N. J. Court of Errors and Appeals.

WILLIAM G. PARK, et al partners, &c., as PARK, BROS. & Co., Appellants, vs. THE GRANT LOCOMOTIVE WORKS, et al. Respondents.	Respondents' brief.

The bill was filed by Park, Brothers & Company against the Grant Locomotive Works, and R. Suydam Grant, Thomas Prosser, J. Frederick Pierson, William H. Wallace, and Benjamin Williamson, as directors of said Company, for an account of the net profits of the Grant Locomotive Works, made under the management of its affairs, under the agreement of June, 1875, and of the amount divisible thereunder, and for a decree for such dividend and for an injunction until payment of such dividend. Bill pp. 1-12 agreement of June, 1875, pp 13, 14. Report of January, 1883, pp. 14c 17. Answer, 17, 27.

The cause was brought to a final hearing on the pleadings and proofs before Vice Chancellor Van Fleet

in July, 1884, evidence p. 40c 148. Opinion p. 28c 38. By the decree as entered it was decreed that under the agreement the corporation was not entitled to reduce the amount of profits by a charge for the depreciation of real estate or machinery ; that the charge of $54,000 for such depreciation was erroneous, and that the amount of net profits under said agreeement, as shown by the balance sheet of December 31st, 1882, was $310,000 and it was further decreed that the whole of said amount was not divisible as dividends under said agreement, and that the complainants were not entitled to a greater dividend in 1883 than the directors declared, p. 38-39. From this decree the complainants appeal to this Court p. 149-150. The purpose of the agreement of June, 1875, was to restore to the corporation the property, then in the hands of a receiver, and to resume business. The agreement was made by all persons interested in the corporation as stockholders, secured or unsecured creditors. The agreement provides for the clearing of the property of the corporation from incumbrances by the cancellation of the mortgages thereon ; and that its creditors, both secured and unsecured, shall receive stock in payment of their debts. No new stock was to be issued, but the stock already issued, and then held by the stockholders of the corporation, was to be assigned to the creditors, subject to a condition which will hereafter appear. The stock thus to be assigned consisted of three thousand shares of $100 each, making a total of $300,000. The fourth and fifth paragraphs of the agreement define the rights of the general or unsecured creditors after they became stockholders. They are as follows: "Fourth: That each certificate of "stock assigned to each general creditor shall be "stamped on its face. 'This certificate of stock is "'held as security for the payment of $ without "'interest, and is to be assigned to David B. Grant on "'the payment of the above amount.' All dividends "paid on this stock shall be credited to account of "such payment and endorsed thereon."

The fifth clause of the agreement provided, "That "all the net profits of the company after the payment "of taxes, insurance and the necessary amount for the "proper maintenance of the property of the company, "in its present condition and capacity, shall be divided "annually among the stockholders."

The account asked for is based on this agreement. No profits were made in the management of the business of the company until the year 1882. At the close of that year, it appearing that net profits had been made, a dividend of twelve per cent. amounting to $104,714.28 was declared payable March 10th, 1883. The complainants received their dividend March 22nd, 1883. On the 29th of January, 1884, and 31st December, 1885, further dividends were declared and paid, which the complainants received. The bill was filed May 11th, 1883. After the dividend of 1883 there remained of the $310,000 some $205,000 not then divided. The proofs show that on December 31st, 1882, the corporation held railroad securities, consisting of notes and bonds which had been taken in payment for locomotives, for a little over $212,000. They had been taken at par. These were, of course, included in the statement of December 31st, 1882, and represented in part the sum shown on that statement to be net profits. The securities were not sold at the New York Stock Exchange and had no market value. The proof is that they were absolutely unsaleable.

POINTS.

FIRST. The making of dividends is a customary power of the directors, and whether the net profits of a corporation shall be used for improvements, or other lawful purposes in its business, or be divided among the stockholders, is peculiarly a matter within their discretion.

This discretion is subject to judicial control when there is a wilful abuse of discretion, bad faith, or a perverse refusal to declare dividends.

Beers vs. Bridgeport Spring Co., 42 Conn. 17.
Pratt vs. Pratt, 33 Conn , 446.
Smith vs. Prattville Man. Co.,29 Ala., 503.
Scott vs. Eagle Fire Ins. Co., 7 Paige 198.
Ely vs. Sprague, Clarke 351.
Thompson vs. Erie R. R. Co., 45 N. Y., 468.
Karnes vs. Rochester & G. V. R. R. Co., 4 Abb.. N. S,, 107.
State vs. Bank of La., 6 La., 745.
Harris vs. San Francisco Sugar R. Co., 41 Cal., 393.
Stevens vs. South Devon R. Co., 9 Hare, 313.
Browne vs. Monmouthshire R. Co., 13 Beav., 32.

But dividends can only be declared when there are funds in hand, which can be paid out for that purpose. Equity will enjoin the making of dividends, when there are no funds applicable to the purpose.

Carpenter vs. N. Y. & N. H. R. R. Co., 5 Abb., 277.
Browne vs. Monmouthshire R. Co , 13 Beav., 32.
Carlisle vs. South Eastern R. Co., 1 Mac. & G., 689.
Fawcett vs. Laurie, 1 Duwey & S., 192.
Allen vs. Abb., 30 Law Times, 316.
Bruns vs. Pennell, 2 H. L. Cas. 497-531.

Dividends are payable in money, and in money only, not even in depreciated currency, still less in bonds or securities.

See Ehle vs. Chittenango Bank 24 N. Y., 5 8, where it is said of a dividend delared payable in New York State currency, "if New York State currency meant "anything other than money there is no authority in "the Board of Directors to declare that a dividend of "the cash profits of the bank should be paid in depreci-"ated bank notes."

SECOND. There can be no doubt about the relations which the directors of a corporation hold to its stockholders. They are trustees; and like all other persons entrusted with fiduciary powers, they are bound to use their authority for the maintenance of the rights and the protection of the interests of their *cestuis que trust*. To attempt to use their power for their own personal advantage to the injury of their *cestuis que trust* is an abuse of the confidence reposed in them, which entitles the *cestuis que trust* to the protection of a Court of Equity.

Elkins vs. Camden & Atlantic R. R. Co., 9 Stewart, 470.
Van Fleet V. C. cites Stewart vs. Lehigh Valley R. R. Co., 9 Vroom, 505.

For any wilful breach of their trust or misapplication of corporate funds, or for any gross neglect or inattention to their official duties, directors are liable in the Court of Chancery to the corporation in the first instance; if it refuses to act then a person aggrieved may bring suit.

Citizens' Build. Ass. vs. Coriell, 7 Stewart, 383.

Citizens' Loan Ass. vs. Lyon, 2 Stewart, 110.
Chester vs. Halliard, 7 Stewart Eq., 341.
Ackerman vs. Halsey, 10 Stewart, 362.

But no such ground of complaint appears here either in the allegations of the bill or in the proofs.

THIRD. As a general rule directors of a corporation are only required in the management of its affairs to keep within the limits of its powers, and to exercise good faith and honesty according to the best of their judgment with reasonable diligence. A mere error in judgment does not subject them to liability.

Unless there has been some violation of the charter or the constituting instruments of the company, or unless there is shown to be a want of good faith, or a wilful abuse of discretion, or negligence, there is no liability whatever.

Gardner v. Butler, 3 Stewart, 703.
Chancellor cites Stewart vs. Lehigh Valley R. R. Co., 9 Vroom, 522.

FOURTH. Complainants are in a Court of Equity and where, as here, the management of the business of the company has been for the interests of the stockholders, and regular dividends made in good faith, and with advice of counsel, and the management has been perfectly fair, there is no ground on which the company or the directors can be called to account by the complainants.

The directors have used and were only bound to use, reasonable diligence and prudence.

Citizens' Building Association vs. Coriell, 7 Stewart Eq., 383.

There is no waste or negligence or inattention alleged or proved.

FIFTH. The management of the corporation and its business, and the declaration of dividends, is within the discretionary powers of the directors. and its execution cannot be controlled at the instance of a stockholder who does not show a dishonest or fraudulent purpose on the part of the directors in such action, and that he will be injured thereby.

All the acts sought to be enjoined by the injunction, which is asked as auxilliary to the accounting, are clearly within the powers committed to the directors, and unless the complainants have alleged in their bill, and clearly demonstrated by their proofs that in their action as directors the defendants are controlled by a fraudulent or dishonest purpose, and that injury will result to them, it is clear that complainants have no case. The bill fails to contain any such allegation, and no support for it is found in the proofs.

The Grant Locomotive Works is a corporation for the manufacture and sale of locomotives, and the directors have implied authority not only to manufacture and sell locomotives on credit, and for railroad securities; but also to settle all amounts due for locomotives sold, and to do whatever may tend to promote and foster the main purpose of the corporation. Courts, as a rule, will presume that the management of the directors, in whatever appears designed to promote the legitimate and profitable management of the Company, is within the limits of their powers, and if its validity be assailed, will require the assailant to assume the burden of demonstrating that fact.

Van Fleet, V. C., in Elkins vs. Camden, and Atlantic R. R. Co., 9 Stewart 242.

SIXTH. The bill shows that the arrangement of June, 1875, was made because it was thought advisable by the creditors, that an agreement should be made "by which *the business of the Company should be continued*"—paragraph III, and by this agreement Park Brothers had a lien on 203 shares, amounting to $20,300 out of the total of 3,000 shares, amounting to $300,000. The figures $310,000 net profits undivided, are reached, by comparing the profit and loss account as it appeared on the books on January 1st, 1883, with what the same account was, July 1st, 1875. On July 1st, 1875, when the Company was in the hands of a receiver, the profit and loss account showed a balance of $300,000; the balance of that account is a very different thing from net profits under the agreement. The statement of July 1st, 1875, shows that the figures of the profit and loss account were only a book-keeper's entry to represent on one side of the accounts what was represented on the other side, by the accounts inventory, $225,000; due from sundry parties (Poliakoff), ... 75,000

And on January 1st, 1883, in the management of the business of the company, the inventory stood at.............		$345,836.08
And due from sundry parties,·		234,382.18
		580,218.26
Less due sundry parties,..	$123.413.37	
Bond & mortgage,..	3,500.00	126,[illegible]13.37
		$453,304.89
Taking this from the profit and loss account,................................		560,805.10
There remains, net profits applicable to dividend,............................		107,500.21
And the dividend declared was......... ..		$104,714.28

The evidence of Mr. Evans, the Superintendent of the company who keeps the books, and of Mr. Grant and Mr. Prosser, two of the defendants and directors

of the company, show that there was no more money to divide than was divided, pp. 53c 55, 57, 118c 120 Mr. Prosser was an original creditor of the Grant Locomotive Works, a larger creditor than the complainants. He was one of the directors nominated by the general creditors, as one of the three directors in the board under the agreement, and has continued a director ever since and has continued his interest in the company, not having parted with any part of it, p. 117. He makes clear the item of $50,000 for depreciation which is mentioned in the bill. He says: "I didn't see that it affected anything whether "it was made or not. It didn't make a dollar's worth "more money or property, or less," p. 117.

There can be no doubt that the question as to the expediency of making a dividend which is justified by the earnings of the corporation, is committed to the judgment of the trustees or directors as managers of the corporation by whom alone it can act, and so long as they keep within the power committed to the corporation and act in good faith with honest motives and for honest ends their acts are valid.

Elkins vs. Camden and Atlantic R. R. Co., 9 Stewart, p. 244.

The action under consideration is not assailed on the ground of fraud. The charges in the bill, that the interests of the general creditors are made secondary to the interests of the stockholders, ultimately entitled to the stock, after payment of the debts, are disproved. Mr. Prosser and Mr. Pierson are such creditors and their interests are the same as complainants. The bill charges that Mr. Wallace became a director without complainants' consent, and resigned without their knowledge; but what of it.

SEVENTH. The division of all the earnings which the Company had cash in hand to divide, certainly presents as just a method of division as can be devised.

The obligation to pay dividends, as expressed by the agreement, is necessarily subject to the paramount obligation of managing the Company and paying its debts. The claim for dividends until such paramount obligations and debts are paid or provided for, cannot be sustained.

> Lehigh Coal and Navigation Co. vs. The Central R. R., of N. J., 7 Stewart, 92.
> McGregor vs. Home Ins. Co., of Norwich, 6 Stewart, 181.

Dividends can only be paid out of net earnings or profits.

> McGregor vs. Home Ins. Co., of Norwich, 6 Stewart, 184.
> Cites Lockhart vs. VanAlatyne, 31 Mich. 76, 14 Am. R. R. N. S., 180.
> Taft. vs Hart. Prov. and Fishkill R. R., 8 R. I., 310, 5 Am. Rep., 575.

EIGHTH. The decree appealed from should be affirmed with costs.

B. WILLIAMSON,
GEORGE H. FORSTER,
Of counsel for respondents.

WARD & TICHENOR Law Case Printers, 832 and 834 Broad St., Newark, N. J.

N. J. Court of Errors and Appeals.

Between WILLIAM G. PARK, AND OTHERS, *Appellants*, *and* THE GRANT LOCOMOTIVE WORKS AND OTHERS, *Respondents.*	*On Appeal from Decree Advised by Vice-Chancellor Van Fleet.*

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Points of JOHN R. EMERY, for Appellants.

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FIRST POINT.

The complainants are *creditors* of the company, secured by the special agreement, and as such creditors are entitled to an annual division of the net profits by force of the agreement. Their right to a dividend does not depend upon its declaration by the company or its officers, or upon the *judgment of the directors*, as to the advisability of a division. Under the agreement the *net profits*, after certain payments, must be annually divided. 30

In this respect their rights are analogous to those of preference or guaranteed shareholders, in whose favor dividends will be declared by the Court if earned. (See *Green's Brice's Ultra Vires*, 2d Ed. Note, (a) p. 164, and cases cited.)

In *Henry* vs. *Railway Co.*, 1 De G. and J. 602, on appeal, p. 620, it was stated in the argument that it was decided by the Vice-Chancellor that the company having 40

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agreed to pay certain shareholders a dividend, could not be allowed to be the judges on the question whether it should be paid or not.

That the complainants are not simple stockholders, is evident from the fact that by the agreement they have no absolute ownerhip of the shares, but hold them as *security* for their debts and *agree to assign* and surrender to a person named upon the payment. In equity, David B. Grant or his estate (in charge of the principal defend-
10 ant, R. Suydam Grant,) are the owners of this stock.

The claim of the directors and the company set up in the answer that the complainants are as remediless as simple stockholders, is not only unfounded, but is such a repudiation of the character of trustee held by the company as to require its clear declaration by the Court for their future control.

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Second Point.

The circumstances of the agreement and the true interest of the creditors require the most strict and faithful performance of the agreement, as to a division of the profits.

At the time of the agreement the property was estimated at two-thirds of all the debts; in the settlement the debts were not to bear interest, and these debts were
30 virtually the working capital supplied by the creditors for the ultimate benefit of the stockholders. The creditors got nothing in division in case of running at less than a profit, and received no share in the ultimate benefit. They were not asked and could not be expected to contribute more working capital than the whole amount of their claims, nor would they have been willing to do so. $600,000 worth of property clear of debts was contributed as a *plant*, and now the claim of the defendants is that they cannot divide *net profits*, because more work-
40 ing capital is wanted.

New Jersey State Library

The creditors are, therefore in all conscience, entitled to a division of all the *net profits* which have been made from the employment of the capital made up by their contribution, and the company have no right to prevent such distribution by investing the increase, either in additional merchandise or other property, to be kept on hand or sold on long credits, (or in any other manner.)

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THIRD POINT.

The Vice-Chancellor erred in holding (pp. 36 and 37,) that under the *fifth article* of the agreement, (p. 13,) relating to the division of the "net profits," the company was under no other obligation than to divide the "net gains" actually realized; and, I submit, that by the true construction of the agreement, the words "net profits" in the fifth article mean the *increase over the capital with which business was commenced under the agreement;* and that this article of the agreement imposed upon the company the two obligations, (1) of dividing all *net gains* actually realized, and (2) of so conducting the business as to provide for the annual *division* of the increase, instead of locking it up in the form of increased capital, either as stock or otherwise.

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The fifth article is (p. 13):

"That *all the net profits* of the company after the payment of taxes, insurance and the necessary amount for the proper maintenance of the property of the company, in its present condition and capacity, *shall be divided annually among the stockholders.*"

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The *primary* object of the whole agreement was the payment of the debts of the company. It was not an agreement on the basis of the rights of ordinary stockholders, who were entitled to a division of the "net profits" of a corporation, in the sense in which that term is used, as a basis for the ordinary dividends of a corporation, for in that case their rights would be gov- 40

erned by the statute (*Corporations*, § 52, *Rev.* p. 186,) which declares that all manufacturing corporations shall declare a dividend of the whole of *their accumulated profits*, after reserving for a working capital an amount to be specified by directors, not exceeding *50 per cent.* of the capital stock. The capital stock of this company was only $300,000, and if the ordinary *basis* or starting point for estimating the "net profits" of a corporation, viz., the capital stock is to be taken, the Vice-Chancellor was wrong in fixing $600,000 as the basis under the agreement, instead of the capital stock of the company, $300,000.

