice; but the witness filed an affidavit as president of the company in support of the answer of the defendant corporation to the bill of complaint that was filed, and I desire to

know, I would like to ask the Court whether at this time I could examine him as to some of the allegations in his affidavit.

The Court. You can cross-examine him on his affidavit so far as the cross examination pertains to his direct testimony.

Re-direct examination by Mr. Bradner.

Q You were asked about some notes being paid? A Yes.

Q Where did you get the money to pay them? A That was sent through to us, I don't know whether Mr. Weissenbach or the Commercial Security Company.

Q Whenever notes were paid then that came from Chicago, the money was sent to you to take them up? A That is the idea, yes.

Re-cross examination by Mr. Weissenbach.

Q Did you sign assignments? You were president of the Standard Piano Company?

Mr. Bradner. I object.

Q Did you not as president of the Standard Piano Company execute an assignment of the company leases to the Commercial Security Company?

The Court. What is the point of this? Is there any doubt about it?

Mr. Weissenbach. The witness might have misled the Court into the belief that I had furnished the money to take up the notes, or my clients had. I simply desire to show through the witness that the Commercial Security Company furnished these contracts, and it was out of the sale of these contracts that these notes were paid.

The Court. Do you know about that?

A Yes.

Q *(By the Court).* Tell what the fact is? A I signed an assignment to the Commercial Security Company.

Q And the Commercial Security Company out of the proceeds of the sale of those leases these notes were paid and other moneys used for the general conduct of the business? A I think so, Mr. Weissenbach; and Mr. Kelley, I want say, furthermore, as treasurer, had supreme control of the financial part of it, and it was up to me to do the selling, and that is why I didn't bother very much with it.

Re-direct examination by Mr. Bradner.

Q All you know, when money was needed to take up notes it was sent to you from Chicago by Mr. Weissenbach? A I don't know whether it was from Mr. Weissenbach or whether it came from the Commercial Security Company; I think the checks were from the Commercial Security Company, but I think the letters, envelopes came from Mr. Weissenbach's office, I won't say to that; as a matter of fact, I was merely a medium between the Standard Piano Company and Commercial Security Company; they sent leases to me and they issued their checks, and I think that was the way.

The Court. I don't think it makes very much difference.

WALTER L. HERDIEN, sworn.

Direct examination by Mr. Bradner.

Q Are you the treasurer of the Standard Piano Company? A I am.

Q You were elected treasurer recently, were you not? A Yes.

Q On what day? A January 24, 1916.

Q Have you in your possession any of the books of the company? A Yes, sir.

Q What books have you? A I have the general ledger and three lease ledgers.

Q What are the lease ledgers? A Lease ledgers are individual accounts with various customers of the Standard Piano Company who have purchased pianos on the instalment plan.

Q What is this book that I show you? A It is one of the general ledgers of the Standard Piano Company.

Q And covering what period of time, can you tell? A It seems to cover a period from about May 1, 1915, to about the middle of January, 1916; it is the last ledger of the Standard Piano Company.

Q (*By the Court*). Where are the others? A The others are probably at the office of the Standard Piano Company; I have never had them in my possession.

Q You made an affidavit in this case setting forth the assets and liabilities? A Yes.

Q Since making that affidavit have you examined this journal, ledger, and the lease ledgers with any more particularity? A Yes, I have.

Q Does your examination show any change to be made in the statement of assets and liabilities? A Considerable change.

Q In what respect? A I discovered about sixty thousand dollars more assets.

Q Is there any change in the amount of cash in bank and on hand? A The cash is posted up to December 31, 1915; at that time there was $951.49 on hand; since that time there has been no entries made in the ledger.

Q And when you became treasurer, about the 24th or 25th of January, what cash was on hand

and in bank? A Well, the best information I could obtain it was about $1,800 at that time.

Q And some of that was used? A Yes.

Q After you became treasurer? A Yes.

Q Leaving a balance of how much? A Oh, about $1,500.

Q In your affidavit you gave the number of piano leases as $196,000? A Yes, sir.

The Court. Number?

Q The amount. Since your examination of the books do you wish to make any change in that? A Yes, I do.

Q In what respect? The paper that you have is what? A I have separated the assets; I have separated the leases assigned to the Federal Commercial Company in accordance with the balance now on the books and the leases assigned to the Commercial Security Company, I have separated the two items. The leases assigned to the Federal Commercial Company in accordance with the books is $130,111.62 on hand.

Q On what page does that appear? A 254 of the journal, $130,111.62, and the leases assigned to the Commercial Security Company the amount is $100,193.45 balance.

Q On what page is that? A Page 100.

Q And the unassigned leases, any change in that amount? A Yes; I take the unassigned leases from the records of the Standard Piano Company on their weekly report sheet in the total amount of $4,820.

Q You have some of those sheets with you? A Yes, I have them here in my hand.

Q And the merchandise on hand, that remains the same, doesn't it, $4,000? A Yes.

Q How do you arrive at that figure? A Well, the best I could do on that was to approximate the

value of the pianos in the store at the time that I made the affidavit, as I did not have the stock record on hand at the time.

Q Automobile, that we agree on, $900, I think. Furniture and fixtures, $400; I don't know but that we make it a little less. Accounts receiveable how much? A $8,000.

Q That makes a total of assets of how much? A $249,925.07.

Q Now, turn to the liabilities, the notes payable? A The notes payable $34,300.

Q And how do you reach that result? A I reach that result after deducting about $35,000 of overcharge on the pianos and $29,000 on the cash advanced by the Standard Piano Company at the request and on behalf of the H. P. Nelson Company.

Q That applies to what issue of notes? A That relates to issue of notes made out in the sums of $3,000 and $1,000 apiece that were delivered to the H. P. Nelson Company in blank and signed in blank by W. W. Forbish, the president of the Standard Piano Company.

Q When were those notes filled up, if you know? A I don't know just what time they were filled up.

Q Do you know Mr. Porter, the treasurer of the H. P. Nelson Company? A I do.

Q When did he become connected with the H. P. Nelson Company? A About the middle of August, 1914.

Q Was he put in there as the representative of any bank or company? A Yes, sir.

Q What bank? A Fort Dearborn National Bank.

Q Do you know whether he was connected with that bank as an officer or director? A He was not an officer or director as I know of.

Q But he was put on the board of directors of H. P. Nelson & Company? A Yes.

Q And he was made treasurer of the H. P. Nelson Company? A Yes.

Q Were you on the board of directors at that time? A Yes, sir.

Q And Mr. Nelson? A Yes, but I resigned at the time that Mr. Porter was elected treasurer and director.

RECESS.

Q Mr. Herdien, do you know anything about the delivery of notes of the Standard Piano Company made to the order of H. P. Nelson Company to the Fort Dearborn National Bank? A I know that at the time Mr. Porter was acting as treasurer of the company that Mr. Porter and Mr. Pattison came to me in reference to the Standard Piano Company.

Q And who was Mr. Pattison? A Mr. Pattison was the director of the Fort Dearborn National Bank and became vice president and director of the H. P. Nelson Company.

Q Do you know for whom he was acting when he came to you? A How is that?

Q When he came to you for whom was he acting, if you know? A Acting for the Fort Dearborn National Bank.

Q If you know?

The Court. What does he know about it?

Q What was the transaction between you in reference to the Standard notes? A Mr. Porter and Mr. Pattison came to me on the second floor of the H. P. Nelson Company and asked me in reference to the standing of the Standard Piano Company, and I told them—

The Court. That is conversation with other people. What did you do, not what did you say to anybody, but what did you do?

A They asked me in reference to—

Q (*By the Court*). Not what they said to you or what you said to them, but what did you do? A I told them the situation of the Standard Piano Company.

Q (*By the Court*). What did you do? A And they asked me—

Q (*By the Court*). What did you do? A They asked me in reference—

Q No. The Court asks you what did you do, not what was said.

The Court. What did you do?

Q What act was done?

The Court. What did you do?

A I told them that the—

The Court. You can't get that out of his head.

A I told them the Standard Piano Company was—

Q At that time was anything done in the way of transferring any notes to the Fort Dearborn Bank? A No, sir, only a discussion in reference to the Standard Piano Company took place.

Mr. Weissenbach. I suggest counsel should not put in the witness's mouth the answer he wants.

The Court. Oh, no, you ought not to lead this witness.

Q When did this conversation take place? A About the middle of August, a little after that, I should say about the 25th of August.

Q What year? A 1914.

Q Do you know whether at that time the Standard notes had been turned over to any bank? A Yes, some notes had been turned over to the Fort Dearborn National Bank about August 1, 1914.

Q Did you see the notes that were here this morning? A I saw some of them.

Q Do you know Mr. Shaw? A I do not.

Q When did you first hear of him? A The first time I learned of it was in reading the complaint, about January 26th or 27th.

Q Now I have called your attention to the notes payable. What do you make now the outstanding notes payable?

The Court. He has already stated that.

A I think the statement is there, $34,300.

Q And the accounts payable, how much? A I think you have the statement there, accounts payable $10,029.

Q Where do you get those figures? A Well, there is small claims to the amount of $1,000, and there is—

Q (*By the Court*). Where did you get the figures is the question?

Q Where did you get the figures? A I got the figures from statement that was made up by the Standard Piano Company on a piece of paper.

Mr. Weissenbach. It is admitted.

A And the small accounts are in amount $1,000, and there was $2,000 commission due F. W. Bonar, and there was about $7,000 due Stanley & Sons Company in Chicago.

Q The next item on your list of liabilities is Federal Commercial Company $51,029.93? A Yes.

Q Is that correct? A Yes, sir.

Q And how do you make that up? A Give me the ledger there; I will give you part of the items. There is also a statement here.

Q I am talking about the Federal now, Federal Commercial. A Federal, yes.

Mr. Weissenbach. I would like to ask if the witness is reading from memorandum prepared by himself.

The Court. I don't know. You have a right to cross examine him on the paper if you like.

Q (*By Mr. Weissenbach*). Are you reading now from memorandum prepared by yourself? A Yes. There was received from the Commercial Security Company to the Federal Commercial Company cash in the sum of $82,564.30, plus the cost of eight and two per cent. to the Standard; $12,691.82 plus accrued interest to the amount of $5,773.81, making a total amount of $101,029.93.

Q Representing what? A That represents the money received by the Standard Piano Company from the Federal Commercial Company plus the cost of ten per cent. and interest of six per cent. From this amount I deduct the cash received from the Standard to myself as trustee and paid to the Commercial Security Company by me in the amount of $50,000 approximately. The reason I say approximately is because I have a record of what has come to me as trustee and to the Commercial Security Company up to about the middle of October, 1915, in the amount of $43,534.78; on November, 1915, there was remitted to the Commercial Security Company the sum of $3,233.95 going directly to the Commercial Security Company and not through me as trustee. On Decem-

ber 31st further cash remittance was made directly to the Commercial Security Company by the Standard Piano Company on contracts delivered by the Standard Piano Company to the Federal Commercial Company to the amount of $2,051.90.

Q Where does that appear? A 1915.

Q Where does that appear? A It appears on the ledger of the Standard Piano Company.

Q What page? A 254.

Q This makes a total of $48,820.63? A The average remittances per month have been about $2,000 a month. No entries have been made for the month of January, so I estimate only $1,200 for January, making an approximate sum of $50,000. In that way I arrive at the sum of $51,029.93 due the Federal Commercial Company.

Q Well, what do you do with that $50,000, add to or deduct it? A What?

Q What do you do with the $50,000? A The $50,000 was sent by the Standard Piano Company either to me or directly to the Commercial Security Company on collections made on pianos delivered by the Standard to the Federal Commercial Company and the Commercial Company received this amount of money.

Q You stated there was $101,029.93. Now, what does that represent? A That represents the total cash received by the Standard Piano Company from the Federal and the cost of ten per cent. and the accrued interest of six per cent.

Q And from that you deduct the $50,000? A Deduct the $50,000 that has been remitted.

Q And leaves balance of what? A $51,029.93.

Q And that is what, a liability? A A liability of the Standard Piano Company.

Q To what company? A First to the Federal Commercial Company and then to the Commercial Security Company.

Q Now take the next item, Commercial Security Company, $44,867.51, what is that? A I added that total—

Q What is that? What is it? A Oh, what is that? That is the balance due the Commercial Security Company.

Q Now, how do you make that up? A I start here with May 11, 1915, and show cash received by the Standard Piano Company from the Commercial Security Company to the amount of $7,899.84.

Q Is that on the book? A Yes.

Q What page? A On page 98. On the same page, June 30, Standard Piano Company received the sum of $2,307.96; on July 31 the Standard Piano Company received the sum of $7,663.20; on August 31, 1915, the Standard Piano Company received $5,533.73; on September 30, Standard Piano Company received $7,710.47; on October 31, the Standard Piano Company received $2,000; on November 6, the Standard Piano Company received $1,673.70; on November 11 the Standard Piano Company received $1,505.13; on November 30, Standard Piano Company received $1,279.96; on November 29, Standard Piano Company received $1,983.84; on December 31, Standard Piano Company received $7,127.49, making a total amount of $46,685.32. There is a pencil memorandum here on the book, "F. D. N. bank," which would indicate to me Fort Dearborn National Bank, of $4,925.67, but there is no cash folio, and I don't know whether that was cash or not, but I have added that into the amount making the $51,610.99; cost has been figured on the total amount of leases on hand of the Commercial Security Company direct from the Standard to it of $100,000; I figured eight per cent. $8,000, mak-

ing a total now of $59,610.99; I have added no interest, as I understand the interest has been paid monthly in about the amount of $270 a month. I have deducted from this amount the cash sent to the Commercial Security Company by the Standard Piano Company.

Q Where does that appear, page 100? A That appears on page 100. On May 29, $1,149.50.

Q This year? A 1915. On June 30, $874; on July 31, $1,025.06; on August 31, $2,389.91; on September 30, $1,583; on October 31, $1,710; all these in 1915. November 30, $3,232; on December 31, $2,765.35, making a total amount of $14.-728.82 from May 29, 1915, to December 31 and inclusive, 1915. I deducted this amount from $59,610.99, making a total amount of $44,882.99.

Q And what does that represent? A. That represents the balance due the Commercial Security Company in accordance with the books here.

Q Now, take the next item on your list of liabilities, Edisonia estate? A I know nothing about that account, except that I find it in the book here on page 349 in the total amount of $2,600, no, in the total amount of $2,539.50, it is by journal entry made on September 30, 1915.

Q And H. P. Nelson estate?

The Court. Is that shown to be a liability then?

Mr. Bradner. We find it on the books as liability.

A It is on the books here and entered as September 30, 1915, but I don't know anything about the entry; it is a journal entry and the journal I have not the possession of.

Q And there is another entry, H. P. Nelson estate? A I know nothing about that.

Q How much is that? A I find that on page 349; another journal entry on September 30, 1915, in the total amount of $4,970.

Q In favor of H. P. Nelson estate? A In favor of H. P. Nelson estate.

Q Do you know anything about a claim against the H. P. Nelson Company in favor of the Standard Piano Company? A I do.

Q Well, tell us about that? A Mr. Kelley as treasurer was instructed to come to Chicago, and being that I was formerly treasurer of the Standard Piano Company I told him I would go there with him, over the figures and adjustment of the account of the H. P. Nelson Company for the purpose of filing a claim against the H. P. Nelson Company for overcharges on pianos and cash advanced by the Standard Piano Company to the H. P. Nelson Company for its benefit and at its request. Mr. Kelley came to Chicago and was there about a week, came to me for some figures; I gave them as best I could under the circumstances; he had no ledger with him, and I found out afterwards that he did not file the claim.

Q On these revised figures what do you make the net assets of the company? A The net assets I make at $249,925.07.

Q That is not net assets. A I don't believe I have explained that, accounts receivable, $249,-925.07.

Q That is the assets of the company? A Yes.

Q And liabilities are how much? A $147,-735.94.

Q Now, will you just take the difference between those, take your pencil and figure that out there? A $101,189.12 excess of assets over liabilities.

Q I find in that affidavit of Mr. Kelley's a statement in regard to the preparation of an income tax return? A Yes, sir.

Q What do you know about that? A I was here in Newark, I don't recollect just the date, but several months ago, and at that time I began to prepare a statement for the Internal Revenue office as I found out that no statement had been made and that we were in default of that statement, and I had received—

The Court. That don't interest us at all. Get to the point.

Q What did you say to Kelley about it? A I don't recollect what I said to Mr. Kelley at the time, except that what figures I had available there looked to me—

Mr. Weissenbach. I object to that.

Q I will read to him just what Mr. Kelley said; I will ask him the direct question. Did you state to Mr. Kelley that a statement of the condition of the business of the Standard Piano Company for 1914 showed that the company had sustained a loss of at least $15,000? A No, sir, I did not make any statement of that kind. I made up a statement, however—

The Court. You are not asked any question yet.

Q Did you exhibit to Mr. Kelley an income tax return which showed that during the year 1914 the company had sustained a loss of at least $15,000? A I don't know as I exhibited it to him, but I think I sent him a statement of that kind.

Q Was that return made to the government? A No, sir, it was sent back to me; I didn't have

all the figures at the time, and I went into it further and discovered a statement later on; it has never been filed.

Q And going into it further, did you make up a statement for the year 1914? A No, sir, I did not make up any statement of 1914, but I found a statement of the business for 1914, it was in my possession as secretary of the company.

Q It was in your possession? A Yes.

Q And do you know who made it? A I don't recollect who made it; it was made by one of the bookkeepers of the Standard Piano Company and sent to me.

Q In the papers of the company I show you the paper, what is that? A This is profit and loss statement for the year 1914.

Mr. Bradner. I offer it in evidence.

Mr. Weissenbach. I object to the introduction of this statement purporting to be profit and loss statement of the Standard Piano Company for the year 1914.

The Court. Has anybody examined this in connection with the books?

Mr. Weissenbach. We certainly have not.

The Court. A statement of that sort would not be evidential on objection unless it was more closely identified. How can we know anything about it, about its correctness, validity.

Mr. Bradner. It is part of the regular transactions of the company and a statement made up at a time when they were not anticipating—

Mr. Weissenbach. May I show how fresh the ink is on top, showing it was a statement for the year 1914?

Mr. Bradner. That has just been written on there.

The Court. I do not think that is admissible, Mr. Bradner.

Q Have you any personal knowledge of the business for the year 1914? A Yes, I have.

Q Can you say whether the business was conducted for that year at a loss or at a profit? A It was conducted at a profit.

The Court. Now, Mr. Bradner, how can he know, except from the books? What had he to do with the business in 1914?

A All those figures on that statement can be verified by the books.

Q Where are the books which we need to verify this statement? A The last I saw of the ledger was in the hands of Mr. Kelley.

Q At the store? A Yes, sir; no, not at the store; he had it with him in Chicago.

Q When was that? A When he came to Chicago to make up the claim against the H. P. Nelson Company.

Q When was that? A That was in December, I think, the early part of December.

Q What year? A 1915.

Q Where is the stock transfer book? A I think it is in Chicago.

Q In your possession? A No, sir.

Q Where? A Mr. Weissenbach's possession.

Q Do you know how it got in Mr. Weissenach's possession? A Yes.

Q How? A I delivered the stock—my stock certificates signed in blank to Mr. Weissenbach, and the stock records, about January, 1915, together with the minute book of the Standard Piano Company.

Q Did you have any agreement with him? A Yes.

Q What was it?

The Court. Does this bear upon the question of solvency or insolvency?

Mr. Bradner. It has been brought out on the other side.

The Court. I do not see that it has anything to do with the question that I have got to decide.

Mr. Bradner. I don't think it has either, but it is these affidavits and I didn't want it to stand unexplained or uncontradicted.

Q Now, Mr. Herdien, will you explain if you can the nature of these transactions whereby piano contracts or leases were turned over or assigned to the Federal Commercial Company and Commercial Security Company? A There is a general written contract, printed contract, form used by the Federal Commercial Company with all the piano dealers or manufacturers from whom they buy piano leases or lien instruments; the same form as used by the Commercial Security Company, a general form of contract; it recites that—

The Court. Well, if we had a copy of the paper it speaks for itself, I suppose.

Q What is that form? A That is the general agreement made between the Federal Commercial Company and its customers and is and was taken from the general agreement printed in the same way by the Commercial Security Company with its customers.

The Court. Now, if I should think this is at all material can't I get all the information I want out of these papers?

Mr. Weissenbach. Yes, your Honor.

The Court. I think I know pretty well how it has been conducted.

Q Have you personal knowledge of the original transactions with the Federal Commercial Company? A Yes.

Q And you were an officer of that company, were you not? A I am still an officer of that company.

Q And that company got some piano contracts from the Standard Piano Company? A Yes, sir.

Q You were an officer at that time? A Yes, sir.

Q How much money was advanced to the Standard Piano Company by the Federal? A Seventy per cent. of the face of the contract figured thirty months by instalment payments of thirty months.

Q Well, you take a contract, say, for $500, payable in instalments of $10, that would be fifty months, wouldn't it? A Yes, contract of $500 payable in fifty months there would be paid to the Standard Piano Company, for example, the sum of $210.

Q Take a piece of paper and figure out? A $210, reserving a twenty per cent. reserve for deferred payment of $60 would be called a regular reserve of twenty per cent. for deferred payment.

Mr. Weissenbach. I submit that is not a fair illustration.

The Court. I don't care whether it is a fair illustration or not, I don't understand it.

Mr. Bradner. I am going to try and make it plain.

The Court. I don't see its relevancy, either, Mr. Bradner.

Mr. Bradner. Simply to figure out to the Court this statement of ours of the amount of leases outstanding and the amount due these two companies, and show how it is made up, and we can take it right from the books, but if we take the books and read from the books and talk about regular reserve and special reserve your Honor won't know what we are talking about unless we explain it. That is what I want to get at.

The Court. Explain it, then.

A In a contract of $500 payable $10 a month that would take fifty months to pay out the contract. The rule of the company is not to accept paper or pay on paper longer than thirty months; in that event they would take only thirty months of that paper, leaving a two-hundred-dollar special reserve deferred payment.

Q (*By the Court*). What company are you talking about now? A The Federal Commercial Company or the Commercial Security Company; both operate along the same lines. Now, in that event, the two-hundred-dollar deferred payment would be set aside and put away to the rear to mature later on, to be paid to the company that sells this contract, this special reserve of $200.

Q (*By the Court*). Set aside where? A Would be set aside with the Federal Commercial Company or the Commercial Security Company. Now, seventy per cent. of that would be paid; of the balance $300 would be paid to the Standard Piano Company by the Federal.

Q (*By the Court*). Loaned, you mean? A Would be paid to them.

Q (*By the Court*). As a loan? A Well, it is a question whether it is a loan or not, would be paid to them, and in that event seventy per cent. of $300 would be $210, so that the Standard Piano Company on a $500 contract payable ten dollars a month would get $210 cash down on that contract. Now, then there is a regular reserve of twenty per cent. that is retained by the Federal Commercial Company or the Commercial Security Company, that would figure $60 on $300, and that would make $210 cash, $60 regular reserve of twenty per cent., special reserve of $200, and the cost,—I find I am incorrect. The cost on the original $500 would be ten per cent., or $50, and I am not certain whether that would come out of cash advanced to the company or would come out of the special reserve, I can't tell you that offhand, I am up against it on that.

Q But that is the scheme, that is the way it is carried out? A That is the scheme. A special reserve is rather a difficult proposition to figure out.

Q The moneys are advanced, though, on the basis of thirty months' contract with the customer? A Yes, sir.

Q These contracts on pianos sold to customers; that is, to individuals, do they or not carry interest? A As far as the Standard Piano Company is concerned, on their contract some of them bear interest and some of them do not.

Q Can you tell from the book before you of the Standard Company what is the amount of the special reserve on contracts now held by the Commercial Security Company? A Yes, sir. On page 102 the special reserve as of January 13, 1916, is $10,735.28; on page 103 the regular reserve account as of January 13, 1916, is $22,-

924.46, making approximately $34,000 in special and regular reserve.

Q And how much is the special reserve of the Federal Commercial Company? A On page 255, at the top of the page, the special deferred payment as of December 3, 1915, is $23,733.56; on the middle of the page is the regular deferred item as of December 3, of $35,163.63.

Q What do the books show as to cash remitted to either of these companies? A Well, I have gone into that.

Q Oh, you stated that? A I have gone into that awhile ago, stating that the cash approximately from the Standard to the Federal or to the Commercial on account of the Federal was $50,000 and that the cash remitted to the Commercial direct by the Standard was about $14,000, which counting the special deferred and regular deferred of both Commercial and Federal Company accounts, and adding the cash that has been sent to the Commercial Security Company and to the Federal Commercial Company totals—you have the figures there.

Q Are those your figures? A Totals approximately about $157,000, and if you take off the cost from that amount, $25,000, leaves about $132,000, which practically proves up the balance between the total amount owing the Federal and Commercial Company on the liability statement deducted from the total amount of leases in the assets of the statement.

Q The figures on that paper are yours, aren't they? A Yes, sir.

Q These reserve funds are what, a debit or a credit? A They are a credit.

Q In whose favor? A The Standard Piano Company.

Q And have you included those in making up your statement of the assets and liabilities? A I don't get that question.

Q In making up the statement of the assets and liabilities have you included those reserve funds in the calculation? A I have included them in the calculation, yes.

Q Mr. Herdien, in December, 1915, there was a meeting of the directors of the company in Chicago, was there not? A Yes, sir.

Q Were you present? A Yes, sir.

Q What was that meeting held for? A For the purpose of assigning the deferred payments of the Standard Piano Company owing to it by the Federal Commercial Company and the Commercial Security Company to the Fort Dearborn Trust and Savings Bank. No, I want to correct that. It was the equity or deferred payment due to the Standard or the Commercial Security Company which was assigned for the purpose of assigning to the Fort Dearborn Trust and Savings Bank.

Q Who was there at that meeting? A Mr. Bonar, Mr. Goldberg, Mr. Weissenbach, Mr. Nelson and myself.

Q Was there any ascertainment made then or estimate made of the value of the equity in the contracts? A Yes; Mr. Nelson asked Mr. Weissenbach what he considered was the equity there, the total amount of the equity; Mr. Weissenbach said that according to figures that had been given to him by Mr. Kelley there was about $95,000.

Q What do you make the equity now? A Approximately $130,000.

Q There was a meeting of the stockholders called then? A Yes.

Q Who sent out the notices for that meeting, do you know? A Mr. Bonar.

Q Did you receive one? A Yes.

Q Do you know whether Mr. Nelson received one? A I know that he did.

Q Where was the meeting held? A At Newark.

Q And who were there? A Mr. Bonar, Mr. Nelson, Mr. Weissenbach, Mr. Kelley, Mr. Bradner and myself.

Q What action did the stockholders take as to the assignment of the equity? A The stockholders passed resolutions disapproving and disaffirming the action taken by the board of directors.

Q What objection, if any, was made at that time at the meeting by either Mr. Weissenbach or Mr. Kelley? A No objection whatsoever.

Cross examination by Mr. Weissenbach.

Q Mr. Herdien, will you look at page 50 of the ledger that is before you, referring to the account of the notes payable, and will you tell the court the balance of notes payable as it appears on the ledger? A According to notes payable account on page 50 under date of November 30, the item is $97,244.02.

Q Did you at any time in your visits to the Standard Piano Company produce to Kelley, to Mr. Kelley, the treasurer, or to Mr. Bonar, the president, (or to me), who was acting for the benefit of the creditors, that the notes that were then owned by the Fort Dearborn National Bank and these various other banks, the South Bend Banking Company and Logansport State Bank, the Citizens Trust and Savings Bank of Chicago, the Fort Dearborn Trust and Savings Bank, as

trustee, and Hamilton Investment Company, were not *bona fide* notes, or that were partial or whole failure of consideration, and therefore the notes should not be paid? A No, sir, I did not.

Q Did you have any knowledge at any time since these notes were issued that any of the notes were paid by the Standard Piano Company? A I had notice that notes were being paid from time to time by the Standard Piano Company.

Q Is it not a fact that at a meeting in Chicago at which there were present Mr. Nelson, Mr. Bonar, Mr. Jacobowsky, yourself and myself, that Mr. Nelson stated that it was his one desire to see all of these notes paid, and that he would try and make arrangements to see that they were all paid at their respective maturities in order that no loss might come to anyone.

Mr. Bradner. I object. I can not see the materiality of what Mr. Nelson said about it. Mr. Nelson has not figured in this at all by affidavit or otherwise.

Q (Question read).

The Court. I think your objection is good. I overrule the question.

Q Mr. Nelson was president of the H. P. Nelson Company at the time these notes were issued, was he not? A He was president at that time, yes.

The Court. President of what?

Mr. Weissenbach. President of the H. P. Nelson Company, the endorser of these notes.

Q Do you know whether Mr. Nelson had knowledge of the fact that these notes were being paid out of the proceeds of the moneys received by the Standard Piano Company for the sale of its pianos?

Mr. Bradner. I object.

The Court. I think that is good; that seems to lead somewhere. I overrule the objection. You may answer.

A I believe he did know it, because I think he was acquainted with it well enough to know some notes were being paid by the Standard Piano Company.

The Court. The question was what he knew.

Mr. Weissenbach. He says he did know.

Q Who was treasurer of the Standard Piano Company at the time these notes were issued? A I don't recollect; it might have been Mr. Woolhouse or it might have been myself, I am not certain.

Q These notes are dated all of them during the month of August, 1914; is it not a fact that you were treasurer of the Standard Piano Company at that time? A That I don't know; I can't recollect just now; either myself or Mr. Woolhouse was treasurer, but I know neither Mr. Woolhouse nor myself as treasurer executed notes of the company.

Q You said you are now the secretary and treasurer of the Standard Piano Company? A No, I was secretary.

Q I mean now; you said you are now? A I am secretary and treasurer now, but I think at that time I was secretary and Mr. Woolhouse was treasurer.

Q Have you in your possession the minute book of the Standard Piano Company? A I have not; I haven't it here, I haven't the minute book here.

Q But you have it in your possession? A Yes, sir.

Q And under your control? A Yes, sir.

Q Would a reference to that minute book refresh your memory as to whether you were treasurer of the Standard Piano Company at that time? A Yes, if I could see the minute book.

Q Have you it here in Newark? A No, I have not.

Q Did you at any time know that these notes were issued? A I knew that certain notes were issued at about August, 1914, or thereabouts by Mr. Forbish when he was in Chicago, and he left them with the Bookkeeping Department of the H. P. Nelson Company to be filled in for the right amount. He left a block of notes with the idea they were to be filled out by thirty-six monthly notes.

Q Do you recall meeting in my office in Chicago in January, 1915, at which we discussed the affairs of the Standard Piano Company and its inability at that time to meet these notes? A I do, very distinctly.

Q And was it not at that time that you agreed to turn over to me the two hundred and fifty shares of the common stock of the company, which was the controlling stock, it being the only voting stock, in order that we might have control of its financial affairs until all of these notes were liquidated, at the end of which time you were to receive the stock back? A No, sir.

Q Will you tell the Court why you turned the stock over to me? A I came to your office at your request and we discussed the affairs of the Standard Piano Company; you stated that at the time there was a large amount of pianos on hand; I agreed with you, and that they should not be

marketed at a loss; I agreed with you. You stated that if it was the policy in going ahead and marketing those pianos you would want for yourself no change in that policy, and that you wanted me to deliver the stock over to you and let it rest in your hands as bailee until these goods had been marketed, with the understanding that you would turn back the stock to me when these goods had been marketed, which were already on hand and a new policy then adopted to continue the business. On that understanding I turned over the stock to you; it was assigned in blank; I turned over one share of stock to Mr. Bonar at the time, together with the minute book, agreeing that a young man in your office should act as secretary of the company and I would resign as treasurer and director.

The Court. What was this all about? Was the company in financial straits at that time?

Q Mr. Herdien, what was the occasion of this meeting? A The occasion was, as I recollect it, that you did not want Mr. Nelson and myself in charge of the company.

Q And was it not due to the fact that the company was not at that time able to meet its present obligations? A No, that was not the feature of the proposition.

Q Is it not a fact that at that time the company was insolvent? A It was not insolvent.

Q Do you recall my getting permission to have William Weber make an audit of the Standard Piano Company's books that were in your possession? A Yes, I believe I gave you permission at that time to examine the books.

Q And that it was after I had received the audit from Weber that I sent for you and told

you that in order that the creditors' interests in the Standard Piano Company be conserved that you had better turn the thing over to us and let us work it out for fear that the large stock of pianos on hand might be sacrificed and the creditors lose? A No, sir, and I never saw the audit statement.

Q I didn't ask you whether you saw the auditor's statement, but isn't that the fact? A No, sir.

Q Are you familiar with the books, or were you so familiar with the books of the Standard Piano Company prior to January 1, 1915, so that you could determine whether items in this audit were correct or not? A I could not unless I referred to the books.

Q When Mr. Bradner showed you a profit and loss statement, a typewritten statement, you identified it as a profit and loss statement for the year 1914, did you not? A Yes, as secretary of the company I received that statement from the bookkeeping department.

Q Then if I hand you an audit based upon the figure taken from the books would you be able to identify the figures? A I would not, unless I compared them with the books.

Q The Federal Commercial Company, of which you were secretary and treasurer, and of which you are now secretary and treasurer, was the owner of some of these notes of the Standard Piano Company, was it not? A Well, the notes, I will answer you—

Mr. Weissenbach. I desire an answer, your Honor, yes or no.

The Court. Answer the question.

A Yes; I take the stand that they are the owner of them.

Q And did not the Federal Commercial Company as such deposit a large amount of those notes, an amount in excess of $40,000 with the Fort Dearborn Trust and Savings Bank as collateral under the trust agreement of March 1, 1913? A Yes, sir.

Q And were not some of those notes paid after they had matured, but as soon as the Standard Piano Company could realize moneys on the sale of pianos? A Some of those notes have been met.

Q And some of the notes that had been sold by the Fort Dearborn National Bank to the Hamilton Investment Company were paid in the same manner, were they not? A Yes, sir.

Q And did not you and I discuss frequently the advisability whether we should pay the Hamilton Investment Company first or the Fort Dearborn Trust and Savings Bank first as the moneys were available to pay off some of these notes? A I remember I discussed with you that the notes of the Federal Commercial Company that they had of the Standard Piano Company should be met promptly when they were due, and you stated you were in accord with me on that.

Q And that was because you needed the money in order to meet the maturing obligations of the Federal Commercial Company on its collateral trust notes and bonds which had been certified by the Fort Dearborn Trust and Savings Bank, isn't that a fact? A Yes.

Q Did you at any time object or direct me or direct Kelley to refuse to pay the face value or the face amount of any of the notes of the Standard Piano Company that were in the possession

of the Hamilton Investment Compnay? A No, sir, I did not give you any special notice on that.

Q Did you give me any notice at all? A No, sir.

Q Did you at any time during the year and three months that we have seen each other frequently in connection with the affairs of the H. P. Nelson Company and Commercial Security Company and Standard Piano Company ever inform me or advise me that these notes failed in consideration either in part or wholly? A Yes, sir.

Q Referring to that portion of your testimony with reference to the charge of ten per cent., your Honor, this may not go directly to the insolvency, but it may have to do with the question as to whether or not there is a usurious contract; if there is a usurious contract it may enhance the value of the assets of the Standard Piano Company; they allege that in their affidavit. If it is true we as creditors welcome it, and I do not want to impose upon the court.

The Court. Let us see how it develops.

Q As secretary and treasurer of the Standard Piano Company, Mr. Herdien, you dealt with yourself as secretary and treasurer of the Federal Commercial Company, did you not, in the purchase of piano leases or lien instruments of the Standard Piano Company? A Not as secretary and treasurer, but I think as secretary of the Standard Piano Company, and at that time I negotiated the deal with the Federal Commercial Company and on through to the Commercial Security Company.

Q But you had charge of the financial affairs of the Standard Piano Company at the time, did you not? You were the largest holder of common

stock? A Well, I don't know as I would say I was absolutely in charge.

Q You were the largest holder of the common stock, were you not? A Yes.

Q You were in charge of the affairs of the Federal Commercial Company, were you not? A I was acting as secretary and treasurer.

Q You were in charge of the affairs, were you not? A In charge of the books.

Q And in charge of all its dealings, were you not? A Not all its dealings, no, sir.

Q I am not speaking now of its clerical force? A There is a president of the company.

Q Did the president ever take any active part in the financial affairs or financial dealings of the Federal Commercial Company? A Yes.

Q In what particular? You mean Col. J. H. Strong? A Yes; negotiated loans for the company, and was in on every financial transaction, but he did not enter into the proposition of the purchase of contracts, except that he would confer with me on every purchase made.

Q But you had charge of the purchasing of contracts, that was within the province of your proposition? A Well, we had both of us to do with that.

Q But didn't you in the largest measure do it? A As custodian of the books, yes.

Q In your affidavit filed in support of this motion to dismiss, Mr. Herdien, you state in language as follows: "The amount actually due to the Commercial Security Company and Federal Commercial Company on the face of the papers is now $126,000, but this is subject to a deduction for charges of usurious interest; in some cases there is a charge of eight per cent. and in other cases a charge of ten per cent. in addition to the regular six per cent. I am a member of the bar practicing

in the State of Illinois and I know that the statutes of Illinois prohibit a charge of interest of more than seven per cent. The penalty for usury in Illinois is loss of interest."

The Court. What is your question?

Q Now, my question is did the Federal Commercial Company, or did you, acting for the Federal Commercial Company, charge the Standard Piano Company a usurious interest of ten per cent. in addition to the regular six per cent?

Mr. Bradner. I object. That is a conclusion.

Mr. Weissenbach. I am asking him did he.

Mr. Bradner. That is a conclusion.

The Court. Did he charge ten per cent?

Mr. Weissenbach. Ten per cent. in addition to the regular six per cent. that he alleges he did in the affidavit.

The Court. That is a proper question. Answer it.

A I am answering. My answer to that question from the affidavit is in this sense, that the status of the contract has never been determined by any court proceeding, and in some jurisdiction a contract of similar nature has been called a loan and in some jurisdictions it has been called a purchase contract, and it is a question with me which it is. In the complaint it was set out as being loan, and I answered it from that standpoint, that if a loan it would be usurious interest, if a purchase it would be regular.

Mr. Weissenbach. I submit, your Honor, that that is not a proper answer to the question, because there is no presumption in the affidavit; it is a plain statement of fact.

(Question and answer read).

Q *(By the Court).* Did you or your company charge the piano company ten per cent. discount in addition to the six per cent. interest bargained for? A That is my opinion of it.

Q *(By the Court).* I know,—but it is either a fact or is not a fact. What is the fact about it? That is what I want to know; I don't care anything about your opinion. What is the fact about it? Did you charge them ten per cent. addition or not? A Yes, I think the company did charge ten per cent. in addition to the six per cent.

Q *(By the Court).* What do you know about it? A I know the transactions between the Standard and Federal Commercial Company, and that is the way I construe it.

The Court. The witness talks about construing things and coming to conclusions. Now, what we want is the fact.

A I am only careful in answering that, your Honor, because I am not a court and the contract has not been construed in any court.

Q *(By the Court).* You know whether you charged ten per cent. in addition to the six per cent., don't you? A Yes, we did.