Inasmuch as the creditors had given up their whole debts as the working capital, thus increasing the capital to double the amount of the capital stock, and the only source for the payment of their debts was the "net profits" derived from the use of their capital, after certain specified payments, the only reasonable construction of the agreement is that the "net profits" mean the *increase* over the capital contributed. It cannot be supposed that the creditors, beyond this liberal provision, intended also to confer upon the company the power of increasing and accumulating in an *undivisible* form property over the $600,000, and I submit that the Vice-Chancellor erred in holding that complainants are entitled to no relief in reference to this accumulation over the $600,000, because (p. 35,) the company in exercise of the ordinary powers of directors, has made contracts which prevent the division required by the agreement.

Let me give an illustration in a form not complicated with the question of the powers of directors. Suppose a merchant, whose debts amounted to $150,000, and whose whole stock was worth $100,000, should agree with his creditors that if they would allow him to continue his business, keeping his capital at its then amount, he would divide among them annually his net profits pro rata, until their debts were paid.

Now, if a balance sheet presented by the merchant at the end of the year showed assets of $125,000, and a

creditor should demand a division of the increase as "net profits," would it be any answer under the agreement for the merchant to say: "True, there has been an increase of $25,000 in the year, but this increase is not 'net profits,' because it is not divisible in cash. I have *in creased my stock* to the amount of $125,000, and I cannot divide my stock of goods among you, and farther, under this agreement I am entitled to *increase my stock* as much as I may consider advisable for carrying on my business, because I have the right to accumulate stock 10 and make contracts, and these rights are not taken away or qualified by our agreement." Would this be *any* answer? Is not rather the agreement with the creditors under such circumstances, in its true nature, the double one—*first*, to carry on the business so that all fair in crease or net profits may be divisible, and *second*, to divide the profits annually? I submit that the Vice-Chancellor has failed to observe the real point at issue under the agreement, viz., whether the agreement has not qualified or restricted the ordinary powers of the directors, so 20 as to prevent their exercising powers which might be proper under other circumstances, but which, if now exercised, will enable the company, at its option, to nullify the agreement.

As the rights of the company now stand under the agreement as construed by the Vice-Chancellor, it has not only relieved itself from the provisions of the general law restricting the accumulation of profits beyond 50 per cent. of its capital stock, but it has 30 virtually doubled its capital stock, and simply by the exercise of the ordinary powers of directors to *make purchases* and sales, may accumulate in an *indivisible* form capital to any amount. I submit, that such construction practically puts it in the power of the company to nullify the agreement. One of the directors (*Prosser*, p. 125, &c.,) says that the business is carried on with the view of accumulating a working capital in addition to that provided by the agreement.

The accumulation up to January 1, 1883, was $310,000 over the amount of the capital on July 1, 1878, and although this excess may not be at present devisable as cash, the complainants claim that on proof of this accumulation, their bill should "not" have been dismissed, but that the Court should have declared the complainants entitled to relief under the agreement.

FOURTH POINT.

The relief insisted on by complainants is that they are entitled—

(1) To a declaration of the basis or standard from which the net profits are to be calculated. This the Vice-Chancellor fixes at $600,000, (Decree, page 39,) and the only question in relation to this is whether it should be $300,-000, the amount of the capital stock of the company; and if the ordinary rules as to corporations are not affected by the agreement in this respect, the latter is undoubtedly the proper basis.

(2) To a declaration of the meaning of the terms "net profits" in the fifth article, and that by "net profits" was meant the increase over the amount fixed as the basis or standard.

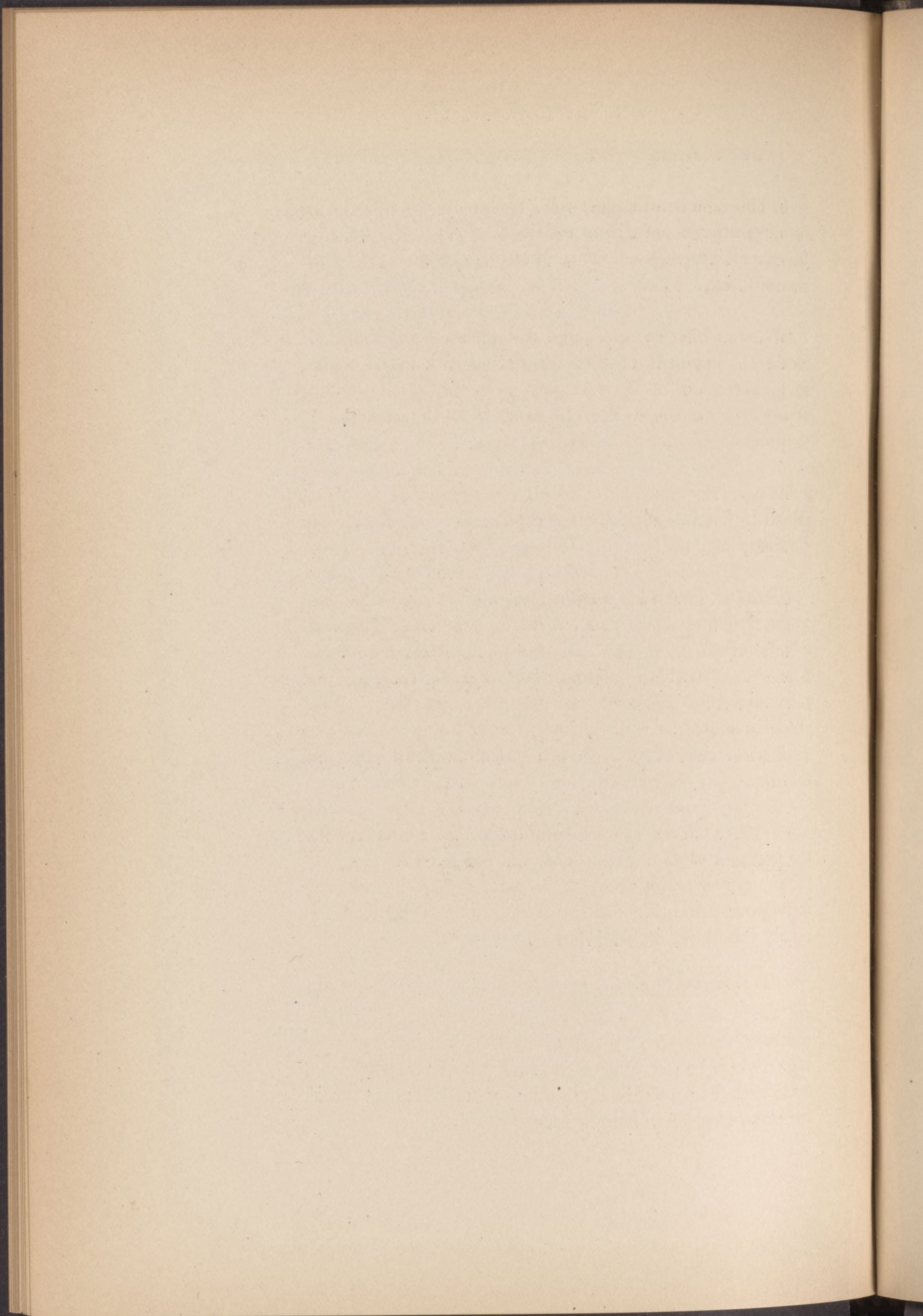
(3) To a declaration that the company, under the agreement, were not entitled to accumulate this increase in an undivisible form, but were bound so to conduct the business as to have the increase divisible.

(4) To an account, upon the basis of these declarations, to ascertain when and how any increase was made and invested, and what directors were responsible for any diversion of the increase.

No account has been kept or made under the agreement. *Evans*, page 81, bottom, and page 82. None had ever been presented to the creditors, and the relief prayed by the bill was an account of the net profits under the agreement and of the amount divisible. Page 11.

FIFTH POINT.

The answer and the evidence on the hearing not showing an account, the decree should be for an account, with such special directions as are necessary. See 2 Dan. Ch. Prac. (3d Am. ed.) 854; City of Hudson *v.* Trenton Locomotive, &c., Co., 1 C. E. Gr. 475, (Chancellor Green, 1864,) as to the practice in this respect.



(Copy of Agreement.—Schedule A, Page 13.)

First. The bondholders shall consent to the satisfaction of all mortgages and the cancellation of all bonds, thereby leaving all property of the company free and clear of all encumbrance.

Second. That the mortgage and general creditors shall receive in payment of their respective claims the capital stock ($300,000) of the company, *pro rata*, to the amount of their claims, the stock to be assigned to the creditors by the stockholders for that purpose.

Third. That the claims of all creditors shall be determined by the report of the receiver, with interest added to February 1st, 1875.

Fourth. That each certificate of stock assigned to each general creditor shall be stamped on its face, "This certificate of stock is held as security for the payment of $ (without interest), and is to be assigned and surrendered to David B. Grant on the payment of the above amount." All dividends paid on this stock shall be credited to the account of such payments and endorsed thereon.

Fifth. That all the net profits of the company, after the payment of taxes, insurance and the necessary amount for the proper maintenance of the property of the company in its present condition and capacity, shall be divided annually among the stockholders.

Sixth. Should the net profits in any year exceed the amount of six per cent. on the present amount of indebtedness of the company as fixed by the receiver, a six per cent. dividend shall be made, and all profits exceeding that amount shall be paid in liquidation of the debts for which the stamped stock is held as security.

SEVENTH. Should the profits in any year not amount to six per cent. of the said amount of the indebtedness, the deficiency of that year shall be paid out of the earnings of the next succeeding year, which shall exceed the amount of six per cent., before any surplus beyond six per cent. shall be divided among the holders of the stamped stock.

EIGHTH. That a board of five directors, three of whom shall be nominated by the general creditors, shall be mutually agreed upon, who shall manage the business of the company, and who shall employ D. Beach Grant as manager of the works at a salary of ten thousand dollars per annum, who agrees to assign all interest in patents owned by him to the Grant Locomotive Works.

NINTH. That the Grant Locomotive Works, the stockholders thereof, and the creditors hereby agree to sign and execute all agreements and writing necessary to carry out this basis of settlement.

TENTH. This agreement shall not be binding on any unless signed by all the creditors.

To His Honor, THEODORE RUNYON, *Chancellor of the State of New Jersey:*

Humbly complaining show unto your Honor, your orators, Richard C. Gray, William G. Park, Winfield S. Kennedy, David E. Parkall, of Alleghany City, in the State of Pennsylvania, DeWitt C. Clapp, John M. Clapp and James H. Park, of the city of Pittsburgh, in the State of Pennsylvania, and Sarah G. Park, sole executrix of James Park, junior, deceased, of Alleghany City aforesaid, and Richard G. Park, of Montclair, in the County of Essex and State of New Jersey, partners trading under the name and firm of Park Brothers and Company, who file this, their bill of complaint against the Grant Locomotive Works, a corporation created under the laws of the State of New Jersey and R. Suydam Grant, of the city, County and State of New York, Thomas Prosser, or the city of Brooklyn, New York, J. Frederick Pierson and William H. Wallace, of the city, County and State of New York and Benjamin Williamson, Esq., of the city of Elizabeth, New Jersey, defendants.

(1.) That the defendant, the Grant Locomotive Works, is a corporation created and organized under an act of the legislature of this state, approved March 21st, A. D. 1866, entitled "An act to incorporate the Union Locomotive Works" and a supplement thereto, entitled "A supplement to the act entitled 'An act to incorporate the Union Locomotive Works,'" which supplement was approved April 11, 1867 and by which supplement the name of the corporation was changed to the Grant Locomotive Works; that the said company was incorporated for the purpose of carrying on the business of manufacturing and selling locomotive engines, cotton and woolen machinery and such other articles as the interests of the company might require; and to carry on the business incident to such manufacture either in the counties of Union, Passaic or Hunter-

don; that the said company carried on their said business at Paterson in the county of Passaic from about the time of their organization up to about the first of February, 1875, and in the prosecution of the same contracted a large indebtedness which at that date amounted to about nine hundred thousand dollars, the firm of Park Brothers and Company being then creditors to the amount of $60,000.

(2.) That on or about the eighth of February, 1875, one Thomas Prosser, who was also then a creditor of said company to the amount of over $70,000, filed in this court his bill of complaint on behalf of himself and all others, the creditors and stockholders of the said company against the said company, alleging (among other things) that it was insolvent and praying that the said company might be declared and adjudged to be an insolvent corporation and for an injunction and receiver under the provisions of the laws relating to insolvent corporations; that upon said bill such proceedings were had that on or about the 15th day of February, 1875, an injunction was issued by this court enjoining the said company from prosecuting its business and transferring its property and from exercising any of its franchises, and one Charles F. Pierson was appointed a receiver of the property and assets of said company; that the said Charles L. Pierson accepted the said appointment, entered upon the discharge of the duties thereof, and continued to discharge the same until on or about the 14th of June, 1875, when the order appointing him was revoked and the company restored to the exercise of the franchise under the circumstances hereinafter stated.

(3.) That at the time of filing the said bill and the appointment of said receiver, the liabilities or alleged liabilities of the company were (1) its capital stock to the amount of $300,000, (2) a mortgage indebtedness securing bonds to the amount of about $400,000, held principally by the directors and stockholders of the company and the validity or priority of which against the general unsecured

creditors of the company was disputed, and (3) the indebtedness of the general creditors of the company (including said firm of Park Brothers and Company) to the amount of about $500,000; that it was thought desirable by the creditors both secured and unsecured and the stockholders, that an arrangement or agreement should be made by which the business of the company should be continued and that during the pendency of said suit and before the 14th day of June, 1875, an agreement set out in the following paragraph was made and entered into between all the general creditors (except those whose claims were disputed) and the mortgage creditors and the stockholders of the company; the said agreement being signed by all of the said creditors and stockholders or their authorized attorneys, including said firm of Park Brothers and Company as by the said agreement when produced will appear, and to which your orators refer if necessary.

(4.) That the terms of said agreement were as set out in the schedule hereto annexed marked schedule "A."

(5.) That upon said agreement being made, application by petition was made to the court in said suit by the said Thomas Prosser, complainant on behalf of himself and the other creditors and stockholders of the Grant Locomotive Works, setting out said agreement and that all the creditors whose claims were not disputed, including the mortgage creditors and the said company and its stockholders were desirous that the agreement should be carried out and that the appoinment of the receiver should be annulled and the injunction dissolved; and upon said application and proof to the satisfaction of the court of the truth of said allegations it was by order and decree in said suit bearing date on the 14th day of June, 1875, (among other things) ordered and decreed that the appointment of said Charles F. Pierson as receiver of the Grant Locomotive Works be revoked and annulled and that the injunction theretofore issued in the case enjoining the said company from prosecuting its busi-

ness and transferring its property be dissolved, and that the said company be restored to its franchises and privileges as far as the same were affected by said suit, and that all the property and assets of the company in the custody of the receiver or that might have come into his hands since his appointment be surrendered and delivered by said receiver to said company, the company paying the expenses and liabilities incurred by the receiver in the discharge of his duties and the fees of said receiver and the counsel fees and costs of suit, the whole of said payments amounting to nearly ten thousand dollars, as by said petition and order will more fully appear.

(6.) That pursuant to said order and decree the said property and assets of the said company were on or about the first day of July, 1875, delivered over to said company, and the management of the affairs of said company commenced under the terms of said agreement; and that this was allowed by said firm of Park Brothers and Company and the other creditors upon the faith and expectation that the same would be managed as provided by said agreement, that the capital stock of $300,000 was received by the mortgage and general creditors as provided in the second and fourth articles of the agreement, said Park Brothers and Company receiving certificates of stock to the amount of 203 shares of a par value of $20,300, stamped as provided in said article fourth; that the same was held as security for the payment of $59,056.93, the amount of which your orators' debt was allowed; and that a board of five directors was chosen as follows: R. Suydam Grant, Thomas Prosser, J. Frederick Pierson, Edward H. Gardner and Benjamin Williamson, Esq., three of whom, viz.: said Prosser, Gardner and Pierson were nominated by the general creditors.

(7.) That your orators claim and insist that the affairs of the said company under said agreement of settlement are to be managed for the purpose primarily of paying off the debts then existing, including the claim of your orators in

the manner therein expressly provided for, and that until the said debts are so paid the said company and the said board of directors are trustees for your orator and the other creditors of the company and required as such trustees to divide the net profits of the company after the payment of the charges expressly provided for annually among the stockholders including those who hold the stock merely as security for their claims; and your orators claim that the object of said agreement and of the surrender by your orators and other creditors of their right to require the settlement of the affairs of the company under said receivership was primarily the settlement in the manner expressly provided for by said agreement of the debts of the company, and that in the management of the affairs of the company under the agreement the said company and the said trustees have no right in violation of the express provisions of the said agreement to retain for the benefit of the company and its stockholders, not creditors, any of the net profits which should be annually divided or to allow the same to remain at the risk of said business.

(8.) That on or about the first of July, 1875, the said company and the said board of directors as trustees under said agreement took possession of the property and assets of the company and commenced the management of its affairs under said agreement; and that the same is still continued thereunder only a small portion of the indebtedness having been paid, your orators and the other general creditors having received only twelve per cent. of the amount of their claim; a dividend of that amount having been ordered to be paid on or about the tenth day of March last.