Q *(By the Court).* You did that? A Yes, sir.

The Court. Now, we will draw the inference whether that was usurious or not.

Q Now, after charging the Standard Piano Company the ten per cent. did you not in turn sell those same contracts to the Commercial Security Company on the basis of eight per cent? A Yes, sir.

Q And did you not prior to November of 1915 have all of the collections on these lien instruments and piano leases go to the Commercial Security Company from the Standard through the Federal Commercial? A Yes.

Q And did you not deduct from those collections your two per cent? A No, sir.

Q Or had you deducted that in the first instance? A The proceeds were sent, less ten per cent.

Q Less ten per cent? A To the Standard, and the same transaction took place from the Federal Commercial Company to the Commercial Security Company.

Q Then you are not prepared to say,—in other words, your affidavit that it was usury you withdraw?

The Court. Oh, I don't understand he does at all. He has just stated his conclusion about it.

Q In the answer of the defendant, paragraph 15, it is said, "That said companies," referring to the Federal Commercial Company and Commercial Security Company, "charged this defendant and exacted from this defendant in some cases eight per cent., and in other cases ten per cent. for the use of the money which was advanced to this defendant, and that said exaction was contrary both to the law of the State of Illinois and the law of the State of New Jersey, and constitutes usury in both states. This defendant alleges that the claims of said two corporations will be reduced by reason of the usury charge the total amount of the interest that has been paid and exacted, and that they will not be entitled to any interest. The amount of $126,000 as aforesaid is subject to adjustment by deduction of the usurious interest charged." In your affidavit in your conclusion you state that all of the allegations contained in the answer of the defendant are true. Is that allegation true? A To the best of my information and belief.

Q That it is usury practiced by the Federal Commercial Company in its dealings with the Standard Piano Company? A Yes.

The Court. Well, now, that is a question of law that I have got to decide, I suppose. This is my conclusion; I am the one who has to reach a conclusion, and not the witness.

Mr. Howell. This is a question of the law of Illinois. This witness in his affidavit testifies he is an expert on that, and I understand foreign law sometimes becomes a question of fact.

The Court. Always a question of fact. He is giving an opinion.

Q Mr. Herdien, referring to your testimony of your meeting with Mr. Kelley, in Chicago, or your coming rather, to Newark, to take up with Mr. Kelley the question of filing the income tax report, why did Kelley refuse to file the report or sign the report as treasurer?

Mr. Bradner. I object.

The Court. What did he say when he refused?

Q What reason did Mr. Kelley assign for his refusal?

Mr. Bradner. I object. There is no evidence that he did refuse.

The Court. This witness testified to it.

Mr. Bradner. That he refused himself.

Mr. Weissenbach. No, that Kelley refused.

Q What did he say when he refused? A He stated that he was not treasurer in the year 1914 and could not sign it.

Q Did you file the affidavit or file the report? A No, sir.

Q Did you not leave that report with Mr. Kelley here, and did he not return it to you unexecuted? A I sent it down here; I sent it down to Mr. Kelley and he sent it back to me saying that he could not sign it, and that it would be up to myself and Mr. Bonar to sign.

Q Did you attempt to show Mr. Kelley wherein the loss of $15,000 occurred? A Yes; I think I went into that feature with him at the time.

Q What did you say to him at that time? A Well, I figured it out on the income tax that there was a loss on the business of $15,000, but I did it hastily and I did it in about a half hour's time, and I was not satisfied with the report.

Q That was a loss for the year 1914? A Yes, sir.

Q Mr. Herdien, how much money was paid into the Standard Piano Company at the time of its incorporation?

Mr. Bradner. I object to that as not cross examination.

The Court. You may answer.

A I don't recollect just now; it was either $1,000 or $5,000, in accordance with the requirements of the state.

Q Was it in excess of $5,000? A It consisted of cash and pianos.

Q Was it in excess of $5,000? A It might have been; I don't know.

Q You were one of the incorporators, were you not? I don't mean the kind of incorporator you call an incorporator in this state, but you were one of those who organized the company, one of the original stockholders? A I was one of the stockholders, yes.

Q And received a majority of the common stock, that is to say, two hundred and fifty shares out of the four hundred issued? A 249.

Q How much did you pay for that stock?

Mr. Bradner. I object.

The Court. It is proper to find out how much money was paid into the company at the time of its organization.

Mr. Bradner. He has said about $5,000.

The Court. I think the question is proper.

A I don't recollect that I paid any money for the stock at all.

Q Who gave you the stock? A The stock was issued by the company to me.

Q Who was secretary at the time of the issuance of the certificate? A A man by the name of Turnquist.

Q Who was president? A A man by the name of Forbish.

Q Of the Standard Piano Company? A Yes.

Q Who was Turnquist? A Turnquist was secretary of the company.

Q What was his business before that, and by whom was he employed, if anybody? A He came here from Chicago.

Q With whom was he engaged in business or by whom was he employed there? A I don't know.

Q Did you ever know him before he was secretary of the company? A I did not, no, sir.

Q Who elected him secretary of the company?

The Court. Why do you pursue this?

Mr. Weissenbach. Simply to find out who Mr. Turnquist is, because it has an important bearing on the question of the $60,000 preferred stock. If there are assets here to be discovered, as Mr. Herdien has attempted on his

direct examination to uncover, we feel that these assets should be uncovered so that if this corporation is actually solvent that these proceedings be dismissed.

The Court. What has Mr. Turnquist got to do with it?

Mr. Weissenbach. He was secretary; I wanted to know where he was, to find out with reference to Mr. H. P. Nelson's issue of $75,000 worth of stock. We have never been able to locate Mr. Turnquist.

The Court. You can not go fishing that way here.

Q How much did Mr. Nelson pay for his 150 shares of common stock?

Mr. Bradner. I object.

The Court. I will permit that, because that goes to show how much money went into the company originally.

A I don't know.

Mr. Bradner. The stockholders are not making any claim.

The Court. The creditors are.

Q Will you answer the question? A I don't know.

Q How long after Mr. Turnquist was secretary were you treasurer? A Mr. Turnquist was secretary for about six months or more.

Q And you became the secretary then? A I think I became secretary after he resigned, yes.

Q And when did you become treasurer? A I don't recollect that date.

Q That was some time in 1914, was it not? A It might have been.

Q Did you when you assumed the office of treasurer endeavor to ascertain whether or not the capital stock had been paid for? A Yes, I knew at the time.

Q You did know at the time? A Yes.

Q And how much was paid in for the entire issue of capital stock of the Standard Piano Company? A I don't recollect now.

Q But you did know? A I did know at the time, yes.

Q If I were to refresh your recollection,—I am referring now to your examination before the referee in bankruptcy at Chicago in February, 1915, in the H. P. Nelson hearing on the 6th day of March where you, among other things, on the examination testified as follows, with reference to the stock of the Standard Piano Company at the time that the capital stock of $100,000 was to be made up. To make myself clear on that I will read the question: "Do I understand you to say that there was a portion of Edisonia contracts turned in to the Standard Piano Company in payment of its capital stock? A To make myself clear on that I will say it again. In July, 1913, at the time that the capital stock of $100,000 was to be made up it was thought at the time that it would take $60,000 of these contracts that were practically of no value to turn them in as capital stock of the Standard Piano Company, and the idea was that if the Standard Piano Company went along as they were doing and their paper profit was of the right kind they would soon make up the capital stock and any deficiency that this paper might prove up to be; and then at that time it was thought that any value these contracts were to the Nelson Company should be charged to Mr. Nelson personally on his account, and Mr. Troyka estimated it as being

worth $5,000 and they were (these Edisonia contracts) and as I understand it, the charge was not made and was not entered against Mr. Nelson for several months thereafter, and then the contracts were never delivered to the Standard as capital stock of the Standard Piano Company." Do you recall testifying to that before the Referee? A I recollect in substance that that is in the main correct, that it was contemplated at one time that the Edisonia contracts would enter into capital stock of the company, but it was never consummated.

Q Then, as a matter of fact, the issue of $60,000 of preferred stock to Mr. H. P. Nelson was without consideration? A Well, I don't know about that; I know that $60,000 of preferred stock was issued and was delivered to him probably nine months or so after the formation of the company, but it was never paid for, never subscribed for.

Q Was it accepted by him? A Yes, he received it.

Q And did not the records of the company show him to be the owner of that stock?

The Court. Why do you pursue the stock?

Mr. Weissenbach. Your Honor, in his affidavit here he testifies that Mr. Nelson does not claim the stock, does not own the stock, and I want to show that he, as secretary of the Federal Commercial Company, in the light of this affidavit, issued certificates, or he as one of the officers of the Federal Commercial Company issued certificates of the Federal Commercial Company's preferred stock and took in payment of that the preferred stock of the Standard Piano Company.

The Court. The point that I have in mind is that you are attempting to show how much money came into the Standard Piano Company

at the time of its organization or at any time after.

Mr. Weissenbach. Yes.

The Court. Now, you are directing your inquiries toward another corporation.

Q Was any money or property or anything of value paid into the Standard Piano Company in return for the preferred capital stock of the company issued to H. P. Nelson? A I don't know that there was.

Q Was any money or property turned into the Standard Piano Company for the issuance of the 150 shares of the common stock of the Standard Piano Company? A Yes.

Q How much? A I don't recollect now, but there was property and cash at the time the company was organized.

Q About how much? A Well, I think there was about five to ten thousand dollars cash, and there was property of probably $5,000 or more paid in at the time.

Q You are not positive? A I don't recollect, no.

Q Will the books of the company show that $15,000 was paid in in return for the 150 shares of the common stock? A I don't know.

Q Where is the 150 shares of common stock now, Mr. Herdien? A Where is the 150 shares?

Q Yes, issued in the name of H. P. Nelson?

The Court. You mean in whose name it stands?

Mr. Weissenbach. Where is it, in whose possession?

The Court. The certificates?

Mr. Weissenbach. Yes.

A It is now in the possession of the Fort Dearborn Trust and Savings Bank.

Q Don't you mean the Fort Dearborn National Bank? A No, the Fort Dearborn Trust and Savings Bank hold the stock of the Federal Commercial Company preferred stock.

Q If I were to tell you that it was in the possession of the Fort Dearborn National Bank under the assignment of the Federal Commercial Company would that refresh your recollection that you were mistaken? A It might be.

Q In your affidavit you state that "among those assets were notes of the Standard Piano Company which had been signed in blank by the president of the Standard Piano Company. Those notes were to be filled in from time to time to cover the amount of the indebtedness of Standard Piano Company to H. P. Nelson Company, which last mentioned company was selling pianos to the Standard Company. The agreement was and I know it to be a fact that H. P. Nelson Company was to charge for the pianos wholesale price." Just before that you say there were some financial transactions with the company and bank which resulted in the bank getting control of the assets of H. P. Nelson Company and among these assets are notes of the Standard Piano Company. You state in your affidavit that the bank knew that there was a failure of consideration. What officer of the bank knew, what officer of the Fort Dearborn National Bank, if anyone, knew there was a partial or whole failure of consideration in these notes? A Mr. L. B. Pattison, the director of the Fort Dearborn National Bank.

Q What officer of the bank with whom you negotiated a loan? A Of my own knowledge, I don't know whether Mr. Lambert, the vice-president, know everything about the transaction of the Standard Piano Company, but I know that Mr. Porter, as treasurer—

Q Answer my question. What officer of the bank knew, not whether you think an officer knew, but what officer knew that there was a failure either in whole or part for the consideration of those notes? A Not of my knowledge, no vice-president or president or officer of the bank knew of the failure of the consideration of the notes.

Q Will you explain this paper to me? A About that $25,000?

Q Yes. A That is made up of about $15,000 or $16,000 from the Federal Commercial Company and about $8,000 of the Commercial Security Company, and that makes a total of $24,000; it should be $24,000 instead of $25,000.

Q You say here eight per cent. and ten per cent.; I thought you were charging eighteen per cent.? A The reason for that is, part of that is eight per cent. and part of it is ten, and it is not my figures; I was misled by the figures that appear upon this paper.

Q Referring to the meeting of the directors of the Standard Piano Company that was held in my office on December, 1915, at which there were present Mr. Bonar, Mr. Nelson, yourself and Mr. Goldberg and Mr. Jacobowsky of the bank, and myself, do you recall that meeting? A Yes.

Q That meeting was called after a conversation with you, was it not, with reference to the deferred assets then in the possession of the Commercial Security Company? A Yes.

Q And H. P. Nelson, F. W. Bonar and Mr. Goldberg were the three directors of the Standard Piano Company? A Yes, sir.

Q And at that meeting is it not a fact that a resolution was presented and unanimously adopted assigning this reserve to the Fort Dearborn Trust and Savings Bank to protect the notes of the Standard Piano Company that had been deposited with

the Fort Dearborn Trust and Savings Bank as collateral with the Federal Commercial Company? A Yes, sir.

Q And is it not a fact that a meeting of the stockholders that was called in Newark, that meeting having been called for a conference with yourself, Mr. Nelson and myself, called in good faith, that the two directors were present—Goldberg had resigned as director—that then a stockholders' meeting was convened and Mr. Bonar presented a resolution that the stockholders meet, and there were present H. P. Nelson, yourself, Mr. Bradner, Mr. Kelley, Mr. Bonar and myself; that Mr. Bonar presented the resolution that had been agreed upon ratifying the action of the Board of Directors of the making of this assignment of the deferred assets to the Fort Dearborn Trust and Savings Bank, and that thereupon you presented a resolution without notice disapproving the act, and that two of the three stockholders present, or the alleged stockholders, voted to disapprove their own act of four weeks before? A Yes.

Mr. Bradner. I object to that; it is an argument.

Q Do you recall, referring to that part of your examination where you testified to meeting Mr. Kelley at Chicago, that he claimed a statement of the Standard Piano Company or H. P. Nelson Company was being prepared? A Yes.

Q Is it not a fact that Kelley refused to sign an affidavit as treasurer because he was not familiar with the affairs of the company prior to his incumbency as treasurer? A That information never came to me.

Q Were you not present at my office when Mr. Kelley said "No, I will not sign it because I know nothing about it?" A No, sir.

Q Did I not then and there ask you to sign as agent, and the question arose as to whether it would be proper, and you refused to sign? A No, sir.

Q The affidavit of the claim? A No, sir.

Q Is it not a fact that the loss that the Standard Piano Company incurred in the administration of its affairs in the year 1914 was due to the fact that so many pianos had been repossessed?

Mr. Bradner. One moment. I object. That assumes that there was a loss.

The Court. I think it is evidence enough; it takes very slight evidence, you know, to allow a proposition to be proved. I think that he has already stated enough to have it considered that there was such a document as that bandied between him and Mr. Kelley. I will permit the question.

Q (Question read.) A No loss, net loss on the pianos sold during 1914, but every piano repossessed by any piano concern is a loss, but the gross, there was a gross profit and a net profit in 1914.

Adjourned until tomorrow morning at half-past nine.

February 5, 1916.

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

Continuation of examination, pursuant to adjournment, on Saturday, February 5, 1916, at the place and in the presence of the Court and the parties as before.

WALTER L. HERDIEN, resumed for

Further cross examination by Mr. Weissenbach.

Mr. Bradner. I would like to call your attention to the fact that a moment or two after the Court adjourned yesterday afternoon, and while Mr. Nelson and Mr. Herdien were still in the court room, who are here as witnesses in this case from Chicago, they were served with subpoenas on behalf of Mr. Heiser, one of these affiants, to appear before the referee in bankruptcy next Tuesday. I think the court ought to be made aware of it; it seems to me it was a very improper procedure.

Mr. Weissenbach. I desire to state to the court that I have no knowledge of it in any way whatever, nor have the firm of Pitney, Hardin & Skinner.

The Court. Whether such service is good or not is not a question for this court.

Q Mr. Herdien, in testifying yesterday with reference to the issuance of the capital stock of the Standard Piano Company I failed to ask you whether F. W. Bonar, the president of the company, in whose name one share of stock was issued, ever paid for that one share of stock? A My best recollection is that that share of stock was issued to Mr. Bonar for services to be rendered.

Q Then it was not issued to him merely as a qualifying share? A I don't think so; I don't just exactly remember now the instance of the proposition, but I know there was an agreement made with Mr. Bonar.

Q Mr. Herdien, I hand you a paper and ask you to tell the Court what this is, if you know?

The Court. It is hardly worth while to pursue a single share, because it means only a hundred dollars.

Mr. Weissenbach. Your Honor, I merely wanted to complete the total issue, that was all.

The Court. Well, what is it?

Q What is that, Mr. Herdien? A It is a letter addressed to the office of the Collector of Internal Revenue.

Q By whom? A By myself.

Q Is that your signature? A Yes, sir.

Q And you sent that letter? A Yes.

Mr. Weissenbach. I desire to offer the letter.

Mr. Bradner. I don't suppose it is offerable in evidence at this time; it can be identified.

The Court. What does it intend to show?

Mr. Weissenbach. A letter written by Mr. Herdien to the Internal Revenue Collector October 5, 1915, to the effect that he had been informed that the Standard Piano Company had failed to make the return required by the laws of New Jersey; that the corporation became involved in financial difficulties late in the fall of 1914 and early part of 1915; that in January, 1915, it became necessary to trustee the stock to secure the holders of the obligations of the company?

The Court. I think that is proper evidence, Mr. Bradner.

Mr. Bradner. I don't object to its going in on their case, but not on mine.

The Court. You have no right to put it in at this time.

Marked 1 for identification.

Q Mr. Herdien, in your testimony yesterday as part of the accounts receivable of the Standard Piano Company, as part of the assets of the Standard Piano Company you gave accounts receivable, $8,000; will you please tell me what those accounts receivable are? A According to statements issued by Mr. Kelley from time to time they were accounts receivable about $3,000, and then there is a carload of pianos shipped, electric pianos shipped to Engelhart-Seybold Company, carload and a half, which has never been accounted for and should be in the accounts receivable.

Q Do the records of the Standard Piano Company show anywhere that these electric pianos were sold to the Engelhart-Seybold Company? A Yes.

Q And they are charged to the Engelhart-Seybold Company?

The Court. On the books?

A I don't know that they are charged to the Engelhart-Seybold Company, but you will find in the shipping book about May, 1915, that a carload and about a half of electric pianos were shipped there.

Q As a matter of fact, the electric pianos that were shipped to the Engelhart-Seybold Company were second-hand instruments, were they not, and were shipped to it— A No, I don't think there were any second-hand instruments in the lot; there were some of them that had not been entirely completed—the electrical apparatus had not been entirely completed in them—but they were new instruments.

Q And is it not a fact that they were shipped to the Engelhart-Seybold Company up at St. Johnsville, New York, for repairs? A I think some of them were not entirely completed, but there should be an account of it.

Q But they were sent to the Engelhart-Seybold Company for repairs, were they not? A That I don't know; I never heard the reason why they sent them there; I know the directors never ordered it.

Q Upon what theory do you fix the amount at $8,000? A $3,000 in accordance with Kelley's statements, and $5,000, I think, is a very proper estimate of a carload and a half of electric pianos, because they run into money very fast.

Q How many pianos were there that were sent to the Engelhart-Seybold Company? A I don't know just the exact number, but the shipping book will tell that.

Q Then, without knowing the exact number, you fix the value of them at $5,000? A I estimated at the time because a carload takes in from eighteen to twenty pianos, and then there was over a carload.

Q How many over a carload? A I just can't remember, but I only estimate the carload, because the electrical instrument is worth from $250 to $300 apiece.

Q How many instruments were there? A If there were twenty—

Q Not "if." How many instruments were there? A I don't know just how many, but there was a carload and a half.

Q What kind of instruments were they? A Electrical instruments.

Q In what state of repair were they? A I don't know.

Q Then your estimate of $5,000 for the value is a mere guess, is it not? A No, it is approximation; I am allowing now $1,000 for any repairs that might have to be made to them.

Q If you don't know the number of pianos that were shipped for repairs, and you don't know the condition they were in, then your estimate of the five thousand dollar value is a mere approximation, a mere guess, is it not? A It is on approximation; that is what it is.

Q But no definite knowledge on your part justifies the value of $5,000? A Yes, from my knowledge of the values of electric pianos, I know what they cost when they are in proper condition, and from that knowledge I feel that I am very reasonable in putting it at $5,000; I wouldn't sell them for that.

Q Your figure of $5,000 is not based upon anything that you know yourself as to the actual value of the instruments in question? A No, sir.

Q Mr. Herdien, in your testimony yesterday you stated that every repossession was a loss. Just what do you mean by that? A I mean

this. If you sell an instrument and have to repossess it you are losing the selling cost of the instrument, and in that event if it costs you $35 to sell the instrument you have lost that $35; you may be able to sell the piano for more money next time, but it is not usually done.

Q I hand you a document and ask you to tell the Court what it is? A It appears to be a letter dictated by myself, not signed by myself, on July 24, 1914.

Q Addressed to whom? A Addressed to W. W. Forbish, president of the Standard Piano Company.

Letter marked 2 for identification.

Q During the year 1914, or during the incumbency of Mr. Forbish as president of the Standard Piano Company, and since that time there have been a large number of repossessions of instruments theretofore sold by the Standard Piano Company, were there not? A Yes.

Q And those repossessions entailed a great loss to the Standard Piano Company, did they not? A Yes.

Q Have you examined the records of the Standard Piano Company, that is the books, for the purpose of ascertaining the amount of loss to the Standard Piano Company during the year 1915 due to repossessions? A I have not accurately gone over the items, no.

Q I hand you this general ledger and refer you to page 5. Will you please tell the Court what page 5 of the general ledger of the Standard Piano Company shows in the way of loss to the Standard Piano Company by reason of re-possessions, of you can? A I would have to figure that; without having the journal in front of me,

and I have not seen the journal, there are several journal entries here which I assume takes account of the repossessions.

The Court. Well, where is the journal?

A And there is a journal entry every month which probably bulks the total repossessions; so I can not state of my own knowledge that this is the accounting of the repossessions, but if I had the journal here I could tell it; but assuming that this is the fact, there was in May $5,159.50 of repossessions made, the instruments coming back to the store to be sold again. On June 30 there was $4,314.52, that represents the total unpaid balance on the contracts that became null and void through repossessing the instruments from the customers. On July 31 there was $3,305.20; on August 31 there was $6,489; on September 30 there was $5,058.50; on October 31 there was $5,500.25; on November 30 there was $6,367.15; on December 31 there was $1,477, making a total of $37,671.12. Now, this is not all a loss, because you get the instruments back again, and it might represent a loss maybe $12,000 in the account, $10,000 in the account; you would have to take every instrument that was sold again for the actual price, and you would have to offset that against this price, and then you could determine the actual loss, and it might not be $5,000.

Q But in the usual course of business, Mr. Herdien, would you not say that $12,000 to $15,000 would be the approximate loss? A You could not approximate the loss; the only way that you could do that would be to take every instrument that was repossessed and find out just what the price was that you got for it, cash or in instalment paper, and deduct that from the total price there, and add to that the selling cost of selling the

piano, which, according to figures that I have received from the Standard Piano Company, amounted to about $35 a piano during the year.

Q Mr. Herdien, this thirty-seven thousand dollar loss, or $37,000 of repossessions would be charged off against the reserve held there by the Federal Commercial Company or the Commercial Security Company, would it not? A Yes.

Q The $37,000 of repossessions were the repossessions between May 1st and January 1, were they not? A Yes, sir.

Q Have you any record of the amount of repossessions between January 1, 1915, and May 1, 1915? A I haven't here.

Q I asked you whether you have any? A No.

Q Do you know what those repossessions amounted to? A No, I do not.

Q Do you know what the amount of repossessions were in the year 1914? A No, I do not.

Q Have you made any effort to ascertain the amount of the repossessions during the year 1914? A Yes, I made an effort to ascertain; I made a hurried examination of the books; I had only about half an hour to do it in, and it was very rapidly done, and I found many errors had been made after I had gone to Newark to make up the statement of it, and then I later on found profit and loss statement of 1914. I will say in behalf of this thirty-seven thousand dollars worth of repossessions, they have to be taken off the reserve, they have all, I understand, been made good to the Federal and Commercial Security Company, because there have been contracts coming in on the repossessions ever since May, on all these repossessions that have been made to make good, and there is an account in the book here, current account set off.

Q Do you say that all those repossessions were made good so that there is nothing charged against the reserve of the Commercial Security Company on those repossessions? A Yes, sir.

Q All of them have been made good? A Yes, all except there is an item that was checked up in about February, 1915, and at that time there was repossessions on about $22,000 and $18,000, making a total of about $40,000, which went through the Federal; now, the Federal, at the present time, has contract, of $170,000, but we have never received the figures from Mr. Kelley; Mr. Kelley, I understand, has given the figures to the Commercial Security Company, but the Commercial Security Company has never rendered us a statement of that account, and I see here in this record here—

The Court. You need not sum up on that line. Pay attention to the question and answer the question.

Q In the statement from which you testified yesterday as to the assets and liabilities as of today of the Standard Piano Company, among the assets you say leases unassigned $4,820. Is it not a fact that a large part of that $4,820 is made up of leases which were taken on pianos that had heretofore been repossessed, and the new leases should not be considered an asset, but must be turned over to whoever held the former lease, is that not a fact? A It is not a fact, because of the fact that the records show here there was only repossessed in the month of December some $1,477 worth of pianos; there were shipped to the Standard Piano Company about five carloads of new pianos in the month of December, and they had nothing but new goods to sell.

Q Then how much of this $4,820 is made up of leases on pianos that had been repossessed at any time prior to the date of their sale or resale? A I don't know that any of them have been.

Q Would you say that none of them are? A I won't, because I haven't the records, necessary records in front of me.

Q Then if you haven't the necessary records in front of you are you now prepared to state to the Court that this item of assets, leases unassigned, $4,820, is a proper asset against which there can be no lien on the part of anyone? A As I stated yesterday, I took that amount from the reports of the Standard Piano Company for the week of January 8th, week of January 15th and week of January 22d. I see from the numbers on the goods here that there are a good number, good price for the goods; the Gerhart Company, 94,000, is new piano just issued—

Q Just a moment. Now, that you have testified that you are familiar with the serial numbers of the pianos, will you examine that statement or those three sales sheets and answer whether you can tell from the three sales reports that you have there the number of the pianos that had been sold that had formerly been repossessed? A I can tell the number of pianos sold, but I can not tell the number of pianos that you might say might be a repossession. There is only about three pianos on this list.

The Court. There is no question pending.

Q Yes, your Honor; he was examining the record to see the number. (Question read.) A No, I can't tell from this statement on that what has been repossessed.

Q Then this item of $4,820 is not a proper item to include among the assets, is it? A Yes.

Q Upon what theory do you make it a proper— A Because of their sales during the month of January, and they seem to be all new goods.

Q Are you prepared to state that there are no liens against either of these leases, or prior liens against the instruments? A I would say in that respect I would have to examine the records to say exactly on that.

Q Then if you are not positive that there are no prior liens this item of $4,820 should not be considered by the Court as a fact.

The Court. That is instructing the Court.

Mr. Bradner. That is subject to explanation by the other side.

Mr. Weissenbach. We will explain it, Mr. Bradner.

Q Turning to the item, the first item under liabilities, notes payable $34,300; will you turn to the notes payable account in the general ledger, Mr. Herdien. I think it is page 50, and state what the general ledger shows to be the amount of notes payable? A General ledger amount under November 30, 1915, is $97,244.02.

Q Upon what basis do you place the liabilities of notes payable at $34,300? A On the basis that the notes should not have been issued for more than the proper amount, that they are in excess of the actual liabilities of the Standard Piano Company, that there is about $35,000 due the Standard Piano Company on overcharges made by the Nelson Company. The Nelson Company would ship the goods on consignment, on a consignment basis, with the understanding that when the notes were made out they would be made out for the regular wholesale price; then the Nelson Company ordered the Standard to pay

for taxes down here on their building, and for other things, in the amount of about some $29,000, making about $64,000 all together. Now, those notes should not have been filled out for any other amount than the proper amount when left by Mr. Forbish in blank with the Nelson Company.

Q When Mr. Forbish left these notes signed by him in blank, left them with the Nelson Company, were you an officer of the Nelson Company? A No, sir.

Q Were you an officer of the Standard Piano Company? A Yes, I believe I was there either their treasurer or their secretary.

Q Did you know that these notes were issued in the amounts for which they were issued? A No, sir.

Q Did you at any time know that? A Yes.

Q When did the Standard Piano Company sell these notes to the Federal Commercial Company? A The Standard Piano Company what?

Q Sell these notes? A They never did.

Q When did the Federal Commercial Company purchase these notes? A The Federal Commercial Company received these notes from the Nelson Company, Mr. Porter delivering these notes, and under an assignment of the Federal sometime in September, I think it was, or October, anywhere around there, 1914.

Q And were you an officer of the Federal Commercial Company at that time? A Yes.

Q Did the Federal Commercial Company pay the H. P. Nelson Company a full consideration for these notes? A As far as I recollect they did.

Q When did you first discover this partial or whole failure of consideration? A After the bankruptcy of the H. P. Nelson Company.

Q How soon after the bankruptcy of the H. P. Nelson Company? A It was discovered when your auditor, when you sent your auditor over, Mr. Weber, over to audit the Standard Piano Company books, and then the question of the notes came up, and you took the question, you took the matter up with me and you asked me how it came that the Standard Piano Company owed so many notes, and I told you that I would look into it, and I explained to you later that I found that they had gone to work and had filled out notes for a greater amount than was due from the Standard Piano Company, and I explained those items to you, and that if the proper amount had been put in that the Standard Piano Company would not owe so many notes.

Q How long after the examination by the auditor did you tell me this? A A short time afterwards.

Q Is it not a fact, Mr. Herdien, that it is only within the last month that I charged you with having knowledge of the fact that Forbish executed whole books of notes in blank and forwarded them to the Nelson Company, and that you denied that you knew anything about it? A Absolutely not; you took this up with me in the early part of January, 1915, and you stated to me that the Standard Piano Company should file a claim against the Nelson Company for that amount, and it was agreed upon between you and me that this should be done, and Mr. Kelley came to Newark in the last month, having delayed up to the last month, for that specific purpose.

Q Is it not a fact, Mr. Herdien, that the Nelson Company's books show the total of these notes as a credit to the Standard Piano Company? A As a credit to the Standard Piano Company?

Q Yes. A I haven't seen the account of the Nelson Company books and I don't know anything about it, how they handled it.

Q In the accounts payable under liabilities you state the sum $10,029; that includes Stanley and Sons, does it not? A Yes, sir.

Q Liabilities to the Federal Commercial Company of $51,029.93, is that a correct statement? A Yes, it is correct as far as I can make the figures out, and I am taking it from the books of the Federal.

Q From the books of the Federal? A Yes, sir.

Q Not from the books of the Standard Piano Company? A Yes, I verified it with the books of the Standard Piano Company.

Q Had you taken into consideration when you fixed the amount at $51,000 the shortage on repossessions for which there had never been an accounting made to either the Federal Commercial or to the Commercial Security Company? A I have.

Mr. Bradner. That was all explained in detail yesterday.

Q Is the item on this statement of assets and liabilities and under the head of liabilities to the Commercial Security Company, $44,800, a correct statement? A As far as I can make it out from the books. You see if you only have the ledger and don't have the journal with you you can not very well go into every item.

Q Will this assist you? (Handing witness book.) A Now, the ledger is not posted up to date, and I will say this, that it probably would not vary over $2,000, the whole proposition.

Q Less or more? You said it would not vary $2,000? A Well, it would not vary $2,000 one way or the other.

Q Mr. Herdien, how much stock did you own in the H. P. Nelson Company at the time these overcharges that you testify about were made?

The Court. What is the relevancy of that? What difference does it make whether he has one share or a thousand?

Mr. Weissenbach. It only goes to the credibility of the witness, that is all.

The Court. I don't see how it does that, even.

Mr. Weissenbach. Simply show an interest or no interest. If the Court feels that it won't I will withdraw the question.

The Court. I overrule that question.

Re-direct examination by Mr. Bradner.

Q Mr. Herdien, you were asked yesterday if any officer of the Fort Dearborn National Bank had any knowledge of the issuing of the notes by the Standard Piano Company and the delivery of them to the H. P. Nelson Company, and you stated, "Not any officer." Can you say whether any director knew anything about that transaction? A Mr. L. B. Pattison.

Mr. Weissenbach. I want to object to that question; I don't believe that is proper re-direct.

The Court. I think it is; it is bringing to the attention of the witness specifically a matter which you cross examined on and which really was not opened on the direct examination, as I remember it. Go on; you may answer.

A Mr. L. B. Pattison.

Q Who was Mr. Pattison? A Mr. Pattison was director of the Fort Dearborn National Bank.

Q And in what way did he participate in that transaction? A He was vice president and director of the H. P. Nelson Company.

The Court. You are trying to bring home notice to the bank?

Mr. Bradner. Yes, sir. I propose to show that he was put in the vice presidency of the H. P. Nelson Company by the Fort Dearborn Bank. It is a very long story. I propose to show to the Court that Mr. Pattison, director of the Fort Dearborn Bank, was put into the board of directors and made vice president of the H. P. Nelson Company at the request of the Fort Dearborn Bank to represent the bank there, and that Mr. Porter was put in there as treasurer of that company for the same purpose, and that all these notes that have been brought here are endorsed H. P. Nelson Company by Porter, treasurer.

Mr. Weissenbach. This witness testified that he did not know of the failure of consideration until after the bankruptcy. How can this witness now testify that he knew that the bank had notice at the time of their issuance, unless it was hearsay; obviously if the witness did not know until five months or six months after the issuance of notes that the notes failed wholly or in part of consideration that he could not know of notice six months prior.

The Court. That sounds like a good argument, Mr. Bradner.

Mr. Bradner. Let us ask him how he knows.

The Court. I know, but if he did not know until long after the notes were discounted or were transferred then his knowledge must be hearsay knowledge. The rule about bringing home notice to a corporation since the case of, I think it was the Vulcan Detinning Company against the American Can Company was pretty strict; I don't think you can prove it in this way. I overrule the question.

Q Were you at any time connected with the H. P. Nelson Company? A Yes, sir.

Q And when did you leave that company? A I resigned at the time that Mr. L. B. Pattison was made director and vice president.

Q When was that? A About the middle of August, 1914.

Q Who was Mr. Porter? A Mr. Porter was elected secretary and treasurer.

Q (*By the Court.*) Who was he? A At the same time.

Q Who was Mr. Porter? A Mr. Porter?

Q Yes. A He was acting—

Mr. Weissenbach. I object to that, who he was acting with.

The Court. You haven't heard the answer yet; you don't know what his answer will be.

Q Mr. Porter was the agent of the Fort Dearborn National Bank?

Mr. Weissenbach. I object to that; that is a conclusion.

The Court. Strike that out.

Q Identify the man, who was he in Chicago, what was his business? A His business was, he was at one time employed in the auditor's office, state auditor's office, I think, in Springfield,

Illinois, and had been employed by Mr. Tilden, a large stockholder of the Fort Dearborn National Bank at different times; I didn't know very much about the man myself until he entered into the negotiations between the Fort Dearborn National Bank and H. P. Nelson Company.

Q There were some negotiations between the bank and the H. P. Nelson Company? Yes, sir.

Q At that time were you on the board of directors of the H. P. Nelson Company? A Yes.

Q And you know about the negotiations? A Yes, sir.

Q As a result of those negotiations did you retire from the H. P. Nelson Company?

Mr. Weissenbach. I object to that; I can't see how it goes to the relevancy of the question put by the Court.

The Court. I don't understand the relevancy of that, Mr. Bradner. We understand that these corporations were pretty well mixed up and their dealings were very complicated, and I find it very difficult to separate the one from the other in my mind when this evidence is being adduced.

Q Was Mr. Porter elected treasurer immeditely upon your retirement? A Yes.

Q You were an officer of the Federal Commercial Company when some notes of the Standard Piano Company were taken by that company? A Yes.

Q Do you know who sent those notes to the Federal Commercial Company? A Yes.

Q Who? A Mr. Porter.

Q When did you have your conversation with Mr. Weissenbach in relation to the notes? A I had several conversations with him in the early

part of January, 1915; I took the matter up with him, and then it was talked about in reference to the Standard Piano Company filing a claim against the H. P. Nelson Company before the period would expire for the claim to be filed, which would be December 24, 1915.

Q Right in here, when was the the H. P. Nelson Company adjudicated a bankrupt? A December 24, 1914.

Q Did you make any agreement with Mr. Weissenbach? A Yes, sir.

Q At that time? A Well, it was a little later on that we made arrangements in reference to the notes; Mr. Weissenbach and I arranged that the Federal Commercial Company notes should be paid first; after that what was held by the Fort Dearborn National Bank and Hamilton Investment Company were paid with the understanding that the Standard Piano Company should file a claim against the Nelson Company for the overcharge on the pianos and the cash that was paid out in behalf of the Nelson Company and at their request.

Q In your conversations with Mr. Weissenbach do you know who he represented? A Yes.

Q Who? A Fort Dearborn National Bank and Hamilton Investment Company.

Q What was your expectation as to the recovery from the Nelson estate of those overcharges and credits? A Claim had been filed against the Nelson Company; I expected the claim to be allowed for the amount of the shortage, for the amount that was due the Standard Piano Company on the overcharge on the pianos and the cash that had been paid out by the Standard at the request of the Nelson Company.

Q How much would that claim amount to? A About $64,000.

Q Did you make out a claim at any time? A Mr. Kelley went over with me the claim on the cash paid out on behalf of the H. P. Nelson Company, and at their request he came to Newark, he came from Newark, after having had a talk myself with Mr. Weissenbach with reference to the specific purpose of filing that claim, and his expenses were taken care of by the Standard on that trip. He stayed around Chicago about a week; and I never knew anything about the claim not being filed until after he had gone.

Q What was Mr. Kelley then? A What?

Q What was he? A He was treasurer of the company and the only proper officer to file the claim.

Mr. Weissenbach. That is a conclusion.

The Court. Yes; a lawyer ought to know better than to talk that way.

Q Do you know whether any of the notes of the Standard Piano Company which you now claim were excessive in amount have been paid? A Yes, some notes have been paid; they were divided up into thirty-six monthly instalments, and by dividing them up in thirty-six monthly instalments there was an excess on each note.

Q Do you know Frank G. Wright and Company? A Yes.

Q Do you know whether they had any of the notes? A Yes, they did.

Q Who are they? A They are brokers; they are a commercial paper house.

Q Were the notes that they held paid? A Yes, all of them.

Q Was Mr. Weissenbach connected with the matter at that time? A Yes; he knew of them being paid.

Q Do you know the Logansport Trust and Savings Bank? A Yes, sir.

Q Did they hold any of the notes? A They did hold some of them.

Q Were they paid? A Yes, all of them.

Q Were any paid to the Citizens State Bank? A Yes, all of them.

Q Why were those notes paid, if you know? A There could be no defense against those notes; they were discounted in the regular way for valuable consideration before maturity.

Q Do you know anything about the making of a note by H. P. Nelson Company for $90,000? A Yes.

Q To the Fort Dearborn National Bank? A Yes.

Q How do you know it? A I was at the H. P. Nelson Company plant at the time; I was at the H. P. Nelson off and on for several months after I resigned as director, and I was looking after some legal matters for the concern, closing up some matters, contested matters.