(9.) That the said company and the said board of trustees as managers of its affairs under said agreement have not divided annually all of the net profits of the business as is therein directed, but now retain and refuse to divide among your orators and the other persons entitled thereto, a large amount, viz.: $300,000 of the said net

profits; and refuse to pay to your orators their portion thereof.

(10.) And in relation to the amount of said net profits, your orators particularly specifying say, that on or about the first of July, 1875, when the management under said agreement commenced, an inventory of the property and assets of the said company was taken, by which it appeared that the assets of said company amounted to the sum of $600,000, divided as follows:

Real Estate,	$ 30,000 00
Buildings,	110,000 00
Machinery,	160,000 00
Inventory,	225,000 00
Due from Polekoff,	75,000 00
Total,	$600,000 00

and that there were then no liabilities except the claims of the creditors to said agreement, for which capital stock to the amount of $300,000 had been taken either absolutely or as collateral under the terms of said agreement, including your orator's claim aforesaid;

That up to the first of January, 1883, no division of profits was made by the said company or ordered by said board of directors, and that at that time the net profits of said business, according to a statement prepared by said board or under their direction and approval and submitted to the creditors under the agreement, (including your orators') amounted to $260,805.10, the assets and liabilities being respectively stated as follows:

JANUARY 1, 1883.

ASSETS.

Real Estate,	$ 33,900 00
Buildings,	88,000 00
Machinery,	128,000 00
Inventory,	345,836 08
Cash,	157,600 21
Due from sundry parties,	234,382 18
	$987,718 47

LIABILITIES.

Capital Stock, ...	$300,000 00
Bond and Mortgage, ...	3,500 00
Due sundry parties, ...	123,413 37
Profit and Loss, ...	560,805 10
	$987,718 47

that even admitting to be correct, the reduced estimate on real estate, buildings and machinery (the total reduction amounting to $50,100) and deducting the indebtedness incurred in carrying on the business other than the capital stock and the claims of the creditors under the agreement, the property and assets of the company had been increased over $260,000 ; but your orators claim and insist that in making up the account of net profits against your orators and the other creditors under said agreement, it is not proper to charge your orators and the other creditors with any depreciation in the values of the real estate, buildings and machinery since July 1, 1875 ; that the said real estate, buildings and machinery were substantially the same on the first of January, 1883, as on July 1st, 1875, and your orators claim that in making up the accounts the creditors under the agreement have already been charged with all sums expended up to July 1st, 1883, for the maintenance of the property by the company or board of directors ; and that under the said agreement the company and the said board of directors are not entitled, independent of amounts paid out by them for the maintenance and repair of the property, to charge against the creditors for the purpose of reducing the net profits, an amount which they shall judge sufficient to cover depreciation of the property and to keep its assets of the same value as on July 1, 1875, and they therefore claim that the said reduction in the said values was improperly made and that the amount thereof, $50,100, should be added to the statement of assets in estimating the amount of net profits ; the whole amount of net profits to be divided, being thus as your orators insist, $310,905.10.

(11.) That on or about the twelfth day of February, 1883, the said company and the said board of directors directed a division of a sum amounting to 12 per cent. of the creditors' claims, being in all about $108,000, payable on the tenth day of March, 1883, which has been divided among the persons entitled thereto under the agreement, your orators having received $7,086.83, being 12 per cent. on their whole claim, and this being the only dividend ever received by them on their claim, the balance of which is yet unpaid.

(12.) That your orators have applied to said board of directors to divide among the creditors under the said agreement the residue of the net profits over and above the amount divided, made under said management up to January 1, 1883, and to pay over to your orators their portion thereof, but said company and the board of directors refuse to make any further division and now hold the amount of said net profits among the general assets of the company used in carrying on the business.

(13.) That the said business is one attended with considerable risk and uncertainty, and is subject to fluctuation and depression and that in carrying on the same there is danger that the net profits already made may be exhausted or impaired if the same be not divided among the creditors as made; and that the said company and board of directors do not intend in any manner to divide or set apart the same during the present year; but intend to continue the business without such division or separation.

(14.) That the said company and the said board of directors in order to give color to or excuse their said refusal to divide any of the net profits beyond the said amount of $108,000 already divided, give out and pretend that it is necessary to retain the same or a large portion thereof to provide for a proper working capital for the said business, but your orators claim and insist that under said agreement no

working capital other than the property and assets on hand was to be provided for at the expense of your orators and the other creditors, and that the retention of the net profits for such purpose is intended to and does benefit the persons ultimately entitled to the stock after payment of the debts at the risk and expense of your orators and other the creditors and is a fraud upon their rights under the agreement.

(15.) At other times the said company and board of directors give out and pretend that the net profits of the company beyond the said amount of $108,000 already divided, cannot now be divided because the same consists largely of obligations not yet due; and that they cannot be realized on at present, but your orators charge that the said obligations, if they exist, consist of bonds of companies and other negotiable securities salable in the market and that if the same are held by the company and not yet set apart to the extent of the net profits from the general assets of the company for the purpose of division, they should be sold and the proceeds divided among the creditors entitled thereto.

(16.) That on or about the day of said Edward H. Gardner died and the defendant, William H. Wallace, was afterwards elected in his place and accepted the trust. Defendant Wallace, without the consent of your orators and the other creditors resigned or claimed to resign from his office, as a member of the board; but your orators claim that under the said agreement the said Wallace and the other members of the board are trustees for the creditors interested in said agreement and that by such pretended resignation he has not become relieved of the discharge of his trust but remains a trustee until released by the consent of the creditors or other proper authority; that since such resignation (which has only come to the knowledge of your orators within a few weeks past), no person has been elected by the general creditors to supply the place and that the interests of the general creditors in the management of the affairs of the company are by the board as at

present constituted made necessary by the interests of the stockholders ultimately entitled to the stock after payment of the debts.

(17.) That the creditors who signed the said agreement for the management of the affairs of said company and are interested with your orators in the division of the net profits thereunder are very numerous, there being over sixty creditors, most of them firms or partnerships signing under their firm names (as did your orators) and the individuals of which are unknown to your orators; that most of said creditors reside out of this state; that some of the persons interested as creditors at the time of the agreement have died, the interest of others has been transferred, and that it is impracticable for your orators to make all of the said creditors parties to this suit, and this bill is filed by your orators in their own behalf and on behalf of all creditors under said agreement who may desire to come in and to contribute to the expense of the suit.

(18.) That the members of the firm of Park Brothers and Company at the time of the signing of the said agreement were the said James Park, junior, deceased, and your orators, Richard C. Gray, William G. Park, DeWitt C. Clapp and John M. Clapp, and one Charles L. Caldwell; that said Caldwell in the early part of 1879, assigned his interest in the firm (including said debt) to your orator Richard C. Gray, and withdrew from the firm and has now no interest therein; that said James Park, junior, departed this life about April 21, 1883, and his interest in said firm is continued therein by your oratrix, his said executrix under and by virtue of his will; that the others of your orators were admitted into said firm and secured an interest in its assets (including the said debt of the said company) since the signing of the said agreement; that your orators and oratrix are carrying on the business of the said firm which has been continued and they are now the persons and the only persons interested in or entitled to its assets including said debt

and the rights of the said Park Brothers and Company under said agreement.

(19.) That according to the strict course of the common law your orators are remediless in the premises, but that this court has full and complete jurisdiction in the premises.

To the end, therefore, that the said defendants may, but without oath, full and complete answer make to the premises and that as fully and particularly as if the same were here again repeated, and they and each of them hereto, particularly interrogated thereto; and that an account may be taken of the net profits of the said Grant Locomotive Works made under the agreement of its affairs under the said agreement, and of the amount divisible thereunder among your orators and the other creditors of said company under the said agreement, and that the said defendants may be directed and decreed to divide among and pay unto your orators and the other creditors entitled thereto, their proportion of the said net profits coming to them under the said agreement; and that the said defendants and the said company until the said division and payment be restrained and enjoined from applying any portion of the profits made or to be made by said company (after paying or retaining the charges for taxes, insurance and the necessary amount for the proper maintenance of the property of the company in its condition and capacity at the time of signing said agreement) to any other purpose than the division of the same among the creditors of said company under said agreement, and especially from retaining any portion of said net profit for a working capital of said company; and that your orators may have such further and other relief as the circumstances of the case may require and to your Honor shall seem meet:

May it please your Honor, the premises considered to grant unto your orators not only the writ of subpœna of the State of New Jersey to be directed to the said the Grant Locomotive Works and to the said R. Suydam Grant,

Thomas Prosser, J. Frederick Pierson, Benjamin Williamson and William H. Wallace, the defendants hereto, therein and thereby commanding them on a certain day therein to be named, to be and appear before your Honor in this court, then and there to answer the premises and to stand to, abide and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience; but also the writ of injunction of the State of New Jersey to be directed to the said the Grant Locomotive Works, their officers, agents and servants, and to the said R. Suydam Grant, Thomas Prosser, J. Frederick Pierson, Benjamin Williamson and William H. Wallace, restraining and enjoining them and each of them from applying any portion of the profits made or to be made by said company after paying the charges aforesaid to any other purpose than the division of the same among the creditors of said company under said agreement; and from so carrying on the business of the company as to reduce below the amount or value of $800,000, its assets, over and above its liabilities for debts incurred in carrying on the business to an amount not exceeding $127,000, unless the reduction of its assets below said sum or amount of $800,000 is made by sale of securities held by the company for the purpose of dividing the proceeds as net profits of the company, and in this estimate of the value of the assets, the real estate, buildings and machinery of the company are not to be estimated as of a less value than in the inventory of the company made about July 1, 1875.

John R. Emery,
Sol. and of Counsel with Complt.

"SCHEDULE A."

In re Grant Locomotive Works—Copy of Agreement.

First. The bondholders shall consent to the satisfaction of all mortgages and the cancellation of all bonds, thereby leaving all property of the company free and clear of all incumbrance.

Second. That the mortgage and general creditors shall receive in payment of their respective claims the capital stock ($300,000) of the company, *pro rata*, to the amount of their claims, the stock to be assigned to the creditors by the stockholders for that purpose.

Third. That the claims of all creditors shall be determined by the report of the receiver, with interest added to February 1st, 1875.

Fourth. That each certificate of stock assigned to each general creditor shall be stamped on its face, "This certificate of stock is held as security for the payment of $ (without interest), and is to be assigned and surrendered to David B. Grant on the payment of the above amount." All dividends paid on this stock shall be credited to account of such payments and endorsed thereon.

Fifth. That all the net profits of the company, after the payment of taxes, insurance and the necessary amount for the proper maintenance of the property of the company in its present condition and capacity, shall be divided annually among the stockholders.

Sixth. Should the net profits in any year exceed the amount of six per cent. on the present amount of indebtedness of the company as fixed by the receiver, a six per cent. dividend shall be made, and all profits exceeding that amount shall be paid in liquidation of the debts for which the stamped stock is held as security.

SEVENTH. Should the profits in any year not amount to six per cent. of the said amount of the indebtedness, the deficiency of that year shall be paid out of the earnings of the next succeeding year, which shall exceed the amount of six per cent., before any surplus beyond six per cent. shall be divided among the holders of the stamped stock.

EIGHTH. That a board of five directors, three of whom shall be nominated by the general creditors, shall be mutually agreed upon who shall manage the business of the company, and who shall employ D. Beach Grant as manager of the works at a salary of ten thousand dollars per annum, who agrees to assign all interest in patents owned by him to the Grant Locomotive Works.

NINTH. That the Grant Locomotive Works, the stockholders thereof, and the creditors hereby agree to sign and execute all agreements and writing necessary to carry out this basis of settlement.

TENTH. This agreement shall not be binding on any unless signed by all the creditors.

"SCHEDULE B."

NEW YORK, January 2, 1883.

Gentlemen :

The President herewith submits the following report of the condition of the company:

When in 1875 the present management assumed charge of this property, it was hoped the locomotive business could be carried on with at least a fair average profit, but their expectations were not realized, and for five years the company, owing to the small demand for locomotives, were

never able to work their shops up to their full capacity or to work with any profit, on the contrary, nearly all the work done resulted in loss owing to the low price caused by competition, and the increased cost of working half time, added to which was the serious loss from the continued depreciation of the large part of the assets which consisted of "material on hand," and during all this time taxes, insurance, expenses of maintaining the plant in thorough order, which has been done, made a heavy and almost ruinous drain upon the company's property, leaving it at the commencement of 1880 almost destitute of assets available for working capital. Since 1880 there has been improvement in locomotive business, and during the year 1881 the company was for the first time since 1875 able to work to its full capacity at more or less profitable prices. The loss of the five years obliged the company to borrow money, and it is still obliged to do so on account of the large amount required to be invested in material; but the years 1880 and 1881 resulted in profits almost sufficient to restore the company to its condition at the time it was taken from the receiver, and at same time keep the plant in good order and capable of working up to its largest output. The table below shows the comparative state of the company in 1875 and on the 1st of January, 1882. The debts due the company are good, and the material on hand is almost entirely required for locomotives under contract. It is not unreasonable to hope that if the business continues good throughout the year 1882 the balance sheet of the company will show a surplus over the necessary working capital of the company.

BALANCE SHEET GRANT LOCOMOTIVE WORKS

JANUARY 1, 1875.

ASSETS.

Real Estate, ...	$ 30,000 00
Buildings, ...	110,000 00
Machinery, ...	160,000 00

Inventory, ...	225,000 00
Due from Poleakoff, ...	75,000 00
	$600,000 00

LIABILITIES.

Capital Stock, ...	$300,000 00
Profit and Loss, ...	300,000 00
	$600,000 00

JANUARY 1, 1882.

ASSETS.

Real Estate, ...	$ 35,500 00
Buildings, ...	110,000 00
Machinery, ...	160,000 00
Inventory, ...	220,793 08
Due from sundry parties, ...	211,574 70
	$737,867 78

LIABILITIES.

Capital Stock, ...	$300,000 00
Bond and Mortgage, ...	3,500 00
Bills Pay, ...	180,000 00
Wages due, ...	15,525 05
Due for Merchandise, ...	93,627 07
Profit and Loss, ...	145,215 66
	$737,867 78

Locomotives built in 1875, 10; 1876, 13; 1877, 1; 1878, 45; 1879, 52; 1880, 57; 1881, 99; and ten repaired and four rep.

JANUARY 1, 1883.

ASSETS.

Real Estate,.	$33,900 00
Buildings, ...	88,000 00
Machinery, ...	128,000 00
Inventory, ...	345,836 08
Cash, ...	157,600 21
Due from sundry parties, ...	234,382 18
	$987,718 47

LIABILITIES.

Capital Stock, ...	$300,000 00
Bond and Mortgage, ...	3,500 00
Due Sundry Parties, ...	123,413 37
Profit and Loss, ...	560,805 10
	$987,718 47

IN CHANCERY OF NEW JERSEY.

RICHARD C. GRAY, WILLIAM G. PARK, WINFIELD S. KENNEDY, DAVID E. PARK, DEWITT C. CLAPP, JOHN M. CLAPP, JAMES H. PARK, SARAH G. PARK, SOLE EXECUTRIX OF JAMES PARK, JUNIOR, DECEASED, AND RICHAHD G. PARK,

Complainants,

against

THE GRANT LOCOMOTIVE WORKS, R. SUYDAM GRANT, THOMAS PROSSER, J. FREDERICK PIERSON, WILLIAM H. WALLACE, AND BENJAMIN WILLIAMSON,

Defendants.

The answer of the defendants, The Grant Locomotive Works, R. Suydam Grant, Thomas Prosser, J. Frederick Pierson, William H. Wallace and Benjamin Williamson, to the bill of complaint of Richard C. Gray, William G. Park, Winfield S. Kennedy, David E. Park, Dewitt C. Clapp, John M. Clapp, James H. Park, Sarah G. Park, sole exectrix of James Park, Junior, deceased, and Richard G. Park, complainants.

These defendants, now and at all times hereafter saving

and reserving unto themselves all benefit and advantage of exception which can or may be had and taken to the many errors, uncertainties and other imperfections in the said complainants' said bill of complaint contained, for answer thereto, or unto so much and such parts thereof as these defendants are advised, is or are material or necessary for them to make answer unto, answering say:

I. They admit all and every, the allegations and averments contained in paragraphs 1 and 2 of said complainants' said bill of complaint, and that at the time of filing the said bill of said Thomas Prosser and the appointment of Charles F. Pierson as receiver, as avered in paragraph 2, the liabilities of the Grant Locomotive Works were (1) its capital stock to the amount of $300,000, (2) a mortgage indebtedness securing bonds to the amount of $400,000, the validity or priority of which against the general unsecured creditors of the company was disputed, and (3) the indebtedness to the general creditors of the company including said firm of Park Brothers and Company, but they deny that said mortgage indebtedness was held principally by the directors or stockholders of the company.

II. They admit all and every, the allegations and averments beginning with the words "that it was thought advisable by the creditors," in paragraph 3, to and including the words "were nominated by the general creditors," paragraph 6.

III. They deny that the affairs of the said company under said agreement of settlement, are to be managed for the purpose primarily of paying off the debts then existing. They deny that until the said debts are so paid the said company and the said board of directors are trustees for said complainants or the other creditors of the company, or required as such trustees to divide the net profits of the company, but they say that on the assignment therein of

the stock under said agreement, the said complainants ceased to be creditors of said company and became stockholders in the manner provided and with the rights of stockholders, but subject to the limitations on their rights expressed in said agreement and in the words stamped upon the certificate issued to them. They further say that the object of said agreement and of the surrender by the complainants, as well as by these defendants, other than said company as creditors of their right to require the settlement of the affairs of the company under said receivership was primarily the settlement, discharge and release of all the claims as creditors for stock in said company, in the manner expressly provided for by said agreement, and they admit that in the management of the affairs of the company under the agreement, the said company and the said trustees have no right in violation of the express provisions of said agreement to retain for the benefit of the company and its stockholders, whether originally creditors or otherwise, any of the net profits which should be annually divided, but they say that until required by said agreement to be divided the same must remain like the other assets of the company at the risk of said business.

IV. They admit all and every the allegations and averments contained in paragraph 8 of said bill of complaint.

V. They deny that the said company and the said board of directors as managers of its affairs under said agreement, have not divided annually all of the net profits of the business as is therein directed. They deny that they now retain or refuse to divide among the complainants, or any other persons entitled thereto, a large amount, or over $300,000 of the net profits, or any sum whatever, or refuse to pay to the complainants their portion thereof, and they say that all the net profits of the company after the payment of taxes, insurance and the necessary amount for the proper maintenance of the property of the company in its condition and capacity at the time said agreement was made,

have been divided annually among the stockholders, including the said complainants, and that the said complainants have been paid their full and entire portion thereof.

VI. They admit all and every the allegations and averments contained in paragraph 10, down to and including "Total, $600,000." They deny that there were then no liabilities except the claims of the creditors to said agreement, for which capital stock to the amount of $300,000 had been taken either absolutely or as collateral, under the terms of said agreement, but they say that there were certain other claims then disputed which were established and which the company was compelled to pay. They admit that up to the first of January, 1883, no division of profits was made by the said company or ordered by said board of directors, but they deny that at that time the net profits on said business amounted to $260,805.10. They say that the statement of January 1, 1883, which is set forth in paragraph 10 of said bill of complaint was prepared from the books of the company as showing the condition of the accounts of the company on the books and that as such a statement the same was approved by the board and submitted to the stockholders, including the complainants. They deny that the same was prepared by the board or under their direction and approval or submitted to the creditors under the agreement as stating the net profits of said business and they said that said statement does not show such net profits. They say that many items are entered in and go to make up the account, headed profit and loss, the total of which account on January 1, 1883, was $560,805.10, which have not been turned into money, closed up or realized and which will not be realized for a long time and which have not become net profits and are not susceptible of division as money. That the item cash $157,600.21 in said statement includes the amount of all the net profits which had been realized on January 1, 1883, and could be divided under said agreement as well as such cash as it is necessary to keep on hand for the main-

tenance of property of the company and the management of the business of the company and the earning of net profits for division under said agreement. They deny that even admitting to be correct the reduced estimate on real estate, buildings and machinery (the total reduction amounting to $50,100) and deducting the indebtedness incurred in carrying on the business other than the capital stock and the claims of the creditors under the agreement, the property and assets of the company had been increased on $260,000. They say that in the management of the business of the company locomotives had been manufactured and sold not for cash but for securities of large nominal value, but payable at distant periods, the face value of which is entered in said statement of January 1, 1883, but the same are not due nor could they be converted into money at the time of the commencement of this suit or now without great sacrifice and loss to the company and the stockholders. They deny that in making the account of net profits against the complainants and other stockholders who were creditors at the time of said agreement it is not proper to charge any depreciation in the values of real estate, buildings and machinery since July 1, 1875. They deny that the said real estate, buildings and machinery were substantially the same on the first day of January, 1883, as on July 1st, 1875. They admit that in making up the accounts there have been charged all sums expended up to January 1, 1883, for the maintenance of the property by the company or board of directors. They deny that such charges are made against the creditors, they deny that they are made for the purpose of reducing net profits. They deny that under said agreement the company and the said board of directors are not entitled independent of the amounts paid out by them for the maintenance and repair of the property, to charge an amount which they shall judge sufficient to cover depreciation of property and to keep its assets of the same value as on July 1st, 1875. They deny that the reduction in the said values was properly made or that the amount thereof of $50,100 should be added to the statement of

assets in estimating the amount of net profits. They deny that the whole amount of net profits to be divided is $310,-905.10 or any sum whatever beyond what was actually divided. They say that the statements and accounts referred to by the complainants are the result of proper entries made in the books of the company and showing the situation of its pending business, but that they do not show the net profits nor can the net profits be determined from the same.

VII. They admit all and every the allegations and averments contained in paragraph 11 of said bill of complaint and they say that the division then directed and paid divided all the net profits of the company and in all respects fully discharged and performed the provisions of said agreement respecting the annual division of net profits among the stockholders.

VIII. They admit that the complainants have applied to the board of directors to divide among the stockholders and to pay to them their portion of what is claimed by complainants to be the residue of the net profits over and above the amount divided, but they deny that any residue of the net profits over and above the amount divided was made under the management up to January 1, 1883, and they say no such residue ever existed in truth or in fact. They admit that said company and the board of directors refused to make any further division and they say that such refusal was because there were no net profits beyond what was divided and paid to the stockholders. They deny that they now hold the amount of said net profits or of any net profits made prior to January 1, 1883, the date to which the said annual division was made among the general assets of the company used in carrying on the business.

IX. They admit that the said business is one attended with considerable risk and uncertainty and is subject to fluctuation and depression. They say there is now as there

was when said agreement was made a possibility or probability that at times the management of the business will not earn any net profits as was the case in the several years prior to the year 1882, when the net profits divided were made. They deny all and singular the allegations and averments contained in said bill of complaint beginning with the words, "and that in carrying on the same there is danger," in paragraph 13, to and including the words, "and the proceeds divided among the creditors entitled thereto," in paragraph 15.

X. They further answering say that said Edward H. Gardner died, and the defendant, William H. Wallace, was afterwards duly elected director of said company in his place and stead, and accepted the said office and continued to act till sometime after his said election and acceptance, when he resigned his office and such director. They admit that his resignation was wtihout the consent of said complainants, but they say that his election and resignation were entirely valid without such consent. They deny that under the said agreement the said Wallace or the other members of the board are trustees for the alleged creditors interested in said agreement except that as directors of said company, they are bound by the provisions of said agreement for the benefit of all the stockholders as well as those who before said agreement were such creditors as for the benefit of the other stockholders. They deny that by such resignation said Wallace has not become relieved of the discharge of his trust. They deny that he remains a trustee until relieved by the consent of the creditors or other proper authority. They say that his said resignation relieved him from all such duties. They admit that since such resignation no person has been elected by the general creditors to supply his place and they deny that the interests of the general creditors in the management of the affairs of the company are by the board, as at present constituted, made secondary to the interests of the stockholders ultimately entitled to the stock after payment of the debts. They deny

any knowledge or information sufficient to form a belief whether the resignation of said Wallace duly came to the knowledge of the complainants within a few weeks past.

XI. They admit that the original creditors who signed the said agreement for the management of the affairs of said company, and as stockholders are interested with the complainants in the division of the net profits thereunder, are in number over sixty, but they say that the greater part of such number were in the minority of such creditors, and they further say that the defendants, R. Suydam Grant, Thomas Prosser and J. Frederick Pierson and the firm of Vicker's Sons & Co., were the majority in amount of such creditors and own and control the majority of the stock which under said agreement was issued to the creditors. They admit that most of the original creditors in number were firms or partnerships signing under their firm names as did the complainants, but they have no knowledge whether or not the individual members of such firms are unknown to the complainants. They admit that most of said original creditors reside out of the State of New York, and that some of the persons, originally interested as creditors at the time of the agreement, have died, and that the interests of others have been transferred. They deny that it is impracticable for the complainants to make all of them parties to this suit.

XII. They have no knowledge or information sufficient to form a belief whether or not the members of the firm of Park Brothers and Company at the time of signing of the said agreement, were the said James Park, junior, deceased, and said Richard C. Gray, William G. Park, Dewitt C. Clapp, John M. Clapp and Charles L. Caldwell, or whether or not said Caldwell, in the early part of 1879, assigned his interest in the firm to said Richard C. Gray and withdrew from the firm, or has now no interest therein, or whether or not said James Park, junior, departed this life about April 21, 1883, and his interest in said firm is continued therein

by the complainant, his said executrix, under and by virtue of his will, or whether or not the other of said complainants were admitted into said firm or received an interest in its assets since the signing of the agreement, or whether or not the complainants are carrying on the business of the said firm, or whether or not it has been continued and they are now the persons or the only persons interested in or entitled to its assets including said pretended debt (which they say no longer exists as a debt, but merely as a limited interest in the stock received therefor), or the rights of the said Park Brothers and Company under said agreement. They deny that according to the strict course of the common law the complainants are remediless in the premises, or that this court has full and competent jurisdiction in the premises.

XIII. And these defendants further answering say, that on the 1st day of July, 1875, there were no admitted liabilities and no liabilities whatever of the said company except certain disputed claims, some of which were afterwards established and paid by the company, that the admitted creditors, including said complainants, had fully released and discharged the company from their and received stock as security for the purpose of receiving a share of the net profits of the company upon the results of its future business up to the original amount of the principal of the debts from which they then released and discharged the company. That the books of the company showed assets of the value of $600,000 represented by capital stock $300,-000, and an account called "Profit and Loss," and stated at $300,000, that this "Profit and Loss" was then, as now, a book-keeping or quasi fictitious account, and could as well have been called any other name; it was not divisible then among stockholders, the assets which it represented consisting of property, in fact unsalable if the company did business, being the entire plant and stock of the company required for the management of the business of the company and estimated to be of the value of $600,-

000, if the company had been wound up and the same sold. The profit and loss at no time represent the actual profit or loss in money of the company, but merely an estimate of the net value of the assets over the liabilities at their face or nominal value. During the four years following July 1, 1875, the company lost money instead of making any profits, and it was not until the first day of January, 1883, that the company had made any net profits which were divisible under the agreement on the first day of January, 1883, the increase of the profit and loss account represented besides what it had represented July 1, 1875, debts owing to the company, obligations of railroad companies and other companies and securities not yet due. The majority of the board of directors are and have been interested more largely than the complainants, but in the same manner under the said agreement, and it has been to their interest to divide all the net profits as soon as the same were realized and available for division. The reduced estimate of real estate, machinery and buildings, was merely twenty per cent. for eight years wear and not only was not excessive but very properly have been put at a larger amount. That these defendants do not desire to retain any net profits when realized for working capital or for any other purpose but desire and interest to divide all net profits annually, and that they have so notified complainants, and that their interests are identical with those of complainants, and that they represent in their ownership of stock a majority of the stock which at the time of the agreement was held by creditors.

XIV. And these defendants further answering, deny that there is any other matter, cause or thing in the said complainants' said bill of complaint contained, material or necessary for these defendants to make answer unto and not herein and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is not true to the knowledge or belief of these defendants. All which matters and things these defendants are ready and willing to aver, maintain and prove, as this Honorable Court shall direct, and

humbly pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

THE GRANT LOCOMOTIVE WORKS.

[L. S.] BY R. S. GRANT,
President.

Solicitors for Defendants.

Replication in common form filed.

IN CHANCERY OF NEW JERSEY.

BETWEEN WILLIAM G. PARK, ET AL., *Complainants,* AND THE GRANT LOCOMOTIVE WORKS, ET AL., *Defendants.*	On Bill, etc.. Order of Reference to Vice-Chancellor.

Due and legal notice of this application having been given, It is thereupon, on motion of the solicitor of the complainants, ordered that the above cause be referred to Hon. Abraham V. Van Fleet, Vice Chancellor, to hear the same and to report to the Chancellor what order or decree should be made therein.

Dated October 1st, 1883.

THEODORE RUNYON, *C.*

A true copy.

G. S. DURYEE, *Clk.*

1. When the power of the directors of a corporation is unrestrained, either by law or contract, they may make any disposition of the profits of its business which they deem judicious.

2. If, however, the directors of a corporation accept office under a contract regulating the disposition of the profits of its business, they must, in that case, dispose of them as the contract directs.

3. The directors of a corporation have power to make any contract which may be necessary or fit and proper, to enable the corporation to accomplish the purposes of its creation.

4. The question of the expediency of making any particular contract, which is within the power of the corporation, is committed to the judgment of its managers, and so long as they act in good faith, with honest motives and for honest ends, their acts are valid and conclude the corporation.

5. The words net profits mean what shall remain as the clear gains of any business venture, after deducting the capital invested in the business, the expenses incurred in its conduct and the losses sustained in its prosecution.

WILLIAM G. PARK AND OTHERS,
vs.
THE GRANT LOCOMOTIVE WORKS AND OTHERS.

On final hearing on bill and answer and proofs taken in open Court.

Mr. John R. Emery for complainants.

Mr. George H. Forster, of New York City, and Mr. Benjamin Williamson for defendants.

VAN FLEET, V. C.:

This suit is brought by the complainants, as stockholders of the Grant Locomotive Works, to compel the payment of a further or greater dividend than that which the directors of the corporation have declared. The complainants sue not only for themselves but for all other stockholders standing in the same right that they do.

In February, 1875, a suit was commenced in this court against the Grant Locomotive Works to wind it up as an insolvent corporation. A receiver was appointed and the corporation enjoined from exercising any of its powers. The debts of the corporation at that time far exceeded in amount the value of its assets. There can be no doubt that it was hopelessly insolvent. Some of its creditors were secured by mortgage and others were merely simple contract creditors. In June, 1875, an agreement, in writing, was made by all persons having an interest in the corporation, either as creditors or stockholders, the design of which was to restore to the corporation the property then in the hands of the receiver, in order that it might be enabled to resume its business. The agreement provides, first, for the clearing of the property of the corporation from incumbrances by the cancellation of the mortgages thereon; and secondly, that its creditors, both secured and unsecured, shall receive stock in payment of their debts. No new stock was to be issued, but the stock already issued, and then held by the stockholders of the corporation, was to be assigned to the creditors, subject to a condition which will hereafter appear. The stock thus to be assigned consisted of three thousand shares, of $100 each, making a total of $300,000. The fourth and fifth paragraphs of the agreement were intended to define the rights of the general or unsecured creditors

after they became stockholders, and the questions now in dispute grow mainly out of their provisions. The following is their language:

"Fourth: That each certificate of stock assigned to each general creditor shall be stamped on its face: 'This certificate of stock is held as security for the payment of $ without interest, and is to be assigned to David B. Grant on the payment of the above amount.' All dividends paid on this stock shall be credited to account of such payment and endorsed thereon."

"Fifth: That all the net profits of the company, after the payment of taxes, insurance and the necessary amount for the proper maintenance of the property of the company in its present condition and capacity, shall be divided annually among the stockholders."

This agreement was subsequently brought to the attention of the court by petition, and the court, on the application of all parties in interest, by decree, on the fourteenth day of June, 1875, directed the receiver to surrender to the corporation the property in his possession, that the franchises and privileges of the corporation be restored to it, and that the receiver be discharged from further duty under the order appointing him. This decree was carried into effect. The corporation took possession of the property and resumed its powers, and, on the first of July, 1875, commenced business again. The complainants' debt against the corporation slightly exceeded $59,000, and they received, as the quota of stock to which they were entitled under the agreement, two hundred and three shares. The assets of the corporation were worth on the first day of July, 1875, according to a valuation then made by its officers, $600,000, divided as follows:

Real Estate, ...	$ 30,000
Buildings, ...	110,000

Machinery, ...	160,000
Merchandise, ...	225,000
Debts due, ...	75,000

The fairness of this valuation seems to have been assented to by all parties. This is made manifest by the fact, that a valuation of the property of the corporation, is, by the agreement, made the standard by which the net profits were to be ascertained. The agreement, it will be remembered, provides, that all the net profits, after the payment of taxes and insurance "and the necessary amount for the proper maintenance of the property of the company, in its present condition and capacity," shall be divided annually. It is obvious, that it would be impossible to ascertain with certainty what the net gains of any business were, at any time during its progress, where the thing put in as capital consisted of merchandise, or something else than money, unless the money value of the thing contributed as capital was fixed definitely at the very outset of the business. In view of the provisions of the agreement, I regard it as entirely clear, that the valuation made by the officers was made for the purpose of fixing definitely and unalterably the amount of the capital of the corporation. There is no dispute that their valuation was just and fair. The net profits must, therefore, be calculated on the basis or by the standard thus prescribed.

No division of net profits was made until February 12th, 1883. On that day the directors declared a dividend of twelve per cent. The sum thus distributed, in its aggregate, amounted to $104,714. The directors about the first of January, 1883, caused a balance sheet to be made up, showing the financial condition of the corporation on the thirty-first day of December, 1882, and sent copies of it to the stockholders. According to the statement, the net profits realized up to December 31, 1882, exceeded by nearly two-thirds the sum which the directors ordered to be distribed in dividends on the twelfth of February, 1883. The net profits shown on the face of this statement or bal-

ance sheet are a little over $260,000, but the complainants contend that they are in truth $50,100 more and that their actual amount is $310,100. The value of the assets of the corporation, as given in this statement or balance sheet, is $50,100 less than the sum at which they were estimated by the officers of the corporation on the first of July, 1875, and thus the net profits are made just $50,100 less than they would have been if the assets had been put down at the same valuation that they were given on the first of July, 1875. The change was made in this way: the value of the buildings and machinery was reduced, the buildings $22,000, and the machinery $32,000, total $54,000; and the value of the real estate was increased $3,900, making the difference $50,100.