Q You saw the note? A No, I didn't see the note that I recollect of.

Q Have you ever seen the note? A No, I have not.

Q That was the note that Mr. Fletcher referred to, was it, yesterday, the $90,000 note? A Yes.

Q That is the same one you have in mind? A Yes.

Q *(By the Court).* Was that a single note or credit of $90,000 represented by several notes?

Mr. Weissenbach. $90,000 note; this was part of the collateral.

Q That note was made, however, after you had resigned? A Yes.

The Court. Resigned what?

Mr. Bradner. As director and treasurer of the company.

Mr. Weissenbach. He was never treasurer of the Nelson Company.

A I was never treasurer of the company.

Mr. Bradner. Can that note be produced, Mr. Weissenbach?

Mr. Weissenbach. I don't think there is any question about it; I don't know; I personally have never seen the note, but the bank has a record of it and I assume the bank has got it, unless the bank sold that note together with the collateral to the Hamilton Investment Company.

The Court. Is there any doubt but that there was such a note made?

Mr. Weissenbach. There can be no question; the witness has testified the note was executed, but he never saw the note.

Mr. Bradner. My information is that the note has been cancelled, but I don't know whether that is true or not.

Q You have no personal knowledge, then, Mr. Herdien, of the delivery of the Standard Piano Company notes to the Fort Dearborn National Bank? A No, sir.

Q What is this paper I show you? A This is the agreement entered into between the Standard Piano Company and the Federal Commercial Company in reference to the lease contracts on their pianos?

Articles of agreement offered in evidence and marked Exhibit D 1.

Q Do you know, Mr. Herdien, whether any of the twenty per cent. regular reserve has been paid over to the Standard Piano Company? A None whatever.

Q By either the Federal or Commercial? A No, sir.

Q You were asked yesterday about your stockholding of 249 shares, as to what you had paid for it. Will you explain how you got that stock? A The stock was issued and it was agreed between the stockholders that I should receive that amount of stock—

The Court. Wait a moment. Does that make any difference? That evidence was introduced for the purpose of showing that he did not put any money in the company, that was for the purpose of showing the financial condition of the company. Now, if he did put in any cash does it make any difference what he did put in? I don't think it is relevent here.

Mr. Bradner. Now, in relation to the affidavits here by Mr. Kelley and Mr. Crandall and Mr. Heiser, which in many respects attack Mr. Herdien, I do not want to take the time of the Court in going through this in detail; I will ask permission to file Mr. Herdien's affidavit with you within some limited time and denying all those allegations, or explaining them; otherwise I think we ought to have the privilege of going over them.

Mr. Weissenbach. I suggest this, if you file with the Court an affidavit of Mr. Herdien, explaining or denying anything that was set up in these affidavits, and within limited time, as you state, we should be given an opportunity to inspect them and file reply affidavits, and if you do that we will never finish this law suit.

Mr. Bradner. The fact is there and we are not content to let it stand on the record without any denial or explanation.

The Court. I think you ought to have an opportunity to deny and explain.

Mr. Bradner. Your Honor will give me leave to deny or explain all those allegations?

The Court. Yes.

Re-cross examination by Mr. Weissenbach.

Q I hand you this document and ask you to please tell the Court what it is? A It is a trust agreement entered into between the Federal Commercial Company and Fort Dearborn Trust and Savings Bank, the usual trust agreement between commercial houses.

Q What is the purpose of the trust agreement? A The purpose of the trust agreement is that the company engaging itself in the business of handling negotiable paper and accounts receiveable may place these accounts receiveable and paper with the trustee and issue against them collateral trust notes payable at different times.

Q At the time that this was executed you were secretary and treasurer of the Federal Commercial Company, were you not? A Yes.

Q And it was under this trust agreement that you deposited with the Fort Dearborn Trust and Savings Bank as trustee the notes of the Standard Piano Company, is that not so? A Yes, sir.

Trust agreement marked 3 for identification.

Q I hand you this document and ask you to tell the Court, please, what it is? A This is trust agreement entered into between the Federal Commercial Company and Fort Dearborn Trust and Savings Bank, under date of May 1, 1913.

Q And it was under that trust agreement that the bonds were issued? A Yes.

Q See if I am not right, that the Federal Commercial Company bought these Standard Piano Company notes for a good and valuable consideration from the H. P. Nelson Company? A Yes.

Q Do you remember the amount? A I don't recollect just exactly the amount.

Q And the Federal Commercial Company then took these notes and deposited them with the Fort Dearborn Trust and Savings Bank as collateral under this collateral trust agreement? A Yes, sir.

Q And against that collateral issued its own, the Federal Commercial Company's own collateral trust notes? A Yes.

Q *(By Mr. Bradner).* May I ask right here, are those notes a part of the $97,000 appearing now on the books of the Standard? A Yes.

Q About $43,000 of those notes are in the $97,000 that appear upon the books? A Yes.

Mr. Bradner. And where are the rest of the $97,000?

Mr. Weissenbach. We have them here. Shaw has them.

Trust agreement marked 4 for identification.

Q Who rented the premises at Broad and Central Avenue where the Standard Piano Company first had its business, that great big building down here on the main street, who rented that?

Mr. Bradner. I object.

The Court. What is the point of it?

Mr. Weissenbach. He testified that the Standard Company had at the direction of the H. P. Nelson Company paid out large sums of money, I want to show that the H. P. Nel-

son Company were the lessors of this large building and sublet to the Standard Piano Company.

The Court. For what prupose do you want to prove that?

Mr. Weissenbach. I was just going further; the Standard Piano Company failed to pay the rent for certain months, and that there is now a claim filed in the H. P. Nelson Company estate in Chicago in bankruptcy for the total amount of the rent, and there may be a claim filed against the Standard Piano Company as a possible liability, it is something that may ultimately be a liability.

The Court. It is a contingent thing and the liability is not fixed now as I understand it.

Q Mr. Herdien, have you in your possession or under your control the lease ledgers or lease records of the Standard Piano Company? A Yes.

Q Where are they? A Well, they are on their way here.

Q From where? A Chicago.

Q When did they get to Chicago?

The Court. Why do you pursue that?

Mr. Weissenbach. Your Honor, it is an important thing to the Standard Piano Company that these lease ledgers be in possession of the receiver as long as he remains there, for this reason, that it is almost impossible to make collections—

The Court. If you want them put in the hands of the receiver I will give you an order.

Mr. Weissenbach. Thank you. That is a very important thing.

Mr. Bradner. We will turn them over to the receiver; they will be here Monday.

We Rest.

LEO J. KELLEY, sworn.

Direct examination by Mr. Weissenbach.

Q Where do you live, Mr. Kelley? A Maplewood, New Jersey.

Q What is your business? A Piano business.

Q What was your business prior to the 26th day of January, prior to the date of the filing of the bill for receiver of the Standard Piano Company? A Treasurer of the Standard Piano Company.

Q How long had you been treasurer of the Standard Piano Company? A Since March 19th, I believe.

Q Are you familiar with the affairs of the Standard Piano Company? A Since that date on.

Q Had you prior to that time had occasion to examine the records of the Standard Piano Company, that is, its books? A I did.

Q By what authority did you examine the books of the Standard Piano Company prior to your becoming connected with the company? A As an agent of the Commercial Security Company, who held leases.

Q Mr. Kelley, I hand you what purports to be a statement of the assets and liabilities of the Standard Piano Company and ask you to examine the same carefully?

Mr. Bradner. I object to that.

Mr. Weissenbach. I will strike out the word "carefully."

Mr. Bradner. I object to his testifying from that paper until we know what it is.

Mr. Weissenbach. It is your document.

Mr. Bradner. This is the same one that I had?

Mr. Weissenbach. This has been offered by Mr. Bradner.

Mr. Bradner. I will offer that, and this is a copy of it.

Mr. Weissenbach. I object to its introduction. The witness has testified these figures are approximate and not actual.

The Court. The record shows it all.

Mr. Bradner. I would like to have it marked.

Marked Exhibit D-2.

Q Will you examine this instrument, Mr. Kelley, and tell the Court whether that is a true statement of the assets and liabilities of the Standard Piano Company? A No, sir.

Q What do you mean by that answer? A That it is not a true statement.

Q Wherein is it not a true statement? A In the assets there are three items, leases assigned to the Federal Commercial Company, leases assigned to the Commercial Security Company, and leases unassigned.

Q Wherein are those items incorrect? A If the leases are assigned it becomes a liability, not an asset.

Q What do you mean by that? A Well, in case, as the case is, the Commercial Security Company has taken these leases—

Mr. Bradner. I object. He is giving his opinion.

A I am giving actual facts.

The Court. Let him tell what the facts are. I will form my own opinion.

Q What are the facts? A The Federal Commercial and the Commercial Security Company took over the leases of the Standard Piano Company.

The Court. How took them over, bought them?

A Bought them under their contract, therefore the Standard Piano Company becomes indebted for the amount of those leases, less whatever equity, if any, at the time of the purchase or transfer of those leases; therefore the amount due on those leases becomes a liability on the part of the Standard Piano Company and the equity or reserves becomes an asset.

Q That refers to the Federal Commercial Company and the Commercial Security Company? A Yes, sir.

Q Now, the third item that you refer to, leases unassigned? A Leases unassigned.

Q Wherein is that incorrect? A The leases unassigned is correct.

Q Give the amount? A As far as I recall, which stands as an asset of the Standard Piano Company, which is a true asset, and if that is a true asset as unassigned how can an assigned—

Q Don't argue with me. A I am just showing the point.

Q Answer my question? A Yes.

Q In the amount $4,820 of leases unassigned are there included any leases on pianos that had been sold before and the lien instrument on that piano sold to either the Federal or Commercial Security Company? A On that $4,820?

Q Yes. A It covers leases sold, but through the Standard Piano Company, or pianos sold by the Standard Piano Company but not transferred or sold through the Federal or Commercial Security Company.

Q Mr. Kelley, since your connection with the Standard Piano Company as treasurer, has the Standard Piano Company received either directly or indirectly any return on the reserves held by either the Federal Commercial or Commercial Security Company? A No, sir.

Q Have you been able to ascertain from the records of the Standard Piano Company whether at any time since its organization it ever received in return any of the reserves that are carried as an asset? A Not to my knowledge.

Q Can you tell the Court why they did not receive any return from those deferred assets; will you state the reasons? A Because the customers who purchased these contracts were in default and the defaults on those contracts were far in excess of any available amount.

Mr. Weissenbach. Does your Honor follow that? Mr. Herdien tried yesterday to explain to the Court the nature of this business.

The Court. Let the witness explain.

A Do you wish me to explain the dealings?

Q I want you to explain to the Court just why the Standard Piano Company never received back any of the equities held by the Commercial Security or the Federal Commercial Company and which were carried as an asset of the company on their books?

Mr. Bradner. That is, within your knowledge.

Q Yes? A Under the contract with the Commercial Security Company, Federal Commercial Company and Standard Piano Company I believe there is a clause in their contract which recites that this reserve is returnable quarterly, based on twenty per cent. and collections which from time to time are remitted on such leases, less any defaults which may have accummulated in any quarter, or at any time an accounting might be asked for the reserve which might be available.

Q So then the defaults were in excess of the collections? A Yes.

Q By defaults what do you mean? A An instalment due on the lease and not paid at the time of its maturity and it has lapsed for some time or remitted at some future date, and it is a default on the account until such time as it may have been paid.

Q Mr. Kelley, can you state to the Court what in your judgment, from your examination of the books and your familiarity with the affairs of the Standard Piano Company, the assets and the liabilities of that company are?

Mr. Bradner. I object to his opinion about it, your Honor please.

Q No. Can he state?

The Court. Can you state what the assets and the liabilities are, the true assets and the true liabilities?

A From the records that I have been able to get together since I have been connected with the Standard Piano Company they show a deficit of something in the neighborhood of $55,000 to $60,000.

The Court. You will have to give the details of that.

Q When the bill of complaint in this matter was filed or was being prepared, did you prepare a statement of the assets and liabilities of the company? A Yes.

Q At the request of Messrs. Pitney, Hardin & Skinner? A Yes.

Q Is this memorandum prepared by you? A Yes.

Q *(By the Court).* Is that the one that is in the eighth paragraph of the bill? A Yes, your Honor.

Q Will you explain, Mr. Kelley, the statement of assets and liabilities and from what facts did you derive those figures? A The assets, cash in

bank, the leases, piano leases, I show here $174,000; the records show at the time I took off that statement $191,000, but figuring on repossessions of at least ten per cent. on the sales made I put a fair valuation on those leases of $174,000, merchandise on hand approimately $5,000.

Q From what did you approximate that? A From the instruments on hand, by taking the cost price of the instruments; the furniture and fixtures, $200, I believe, is a fair estimate; the automobiles, $900 is fair.

Q Isn't that a little bit excessive for two Fords? A Well, it is a little bit; it is a little bit high; accounts receivable $500, making a total of $182,400.

Q Mr. Kelley, you just read accounts receivable, $500; what do the books show the accounts receivable to be? A The books show the accounts receivable of $3,000 with offset entry due to the Edisonia Estate of $2,500 and something.

Q Who owes the Standard Piano Company the difference between the $500 and the $3,000? A The Commercial Security Company.

Q And why do you charge the Edisonia as an offset against the Commercial Security Company's account? A We purchased—

Q When you say "we" you mean the Standard Piano Company? A The Standard Piano Company purchased from the Edisonia Estate some forty pianos which were on storage at the Smith-Wallace storage.

Q Who did you purchase those through? A Through, I believe, it is the Central Trust; what is the name of it?

Q The Central Trust Company of Illinois? A Yes; and I believe those were purchased at $40 apiece, which brought it up in the neighborhood of a little better than $2,600 or $2,500; and that is

offset by this $3,000 which is due from the Commercial Security Company, and the difference leads to about approximately $500.

Q And that is all the accounts receivable? A To my knowledge.

Q Does the Engelhart-Seybold Company owe the Standard Piano Company anything for electric pianos? A Not that I know of.

Q Do you know of any electric pianos having been shipped to the Engelhart-Seybold Company? A Yes.

Q And for what purpose? A For repairs; they were shipped on memorandum as far as my knowledge is.

Q But not purchased by the Engelhart-Seybold Company? A No; not to my knowledge.

Q And they are still the property of the Standard Piano Company? A Yes.

Q Where are those Standard Pianos now? A I believe they are in St. Johnsville, New York.

Q Do you know the value of those pianos? A In estimating the stock on hand when I went in the institution, going over the matter with Mr. Bonar, we decided they were not worth very much to the Standard Company.

Q When you took inventory of it, and while those electric pianos were in the possession of the Standard Piano Company did Mr. Bonar give you any valuations on those electric pianos? A I think we both—

Q I didn't ask you what you did. Did Mr. Bonar—answer my question—give you any valuation at all? A No, sir.

Q Did he say anything as to their value? A Yes.

Q What did he say? A They were worth about $20 apiece to us; I agreed with him.

Q The twenty-three pianos? A Yes.

Q Did you see those pianos, those instruments? A I was up in the warehouse, yes—I looked over some of them; I didn't take any particluar notice; I just knew they were there.

Q Were they in good or bad state of repair? A I can't answer that myself.

Q Will you examine the liabilities of the Standard Piano Company as you know them and state to the Court what they are? A This note is payable, account here $94,000; I believe the record, the statement submitted by me showed ninety-seven thousand and some odd dollars, and it has assigned invoice $4,300; I am not very clear on that, but I understand that it was assigned invoice put up by the bankers, collateral to some notes, the notes of which I don't know whether they are paid, and the invoice I have been told has not been paid; accounts payable $9,400, which is practically the figure that has been agreed on; money borrowed on security $139,000.

Q (*By Mr. Bradner.*) What does that mean? A It is the leases that have been sold through the Federal Commercial and Commercial Security Company.

Q Is that the total of the indebtedness, or is that the total of the indebtedness of the Commercial Security Company and the Federal Commercial Company to the Standard Piano Company, or do you carry that as a liability with the amounts received from the Federal Commercial Company and the Commercial Security Company? Do you understand my question? A That is amount due the Federal Commercial and Commercial Security Company.

Q That is the amount you received from the Federal Commercial Company and Commercial Security Company, is it not, or is it? A Yes.

Q $139,000? A Yes.

Q Mr. Kelley, do you include in your bills payable the note of the Fort Dearborn National Bank, the $5,000? A No, I do not; I believe I overlooked that entry putting the memorandum on the book after showing that that note had been signed by the Fort Dearborn Bank, and for that reason in the Commercial Security Company's account there is a lead pencil notation that the money for forty-nine hundred and some odd dollars was received from the Fort Dearborn, I believe.

Q Will you refer to that? What was that $5,000 for and when did the Standard Piano Company receive it? A The Standard Piano Company received that on or about the middle of December; they needed money.

Q For what? A To pay their current indebtedness; and there were a couple of people threatening suit, and for that reason we had to get the money somehow or other, and we took the matter up with you and you had us execute that $5,000 note, which was discounted at the Fort Dearborn Bank.

Q And the moneys, the proceeds of that note, was fresh money put into the Standard Piano Company, was it not? A Yes.

Q And did you use any part or did you use all of that to pay the current indebtedness of the Standard Piano Company? A To the best of my knowledge and belief it was all.

Q Did any of that money go to pay any of the indebtedness you owed to the Fort Dearborn National Bank or to anyone on any of these notes? A No, sir.

Q I understand, subsequently to the filing of this bill, you made another affidavit wherein you reduced the assets of the company from the figure

that you placed the value of the reserves to an amount some $35,000 less. Do you recall making that affidavit? A I believe it was estimated about $35,000.

Q And what was the reason for changing that, if there was any reason? A The depreciation in the accounts.

Q What accounts? A In the lease accounts.

Q Do you consider the reserves held by the Federal Commercial Company and Commercial Security Company an available asset of the Standard Piano Company? A No, sir.

Q Why not? A The defaults on those contracts held by them are so far in excess there isn't anything available at this time.

Q When could the Standard Piano Company, in your judgment, in your experience and with your knowledge of the affairs of the Standard Piano Company and its relations with the Federal Company and Commercial Company, when, in your judgment, would they receive the benefit of this asset? A Undoubtedly when the accounts pay out.

Q Can you give the Court an idea just when that would be? A Why, from two to three years, I imagine.

Q Did you at any time receive notice from anyone, either directly or indirectly, that the notes of the Standard Piano Company that were offered in evidence here that are now owned by A. B. Shaw and the notes owned by the Federal Commercial Company that are deposited with the Fort Dearborn Trust and Savings Bank, and the notes of the Standard Piano Company that have been held by the Logansport Trust and Savings Bank and South Bend Banking Company and Citizens' Trust and Savings Bank, Hamilton Investment

Company and Frank G. Wright & Company were not bona fide notes and given for a full consideration? A No, sir.

Q Did you pay these notes in the regular course of business? A Yes.

Q Did you prefer anyone in the payment of these notes? A No, sir.

Q Were any of these notes presented to you as treasurer of the company for payment and payment refused? A Yes.

Q Why did you refuse payment? A Didn't have the money to pay them.

Q Was there any agreement between you and the holders of any of these notes that the notes should not be presented through any banks here? A Yes.

Q What was that agreement and with whom did you have it and what was the reason for it? A I told you that there was some notes being presented here different times and we did not have the money to pay them, and it was rather embarrassing for the Standard Piano Company to have banks calling up and stating that they held notes and would like a check for it and couldn't pay them, and you said you would have those notes presented at such times when the Standard Piano Company was in possession of funds to meet them.

Q Mr. Kelley, did Mr. Bonar know that these notes were being paid? A Yes.

Q Did he at any time request you not to pay any of these notes? A No, sir.

Q Did he at any time tell you that there was a failure in part or whole consideration of the note? A No, sir.

Q Did Mr. Bonar work with you in straightening out the financial affairs of the Standard Piano Company? A We both worked together.

Q And was he or was he not familiar with the financial status—that is, the present financial status of the Standard Piano Company? A Yes.

Q Did you have any convesation with Mr. Bonar within a month or six weeks prior to the filing of this bill for the appointment of a receiver with reference to the possibile continuance of the Standard Piano Company as a going concern?

Mr. Bradner. Is that contradiction of Mr. Bonar? I don't remember that he was asked anything about it.

Q (Question read.)

Mr. Bradner. There is no foundation for that.

The Court. He says there is an affidavit in which Mr. Bonar makes an assertion about it. I will admit it.

A Why, I believe there was a little conversation.

Q Do you remember the substance of that conversation or the exact conversation?

Mr. Bradner. I insist upon the exact conversation.

The Court. Oh, yes; give the conversation to the best of your ability.

A Well, as far as I can say, we understood that the Standard Piano Company was in process of liquidation, and that the conversation come up that Mr. Bonar and I might start in the piano business here in Newark if the Standard Piano Company discontinued, at which time it was one time agreed that we should go in, and then Mr. Bonar changed his mind and said he had been offered a better position and did not care about going in business with me.

Q Mr. Kelley, Mr. Bonar in an affidavit filed here, said that the total business of the Standard Piano Company for the year 1915 was approximately $200,000, and that the profits of the company during that same year was $75,000; is that correct? A I would like to see the figures.

Q I am giving you the figures, $200,000 worth of business, and profit $75,000? A I would like to see how he arrived at it, though.

Q I am asking you whether that is correct? A I don't believe it is.

Q Did you ever have a conversation with Mr. Herdien with reference to the financial condition of the company? A Yes.

Q Did you ever have a conversation with Mr. Herdien with reference to the filing of an annual income tax report of the Standard Piano Company? A Yes.

Q Will you give us that conversation as nearly as you can recollect it? Let us know when and where it took place. A Why, Mr. Herdien—

Mr. Bradner. Mr. Herdien has not denied the conversation and there is nothing to contradict.

Mr. Weissenbach. There may be something in the conversation that Mr. Herdien has not told the court.

The Court. The other side has a right to put in the conversation.

A As far as I can recall, Mr. Herdien showed me a statement of the income report for the year 1914 which showed a loss of somewhere in the neighborhood of $15,600; he left it with me for Mr. Bonar and I to sign.

Q As officers of the company? A As officers of the company, and file the report; I took the

matter up with Bonar and told him I did not care to sign that report, inasmuch as I was not an officer in 1914, and Mr. Bonar and I went down to the office together, the income office, and we asked them—I explained my position, why I did not wish to sign, and he said to get the former—

Q Your conversation with the income tax collector is not wanted. Did you have any further conversation with Mr. Herdien with reference to it? A I think when he showed me that statement he mentioned that the reason for the loss was due to the heavy repossessions during 1914.

Q Do you know whether or not the Standard Piano Company made a profit, a net profit during the year 1915? A No.

Q By that answer do you mean they did not make a net profit? A As far as I have been able to figure they have not.

Q Well, did they make a profit or did they sustain a loss in business operations during the year 1915? A I should say a loss.

Q On what do you base that statement? A The figures from April 1st to December 31st.

Q Will you give the Court the figures of the Standard Piano Company during that time? A The sales from April 1st to December 31st, including cash sales, first payment and time sales, amounted to $147,761.25; stock on hand at the close of the year $5,440, making a total of $153,-201.25; purchases during the year $25,635; stock on hand April 1st, according to the invoice price charged by the Standard Piano Company, $56,059, making a total of $81,694, showing a gain on that transaction of $71,507.25; miscellaneous, rents, $99.99; miscellaneous income, $788.23, making a total gross income of $72,395.47. The deductions from that, the general expenses $32,466.92; rent

on building, $2,625.03; losses on repossessions, pianos repossessed, $40,364.12; additional interest charge or brokerage charge on leases sold, $7,569.74; interest paid by banks, $7.19; taxes, which we were obliged to pay, $588.84, making a total deduction of $83,621.88, or a loss for the nine months of $11,226.41.

Q (*By the Court.*) What paper were you reading from? A Why, I had a blank income tax report in my desk and I just filled in these figures as I took them off the books to make up the total, your Honor.

Q Did you examine the books of the Standard Piano Company for the first three months of 1915? A They were not kept after January 25th, to my knowledge, up until the time I went in there and opened up the new set of books.

Q Do you remember a conversation with Mr. Herdien in Chicago in December with reference to filing a claim of the Standard Piano Company against the estate of the H. P. Nelson Company? A Yes.

Q Did you or did you not refuse to file that claim as treasurer of the Standard Piano Company? A I refused.

Q Will you tell the Court why you refused?

Mr. Bradner. I object.

The Court. Oh, yes; it is enough to know that he refused.

Mr. Weissenbach. I desire at this time to offer in evidence the instruments heretofore marked and identified as Nos. 1, 2, 3 and 4 for identification.

Marked Exhibits C. 2, C. 3, C. 4 and C. 5.

(Adjourned until Friday morning next at ten o'clock.)

Order Amending Order of January 26, 1916.

Order.

(Filed February 7, 1916).

IN CHANCERY OF NEW JERSEY.

Between ALEXANDER B. SHAW, *Complainant,* *and* STANDARD PIANO COMPANY, *Defendant.*	*On Bill, Etc.* *Order.*

This cause now pending on summary hearing before the court, and it appearing that the order heretofore made on January 26, 1916, appointing a Receiver in this cause should be amended and modified:

IT IS thereupon on this 7th day of February, 1916, ORDERED that the order heretofore made dated January 26, 1916, be amended and modified as follows, to wit:

That the corporation defendant be and it is hereby permitted to carry on business in the usual course and with its usual force of employees and agents—but such business shall be carried on under the supervision and control of the Receiver heretofore appointed in this cause; and all moneys collected and received by said defendant shall be paid to and taken by said Receiver to be accounted for by him; and said Receiver is authorized to pay rent of the store premises, wages of employees and agents and usual current expenses of the business

out of any moneys received by him while the business is being conducted under his supervision; until the further order of this court.

E. R. WALKER,
C.

Respectfully advised,

J. E. HOWELL,
V. C.

First Report and Inventory of Receiver.

(Filed February 11, 1916).

IN CHANCERY OF NEW JERSEY.

Between ALEXANDER B. SHAW, *Complainant,* *and* STANDARD PIANO COMPANY, a corporation of the State of New Jersey, *Defendant.*	*On Bill for Receiver.*

To His Honor, Edwin Robert Walker, Chancellor of the State of New Jersey.

The report of Charles L. Farrell, Receiver of Standard Piano Company, respectfully shows:

1. That Charles L. Farrell was by an order made in the above entitled cause on the twenty-sixth day of January, 1916, appointed Receiver of Standard Piano Company, the defendant in the above entitled cause, to demand, sue for, collect and receive and take into his possession all the goods and chattels, rights and credits, moneys and effects, lands and tenements, books, papers, choses in action, bills, notes, franchises and property of every description of the defendant corporation, and to institute suits in law or in equity for the recovery of any estate, property, damages or demands existing in favor of the corporation and generally to do and perform all the duties imposed upon him and required by law.

2. That the said Receiver after his appointment duly qualified by giving bond and taking the oath of office as required by said order and prescribed by law.

3. That pursuant to the requirement of the order of his appointment the said Receiver within five days from the date thereof mailed a notice of said order to all the creditors and stockholders of the defendant corporation at their last known post office addresses.

4. That pursuant to the order of his appointment said Receiver took possession of such of the assets of the defendant company as could be found by him and thereafter up to the seventh day of February, 1916, conducted the business of the corporation as directed in the order of his appointment; that on the seventh day of February, 1916, an order was made in the cause directing that the corporation defendant be permitted to carry on business in the usual course and with its usual force of employees and agents, but under the supervision and control of the Receiver; that since said last mentioned date the business of the defendant company has been conducted as directed in said order.

5. That annexed to this report, as Exhibit A, is an inventory and appraisement of all the estate, property and effects of the corporation so far as now known to the Receiver, and an account of all debts due from and to it as nearly as the Receiver has been able to ascertain the same.

6. That as appears from said inventory the Receiver now has on hand at the place of business of the defendant corporation, No. 584 Broad street, Newark, N. J., a number of pianos of an appraised value of $2,225; that there was one additional piano, to wit, a Cook & Son Piano, No. 69,623, included in the stock at the time when the Receiver entered

upon the duties of his office. This piano was sold for $175 and the proceeds thereof have increased the cash balance of the Receiver by that sum.

7. That at the request of the Receiver, Messrs. Fred L. Cobb, Jr. and Albert H. Atha, two disinterested persons, on the twenty-eighth day of January, 1916, examined the stock of pianos of the defendant corporation and the furniture, fixtures and other tangible assets of the defendant corporation that could be found, and that the Receiver in making the inventory and appraisement above referred to and attached hereto, as aforesaid, has relied upon the appraisal made by said Cobb and Atha; that the valuation of the miscellaneous furniture, fixtures and other tangible assets of the defendant corporation discovered by said Receiver and now in his control is $801.

8. That at the time of Receiver's appointment there was a balance in bank to the credit of the defendant corporation of $1,626.82; that of this amount the sum of $252.97 represented collections that had been made by said defendant corporation for the account of the Commercial Security Company on leases assigned to said Company; that so far as Receiver is advised this money though in the possession of the Standard Piano Company was the property of the Commercial Security Company; that since the appointment of said Receiver he has collected as the agent of the Commercial Security Company upon leases assigned to that Company the sum of $2,171.55 from January 27, to February 9 inclusive, and that he has collected as agent for the Trustee in Bankruptcy of the Edisonia Company upon a lease assigned to that Company the sum of $5; that these sums have been deposited by the Receiver in the same account in the Essex County National Bank in which the other

moneys of the defendant corporation were deposited, as that was the practice of the Company formerly; that Receiver from this account has been paying the rent of the store premises and the other ordinary expenses of the business; that attached hereto as Exhibit B is an itemized statement of the receipts and expenditures of said Receiver since his appointment up to and including said ninth day of February, 1916; that said Receiver has included within his receipts the money received by him as agent for the Commercial Security Company and the Trustee in Bankruptcy of the Edisonia Company, as aforesaid; that the total amount of cash in bank on February 10th was $3,893.75. Of this sum $2,424.52 is the property of the Commercial Security Company as above stated, being made up of the above items, $252.97 and $2,126.55; and of this sum of $3,893.75, $5 is the property of the Trustee in Bankruptcy of the Edisonia Company, as above stated. The balance of said $3,-893.75 after making the above deductions, which balance amounts to $1,464.23, is the amount of cash in bank to be included among the assets of the defendant corporation, and this figure appears in the said inventory.

9. That said Receiver has expended for rent and for the expenses of the business, as shown by the said Exhibit B, the sum of $426.87; that he has received in cash (not as agent for the Commercial Security Company or the Trustee in Bankruptcy of the Edisonia Company) the sum of $517.25; that of the amount now in bank said sum of $1,464.23 is the balance remaining of the original cash in bank of $1,626.82 after adding thereto said receipts of $517.25 and deducting from the total $426.87, paid as aforesaid, and also deducting $252.97, cash belonging to the Commercial Security Company in-

cluded in the original figure in bank at the commencement of said receivership, $1,626.82.

10. That said Receiver has included in said inventory the interest of the Standard Piano Company in deferred payments due on piano contracts. He has, however, stated the value to be unknown. Testimony was given in Court in these proceedings to the effect that this interest was assigned by the Standard Piano Company to the Fort Dearborn Trust & Savings Bank, of Chicago, Ill., and further testimony was given to the effect that the stockholders of the Standard Piano Company repudiated or sought to set aside this assignment. For this reason the Receiver is at present unable to determine whether this interest of the Standard Piano Company is, or is not, an asset. But said Receiver has thought it advisable to include same in enumerating the assets of the defendant company as being a possible asset thereof.

11. That said Receiver has also included among the assets an item, "unsold piano contracts not in the possession of the Receiver," and said Receiver has stated the value of this as unknown for the reason that said contracts have never been turned over to the Receiver by the persons who were officers of the Company at the time of the order of his appointment. Said Receiver is advised that the value of these contracts was stated in court to be $4,100.

12. That said Receiver has further included among the assets a number of electrics and electric harps said to be at the factory of Everhard & Seabold at St. Johnsville, N. Y. Said Receiver has included these items as being a possible asset, although their value is unknown to said Receiver.

13. That said Receiver has listed the notes payable of the defendant corporation under "Liabili-

ties'' at $102,244.02, this figure being taken from the books of the company. The Receiver is aware that the amount of notes payable, for which the defendant corporation is liable, is in issue before this Court and intends to make no pre-judgment of said issue by the inclusion of said amount as a liability of the defendant corporation; that the Receiver in listing the assets of the company has thought it advisable to include only such assets as are certainly of value; in stating the liabilities, however, he has not felt at liberty to omit any of the liabilities that appear on the books of the company with the single exception hereinafter noted. The exception referred to is as follows:

On the books of the company both the assets and liabilities are increased by a very large amount, to wit, an amount of approximately $139,000. This was due to the fact that the piano leases or contracts sold or assigned by the defendant corporation were included as an asset and the amount for which they had been sold or assigned was included as a liability. The Receiver is advised that these leases were sold and not merely pledged, and that, therefore, the amount of money received therefor by the Standard Piano Company is not a liability. On the other hand, the leases themselves are no longer assets, but the only asset arising therefrom is the interest of the defendant corporation in the deferred payments due on said leases or piano contracts. This item the Receiver, as above stated, has duly included among the assets of the corporation as of unknown value.

14. The item of accounts payable shown under the heading ''Liabilities,'' which accounts payable total $8,683.40, were all incurred prior to the beginning of said Receivership.

15. The said Receiver has further included under "Liabilities" two alleged claims against the defendant corporation, one said to be due to the Central Trust Company, of Illinois, Trustee in Bankruptcy of H. P. Nelson Company, and the other said to be due for collections and re-possessions to Frank W. Long, Esq., Trustee in Bankruptcy of the Edisonia Company; that said Receiver has no knowledge of the amount alleged to be due to either of these claimants.

Respectfully submitted,

CHARLES L. FARRELL.
Receiver of Standard Piano Company.

Dated, February 11, 1916.

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

CHARLES L. FARRELL, being duly sworn, according to law, on his oath, says:

I am the Receiver of Standard Piano Company, the defendant in the above entitled cause and in the foregoing report referred to. The matters and things in said report contained, so far as they relate to my acts, are true, and so far as they relate to the acts of others I believe them to be true.

The inventory annexed to the foregoing report is a complete inventory of all the assets of the Standard Piano Company so far as I have been able to ascertain the same.

I verily believe the said statement, marked Exhibit A, to be a true and correct statement of all the estate, property, effects and liabilities of said corporation, so far as I have been able to ascertain the same.

I am aware that many of the matters to which I have necessarily referred in said inventory, both under the heading of "Assets" and "Liabilities" are now in issue before this Court, and that the totals under each heading cannot in any sense be taken as accurate or final. In making the inventory as I have, I intend no prejudgment of said issues. I have thought it advisable in listing the assets to include only such assets as are certainly of value, but in stating the liabilities I have not felt at liberty to omit any of the liabilities which appear on the books of the company, with the single exception referred to in the foregoing report.

With this explanation, I respectfully submit said report and inventory to the Court.

Sworn and subscribed to, before me,
this 11th day of February, 1916.

First Report and Inventory of Receiver.

EXHIBIT A.

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY, a corporation of the State of New Jersey,
Defendant.

On Bill for Receiver, etc.

Inventory and Appraisement

ASSETS.

PIANOS.

Make.	Style.	Finish.	Number.	
Nelson	Grand	Mahogany	68816	$ 100.00
"	Player	"	80772	115.00
"	Upright	Walnut	79249	70.00
"	Player	Oak	87075	110.00
"	"	"	86413	90.00
"	Upright	"	88026	55.00
"	Player	Circassian Walnut	84932	125.00
"	Upright	Circassian Walnut	87338	85.00
"	"	Circassian Walnut	87768	85.00
Gerhard	"	Walnut	84510	75.00
"	Player	Oak	95844	125.00
"	Upright	Mahogany	95252	70.00
"	"	Walnut	95677	70.00
"	"	Circassian Walnut	93592	85.00
"	Player	Walnut	95673	125.00

	Gerhard	Upright	Circassian		
	"	"	Walnut	84458	85.00
	"	"	Walnut	87376	70.00
	"	Player	Oak	95679	125.00
	"	Upright	Mahogany	95928	65.00
	Knabe	Upright	Walnut	598	90.00
10	H. Beckstein	Player	Mahogany	50509	50.00
	Gilbert	Upright	"	51673	40.00
	Steinway	"	Ebony	34854	60.00
	Dickinson	"	Mahogany	95850	65.00
	Forbish Electric		Mission	11911	125.00
	Cook	Upright	Mahogany	70066	65.00
					$2,225.00

20 MISCELLANEOUS FURNITURE, ETC.

1 Victrola (Mahogany Finish)	$	10.00
1 Lamp (Electric)		.50
6 Globes and Fixtures at 2.50		15.00
1 Roll Top Desk		10.00
" " " (Small)		10.00
1 Underwood Typewriter and Table		15.00
1 L. C. Smith Typewriter and Table		10.00
3 Chairs Cane Seats at .75		2.25
1 Burroughs Adding Machine		125.00
1 Mahogany Desk		10.00
1 " " Glass Top		25.00
1 " " " "		25.00
1 Desk		3.00
3 Mahogany Chairs at 3.50		10.50
1 " Chair		3.00
1 Large Safe		35.00
1 Small "		20.00

2 Work Benches	5.00	
1 Steel Filing Cabinet	10.00	
1 Wood " "	5.00	
3 Benches at $ .50	1.50	
3 Stools at $ .50	1.50	
8 " at $ .50	4.00	
3 Benches	1.50	10
3 Coat and Hat Trees	.75	
1 Piano Truck	1.00	
Miscellaneous Tools	1.00	
Screens (Lot)	1.00	
Miscellaneous (Junk)	1.00	
1 Ford Car	250.00	
(*Note*—The company is stated to have had another Ford Car of about equal value. This car, however, has never been in the possession of the receiver and has not yet been located ,and its value is, therefore, not here included.)		20
8 Benches at $ .50	4.00	
1 Piano Horse	1.50	
1 Automatic Harp	5.00	30
21 Duet Benches at $2.50	52.50	
20 Benches at $ .50	10.00	
20 " at $1.50	20.00	
50 Pounds of Cheese Cloth	5.00	
10 Electric Motors at $3.00	30.00	
1 Piano Truck	5.00	
Miscellaneous Piano Parts	1.00	
2 Talking Machines at $ .50	1.00	
1 Table	1.00	
1 Bench	.50	40

	1 Chair	.50	
	1 L. C. Smith Typewriter	5.00	
	Miscellaneous Stationery and Music Rolls	2.00	
	4 Benches	2.00	
	1 High Chair	2.00	
10	3 Wood Filing Cabinets	9.00	
	5 Steel Filing Cabinets	10.00	
	1 Flag	1.00	
	Artificial Palms (Lot)	1.00	
	1 Desk	5.00	
	10 Benches at $ .50	5.00	
	1 Ladder	3.00	
	1 Desk (Work)	.50	
	2 Cabinets at $ .50	1.00	
	1 Electric Fan	3.00	
20	Miscellaneous Tools	1.00	
	Miscellaneous Oils and Varish, etc.	1.00	
			$801.00
	Cash in Bank		$1,464.23
	Accounts Receivable		460.50
	Interest of Standard Piano Company in deferred payments due on piano contracts		(value unknown)
30	(This interest is said to have been assigned to the Fort Dearborn Trust & Savings Bank of Chicago, Illinois.)		