The complainants insist, that this reduction was wrongful as to the stockholders, and that the court should, on the facts before it, declare that the amount of the net profits divisible under the agreement, in the year 1883, was $310,-000. The decision of this question must be controlled by the contract. The subject is one that it was competent for the parties to regulate by contract. The contract unquestionably imposes very important limitations upon the power of the directors. In cases where the power of the directors of a corporation is without limitation and free from restraint, they are at liberty to exercise a very liberal discretion as to what disposition shall be made of the gains of the business of the corporation. Their power over them is absolute so long as they act in the exercise of an honest judgment. They may reserve of them whatever their judgment approves as necessary or judicious for repairs and improvements and to meet contingencies both present and prospective. And their determination in respect to these matters if made in good faith and for honest ends, though the result may show that it was injudicious, is final and not subject to judicial revision. But the directors of this corporation have no such power. The contract takes it from them. The disposition of the net profits is not to be governed by the discretion or judgment of the directors, but

by the rule prescribed by the contract. The contract prescribes the standard by which the rights of the stockholders to the profits are to be measured, and the directors in disposing of them have no right of judgment, but must perform their contract obligations. The purposes to which the net profits must be applied are limited and defined by the contract; they are to be used to pay taxes and insurance and to keep the works of the corporation in the condition and up to the capacity they had on the first of July, 1875, and the balance must be distributed to the stockholders. The obligation created by the contract in this respect is plain and imperative. The directors have no power and no right to apply them to any other purpose, and if they should do so, they would violate their contract. No part of them can be reserved to be employed as a working capital. The stockholders have already contributed all the means for that purpose that their obligation requires them to furnish. The $50,100 in question were not reserved to be expended in repairs and improvements, in order to put the works of the corporation in the condition and bring them up to the capacity they had in July, 1875. Had the directors set apart a fund out of the net profits to be used for those purposes, it is quite evident, I think, that their action, in that regard, would have been within the fair scope of their power. The amount necessary to be expended in any year, for such purposes, I suppose, can never be fixed in advance with anything like certainty or precision, and the contract should, therefore, be construed as having submitted the decision of that question, to a very large extent, to the discretion of the directors. It may not be entirely accurate to say, that any action taken by the directors on this subject, in good faith, would conclude the stockholders and wholly exclude judicial inquiry as to whether or not their action had violated the contract, yet this, I think, may be safely said, that if a court should be called upon to review the action of the directors in that regard, it would be bound, in deciding the question whether the contract had been violated or not, to adopt the same

standard of judgment as that which should have governed the action of the directors, and not to adjudge that the con tract had been violated unless it was made clearly to appear that the stockholders had been deprived of some right plainly secured to them by the contract.

There is nothing, however, in the action of the directors which gives either pledge or indication that the $50,100 will be appropriated for purposes authorized by the contract. The book of minutes of the corporation contains no record of their action. All they have done is to mark down the value of the buildings and machinery. This was done, they say, because they believed that seven years' wear and tear had depreciated them to the extent that their value was reduced, but the proofs show that during that period nearly $100,000 had been expended in their maintenance. It is manifest, I think, that the stockholders have a right, under the agreement, to have this matter dealt with in a manner very different from that in which it would appear it has been dealt with. If the buildings or machinery are out of repair, or need to be renewed, so that some part of the net profits must be expended to put the works of the corporation in the condition and to raise them to the capacity they had in July, 1875, the stockholders have a right to have the judgment of the directors as to how much shall be expended for each of those purposes, and if net profits are reserved, they also have a right to know for what purpose they are reserved, in order that if the purpose is one not authorized by the contract they may challenge the action of the directors, and if it is, that they may know how the net profits have been disposed of. Although there is no express provision of the contract so declaring, yet I think, when the contract is examined with a view of ascertaining what were the principal objects of the parties, there can be little doubt that one of them was that the works of the corporation should be constantly kept up to the capacity they had in July, 1875. On that part of the contract being fully performed rested the main hope that either its present or intimate purpose would be accom-

plished. And I regard it as entirely clear that the stockholders have a right to have that part of the contract faithfully kept. On the case as it now stands, the complainants are, in my judgment, entitled to a declaration that the amount of net profits, shown by the balance sheet of December 31, 1882, was $310,000, and that the reduction made in the valuation of the buildings and machinery was erroneous.

The remaining and more important question is, were the stockholders entitled, under the contract, to a larger dividend in 1883 than that which the directors declared. They distributed nearly $105,000. This left of the $310,000 nearly $205,000. If this balance consisted of money, or of securities which could easily and readily be converted, without loss, there can be no doubt that the directors were bound by the contract to divide it. The proofs show that on December 31, 1882, the corporation held railroad securities, consisting of notes and bonds which had been taken in payment for locomotives, for a little over $212,000. They had been taken at par. These were, of course, included in the statement of December 31, 1882, and represented in part the sum shown on that statement to be net profits. None of them were then due and none became due until February 10, 1883. After that date portions of some of them fell due every month and portions of others every quarter. The one having the longest period to run will not mature until January 1, 1888. The securities were not sold at the New York Stock Exchange and had no market value. The proof is that they were absolutely unsalable. They were taken, as already stated, in payment for locomotives.

The corporation was created for the purpose of manufacturing and selling locomotive engines and other machinery. The contract under which the corporation resumed business imposes no limitation upon the power of the directors to make contracts in carrying on its business. Their authority, in that respect, is full and complete. They are competent to make any contract which may be necessary or

fit and proper to enable the corporation to accomplish the purposes of its creation. *Angell and A. on Corpo.*, § 256; *Field on Corpo.*, § 246. The question of the expediency of making a contract which is within the capacity of the corporation is committed absolutely to the judgment of its managers, by whom alone it can act, and so long as they keep within the power conferred upon the corporation, and act in good faith, with honest motives and for honest ends, their contracts are valid and conclude the proprietors of the corporation. *Elkins vs. Camden and Atlantic R. R. Co.*, 9 Stew., 241. It would seem, therefore, to be entirely clear that the directors, in accepting these securities in payment for locomotives, did nothing which was not clearly within the power committed to them. The true state of the case would then seem to be this: profits have been made, provided the securities which the directors have rightfully taken, in the proper prosecution of the business of the corporation, are paid, or can be collected, but not otherwise.

If it should turn out that part of the securities can be collected, and part cannot, or cannot otherwise be converted, the part not paid or converted, will, in no sense, be entitled to be regarded as profits.

The words net profits define themselves. They mean what shall remain, as the clear gains of any business venture, after deducting the capital invested in the business, the expenses incurred in its conduct and the losses sustained in its prosecution. If, as in this case, merchandize is sold and securities, payable at a future day, are taken in payment, it is entirely proper, nay, if accuracy is desired, it is indispensable, that, in making a statement of the condition of the business the securities should be put down as part of its assets, and they must, as a general rule, if the statement shows that profits have been made, represent the profits either wholly or in part. And if subsequently, in attempting to collect them, losses are sustained or expenses incurred, the sum shown as profits will be re-

duced first to the extent of such loss or expense. Now, the agreement in this case requires that the net profits shall be distributed annually to the stockholders, but it is quite obvious, I think, that what the parties meant by the words net profits as here used, was not the whole sum appearing as net profits on any annual statement, if such sum represented securities taken by the corporation in the ordinary course of its business, which were not yet due, and which could not be converted except at a price much less than that which the corporation had given for them, but what they meant was net gains which had been actually realized, or which could be quickly realized without loss, by a sale of the assets representing profits.

Two fundamental objects are apparent on the face of the contract. They are: first, that the creditors who hold the stock of the corporation as security for their debts shall be paid out of the net profits of its busines; and secondly, that the persons who assigned their stock as security for the debts of the corporation shall, as soon as the debts are paid, have their stock returned to them. The directors are bound, in conducting the business of the corporation, to have regard to both of these objects, and if possible, so to manage its affairs, that both may be ultimately accomplished. If the directors were to attempt to sell the securities of the corporation, which they had taken at par, and which were maturing at short dates, and at frequent intervals, at merely nominal prices or at prices far below their face value, they would attempt to do what, in my judgment, would constitute a flagrant breach of duty against both classes of *cestui que trusts*, both those who have the present interest, and those who have a prospect of having an ultimate interest. To divide the securities in kind is an impossibility. The only other method open then is by a sale of them, and that, according to the proofs, is also an impossibilty, or if not, it can only be effected at a loss which would be ruinous to all concerned. My conclusion is, that the complainants were not

entitled to a greater dividend in 1883, than that which the directors declared.

IN CHANCERY OF NEW JERSEY.

BETWEEN WILLIAM G. PARK, ET AL., *Complainants*, AND THE GRANT LOCOMOTIVE WORKS, ET AL. *Defendants.*	On Bill, etc. Final Decree.

This cause coming on to be heard on bill, answer, replication and proofs, taken in open court, before his Honor Abraham V. Van Fleet, the Vice-Chancellor to whom the same was referred, and in the presence of John R. Emery, solicitor and of counsel with the complainants, and George H. Forster, Esq., and B. Williamson, Esq., of counsel with the defendants, and the Court having read, heard and considered the pleadings and proofs in the cause and the arguments of counsel thereon, and the Court being of opinion that under the agreement bearing date June 14th, 1875, set out in said bill the sum or amount fixed as the capital of the corporation the Grant Locomotive Works was $600,000, to wit, $300,000 capital stock and $300,000 profit and loss account, and that said sum is the basis or standard from which the net profits under said agreement must be calculated, and being further of opinion that under the terms of said agreement the reduction in or charge against the value of the real estate and machinery of the sum of $54,000 was unauthorized and erroneous; and being further of opinion that the amount of net profits shown by the balance-sheet

of December 31st, 1882, was $310,000 ; but being further of opinion that the whole of said sum was not and is not divisible as dividends under said agreement, for the reason that the same consisted largely of securities which can not be disposed of except at great loss; and that the complainants were not entitled to a greater dividend in the year eighteen hundred and eighty-three than they received and good reason appearing therefor.

It is thereupon on this fifth day of December, A. D. eighteen hundred and eighty-five, by his Honor Theodore Runyon, Chancellor of the State of New Jersey, ordered, adjudged and decreed, and the said Chancellor doth, by virtue of the power and authority of his office, order, adjudge and decree that under the said agreement set out in said bill and for the purposes thereof, the capital of the said corporation was fixed at the sum of $600,000 in manner hereinbefore stated ; and that said sum is the basis or standard from which the net profits under said agreement are to be calculated, and that under said agreement the said corporation is not entitled to reduce the amount of profits by a charge for the depreciation of real estate or machinery ; and that the charge of $54,000 referred to in the bill for the same is erroneous, and that the amount of net profits under said agreement, as shown by the balance-sheet of December 31st, 1882, was $310,000 ; and it is further ordered, adjudged and decreed that the whole of said amount was not divisible as dividends under said agreement and that the complainants were not entitled to a greater dividend in eighteen hundred and eighty-three than the directors declared.

Respectfully advised. THEODORE RUNYON, *C.*

A. V. VAN FLEET, *V. C.*

IN CHANCERY OF NEW JERSEY.

BETWEEN PARK BROTHERS ET AL. *Complainants*, AND THE GRANT LOCOMOTIVE WORKS, ETC., *Defendants.*	On Bill, etc.

Before His Honor, Abraham V. Van Fleet, V. C.

Mr. John R. Emery, for complainants.
Ex. Chancellor Williamson, for defendants.

Transcript of short-hand report of the admissions,etc., made on behalf of the defendants in this cause, upon the moving thereof, on Wednesday, the 5th of December, A. D. 1883, at the Vice-Chancellor's Chambers, Newark, N. J.

The following admissions were then made by defendants' counsel:

By Mr. Emery—I want to prove by Mr. William G. Park, one of the complainants, that the complainants named in the bill, are those who now the firm of Park Brothers and Company; and that they composed the firm at the time of the filing of the bill.

By Mr. Williamson—In our answer we say we don't know anything about that. I now admit that is so, and wave any formal proof of it.

By Mr. Emery—That will include an admission that Mrs. Park carries on the business under the will of her husband, as stated in the bill.

By Mr. Williamson—Oh, yes; certainly

By Mr. Emery—You also admit that the complainants are the persons now entitled to the claim of Park Brothers and Company against the Grant Locomotive Works for which the stock mentioned in the agreement was issued, and are also entitled to that stock and are the only persons entitled to it, and that the transfer of their interest has been made as alleged in the bill.

By Mr. Williamson—Will your client swear to that?

By Mr. Emery—Yes.

By Mr. Williamson—I admit it the same as if he had sworn to it; that is all. I admit it the same as if he had been sworn, and swore to that fact.

By Mr. Emery—I also desire to prove by Mr. Park that he did not know until within a few weeks before the filing of the bill that Mr. Wallace had resigned.

By Mr. Williamson—(To Mr. Park.) You say that, do you?

By Mr. Park—I do; yes, sir.

By Mr. Williamson—Then I will admit it the same as if it was sworn to here.

By Mr. Emery—And also that these were the only statements (3 papers) that were received by Park Brothers and Company under the agreement.

By Mr. Williamson—We admit that in the answer, don't we?

By Mr. Emery—You admit as to two of them, but I think not as to the third.

By Mr. Williamson—Well, you say he will swear to that?

By Mr. Emery—Yes.

By Mr. Williamson—Well, we admit that he swears to that.

Mr. Emery offers said three statements in evidence and same are marked as Exhibits No. 1, 2 and 3.

By Mr. Emery—I understand in reference to the question whether these creditors or the individual members of the firm was unknown to Park Brothers and Company, you make no point of that.

By Mr. Williamson—None at all.

Adjourned until Saturday, the 22d of December, A. D. 1883, at 10 A. M., at Vice-Chancellor's Chambers, Newark, N. J.

Before his Honor Abraham V. Van Fleet, Vice Chancellor.

Mr. John R. Emery for complainants.

Mr. Benjamin Williamson and Mr. George H. Forster, of New York, for defendants.

Transcript of shorthand report of testimony, etc., given in the above stated cause on the trial thereof at the Vice Chancellor's Chambers, Newark, N. J., on Saturday the 22d day of December, A. D., 1883.

William W. Evans, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith:

Direct examination by Mr. Williamson:

Q. What is your business?

A. I am superintendent of the Grant Locomotive Works.

Q. How long have you been such?

A. Four years.

Q. Have you seen a statement of assets and liabilities as of January 1st, 1883, which is annexed to the bill of complaint in this cause?

A. I have seen a statement of assets and liabilities; yes, sir.

Q. Do you recollect an item in that, "Due from sundry parties" $234,382.18?

A. Yes, sir.

By Mr. Emery—Is he speaking as to the contents of that paper; he doesn't say he has seen that before, he says he has seen a statement of assets and liabilities. Do you propose to put the paper in?

By Mr. Forster—This statement is attached to your pleadings.

By Mr. Emery—Yes; but he doesn't say he has seen that, he says he has seen a statement of assets and liabilities.

By the Court—My recollection is that you annexed to your bill a paper which you say is a statement of the assets and liabilities furnished to you by some officer of the corporation, defendant, and by that it appears that the net profits were of a certain sum; is not that so?

By Mr. Emery—The bill alleged that we received that as the only statement which we have ever received of the condition of the company. We filed our bill for an account and claim our account under the agreement; and we claim that they sent us that as an account of the profits. They deny in their answer that that is a statement of the net profits, but say that it was a statement of the assets and liabilities of the company, and the question is as to whether the Court now on this examination will go into an examination in detail when they have not set up any account in their answer upon which the evidence can proceed. They now propose, as I understand the question, to ask this witness as to a statement which appears in that paper without reference to any other papers or books of the company—he is merely asked as to a particular figure that is stated in that statement annexed to the bill; that is the only question I have ever heard asked the witness—now my inquiry is whether he is speaking from the contents of any statement or paper of the company, or from the books of account?

By the Court—But I understand the paper an-

nexed to your bill is the very foundation of your bill.

By Mr. Emery—It is the foundation for asking for an account; if they don't admit that that is an account showing the amount of profits, we ask that an account be taken as to what the profits are.

By the Court—Well, proceed, gentlemen.

Q. Was one of these parties the Massachusetts Rolling Stock Company?

A. Yes, sir.

Q. What was the amount of that item and what was the transaction?

A. The sale of locomotives.

Q. For what?

A. For bonds.

Q. What sort of bonds?

A. Bonds called "Bonds series C" of the Toledo, Cincinnati and St. Louis Railroad.

Q. Where are these bonds or what has been done with them?

A. They are in the safe.

Q. Have they been paid?

A. No, sir; not all of them.

Q. Has any money been realized on them?

A. Three thousand dollars, I think.

Q. When was that realized?

A. May or June of this year, if I am not mistaken.

Q. That is all has been realized on them then?

A. Yes, sir.

Q. Included in that item was there another item of the Texas and St. Louis Railroad?

A. Yes, sir.

Q. What was the amount of that?

A. Fifty thousand dollars of bonds—(interrupted).

By the Court—Do you intend to have the witness inform the Court as to the amount of the item of

bonds of the Toledo, Cincinnati and St. Louis Railroad?