40

Unsold piano contracts not in possession of Receiver	(value unknown)	
Number of Electrics and Electric Harps said to be at factory of Everhard & Seabold at St. Johnsville, New York	(value unknown)	
Total Assets		$ 4,950.73

LIABILITIES.

Notes Payable		102,244.02
Assigned Invoice		4,390.00
Accounts Payable:		
Gulbransen, Dickinson Co.	$ 186.50	
Stanley & Sons	6,686.16	
Archie H. Ormond, Assignee	695.13	
Burroughs Adding Machine Co.	120.66	
H. Behlin & Bros.	4.90	
W. L. Brunyate	135.00	
Holtzman & Co.	21.25	
Knickerbocker Watch Co.	41.00	
Public Service Electric Co.	95.02	
Pinkman & Co.	23.50	
Frederick M. Sommer	64.96	
Shearer Piano Co.	78.50	
Warner Mfg. Co.	23.40	
Western Union Telegraph Co.	29.75	
Commercial Security Co. (Interest)	299.56	
William E. Weber & Company	40.00	
Music Trades Co.	2.00	
Dime Messenger Service	.75	
Bulmers Ltd., Inc.	9.00	

Department of Water of City of Newark	11.19	
New York Telephone Co.	15.17	
Job DeCamp	100.00	
		8,683.40

COMMISSION.

W. F. Bonar—Credit		1,500.00
Open account alleged to be due to Central Trust Company of Illinois, trustee in bankruptcy of H. P. Nelson & Company	(amount unknown)	
Amount alleged to be due for collections and repossessions to Frank W. Long, Esq., trustee in bankruptcy of Edisonia Company	(amount unknown)	
Alleged liability of defendant corporation on two suits pending when the Receiver took office	(amount of liability, if any, unknown)	
Total Liabilities.....		$116,817.42

Newark, N. J., February 10, 1916.

Receiver of Standard Piano Company.

EXHIBIT B.

Report of Receipts and Disbursements of Charles L. Farrell, Receiver, Standard Piano Company, Jan. 27th to Feby. 9th, 1916, inclusive:

RECEIPTS.

Jan. 27	Collections on leases	$104.00	
" 28	" " "	87.50	
" 29	" " "	293.75	
" 31	" " "	244.50	
Feb. 1	" " "	220.00	
" 2	" " "	109.25	
" 3	" " "	141.00	
" 4	" " "	78.50	
" 5	" " "	543.80	
" 7	" " "	234.50	
" 8	" " "	273.50	
" 9	" " "	116.25	
Error on collection reported on Jan. 28		3.00	
			$2,449.55

SALES.

Jan. 28	Max Roth, on account Cook & Son, piano No. 69623	20.00	
" 31	Max Roth, bal. piano & stool	156.00	
" 31	Received from F. W. Bonar on sale prior to receiver, Miss G. Katz account	66.75	
Feb. 1	Mrs. M. Brodwick, a scarf	1.50	
			244.25
	Total receipts		$2,693.80

DISBURSEMENTS.

Jan.	27	Pd. C. S. Demarest, changing combinations		3.00	
"	28	Pd. Adams Express Co., express on stool		.35	
"	29	Pd. Carl Hoffman, Receiver's stamp		.30	
"	29	"	L. M. Hiltgen, salary	2.35	
"	29	"	R. Franchos, "	12.00	
"	29	"	J. E. Walker, "	10.00	
"	29	"	E. J. Kelley, "	20.00	
"	31	"	F. J. Bock, stamps	3.00	
Feb.	1	"	R. A. File, ice	2.40	
"	1	"	F. A. Cleary, watchman	3.00	
"	1	"	Exchange on money order	.10	
"	4	"	L. M. Hiltgen, salary	7.00	
"	4	"	J. E. Walker "	20.00	
"	5	"	H. Schroeder, "	11.70	
"	5	"	L. J. Kelley, "	40.00	
"	7	"	Anna J. Genung, rent for Feby.	291.67	
					426.87
			Bal. after deducting disb'sements		$2,266.93
			Cash in bank Jan. 27, 1916		1,626.82
			Total cash in hand Feb. 9, 1916		$3,893.75

IN CHANCERY OF NEW JERSEY.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

Transcript of testimony taken in the above entitled cause before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, February 16, 1916, at 2 P. M.

Appearances.

Mr. William L. Morgan, Mr. Corwin Howell, and Mr. Joseph Weissenbach (of the Illinois Bar) for complainant.

Mr. Frank E. Bradner for defendant.

LEO J. KELLEY, recalled for further

Direct examination by Mr. Weissenbach.

Q Mr. Kelley, I will read back three questions to you and your answers, which were the concluding testimony given by you before Vice Chancellor Howell, so your memory will be refreshed:

"Q Do you remember a conversation with Mr. Herdien in Chicago in December with reference to filing a claim of the Standard Piano Company against the estate of the H. P. Nelson Company? A Yes.

Q Did you or did you not refuse to file that claim as treasurer of the Standard Piano Company? A I refused.

Q Will you tell the court why you refused?''

and then Mr. Bradner objected, and the Court said, ''It is enough to know that he refused.'' Were you familiar with the books of the Standard Piano Company prior to your incumbency as treasurer in April, 1915? A No, sir.

Q Did you know anything of the items going to make up this alleged claim against the estate of the H. P. Nelson Company? A No, sir.

Q Was that the reason you refused? A Yes, sir.

Mr. Bradner. I object.

Court. Aren't you endeavoring to overcome the Vice Chancellor's ruling? I will sustain the objection. It is immaterial what his reason was; he refused to do it.

Cross examination by Mr. Bradner.

Q Prior to your connection with the Standard Piano Company, what was your business? A I was agent for the American Piano Company and the Commercial Security Company.

Q The Commercial Security Company is the company in which Mr. Crandall is connected? A Yes, sir.

Q And was the American Piano Company also one of his companies? A No, sir.

Q It was another concern? A Yes, sir.

Q And did you as such agent have charge of the collections on piano contracts? A No, sir.

Q Is this your first experience? A No, sir.

Q What experience had you had on those collections before this? A I don't quite understand you. Making retail collections?

Q Yes; on piano contracts. A No actual experience in the retail business.

Q Had you had any experience before you came to the Standard Piano Company in keeping the accounts on piano contracts, the accounts of re-possession? A Yes, sir.

Q Where had you had that experience? A With the American Piano Company.

Court. I notice in the record that expression "re-possession" or "possession." I was going to ask you, for my own information, if that means where a piano had been sold on an installment contract and the party has defaulted in the payment and the company has taken possession of the piano again?

Mr. Bradner. That is it exactly.

Q How long have you known Mr. Crandall? A Possibly eight years.

Q Have you been associated with him in business before? A Not directly connected.

Q When you examined the books of the Standard Piano Company prior to becoming connected with that company, who authorized you to make the examination? A Mr. Crandall.

Q And you did it for him? A Yes, sir.

Court. Does it appear what connection Mr. Crandall had with the Standard Company?

Q Mr. Crandall at that time was the assignee of some piano contracts, was he not? A Yes, sir.

Q Had he at that time taken any contracts directly from the Standard Piano Company? A Yes, sir.

Q To what amount? A That I am unable to tell.

Mr. Weissenbach. In order that the witness may not be misunderstood, you mean

the Commercial Security, don't you, and not Mr. Crandall?

Mr. Bradner. I am talking about the Commercial Security, Mr. Crandall's company.

Court. Are they synonymous in your mind?

Witness. Yes.

Mr. Weissenbach. The Commercial Security Company was the assignee.

Mr. Bradner. When I speak of Mr. Crandall in connection with the contracts, I mean the company, Commercial Security Company.

Q Had any assignments been made directly to the Commercial Security by the Standard Piano Company of piano contracts made before you became connected with the defendant company? A Through the Fort Dearborn National Bank there were two lots of paper.

Court. Notes?

Witness. Of piano leases.

Q But you had no personal knowledge of that? A Yes, sir.

Q Did you participate in the transfer of those leases through the Fort Dearborn National Bank? A Prior to my coming in?

Q Yes. A No, sir.

Q When you say you had personal knowledge, what do you mean? A By the reports that I received from the Commercial Security Company to make the checking.

Q Those reports you had received after you became connected with this company? A No, sir.

Q Where did you receive those reports? A At the New York office.

Q Of the Commercial Security Company? A Yes, sir.

Q What was the nature of the transfer through the Fort Dearborn National Bank? A I believe that the leases were guaranteed by the Fort Dearborn National Bank before they were turned over to the Commercial Security Company.

Mr. Weissenbach. What the witness tells isn't what the Court wants.

Court. I sustain the objection.

Q You don't know what was done? A No, sir.

Q You only judged from the reports that came in, that the Fort Dearborn National Bank had in some way participated in the transfer of those leases?

Mr. Weissenbach. Objected to.

Court. Objection sustained. He may state anything he knows; we don't want his belief or judgment on the subject.

Q You made a special examination, did you not, of the financial condition of the Standard Piano Company at the request of Mr. Crandall? A As far as his account went only.

Q His account as the Commercial Security Company? A Yes, sir.

Q When did you make it? A I believe I started on the 23rd day of February, 1915.

Q And what was the purpose of that? A To find out the condition of the leases.

Q Nothing else? A Not to my knowledge.

Q Were you interested at that time in ascertaining whether the Standard Company was solvent or insolvent? A No, sir.

Q At that time can you tell me whether the Commercial Security Company held any contracts? A Yes, sir.

Q Can you tell me the amount? A I cannot tell you the exact amount.

Q Can you tell approximately? A Approximately one hundred and fifty—one hundred and sixty thousand.

Q Do you know what was the amount of the assets of the Standard Piano Company at that time? A No, sir.

Q And you didn't make any investigation? A No, sir.

Q Nor of the liabilities either? A No, sir.

Q When did you become connected with the Standard? A March 19th, I believe.

Q Upon your direct examination you were asked, on page 122, "Are you familiar with the affairs of the Standard Piano Company? A Since that date on." (Referring to March 19th.) "Q Had you prior to that time had occasion to examine the records of the Standard Piano Company; that is, its books?" and you answered "I did," and you stated that you made the examination as an agent of the Commercial Security Company; and the next question is: "Mr. Kelley, I hand you what purports to be a statement of the assets and liabilities of the Standard Piano Company and ask you to examine the same carefully." Do you recall seeing that statement? A Yes, sir.

Q When did you make that up? A I don't believe that I made the one up that was handed me.

Q You didn't make it up yourself? A No, sir.

Q When was the first occasion when you—

Mr. Weissenbach. May I submit to the court that if counsel is going to read from the testimony, in order that the court might not be misled, if the counsel will proceed to read my argument and his objection and let the court know that it was then shown that the statement or paper that was handed to Mr. Kelley was one prepared by Mr. Bradner and one that Mr. Bradner handed me—

Court. I presume I will have to read the entire record, and Mr. Bradner is entitled to read such portions of the record as he thinks necessary for his present purposes.

Mr. Bradner. And I might be testing the witness's memory.

Mr. Weissenbach. There were several papers handed the witness; they were marked Exhibit D 2.

Mr. Bradner. It is correct that the paper was afterwards marked Exhibit D 2.

Q You were shown a paper, Mr. Kelley, which was marked Exhibit D 2, and asked to examine it; do you remember that? A Yes, sir.

Q You did not prepare that paper yourself? A No, sir.

Q When did you first make any examination of the financial condition of the defendant company for the purpose of ascertaining whether it was solvent or insolvent? A On or about April 1, 1915.

Q And as a result of that examination did you at that time form any judgment as to the financial condition of the company? A Yes.

Q What was it?

New Jersey State Library

Court. Is it material what his judgment was? How will that give us any information? If we had the figures that he prepared at that time on which he based his judgment, we might be able to see whether his conclusion was wrong or right, but I do not see how it would give me any information, to learn what he thought of the condition of the company. The question is now, what do we think of the company at the present time, not in April, 1915.

Mr. Bradner. I might ask one more question.

Q In making that investigation, were you acting on behalf of Mr. Crandall? A I was not.

Q For whom were you acting? A As treasurer of the Standard Piano Company.

Q Was there any special reason for making the examination at that time? A Yes, sir.

Q What was it? A To get a set of books opened up.

Q Did you want to start a new set of books? A Yes, sir.

Q Did you inform Mr. Crandall that you had made such examination? A No, sir.

Q Did you ever tell him anything about it? A Not to my knowledge, no, sir.

Q Did you ever tell him what was the financial condition of the Standard Piano Company? A I don't recall any conversation I had directly regarding the conditions.

Q You were there as his agent? A I was there as treasurer of the Standard Piano Company.

Q And also as the agent of the Commercial Security Company? A Not that I knew of.

Q Were you compensated for making collections and turning them over to Mr. Crandall? A I was not.

Q All you received was your salary as treasurer of the Standard Company? A Yes, sir.

Q In what respect, then, did you act as Mr. Crandall's agent?

Mr. Weissenbach. The witness has testified that he was not Mr. Crandall's agent.

Court. It is cross examination.

A I didn't know that I was acting as his agent.

Q You acted as his agent when you made your original investigation? A Yes, sir.

Q Did you believe in April, 1915, that this company was solvent?

Court. How is it material what he believed?

Mr. Bradner. That isn't the purpose of the cross examination.

Court. It is immaterial to me what he believes. What he knows may be very material.

Mr. Bradner. It was suggested to me that he was asked about his belief on the direct examination.

Court. I may say for the benefit of counsel, what his belief was, whether given on the direct or cross will be absolutely disregarded by me.

Mr. Bradner. I wasn't pursuing it for that purpose; I was pursuing it in order to contradict the witness.

Court. I will disregard it entirely as to what he believed, so the contradiction will not be necessary.

Mr. Bradner. One of the allegations in the bill is that this company had been conducting business at a loss, and is conducting it at a loss.

Court. If he knows anything about that, he can testify. The books of the corporation ought to show whether it was conducted profitably or at a loss, if they were kept.

Mr. Bradner. Mr. Kelley has made an affidavit attached to the bill of complaint, that the statements in the bill are true.

Court. You may examine him on that.

Mr. Bradner. One of the statements is that this company has been conducted at a loss.

Court. If it is a mere matter of belief or opinion, I shall absolutely disregard it.

Q I will ask you, then, Mr. Kelley, do you know what was the financial condition of this company in April, 1915? A I did not have the full figures at that time.

Q (*By the Court.*) Do you know what the financial condition was? That admits of a "yes" or "no" answer. A Insolvent.

Court. Strike the answer out as not responsive. He wants to know if you know what its condition was.

Witness. Yes.

Q How did you get this knowledge? A From the assets and liabilities that I was able to get at that time.

Q You made up a statement of the assets and liabilities from the books? A No, sir; from actual conditions.

Q Outside of the books, where could you get any information? A The old books of the company were not kept from January 25th on.

Court. Strike that out as not responsive. He asked "outside of the books, where could you get any information."

Witness. I took the stock on hand and the leases and the accounts payable and notes payable, and I made up the statement.

Q Did you submit that statement to anybody? A No, sir.

Q You kept that for your own private information? A No, sir.

Q Did you show it to anybody? A Yes, sir.

Q To whom? A I believe Mr. Bonar saw it.

Q Anyone else? A No; I don't believe so.

Q You didn't send it to Chicago? A No, sir.

Q Do you know what was the financial condition of the company in May, 1915? A I didn't have all the figures together in May, 1915.

Q (*By the Court.*) You know or do not know? A No; I do not know.

Q Do you know whether the company did a profitable business or not in April, 1915? A In the month of April?

Q Yes. A I do not know.

Q Do you know whether the company did a profitable business in May, 1915? A I do not.

Q Do you know whether the company did a profitable business in June, 1915? A No, sir.

Q You don't know? A No, sir.

Q Do you know Mr. Scherer, president of the Scherer Piano Company? A Yes, sir.

Q Did you go to Mr. Scherer in August last to get credit from him? A Yes, sir.

Q Did you tell him at that time that the Standard Piano Company was doing an elegant business; that its standing was of the best, and that the company had paid salaries, rent and all running expenses out of the cash sales and payments

down, and that the company had made a profit in June alone of over $10,000? A Not to my knowledge; I never made that statement.

Q You say that you didn't make it? A I did not.

Q You were there all during the month of June? A Yes.

Q How many pianos did the company sell in the month of June, 1915? A Approximately 100, I believe.

Q Did the company make money in the month of June. 1915? A I didn't figure up what they made during the month.

Q You don't know? A No, sir.

Q Did it lose money? A I cannot answer.

Q Can you answer whether it lost money in May? A No, sir.

Q Or in April? A No, sir.

Q Did the company make money in July? A I don't know.

Q Or lose money? A I cannot say.

Q Did it make money in August? A I cannot answer.

Q You cannot answer whether it lost money or not? A No, sir.

Q Do you know Mr. Gary of the F. H. Sommer Advertising Agency? A Yes.

Q Did you tell him recently that the company was doing a fine business and making lots of money? A Not to my knowledge, no, sir.

Q Do you know Mr. Baker of the Smith & Wallace Company, the warehouse people? A I have met him.

Q Did you tell him that the Standard Piano Company had enough cash to run the business and that he need not worry about the rent of the warehouse, that the company was doing a fine

business and had sold 164 pianos in June alone? A I do not recall making that statement.

Q Do you deny it? A I do not believe I made the statement.

Q You were trying at one time to get further credit from Mr. Scherer, were you not, the piano man? A Mr. Scherer never recognized the Standard Piano Company.

The Court. Strike that out. Did you or not try to get credit from him?

Witness. No, I did not.

Q Did you go to Mr. Baker to get any credit? A No, sir.

Q Do you know Mr. Shaw, the complainant in this case? A I have met him.

Q When? A Possibly two weeks ago.

Q Is that your first acquaintance with him? A Yes, sir.

Q Did you ever hear of him before that? A I have heard his name mentioned, yes, sir.

Q Where? A Chicago.

Q Did you know before this suit was brought, that Mr. Shaw held any of the notes of the Standard Piano Company? A I was given to understand that he held the notes.

Q Does that appear on the books of the Standard Piano Company, to your knowledge? A No, sir.

Q When did you get the first information that Mr. Shaw held some notes? A Possibly a week before the complaint was made.

Q (*By the Court.*) Before this suit was commenced? A Yes.

Q That was the information you had when you made your affidavit attached to the bill of complaint, was it? A At that time I understood that he was the owner of those notes.

Q From whom did you get that information? A From Mr. Weissenbach.

Q Apart from that, you know nothing about Mr. Shaw's connection with the company, do you? A No, sir.

Q You stated, I believe, in your direct examination, that these assigned piano contracts, which you call leases, become a liability and not an asset, is that so? A Yes, sir.

Court. Liability of the Standard?

Mr. Bradner. Yes.

Q The transaction is this, is it not, that the company gets an advance of money from the Commercial Security Company, we will say, and assigns the contract as security for the payment of it? A No, sir.

Court. Let me see if I understand this right. The company has a number of these installment contracts, and it appears from the record so far that on those contracts they either sell or borrow to the extent of seventy per cent, the contracts running thirty months or longer—

Mr. Bradner. Seventy and seventy-two per cent.

Court. —then there is what is called a general and special reserve, relating to the balance of the contract price if it extends beyond thirty monthly installments; is that correct?

Mr. Bradner. The general reserve is twenty per cent. that is retained when the contract is assigned, and the special reserve is the amount exceeding the thirty months.

Q When you make a transfer of contracts the company executes a certificate of transfer of some

kind, does it not? A Called a certificate of indebtedness.

Q It was called a certificate of indebtedness; that is what it was, wasn't it? A That is what it is called.

Q Has the title of that ever been changed? A Not to my knowledge.

Q I show you a paper and ask you if you identify it, and if you do, whether it is a paper taken from the files of the Standard Piano Company? A Yes.

Q That is a certificate of sale, is it not? A It is a certificate of sale.

Mr. Bradner. I will ask to have it marked for identification.

(Marked Exhibit D 1 for identification February 16, 1916.)

Q That, Mr. Kelley, is the form of certificate that is signed by the Standard Piano Company when contracts are turned over to the Commercial Security Company? A Yes, sir.

Q And this one is called "Certificate of Sale?" A Yes, sir.

Q Is there another paper called a "Certificate of Indebtedness?" A No, it is the same thing; it has been recently changed.

Q When was it changed? A I haven't any idea.

Q Do you know whether any change was made in the language of the certificate? A Not to my knowledge.

Court. Where does the change occur, in the caption?

Mr. Weissenbach. It is the title.

Q If these contracts are absolutely sold, what interest does the Standard Piano Company retain in them? A The reserve.

Court. What are you asking, the effect of that paper?

Mr. Bradner. In the actual transactions between the parties,—

Court. Doesn't the paper itself state the nature of the transaction? If it does, I don't want him to tell about it. If it does not, he may.

Mr. Bradner. He had started in explaining how he made this out a liability instead of an asset; that is what I had in mind to ask him about that.

Court. You may do that.

Mr. Bradner. I withdraw the question.

Q You call the transaction with the Commercial Security Company a liability, do you not? A When the lease is sold, yes, sir.

Q How do you make that out? A When the leases are sold it becomes a liability to pay that indebtedness; the leases themselves when you take them from the customers are considered an asset. If you sell those leases there must be a liability to offset it.

Court. Do I understand that the Fort Dearborn Bank or the Trust Company or this other Security Company could resort to the Standard Piano Company in case the money could not be realized on these leases?

Mr. Weissenbach. The Fort Dearborn has nothing to do with the leases; it is the Commercial Security and Federal Commercial Company.

Mr. Bradner. I want to get the witness's idea about it. Our contention is on our side that the money borrowed from the Commercial Company is a liability; that the outstanding contracts are assets; but, of course, it would only be assets to the extent of the difference between the loans and the face value of the contracts.

Court. Under the terms of that assignment, which has been marked D 1 today, can resort be had to the Standard Piano Company in case the installments do not produce enough money to pay the amount borrowed?

Mr. Bradner. I don't think so.

Mr. Weissenbach. There is in connection with that a guarantee by the selling company to indemnify the purchasing company against any loss.

Mr. Bradner. That is what they say here, they guarantee the payment of the contracts.

Court. Then why isn't the burden cast on the court to determine whether it is a liability or asset?

Mr. Bradner. In the bill of complaint this whole item was carried as an asset and laid before Vice Chancellor Howell as an asset. On the examination of this witness he calls it a liability—a complete change of front.

Mr. Weissenbach. The statement made by Mr. Bradner, as a "complete change of front," is misleading. It is carried as an asset, but charged against that asset is this liability advanced—either loan or the purchase price.

Court. I am trying to find out, if I can, independent of someone's judgment or opin-

ion, what the financial condition of this company is.

Mr. Bradner. We propose to show that they have not treated this as an absolute sale, but they have treated it as a pledge.

Mr. Weissenbach. What difference does it make, if the difference between the amount advanced and the amount deposited is the asset; then whether it is treated as a liability or an asset makes no difference.

Court. I thought the contract spoke for itself. Now he says it does not, by reason of the way the parties have treated it, and I will permit him to go into the other phase of it.

Q I find on the books of the Standard Piano Company the term "brokerage" used in charges; what does that mean? A That is a brokerage first charged on the lease sold.

Q Is that a charge that has been made by the Commercial Security Company? A Yes, and the Federal Commercial.

Q By brokerage, you mean a charge for making the sale? A Yes.

Q And that is paid to the Commercial Security Company? A And the Federal Commercial, yes, sir.

Q Will you please answer my question?

Court. Strike out the Federal Commercial and confine your answer to the question.

(Last question read.)

A. Yes.

Q Is that brokerage deducted from the amount of the advance, the first advance? A Yes, sir.

Q And how much has it been within your experience with the Commercial Security Company? A I think around $7,500.

Q I mean the percentage.

Court. The rate?

Mr. Bradner. The rate.

A Eight per cent.

Q What do you mean by rebate brokerage? A In case of re-possession a new paper is given to replace them, and the brokerage is rebated for the unmatured time of the contracts withdrawn.

Q (*By the Court.*) That is, the piano company is credited with part of the original brokerage of eight per cent. for the unexpired portion of the term for which the paper was assigned? A Yes, sir.

Q (*By the Court.*) The brokerage of eight per cent. covers the entire period of the thirty months on the amount that has been advanced; now, as a result of lapses or re-possession, new paper is substituted and then an adjustment is made of a rebate out of the eight per cent. brokerage originally charged; is that correct? A Yes, sir.

Q Do you pro-rate that when you make your rebated brokerage or do you charge it up for the whole year? A It is treated on each transaction.

Q You keep a separate account of each contract, do you not? A That is sold?

Q Yes. A. No, sir.

Q How do you keep the account with the Commercial Security Company? A If we sell them ten leases, they are listed on the certificate of indebtedness and the total amount of those leases is credited to the account of the Commercial Security Company, and the reserves which may have been set up on that paper is charged

against their account; the difference between the two being the amount of the indebtedness to the Commercial Security Company.

Q Do these piano contracts carry interest? A Some of them, and some of them do not.

Q And do you include that in making a sale to the Commercial Security Company, in estimating the amount of the contract? A No, sir.

Q That is disregarded entirely? A Yes, sir.

Q And when a re-possession is made the interest is disregarded? A Yes, sir.

Q Upon your direct examination, Mr. Kelley, at page 141, you stated that the sales from April 1 to December 31, 1915, including cash sales, first payment and time sales, amounted to $147,-761.25. Have you got the paper before you? A Yes, sir.

Q That is correct, is it not A Yes, sir.

Court. These are the figures made up on the income tax blank?

Witness. Yes.

Q For 1915? A 1915.

Mr. Bradner. I am talking about 1915.

Court. He said he had it copied on an income tax blank.

Mr. Bradner. I didn't remember that.

Q In your statement of liabilities you have interest and brokerage charged $7,569,74? A Yes, sir.

Q Is that estimated for the whole time of the contract? A It is the brokerage accumulated on the leases which had been sold during the year, during the period from April 1st down.

Q I am not sure I understand that. A Perhaps I didn't understand your question.

Q There are a number of contracts, and I speak of it as a contract, as though this applied to one individual contract; in estimating that brokerage, in your figuring of the liabilities, did you estimate the interest and brokerage for the whole time of the contract, not the thirty months alone, but the whole time, whatever the contract might have been? A Yes.

Q Was that the right thing to do, or should it not have been pro-rated for a part of the year? A I believe that is the custom of the Commercial Security Company on each transaction, to set up their charge.

Q I am not asking you whether it is the custom of the Commercial Security Company, but was it the right thing to do? A That I cannot answer.

Q You don't know? A No, sir.

Q Did you do it by direction of Mr. Crandall? A I did it by the reports that were sent to us on the paper which was sold.

Q So you did not pro-rate any part of that interest or brokerage? A No, sir.

Q Could you estimate now what difference it would have made in the amount if you had pro-rated it? A Probably a third.

Q If you had the ledger before you, could you pro-rate it and get the exact amount? A No, I don't think the ledger would show it.

Q Is there any other book that would show it? A No, sir.

Q How could you get at it to calculate it? A Take each individual lease.

Q You think it would make a difference of about a third? A Perhaps, yes, sir.

Q You mean one-third off your amount or two-thirds off of your account? A Two-thirds off.

Q Two-thirds off of your amount? A Yes.

Q Then your amount, if pro-rated, ought to be about something over $2,000? A $2,500.

Q You have also charged the taxes for the whole year, $588.84, have you not? A Yes, sir.

Q The tax on what does that mean? A I believe it is the organization tax and the state tax.

Q And personal property tax? A I cannot answer that.

Q Why did you charge it for the whole year? A It was paid during that one year.

Q Ought that not to be pro-rated just the same as the brokerage? A I do not believe so, no, sir.

Q Your figures are based on the total sales for the nine months, are they not, from April 1st to December 31st? A Yes, sir.

Q Why charge taxes for the whole year as liability? A It was paid during the nine months on which these figures were gotten up.

Q But the payment covered a portion of the year which was not included in your sales, isn't that so? A Yes.

Q You have in your statement of liabilities "Losses on re-possession $40,364.12"; does that mean all the re-possessions that you made during the nine months from April 1st to December 31st? A Yes, sir.

Q Does that include besides re-possessions, exchanges and returns of pianos? A Yes, sir.

Q Why not call it then "losses on re-possession, exchanges and returns;" wouldn't that be more proper? A It probably would.

Q When pianos are re-possessed, do you charge off on your books the balance on the contract? A Yes, sir.

Q That is, if a contract is $300 and $50 has been paid, and you then re-possess the piano, you charge off $250 as a loss? A No, sir.

Q What do you charge off? A We take that instrument back in stock at what we figure a fair valuation, and the difference between the balance due on the contract and what we would take it in stock for, is the loss on the re-possession.

Q Before you make your charge under this title of "losses on re-possession" do you put a value upon the piano that has been returned? A Yes.

Q And who does that? A Both Mr. Bonar and myself generally decide on what is a fair value to take it in stock at.

Q (*By the Court.*) So take the illustration that Mr. Bradner just mentioned: if a piano had been sold originally for $300 and $50 had been paid upon it up to the time of re-possessing it, and you and Mr. Bonar had valued it then for stock purposes for $150, you would charge off a loss of $100 against it? A Yes, sir.

Q (*By the Court.*) Is that the way you arrived at this total of $40,000 less exchanges and other items you mentioned? A That $40,000 represents the balance on the contracts either re-possessed or exchanged.

Q That is what I understood you to say before, that is the actual balance on the contracts? A Yes.

Court. It would include, then, $250, under Mr. Bradner's illustration, and not $100?

Witness. Yes, the $250.

Q Have you got your books here? A I believe they are here.

Q I don't understand it that way, Mr. Kelley: I would like to look at the book if you have it here.

(Book produced)

Q On page 13 of the book, what do you call the book? A Journal.

Q The first item is what? A Re-possession from Laura Dexter, the balance on the contract.

Q What date? A August 2, 1915, the balance on the contract being $175; we took it in stock at $50, and charged off $125.

Q (*By the Court.*) In arriving at your total of $40,000 losses on re-possessions, which figures do you combine, your column on page 13? A Yes.

Q (*By the Court.*) Not the one under the P. & L.? A No, sir, take the total re-possessions for the months.

Q (*By the Court.*) That is the way you make up your $40,000? A Yes.

Q (*By the Court.*) That in connection with exchanges and so forth? A Yes.

Q What does the total of your profit and loss account amount to? A That I haven't added up for the different months.

Mr. Weissenbach. Will it take long to add it up?

Witness. No.

Court. That can be done at some other time .

Q Did you post from that journal entry and ledger? A Yes, sir.

Q And in the ledger, under the title of "losses on re-possessions," you posted the last column, did you not? A No, sir.

Q Let us see the ledger? A It was posted to the loss account; the total re-possessions in any one month was posted against the loss account.

Q And that is the way you make up your $40,000? A Yes, sir.

Q Then your $40,000 does not include any valuation of the piano that has been taken back? A No, sir.

Q And it does not include anything that you might have gotten on a sale of that piano? A No, sir.

Q (*By the Court.*) Consequently, your alleged loss of $40,000 would have to be reduced to the extent of the values of the pianos re-possessed, which that list makes up the total of, to show the real situation? A To show the real situation.

Q (*By the Court.*) If you got back ten pianos on which you lost $5,000, we will say, the ten pianos would be worth something, wouldn't they? A Yes, it would be less the stock value.

Q (*By the Court.*) Wouldn't the value have to be deducted from that $40,000 in order to show the actual loss? A Yes.

Q How many pianos were re-possessed during that nine months, can you tell me? A During the whole year there was approximately 180 re-possessed, exchanged and otherwise; the exact amount for the nine months I wouldn't attempt to say.

Q About 150, were there not? A No, I think it would be more like 125.

Q How many of those pianos that you re-possessed during nine months, were pianos sold during the nine months? A They were all sold during the nine months, with the exception, I believe, there are a few on the floor at the present time that haven't been re-sold.

Q Then you didn't re-possess anything during that nine months on sales that had been made prior to April first? A I didn't understand your question.

Q You re-possessed about 125 pianos during the nine months from April first on, and I understand you to say that the 125 were pianos that had been sold during that period of time? A Yes.

Q Does that appear on your books? A There might some have been re-possessed and which were sold during the first three months.

Q How many of them? A That I cannot answer.

Q Wouldn't that enter into your calculation of the losses during the nine months? A No, sir.

Q You estimate in your losses during the nine months pianos that had been sold prior to the nine months? A I take into consideration the re-selling of those instruments.

Q I am talking about your $40,000 liability that you have put in your estimate as the liability—you have put it in as losses on re-possessions during that nine months; have you calculated in that amount the loss on pianos re-possessed, which had been sold prior to April first?

Mr. Weissenbach. Do you understand the question?

Witness. No, I do not.

Q Does your profit and loss account include re-possessions of pianos sold prior to April first? A Undoubtedly it does, yes, sir.

Q And does your profit anl loss account, which you total at $40,364.12, include pianos sold prior to April first? A Yes, it would.

Q On what theory do you make that arbitrary statement? A On the theory that the pianos were re-possessed during those nine months and re-sold.

Q (*By the Court.*) And the loss sustained during that period? A And the profit on re-sales was taken into consideration.

Q But that would not be true, if you started with April first and entirely disregarded what had occurred prior to April first. You wouldn't have such a loss, would you? A Yes.

Q Suppose the business had started on April first, no sales had ever been made before that, what would your losses have been on re-possessions from April first to December 31st? A The re-possessions that had been made during that time.

Q You just said that that includes pianos sold before April first?

Q How much is that? A $40,364.12.

Court. Suppose it does, does that alter the situation very much, if the loss has been sustained during that nine months period?

Mr. Bradner. It affects this statement of his as to the liability, because he is figuring on sales for nine months and is putting in his liability losses on sales for a previous time.

Court. But the loss was sustained during the period that the statement relates to.

Mr. Bradner. But he hasn't given us any credit for the sales prior.

Court. That is true.

Q In your statement on page 141 of the testimony, you give the purchases during the year $25,635? A Yes, sir.

Q That is for the whole year, is it not? A Yes, sir.

Q Your stock on hand April first, according to the invoice price charged by the Standard Piano Company, is $56,059? A Yes, sir.

Q The difference between these two amounts is $31,059; that is figured correctly, is it not? A Yes, sir.

Q What was the sales for April? A I haven't the figures before me.

Q Is there any way you can work it out? A Yes, sir.

Q How? A The book is here.

(Book produced, marked "Sales Record.")

(Referring to page 3.)

Q Take your ledger, your stock April first is $56,059; that is what you stated in your testimony; your stock May first is $25,000; look at your ledger. A Arriving at the statement of assets and liabilities, when I went in there Mr. Bonar and I figured the valuation—on a fair valuation on the pianos, and I believe we estimated that it was around $25,000, but since then, on taking actual valuations of the pianos on hand when I went in there, they amounted to $56,000, according to the invoices submitted by the H. P. Nelson company.

Q That is $56,059 April first? A Yes.

Q What does your ledger show for the stock on hand April first? A I believe it is considerably less than the amount of the stock at the time I was in there.

Q Will the ledger show it exactly? A I believe so.

(Book produced marked "Ledger.")

Q That is the inventory price, now, May 1st of your stock? A Yes, sir, an approximated figure of $25,000.

Q That would mean an inventory price on the sales during April of $31,059, would it not? A You mean deducting the twenty-five from the fifty-six?

Q Yes. A The figure—when we opened up our books, not knowing the routine of the workings of the Standard Piano Company or where all the records were, the stock account should have been written up for the original value of the pianos billed to the Standard Piano Company.

Court. That does not answer the question at all.

Q You have already stated that your inventory price on your book for April is $56,059; your inventory price stock on hand May 1 is $25,000? A Yes.

Q That would indicate sales of pianos at an inventory price of $31,059 for April, would it not, as per your books? A The sales during April?

Q Yes. A No, sir.

Q At the inventory price? A The difference between—

Q That is right? A Yes.

Q What is the fact as to your actual sales for April from your books at the sale price—net sales? A $20,521.

Q When you sell a piano do you sell it at the inventory price? A No, sir.

Q About double, don't you? A Sometimes higher than that.

Q Your actual sale price then for April would indicate an inventory price of about $10,000? A Possibly larger than that.

Q The sale price is at least double the inventory, isn't it? A Yes.

Q On the average; what has become of the twenty or twenty-one thousand dollars of pianos? A I tried to explain that to you a few moments ago.

Q Again explain it. A That when I went in there, in order to get the books opened, so we could have a record, Mr. Bonar and I looked over the stock, and we figured it—we approximated it at about $25,000.

Q (*By the Court.*) Is this in May? A No, April, and later on, in getting more familiar with the records and so forth, I found that the leased valuations of those pianos, according to invoice prices, should have been $56,000.

Q (*By the Court.*) Did you change the figures on the books accordingly? A No, we didn't change them.

Q That made your total of purchases and stock on hand $81,694? A Yes, sir.

Q (*By the Court.*) That is on the valuation of $56,000? A On the valuation of $56,000.

Q But if it is the fact, as I have stated it to you, there should be a difference in your statement of assets, should there not, of approximately $20,000? A No, sir.

Q You take your purchases $25,635, that is right? A $25,635, yes, sir.

Q And your stock on hand May 1, $25,000? A You should take the actual cost—the actual figure of $56,000.

Q And if you made sales in April of $20,521, that would indicate an inventory price of about $10,000, wouldn't it? A Probably.

Q That would be a total of $60,635, wouldn't it? A If you are taking it at the approximate value.

Q That would be some $21,000 less than your amount of $81,000? A Yes.

Q That amount of $81,000 you had deducted from the gross sales, had you not? A Yes, sir.

Q Mr. Kelley, I want to call your attention to the report of the receiver made in this case. Do you know that the receiver made a report last Friday to the Court? A I understand so.

Q Did you assist him in making it? A I gave him reports, but I was not around when the report was made up that was filed.

Q Did you make up the statement of the liabilities? (Witness shown receiver's report.)

Mr. Howell. Has he seen this report?

Mr. Bradner. I am showing it to him.

A Yes.

Q Take the item of Gulbranson, Dickinson & Co., $186.50, in accounts payable. Have you got the book there? A No, I haven't that book here.

Q You didn't bring it here? A I believe it is upstairs.

Q Do you know what that $186.50 represents? A Yes, sir.

Q Was it a balance after the return of some pianos which were sent back since about January 26? A Yes, sir.

Q Who put the credit on the books of the pianos returned to Gulbranson, Dickinson & Co.? A I do not think they have been entered up.

Q Is there any charge for those pianos—any charge on your books? A The original invoice has not been entered up.

Q Do you know whether this $186.50 includes the covers for the pianos? A It is less covers.

Q The covers have been credited? A Yes, sir.

Q You are quite sure of that? A I know that the credit from Gulbranson, Dickinson & Co. came in the office of $93.50, and I believe it shows on their account.

Q You only had the one charge of the Gulbranson, Dickinson & Co. against you, and that was for a certain number of pianos that were sent there the latter part of January? A Yes, sir.

Q And those pianos were all returned? A No, they were not all returned.

Q Was there one kept? A There was 21 came and 16 returned.

Q You don't know whether the covers for the pianos went back with the sixteen that were returned? A That I don't know; I know there was three lots of covers returned.

Q The next item of Stanley & Sons, $6,086.16; that is the company that is represented by Mr. H. P. Nelson? A Yes, sir.

Q And that is the balance that appears to be due on your books? A According to the invoices received.

Q Is that money due? A Not all of it; I believe there is to be an adjustment made.

Q Adjustment of what? A Some price.

Q (*By the Court.*) How much of it is due? A I am unable to answer.

Q Is that for pianos? A Yes, sir.

Q Were those pianos billed to the Standard Piano Company at a certain price? A Yes, sir.

Q The wholesale price? A Yes, sir.

Q And there was to be a deduction from that? A So I understand.

Q How much? A I do not know.

Q Will it run about $25 a piano? A I cannot say.

Q You haven't deducted that in this statement? A No.

Q In addition to that there was a term of credit? A If the deduction is right, as I understand it, there will be something off that bill.

Q There is a credit of time besides that; there is a time credit on the purchase? A That is the first I knew of it; I don't know of it.

Q The item "Commercial Security Company interest $299.56;" what is that? A It is a balance due for interest on the account, on the leases sold.

Q On the leases sold to them? A Yes, sir.

Q Interest that you have collected from the piano purchasers? A It hasn't been collected, no, sir; that is generally left until along the end of the contract.

Q What is this item of interest; explain, if you please, how there is any interest due to the Commercial Security Company on leases sold to them? A When the lease is sold they charge interest on the total amount of leases which they purchase, and they rebate the interest on the reserves, which are set up against the paper, the difference between the two figures representing the interest due them on the balance involved.

Q How do you figure that interest, on what balance? A It is figured on the running balance of the contracts less the collections that are sent in from time to time, or less any re-possessions which might have been exchanged.

Q Then you treat this account of the Commercial Security Company as an indebtedness of the Standard Piano Company, do you? A Until the interest has been collected by the Standard Piano Company from the customers, yes.

Q You mean the interest on the contracts called for, or the interest on the money advanced to you? A The interest that the contracts call for.

Q Then this item in the liabilities is interest that you have collected? A No, sir.

Q Have any of those creditors in the list of liabilities brought suit against the company, to your knowledge? A Not to my knowledge.

Q On the list of accounts payable? A No, sir.

Q Do you know whether any of the accounts have been assigned besides the one that I find here, "Archie H. Ormond assignee $695.13?" A I don't think there are any assigned that are listed there.

Q There is one listed "Archie H. Ormond, assignee, $695.13;" you know about that? A Yes.

Q Who is he? A He is a young attorney here, I believe, in Newark.

Q Did you have that assigned to him? A Did I have it assigned?

Q Yes. A No, sir.

Q Did you furnish him with the money to get the assignment? A I did not.

Q And by whom was that claim assigned to him?

Mr. Weissenbach. Might I ask what this has to do with the question as to the solvency of this corporation?

Court. I think it is proper.

Q You say he is a young lawyer A I understand so.

Q What claim was assigned to him, if you know? A I believe there were a number of them.

Q This $695 then includes a number of claims? A I believe so.

Q Did you participate in the purchase of those claims? A No, sir.

Q Do you know whether Mr. Ormond represents any person in making the purchases? A I cannot say exactly.

Q Do you know who put up the money? A Yes, sir.

Q Who? A Mr. Weissenbach.

Q Mr. Bonar's claim is stated here at $1,500? A Yes, sir.

Q There has been $500 paid on his $2,000 claim—it was $2,000 January 24th? A Yes.

Q $500 has been paid on that? A So I understand.

Court. Is that included in the list of liabilities?

Mr. Bradner. Yes, sir, under commissions.

Q In your statement on page 141, have you included any interest on contracts in your profit and loss account? A Any interest as due from the customers?

Q Yes. A No, sir.

Court. I understood you to say that all these leases did not carry interest; some did and some did not.

Witness. That is right.

Q Approximately about what percentage carry interest? A Of the sales made in 1915 since I have been there, I should say at least 80 to 85 per cent. carry interest.

Q Six per cent. interest? A Yes, sir.

Q And is that interest figured as a part of the gross amount of the contract on the sale to the Commercial Security Company? A Yes, sir.

Leo J. Kelley, re-direct.

Q (*By the Court.*) Is it collected monthly? A No, it is collected at the end of the lease, or toward the end of the lease.

Q That would come in, then, as a clear gain to the Commercial Security Company, would it not, the interest item? A I wouldn't call it a gain.

Q (*By the Court.*) Would it come to the Security Company or to the Piano Company? A The interest collected from the customers would come to the Piano Company. The interest which is charged them on the leases sold would be paid out from the company.

Q When you make a sale, in addition to the brokerage of eight per cent. you pay six per cent. on the amount you get?

Court. To the Security Company.

Q But the interest collected from the customers ought to be included in your total of income for the nine months?

Court. If any were received.

A If any were received.

Q But you haven't put any in? A There have been none collected from the customers.

Q Nothing collected during the nine months? A No, sir.

Re-direct by Mr. Weissenbach.

Q Do you know whether Mr. Ormond took these assignments or purchased these accounts? A I was informed that he took them.

Q Do you know? A Absolutely, no, not why he took them.

Q I understood your testimony, in answer to a question put to you by Mr. Bradner, and I want to be set clear on it, referring to the total

of purchases and stock on hand as $81,694—I read from page 141; have you got that figure there? A I have.

Q You testified that the invoice price charged to the Standard Piano Company for pianos on hand as of April 1st was $56,059; the purchases for the year were $25,635, making a total of $81,694. In answer to a question put to you by Mr. Bradner, you testified—at least, I understood you to testify—that $21,000 should be deducted from that $81,000? A No, I didn't say that it should be deducted.

Q How did you arrive at that figure $56,059 as being the value of the pianos in stock at the time that you opened up the books on April 1st, 1915? A From the invoices.

Q Did anybody assist you in making up that inventory? A The young lady at the office.

Q Did Mr. Bonar assist you in any way? A No, sir.

Q Did you take the numbers of the pianos and compare them with the invoice? A Yes, sir.

Q Or how did you do it? A The numbers of the pianos and compared them with the invoice prices.

Q And when did you do that, Mr. Kelley? A About the first of February of this year.

Q With reference to the interest on contracts you just testified about, I understand you to say that during the nine months during which these computations are made, you collected no interest from the customer? A No, sir.

Q Have any contracts come to maturity during that nine months? A Very few.

Q Was there interest charged on those contracts? A No, sir.

Q Can you tell whether prior to your incumbency as treasurer of the Standard Piano Company the contracts of the Standard Piano Company called for interest or not? By contracts, I mean leases.

Mr. Bradner. Do you know?

Witness. Only from what I have heard from customers.

Q You don't know of your own knowledge? A No.

Q Is there any record in the books of the Standard Piano Company that would give the information as to whether or not interest was charged on the leases? A Not to my knowledge.

Q You testified early in the afternoon that you checked the records of the Standard Piano Company for the Commercial Security Company sometime in February of 1915? A Yes.

Q What was the result of that checking? A As far as I can recall there was something in the neighborhood of $50,000 discrepancy.

Q What do you mean by that? A Cash shortage and re-possessions.

Q That hadn't been accounted for to the Commercial Security Company? A Yes.

Q Did you report that to anyone other than the Commercial Security Company? A No, sir.

Q Did the Federal Commercial Company have anything to do with these contracts or this discrepancy that you speak of? A That I cannot answer.

Q Do you know whether or not remittances have been made to the Federal Commercial Company and unaccounted for? A That I cannot answer.

Leo J. Kelley, re-direct.

Q To whom were remittances made by the Standard Piano Company on collections on leases that had been sold and hypothecated? A Prior to my coming in?

Q Yes, sir, if you know. A I understood they were made to Mr. Herdien.

Q (*By the Court.*) Do you know anything about it? A I cannot say to whom they were.

Q (*By the Court.*) The books don't indicate? A Probably the old books might indicate to whom it went.

Q Were any remittances made to the Federal Commercial Company or to Walter L. Herdien as trustee after your incumbency as treasurer of the Standard Piano Company, on collection? A Yes.

Q Can you tell me what amount? A I believe so, if I had the book.

Q Why were collections made to Mr. Herdien, if you know? A Inasmuch as he was to turn the contracts over to the Commercial Security Company—he sold them to the Commercial Security Company, he wanted the collections so he—

Q How did he get possession of the contracts? A Originally from the Standard Piano Company.

Q In what capacity did he get possession of the contracts, if you know? A I don't know.

Q Do you know whether he was secretary and treasurer?

Court. Didn't you go into that on the other hearing?

Mr. Weissenbach. Not so far as these collections are concerned. I forgot that your Honor read the record.

Q Do you know whether any brokerage was paid to the Federal Commercial Company? A Yes, sir.

Q Do you know what percentage was paid them? A Yes, sir.

Court. Didn't you go into that also, in the purpose of its being paid?

Q Was there any of the brokerage paid to the Federal Commercial Company included in the item "Brokerage $7,569.74?" A Yes, sir.

Q Do you know how much? A No, sir.

Q You testified on cross-examination that you did not know the profit or loss for the months of April, May, June, July or August, of 1915; do you know what the profit or loss of the Standard Piano Company was during the period of time from April 1, 1915, to December 31, 1915? A I figured it out as approximately a loss of about $11,000.

Re-cross by Mr. Bradner.

Q Is that contained in your statement on page 141? A Yes, sir.

Q That is, that is the result of that statement that you made on your direct examination the other day? A That is the figure arrived at.

Q (*By the Court.*) Is that the result produced by reason of the compilation of your statement? A Yes.

Re-direct by Mr. Weissenbach.

Q Mr. Kelley, you testified that in making up the item of $40,364.12, losses on re-possessions and pianos re-possessed, and returns and exchanges, that you took as a loss the difference between the amount that had been collected on the piano and the face of the contract, without crediting the value of the instrument re-possessed; is that correct? A I believe I stated that we charged the difference between the—at what we

took the instrument in in stock and the balance of the contract, to profit and loss.

Q (*By the Court.*) He is asking you now if in the $40,000 you have given any credit for the value of the instrument in stock? A No.

Q How do you re-sell or in what account do you carry the instrument that has been re-possessed, and how do you account for it? A In the stock account.

Q What do you mean by that? A In our stock record.

Q In other words, you include the contract that you receive when you sell this re-possessed piano, in the total sales for the period? A Yes.

Q And whatever profit there is on that goes into the gross profit of the businss? A Yes, sir.

Q On page 141 you testified that the total of sales amounted to $147,761.25 and that the stock on hand at the close of the year was $5,440, making a total of $153,201.25? A Yes.

Q Then you deducted from that the amount of money used for the purchase of new pianos during that period of time and the value of the stock, making a total of $81,694, showing a gain on the entire sales of $71,507.25? A Yes, sir.

Q Is the profit on these re-possessed instruments that were sold during that period included in this gross profit $71,507.25? A Yes, sir.

Mr. Bradner. May I ask a few more questions?

Court. Yes.

Re-cross by Mr. Bradner.

Q Mr. Kelley, you stated that you made an examination of the books in February, 1915, and found a shortage of $50,000; is that correct? A Approximately that figure; I don't recall the exact amount.

Q Did that affect the financial condition of the company? A I should say it would, seriously.

Q Were you able to ascertain at that time whether the company was in a solvent condition? A I did not go into that detail.

Q You didn't go far enough for that? A I wasn't there for that purpose.

Q Do you remember the account of Engelhart-Seybold Company—this is matter which I overlooked—St. Johnsville, New York? A I remember no account with them.

Q Some pianos were shipped to them? A Yes, sir.

Q Those pianos belonged to the Standard Piano Company? A Yes, sir.

Q How many were shipped? A I believe 25 or 26.

Q Have you included those pianos in your statement and in your testimony on page 141? A No, sir.

Q You have got them in your statement in the bill of complaint, haven't you—

Court. In your affidavit.

Q In your affidavit annexed to the bill of complaint, in your statement of assets and liabilities, have you included the pianos shipped to Engelhart-Seybold Company? A I do not recall.

Q You don't know whether you did or not? A No.

Q I show you a copy of the bill of complaint and the assets page 3, paragraph 8. A No, they are not in there.

Q On page 3 in paragraph 8 in the bill of complaint, under the heading of "debts" you have "money borrowed on security $139,000";

what does that item mean? A It represents the amount of money due on leases sold.

Q At that time you considered that the $139,000 was a liability of the company, did you not?

Court. On that item?

Q On that item? A On that item, yes, sir.

Q Money borrowed on the security of $139,000 is the money borrowed from Federal Commercial Company and Commercial Security Company? A Yes, the money advanced on the leases sold.

Q Can you tell me how much has been paid back to those two companies? A Off hand I cannot.

Q Do you mean $139,000 is the balance due? A The balance due.

Q Can you show me now how you reach that amount; can you figure it out there and show me how you get that amount, $139,000? A Yes, sir.

Q Will you do so? A Yes.

Commercial Security Co., $100,193.45; Commercial Security Co., Special Reserve, $10,735.28; Commercial Security Co., Regular Reserve, $22,924.46, $32,659.74, $67,533.71; Federal Commercial Co., $130,111.62; Federal Commercial Co., Special Reserve, $23,733.56; Federal Commercial Co., Regular Reserve, $35,163.63, $58,897.19, $71,214.43—$138,748.14.

Q In making up these figures you have simply taken the balance on the books of the Standard Piano Company? A Yes, sir.

Q Does the account of the Federal Commercial Company show the cash actually received from the Federal Commercial Company? A Not in the account on the books.

Q Does the account on the Standard Piano Company's books with the Commercial Security

Company show the actual cash receipts from the Commercial Security Company? A Yes.

Q Turn to that, please. I want to know the actual cash receipts from the Commercial Security Company. A I believe there was some money remitted by the Commercial to the Standard Piano Company prior to my coming in there, which I do not believe shows in the records that I have made up.

Q (*By the Court.*) Do you know the amount of it? A No, I do not.

Court. What do the records show?

Q What does your record show? I refer to contracts purchased by the Commercial directly from the Standard only; on April 3rd, 1915, there is a credit of $2,643.76; is that correct? (Referring to cash receipts book.) A Yes, sir; April 3, $2,643.76; May 11, $7,899.84; June 5, $2,307.96; July 3, $1,663.20; July 23, $6,000.00; August 24, $5,533.73; September 20, $7,710.47; October 18, $2,000.00; November 5, $1,673.70; November 11, $1,505.13; November 16, $1,279.96; December 4, $1,498.72; December 27, $703.10; January 17, $635.82; January 20, $2,143.82. Total, $45,199.21.

Adjourned to Thursday, February 17, 1916, at 10 A. M.

Leo J. Kelley, re-cross.

Continuation of testimony in the foregoing cause, taken before Hon. John E. Foster, Vice Chancellor, at the Chancery Chambers, Newark, New Jersey, on Thursday, February 17th, 1916, at 10 A. M., in the presence of counsel as before stated.

LEO J. KELLEY, recalled for further

Re-cross examination by Mr. Bradner.

Q Mr. Kelley, at the adjournment yesterday you were figuring on the cash received from the Commercial Security Company? A Yes, sir.

Q And this was the statement of the figures as you took them from the books? A We hadn't completed that; you want the figures from the starting of the transaction, no doubt.

Q Of the Commercial Company only. A Yes, sir. These are reports of moneys coming into the company prior to my being connected with it.

Q The figures that you had yesterday began April 1, did they not? A Yes, sir.

Q You have got the total now? A It doesn't include from February 20 to March 22nd.

Q What is the total that you have there from April 1? A $48,199.21.

Q And what were the figures in your books prior to April 1? A $13,699.44.

Q Add $13,699.44 to the $48,199.21, that makes $62,898.65 as the total receipts of money from the Commercial Security Company. A I would like to explain about this $3,000; that about twenty-five hundred and some odd dollars of that went to pay for pianos purchased from the Edisonia Estate; the balance of about $460 and some cents has not been remitted to the Standard at this time.

Q That would have to be deducted? A Yes, sir.

Q And that represents how much as actually remitted to the Standard by the Commercial Security Company? A $62,438.65.

Q How much money has been remitted by the Standard to Commercial Security Company on account of collections? A I cannot say offhand.

Q Can you tell from the books? A Yes.

Q Will you get them, please? A (After examining cash disbursements books) $15,501.82.

Q Will you look at your ledger account? (Witness does so.) I am asking for the remittances to the Commercial Security Company; what is the total amount on your ledger? A $15,501.82.

Q (*By the Court.*) The same as you find on the other book? A Yes.

Q The difference between those amounts show the indebtedness to the Commercial Security Company of the Standard Piano Company? A No, sir.

Q What is the difference between the two accounts? A $46,936.83.

Q And you say that that does not mean that that amount is now due to the Commercial Security Company from the Standard Piano Company? A No, sir.

Q What does it mean? A This figure does not take into consideration the re-possessions or the broker's charges.

Q The Commercial Security Company only gets back what it has advanced, with legal interest, doesn't it?

Court. Is he in a position to testify to that?

Mr. Bradner. That is a matter of the construction of the contract.

Leo J. Kelley, re-direct.

Q In the bill of complaint which was verified by you, in paragraph 6 it is alleged that the defendant corporation is indebted to Commercial Security Company, a corporation of the State of Illinois, for money borrowed upon security in the sum of $67,533.71 A Yes, sir.

Q That statement you made at the time? A Yes, sir.

Q And how did you arrive at those figures? A Taking the leases sold to the Commercial Security Company less the reserve account.

Q The statement in the bill of complaint includes more money than has actually been received from the Commercial Security Company? A It takes into consideration the broker's charge.

Q In making up that statement you took into consideration not only the broker's charges, but the re-possessions? A Any that hadn't been made—yes, sir.

Q In the statement made in the bill of complaint of assets and liabilities, did you include the interest as due from the customers? A No, sir.

Re-direct by Mr. Weissenbach.

Q How much was received by the Standard Piano Company from the Federal Commercial Company; can you tell from your records there? A No, sir.

Q Where are the records showing the amount of money received by the Standard Piano Company from the Federal Commercial Company on leases assigned to the Federal Commercial Company by the Standard? A The only record that I have is the statement handed to me some time ago by Mr. Herdien.

Q Where are the records? A I suppose they are kept in the old set of books.

Leo J. Kelley, re-direct.

Q Have you got the books of the Standard Piano Company? A The general ledger is here.

Q Does that show whether or not there is anything due to the Federal Commercial Company by the Standard? A Not that I know of.

Q Will you examine the books, please, and see? A (After examining old general ledger). On December 31, 1915, the Federal Commercial general account shows a debit balance of $44,044.32.

Q By debit balance you mean that the Standard is indebted to the Federal Commercial Company in that amount? A I don't understand the nature of this account.

Q *(By the Court).* Is that what the entry means? A Undoubtedly it does.

Q What is the total amount of leases that the Federal Commercial received and now holds from the Standard Piano Company as security for this $44,000?

Court. Does it appear anywhere, the total amount of leases held by the Commercial as securiy for the indebtedness due it?

Mr. Bradner. It is combined in one item.

Court. But it does not appear as to the amount held by each one?

Mr. Bradner. No, they have never been separated.

Court. Probably this examination will produce that.

A The balance of leases as shown through the Federal Commercial Company account is $130,-111.62.

Q *(By the Court).* Does that mean that that is the total amount of leases held by that company as security for the indebtedness you find there? A I believe there is a shortage still due of re-posses-

sions on an old account that has not been made good, but still carried in the balance as due.

Q In addition to the $44,000? A Yes.

Q *(By the Court).* But the amount you have just given us represents the total value of the leases held as collateral for that indebtedness? A Yes.

Q (*By the Court.*) What is the total amount of leases held by the Commercial Security Company as collateral for the indebtedness which you say is due it? A $100,193.45.

Q Mr. Kelley, do you know whether the Federal Commercial Company owns those leases now? A They do not.

Q Who owns them? A Commercial Security Company.

Q Do you know how the Commercial Security Company got them? A Through a purchase from the Federal Commercial Company.

Q In making remittances on the collections on these leases that had theretofore been sold to the Federal Commercial Company, do you remit to the Federal Commercial Company or to the Commercial Security Company? A Commercial Security Company.

Q What brokerage did the Federal Commercial Company charge the Standard Piano Company? A Ten per cent.

Q What brokerage did the Commercial charge? A Eight per cent.

Q Do you know at what price the Federal Commercial Company sold these leases to the Commercial Security Company, at what brokerage? A Ten per cent.

Court. Is it material?

Mr. Weissenbach. To show that the present secretary and treasurer of the Standard Piano Company is the secretary and treasurer of

the Federal Commercial Company—to show the connection between the two companies, and how under that management the excess charge was determined.

Court. Is that material on the question of solvency?

Mr. Weissenbach. No.

Q As to the shortage of $20,000 and odd, what do you mean by that? A At the time I made the checking prior to my being connected with the Standard Piano Company, I stated yesterday there was an approximate shortage of $50,000, and I understand that there is still in the neighborhood of $21,000 or $22,000, which has not been made good at this present time.

Q In other words, that $21,000 or $22,000 will be an additional liability of the Standard Piano Company? A It shows up—

Q Answer yes or not. A Yes.

Q (*By the Court.*) Liability to whom? A To the Commercial Security Company.

Q Who now hold these leases? A Yes, sir.

Re-cross by Mr. Bradner.

Q What do you mean by shortage, collections that have been made and not remitted? A Collections, re-possessions, yes, sir.

Q By the Standard Piano Company? A Yes, sir.

Q Why do you say "re-possessions"; you don't collect anything on a re-possession, do you? A If the Standard Piano Company received the money on that contract and re-possessed it, they certainly have to make good on that particular contract.

Q (*By the Court.*) And whatever they received you claim they did not remit, and goes to make up this shortage? A Yes.

Q What you mean is this, is it not, that they did not account for pianos that were re-possessed? A They haven't made an accounting yet.

Q You don't mean to say that they have kept any money that was actually collected? A There was a cash shortage at the time I made the checking.

Q How much? A I don't recall the amount.

Q Did it amount to much? A A few thousand dollars.

Q That has been made good, hasn't it? A That I don't know.

Q There are a good many elements enter into that question of re-possession, are there not, besides the balance due on the contracts? A I don't think I understand you.

Q You say that they re-possess a piano and don't give credit for that or don't account for it; what do you mean by that? A If they sell a piano to a customer and sell the lease and then re-possess the piano and re-sell it again and don't take the new lease and make good the other one, there must be a shortage.

Q Then what you mean is that there have been re-possessions, re-sales, and the new leases haven't been turned over? A I don't know where the leases are, but I know the shortage has not been made good.

Q You don't know anything about it of your own knowledge, do you? A I know that a shortage existed, yes, sir.

Q It existed where, in your knowledge or on the books? A On the statements which I checked.

Q What statements? A Which I received from the Commercial Security Company.

Q Then you got your information from the Commercial Security Company, whom you represented as agent, did you not? A I got the information that they desired from the books of the Standard Piano Company.

Q Then you are testifying from something that you heard from somebody else? A No, sir.

Q Are you testifying from something that appears on the books of the Standard Piano Company? A I am testifying from the shortage that I found in checking up the reports on the leases which the Commercial Security Company purchased from the Standard Piano Company and which had not been made good by the Standard.

Q But you got that information from these statements that came from the Commercial Security Company? A No, I was the one that put the information on the statements.

Q Where did you get the information? A Out of the books of the Standard Piano Company.

Q What book? A The lease ledgers.

Q Are they here? A They are upstairs.

Re-direct by Mr. Weissenbach.

Q Can you say what percentage of pianos sold on the installment plan by the Standard Piano Company are re-possessed through defaults or for any other reason?

Mr. Bradner. I don't see how that will help us any; it is nothing but an approximation.

Mr. Weissenbach. This is to show the actual value of these so-called reserves.

Court. If you will take a definite time, I will permit the question.

Q Mr. Kelley, do you know the number of pianos that were re-possessed between April 1,

1915, and January 1, 1916, as compared with the number of pianos sold during that same period? A Approximately 125.

Q And what were the number of pianos sold during that same period? A About 670 I believe, around that number.

Mr. Bradner. 687.

Witness. I can tell exactly from the sales record. (After examining book.) There were 687 deliveries, pianos sold and delivered, between April 1 and December 31, 1915.

Q Have you a record which will show the number of re-possessions during that period? A On those particular sales, no, sir.

Q No, but during the same period. A 125, I think, I stated yesterday.

Mr. Bradner. We make it 151.

Re-cross by Mr. Bradner.

Q How many pianos did you have on hand on December 31, 1915? A I don't recall the number.

Q Will the books show? A I can figure it out from the stock book.

Q Can you do it in a moment or two? A It will be a hard job to do that. I should say approximately around 40.

Mr. Bradner. We have it 45; that is near enough.

Witness. If it is exactly 45, we will call it 45.

Q And the re-possession for the same period of time, from April 1 to December 31, 1915, are how many? A About 125 I should say.

Q Will you look at the journal and see if you can give us the exact figures on that? A The journal only gives from May 1.

Q Look at the stock record. A I cannot tell the re-possessions by looking at the stock record.

Q Haven't you anything to show what pianos were re-possessed during that period? A There is a book at the office which shows each and every one.

Q You think about 125? A I should say it is about that.

Q During that same period of time did you purchase any Edisonia pianos? A Yes.

Q About sixty? A I think it was either 60 or 62.

Q Did you purchase pianos during that time from Stanley & Sons? A Yes.

Q As many as 114? A I wouldn't attempt to answer for the number.

Q More than 100? A I should say it was, yes.

Mr. Weissenbach. Won't the record show, Mr. Kelley?

Witness. Yes.

Q What are these papers I show you? A Invoices received from Stanley & Sons.

Q Can you tell us in a moment or two how many pianos we have got?

Court. I will let you reserve that and have him figure it out when not on the stand.

Q There were also pianos purchased during that time from Scherer Piano Company? A Yes, sir.

Q Do you recall about how many? A No, I cannot say.

Q And there were some pianos purchased from Gulbranson, Dickinson & Co. of Chicago? A Yes, sir.

Q Do you recollect about how many of those? A I believe there were four carloads of 21 pianos to a car, 84 instruments.

Q Three carloads, were there not? A Four.

Q Some of those were sent back? A Yes.

Q And those were all the pianos that were purchased during that time that you know of A Yes, sir.

Q And those pianos average a cost price of about how much? A If you take the straight pianos and take the number of pianos and number of players separately, I might be able to tell you, but collectively I wouldn't want to answer.

Q Take the pianos, how much did they cost? A Probably on an average of ninety.

Q And the players how much? A On an average of one hundred and ninety.

Q When a piano was re-possessed you put a valuation upon it of $50, did you not? A On some, yes, sir.

Q Didn't you do it arbitrarily on every piano? A No, sir.

Q Didn't you make an arbitrary amount on every player-piano that was re-possessed? A I wouldn't say arbitrary, no; Mr. Bonar and I went into that and we figured what we thought the piano would be worth, taking it back into stock.

Q Did you make any distinction at all, didn't you make $50 odd valuation on every piano that was re-possessed? A No, sir.

Q Did you give directions to the bookkeeper to enter the valuation in your profit and loss account? A At the valuations given, yes, sir.

Q At that time? A Yes.

Court. Have you closed your case?

Mr. Weissenbach. We have closed our case. I happen to be in the rather anomalous position of having had certain statements made on the witness stand, and referred to conversations with me. The ethics of our profession forbid counsel who actively appear in the trial from testifying as a witness, although there is an affidavit on file here, before I appeared in this case, which is my affidavit. I wouldn't want the court to feel that I fear taking the witness stand. We will close our case.

Court. I don't understand the significance of the statements made.

Mr. Weissenbach. I don't think that they are of any great importance, excepting the testimony of Mr. Kelley yesterday, with reference to the purchase of these outstanding accounts prior to the filing of this bill, that the money was furnished by me, and as I have stated to counsel—

Court. It appears in the case that you are acting not in an individual capacity, but as the representative of certain institutions, endeavoring to collect money from this corporation. I don't see any impropriety in your conduct suggested by Mr. Kelley.

Mr. Bradner. My object in bringing it out was to show that there was no pressing demand.

Mr. Weissenbach. It was done, as I told you, to prevent bankruptcy, Mr. Bradner.

We rest.

HANS PETER NELSON, sworn for defendant.

Direct examination by Mr. Bradner.

Q You reside in Chicago? A Yes.

Q You are one of the directors of the Standard Piano Company? A Yes, sir.

Q Are you connected with the Stanley & Sons Company? A Yes, sir.

Q Are you in a position to state whether that company will extend credit to the Standard Piano Company?

Mr. Weissenbach. I object to the question, first, because counsel rested his case, and it is not rebuttal. That is evidence in chief.

Court. I think I will receive it; I want to get all I can about the situation of this concern.

A It will extend credit to the Standard Piano Company.

Q Has that company sold pianos to the Standard Piano Company? A It has.

Q And has an account now? A Yes.

Q Of some six thousand dollars? A I don't know how much.

Q Are you willing to extend the time for the payment of that account? A The Stanley Company is willing to extend that time.

Q Are you willing to ship more pianos? A Yes.

Q And give them credit? A Yes, we are willing to accept lease paper such as they take from their customers, in payment of our pianos that we ship to them.

Cross examination by Mr. Weissenbach.

Q You are a creditor of the Standard Piano Company as well, are you not? A I am now.

Q You were president of the H. P. Nelson Company which went into bankruptcy in December, 1914?

Mr. Bradner. Objected to as not cross-examination.

Court. I will take it.

A I was the president.

Q At that time you were also a director of the Standard Piano Company? A I don't remember; the records will show that.

Q And were you a director of the Standard Piano Company during the year 1915? A I don't remember if I was.

Q Do you remember attending any meetings of the directors of the Standard Piano Company as a director during the year 1915? A I think I was a director and I think I attended the meetings too.

Q What position do you occupy with Stanley & Sons? A I am general manager, I might call myself.

Q Are you an officer? A It is not a corporation, it is a partnership.

Q Have you a partnership interest in Stanley & Sons?

Court. I understand you to say were a director in the Stanley & Sons Company?

Witness. No, in the Standard.

Q Are you connected with the corporation known as the H. P. Nelson Sons Company? A They are not in active business.

Q Are you connected with that corporation? A Yes,; we have incorporated that company.

Q As an officer? A We haven't as yet elected any officers.

Q Are you a director? A We haven't as yet elected any director.

Q You haven't completed your incorporation? A Yes.

Q As general manager of Stanley & Sons, have you consulted with anyone relative to whether or not Stanley & Sons will extend credit? A Yes, I have.

Q When did you have that conversation? A Oh, a long time ago.

Q How long ago. A Probably two months.

Q Have you had any conversation with them since the proceedings in this court? A Yes, I have.

Q What is the paid in cash capital of Stanley & Sons?

Objected to. Objection sustained.

Q As a creditor of the Standard Piano Company, Mr. Nelson, do you know of any other manufacturers of pianos who will sell to the Standard Piano Company on credit?

Mr. Bradner. I object.

Court. I will take it.

A I haven't ascertained.

Q Do you know of anyone that would? A I haven't ascertained; if I go out and inquire, I may find out.

Q Do you know how much money the Standard Piano Company has on hand at this time? A I do not.

Q Do you know of anyone that is going to put any money into the Standard Piano Company, or has put any money into the Standard Piano Company? A I know of none.

Q How much stock do you hold in the Standard Piano Company? A I don't recall now, I think it is about $15,000 worth.

Q There was originally issued to you $60,000, or all of the preferred stock of this corporation?

Mr. Bradner. Objected to as not cross-examination. They can call him and make him their witness. It is a collateral matter.

Court. You have the right to go in and inquire as to his interests in the Standard Company to this extent; he has stated he was a director of the company; under our law, he must be a stockholder to qualify as such. Now, whether he ever did or did not have $60,000 worth of preferred stock issued, and somewhere in the record it appears it has no voting power, I don't see how it is material or will aid me.

Mr. Weissenbach. The record also shows that there were $15,000 in common stock issued to Mr. Nelson. He has testified he is a director. I want to show by him that he hasn't one single share of stock in the company.

Court. He just said he had $15,000 of stock in the company, and you may pursue that line.

Q Isn't it a fact that $15,000 of common stock, that you referred to, is owned by the Federal Commercial Company? A No, I put that up as collateral.

Q Isn't it a fact that you sold all your stock in the Standard to the Federal in return for this stock? A Not to my knowledge I never sold it.

Q You did not transfer it? A No.

Hans Peter Nelson, cross

By the Court.

Q What knowledge have you of the present financial condition of the Standard Piano Company that warrant you in saying that Stanley & Sons will extend credit to them for pianos and continue to sell them? A I know that they do not owe any money except on the notes in question, which mature at certain times, and there is a question about their validity. The next thing I know, that they have borrowed money on leases, for which there are ample security up, which will take care of itself—monthly, weekly or any other way.

Q Do you know that from your examination, from your familiarity with the affairs of the Standard Piano Company, your personal familiarity? A I do.

Q Not from what someone has told you? A Yes.

Q Do you know the value of the stock on hand of the Standard Piano Company at the present time? A The value of the physical property?

Q Yes. A I do not. I know the value of the paper.

Q You don't know the cash in bank? A No, not of my own knowledge.

Q When did you last attend a meeting of the directors of the Standard? A About two weeks ago.

Q And before that time when did you last attend a meeting? A About a week or two previous.

By Mr. Weissenbach.

Q At any of those meetings was the question of the financial condition of the Standard Piano

Company raised or discussed? A It was broached, but not discussed in detail.

Q At either of those meetings, Mr. Nelson, was any statement made by you to your fellow directors that there was a question about the validity of these note obligations? A That subject was not reached at all.

Q Do you recall a meeting of the directors held in Chicago in December, 1915, at which there were present yourself, Mr. Herdien, Mr. Goldberg, Mr. Jacobson, Mr. Bonar and myself, at which there was an assignment made by the directors of the equities that were then held by the Commercial Security Company, the assignment running to the Fort Dearborn Savings Bank as security for these note obligations? A There was such a proposition came about subject to the—

Q Answer my question; was such a resolution passed by the Board of Directors? A I think so.

Q Was such an assignment executed by the Board of Directors? A I think so, subject to the Board of Directors—subject to the approval of the stockholders.

Q Was there anything in the resolution or in the assignment that made it subject to anything? A I don't know.

Mr. Bradner. I object.

Mr. Weissenbach. Have you got that resolution here?

Mr. Bradner. I have a copy of it. (Producing paper.)

Q I hand you a paper and ask you to examine it, Mr. Nelson, and see whether the resolution contained thereon is the resolution that was

passed by the Board of Directors at that meeting in December, 1915? A I cannot say because I didn't read the resolutions at that time.

Q Do you recall the context of that resolution, the substance of it?

Court. You are endeavoring to show that it was all subject to the action of the stockholders?

Mr. Weissenbach. Yes.

Court. You can prove a copy of the resolution.

Q Mr. Nelson, are you in any way connected with the Federal Commercial Company as an officer? A No.

Q Were you at any time an officer of the Federal Commercial Company? A No.

Q Never on its Board of Directors? A No.

Q You testified in answer to a question by the Court, that the collections on the leases that had theretofore been sold to the Federal Commercial Company and Commercial Security Company were sufficient to maintain the business? A No, I did not.

Q What was your answer to that question? A Pay the obligations on the paper, that is, put up as collateral security for loans. I understood the question being put that way, and that my answer is accordingly.

Q Would the collections on these outstanding leases be sufficient to meet the amounts due on these leases and meet the other maturing obligations of the Standard Piano Company? A That I cannot say off hand.

Q (*By the Court.*) Can those collections be used for any other purpose?

Mr. Weissenbach. No, sir.

A No, sir.

Q Mr. Nelson, you state that there are no obligations of the Standard Piano Company other than these notes, whose validity you say is questioned; isn't it a fact that the Standard Piano Company is indebted to the Fort Dearborn National Bank on a $5,000 note which they discounted last December? A That note I know nothing about.

Q Isn't it a fact that there are outstanding accounts against the Standard Piano Company for current indebtedness, such as supplies and other things, in excess of $1,200? A Yes, I understand that, but I know that they have money in the bank to pay that, I have been told.

Q How much money have they in the bank? A I told you I didn't know, but I know it is in excess of $1,200.

Q Is there enough money on hand to meet all of the present obligations of the company that have matured? A I am not a bookkeeper of that proposition.

Mr. Bradner. I object.

Court. He is an officer of the company; if he knows, he can state.

Q (Last question repeated). A I do not know what has matured other than the open accounts; I understand it is about a thousand or $1,200; I know there is money enough to meet that.

Q Is there money enough to meet the Fort Dearborn National Bank note of $5,000? A I don't know of the existence of that note.

Q *(By the Court).* Is there money enough to meet that note, assuming it exists?

Q Assuming that that note exists? A That is $5,000, and there is $1,500 in the bank, there wouldn't be enough.

Q What became of the money that was taken out of the bank just immediately prior to the appointment of the receiver—taken out by Mr. Bonar, the president of the company? A I have no idea; Mr. Herdien is the treasurer and he will answer that question; I don't know.

Q Did you give any authority to anyone for taking the money out of the Essex County National Bank for any purpose? A I authorized them as a director to draw such money as was necessary to pay current expenses.

Q And for no other purpose? A No.

Q Did you direct Mr. Herdien as treasurer or had you knowledge of the fact that Mr. Herdien as treasurer issued a check to Mr. Bonar just immediately prior to the appointment of the receiver, and had you deposited it in the North Ward Bank in Mr. Bonar's own name? A I do not know anything about that.

Q You were not consulted in the matter? A All except this, that I gave my authority to draw whatever money was necessary for the continuance of business.

Q Do you know whether it was necessary for so large an amount to be suddenly withdrawn from the Essex County National Bank and deposited in another bank in Bonar's personal name? A No, I do not.

Court. Does it appear what the amount was anywhere?

Mr. Weissenbach. About $1,000.

Q Do you know anything about the withdrawal of approximately $1,000 just immediately prior to the appointment of the receiver? A No, but I understood that there were certain bills paid, and I presume that is included in the thousand dollars.

Q I asked you if you knew. A I don't know.

Q Do you know where the money is to come from to pay Mr. Bonar $2,000 that he claims is due him for commissions on sales last year? A He has made no demand on me.

Court. Strike out the answer. He asked you if you know where the money is coming from.

Witness. No, except the general course of business, they may borrow it.

Q Do you know where they could borrow it? A I may loan it to them myself.

Q What? A I might loan it to them myself.

Q I asked you if you knew where they can borrow it? A They can borrow it from me.

Q They can borrow enough money from you to run this business? A I don't know; I would want to see their security.

Q If a demand were made on the Standard Piano Company for the payment of the notes deposited with the Fort Dearborn Trust & Savings Bank by the Federal Commercial Company, approximating $6,000, is the Standard Piano Company in a position to pay those notes? A Yes, they are in a position to pay them.

Q Those notes? A Yes.

Q Where will the money come from? A I don't know; I can furnish part of it myself and I know where I can go to get the balance.

Q Where can you get the balance? A Right in Chicago.

Q From whom? A From friends of mine.

Q Who are those friends, Mr. Nelson?