Q. Yes; what was the amount of the Texas and St. Louis Railroad which went into this item of $234,382.18?

A. I don't call the amount to mind; it is on the balance sheet.

Q. Will this paper refresh your recollection and enable you to state it? (Handing witness paper).

A. Yes, sir; $64,912.18.

Q. That is the Texas and St. Louis?

A. Yes, sir.

Q. As it stood on the 31st day of December, 1882, or the 1st of January, 1883?

A. Yes sir.

Q. That went to help make up this amount "due from sundry parties"?

A. Yes, sir.

Q. What was that item?

A. It was for the sale of locomotives.

Q. Well, for what?

A. Part of that—after the 1st of January was in bonds, I don't think they had been received on the 1st of January.

By Mr. Emery—I don't understand your answer.

A. Well, that is all I know of it, that on the account there on that date they stood our debtor $64,912.81, and that went to make up that amount.

Further direct:

Q. How was that represented, were there any securities or papers or anything for that?

A. Not at that time that I know of.

Q. Who had charge of those securities, whatever they were?

By the Court—Let me understand this, did or did

not the corporation hold bonds; what does the witness say about that?

Q. You did not have the bonds, did you?

A. At that time the locomotives were just sold and the result of the transaction hadn't been received up to the 1st of January, and, therefore, they stood our debtor to that amount.

Q. They stood debtor on the books?

A. Yes, sir.

Q. What had you to do with the books?

A. I was book-keeper.

Q. What did you have to do with the receipts of the proceeds of the sales of locomotives, if anything, and the making of entries in the books?

A. They were handed over to the president.

Q. Who was the president?

A. R. S. Grant.

Q. And he attended to that part of the business?

A. Yes, sir.

Q. You simply made the entries?

A. Yes, sir.

Q. Was there included in this item a third account—(inrupted).

By the Court—Let me see if I understood this matter correctly. The Grant Locomotive Works prior to the 31st of December, 1882, had made a sale of locomotives to the Texas and St. Louis Railroad Company to the amount of $64,912.81?

By the Witness—Yes, sir; that was the the balance due on the books.

By the Court—That was the balance appearing due on the books?

By the Witness—Yes, sir.

By the Court—And the Grant Locomotive Works had agreed with the vendee that they would accept bonds of that corporation in payment of this sum?

By the Witness—Not exactly in that way, but that we were to receive a part in bonds.

By Mr. Emery :

Q. What part?

A. That I cannot say ; that was done in the New York York office.

Further direct :

Q. Who had charge of that offiee?

A. R. S. Grant.

Q. The New York office ?

A. Yes, sir.

Q. Was there included in this amount " due from sundry parties," a third item—(interrupted).

By the Court :

Q. In regard to this transaction was the contract in writing between the defendant corporation the Grant Locomotive Works and the Texas & St. Louis Railroad Company?

A. Well, that was done in the New York Office.

Q. But was there a written contract?

A. There was a written contract for locomotives.

By Mr. Emery—Then I ask for the production of that contract.

By the Court—Yes, gentlemen ; you ought to produce your papers and books here.

By Mr. Forster—We propose to show all we can in relation to this transaction by the book-keeper, and then show the transactions by Mr. Grant who is the president of the company.

Further direct :

Q. Now, was there a third account which went to make up this amount of " due from sundry parties " known as the Toledo, Cincinnati and St. Louis bond account to the amount of $52,000?

By Mr. Emery—I think you mentioned some other company before, didn't you?

Q. Will you give us the amount of the first item on your book which went to make up the amount "due from sundry parties"?

A. That was the Massachusetts Rolling Stock Company, $48,000.

Q. Now, the Toledo, Cincinnati and St. Louis bond account—was there such an account which went up to make up the amount "due from sundry parties"?

A. Yes, sir; $52,000.

By Mr. Emery—The witness must be stating this from his book; is his book here?

By the Court—The counsel for the defendant can answer that question. I suppose from the fact that he is using the balance sheet that the books are not here.

By Mr. Emery—I think the books should be produced.

By the Court—Yes.

Q. What was the transaction?—(interrupted).

By Mr. Emery—I object to this going on until the books are produced; this witness is speaking from his books.

By the Court—I suppose, gentlemen, that the best proof you can produce here to show how this large item is made up is your books, and they ought to be here. You may use, of course, the balance sheet or any other memorandum which you have made from your books for the purpose of examining him, but the counsel for the complainant has a right, on cross-examination of this witness, to be able to refer to your books.

Q. Did you keep a book known as the balance sheet book?

A. Yes, sir.

Q. How long have you kept such a book?

A. Since 1879.

Q. Is it in court?

A. Yes, sir.

Q. Now will you state what that transaction was, so far as you know, which appears on the statement of assets and liabilities January 1st, 1883, as "due from sundry parties," $234,382.18 in respect to a particular item called Toledo, Cincinnati and St. Louis bond account there?

> By Mr. Emery—Excuse me one moment; I believe I have a right to examine this witness in relation to this book.

Cross-examined by Mr. Emery:

Q. Is that the first book of the company in which that item appeared; is that the original book of entry in relation to that item of the company, or is that taken from another book; that balance sheet, is that taken from other books, or is it the result of other books?

A. It is the result from the ledgers.

Q. Then any item in reference to this railroad which counsel asks you about would be taken on the balance sheet from the ledger?

> By the Court—Have you the ledger here?
>
> By Mr. Forster—I don't think so, sir.

Further direct:

Q. Is there any other book here except the balance sheet book?

A. No, sir.

> By the Court—Well, gentlemen, can you establish the defence to be made in this case without the books?

By Mr. Forster—I think we can establish it by showing the transactions.

Mr. Williamson then stated to the Court that they were perfectly willing to produce the books if it was necessary to do so, but that he did not think in the present shape of the case that it was necessary to produce them.

By the Court—The case stands thus: the complainant puts himself upon a statement furnished by the defendant corporation to him, and he says by that statement it appears that the net profits amount to a sum much greater than these directors have divided.

By Mr. Williamson—They were his own directors.

By the Court—Very true, and if he chooses to stand there he has a right to rest there. Then you are bound to establish your defence and to show that the sum stated in that paper as net profits are not net profits, but that it consists of assets that can not be distributed at this time without serious loss to the corporation, and the only way you can do that, it seems to me, is to produce the books of account and papers themselves.

By Mr. Williamson—All right, sir.

By the Court—I propose, of course, to allow counsel on both sides to pursue their own course in trying this case. Your answer in this cause says you have distributed all the assets of the company that can be regarded as net profits and that this sum of $234,000, consist of bonds and other securities falling due at a very distant date and having no market value and that if you were to put them on the market now and convert them into money it would be a very serious loss to the persons interested in this corporation.

By Mr. Williamson—Well, the question is whether we shall go on. We will put Mr. Grant on the

stand and will show what net profits have been divided.

By the Court—I suppose, Chancellor, the only way you can show how this sum of $234,000 which the other side claim to be profits, are not profits, is by reference to your books.

By Mr. Williamson—Well, we will put Mr. Grant on the stand and if they raise any objection to any question that we shall ask him, why then, all right.

At this point Mr. Evans was requested to stand aside in order to allow the examination of another witness.

Richard S. Grant, a witness produced on the part of the aforesaid defendants, having been duly sworn according to law, deposeth and saith :

Direct examination by Mr. Forster :

By Mr. Emery—We, of course, insist upon having the books and papers produced—all that are material to this case.

By the Court—It will be a better plan.

Q. Mr. Grant, what relation have you to the Grant Locotive Works?

A. President of it.

Q. Are you familiar with this agreement, a copy of which is "Schedule A," annexed to the bill of complaint in this case?

A. Yes; thoroughly.

Q. Referring to the eighth clause, who constituted the three directors nominated by the general creditors?

A. Mr. Thomas Prosser, Frederick Pierson and originally Mr. E. H. Gardener; he died and Mr. William H. Wallace was put in his place.

Q. Who were the other two directors?

A. Myself and Chancellor Benjamin Williamson.

Q. Have any of the directors of this corporation been elected since?

A. Regularly every year except last year, and there were only four elected.

Q. Every other year there were five?

A. Yes, sir.

Q. Who were the four then elected?

A. Myself, Chancellor Williamson, Thomas Prosser and J. F. Pierson.

Q. Have their been any other new directors put in this corporation except such as were nominated by the general creditors?

A. No, sir.

Q. The only change that has been made at any time was by the death of the gentleman you mentioned and the substitution in his place of the other gentleman you also named, Mr. Wallace, who was nominated by the general creditors?

A. Yes, sir.

> By Mr. Emery—He didn't say that he was nominated by the general creditors.
>
> By the Witness—I say he was nominated by the two directors and consultation with several other general creditors, directors, I simply paying these two directors the deference to consider that they would choose a man that would represent that class of interest and they did choose Mr. Wallace.

Q. And he was elected by the stockholders at the general meeting?

A. Yes, sir.

Q. Did you hold or control, yourself, any stock in this company, and if so, how much?

A. The exact amount I can't recollect, but in both classes of stock it is a large majority.

Q. In both classes?

A. In the last class it would not be an absolute majority of the unsecured stock.

Q. What do you mean by the last class?

A. The unsecured stock which these complainants represent; it is only about a third of that I control.

Q. And your associate directors, what amount of the stock, about, do they respectively control?

A. Mr. Prosser has the second largest amount.

Q. He, I think, is one of the directors who was nominated by the general creditors originally?

A. Yes; and has the second largest in amount.

Q. Well?

A. Mr. Pierson was, I should think, about the sixth largest.

Q. Was he another of the directors originally nominated by the general creditors?

A. Yes, sir.

Q. Now, Mr. Grant, with regard to the dividend that was declared—what do you say with regard to that as to the ability of this corporation in its condition at the time to have declared any larger dividend with safety?

By Mr. Emery—I object to that.

By the Court—I don't see how that is competent; I can't try this case upon the opinion of the witness, I must try it by the facts.

Q. Well, state the facts. Were you present at the meeting at which the dividend was declared?

A. Yes, sir.

Q. Did you take part in that meeting?

A. Yes, sir.

Q. Were all the other directors present?

A. No.

Q. Who were present?

A. Mr. Prosser, Mr. Pierson and myself.

Q. Two of the directors nominated by the original general creditors?

A. Yes, sir.

Q. Now, on what facts did the directors act in the declaration of that dividend?

A. They acted on the fact that the result of the business—of the company's business, showed that there was money suc-

ceptible of division to the stockholders under the terms of that agreement; they figured the amount of cash, we had the amount of money due from the railroad companies for the construction and sale of locomotives, and they found that the cash was $157,000, and the amount due from other companies was something in the neighborhood of $200,000.

Q. Now this amount that was due from other companies, how was that represented?

A. It was represented by other bonds for which locomotives had been sold, or book account.

Q. So far as it was represented by bonds, who was the custodian of them?

A. I was.

Q. Have you those bonds still?

A. Yes, sir; I have got them all.

Q. Now, with regard to the Toledo, Cincinnati and St. Louis Railroad Company—was that concern or its security on its bonds any part of those assets which you had on hand at that time?

A. The debt from that company amounted to $125,000; I speak in round figures and am trusting to my memory.

By the Court:

Q. The bonds of what corporation?

A. The Toledo, Cincinnati and St. Louis Car Trust Association.

Further direct:

Q. Well?

A. There was an amount of nearly $85,000 more due from the Texas and St. Louis Railroad Company which was represented by bonds of the same character.

Q. Those bonds were not salable, have not been salable and are not salable to-day?

A. I have the bonds.

By the Court:

Q. Are you speaking of the bonds of both corporations?

A. Both companies; I have the bonds, and at the meeting at which the dividend was declared, I offered to sell

them, or I offered to give them in kind, if it were possible and Mr. Prosser and Pierson, the other directors, said it would be a sacrifice that ought not to be made—(interrupted).

Objected to by complainants' counsel.

Further direct:

Q. Have you taken any legal steps or otherwise in regard to the securities of the Toledo, Cincinnati and St. Louis bonds, and if so, with what result?

A. The steps that were taken have been subsequent, of course, to last year's business, the bonds having been in my possession after the 1st of January, 1883, and I only proceeded to collect them as they matured or as occasion demanded, and the company has gone into default, the bonds are overdue, and I have been for six months litigating the matter with, I think, a reasonable chance of success.

Q. Both companies?

A. No, sir; with the Toledo, Cincinnati and St. Louis Company. But the condition of those bonds, from the time I received them to the present day, has been one of absolute unsalability, although in my opinion they are of thoroughly good value. The Texas and St. Louis bonds are of a similar nature—or rather I should say a portion of them are of a similar character, they are overdue and unpaid. Others were paid promptly at maturity, but they have no market value.

Q. What amount of those Texas and St. Louis Railroad bonds or securities, if any, have matured since the 1st of January, 1883, and been paid?

A. $4,000.

Q. That is all?

A. That is all.

Q. Have any of the bonds of the Toledo, Cincinnati and St. Louis corporation or securities which you had on the 1st of January been paid?

A. $4,500 on account.

Q. So that $8,500 is the total amount of money that you

have realized from the payment or redemption of these $125,000.85, about $210,000 worth of securities or indebtedness which you say you had on the 1st of January, 1883?

A. As my memory serves me, yes, sir.

Q. Now this litigation which you have spoken of with the Toledo, Cincinnati and St. Louis Railroad Company securities, has it reached a conclusion so far as a decree or judgment is concerned yet?

Objected to by complainants' counsel.

A. I have only got a copy of a decree, but it has not yet been signed by the judge. The copy I have does not contain the judge's signature.

Q. Where is that case pending?

A. I don't know; it is between Judge Drummond, of Illinois, and Judge Baxter, of Cincinnati; they are fighting over it.

Q. Now, Mr. Grant, do you know whether or not this indebtedness which you have spoken of, of these railroad corporations for locomotives, enter into this amount of $560,805.10 that is mentioned in the bill of complaint in this suit?

A. It enters into it as an offset that very amount, the part of that $560,000 which consisted of those bonds. There is a credit to profit and loss on that account that they rendered of $560,000 after the item of it represented by cash, debts due and merchandise on hand.

By Mr. Emery:

Q. That you got from the books?

A. Yes, sir; from my memory and the books, my knowledge as we know anything; I know it because I did it.

Further direct:

Q. Who attended to the cash transactions of this concern in 1882, who received the money?

A. The Grant Locomotive Works; sometimes it came to Paterson, sometimes it came to me at New York; my bank account is kept at New York. The money is paid out in Paterson. Sometimes it came one way and sometimes another.

Q. You are custodian of the bonds and securities?

A. Yes, sir.

Q. As to the sale of locomotives, who sells them?

A. Anybody that can.

Q. Did you have anything to do with it?

A. Either I or Mr. Evans makes the contracts, but we allow anybody to sell them. In further reply to your question respecting the $560,000, I want, if it is possible to get into my evidence the fact that the item as I said consisted of money, debts due, and merchandise represented by the inventory; that we divided all of the cash that our judgment dictated was proper; that we, as directors of the company, are prepared to accept the amount of bonds therein stated and under the judgment of two directors who represent that class of creditors to divide it at any time that they see fit. My statement as an officer of the company and a stockholder is: "Gentlemen, you shall do with them as you please, I am ready to have them divided." They say: "We don't think it judicious to do it, if it is divided either on the 1st of January, 1883, or to-day it will be done at a very large sacrifice."

Q. Now, another question. You, as I understood you, said that you hold some of this creditors' stock?

A. I am the largest individual creditor.

Q. With respect to the amount of that stock, what proportion of that creditor stock was represented by yourself and Mr. Prosser and Mr. Pierson, two of your associated directors, who were original appointees of the creditors under article 8?

A. I think nearly two-thirds, and if I may be permitted to add in regard to the production of the books or bonds, if the Court sees fit to order it I am ready to produce them,

I am ready to act in any way that good intelligence can dictate.

By Mr. Emery—We understand that, sir.

By the Witness—And I would like the Court or somebody else explain to me what is wanted.

Q. Now, Mr. Grant, on the 1st of January, 1883, did this company owe any wages or for any materials bought?

A. I think there was an account of over $100,000, possibly for $120,000.

By Mr. Emery:

Q. You are speaking now from the books?

A. From my recollection of the books, if the books don't agree with me, why the books are right and I am wrong, I am speaking from memory and from what I recall the circumstances to be.

Further direct:

Q. Now, this amount for materials bought, do you know when they were payable?

A. They were payable in thirty, sixty and ninety days from the date of the auditing of the bill.

Q. And the thirty day payments would come due when, after the 1st of January?

A. Fifteenth of January.

Q. And the sixty days?

A. That would be in February.

Q. And the ninety days?

A. That would be due in March.

Q. The wages that were due on the 1st of January, when were they payable?

A. Fortnightly, and I don't know whether it was a week or a fortnight after the 1st of January.

Q. Are they payable on any particular day?

A. Saturday.

Q. And it was either the first or second Saturday after the 1st of January?

A. Yes, sir.

Q. Do you know what this amount of wages was, about?

A. $20,000.

Q. Now, you had in cash, you said, one hundred and how many dollars?

A. $157,600.

Q. And the amount of the dividend you declared, how much was that?

A. $104,000.

Q. That is all.

Cross-examined by Mr. Emery:

Q. When did Mr. Gardner die, about what time?

A. I don't know.

Q. In what year?

A. I dont know, I think he resigned before he died; I don't remember the circumstances.

Q. When he resigned who was put in his place?

A. William H. Wallace.

Q. Who put Wallace in Mr. Gardner's place?

A. Mr. Prosser and Mr. Pierson and several others whom I don't recollect.

Q. Did you ever notify the complainants, Park Brothers and Company about the election of the director in Mr. Gardner's place, or was it done at your directors' meeting?

A. I am under the impression that it was done at the stockholders' meeting.

Q. Will your minutes show about that?

A. They will show exactly.

Q. Have you that book here?

A. No, sir.

Q. Did you ever send Park Brothers and Company any notice of the stockholders' meeting?

A. The charter don't require it.

Q. Did you?

A. I didn't.

Q. When is your stockholders' meeting?

A. I think it is any day in the early part of January.

Q. Any day at all?

A. I don't think the charter requires it to be held on any special day, but it has been customary to hold it on the first Tuesday in January.

Q. How do you give anybody notice when it is to be held?

A. We advertise it in the paper.

Q. What paper?

A. One of the Paterson papers.

Q. You don't advertise in the New York papers?

A. No, sir; it is a New Jersey charter.

Q. Did Mr. Wallace act with you?

A. Frequently.

Q. Up to what time?

A. I don't remember.

Q. Can you tell the year?

A. I don't remember the year; as much as two years ago, I should think.

Q. Since that time did you give any notice to any of the general creditors that Mr. Wallace had declined to act for them?

A. No, sir.

Q. How have you been going along since you elected four directors?

A. Last year we elected four directors.

Q. What general creditors were present when they elected four directors?

A. There never has been but one there and that was Mr. Prosser.

Q. And he is a director with you?

A. Yes, sir.

Q. So that Mr. Prosser has taken charge, as you understand, of all the interest?

A. Not at all; he has not attempted to take charge of anybody's interests but his own.

Q. The 8th clause required that there should be a board of five directors, three of whom should be nominated by the general creditors as they shall mutually be agreed upon?

A. That was done.

Q. But since Mr. Wallace ceased to act, you say you had but two directors?

A. I beg your pardon, we had four.

Q. The two directors who were nominated by the general creditors, Messrs. Prosser and Pierson?

A. Yes, sir.

Q. How was it that you have given no notice to any of the creditors under the agreement, that there was a vacancy?

A. I don't find anything in the agreement requiring me to give notice.

Q. And you don't propose to give them anything more than you find in the agreement?

A. I have no reason for it as I know of.

Q. Didn't you think that they were entitled to be represented?

A. I thought that they were represented.

Q. By Mr. Prosser?

A. Yes, sir.

Q. What could Mr. Prosser and the other general creditors' director do in opposition to the opinion of yourself and the other mortgage director, if any such opposition occurred?

A. It never did occur.

Q. But if it did occur what provision was there for the creditors then?

A. And the reason was I didn't intend to let it occur.

Q. Then it depended entirely upon your own judgment?

A. Because I was the largest outside creditor.

Q. You also own a majority of the stock after the debts are paid, don't you?

A. Yes, sir.

Q. As such owner is it not your interest that the working capital of this company shall be increased as much as possible?

A. No, sir.

Q. Will you explain to me how that is?

A. Well, I said it wasn't.

Q. Well, will you explain what your interest is as stock-

holder ultimately entitled to the payments of this stock after the payment of the debts, is not it your interest at the time the debts are all paid that the working capital of the company shall be as large as possible?

A. I say it is not, if you say it is, that is your business to prove it, not mine; I say it is not; and I know my position in it and I say it is not my interest.

Q. You own or control the majority of the mortgaged creditors' stock which was taken absolutely, as I understand you?

A. Own or control; yes.

Q. And you are the person ultimately entitled to the majority of the stock after these creditors are paid?

A. Ultimately entitled to the majority of the stock?

Q. Yes; after the creditors are paid?

A. You say ultimately entitled?

Q. Yes.

A. I question whether that is absolutely correct.

Q. Well, I will attempt to explain what I mean. This provides that after the creditors are paid, the scrip shall be assigned and surrendered?

A. Yes, sir; and that will be assigned if that agreement is ever completed—it will be assigned to an estate and I am interested in that estate so that whether I am ultimately interested in the whole of it or in the control of it, I shall have to figure out what my interest will be?

Q. You represent that interest?

A. I represent the interest.

Q. Now, when you say at this meeting of the directors that Mr. Prosser, Mr. Pierson and yourself were present, the books will show, I suppose, who were present?

A. Yes, sir.

Q. Was there ever any call for the other directors to meet or notice given to other directors of the meeting or that you were going to declare a dividend?

A. To Mr. Prosser, Mr. Pierson?

Q. Yes; they and yourself, but were there any other persons there?

A. I think I notified Chancellor Williamson, but he was not there.

Q. You say you acted according to the results of the business, that I suppose you derive from the books?

A. Yes, sir.

Q. Do you know who made the inventory?

A. Mr. Evens.

Q. Did he make it up alone or was it under his supervision—did you have anything to do with it?

A. I had nothing to do with it.

Q. Now, in that inventory of January 1st, 1883, in your statement you charge off about $50,000 for depreciation in value; do you consider that right?

A. Yes, sir.

Q. You claim the right to do that under the agreement; do you?

A. Yes, sir.

Q. Have you charged off any other depreciation than that of the real estate and building?

A. I don't think there has been any other, may be there have been some small charges.

Q. How have you conducted yourself in reference to the inventory, how did you take that—at the cost to you or on what basis?

A. I don't know how that is figured.

Q. Will your books show?

A. Books will show what it was taken at.

Q. And that will show, or the person who directed it to be taken can tell whether it was taken at cost or at your selling prices?

A. Yes, sir; but I presume it was taken as I should have directed it to be taken, at what the things were worth.

Q. What do you mean by what things were worth; what they would have sold for in the market?

A. Well, there would be a great deal of merchandise there that would not be salable in the market at all, but it would have a value of between what we would have to pay for it and what would be considered as market price, of

course if it was steel we would know what its price was, so there would be a great many things we could tell the value of accurately.

By the Court:

Q. This charge off of $50,000 for depreciation was done in January, 1883?

A. It was done in December, or at least the entry would be made at the end of the year, the 31st day of December, 1882.

Further cross:

Q. I suppose the books will show?

A. Yes, sir.

Q. That is charged off for the depreciation of what?

A. All real estate, machinery and general wear and tear or the company's property, in other words it was decided at this meeting that the property of the company was not worth what it stood on the books of the company, and therefore it was right and proper to mark it down as it had not been marked down for a period of seven years and the wear and tear had been going on all the time.

Q. You claim the right under the agreement to charge off of this account of profits any depreciation in the value of the property?

A. Yes, sir.

Q. You have the books from which you declared this dividend as the result of the business; I suppose they were submitted to you, or did you examine them when you declared it?

A. No, sir; I didn't examine the books; I examined the balance sheet.

Q. And the balance sheet was taken from the books?

A. Yes, sir.

Q. Now, when were these bonds of the Texas and St. Louis Railroad Company taken?

A. The exact date I don't know.

Q. With respect to the manner of estimating the value

of the things included in the inventory, was the same method adopted in January, 1883, as in July, 1875?

A. I have no reason to know of any difference; I presume it was.

Q. Do you know anything about the inventory of July 1st, 1875; did you assist in the making of it?

A. No, sir.

Q. Who made that, if you know?

A. I think the receiver of the company; It was taken from his report.

Q. He went in in February?

A. Well, it was only in July that it was turned over; we had some troublesome litigation about it.

Q. And you think that he took one in July?

A. Yes, sir; and the value of the company was fixed arbitrarily in the receiver's report made to the court and the property then was taken as $300,000.

Q. I don't find any such thing, but you may be right; I will look among the papers for the receiver's report?

A. I am speaking of the receiver's report to the company.

Q. I am asking you whether, in making up your statement of January, 1883, whether the same basis was used in estimating the value of the things as in the former inventory?

A. The same basis?

Q. For instance, the receiver may have estimated at the actual value or he may estimate them at cost and the statement of the profits would be altogether different?

A. You are speaking of the merchandize?

Q. Yes.

A. Well, in 1875 and at various times it would differ materially, so that the basis you speak of could not be used, I don't see how it could be the same basis in regard to prices.

Q. Well; that would be the market value, would it not?

A. There is no question but what the value of the inventory would be taken on some general principle. I know of

on change in the taking of the inventory from one year to another.

Q. Then the market value at the time would be the general basis ?

A. Yes, sir; but it would not be fair to take it at what would be called an equitable market value; for instance, some things are of different patterns and there is a great deal of stuff lying there that may be of value ten years hence, or it may have been of value ten years ago, but with other material you could say, "that is steel" or "that is iron," and iron is worth so much a pound; but with reference to any particular patterns or shape of iron we would be glad to sell them for less or it may be specially valuable and worth more now.

By the Court:

Q. An article that would not come into use for ten years would not have any market value ?

A. That is just it, and it has to be put in at an arbitrary value, but we have always tried to get at a fair equitable value of the property.

Q. Well, the inventory books which you have will show the prices ?

A. Yes, sir.

Q. And any one familiar with the prices of the article can tell the basis ?

A. Yes, sir.

Q. That is the reason I would like to see those books, because it may make a difference to the amount of profits. Now coming to the question of sale of locomotives for bonds, were they made by virtue of written contracts ?

A. Both written and verbal.

Q. What do you mean ?

A. In one case written and in another case possibly verbal.

Q. In which case was it written ?

A. The Texas and St. Louis Railroad, and I think it was written in one case with the Toledo, Cincinnati and St.

Louis Car Trust, but I think some were merely made on a verbal agreement to sell them, and there was possibly an exchange of letters in both cases.

Q. Have they an office in New York?

A. They had one in Boston and one in St. Louis.

Q. How then did you make a verbal sale?

A. By meeting the parties who wanted to buy them.

Q. In New York?

A. In New York, Boston, Saratoga and St. Louis.

Q. Do you mean to say that for any considerable amount of those locomotives you have no written contract?

A. I say, I think there was one sale of ten locomotives that was done verbally.

Q. Any others?

A. I think not.

Q. Those that were written contracts, where are those contracts?

A. They are in my office or else at Paterson.

Q. They are under your control?

A. They are under our control.

Q. So that you can produce them or give us copies of them?

A. Yes, sir.

Q. Then the contracts will show what they are, and I don't care to ask any questions about them?

A. But I would like te tell you all you want to know if you will only convey your questions to me.

Q. It is not your fault but it is not the rule to speak of the contents of papers?

A. I will produce the copies. And if you will come as close as you can to your object I will tell you what you desire to know; there is no item I have to conceal, but the question in regard to those locomotives and the sale of them—(interrupted).

By the Court—You had better wait until counsel puts the question to you, Mr. Grant.

By the witness—Well, I want to give them information so as to get back to work.

Q. Were the bonds taken at par?

A. They were all taken at par?

Q. Then was the price of the locomotive based by the cash value or were they put high?

A. The locoomotives were sold on a cash basis and, in one case, the bonds were taken on a subsequent agreement, and in another case the locomotives were sold with a definite understanding that they should be paid for in these bonds, but there was a long delay on the part of the company, because of its inability to create the bonds to prepare the papers, necessitating the readjustment before the bonds were absolutely ready, but there was no readjustment that reduced the amount of representative value that were in the bonds.

Q. I would like you to give us copies of those written contracts so that we can see the dates and be able to judge about them?

A. Well, I shall have to take some time to get them; I shall have to look them up.

Q. Are not the Texas and St. Louis Railroad bonds quoted at the New York Stock Exchange?

A. I don't know.

Q. You are a broker or banker in New York, are you not?

A. I suppose some people would call me that. I am a member of the Stock Exchange, and some people may say I am a banker or broker.

Q. What is your view about it?

A. I am a member of the New York Stock Exchange; if that constitutes a banker or broker that is my position about it.

By the Court—Are you engaged in the business of banking and broking?

A. Yes, sir.

Further cross :

Q. Do you know that the Texas and St. Louis bonds are quoted for sale at the New York Stock Exchange?

A. I know that these bonds that I now have have never to my knowledge been quoted anywhere.

Q. That does not answer my question.

A. Well, they are not quoted at the Exchange.

Q. And that does not answer my question.

By the Court :

Q. Counsel does not ask you about the particular bonds that you have, but whether bonds issued by that corporation, the Texas and St. Louis Railroad Company, are sold in the market, do you know about that or don't you?

A. I never heard of a sale, but I have seen the quotations in the newspapers.

Further cross :

Q. Well, quotations in the newspapers of the sales made at the Exchange?

A. Allow me to ask you a question to enable me to make a proper answer. Do you refer to the bonds we have of the Texas and St. Louis Car Trust?

Q. I don't know what bonds you have; you haven't shown them yet?

A. Well, I have given you information that they were Texas and St. Louis Car Trust bonds.

By the Court :

Q. Are there a different series?

A. Yes, sir; and these are issued with the security of our locomotives back of them, and those bonds I have never heard of being quoted; I have tried to sell them but can't. But the Texas and St. Louis Railroad first mortgage bonds and income bonds and stock have been quoted, or at least I have seen quotations of them and presume that they are on the Exchange, but these car trust bonds I have not heard of being quoted.

Q. Your answer is, then, that none of these series or class of the bonds you held are on the market to your knowledge ?

A. No, sir ; that is it exactly.

Further cross :

Q. When you speak of the indebtedness of the company, were you speaking from your memory of the books?

A. Yes, sir; from my recollection.

Q. You also speak of the wages being due, or payable rather, on the fifteenth of each month ?

A. No, sir; I said every fortnight; I don't know whether the fortnight goes to the fifteenth—for instance, it is wages day to-day.

Q. Now can you state from memory whether the amount that was due wasn't included in the statement of liabilities of the company on the 1st of January ?

A. It was and is there.

Q. Then this is not additional to that ?

A. No, sir.

Q. So that whenever your statement is made up you include everything you owe and is unpaid ?

A. Yes, sir.

Q. And the statement made at any time would include the wages up to that time ?

A. Yes, sir.

Q. And this amount of wages was included ?

A. Yes, sir ; the only point was that it was wages and cash due.

Q. You had payments coming in all the time, too, from other bills receivable ; didn't you have any other accounts—you had accounts, didn't you, coming in ?

A. The accounts appear in the debts due from individuals and corporations.

Q. The books will show how much these accounts are ?

A. No doubt.

Re-direct:

Q. Article 4th says, that each certificate of stock sent to each general creditor shall be stamped on the face of it: "This certificate of stock is held as collateral security for the payment of blank dollars without interest, and is to be paid and assigned to Davis B. Grant on payment of the above amount"; who was that David B. Grant?

A. My uncle.

Q. And he is dead?

A. Yes, sir.

Q. And his estate was the estate you referred to on your cross-examination?

A. Yes, sir.

Q. Did he leave a will or die intestate?

A. He left a will.

Q. And who is interested in his estate?

A. Well, there are now only three parties interested.

Q. And how many were there interested at the time of his death.

A. Five.

Q. And you are one of those three or five?

A. Yes, sir.

Q. Now, in regard to that matter of depreciation, you have spoken of $50,000 being charged off for depreciation; was that entered on the books?

A. Yes, sir; it was entered on the books.

Q. Well, there was not $50,000 paid to anybody?

A. No, sir; it was real estate and buildings that we marked down as only worth so much.

Q. It was simply an entry on your books?

A. Yes, sir.

Q. An entry of the value of the real estate and machinery and plant of the company?

A. Yes, sir; a mere journal entry.

Q. No money passed to anybody?

A. No, sir.

Q. It didn't diminish the cash balance at all?

A. No, sir.

Q. Didn't affect the cash balance in any way?

A. No, sir.

Q. It didn't affect the securities in any way—no securities were disposed of in any way?

A. No, sir.

Q. And all there was of it was in making up your statement at that time there was in the judgment of some one or estimate of some one, that after seven years' wear and tear of these works there had been a decrease or depreciation in their value of $50,000?

A. Yes, sir.

Q. And that I understand you was fixed at this meeting of directors?

A. We had several meetings at that time and I don't recall which one it was that it was fixed at, but it was fixed immediately previous to the decision as to the dividend or about that time.

Q. You spoke of a receiver who made a report to the company; who was that receiver?

A. Charles F. Pierson.

Re-cross:

Q. The effect of this charge off of $50,000 on the real estate would be to reduce the assets to that extent on the books; would it not?

A. On the books; yes, sir.

Q. If the charge was a true representation of the value, it would reduce the assets?

A. On the books, yes, sir; but not in their practical value.

Q. And the effect of that would be to reduce the amount of profits made under the agreement; would it not?

A. Well, that would depend upon how you would construe that.

Q. What do you claim?

A. As to what?

Q. As to that, whether the effect of reducing the value

of the real estate would not be under the agreement, to reduce the amount of net profits of the business?

A. I don't claim that it would be a net reduction of the profits by any means, the property is all there.

Q. But does not it show so much less to be divided or to go profit and loss account?

A. Profit and loss account would be represented on the other side by so much less in value.

Q. So that between January 1st, 1883, you charged off $50,000, and that would show that $50,000 less profit had been made than if the account had been continued as it was?