Mr. Bradner. I object.

Court. I will take the evidence.

A If it is necessary, I can pay it all myself.

Court. The question is, who are the friends you refer to.

Witness. In the first place, Mrs. H. P. Nelson.

Q That is your wife? A Yes.

Q She would loan it all? A Yes, she would loan it all.

Q Is there any bank in Newark or in Chicago or anywhere else that the Standard Piano Company can go to, to your knowledge, and secure credit? A I don't know of any, because I haven't tried.

Q Is the Standard Piano Company in a position to pay the notes that are past due and owned by the complainant in this case, approximating $18,000? A I don't know that.

Q If a demand were made for the payment of those notes, is the Standard Piano Company in a position to meet them? A I don't know.

Re-direct by Mr. Bradner.

Q There was a new board of directors elected on January 24, 1916, of the Standard Piano Company, was there not? A Yes.

Q Did that new board authorize another bank account to be opened? A Yes, sir.

Q Do you remember the name of the bank selected? A No, I do not.

Q The account had been in the Essex County National Bank, had it not? A Yes.

Q And you authorized the new bank account? A Yes.

Q Mr. Nelson, at the meeting of the board of directors in Chicago, which your attention has been called to, when some resolution was passed relating to an assignment of the equities in the contracts, was there any agreement made as to the future business of the company, as to who was to supply

the pianos and from whom they were to be purchased?

Mr. Weissenbach. That is a direct leading question.

A There was an agreement made.

Q Did the making of that agreement enter into the adoption of this resolution? A Primarily.

Q Between whom was the agreement made? A The agreement was made with Mr. Weissenbach and the directors of the company.

Q What was it? A As to who was to furnish the goods to the Standard Piano Company for the future.

Q Who was? A It was agreed that Stanley & Sons should furnish the pianos.

Q At that time was any order given by the Board of Directors for the purchase of pianos from any person or firm or corporation? A I didn't understand that.

Q At that meeting was there any order given for the purchase of pianos from any other person than Stanley & Sons? A There was no order given to purchase any at all; but it was understood that way.

Q Do you know of any purchase of pianos from Gulbranson, Dickinson & Co? A Only hearsay.

Q You don't know how that came about? A No, sir.

Q When did you learn that any pianos had been shipped to the Standard Piano Company by Gulbranson, Dickinson & Co? A A week or two after that meeting; I cannot recollect exactly.

Q In the meantime had you received any notice of a meeting of stockholders? A I received a notice of a meeting for the stockholders, but I cannot say whether that was in the meantime or afterwards.

Q You received a personal notice of a meeting of stockholders to be held at Newark on January 24th? A Yes.

Q Do you know from whom that notice came? A I think it was signed by Mr. Bonar.

Q What was he? A The president of the company.

Q Was he the president then? A Yes.

Q Before attending that meeting did you hear about the purchase from Gulbranson, Dickinson & Co? A I don't recollect that, Mr. Bradner.

Q At the stockholders meeting the stockholders refused to ratify the action of the Board of Directors, did it not? A They did.

Court. For my own information, were the same individuals present at the stockholders meeting who were at the directors meeting in Chicago?

Witness. Yes.

Q Any additional ones present at the stockholders meeting to those who attended the directors meeting? A No.

Mr. Bradner. Mr. Goldberg wasn't there.

Witness. That is right. There was one missing.

Q At the stockholders meeting in Newark on January 24, besides the stockholders appearing as such of record, Mr. Herdien, Mr. Garrison and Mr. Bonar, were there any other persons present in the room? A Yes, there was Mr. Weissenbach, Mr. Kelley and Mr. Bradner.

WALTER L. HERDIEN, recalled.

Direct examination by Mr. Bradner.

Q Do you wish to make any corrections in your former testimony? A I do.

Court. You can agree on those corrections and change the record accordingly.

Witness. On page 63 the question was asked: "Did you at any time during the year and three months that we have seen each other frequently in connection with the affairs of the H. P. Nelson Company and Commercial Security Company and Standard Piano Company ever inform me or advise me that these notes failed in consideration either in part or wholly?"

Court. What is the correction desired?

Witness. I believe that should be "Yes, sir."

Mr. Weissenbach. We will object strenuously to that correction.

Court. You desire to change "No, sir" to "Yes, sir"?

Witness. I understood the question a little later on, and I answered it on page 102.

Court. Answer it as you now wish it to appear.

Q On page 55 do you wish to make a correction there? A (Reading.) The question was "Did you at any time in your visits to the Standard Piano Company produce to Kelley, to Mr. Kelley, the treasurer, or to Mr. Bonar, the president, or to me, who was acting for the benefit of the creditors, that the notes that were then owned by the Fort Dearborn National Bank and these various other banks, the South Bend Banking Company and Logansport State Bank, the Citizens Trust and Savings Bank of Chicago, the Fort Dearborn Trust and Savings Bank, as trustee, and Hamilton Investment Company, were not bona fide notes, or that were partial or whole

failure of consideration, and therefore the notes should not be paid?" I answered, "No, sir, I did not." I didn't get the part "or to me." If a man lowers his voice, I cannot get what is said.

Q What correction do you wish made? A The correction I want made this way: "I did not say anything to Mr. Kelley or to Mr. Bonar in reference to the notes, but I talked with Mr. Weissenbach several times about it."

Mr. Weissenbach. I should think that if such permission were granted, it would destroy all form in court, when a witness examines his testimony and finds he has made a statement, to go back and say he wishes to correct it.

Court. You must realize that this witness is suffering from an impediment to his hearing, that may justify this in his case, and I will allow the correction. I will allow you ample opportunity to go into an examination as to why it is made.

Mr. Bradner. I think the context shows it.

Court. Both sides can prepare a list of the corrections they desire made in the testimony taken before Vice Chancellor Howell and hand it to Mr. Bindseil.

Q Mr. Herdien, since Mr. Kelley's examination, in which he gave a profit and loss account from April 1, 1915, to January 1, 1916, have you examined the books of the Standard Piano Company? A I have.

Q Have you made up a profit and loss account for that period of time? A I have.

Q From the books? A Yes, sir.

Q What were the total sales during that period?

Court. Can't the sheet be put in evidence?

Q What is the paper that you produce and call a statement; what does it show? A It shows a profit from April 1, 1915, to January 1, 1916, of $51,409.95.

Q The statement is entirely made out by you? A Yes, sir.

Court. From the books?

Witness. Yes, sir.

Mr. Bradner. I offer the statement in evidence. I am willing to go into these items.

Court. If it is not necessary, you need not do it.

Mr. Weissenbach. Reserving me the right to cross-examine?

Court. Yes.

(Marked Exhibit D 3 February 17, 1916.)

By the Court.

Q What became of all this profit of $51,000? A It has increased the assets of the business during that period.

Q What property was acquired by it? A Leases in piano paper.

Q For instance, what particular property was acquired by any part of the $51,000 profit? A There were leases—I should have to approximate that—about—

Q Do the books show what was done with this $51,000 profit? A The books have no profit and loss statement in it, in the ledger, that I can see.

Q Is there any way by which I could determine from an examination of the books, that you had made this profit of $51,000 during this period you speak of, and what had become of it? A Yes, sir.

Q What books would give me that information? A The ledger would give you a good deal of that information.

Q And what else will give me the balance of it? A I should judge that the ledger would give you practically the whole thing.

By Mr. Bradner.

Q I show you another paper and ask you what that is? A That is a statement of assets and liabilities.

Q Was that made up by you from the books? A Yes, sir.

Court. When were both these statements prepared by you?

Witness. I prepared them last week and this week.

Q In the statement produced today, the assets and liabilities, have you made any change in the figures from that produced at the last hearing? A Yes, sir.

Q What do you make in this statement the total amount of assets? A $263,925.07.

Q And what, the total amount of liabilities? A $153,765.94.

Mr. Bradner. May I offer that in that way?

Mr. Weissenbach. Yes.

(Marked Exhibit D 4 February 17, 1916.)

Q Have you also made a statement of the pianos sold from April 1, 1915, to January 1,

1916, of the pianos purchased, so as to show those on hand May 1, 1915, and what were sold during April, 1915? A Yes, sir.

Q Have you such a statement? A Yes, sir.

Q How many pianos appear from the books to have been sold during that period of time? A 687 pianos.

Q How many were on hand December 31, 1915? A I had to approximate that item 45, because I couldn't get at the books; they were not at the Standard Piano Company.

Q How many were re-possessed during that time? A 151.

Q How many Edisonia pianos were purchased? A 60.

Q How many from Stanley & Sons? A 114.

Q How many from Scherer Piano Company? A 42.

Q How many from Gulbranson, Dickinson & Co.? A 42.

Q That was 258 pianos purchased? A 258.

Q What do your figures indicate which you have, a balance there of 323? A On hand May 1, 1915, 223 pianos; the pianos sold during April, 1915, 100 pianos, making 323 pianos.

Q What would be the inventory price of 100 pianos, approximately?

Mr. Weissenbach. I think the books should be produced.

(Statement offered in evidence and marked Exhibit D 5, February 17, 1916.)

(Recess.)

Q Mr. Kelley, in his direct examination on page 141, stated "losses on re-possessions, pianos re-possessed, $40,364.12." Can you tell me what was the actual loss on that item of re-possessions?

Court. So as to have no confusion, suppose you embody in your question the correction Mr. Kelley made, including returns, exchanges and re-possessions.

Q On his cross examination Mr. Kelley stated that that included exchanges and re-sales and returns of possessions; have you examined the books and made any study of that question? A I have.

Q Does the $40,363 represent the actual loss? A No, sir.

Q Can you tell what was the actual loss? Yes or no. A Just approximately.

Q How can you ascertain it? A I ascertain it by taking the difference between the balance due on the lease that became null and void from the re-possession and the re-sale price of that piano re-possessed.

Q (*By the Court.*) You mean by that, if there were a balance of $175 due on the piano when re-possessed and it were re-sold for $250— A There would be a profit, not a loss.

Q (*By the Court.*) Is that what you mean in answer to Mr. Bradner's question? A Yes.

Q What have you ascertained was the actual loss on those re-possessions? A $7,845.37 plus the re-sale cost of the piano, about $55 a piano, on 151 pianos.

Q Have you investigated the shipment of pianos to Engelhart-Seybold Company? A Yes, I have.

Q Can you state what pianos were shipped to them? A I made a record of them on a slip of paper; I think you have it in your hand.

Q Is that the paper? A Yes, sir.

Q From what records did you make that paper? A I got those from the shipping book under date of May 28, 1915.

Q How many pianos were sent to them? A 29 pianos, electric pianos.

Q What is the total amount? A I make it $7,000; three electric pianos that I have to approximate at $500, because I couldn't get the cost price out of the records.

Q What is the cost price of the others? A $6,500.

Q On January 24, 1916, there was a change made in the Board of Directors, was there not? A Yes.

Q Who owns the pianos that Engelhart-Seybold Company have? A The Standard Piano Company.

Q Now, I ask you about a change in the Board of Directors on January 24, 1916; do you know of such a change? A Yes, sir.

Q At that time was any change made in the bank account? A Yes, sir.

Q What was it? A We made a change of $1,000 over to the North Ward National Bank of Newark, New Jersey.

Q Deposited there in what name? A In the name of the Standard Piano Company.

Q Do you know, Mr. Herdien, the total amount of notes paid last year by the Standard Piano Company? A About $44,000 to $46,000; I am not just exactly certain on that, but the records will show.

Mr. Bradner. I offer in evidence the list of pianos shipped to Engelhart-Seybold Company.

Mr. Weissenbach. Is this your own handwriting?

Witness. Not all of it, not all the prices, but I compared it with the records, and the young man at the office made out the list and I compared it with the shipping book.

Court. It is a correct copy of the shipping record?

Witness. Yes.

(Marked Exhibit D 6, February 17, 1916.)

Mr. Bradner. Exhibits D 3, D 4 and D 5, February 17, 1916, are statements made by Mr. Herdien. I am prepared to prove up each one of those items from the books.

Court. I understood that, and it was merely as a matter of convenience and to save time, we used the statement instead of going into detail.

Cross examination by Mr. Weissenbach.

Q Mr. Herdien, did you ever see these electric pianos that were shipped to the Engelhart-Seybold Company? A Yes, sir.

Q Did you know why they were shipped to them? A I do not know, no, sir.

Q Did you make any inquiry of Mr. Bonar or anyone? A I didn't know anything except hearsay about it.

Q When was the last time you saw these pianos? A I saw them for the first time at the Heller Piano Company at Milwaukee, Wisconsin.

Q Who was the Heller Piano Company? A A corporation.

Q Who were the owners of the stock and who were the managers and officers? A I don't know.

Q Was H. P. Nelson interested in the Heller Piano Company, directly or indirectly? A No, sir.

Q Isn't it a fact that these pianos were all used pianos, secondhand pianos? A No, sir.

Q How many of them were new? A Most of them were new when I saw them at the Heller Piano Company, and they were later on shipped here at Newark, New Jersey, and they just stood in the storeroom and were not marketed.

Q (*By the Court.*) When were these pianos shipped to the concern in New York State? A May 28, 1915.

Q Do you know why they were shipped there? A No, sir.

Q Did you examine them carefully when they were in the warehouse here in Newark? A I wouldn't say "carefully," but they looked like the same pianos.

Q Did you examine them to see whether they were equipped with motors so they could be operated? A Some of them might have been equipped with motors.

Q (*By the Court.*) Did you examine them? A No, I did not, whether they were equipped with motors or not; I didn't go inside of the piano.

Q Then you do not know whether they were new pianos, do you? A Yes, sir, I do know.

Q Is it a fact that all electric pianos are equipped with the motors? A Sometime or other they are.

Q And if they are a new piano they are equipped with a motor, are they not? A Not necessarily.

Q Are there electric pianos that run without motors? A Motors might have been taken out of them.

Q (*By the Court.*) How much would it affect the value if the motor had been removed? A A motor is about $20.

Q Isn't it a fact that some of those instruments are what they call harps? A There was about six or seven, maybe eight, harps in the lot.

Q Out of the 29? A Yes, sir.

Q Do you remember what those harps were worth? A They are worth—

Q These particular harps in the condition in which they were? A Yes, sir, they were new harps, $225 to $250 apiece.

Q How did the Standard Piano Company come in the possession of those pianos? A They bought them.

Q Bought them from whom? A From the H. P. Nelson Company.

Q How did the H. P. Nelson Company get them? A They bought them.

Mr. Bradner. Objected to.

Court. It is immaterial to show how the Nelson Company acquired them.

Q How much did the Standard Piano Company pay the H. P. Nelson Company for them? A They were charged the invoice price that the Nelson Company paid for them.

Q How much did the Standard Piano Company pay the H. P. Nelson Company for these electric harps and pianos? A Invoice price.

Q What was that invoice price? A On the harps about $225.

Q Did you examine the records of the Standard Piano Company to ascertain how much they paid for them? A Yes, sir.

Q When did you examine that record? A Last week—this week.

Q (*By the Court.*) Why were these pianos sent to New York to this concern? A They thought they had a market for them here.

Q Why were they shipped to the concern in New York by the Standard Piano Company in May, 1915? A I don't know; I had nothing to do with it.

Q Have any of them ever been returned? A No.

Q Why not? A That I don't know. I was not in charge of matters of the Standard or that—

Mr. Weissenbach. I will introduce evidence as to that.

Q Did the Standard Piano Company pay the H. P. Nelson Company cash or notes or— A Part notes and part cash.

Q How much cash and how much notes? A I don't know; that would be a matter of record that would have to be figured out.

Q Did you examine the records to ascertain the fact that some were paid for in cash and some by note? A No, sir.

Q Upon what basis, then, do you make the statement that they were paid partly in cash and partly by note? A That is just my idea about it, that is all; I don't know of my own knowledge.

Q You have no direct knowledge on the subject at all as to how they were paid for? A I know they are on the books of the company.

Q Answer the question. You have no direct knowledge as to whether the Standard Piano Company ever paid anything for them, have you? A I don't know whether the item has been paid for yet.

Q Isn't it a fact that the Heller Piano Company is suing the H. P. Nelson Company at this time, referring to these very same pianos?

Mr. Bradner. I object.

Court. There is no proof yet that the Standard Piano Company ever paid the Nelson Company for the price of the pianos.

Q During the time that you were in charge of the affairs of the Standard Piano Company did the H. P. Nelson Company ever make any demand upon the Standard Piano Company for payment on these pianos? A I don't know. Settlements were made up from time to time.

Court. Strike that out as not responsive.

Q Was any demand made? A I don't know.

Q Up until August 1914 you were counsel for the H. P. Nelson Company, were you not? A Yes, sir.

Q And a director of the company? A Yes, sir.

Q And at the same time you were an officer of the Standard Piano Company, were you not? A Yes, sir.

Q Do you know whether during that time the H. P. Nelson Company ever made any demand on the Standard Piano Company for payment of these pianos? A I do not.

Q Do you know whether the H. P. Nelson Company ever did render an invoice for those pianos to the Standard Piano Company? A I do.

Q When? A I don't recollect just the date now, but it was about October or September, 1913.

Q Had any demand ever been made after that time and up until the time that you resigned as treasurer of the Standard Piano Company, that is, last January, 1915? A I don't know.

Q Had any demand been made on the Standard Piano Company for payment for those pianos? A I don't know.

Q If there had been a demand made for the payment you would have known it? A Not necessarily, no, sir.

Q Who handled the finances of the Standard Piano Company from October, 1913, up until January, 1915? A I handled it more or less off and on.

Q The actual books of account of the Standard Piano Company during that period were kept in your office in Chicago, were they not? A No, sir.

Q Where were they kept? A Part of the time here in Newark and part of the time in Chicago.

Q And during that time you had no knowledge of the payment to the Nelson Company of the amount due on these pianos? A I don't know of my own knowledge, no, sir; it may have been paid long ago; I don't know; the account may have been paid long ago.

Q Mr. Herdien, referring to Exhibit D 4 and to the items under "Liabilities," I understood you to say on direct examination by Mr. Bradner, that you took those figures from the books? A Yes, sir.

Q Where in the books did you get the item "notes payable $44,300"? A I had explained that—

Q I asked where in the books did you get that item? A That item is not in the books at $44,300; it is in the books at $97,000.

Q Isn't it in the books at $102,000? A I think it is now $56,000 to the Fort Dearborn Bank.

Q Then the figure $44,300 is an arbitrary figure fixed by yourself? A It is a figure made up from the overcharges on books and cash—

Q Will you please answer my question yes or no? (Last question repeated.) A It is a figure fixed by myself.

Q And is not taken from the books? A No.

Q Referring to the items under "Assets," I call your attention to the item "Accounts receivable $10,000." Will you tell the court what that item is and what it is made up of? A It is made up of $3,000 due from the Commercial Security Company and $7,000 for the Engelhart-Seybold pianos.

Q Then the Engelhart Company owes the Standard Company $7,000? A I cannot find the account in the ledger, and for that very reason it is either a return of the pianos or they are owing us the money.

Court. It would make all the difference in the world as to the condition of the company, as far as that item goes, whether you got back a lot of second hand pianos or got back $7,000 in cash. The pianos were billed in 1913; we are now in February, 1916.

Mr. Bradner. These pianos were shipped to the Standard in October and November, 1913, and shipped by the Standard last May.

Court. They are two years and some months old; on ordinary experience we would

conclude that a piano two and one-half years old or something like that would not be equivalent in value in cash.

Q (*By the Court.*) Is there any charge on the books of this company, the Standard Piano Company, that this Engelhart concern owes the Standard Piano Company $7,000? A According to the receiving book, but I don't know what entry Mr. Kelley made of it.

Q Is there any charge showing that this Engelhart Company is indebted to the Standard Piano Company to the extent of $7,000? A Not on the ledger, no, sir.

Court. Then it is not on the books, is the answer to my question. He says it is not on the ledger and I assume from that answer, it is not on the books.

Mr. Bradner. It is not on the books as a charge. Gulbranson-Dickinson is not on the books either. That does not signify anything; it is the fault of the bookkeeper.

Q Under "Assets," the last item, "Accrued interest estimated $12,000"; does that item appear in the books? A No, sir, it says it is estimated.

Q Does the item appear in the books; is there anywhere in the books an item of accrued interest as an asset of the company? A I don't find it, no, sir, on the ledger.

Q Do you find it on any of the books? A I haven't located it, no, sir.

Q Then this statement marked D 4 is not a statement of the assets and liabilities of the Standard Piano Company as taken from the books of that company? A Not all the figures, no, sir.

Mr. Bradner. Made up from the books.

Walter L. Herdien, re-direct.

Q Mr. Herdien, from the time the Standard Piano Company commenced business in April, 1913, and until January, 1915, the leases taken for the pianos that were sold were in turn sold to the Federal Commercial Company, were they not? A Yes, sir.

Q And money advanced and purchase price advanced to the Standard Piano Company? A Yes.

Q Has the Federal Commercial Company ever remitted to the Standard Piano Company any moneys on account of the deferred credits or general or special reserve? A No, sir.

Q To your knowledge has the Standard Piano Company received from either the Federal Commercial Company or from the Commercial Security Company any money since the Standard Piano Company started business and up until the time the receiver was appointed? A Not that I know of.

Q Received any moneys in excess of the amount of the purchase price of these leases? A Not that I know of.

Q If they had received any moneys would you have known it? A Not necessarily.

Q Did you examine the books to ascertain whether or not the Standard Piano Company received any such moneys? A Yes, sir.

Q Did you find that they had or had not? A Had not as far as I could see.

Re-direct by Mr. Bradner.

Q What do you mean by the item "accrued interest estimated" in Exhibit D4? A I mean the interest on the various contracts that the Standard Piano Company have taken from time to time from their customers; these contracts

in the majority of instances draw interest at six per cent.

Court. Is that amount of interest accrued at the present time?

Witness. Yes, sir, because they have been running, some of them two years, and some of them for one year, and some for six months.

Q Any effort been made to collect it or any part of it? A They failed to collect it.

Q Has any effort been made to collect? A That I don't know.

Mr. Bradner. I offer in evidence paper marked "Certificate of Sale," which was marked D. 1 for identification, February 16, 1916.

(Marked Exhibit D. 1, February 17, 1916.)

Mr. Weissenbach. In connection with this Exhibit D. 1 and as part of the general transaction, there is a little slip that is attached to it, which is an assignment, and this in itself being incomplete might mislead the Court.

Court. It is to be attached to and made part of Exhibit D. 1.

Mr Bradner We rest.

LEO J. KELLEY, recalled for complainant.

Direct examination by Mr. Weissenbach.

Q Are you familiar with these electric pianos that Mr. Herdien testified about? A I know of them; I am not very familiar with that.

Q Did you ever see them? A Yes, some of them.

Q Where? A At the Smith-Wallace storage house.

Q Tell the Court the condition of repair that they were in.

Court. When did you see them?

Witness. I think on or around April first, 1915.

Q Please state to the Court the condition of repair they were in at that time. A I didn't examine them very carefully, but the porter that was with me said they were—

Q What you saw. A I couldn't say offhand how they were.

Q Were they in a condition, if you know, so that they could be operated? A No, they were not.

Q Do you know why they were sent to the Engelhart-Seybold Company?

Mr. Bradner. If you know.

A Yes, sir.

Q Why were they sent to the Engelhart-Seybold Company? A To be repaired.

Q Were they charged to the Engelhart-Seybold Company? A No, sir.

Q Was a bill ever rendered to the Engelhart-Seybold Company? A No, sir.

Q Do you know whether they have been repaired? A I do not know.

Q Do you know why the Standard Piano Company has not got these pianos now? A Yes.

Q Why? A The Engelhart-Seybold Company went into bankruptcy shortly after they received the pianos and have been unable to have gotten them out or returned.

Q (*By the Court.*) Do you know if any claim for the pianos has been made on the trustee in

bankruptcy by the Standard Piano Company? A I do not.

Q For these instruments or their value? A I do not know.

Mr. Weissenbach. I filed a petition for their return and that petition hasn't been argued yet, and the Court referred the matter to St. Johnsville, there being an ancillary receiver there.

Q I hand you a document marked Exhibit D. 4 today and ask you to look at the item under "assets", "accrued interest estimated"; did the Standard Piano Company during the time you were treasurer ever receive any interest on any of the leases that they had taken in payment?

Mr. Bradner. He did answer that.

Court. He said yesterday that they did not, and I think he said most of the old leases did not carry interest, and about 85 per cent. of the new leases since he has been connected with it carry interest.

Q Did you at any time carry as an asset or enter upon the books a figure representing an asset, of accrued interest? A No, sir.

Q I refer you to the first line under "Liabilities", "notes payable, $44,300"; is that a correct statement of the notes payable of the Standard Piano Company? A No, sir.

Q What do the books show to be the notes payable of the Standard Piano Company? A A Little over $102,000.

Q Did Mr. Herdien when he was treasurer of the Standard Piano Company, or did any treasurer of the Standard Piano Company, or any bookkeeper, as far as you have been able to ascertain from the books of the Standard

Piano Company, ever carry accrued interest as an asset? A No, sir.

Court. Is there any such item on the book as accrued interest?

Witness. Not to my knowledge.

Q The item "notes payable", where did you get the figures when you opened up your set of books when you became treasurer of the company, as to the amount of the notes payable of the Standard Piano Company? A From Mr. Fleming, who was there prior to my time.

Q Your predecessor as treasurer? A Yes.

Q Did it appear upon the books of the Standard Piano Company as kept at that time as the amount of notes payable? A The books weren't kept at that time.

Q Who kept them? A The books were in Chicago until on or around the latter part of January, and then they were shipped down here, but never kept from that date on.

Q But in the books that were shipped here in January was there an item "notes payable"? A I do not know.

Q From what did Mr. Fleming give you the information with reference to the amount of notes payable? A On a list, which he stated was furnished by Mr. Herdien.

Mr. Bradner. I think the last part of that ought to be stricken out, "which he stated," &c.

Court. I think it should go out.

Q I hand you a paper marked D. 3, February 17, 1916, purporting to be a profit and loss statement from April 1, 1915, to January 1, 1916, and ask you to examine the same and state whether or not it is a correct profit and loss statement

of the affairs of the Standard Piano Company during that period of time? A No, I cannot say that it is.

Q Can you point out to the Court wherein it is not a correct statement? I will call your attention to the item under "Purchases," "Stock on hand May 1, 1915, $25,000," is that correct? A It is not the actual figure, the actual cost of the goods, no, sir.

Q What is the actual cost of the goods? A On April 1 it was $56,000 and some odd.

Q (*By the Court.*) As testified to by you yesterday? A Yes, sir.

Q Under the item "Accrued interest," approximately $5,000 as an income from last year; is that correct? A No, sir.

Q Was any money received last year as interest? A No, sir.

Q Under the item brokerage, $1,014.75; is that item correct? A No, sir.

Q What is the amount of brokerage that was paid during that period of time, if you remember? A A little better than $7,600.

Q (*By the Court.*) You said two-thirds of that should come off yesterday, on certain conditions? A I don't believe I said it.

Court. Under the conditions as stated by Mr. Bradner in his question.

Mr. Weissenbach. He said in the face of these tremendous re-possessions they would be given credit.

Q Mr. Kelley, with reference to your testimony that there was a loss on re-possessions, returns and exchanges of approximately $40,000 during the period from April first, 1915, to January last, did you credit anywhere on the books

the profit derived from the sale of these re-possessed, returned or exchanged pianos? A There wasn't any profit on the re-selling of them.

Mr. Weissenbach. That isn't answering my question.

Court. Did you credit the profit.

Q I am not speaking of profit; whatever proceeds were received from the re-sale of those re-possessed, returned or exchanged pianos, are those included in the item of $147,000 total sales during that period of time? A Yes, sir.

Q So that if there was a profit earned on that it would have been included in the gross profit of the business? A Yes, sir.

Cross examination by Mr. Bradner.

Q Why didn't you collect interest? A In some cases I tried to.

Q (*By the Court.*) Why didn't you collect on contracts made? A The customers wouldn't pay it.

Q Then you tried to collect interest? A In some cases I attempted to.

Q Were you authorized by the directors of the company not to collect interest? A No, sir.

Q Have you discounted any notes while you have been in charge? A Yes, sir.

Q By what authority? A I cannot say that I discounted them personally.

Q What do you mean by that? A If a sale was made and it was agreed with the customer that if they would pay that within a certain length of time, they would be given a certain discount on the original price of the instrument—

Q Haven't you given them a discount that did not enter into the original agreement? A

In some cases I believe when a customer come in and paid cash for their account, a certain deduction was allowed them.

Q What became of that discount? A It was charged off against the profits.

Q Did you take the money from the Standard to make good to the Commercial Security Company? A I believe if the lease had been hypothecated and the balance due them, the Standard Piano Company could get the amount.

Q That made an additional allowance to the Standard Piano Company, did it not? A No, sir, it did not.

Q When you made the discount were you acting for the Commercial Security Company or for the Standard Piano Company?

Mr. Weissenbach. He said he did not personally make any discount.

Court. I think the inquiry is a proper one.

A As treasurer of the Standard Piano Company.

Q And in each one of those cases the Standard had paid for carrying the lease? A I believe it was charged interest.

Q And you took the money from the Standard Piano Company to make good to the Commercial Security Company the loss on that discount?

Objected to. Objection overruled.

A The Standard Piano Company was indebted to the Commercial Security Company and they paid the balance due on the contract.

Q Those pianos that were sent to Engelhart-Seybold Company, so far as you know, belong to the Standard Piano Company, do they not? A As far as I know, yes, sir.

Leo J. Kelley, re-direct.

Q Carried in stock for some little time? A They were in stock when I went there.

By the Court.

Q Yesterday you stated the total amount that had been paid by the Commercial Security Company and also by the Federal Commercial Company had been paid or loaned or advanced on leases during the period that your attention was directed to. In those two amounts that you gave did any of the so-called advances represent the amount which was due the Standard Piano Company for the general or special reserve? A No, sir.

Q It was the so-called 72 per cent. of the lease that these advances represented? A Yes, sir.

Q At any time during the period that you have been connected with this company did the Standard Piano Company receive from any person or corporation that had made advances to it anything to represent the special or general reserve? A No sir.

Q In the way of cash? A No, sir.

Re-direct by Mr. Weissenbach.

Q You testified that you did not personally make any discount; if you didn't, do you know who did? A Any allowance that was made to any customers was taken up by either Mr. Bonar or myself.

Court. What difference does it make if he made them improperly; it does not affect the insolvency.

Leo J. Kelely, re-cross.

By the Court.

Q When these leases were sold to the Federal and the Commercial companies, when was it expected that the Standard Piano Company was ever going to realize anything on the special or general reserves? A Every three months that reserve should be returnable by taking twenty per cent. of the collections which during that period had been remitted, less any defaults which may have accumulated in that period; if the defaults were in excess of the amount which might have been available, there was nothing coming back; if, on the other hand, the amount available was larger than the defaults, the difference would be remitted.

Q And there was no such remittance? A The defaults were always in excess.

Court. I am endeavoring to ascertain if the so-called general and special reserves have any actual tangible value as an asset of the Standard Piano Company. That is one thing that is in my mind, and I am trying to get the information about it.

Mr. Bradner. They evidently thought they had when they assigned them.

Re-cross by Mr. Bradner.

Q In your experience with the Commercial Security Company what is the average percentage in defaults on piano contracts? A That is a hard question to answer.

Q Can you approximate it? A In some sections it is high and other sections it is low.

Q (*By the Court.*) In this locality? A In this particular case the defaults are very heavy.

Q How heavy? A I should say that the defaults at the present time are in the neighborhood of $25,000 or $30,000.

Court. You don't mean by reason of this proceedings?

Witness. Oh, no.

Court. Prior to the time of this action?

Witness. Yes.

Q And in March, 1915, when you went to this company, what were the defaults, as far as you could ascertain them? A I wouldn't want to make an attempt to answer that question.

Q Were they as large as twenty per cent? A Yes, they were over twenty per cent.

Q Then the Commercial Security Company with knowledge of that didn't expect to pay any of that twenty per cent. reserve? A It wasn't the fault of the Commercial Security Company.

Mr. Bradner. Exhibit D. 3 has not been gone into in detail. I thought the other side would go into it on cross-examination, but they did not, and I would like to recall Mr. Herdien.

WALTER L. HERDIEN, recalled for

Further direct examination, by Mr. Bradner.

Q I have recalled you to explain Exhibit D3 in detail. A I have taken the total sales from April first, 1915, to January first, 1916, from the record sales book and my figures and Mr. Kelley's practically agree there—$147,761.25 as the total gross sales. I have taken the total re-possession item, for re-sales and re-possessions and returns from April first, 1915, to January first, 1916, in the total amount of $40,324.12, and I have

checked off from the stock records from re-possessions made during the period from April first, 1915, to January first, 1916, and sold during that period, the net sales of which, subtracting $10,489, leaves $137,272.25, being the net sales for that period. The stock on hand at close of the year $5,440.

Q (*By the Court.*) Why do you subtract that $10,489? A Because those sales had become null and void during the period from April first, 1915, to January first, 1916, by either exchanges, returns or re-possessions, having been sold during that period. The purchases, the same item as Mr. Kelley has there, $25,635. The stock on hand I have taken at $25,000, according to the ledger on May first, 1915. I had no way of telling just what the stock on hand was on April first, and I had to do it in this way. I took from the sales record, Exhibit D5, the total number of pianos sold from April first, 1915, to January first, 1916, and the total amount of pianos is 687; to that I add the pianos on hand December 31, 1915, making a total number of pianos on hand and sold 732 pianos; the number of pianos re-possessed, exchanged or returned to be re-sold were 151 pianos. If you take the 151 from 732 that leaves 581 pianos. There was purchased from the Edisonia Estate 60 pianos, Stanley & Sons 114 pianos, Scheerer Piano Company 42, Gulbranson, Dickinson, 42, making a total amount of 258 pianos. The purchase price of these pianos is $25,635, which is practically about $100 a piano. You take 258 pianos from 581 pianos, and you have 323 pianos to account for. On hand, I figure May first, 1915, as 223 pianos, at a stock record price of the ledger, $25,000. That practically harmonizes with the 258 pianos that were purchased

for $25,635. I know that 100 pianos were sold during the month of April, because the stock record so shows. You add the 100 pianos to the 223 on hand, and I make it $10,000, $100 a piano; that is the way I estimate it. I take total purchases, stock on hand and stock sold in the aggregate amount of $60,000, that is, pianos on hand, purchased and sold, and those on hand in April and May, at $60,335; from that I get a gross income of $82,077.25. I add to that the approximately accrued interest of $5,000; I cannot figure it, because you would have to take every lease and figure it, and I didn't have time to do it, but there is over $100,000 of leases this year drawing six per cent. a year. I was not far wrong in putting it at $5,000. The rentals at $99.99, Mr. Kelley's figure; the other income $788.23, Mr. Kelley's statement. The general expense I put at $32,466.92, and agree with Mr. Kelley on that. I agree with Mr. Kelley on the rent on building, $2,625.03. The brokerage item I put at $1,014.75. I arrived at that by taking the ledger and taking every brokerage charge that is made there, and I pro-rated it for the thirty months, putting it on the nine months' basis, because that eight per cent. goes over the entire thirty months, the cost for carrying the paper for thirty months, and I arrived at $1,014.75. The interest paid all banks, the same as Mr. Kelley. The taxes I reduced to $441.63 from $588, because I pro-rate that for the nine months' period. Mr. Kelley put it in for the entire period of one year. Making a total expense of $36,555.52, which I deduct from the gross income, leaving a net income of $51,409.95.

Cross examination by Mr. Weissenbach.

Q The $5,000 item for accrued interest is a fictitious item, is it not; it was not received by the company? A It says approximately.

Q It is a fictitious item; the money wasn't collected during the year? A No, but the interest accrued on the contract; the value was there if they collect it.

Q If they collect it? A Yes, if you collect it.

Q And if they didn't collect it, it is not any part of the income? A Why, certainly it is the income; if they fail to collect it, that is their fault.

Q Nevertheless, if they did not collect it, it is not a part of the income, is it? A Certainly; everybody figures accrued interest, banks do; they may not collect it.

Court. If you don't receive it, it is not part of the income. You may never receive it. You may put it among your assets.

Q On the question of brokerage, Mr. Herdien, isn't the fact that the brokerage was actually expended during the year? A The brokerage is in this way: it is taken out during the year, naturally, but it covers a period of thirty months, and it costs no more to run it thirty months than it does—they rebate you if you go to work and pay them off. If I pay them I get the rebate back for the unexpired time.

Q In making up your figures of $1,014 for brokerage, it is purely a matter of bookkeeping, isn't it? A Certainly.

Q And in view of the fact that the money was actually paid out for the brokerage, isn't it

a legitimate charge against any income for the same year? A No, sir.

Court. Mr. Kelley says you paid out $7,600 for brokerage.

Mr. Weissenbach. Yes, and the books so show.

Q If the pianos that were on hand May first, 1915, were as Mr. Kelley testifies, and as the stock record shows, $56,000, instead of $25,000— A The stock record don't show that.

Q Let me finish. I said, if the figure $56,000 represents the actual value of the pianos on hand May first, 1915, then there should be deducted from this net profit that you figure for the nine months, of $51,000, the sum of $31,000; is that not right? A No, sir.

Q Then if the pianos cost $31,000 more, the value of the stock on hand is $31,000 more than you state here—call that a legitimate deduction as against the gross income? A Yes, if it costs that much more.

Q I said if it does cost. A Yes, sir.

Q Then if you deduct the $5,000, which you did not receive, that would take $36,000 off from the $51,000? A If you make that deduction.

Court. We need no argument about that.

Exhibit C. 1—C. 2.

Exhibits.

EXHIBIT C. 1.

The notes of the complainant, Alexander B. Shaw, were marked together in a single exhibit under this number. These notes are set forth in a list annexed to the affidavit of Alexander B. Shaw, which is printed in this state of case at page 44 and 45.

EXHIBIT C. 2.

5th District New Jersey,
Internal Revenue,
Oct. 7, 1915.
Received.

Walter L. Herdien
Attorney at Law
1414 Westminster Bldg.
110 So. Dearborn Street
Chicago
Telephone Randolph 5208

October 5th, 1915.

Office of Collector of Internal Revenue,
Newark, New Jersey.

Gentlemen:

In re: Standard Piano Co. of Newark, N. J.

I have just been informed that the Standard Piano Company of Newark, New Jersey, have failed to file with you its statement showing its annual net income for the year 1914.

This corporation became involved in financial difficulties in the fall of 1914 and in the early part of January, 1915, it was deemed advisable to trustee

the stock and the affairs of the company to better secure the holders of the note obligations of the corporation.

At that time the writer, who was secretary of the company, resigned his office and this feature of filing a return of the annual net income was overlooked by my successor.

The corporation did business for the year 1914 at a considerable loss and the affairs of the company have been in the process of liquidating its liabilities since the first of the year.

As the writer is familiar with the business of the corporation during the year 1914, I offer the suggestion to render you any service that I can to place before you the information that you desire.

If you will write me concerning this feature I will promptly act on your suggestions.

Respectfully yours,

WLH-B (Signed) W. L. HERDIEN.

EXHIBIT C. 3.

FEDERAL COMMERCIAL COMPANY
Westminster Building
110 South Dearborn Street

Chicago, July 24, 1914.

Mr. W. W. Forbish,
Pres. Standard Piano Company,
Newark, N. J.

Dear Sir:

You will find enclosed a list of 105 non-active accounts. If it is necessary to repossess all of these instruments, you can readily appreciate that it will mean a month and a half of business to equalize these contracts, which seemingly now have no value.

Exhibit C. 4.

I should like to have a separate report on each one of these parties, sending the list back to me. How soon will this report be forthcoming?

Yours very truly,

WLH-CCW (Signed) W. L. HERDIEN.

Enc.

EXHIBIT C. 4.

THIS INDENTURE, Made this 4th day of March, 1913, by and between the Federal Commercial Company, a corporation organized and existing under the laws of the State of Delaware and located in the City of Chicago, State of Illinois, hereinafter called the "Company" and the Fort Dearborn Trust and Savings Bank, a corporation organized and existing under the laws of the State of Illinois and located in the City of Chicago in said State, as Trustee, hereinafter called "Trustee."

WITNESSETH THAT

WHEREAS, the "Company" is engaged in the business of acquiring negotiable paper, accounts receivable, mortgages, leases, conditional sale contracts, and other evidences of indebtedness against merchants, manufacturers and others, and is authorized to borrow money and issue its promissory notes therefor, and to secure payment thereof by pledges of its assets:

WHEREAS, the "Company" desiring to provide money for its business, its Board of Directors, at a meeting duly called and held in the City of Chicago, Illinois, on the 4th day of March, 1913, duly authorized its President and Secretary to execute and deliver to the "Trustee" ready for certification by it, certain promissory notes of the "Company," each of said notes to be the face value of Five Thousand

Exhibit C. 4.

Dollars ($5,000.00) or of any multiple of Five Hundred Dollars ($500.00) and numbered consecutively from "one" (1) upward, to be known as "Series A," the issue of which is not to exceed Two Million Five Hundred Thousand Dollars ($2,500,000) and from time to time to execute and deliver to the "Trustee" ready for certification by it, additional like promissory notes to the "Company" and to execute, acknowledge and deliver to the "Trustee" a Deed of Trust, pledging as security for payment of said promissory notes so to be executed, negotiable paper, accounts receivable, mortgages, leases, conditional sale contracts and other evidences of indebtedness purchased by the "Company" both now and hereafter.

WHEREAS, the Stockholders of the "Company," at their meeting duly called and held at Wilmington, Delaware, on the first day of March, 1913, by resolution duly passed by vote of the holders of a majority of the stock, consented to, ratified, approved and confirmed the aforesaid action of the Board of Directors.

WHEREAS, pursuant to said action of the Directors and Stockholders, the President and Secretary of the "Company" have executed and delivered to the "Trustee," for certification as herein provided, certain promissory notes of the "Company," and said officers will, from time to time hereafter, in accordance with the provisions herein contained, execute and deliver to the "Trustee," for certification, additional like promissory notes of the "Company," each of which note is, and shall be, in substantially the words and figures following, subject only to necessary variation in distinguishing num-

Exhibit C. 4.

bers, dates of issue, the time to run and the principal sum to-wit:

$5,000.00 $5,000.00

COLLATERAL TRUST NOTE

Series "a" No.....

FEDERAL COMMERCIAL COMPANY
Chicago, Illinois

.....after date for value received the Federal Commercial Company promises to pay .....or order at the office of the Fort Dearborn Trust and Savings Bank, of Chicago, Illinois.

($5,000.00) Five Thousand Dollars ($5,000) in gold coin of the United States of America of the present weight and fineness with interest at rate of 6 per cent. per annum after maturity.

This note is one of an authorized issue of notes all of which are of the denomination of Five Thousand Dollars ($5,000.00) or of any multiple of Five Hundred Dollars ($500.00) issued or to be issued, of like tenor and amount, all of which notes are equally or ratably secured without distinction (by reason of priority of date of issue) by a deposit with and assignment to the Fort Dearborn Trust and Savings Bank, Trustee, under a Deed of Trust dated the 4th day of March, 1913, of guaranteed negotiable paper, bills and accounts receivable, and other evidences of indebtedness against selected merchants, manufacturers and others amounting to 120 per centum for every Five Hundred Dollars ($500.00) of the face of all notes outstanding, which Deed of Trust is hereby made a part hereof.

In case any default be made in the payment of any note when due, or in performing or complying with any other agreement or condition of any such

Exhibit C. 4.

note or said Deed of Trust, and such default continue for ten days after the Trustee shall have requested the Federal Commercial Company to pay or to perform or comply with such agreement or condition, then and in every such case all such notes outstanding shall forthwith become due and payable.

All the provisions herein contained and set forth in the Deed of Trust shall inure to the benefit of the holders or assign thereof.

FEDERAL COMMERCIAL COMPANY,

.....

President.

Countersigned.

.....

Secretary.

TRUSTEE'S CERTIFICATE

It is hereby certified that this note is one of the series of notes referred to in the Deed of Trust within mentioned.

FORT DEARBORN TRUST AND SAVINGS BANK,

Trustee.

By .....

Secretary and Trust Officer.

NOW, THEREFORE, the "Company" in order to secure the payment of principal and interest of all of its promissory notes aforesaid at any time outstanding, hereby sells, assigns, transfers, sets over, hypothecates and pledges to the "Trustee" all right, title and interest in and to all negotiable paper, accounts receivable, mortgages, leases, conditional sale contracts, and other evidences of indebtedness purchased by the "Company" and now or hereafter delivered to, and deposited with the

Exhibit C. 4.

"Trustee" as security hereunder, together with all guarantees of and all security for payment of the same, as fully and completely as though each item were attached hereto and made part hereof, the same to be held, dealt with and applied by the "Trustee" as hereinafter provided, and such negotiable paper, accounts receivable, mortgages, leases, conditional sale contracts, and other evidences of indebtedness are hereinafter called "accounts."

ARTICLE I.

The accounts at all times delivered to and deposited with the "Trustee" as security hereunder, shall be those existing against merchants, manufacturers and others, selected and approved as to credit by the "Company," which accounts shall be duly assigned to and owned by the "Company" and purchased in the usual course of its business, and shall have attached thereto a formal written assignment of the same, executed by the creditor assigning the same to the "Company" together with a formal instrument subjecting the same to the lien and operation of this indenture, and that all promissory notes and other negotiable instruments pledged hereunder shall, unless payable to bearer, be properly endorsed.

The "Company" agrees that all the notes hereby secured, which may be executed by the "Company" and which may be certified by the "Trustee" shall be so that the amount outstanding shall always have at least Six Hundred Dollars ($600.00) face value, of accounts pledged hereunder, for every Five Hundred Dollars ($500.00) of the face of all notes outstanding, or, if there be both money and accounts pledged, then so that the accounts shall be at least One Hunderd and Twenty per cent. (120 per cent.) of the balance of the face of the notes after taking therefrom the amount of cash so

pledged. Subject to the foregoing restrictions, the "Trustee" shall from time to time certify and deliver notes hereby secured as required by the joint order of any two of the following four officers of the "Company:" the President, Vice President, Treasurer and Secretary.

ARTICLE III.

The "Company" may at any time withdraw any of the accounts pledged hereunder on duly substituting therefor like accounts or money or both to the amounts as provided in "Article II," and shall so substitute for and take up any and all accounts pledged hereunder which shall not be paid within ninety (90) days after the due date thereof; and, in each case the delivery of the account or evidence thereof, by the "Trustee" to the "Company" shall operate as a reassignment of the same and of all title thereto to the "Company" as fully as any formal assignment might do.

ARTICLE IV.

The "Company" shall pay said notes, and each of them when and as the same become payable according to the tenor thereof, and the "Company" shall provide for such payment by depositing with the "Trustee" on or before the due date of each note the entire amount necessary to pay the same, and each such deposit shall be accompanied by a statement of the "Company" giving the number of the notes and the respective amount due thereon, for the payment of which such deposit is made, and the money so deposited shall be held by the "Trustee" for payment of the note so specified.

ARTICLE V.

Until default and request upon the "Trustee" by some note holder or holders as herein provided, the "Company" shall have the right to collect the prin-

Exhibit C. 4.

cipal and interest on all accounts pledged hereunder, and the "Company" covenants and agrees that it will forthwith, and as and when payments are made to it, of, or on account of, any accounts pledged or hypothecated hereunder, at once remit such payments to the "Trustee" to be held in lieu of the particular accounts paid or partly paid as aforesaid; or the "Company" may, in such case, substitute such accounts so paid or partly paid with new accounts conforming to the requirements of this Deed of Trust; provided, however, that if, in any case, the "Trustee" shall have in their possession accounts pledged hereunder not more than ninety (90) days overdue, together with the money of the "Company" in excess of the amount required by Article "II" hereof, as security for the notes outstanding and secured hereby, the "Trustee" shall, if the "Trustee" has not then have received written notice from a holder of any such note that the "Company" is in default hereunder, deliver such excess of cash in accordance with the order of the "Company," provided, however, that no cash deposit with the "Trustee" for payment of any note as provided in "Article IV" shall be returned to the "Company."

The "Company" hereby agrees to promptly notify the "Trustee' of any fact which tends to lessen the financial stability of any account then on deposit with the "Trustee," whether involved in bankruptcy or otherwise, and upon notice by the "Trustee" to the "Company" so to do the "Company" will promptly replace such account by other good, valid and solvent securities, or by cash, and will replace any account if requested to do so by said "Trustee."

The "Company" hereby agrees that on or before the 5th and 20th day of each month that the

Exhibit C. 4.

"Company" will furnish the "Trustee" with a detailed report of all collections, on all accounts that then are on deposit with the "Trustee" that have been made up to the first and fifteenth day prior thereto, and the "Company" further agrees that it will certify as to the accounts then on deposit with the "Trustee" that none of them are in default of any payments due thereon for more than ninety (90) days.

ARTICLE VII.

The "Company" shall keep proper books of records and account containing full and true entries of all transactions, and shall on or before the fifteenth day of July and January of each year while any of the notes secured hereby are outstanding, furnish to the "Trustee" a statement showing the "Company's" assets and liabilities at the time. The "Trustee" may at any time and by such representatives as they may select and at the expense of the "Company," make an examination of the properties, books and papers of the "Company" and the "Company" shall furnish the "Trustee" with reasonable facilities for such examination.

ARTICLE VIII.

In case any of the notes secured hereby shall become mutilated or destroyed, new notes of like tenor and date may, at the discretion of the "Company" and the "Trustee," upon receipt by the "Trustee" of satisfactory proof of such destruction and of satisfactory indemnity, be executed and certified in exchange or substitution therefor. Any such mutilated notes shall be delivered to the "Trustee" and cancelled by it before certification of any note in its place.

Exhibit C. 4.

ARTICLE IX.

In case default shall be made by the "Company" in the payment of any of its said notes when due, or in performing or complying with any other agreement or condition of said notes, or of this indenture, and written notice of such default has been given the "Trustee" by the holder or holders of notes issued hereunder, with the request that the "Trustee" demand payment or performance, and such default shall continue for ten (10) days after the "Trustee" shall have requested the "Company" at "No. 110 South Dearborn street, Westminster Building, Chicago, Illinois," or its last known place of business, to pay such note or notes and the interest accrued thereon, or to perform or comply with such agreement or condition, which default will thereupon be deemed a matured default, then, and in every such case, all notes certified and outstanding hereunder shall forthwith become due and payable, anything herein contained to the contrary notwithstanding, and the "Trustee" may, and upon being requested so to do by one or more holders of said notes and upon indemnity satisfactory to the "Trustee," they shall proceed to collect or sell the securities so pledged hereunder in whole or in part, at public or at private sale, at any time or time hereafter, without demand or notice to the "Company" or notice to the debtor, assignor or guarantee of such securities, with the right on the part of the "Trustee" and of the holders of said notes, and any of them, to become purchasers of said securities at such sale or sales, freed and discharged from any equity of redemption; and the "Company" hereby constitutes and appoints the "Trustee" its agent and attorney for the purpose and hereby authorizes and empowers it, as such agent and attorney, to endorse the name

of the "Company" on any and all notes, checks, drafts, money orders or other forms of exchange that may come in to the possession of the "Trustee" as payment of, or on account of, any of the accounts, or the merchandise represented by any of them, and fully authorizes its agent and attorney to sign its name to any assignment or any said securities reasonably necessary to effect a complete sale of the same by the "Trustee" under the powers hereby conferred.

The proceeds of all such collections and sales made by the "Trustee" in case of such default, and all cash held by it hereunder at such time shall be applied as follows:

(a) To the payment of the costs and expenses of the "Trustee" in the premises, including reasonable compensation to the "Trustee," its agents and attorneys.

(b) To the payment of the whole amount which shall then be owing or unpaid for principal or interest on said notes then certified and outstanding; and, in case of the insufficiency of such proceeds, the same shall be applied, first, to the payment ratably of the interest, and next to the payment ratably of the principal.

(c) The surplus, if any, to be paid to the "Company" its successors and assigns, or to whomsoever may be lawfully entitled to receive the same.

ARTICLE X.

The "Company" covenants that at the request of the "Trustee" it will forthwith execute and deliver all such further instruments and will take all such further action as may be required by the "Trustee" for better transferring and assuring unto the "Trustee" the title to the accounts at any time pledge with the "Trustee" hereunder.

Exhibit C. 4.

ARTICLE XI.

The "Trustee" for itself, its successors and assigns, accept the trust hereby conferred and assume the obligations thereof only on the following terms and conditions, to-wit:

(a) The recitals of fact contained herein and in the promissory notes issued hereunder shall be understood as made solely by the "Company" and shall not be construed as made or vouched for by the "Trustee."

(b) The "Trustee" shall have no responsibility as to the validity or execution of this indenture or of any lien purporting to be hereby created, or as to the title to, or value of, any of the property described herein, it being understood that neither the "Trustee" nor any of its officers or agents has, or claims to have any knowledge relative thereto, and assumes no responsibility for, or obligation with respect to the title, validity or value of accounts and notes delivered to it under this indenture.

(c) The "Trustee" shall not be in any way liable or responsible for the consequences of any breach on the part of the "Company" of any of the stipulations herein contained or for the application of the promissory notes secured hereby or the proceeds thereof.

(d) The "Trustee" may receive any such account tendered for pledge hereunder, together with all papers accompanying the same, without making any examination as to their genuineness or validity and may accept the same as delivered to them by the "Company" as being what they on their face purport to be, and shall not be responsible for the due execution or validity of the same. The "Trustee" shall be under no duty to refuse any accounts tendered to them hereunder by the "Company" on account of its being against a debtor of insufficient

credit, or for any reason to inform themselves as to the credit of the debtor, or of the assignor or guarantor of any such account, or to collect, make any demand upon, or give notice of default of, or to protest or take any other action on, or in respect to, any account pledged or hypothecated hereunder, or in respect to the principals, endorsers, guarantors, sureties or other parties liable thereon, except as herein otherwise provided; but the "Company" shall and will attend thereto and to all matters necessary, proper or advisable to maintaining unimpaired the validity and value of such accounts. The "Trustee" in its discretion and at the expense of the "Company" or the property of the "Company" in its custody, may do or procure to be done all matters and things in this indenture set forth, but no such action on the part of the "Trustee" shall be construed as a waiver of its exemption from responsibility on account thereof, or a waiver of any default on the part of the "Company" in respect theerof, or of any right of the "Trustee," or any note holder, consequent upon such default.

(e) The "Trustee" shall not be required to take notice, nor be deemed to have notice of any event creating or causing a default hereunder unless specifically notified, in writing, of such default by the holder of a note, or notes, secured hereby, nor be required to take any action in respect thereto unless so notified and indemnified to their satisfaction, as hereinafter provided.

(f) The "Trustee" may select and employ in and about the execution of its duties in the premises suitable agents and attorneys, to be paid by the "Company" and until paid the expense to be a lien as provided in paragraph "H" hereof; and the "Trustee" shall in no event be held liable for any neglect, commission, mistake or misconduct of any

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such agent or attorney, reasonable care being exercised in their selection.

(g) The "Trustee" shall not be liable for any loss or damage not caused by their own willful negligence or default.

(h) The "Trustee" shall have a lien on all accounts pledged with it hereunder and all cash delivered to such "Trustee" and the proceeds of the accounts prior and paramount to the lien of the promissory notes issued hereunder and the interest thereon, for the reasonable expense, disbursements and compensations of the "Trustee" hereunder; and the holder of each and every note issued hereunder, by accepting the same, thereby acknowledges and assents to such lien.

(i) The "Trustee" shall be protected in acting upon any notice, request, consent, certificate, note or other instrument, believed by them to be genuine and to have been properly executed, and shall be entitled to receive, as conclusive proof of any fact or matter required to be ascertained by the "Trustee" hereunder, a certificate of the "Company" signed by the President and Secretary.

(j) The "Trustee" shall be under no obligation to recognize anyone as holder or owner of any promissory note issued hereunder, or to do or refrain from doing any act pursuant to the request of anyone professing or claiming to be such owner until such professed holder or owner shall deposit such note or notes with the "Trustee" and indemnify and save harmless the "Trustee" to its satisfaction from any and all costs and expenses, outlays, counsel fees and other reasonable costs and damages, for which they may become liable and responsible in proceeding to carry out such request or demand.

Exhibit C. 4.

(k) The "Trustee" shall be under no obligations to institute, conduct or defend any suit, litigation or proceedings under this indenture nor take any other action on any default hereunder, until the "Trustee" shall have been indemnified to its full satisfaction against expenses and costs of every kind, which, in the "Trustee's" judgment may be incurred by such proceedings.

(l) The "Trustee" or any successor hereafter appointed may resign and be discharged from its duties hereunder by delivering or sending by registered mail to the "Company" at "No. 110 South Dearborn Street, Chicago, Illinois," or at its last known place of business, such resignation in writing duly signed by the "Trustee" and such resignation shall take effect at the expiration of five (5) days from mailing of such notice, in case the same is mailed by the "Trustee."

(m) In case a vacancy in the Trusteeship occurs, by resignation or otherwise, the "Company" is authorized to appoint by resolution of its Board of Directors, as successors to the "Trustee" any other trust company with a place of business located in the City of Chicago, Illinois, and authorized by the laws of the State of Illinois to administer such trust, and the "Company" agrees that whatever and as often as it shall receive notice as above provided, of the resignation of a "Trustee," it will within five (5) days, cause a new "Trustee" to be appointed in the manner herein provided. And, it is further agreed that a copy of such resignation of the "Trustee" together with a copy of a resolution of the Board of Directors of the "Company" appointing a new "Trustee," both certified by the Secretary of the "Company" shall be full and complete evidence of the authority of the Trust Company named in such resolution of the Board of Di-

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rectors of the "Company" to act as such "Trustee."

In Witness Whereof, The Federal Commercial Company, by its President and Secretary, thereunto lawfully authorized by action of its Directors and Stockholders, has hereunto set its corporate name and seal; the Fort Dearborn Trust and Savings Bank, by its President and Secretary, thereunto lawfully authorized by action of its Directors, has hereunto set its name and seal as of the day and year aforesaid.

FEDERAL COMMERCIAL COMPANY,
By Andrew P. Mackie,
(seal) *President.*

Attest:
William O. Heffernan,
Secretary.

FORT DEARBORN TRUST AND SAVINGS BANK,
By Wm. A. Tilden,
(seal) *President.*

Attest:
E. C. Glenny,
Secretary.

State of Illinois, }
County of Cook, } *ss.*

On this 4th day of March, 1913, personally appear before me a Notary Public within and for said County and State, Andrew F. Mackie and William O. Heffernan, to me known and known to me to be respectively the President and Secretary of the Federal Commercial Company, one of the corpora-

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tions which executed the foregoing instrument as such officers for and on behalf of said corporation, and that the same is their free act and deed as such officers and the free and corporate act and deed of said corporation.

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and seal at Chicago, this 4th day of March, 1913.

EARL C. HALES,
Notary Public.

Signed, sealed and delivered in the presence of:

M. B. CROWLEY,
EARL C. HALES.

STATE OF ILLINOIS, }
COUNTY OF COOK, } *ss.*

On this 4th day of March, 1913, personally appear before me a Notary Public within and for said County and State, Wm. A. Tilden and E. C. Glenny, to me known and known to me to be respectively the President and Secretary of the Fort Dearborn Trust and Savings Bank, one of the corporations which executed the foregoing instrument as such officers for and on behalf of said corporation, and that the same is their free act and deed as such officers and the free and corporate act and deed of said corporation.

Exhibit C. 5.

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and seal at Chicago, this 4th day of March, 1913.

E. WITZLEBEN,
Notary Public.

My commission expires Nov. 25th, 1916.

Signed, sealed and delivered in the presence of:

F. M. FORREY,
M. AARON.

EXHIBIT C. 5.

THIS INDENTURE, dated the 1st day of May, in the year one thousand nine hundred and thirteen, by and between the Federal Commercial Company, a corporation duly created, organized and existing under and by virtue of the laws of the State of Delaware and having a usual place of business in the City of Chicago, State of Illinois, and hereinafter termed "the company" or "the said company," party of the first part, and the Fort Dearborn Trust and Savings Bank, a corporation duly created, organized and existing under and by virtue of the laws of the State of Illinois, and located in the City of Chicago, in said State, and hereinafter termed "the Trustee,"or "the said Trustee," party of the second part;

WITNESSETH: That WHEREAS, The Board of Directors of the Company pursuant to the authorization by the stockholders given to its Board of Directors, has resolved to issue and sell from time to time different series of six per cent. (6%) bonds, the total amount of which, comprising each series, together with respective dates, maturities,

denominations and other details thereof, shall be indicated upon the face of such bonds, which bonds shall be secured by the assignment to the said trustee of selected notes or other evidences of indebtedness, secured by mortgages or other lien instruments covering pianos and other tangible property purchased or acquired by the Company in the course of its business from divers merchants, manufacturers, and others, and

WHEREAS, for the purpose of securing the due and punctual payment of the principal and interest of its certain bonds comprising each of said series, the said Company does hereby make, constitute and appoint the trustee above named for the purpose aforesaid and hereinafter more fully set forth, and,

WHEREAS, the said trustee has undertaken and agreed to accept the trusts herein and hereby created, and,

WHEREAS, it is covenanted and agreed by and between the parties hereto, that the bonds of the said Company to be issued hereunder shall be in different series, designated from A to Z consecutively, as they shall be issued respectively, and that the form of bonds and of interest coupons and the certificate of the trustee shall be substantially, except as to any necessary variations to indicate the different series alphabetical, bond numbers, denominations, dates, maturities, etc., as follows:

UNITED STATES OF AMERICA

STATE OF DELAWARE

Series No.....

($500). ($500).

FEDERAL COMMERCIAL COMPANY

Six per cent.

COLLATERAL TRUST GOLD BOND

Exhibit C. 5.

On the first day of May, 1913, for value received the Federal Commercial Company, a corporation hereby promises to pay to the bearer hereof, or, if registered, to the registered holder of this bond, at the office of the Fort Dearborn Trust and Savings Bank, Trustee, in the City of Chicago, State of Illinois, the sum of Five Hundred Dollars in gold coin of the United States of America of or equal to the present standard of weight and fineness and to pay interest thereon from date hereof, at the rate of six per centum (6%) per annum, payable quarter annually at said office as they severally mature, upon presentation and surrender to the said trustee of the quarterly interest coupons therefor hereto attached. Both the principal and interest of this bond shall be paid without deduction for any tax or taxes which may be imposed thereon by any present or future law of the United States of America, or of any state, county or municipality therein. This bond is one of a series of bonds issued in the aggregate amount of One Hundred Thousand ($100,000) Dollars under and pursuant to the provisions of a trust agreement entered into between the Federal Commercial Company and the Fort Dearborn Trust and Savings Bank, as Trustee, subject to the terms and conditions of which agreement this bond is issued, securing the payment of said bonds and which bonds are further secured by the assignment to the said trustee of evidences of indebtedness, secured by mortgages and lien instruments, covering pianos and other tangible property, amounting to, at the time of the issuance hereof not less than One Hundred Twenty-five Thousand ($125,000) Dollars and at all times an amount of such Collateral as shall be equal to not less than One Hundred Twenty-five (125%) per centum of the par value of any bonds of this

series outstanding and unpaid or cash deposited with the trustee equal to the amount of said bonds outstanding, or both Collateral and Cash, as above indicated. A detailed list and description of said Collateral has been filed with and properly assigned to said Trustee under the above mentioned trust agreement to be held as security for the payment of the principal and interest of said bonds. This bond is subject to redemptionat the option of the Federal Commercial Company, or its successors at par and accrued interest, together with a premium of one (1%) per centum per annum for the unexpired term. This bond shall pass by delivery unless registered in the owners name on the books of the Fort Dearborn Trust and Savings Bank, at its offices in the City of Chicago, State of Illinois, such registration being noted on the bond by the Fort Dearborn Trust and Savings Bank. After such registration of ownership duly certified hereon, no transfer shall be valid unless made on said books by the registered owner in person or by his duly authorized attorney, and similarly noted on the bond, but the same may be discharged from registration by being transferred to bearer, and thereupon transferability by delivery shall be restored. This bond may again from time to time be registered or transferred to bearer as before. Interest coupons shall be transferred by delivery only. No recourse shall be had for the payment of the principal or interest of this bond against any stockholder, director, or officer of the Federal Commercial Company by virtue of any statute or by enforcement of any assessment or otherwise. If default shall be made in the payment of any installment of interest thereon, and such default shall continue for thirty days, the principal of all such bonds may become due and payable in the manner and

Exhibit C. 5.

with the effect provided in said trust agreement, or if said Federal Commercial Company shall fail to carry out any of its obligations under said agreement between it and Trustee, the principal hereof may be made to become due and payable before regular maturity as provided in such agreement and said evidences of indebtedness deposited as collateral, as aforesaid, may be sold and the proceeds thereof and applied to the principal and interest of this bond by said Trustee as provided in said agreement. Neither this bond nor any coupon for interest thereon shall become valid until the bond shall have been authenticated by the certificate endorsed hereon duly signed by the Trustee under said trust agreement.

In Witness Whereof, said Federal Commercial Company has caused these presents to be signed by its President, and its corporate seal to be hereunto affixed, attested by its Secretary, and coupons for such interest bearing the engraved fac-simile signature of its Treasurer, the....day of...., A. D., 19...

FEDERAL COMMERCIAL COMPANY,

By .....

President.

Attest:

.....

Secretary.

Exhibit C. 5.

TRUSTEE'S CERTIFICATE.

This bond is one of a series of bonds, described in the Trust agreement referred to herein.

FORT DEARBORN TRUST AND SAVINGS BANK,
Trustee.

By.....
Secretary and Trust Officer.

FORM OF INTEREST COUPON.

Coupon No.....

On the.....day of....., 19....

FEDERAL COMMERCIAL COMPANY

will pay to the bearer, Seven Dollars and Fifty Cents ($7.50) in gold coin at the office of the Fort Dearborn Trust and Savings Bank, in the City of Chicago, State of Illinois, as payment of three months' interest on its Six Per Cent. (6%) Gold Bond.

Series No.....

.....
Treasurer.

$7.50

NOW THEREFORE THIS INDENTURE WITNESSETH: That in order to afford security and protection to each and every one of the purchasers and holders of any of said bonds, and the coupons thereto attached, it is hereby expressly declared, that said bonds are to be issued, dealt with and disposed of under and subject to the terms, conditions, stipula-

New Jersey State Library

Exhibit C. 5.

tions, covenants, agreements and trust hereinafter expressed, that is to say:

Only such bonds as shall bear thereon endorsed the trustee's certificate substantially in the form hereinbefore recited, executed by the trustee, shall be secured by this indenture, or shall be entitled to any lien, right or benefit hereunder; and every such certificate of the "Trustee" upon any bond purporting to have been issued hereunder shall be conclusive evidence that the bonds so certified have been duly issued hereunder, and that the same is entitled to the benefit of the trust hereby created.

That as many different series of bonds may be issued by said "Company" pursuant to the provisions hereof from time to time in such amounts and at such times as may be deemed most convenient. The said "Company" shall determine the aggregate or total amount of the bonds which shall comprise any series to be issued, and after the issuance of the amount of such bonds, no further bonds of that particular series shall be issued. That each series shall be dated and become due serially at such times as shall be expressed upon the face of the different bonds composing it. As security for the payment of each entire series of bonds herein provided for and authorized, the said "Company" shall from time to time cause to be set over, assigned and transferred so as to be fully available to said "Trustee," certain selected notes, and other evidences of indebtedness, secured by mortgages or lien instruments, as above indicated in the total amount of not less than One Hundred Twenty-five per cent. (125%) of the total amount of each several series, which notes, mortgages, etc., shall be held by said "Trustee" in trust for the equal security, benefit and protection of the several purchasers of each particular series of bonds to

which they are respectively applicable, without priority as between themselves.

Whenever the "Company" shall hereafter purpose to issue any new series of bonds, pursuant to the provisions hereof, it shall prepare and submit to the "Trustee" a certificate under its corporate seal, signed by its PRESIDENT, attested by its SECRETARY, indicating the series number, the total amount of bonds to be included in such new series, their dates, denominations and maturities, including a detailed list and description of the selected notes, and other evidence of indebtedness to be secured by mortgages and lien instruments that are to constitute the security to be pledged with the "Trustee" for the payment of such bonds. And the "Company" shall thereupon deposit with the "Trustee" all the notes, and other evidences of indebtedness together with the mortgages and lien instruments so described in such certificate, the payment of which in each case shall have been severally guaranteed by the manufacturers or dealers from whom such notes and other evidences of indebtedness secured by mortgages and lien instruments shall have been purchased, and which shall be further duly assigned to the "Company" and by it assigned in blank so as to be available and collectable by the "Trustee" which notes, and other forms of indebtedness secured by mortgages and lien instruments so deposited shall be held as collateral security for the payment of the principal and interest of said bonds.

It is further expressly agreed that the "Company" may at any time deposit with the "Trustee" cash in lieu of the notes, and other evidences of indebtedness secured by mortgages and lien instruments which it is contemplated by the provisions hereof, are to be pledged as security, but any such

deposit shall be regarded as only temporary and shall be refunded by the "Trustee" to the "Company" upon the deposit of an equal amount of securities aforesaid.

If after the execution by the "Company" of any of the bonds of any of said series, the persons who shall have executed such bonds, or coupons as President and Secretary of the "Company" or any or either of such persons shall cease to be such officer or officers of the "Company" before such bonds shall have been certified by the "Trustee" and issued, such bonds may nevertheless be adopted by the "Company," and upon its request, shall be certified and delivered by the "Trustee" and issued as though said persons or either of them had not ceased to be such officer or officers.

In case any bond issued under this indenture and coupons thereto appertaining, should become mutilated or be destroyed, the "Company" in its discretion may issue and thereupon the "Trustee" shall certify and deliver a new bond of like tenor and date as the one mutilated or destroyed, in exchange and substitution for and upon cancellation of the mutilated bonds and coupons, or in lieu of or substitution for the same if destroyed; in case of destruction the applicant for the substituted bond and coupons shall furnish to the "Company" and the "Trustee" evidence to their satisfaction in their discretion, of the destruction of the bond and coupons so destroyed, and also such security for indemnity as may be required by the "Company" and by the "Trustee."

The securities pledged by the "Company" for payment of any specified series of bonds, shall secure the payment of that series only, and the "Trustee" shall not endorse its certificate upon the bonds of any series, for the payment of which it does not hold securities, specifically pledged therefor of a

face value of at least One Hundred Twenty-five per cent. (125%) of the amount of the bonds so certified.

The "Company" covenants and agrees that the principal and interest on any and all of said bonds, shall be paid without deduction for any tax or taxes which the "Company" may be required to pay thereon, or to retain therefrom under any present or future laws of the United States of America, or in any state, county or municipality therein. The interest of the bonds shall be payable only upon presentation and surrender of the several coupons annexed thereto, as such coupons respectively mature, and when and as paid, all coupons shall forthwith be cancelled by the Trustee.

It is agreed that the Company shall on or before the 7th day of each month furnish to the Trustee a detailed list of the payments that have been made during the month preceding thereto, upon the collateral then held and the Company shall thereupon deposit with the Trustee cash equal to eighty per cent (80%) of the total of such collections, which deposits shall be retained by the Trustee for the payment of the bonds of that Series next falling due; the over-plus of such deposits not required in the retirement of such bonds may, at the election of the Trustee, be retained on deposit for the retirement of the bonds of that issue next becoming due and payable; in the monthly report by the Company so rendered to the Trustee, the Company shall certify that, on the notes remaining on deposit in connection with that particular series none are in default in the payments thereon for a period longer than ninety days; and if there should be such notes upon which there has been a default for a period of ninety days, it shall be the duty of the Company to promptly replace such collateral with new collateral, or cash, as hereinbefore provided.

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It shall be deemed within the meaning of this instrument full payment of any bond or bonds of any of said series not presented at maturity for payment at the place of payment designated therein, if the amount necessary to discharge the principal thereof and all interest then accrued and unpaid thereon shall be deposited with the "Trustee" upon the business day of such maturity, leaving the "Trustee" to make actual payment of such amount to the holder or holders. Any money so deposited with the "Trustee" for the payment of any of the bonds of any of said series or any of the interest coupons, shall thereafter upon the presentation and surrender to the "Trustee" for cancellation of such bonds or coupons, be paid over by the "Trustee" to the then holder or registered owner thereof. Upon the full payment and cancellation of all of said bonds, said "Trustee" shall deliver to the "Company" all of said notes and other evidences of indebtedness secured by mortgages and lien instruments so deposited with it as aforesaid.

It is further expressly agreed that the "Company" shall be entitled to collect and receive all accruing installments of principal and interest of said securities pledged, and pursuant to the provisions hereof, held by the said "Trustee" in trust, and to receive from said "Trustee" any principal notes or the interest coupons attached to or belonging to any of such securities so pledged at any time within 30 days prior to the maturity thereof upon depositing with the "Trustee" in cash, an amount equal to 80% of such maturing notes so received by the "Company," so long as the "Trustee" shall not have had notice of the existence of any default in the payment of principal or interest upon the series of bonds for which the said securities are pledged but no longer.

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It is further understood and agreed that in the event there shall at any time be any default in the payment of either the principal or interest of any of the securities herein pledged, and such default shall continue for 90 days, the "Company" shall be then required and hereby agrees to substitute in the place of such security so in default, other securities in amount equal to at least such securities for which substitution is to be made, that shall meet all the requirements of this trust agreement.

The "Company" hereby agrees to promptly notify the "Trustee" of any fact which tends to lessen the value of any security then on deposit with the Trustee," whether involved in bankruptcy or otherwise, and upon notice by the "Trustee" to the "Company" so to do, the "Company" will promptly replace such securities by other good, valid and solvent securities, or by cash, and will replace any security if requested to do so by said "Trustee."

If the said "Company" shall not be in default in the payment of interest due upon any of the bonds of any particular series or the principal thereof, it shall have the right to extend the time of payments by agreement in writing, of any of the notes, and other evidences of indebtedness secured by mortgages and lien instruments, and to deposit such extension agreement or evidence of such extension with the "Trustee" at any time within 60 days after the maturity of any such securities so extended, or may at any time withdraw any of the securities pledged to secure the payment of the bonds of any particular series by substituting other securities of a like character, and of at least equal amount, and whenever under the conditions aforesaid, such securities described as aforesaid, are tendered to the "Trustee" for exchange, the said "Trustee" shall promptly receive the same and immediately deliver to the said "Company" the securities requested.

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But if default be made in the payment of the interest or principal, thereafter maturing upon any series of bonds issued hereunder, the "Trustee" may in its discretion require all interest thereafter maturing upon the securities pledged for the payment of the series of bonds in which the default occurs to be paid direct to it, to be applied upon the payment of any delinquent interest or principal of said bonds or any principal or interest thereafter accruing.

In case default shall be made by the "Company" in the prompt payment of any interest on any outstanding bond or bonds secured by this indenture, and any such default shall have continued for a period of 30 days or in case default shall be made by the "Company" in the due observance or performance of any other covenant, condition or requirement imposed upon it by this instrument or by said bonds then and in such case, at the election of the holders of at least one-fourth in amount of all said bonds then outstanding, expressed in writing to said "Trustee" and upon written notice or declaration to that effect by the "Trustee" to the "Company," the principal of all said bonds then outstanding shall immediately become and be due and payable, anything in this instrument or in said bonds contained to the contrary notwithstanding; provided, however, that if at any time after the principal of said bonds shall have been declared due and payable as aforesaid, the "Company" shall pay all arrears of interest upon said bond and shall make good every other default of the "Company" in the performance of the covenants and obligations hereby imposed upon it, then and in every such case the holders of a majority in amount of said bonds then outstanding may, by written notice to the "Company" and to the "Trustee," waive such default

and its consequences and rescind the declaration accelerating the maturity of the principal of the bonds and thereupon said last mentioned declaration shall be wholly rescinded and cancelled with like effect as if no attempt had been made to cause the said bonds to become due and payable before regular maturity, but no such waiver shall extend to or affect any subsequent default or impair any right consequent thereon. In the event of any such waiver and rescission any and all proceedings theretofore taken to enforce any remedy on said bonds or hereunder shall thereupon be discontinued.

If the "Company" shall fail to pay any of the bonds of said series when the same shall become due and payable, either at regular maturity or by previous election and declaration as herein provided, then the "Company" upon demand of the "Trustee" shall pay, and it hereby promises to pay the principal and accrued interest of all such bonds to the "Trustee" for the benefit of and as "Trustee" for the holders or owners of such bonds, and of the interest coupons thereunto belonging (whether such bonds or coupons shall be in the possession of the "Trustee" or not), and in addition thereto such further amount as shall be sufficient to cover the costs and expenses of the collection of such bonds, including a reasonable compensation to the "Trustee," its attorneys and counsel and any expenses or liabilities incurred by the "Trustee" hereunder.

In case the principal of any of the bonds of any of said series shall become due and payable by election and declaration, as aforesaid, or otherwise, and shall remain unpaid after demand, the "Trustee" may of its own motion, and shall, upon the written request of the holders of at least one-fourth in amount of said bonds at the time being outstand-

ing, and upon indemnity or security to it as hereinafter provided, institute and carry on such suit or suits to enforce any rights of the holders thereof under this instrument as may be authorized by law. And it may, at its option, after giving ten days' notice of the time and place by advertisement in any daily newspaper published in the City of Chicago, State of Illinois, proceed to sell for cash any or all of said negotiable paper, mortgages, leases and conditional sale contracts, accounts receivable and other evidences of indebtedness deposited with it as collateral security for the payment of said indebtedness and the proceeds derived from any such sale shall be applied ratably to the payment of the principal and interest of said bond after deducting the cost of any such sale.

Remedies for enforcing the payment of the principal and interest of said bonds shall be regarded as cumulative and the exercise of one shall not prevent the "Trustee" from resorting to any or all of the other remedies provided herein or by law or equity for the enforcement of the payment of the said bonds and the interest thereon. At any sale of said securities made pursuant to any of the provisions hereof, the holder or holders of any of the series of bonds to which such securities were pledged, may become the purchaser of any such securities and hold the same absolutely discharged from any claim or interest of said "Company" therein, and in such event the bonds of said series held by such purchaser may be used on account of the payment of the purchase price at the net sum which would be distributable thereon from the proceeds of such sale.

No holder or owner of any of said bonds, or of any coupons belonging thereto, shall have any right to institute any suit, action or proceeding in equity

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or at law for the enforcement of any remedy hereunder, or to take any other action in respect of any default of the "Company" without first giving to the "Trustee" written notice of the fact that the default has occurred, nor unless also the holders or owners of at least one-fourth in amount of the bonds of said series then outstanding shall have made written request upon the "Trustee," and shall have offered the "Trustee" reasonable opportunity to institute such action, suit or proceeding in its own name, or to take such other action as it shall think reasonable and proper and the "Trustee" shall have refused or failed to act in the premises, nor unless also such holders or owners shall have offered to the "Trustee" adequate security or indemnity to its satisfaction against the costs, expenses and liability likely in its judgment to be incurred by it in any desired or suggested course of action; and such notification, request and offer of security or indemnity shall in any such case, at the option of the "Trustee," be condition precedent to the execution of the powers and trust of this instrument and of any action or right of action hereunder; it being understood and intended that no one or more of the holders or owners of any of said bonds or coupons shall have the right to enforce any remedy or right hereunder, except in the manner and upon the conditions herein provided, but that all proceedings at law or in equity and all other actions under this instrument shall be instituted, maintained and had in the manner herein provided and for the equal benefit of all holders of said bonds.

The "Trustee" shall keep at his office in the City of Chicago a book or books for the registration of the bonds of any and all of said different series. Each coupon bond shall upon application to the

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"Trustee" by the holder or owner thereof, be registered by the "Trustee" or discharged from registry in accordance with the provisions contained in such bonds.

Said "Trustee," in its capacity as "Trustee" hereunder or otherwise, shall be under no obligations to recognize any person or persons, firm or corporation as the holder or holders owner or owners of any of said bonds or to do or refrain from doing any act pursuant to request of any person or persons, firm or corporation, professing or claiming to be such holder or owner, until such supposed holder or owner shall have produced the said bond or bonds and deposited the same with the "Trustee," and shall indemnify and save harmless the "Trustee" to its full satisfaction from and against any and all costs, expenses, outlays, counsel fees and other reasonable disbursements and damages for which it may become liable and responsible in proceeding to carry out such request or demand. All recitals herein and in said bonds are made by and on behalf of the "Company" and the "Trustee" shall not be responsible for the correctness thereof. The "Trustee" shall have no responsibility nor does it guarantee as to the execution or the validity hereof nor of any bond, secured hereby nor of any notes, and other evidences of indebtedness secured by mortgages and lien instruments deposited as collateral security hereunder, nor as to the amount, value nor extent of the security afforded hereby, nor be obliged to see to the application of said securities, or the proceeds thereof, and shall not be in any way liable for the consequences of any breach on the part of the "Company" of the covenants herein contained, or for any other act or thing hereunder except its own negligence and intentional wrong doing. The "Trustee" shall only

Exhibit C. 5.

be responsible for reasonable diligence in the performance of the trusts hereunder and shall not be answerable in any case for the acts or defaults of any agent, attorney or employee selected with reasonable care. Should any suit or other proceeding be brought against the "Trustee" by reason of any matter or thing connected with the trusts herein created, or by reason of its being such "Trustee," it shall be under no obligation to enter any appearance by counsel or in any way to appear in and defend the said suit or other proceeding until indemnified to its satisfaction for so doing, but it may nevertheless appear and defend the same without indemnity, if it shall elect so to do, and in such case it shall be compensated therefor by the holders of said bonds then outstanding. The "Trustee" shall be entitled to be reimbursed for all proper and reasonable outlays of every sort or nature incurred by it in discharging its duties hereunder, including court costs and reasonable attorneys' fees, and to receive a reasonable and proper compensation for all duties and services which it may at any time perform in discharging the trusts hereunder, and to be reimbursed for all damages sustained or incurred by it on account of any negligence in the performance of such trusts by any of its officers, agents or servants selected with reasonable care; and all such fees, compensations, damages and disbursements, shall be paid to the "Trustee" by the "Company" upon demand and if the "Company" shall fail so to pay the same upon demand, then the same shall be forthwith paid by the holders of said bonds.

The "Company" covenants and agrees that from time to time it will pay and discharge all taxes and assessments imposed upon any part of securities in the hands of the "Trustee" so that the priority of

this indenture shall be fully preserved in respect of such securities at the cost of the "Company," without expense to the "Trustee," or the bondholders, provided, however, that nothing contained in this section shall require the "Company" to pay any tax or assessment, so long as the "Company" in good faith and by proper legal proceedings, shall contest the validity thereof should the "Company" fail to pay any such tax and assessment, or suffer any lien to attach other than such as is herein expressly accepted, the "Trustee" may pay and discharge the same and shall in that case have a lien therefor upon all the securities hereby conveyed, or intended so to be, and the "Company" shall be bound to repay, on demand, all moneys so expended by the "Trustee."

No delay or omission of the "Trustee" or of any bond holder to exercise any right hereunder shall impair any such right or be a waiver of any default or an acquiesence therein. Until the payment in full of the principal and interest of all the bonds hereunder, the "Company" will at all times maintain an office in the City of Chicago, Illinois, where notices and demands in respect to said bonds and coupons or under this instrument may be served; and in default of any such office, any demand may be made and any notice may be served at the office of the "Trustee" in the City of Chicago, Illinois. Whenever in this agreement the holder or owner shall be deemed to be the person in whose name any such bond is registered upon the books of the "Trustee," such books or registration shall be conclusive evidence of such holding and owning. The "Trustee" shall have the right to acquire and own, from time to time, bonds secured hereby.

In case a vacancy in the Trusteeship occurs, by resignation or otherwise, the "Company" is author-

ized to appoint by resolution of its Board of Directors, as successors to the "Trustee" any other trust company with a place of business located in the City of Chicago, Illinois, and authorized by the laws of the State of Illinois to administer such trust, and the "Company" agrees that whatever and as often as it shall receive notice as above provided, of the resignation of a "Trustee" it will within five (5) days, cause a new "Trustee" to be appointed in the manner herein provided. And, it is further agreed that a copy of such resignation of the "Trustee" together with a copy of a resolution of the Board of Directors of the "Company" appointing a new "Trustee," both certified by the Secretary of the "Company" shall be full and complete evidence of the authority of the Trust Company named in such resolution of the Board of Directors of the "Company" to act as such "Trustee."

In Witness Whereof, The Federal Commercial Company, by its President and Secretary, thereunto lawfully authorized by action of its Directors and Stockholders, has hereunto set its corporate name and seal; the Fort Dearborn Trust and Savings Bank, by its Vice President and Secretary, thereunto lawfully authorized by action of its Directors has hereunto set its name and seal as of the day and year aforesaid.

FEDERAL COMMERCIAL COMPANY,

(seal) By Joseph H. Strong,

Attest: *President.*

W. O. Heffernan,

Secretary.

Exhibit C. 5.

FORT DEARBORN TRUST AND SAVINGS BANK,
(SEAL) By NELSON N. LAMPERT,
Attest: *Vice-President.*
E. C. GLENNY,
Secretary.

STATE OF ILLINOIS, }
COUNTY OF COOK, } *ss.*

On this 1st day of May, 1913, personally appear before me a Notary Public within and for said County and State, Joseph H. Strong and W. O. Heffernan to me known and known to me to be respectively the President and Secretary of the Federal Commercial Company, one of the corporations which executed the foregoing instrument, as such officers for and on behalf of said corporation, and that the same is their free act and deed as such officers and the free and corporate act and deed of said corporation.

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and seal at Chicago, this 1st day of May, 1913.

WALTER L. HERDIEN,
Notary Public.

Signed, sealed and delivered in the presence of:

E. E. MOE,
A. J. WRIGHT,

Exhibit D. 1.

STATE OF ILLINOIS, }
COUNTY OF COOK, } *ss.*

On this 1st day of May, 1913, personally appear before me a Notary Public within and for said County and State Nelson N. Lampert and E. C. Glenny to me known and known to me to be respectively the Vice-President and Secretary of the Fort Dearborn Trust and Savings Bank, one of the corporations which executed the foregoing instrument as such officers for and on behalf of said corporation, and that the same is their free act and deed as such officers and the free and corporate act and deed of said corporation.

(SEAL) IN WITNESS WHEREOF, I have hereunto set my hand and seal at Chicago, this 1st day of May, 1913.

PERCY M. KNIGHT,
Notary Public.

Signed, sealed and delivered in the presence of:

E. H. SWEGMAN,
WM. O. KINBERG.

EXHIBIT D. 1.

ARTICLES OF AGREEMENT made and entered into this 5th day of February, A. D. 1914, by and between Standard Piano Company hereinafter designated as first party, and Federal Commercial Company, of Chicago, Illinois, hereinafter designated as second party.

WITNESSETH, that whereas, first party is now engaged in the business of retailing pianos at Newark, N. J., and now has and will hereafter have,

Exhibit D. 1.

own and possess notes, leases, contracts or mortgages (hereinafter for convenience designated as contracts) evidencing sales, deliveries and liens upon goods dealt in by said first party, upon which contracts balances are and will be due and owing first party from the various individuals, firms and corporations, therein severally indicated.

AND WHEREAS, ALSO, first party desires to sell from time to time certain of said contracts which second party proposes to purchase during the existence of this agreement, upon the terms, provisions and conditions herein stated.

NOW THEREFORE, in consideration of the premises, and the sum of One Dollar ($1.00) the parties hereto have agreed and do hereby agree as follows:

FIRST: First party hereby agrees to sell and second party agrees to buy from time to time such of said contracts which shall draw 6% interest per annum, and which second party shall indicate will be acceptable to it, paying therefor 70% of the face value thereof upon delivery, duly assigned and guaranteed by first party and their acceptability duly indicated by second party, and paying a further 20% of the unpaid face value of said contracts, as above stated, as nearly as practicable in quarterly installments, but not to exceed 20% of the amounts that shall from time to time be thereafter collected and remitted to second party upon said contracts by first party or collector under the terms of this agreement, less any payments of principal and interest on contracts or any other obligation in default, until a total of 90% shall have been paid as the full purchase price of said contracts.

When first party shall sell pursuant hereto contracts payable in installments, and any of which shall not be promptly met, first party shall, on de-

Exhibit D. 1.

mand of second party, promptly repurchase any such contracts so in arrears for cash at par and accrued interest for the balance uncollected thereon, or at the option of second party, substitute therefor other acceptable contracts of equal value for the unmatured portion thereof and shall then also pay cash for such portions as shall then be in default.

SECOND: First party shall execute an absolute assignment and guaranty, satisfactory to second party, of all right, title and interest in and to each of the contracts.

AND WHEREAS, the business of first party is such that it is deemed desirable that the collections on the contracts be made at its place of business, it is therefore agreed that first party shall designate some acceptable person to act as agent of second party to receive and remit to second party all moneys collected on said contracts, first party hereby agreeing that it will see that such agent execute and give an acceptable Surety Bond to protect the interest and rights of second party in the discharge of said acts and duties. By way of remuneration, second party hereby agrees to pay said agent the sum of Five Dollars per annum, and second party shall have power to remove or dismiss from its employ any such agent and replace him by another.

THIRD: First party hereby makes, constitutes and appoints W. L. Herdien and R. Jones severally the true and lawful attorney of said first party, to endorse the name of said first party upon any checks, notes, drafts, money orders or other forms of exchange that may come into the possession of second party, as payment upon said contracts, and to endorse the name of said first party, or assign said contracts, notes, leases or mortgages, delivered to second party, pursuant to the provisions hereof,

hereby ratifying and confirming any and all acts of said attorneys or any of them that may be done pursuant to the provisions hereof. Said first party hereby agrees to pay to second party for the services of said attorneys, or any of either of them, the sum of Five Dollars per annum.

FOURTH: The requirements, provisions and conditions stated on the back hereof are conditions precedent to and are a material part of this contract, as fully as if they were recited over the signatures hereto affixed.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals, on the day and year first above written, to two copies, each being an original.

STANDARD PIANO COMPANY,

(SEAL) (Signed) By W. W. FORBISH,
President.

Attest: THOS. L. WOOLHOUSE,
Secretary.

FEDERAL COMMERCIAL COMPANY,

(SEAL) (Signed) By JOSEPH H. STRONG,
President.

Attest: W. L. HERDIEN,
Secretary.

REQUIREMENTS, PROVISIONS AND CONDITIONS REFERRED TO ON PRECEDING PAGE.

FIRST: First party hereby guarantees the prompt payment of principal and interest of all contracts purchased by second party.

SECOND: The method of computing interest shall be based on total amount of unpaid balances on

Exhibit D. 1.

contracts, from date of purchase by the second party, less the interest on the 20 per cent. reserve held by second party, new balances to be established each month by crediting collections made and remitted during the preceding month, said second party to mail bill covering said interest on the first of the following month, payable by said first party on or before the tenth of said month.

THIRD: First party will not sell or tender for sale to second party any contracts unless they represent bona fide sales and deliveries made pursuant to agreement had between said first party and the respective debtors named in said contracts, and which represent a certain, definite, indisputable claim or demand, due or to become due.

FOURTH: Second party, its agents and representatives, shall have the right and privilege to inspect books, accounts and records of said first party, which first party agrees shall be properly kept and shall contain proper entries, showing transactions with said second party in detail.

FIFTH: It is understood that the purchase of contracts and the payment of the consideration therefor by the second party, pursuant to the provisions hereof, is made upon the representations in writing concerning the financial responsibility of the first party, evidenced by the written statement or statements made by said first party from time to time.

SIXTH: First party agrees to execute and deliver on request therefor, any document that in the judgment of said second party may be necessary or proper to carry into full and prompt effect the terms, provisions and conditions of this agreement.

SEVENTH: In the event of the failure of any debtor indicated in any contract to pay the full amount due, and first party shall have failed to

Exhibit D. 1.

repurchase same on demand, then second party is hereby authorized, if it sees fit, to institute any legal proceedings that in its judgment may be necessary to enforce payment of such contract, and first party hereby expressly agrees to pay and reimburse second party for all such costs, expenses and attorney's fees which may be incurred thereby.

EIGHTH: It is agreed that in the event of nonpayment at maturity of the installments of principal or interest on any of said contracts, by reason of the insolvency of the debtors, or said first party, then second party is hereby given the right and option, without notice, to apply any moneys in its hands, or that thereafter may come into its possession, belonging to said debtors or said first party, in settlement and discharge of said installments so in default. The term insolvency shall be understood to mean the inability, refusal to pay, or any other act constituting a business failure.

NINTH: This agreement shall remain in full force until terminated by a two months' written notice given by one party to the other, but said termination shall not affect or impair any obligation given hereunder then in force.

For a valuable consideration paid by Federal Commercial Company to the undersigned, receipt of which is hereby acknowledged, the undersigned hereby jointly and severally guarantee Federal Commercial Company the full, prompt and faithful performance and discharge by Standard Piano Company of each and every of the provisions of the within agreement, provided to be done, paid or discharged by said Standard Piano Company in manner and form as therein provided, hereby waiving all notice of acceptance of this guaranty.

Exhibit D. 2.

In Witness Whereof, we have hereunto set our hands and seals this 5th day of February, 1914.

W. W. Forbish,
Thos. L. Woolhouse.

Exhibit D. 2.

Assets.

Cash in bank and on hand	$ 1,500.00
Leases assigned to Federal Commercial Company	130,111.62
Leases assigned to Commercial Security Company	100,193.45
Leases unassigned	4,820.00
Merchandise on hand	4,000.00
Automobiles	900.00
Furniture and fixtures	400.00
Accounts receivable	8,000.00
	$249,925.07

Liabilities.

Notes payable	$ 34,300.00
Accounts payable	10,029.00
Federal Commercial Co	51,029.93
Commercial Security Co	44,867.51
Edisonia Estate	2,539.50
H. P. Nelson Estate	4,970.00
	$147,735.94

Exhibit D. 1. February 17, 1916.

EXHIBIT D. 1.

Number..... Form 7

February 17, 1916.

CERTIFICATE OF SALE.

This is to Certify that the persons named below are indebted to the undersigned in the sums set opposite their respective names, for goods sold and delivered.

No.	Date 1915	Name	Address	Paymts.	Face	Paid	Balance
	Nov. 5	Dan Steinberg	Brooklyn, N. Y.	8.	400.00	135.00	265.00
					400.00	135.00	265.00

Chicago, Ill.

For and in consideration of the sum of Two hundred forty-three and 80/100 - - - Dollars ($243.80) to the undersigned in hand paid, the receipt whereof is hereby acknowledged, the undersigned hereby sells, assigns and transfers to Commercial Security Company, a corporation, all right, title and interest in and to the notes, leases and mortgages above named, which amount to Two Hundred sixty-five and no/100 - - - - Dollars ($265.00) and which are herewith delivered to Commercial Security Company at Chicago, Ill. The undersigned guarantees that the balances due on said notes, leases and mortgages are correctly set out in the above schedule thereof, and that full delivery has been made on all of said notes, leases and mortgages in accordance with the specifications of the buyer; that there are no contra accounts against any of them, that the amounts due on said notes, leases and mortgages are not disputed by the debtor, and are not past due, and that there are no offsets against said notes, leases or mortgages or any of them, for freight, drayage or other carrying charges, commissions, damages or any other counter-claims of any nature whatsoever, but the amount set out in

each item of said schedule is net and the payment of said item or items is not contingent on the fulfillment of any contract, past or future, and that entries have been made on our books disclosing the absolute sale thereof to the Commercial Security Company.

In consideration of the premises aforesaid and the further sum of One Dollar, to the undersigned heretofore paid, the undersigned hereby guarantees the prompt payment in full to the Commercial Security Company or assigns of the above named notes, leases and mortgages, including the payment monthly of accruing interest, in accordance with the terms indicated and appearing thereon.

(SEAL) STANDARD PIANO COMPANY.

Accepted:

COMMERCIAL SECURITY COMPANY.

ASSIGNMENT. Form 19.

Date.....

For value received, the undersigned hereby assign.....all.....right, title and interest in and to the within contract made by.....

.....

and to the property therein described to.....

.....successors or assigns, and hereby guarantee.....the full performance of said contract in all its terms and the payment of any and all sums provided therein, together with interest, attorneys' fees and cost of collection. The undersigned further agree....in the event of any repossession and resale of the property set forth in said contract, to pay any deficiency arising upon such resale, including reasonable expenses and attorneys' fees. The undersigned hereby waive..... any and all notice of non-payment, demand, protest

Exhibit D. 3. February 17, 1916.

which may be required under said contract or in connection therewith, and agree.... that any extension which may be granted to the parties to said contract shall not in any manner release the undersigned.

Signed.....

10

Exhibit D. 3.

February 17, 1916.

Profit and Loss from April 1, 1915 to January 1, 1916.

Total Sales April 1, 1915 to Jan. 1, 1916			147,761.25
" Returns on sales from April 1, 1915, to Jan. 1/16			10,489.00
		Net Sales	137,272.25
20 Stock on Hand close of year			5,440.00
			142,712.25
Purchases	25,635.00		
Stock on Hand 5/1/15	25,000.00		
" Sold in April	10,000.00		60,635.00
			82,077.25
Accrued Interest—Approximately			5,000.00
Rentals			99.99
Other Income			788.23
			87,965.47
30 General Expense	32,466.92		
Rent on Building	2,625.03		
Brokerage	1,014.75		
Interest Paid by banks	7.19		
Taxes	441.63		36,555.52
			51,409.95

40

Exhibit D. 4.

February 17, 1916.

Assets.

Cash on hand and in bank	1500.00
Leases assigned to F. C. Co.	130111.62
Leases assigned to C. C. Co	100193.45
Leases unassigned	4820.00
Merchandise on hand	4000.00
Automobiles	900.00
Furniture and fixtures	400.00
Accounts receivable	10000.00
Accrued Interest Estimated	12000.00
	263925.07

Liabilities.

Notes Payable	44300.00
Accounts Payable	10529.00
Fed. Com. Co.	51029.93
Commercial Sec. Co.	44867.51
Edisonia Estate	2539.50
	153765.94

Exhibit D. 5.

February 17, 1916.

No. of Pianos	Sold from April 1, 1915 to Jan. 1, 1916	687
" " "	On Hand Dec. 31, 1915	455
		732
" " "	Repossessed, exchanged, or returned to be resold	151
		581

Exhibit D. 6. February 17, 1916.

Edisonia pianos purchased	60.	
Stanley & Sons Pianos Purchased	114.	
Shearer " "	42.	
Gulbransen Dickenson "	42.	
	258.	258.
		323.
On Hand May 1, 1915	223.	
Pianos Sold During April 1915	100.	323.

10

Exhibit D. 6.

February 17, 1916.

May 28, 1915.

Engelhard Seybold Co.
St. Johnsville, N. Y.

20 Via D. L. & W. Freight Prepaid.

Peerless Elect	No. 27087	$225.00
R Wurtlizer "	" 4009	225.00
" "	" 9528	350.00
" "	" 3022	350.00
	10	
" "	" 19983	125.00
" "	" 9958	225.00
" "	" 9598	225.00
" "	" 9802	325.00
" "	" 9535	325.00
" "	" 9987	325.00
Regina Sublime Elect	3040 731	
Regal Elect	4830	275.00
Roth Enghardt "	935	
30 Heller "	11 517	325.00
" "	11 263	325.00
" "	11 524	225.00
" "	11, 519	325.00
Eberhardt "	11 908	225.00
Heller "	11 521	325.00
" "	11 510	
" "	11 884	325.00
" "	11 520	225.00
" "	11 886	225.00
Wurlitzer Harp "	1 806	225.00
" " "	1 815	225.00
Englehardt Seyboldt June 1, 1915		
	Freight Prepaid	
1 Wurlitzer Elect Harp	1853	225.00
1 " " "	1833	225.00
40 1 " " "	1852	225.00
1 " " "	1807	225.00

Freight 7:07

Order Denying Application to Discharge Receiver and Modifying Terms of Order Appointing Receiver.

Filed February 21, 1916.

In Chancery of New Jersey.

Between ALEXANDER B. SHAW, *Complainant,* *and* STANDARD PIANO COMPANY, *Defendant.*	*On Bill for Receiver, &c.*

This matter coming on to be heard on the application of the defendant to open the order heretofore made in the above stated cause appointing the receiver and to discharge the receiver, in the presence of Frank E. Bradner, Esq., solicitor for and of counsel with the defendant, and Pitney, Hardin & Skinner, Esqs., solicitors for and of counsel with the complainant, and of Joseph Weissenbach, Esq., of the Illinois Bar, of counsel for the complainant; and the affidavits submitted on both sides having been read and filed, and proofs having been taken, and the arguments of counsel having been heard, and the court being of the opinion that the application to open the decree of insolvency and to discharge the receiver herein should be denied with costs;

And the court being further of the opinion that an order of this court made on the 7th day of February, 1916, directing that the corporation

defendant be permitted to carry on its business in the usual course, but under the supervision and control of the receiver, should be opened and declared to be of no further force or effect;

It is, on this 21st day of February, 1916, on motion of Pitney, Hardin & Skinner, solicitors for the complainant, ordered that the application of the defendant corporation to open the order theretofore made in the above stated cause, appointing a receiver therein, and to discharge the said receiver, be and the same is hereby denied with costs.

It is further ordered that an order of this court made in the above entitled cause on the 7th day of February, 1916, be and the same is hereby opened and declared to be of no further force or effect.

And it is further ordered that the order appointing the receiver in this cause, dated January 26, 1916, be and the same is hereby declared to be in full force and effect without modification, except that the said receiver is hereby authorized to conduct the business of the defendant corporation in the usual and ordinary manner of conducting the same, to-wit, by sales or leases of merchandise upon the installment plan, if that be deemed advisable by him in his discretion; and that the order herein appointing the receiver, which forbade said receiver to make sales or leases of merchandise upon the installment plan, be modified to the extent aforesaid.

E. R. WALKER,
C.

Respectfully advised.

JOHN E. FOSTER,
V. C.

Notice of Appeal.

Filed February 24, 1916.

In Chancery of New Jersey.

Between ALEXANDER B. SHAW, *Complainant,* *and* STANDARD PIANO COMPANY, *Defendant,*	*On Bill, &c.* *Notice of Appeal.*

The defendant hereby appeals from the order made in this court in the above stated cause appointing a receiver, dated January 26, 1916, and from the whole and every part thereof; and the defendant also appeals from the order made in this court in the above stated cause, denying its application to open the decree of insolvency and to discharge the receiver, dated Feruary 21, 1916, and from the whole and every part thereof; to the Court of Errors and Appeals in the last resort in all causes.

Dated February 23, 1916.

FRANK E. BRADNER,
Solicitor for and of Counsel with Defendant.

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

FRANK E. BRADNER,
Of Counsel with Defendant.

Petition of Appeal.

Filed March 11, 1916.

New Jersey Court of Errors and Appeals

Between

ALEXANDER B. SHAW,
Complainant-Respondent,

and

STANDARD PIANO COMPANY, a corporation of the State of New Jersey,
Defendant-Appellant.

Petition of Appeal.

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

The petition of Standard Piano Company, a corporation of the State of New Jersey, the appellant in the above stated cause, respectfully shows, that your petitioner finds itself aggrieved by an order made in the Court of Chancery by his Honor, Edwin Robert Walker, Chancellor of New Jersey, bearing date January 26, 1916, wherein the said Alexander B. Shaw was complainant, and the Standard Piano Company defendant; and also, by an order made by the said Chancellor bearing date February 21, 1916, wherein the said Alexander B. Shaw was complainant, and the said Standard Piano Company defendant, in the following particulars, to-wit:

1. Because the order of January 26, 1916, adjudges and decrees that the Standard Piano Company is insolvent and without further funds to

continue its business with safety to the public and advantage to its stockholders.

2. Because the said order of January 26, 1916, was made without notice to the appellant and without any opportunity to be heard.

3. Because the said order of January 26, 1916, appoints Charles L. Farrell receiver for the creditors and stockholders of the defendant corporation with powers given by the statute to a receiver of an insolvent corporation, and does not limit the powers of the receiver to the mere right to take possession of and hold the property of the defendant corporation.

4. Because the said order enjoins and restrains the defendant corporation in accordance with the prayer of the bill of complaint.

5 Because the said order adjudges and decrees that the real and personal property of the defendant corporation shall be vested in the said receiver and divests the defendant corporation of the title thereto.

6. Because the said order authorizes the said receiver to continue the business of the defendant corporation excepting the right to make sales upon the installment plan.

7. Because the order of February 21, 1916, denies the application of the defendant corporation to vacate the order appointing a receiver.

8. Because the order of February 21, 1916, declares that the order of January 26, 1916, shall continue in full force and effect without modification, excepting that the receiver is authorized to conduct the business of the corporation in the usual ordinary manner of conducting the same.

9 Because upon the bill of complaint and affidavit annexed thereto, and the answer and affida-

vits annexed thereto, the injunction should have been dissolved and the order appointing the receiver vacated.

10. Because upon the pleadings and affidavits and testimony of witnesses and the exhibits submitted to the court, the complainant failed to prove that the defendant corporation was insolvent, or had suspended its ordinary business for want of funds to carry on the same, or that its business had been or was being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders.

11. Because upon the pleadings and proofs, the appellant was entitled to prevail, and its motion to vacate the order appointing the receiver and to discharge the receiver should have been granted.

And your petitioner humbly appeals from the said respective orders of the Chancellor and from the whole and every part thereof, upon the grounds that the same are erroneous in the particulars hereinbefore stated and set forth.

Your petitioner therefore prays that the said respective orders of the said Chancellor may be in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable Court may seem meet.

FRANK E. BRADNER,
Solicitor for and of Counsel with Appellant.

Opinion.

Filed March 31, 1916.

In Chancery of New Jersey.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
Defendant.

On Bill for Receiver, &c.

Messrs. Pitney, Hardin & Skinner and Mr. J. Weissenbach (of the Ill. Bar) for complainant.

Mr. Frank E. Bradner for defendant.

FOSTER, *V. C.*

The bill and affidavit in this cause were filed with Vice-Chancellor Howell on January 26th, 1916, who determined that the defendant corporation was insolvent and advised an order granting the restraint asked for and appointing a receiver.

On January 27th, 1916, Vice-Chancellor Howell, on application of the defendant, advised an order directing notice of a motion to be given to open the order appointing a receiver in this cause, and permitting defendant to serve its answer and affidavits in support of the motion.

The matter came on for hearing on bill and affidavits, and answer and affidavits, and the oral examination of witnesses on the part of both parties, before Vice-Chancellor Howell on February 4th and 5th, 1916, and by consent of the

parties the hearing was continued before me on February 16th and 17th.

The complainant, Alexander B. Shaw, a resident of Chicago, alleges that defendant, Standard Piano Company, a corporation of this State, is indebted to him on its unsecured promissory notes for more than $67,857.35, of which approximately $16,000.00 are past due and unpaid. Part of these notes were negotiated to him by the Fort Dearborn National Bank of Chicago, and the remainder by the Hamilton Investment Company, a corporation of the State of Illinois, and so far as complainant has knowledge, the bank and investment company were bona fide holders for value of said notes.

Defendant began business in Newark about April, 1913, with a capital stock of $100,000, of which $60,000 was preferred and the balance common stock. The entire preferred stock appears to have been issued to one H. P. Nelson without consideration, and of the 400 shares of common stock, 150 shares were issued to Nelson for cash and property amounting, as he states, to about $15,000, 249 shares were issued to Walter L. Herdien and one share to F. W. Bonar—for what consideration, if any, does not appear.

The company's business was the sale of pianos and piano players on the installment plan, and for the purpose of obtaining money to carry on its business it sold and assigned, from time to time, leases, mortgages or conditional bills of sale, as they have been termed, together with the installment notes secured by the same, which had been obtained from its customers in connection with the purchase of pianos or piano players.

From the sale of these installment notes and leases the company realized seventy-two per cent.

of the face value thereof, the remaining twenty-eight per cent. being held by the purchaser, under the terms of the assignment, as a "general" or "special reserve," which was to be paid by the defendant when the amount, with interest, advanced by the purchaser of the notes had been repaid. Provision was also made, in the assignment, for the substitution, from time to time, of other notes and leases to take the place of notes and leases on which the purchasers of the pianos had made default; upon such default the defendant re-took possession of the piano and resold it, and used the notes and lease of the new customer to make the substitution mentioned.

Until the past few months none of the customers' notes carried interest, while all the notes issued by the defendant not only carried interest, but were also subject to a brokerage charge of eight or ten per cent. additional.

From the books of the company, the testimony and the receiver's report, it appears that the Commercial Security Company had purchased from the defendant such notes and leases aggregating $100,193.45, and that the Federal Commercial Company had also purchased notes and leases to the amount of $130,111.62, making a total of $230,305.07; that there is due on such notes and leases to the Commercial Security Company and the Federal Commercial Company for money advanced in this way to the defendant the sum of $139,545.71.

The receiver's report shows defendant to have actual assets of $4,950.73, which includes cash in bank, stock on hand, furniture, accounts and other tangible items, the value of which could be definitely determined. This statement of assets does not include the equity in the notes and leases

sold and which is called the "general" or "special reserve," because the value of this item, if any, is unknown, and until these notes are paid the value of this "reserve" or equity cannot be ascertained; nor does the receiver's report show the value of pianos shipped by the defendant in May, 1915, for sale, or repair, to Engelhardt & Seybold at St. Johnsville, New York. This concern is now in bankruptcy and a claim for the pianos, or their value, has been filed on behalf of the defendant, but has not yet been allowed, and when allowed it may be subject to a charge for repairs made to these instruments.

The receiver reports liabilities of at least $116,817.42; while defendant admits liabilities of $153,765.94 and claims assets of $263,925.07; complainant contends it has been shown that defendant has assets (crediting it with an estimated value for the possible equity or "reserve" in the assigned notes and leases), of $178,950.73 and liabilities amounting to $256,351.25, showing a deficit of about $76,000.

Since defendant has been in business it has never realized a dollar from the so-called "reserve" or equity in the notes and leases assigned by it, but in the statement prepared for this hearing it treats and values this so-called "reserve" or equity as being worth $104,407.63. In its list of assets, under "accounts receivable," it includes the sum of $7,000 that it hopes to receive from the bankrupt estate of Engelhardt & Seybold for the pianos shipped them for sale or repair.

During the entire period it has been in business defendant has not collected any interest from its customers. In its statement of assets it includes "accrued interests estimated" of $12,000, without showing on what this estimate is based, and

it values its merchandise on hand at $4,000, while the receiver values this merchandise at $2,225. In the statement showing its liabilities defendant charges itself with "notes payable" of $44,300. Its books show, however, that this item amounts to at least $97,000, and possibly $102,000.

It further appears from the testimony of the treasurer of the company, Mr. Herdien, that he claims the company has always done a profitable business, and that it made a profit of over $51,000 in the past year; but he is unable to tell what was done with it, or where it is shown in the company's books. On October 5th, 1915, Mr. Herdien wrote the Collector of Internal Revenue at Newark, explaining why the company had failed to file a statement showing its net annual income for the year 1914. In this letter he states that the company "became involved in financial difficulties in the fall of 1914; and in the early part of January, 1915, it was deemed advisable to trustee the stock and the affairs of the company to better secure the holders of note obligations of the corporation." In another paragraph of the letter he adds, "The corporation did business for the year 1914 at a considerable loss and the affairs of the company have been in the process of liquidating its liabilities since the first of the year." And it further affirmatively appears that from April, 1915, to January 1st, 1916, the company suffered a loss of many thousands of dollars through defaults, re-possessions, returned and exchanged pianos and the expenses of the re-sale of the same.

From the investigation of defendant's affairs that has been made in these hearings, I think it clearly appears that defendant is insolvent and cannot, within a short time, resume its business

with safety to the public and advantage to its stockholders as contemplated by the statute.

But it is insisted that if this be so, complainant cannot maintain his action as a creditor because of a partial or total failure of consideration for the notes held by him. There is no evidence in the case to justify this contention, except the statement that one Mr. Pattison, an officer of H. P. Nelson Company, was also a director of the Fort Dearborn National Bank, and that by reason thereof the bank was chargeable with any notice or knowledge he acquired in relation to defendant's notes.

While it does not appear that Mr. Patterson ever had knowledge of any infirmity in complainant's notes, if he did it would not be sufficient to charge the bank, and therefore complainant, who acquires from it some of the notes he now holds, with knowledge of the alleged infirmity, unless it further appeared that Mr. Patterson acquired this knowledge while acting as a member of the Board of Directors of the bank convened in its official capacity—First Nat. Bank v. Christopher, 40 N. J. L. 435,—or that while acting as the agent of the bank, and within the scope of his authority, he received the information at the time he was actually acting as agent in behalf of his principal.

Hanford vs. *Dachastel,* 87 N. J. L. 205.

It is further insisted that the receiver should not have been appointed without notice to the defendant; and because it must be made to appear, not only that the company has become insolvent, but that since the amendment to the Corporation Act in 1912 (P. L. 1912, p. 535, Ch. 300) it must also appear that the corporation is not

about to resume its business in a short time thereafter, and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders.

If it were necessary to hold that all the elements mentioned in the Amendment of 1912 must be established to give the court jurisdiction, it would be sufficient to say that the evidence shows all of them present in the case at bar. The cases hold, however, that no such combination of circumstances as is contended for its required. Empire Trust Co. vs. Fisher, 67 Eq. 602; Catlin vs. Mining Co., 73 Eq. 286. In Bull vs. International Power Co., 93 At., p. 86, Chancellor Walker held that by virtue of the Amendment of 1912, a receiver could now be appointed, not only when the corporation had become insolvent or had suspended its ordinary business for want of funds to carry on the same as authorized by Sec. 65 of the Act Concerning Corporations (Revision of 1896), but also, if its business has been or is being conducted at a great loss and greatly prejudicial to the interest of the creditors and stockholders.

On the question of notice, it is expressly provided by the Amendment of 1912 that the court may proceed in a summary way to hear affidavits, &c., upon such notice, if any, as the court may direct to be given.

The evidence is convincing that the defendant corporation is insolvent; that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, and that its business in its present condition cannot be conducted with safety to the public and advantage to the stockholders; and the motion to open the order and discharge the receiver is therefore denied.

Answer to Petition of Appeal.

Filed April 14, 1916.

New Jersey Court of Errors and Appeals

Between

ALEXANDER B. SHAW,
Complainant-Respondent.

and

STANDARD PIANO COMPANY, a corporation,
Defendant-Appellant.

On Appeal from Chancery.

The answer of the above named respondent to the petition of appeal of the above named appellant:

This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto nevertheless says and admits that an order was on the 26th day of January last past made in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; and also an order on Feby 2, 1916; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes that the said orders are agreeable to equity and he prays that the same may be affirmed with costs to be adjudged to this respondent.

PITNEY, HARDIN & SKINNER,
Solicitors for and of Counsel with Complainant-Respondent.

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Order Amending Orders of January 26 and February 21, 1916.

Filed June 27, 1916.

In Chancery of New Jersey.

Between

ALEXANDER B. SHAW,
Complainant,

and

STANDARD PIANO COMPANY,
a corporation,
Defendant.

On Bill, &c.

Order Amending Orders of January 26th and February 21st, 1916.

This matter coming on to be heard on the application of Pitney, Hardin & Skinner, solicitors of the complainant, for certain amendments to orders made by this Court in this cause on the 26th day of January, and the 21st day of February, 1916, respectively, in the presence of Frank E. Bradner, Esq., solicitor for the defendant, and due notice of the application having been given, and it appearing to the Court that the new matters introduced by said amendments are merely provisions which would have been inserted as matter of course if asked for at the time said orders were made respectively, and the Court being of opinion that said application should be granted;

IT IS on this twenty-sixth day of June, 1916, on motion of Pitney, Hardin & Skinner, solicitors of the complainant, ORDERED that the order made in

this cause on January 26, 1916, be and the same is hereby amended, *nunc pro tunc,* by striking out on page 1, lines 3-6 inclusive, reading—

> "by which it appears that the defendant corporation is insolvent and without funds to carry on its business, and cannot continue the same with safety to the public and advantage to its stockholders,"

and by inserting in lieu thereof the following:—

> "and the Court being satisfied by the proofs offered of the sufficiency of the application and of the truth of the allegations contained in the bill of complaint, and it appearing to the Court that the defendant corporation has become insolvent and that its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors and stockholders, so that its business cannot be conducted with safety to the public and advantage to the stockholders."

It is further ordered that the order made in this cause on February 21, 1916, be and the same is hereby amended, *nunc pro tunc,* by inserting on page 2 of said order, line 12, after the words "dated January 26, 1916," the following:—

> "As amended *nunc pro tunc* by an order made in this cause on the 26th day of June, 1916."

It is further ordered that the foregoing amendment is made with the reservation to the defendant to move to strike out the amendment before the Court of Errors and Appeals on motion on the hearing of the pending appeal without further

notice, in case the Court of Errors and Appeals should deem the amendment wrongfully made.

E. R. WALKER,
C.

Respectfully advised,
J. E. HOWELL,
V. C.

Respectfully advised,
JOHN E. FOSTER,
V. C.