A. Yes, sir.

Q. Now you had charged, as I understand you, against the creditors under the agreement all the expenses you paid for maintaining the property?

A. I didn't charge anything against the creditors, but the property has been maintained as well as possible.

Q. You have charged the amounts expended for that on your books?

A. It was part of the business of the concern that we tried to keep up the business in working order.

Q. And that was charged against the property?

A. It was charged in operating the property and doing the business.

Q. And the taxes and insurance were also charged against it?

A. They were paid, that is all.

Q. As expenses?

A. Yes, sir.

Q. Now, your books will show—you have an expense account in your books, I suppose, as to the works?

A. An expense account as to the works? The merchandize account is the account I think that everthing of that nature has been charged to.

Q. It is not charged against the property in a special account then?

A. I think not; I think the real estate and buildings account has remained just the same, the money is charged to

the expense account, I think. And I would like to say in further answer to that, that the property for a period of four years after this agreement was made, lost nearly three hundred thousand dollars or more than that, nearly $400,-000. There was no money to spend in properly keeping the property in order until within the last year.

Q. Then you did spend it and charge it to the expenses?

A. We did just what was to be done—what we understood by that agreement, that the money should be used for the proper maintenance of the property.

Q. We have no objection to that.

A. No, sir; and when we came to the end of the year we said that although the property had been maintained yet there was wear and tear of seven years of work and that the property was not worth what it had been and should be marked down, and the directors considered that twenty per cent. was a fair amount to mark off for depreciation of the value of the property.

Q. Did you charge in these expenses of maintaining the property the money that was expended in new machinery that was put in; was that included in the expenses?

A. That was always included in the expenses whenever a new piece of machinery was required, but none was ordered, but what was essential to replace the old machinery and keep the capacity of the works up to its standard.

Q. And to increase the capacity?

A. We haven't been able to increase the capacity at all; we made more locomotives in 1873 than we ever did since.

Q. Will your books show how much of those expenses was ever put in new machinery?

A. I should think so; there is no question about it. Whenever we got machinery it will show where we got it from, there will be no trouble about that. And I want to say, if I can do so, that the reason of the $50,000 being charged off this year was, that it was the first year that we were in a position to ascertain what the value of the works was. There had been several years of steady wear and tear by the company, and the company was borrowing money

for six out of that seven years, having no money in hand, and having nothing but the bare establishment, and being obliged to do the business on credit, so that when we did come to the point we said : now what is this worth, have we been able to keep them up to the proper standard; and the result of our examination was, "No; there has been a depreciation and how can we represent it. It is not good judgment to go and spend a lot of money in repairing the property which is 'tumble down,' and would require entirely new buildings ;" and with that view we decided not to put up new buildings, but only to say that the present buildings were not worth so much as they had been, that there was a depreciation of $50,000, so that the sum of $50,000 was fixed upon so as to make the buildings and other property to appear properly represented on our books.

Q. As the company's account or as your own property?

A. As the company's account.

Q. When I said your own property I meant property of the company.

A. Yes, sir; but there was no opportunity—(interrupted).

Q. Well, that is a matter to be decided under the agreement. I have no objection to you giving your views, but I think it only shows there was a difference about the rights of the parties which should be settled by the Court. Now I would like to see these books and also copies or the original contracts, and I can send some one to your office at whatever time is convenient for you to make them.

A. If anything has got to be produced I prefer that they should be brought here; I don't want anybody to come to our office.

The Court then ordered that the defendant produce all their books, contracts and bonds in court at the next hearing of this cause.

Adjourned until the hour of ten o'clock in the forenoon of Wednesday, the 2d day of January, 1884.

Transcript of short hand report of testimony, etc., given in the above stated cause on the continuation of the trial thereof in the Vice-Chancellor's chambers, Newark, N. J., on Wednesday, the second day of January, A. D. 1884.

William W. Evans, a witness called by and sworn on behalf of the defendants, deposeth and saith as follows:

Direct examination by Mr. Forster:

Q. You have brought the books of the Grant Locomotive works here?

A. Yes, sir.

Q. (Showing witness a book) Is this the book of minutes?

A. Yes, sir.

Q. Of both the stockholders' and directors' meetings?

A. Yes, sir.

By Mr. Forster—I purpose to put in the meetings of the stockholders of the tenth of January, 1882; the meeting of the directors on the 6th of May, 1882; the meeting of the stockholders January 10, 1883; the meeting of the directors February 12, 1883, and March 13, 1883—(interrupted).

By the Court—Meeting of the same body?

By Mr. Forster—Yes, sir; and also of March 21, March 22, and April 3, 1883. (Reading.) "Meeting of the stockholders held, Paterson, January 10, 1882, for the purpose of choosing five directors for the ensuing year, polls being open, etc." (Counsel then proceeded to read said minutes as offered).

Q. You were asked the other day, in reference to the inventory, or at all events the inventory was mentioned; what is this book? (producing book).

A. The inventory book.

Q. This is the book in which the inventory referred to is found?

A. Yes, sir.

> By Mr. Forster—Now I offer the inventory of January 1st, 1883, which appears on pages 324, 325, 326, 327, 328, 329, 330, 331, and 332. This contains numerous details on these pages of materials, measurements, weights and prices, and the aggregate amount carried out at each price, the total footing being $345,836.08, the figures referred to the other day.
>
> By the Court—That contains inventory of what date?
>
> By Mr. Forster—January 1st, 1883.

Q. (Showing witness another book). What book is this, Mr. Evans?

A. The ledger.

Q. Now, in a paper that was called to your attention the other day there was an item of profit and loss $560,805.10; what do those words and figures represent?

A. The balance of profit and loss.

Q. And on what page in the ledger?

A. Page 12.

Q. That is the profit and loss account?

A. Yes, sir.

Q. How often do you make entries in this profit and loss account?

A. At the end of every year, or at any rate every six months, whenever we balance.

Q. Whenever you balance your books?

A. Yes, sir.

Q. From what books are the entries made in this profit and loss account?

A. From the journal.

Q. Now I observe here on page 12 an entry in these

words: "1882, January 30, by merchandise, 220, $303,-709.61." What do these figures 220 refer to?

A The balance of merchandise.

Q. No. My question is what do those figures 220 refer to?

A. The balance of merchandise.

Q. You do not understand me. What do the figures 220 refer to?

A. Oh, that is the journal page.

Q. The page in the journal from which that entry is posted?

A. Yes, sir.

Q. And on page 220 is this entry in the journal: "Merchandise, to profit and loss balance of account $303,709.61." What is that?

A. The balance of the merchandise.

Q. That is the balance of merchandise account on that date?

A. Yes, sir.

Q. You closed the merchandise account with that entry?

A. Yes, sir.

Q. And carried the balance of merchandise account to profit and loss account?

A. Yes, sir.

Q. Now, an entry of December 31, reads: "Merchandise, 239, $175,410.33." What does 239 mean there?

A.. The journal page.

Q. Now, on page 239 of the journal, December, 1882, is: "Merchandise, to profit and loss balance of account, $175,-410.73." Is that entry in the journal?

A. Yes, sir.

Q. And what is that?

A. The balance of merchandise.

Q. You simply closed the merchandise account?

A. Yes, sir.

Q. By transferring the balance of it to profit and loss account?

A. Yes, sir.

Q. So that when the profit and loss account received those two entries, $560,805.10, the merchandise account was closed on the book?

A. Yes, sir.

Q. What did you enter in the merchandise account during the course of the year?

A. On the debit side all we bought, and on the credit side all we sold.

Q. Well, if you sold a locomotive or locomotives, for cash, how would that go into the merchandise account?

A. That would be charged to the parties and credited to the merchandise account.

Q. And the amount of cash received would go through the cash book?

A. Yes, sir.

Q. Suppose, instead of selling locomotives for cash you sold them for car trust certificates or bonds, or any other sorts of securities or representative of value, would they be entered in the books?

A. They would be entered just the same and credited to merchandise.

Q. If you sold ten locomotives for car trust certificates or bonds or other securities that were received, the price received for the locomotives, although it was received in securities, would go into the merchandise account?

A. It would be charged to the parties to whom the locomotives were sent and the merchandise account would have credit.

Q. Although you did not receive the money?

A. Yes, sir.

Q. But received securities such as you might receive?

A. Yes, sir, and those would be after entries to make up the credits.

Q. When locomotives were delivered, an entry would be made to the credit of merchandise account?

A. Yes, sir, and debited to the parties to whom they were delivered.

Q. And when you closed the books at the end of six

months, the balance of the merchandise account would be carried to the credit of profit and loss account?

A. Yes, sir.

Q. So that the balance of the profit and loss account would represent as well the price of the locomotives sold for bonds or car trust certificates or other securities, as the price of a locomotive sold for cash, would it?

A. Yes, sir.

Q. And in that way is that balance of $560,805.10?

A. Yes, sir.

Q. Shown as balance of profit and loss account? Does that represent the securities that were on hand that had been received for locomotives sold?

A. Yes, sir.

Q. Just as well as cash?

A. It merely represented them in the account. They were debited. And if they were all good and received as they stood on the book that would be the amount of profit and loss. If there was any loss afterwards it would come in the next balance sheet and be deducted.

Q. There is included in that 560 odd thousand dollars of profit and loss account every account of debit to parties on your books for locomotives, even if the account should turn out afterwards to be bad and nothing was realized?

A. Yes, sir.

Q. And it would remain in that shape till that was finally closed?

A. Yes, sir.

Q. And if that account should be closed by a loss you would debit that loss to the profit and loss account?

A. To merchandise, and then at the end of the six months to profit and loss.

Q. When you closed up the merchandise account?

A. Yes, sir.

By the Court:

Q. Let me see if I understand you. The profit and loss account includes all credits due to the corporation whether

the price to be paid for each locomotive has been paid in securities or cash or not paid at all?

A. The profit and loss on the balance of the merchandise. The merchandise is the whole account of the works, and if ten locomotives or one locomotive be sold to a party it was debited to the party and credited to merchandise, and the balance of that account, if there was a balance, at the date of closing the books, would be shown on the balance sheet as that amount of money due from that concern.

Q. And that would be included in the profit and loss?

A. Yes, sir; as the total amount of the business. The whole result if everything was collected as entered.

Further direct:

Q. You have already identified the ledger. Now this book before you, from which we have already read, page page 220 and page 239, what is that?

A. The journal.

Q. What other book is kept besides these in your set of books?

A. Cash book.

Q. (Handing witness book). And that is this?

A. Yes, sir.

Q. The cash book; did that contain any other entries except the actual cash transactions?

A. Actual receipts and disbursements.

Q. Only?

A. Only.

Q. And all the other entries in the course of the business are entered in the journal?

A. Yes, sir.

By Mr. Forster—The books being here, you may cross-examine.

Cross-examination by Mr. Emery:

Q. Mr. Evans, has this company kept any account on its

books of the net profits divisible to the creditors—have you any such account under this agreement?

A. No, sir.

Q. Have you any account anywhere in your books that will show—no such account has been kept since the time they assumed charge, has it?

A. All those accounts are in the books kept prior to 1875, when they were all balanced by the giving of the securities.

Q. I don't know whether you understand my question. I ask you whether since the company has been managed under this agreement you have kept an account in the books of the company of the profits which are divisible under the agreement?

A. Yes, sir; the profit and loss account shows it.

Q. Is the amount then shown of profit and loss divisible under the agreement?

A. The balance of profit and loss shows the profit of the concern.

Q. Is that the account to which you referred as the one showing the amount divisible among the creditors?

A. The one showing the profit to the concern.

Q. This agreement requires that the net profits, after paying the taxes, insurance and the amount for the proper maintenance of the property of the company, shall be divided annually among the stockholders. Have you on your books anywhere an account which shows annually the amount divisible under that fifth article in the agreement?

A. Yes, sir; here it is.

Q. Well, you mean the profit and loss shows that; does it?

A. Yes, sir.

Q. And that is the amount divisible under the agreement?

A. Yes, sir; that shows the amount that the concern has made if everything is collected, and the balance sheet shows what is charged to that account.

Q. But, I asked you whether there is an account kept under this agreement?

A. There is no other account in these books but profit and loss.

Q. No other account except profit and loss?

A. And the profit and loss shows the result of the business.

Q. Now, have you anywhere, in your books, since the company has been managing the affairs under this agreement an account showing the amount of those three items: taxes, insurance, and the necessary amount for proper maintenance of the property of the company?

A. That is charged through merchandise.

Q. Is it entered throughout the books in different places, or have you an account showing specially the items for the payments made for each of these purposes?

A. You can refer, of course, to each year's taxes and to the general and machinery repairs; they go through the merchandise.

Q. Have you anywhere in your books a separate account of the taxes of each year so that that can be determined upon by looking at them?

A. I can refer to them; I haven't a separate account.

Q. Have you a separate account of the insurance paid?

A. No, sir; but I can refer to it in the merchandise.

Q. That would require you to go through the items for each year in the account?

A. It would be very readily gotten at.

Q. Have you any separate account of the amount paid for insurance of the property of the company?

A. Merchandise.

Q. Is it entered throughout the merchandise account as made?

A. The merchandise account represents the whole business.

Q. Is it anywhere posted into a separate account?

A. No, sir.

Q. As I understand you, in your books you have no ac-

count that would show the amounts that have been paid by you for taxes and insurance, and the necessary amount expended for the proper maintenance of the property of the company, without your now going through and making out that account from the entries in the merchandise account?

A. Well, we have supplementary books which would give that.

Q. Where are the supplementary books?

A. In the office.

Q. Do these supplementary books tabulate those payments for taxes, insurance and the amount paid for the necessary maintenance of the works?

A. I have books here that I can give you that from.

Q. But in these supplementary books which you spoke of, I refer to; why didn't you bring them with you?

A. It it is not in any of the accounts by themselves; they are in the other accounts for the running of the business; these are the general books of the concern.

Q. Then you never kept any separate account of those?

A. No, sir; not in the general books.

Q. Have you kept a separate account in any other books?

A. We have other memorandum books that show what it has been—the result of the business is all in these books.

Q. Are they distinct, separate accounts?

A. No, sir.

Q. Then the only way that they could be gotten at would be by tabulating them?

A. Yes, sir.

Q. I see the last election of the directors which appears by your minutes here, only four were elected—is that correct?

A. Just as the minutes say.

Q. What?

A. As the minutes say, so it was.

Q. You made the minutes?

A. Yes; if my name is there.

Q. I see your name seems to be here, January, 1883; that is your signature, I suppose? (Handing witness book).

A. Yes, sir.

Q. Now, by the minutes of that meeting, it appears that Mr. Prosser, Mr. Pierson, Mr. Williamson and Mr. Grant were elected; of those gentlemen two of them are creditors, and that is Mr. Prosser and Mr. Pierson?

A. Yes, sir.

Q. Now, do you know why no third director was elected?

A. I do not; except that I presume no name had been presented that was acceptable at the time.

Q. No name acceptable?

A. I don't know of any.

Q. Hadn't Mr. Park made a request to be appointed on behalf of the creditors?

A. Never, to me.

Q. Did you hear of any such request?

A. Well; I don't know as I did.

Q. I believe that is all.

Re-direct examination by Mr. Forster:

Q. You spoke of a balance sheet in which the amounts due from the company or due to the company, which are included in the profit and loss account are shown? (Handing witness book). Now, what is this book?

A. The balance sheet.

Q. This contains the balance sheets of the company?

A. Yes, sir.

Q. Now, what are the accounts there, or what do the accounts there amount to in that balance sheet of December 31, 1882, on pages 38 and 39?

By Mr. Emery—You did not ask about that in your direct examination.

By Mr. Forster—No, sir; but he spoke about the balance sheet on your cross-examination.

By Mr. Emery—No; I think not.

By Mr. Forster—Well, I heard him; that's all. Just read my question, Mr. Stenographer.

The stenographer read the previous question as follows: "Now, what are the accounts there, or what do the accounts there, amount to in that balance sheet of December 31, 1882, on pages 38 and 39?"

Objected to.

Q. On what page is the balance sheet of December 31, 1882, where the profit and loss of $560,000 appears?

A. Pages 38 and 39.

Q. Now, what is the amounts, or what is the total amount of them which you referred to as representing the amounts due the company which were included in the profit and loss account in the balance of $560,000?

A. $391,982.39.

Q. And do the details of the accounts which go to make up that footing appear as well as the footing on pages 38 and 39 of the balance sheet?

A. Yes, sir.

Q. Where are those accounts; in what books?

A. The ledger.

Q. Those are the balances of the ledger accounts referred to?

A. Yes, sir.

Q. Now, when you speak of the profit and loss account as the only account which shows what would be divisible under the agreement, how would you get at from the profit and loss account what, at any particular time, was divisible under that agreement?

A. The cash on hand.

Q. How would you get at it from the profit and loss account?

A. Provided all the accounts were collected and the cash was in hand it would show there ought to be $260,000.

Q. If all the accounts were collected?

A. Yes, sir.

Q. Then there would be $260,000?

A. Yes, sir.

Q. Why do you say $260,000 instead of $560,000; why do you take off $300,000?

A. That $300,000 with the capital stock of $300,000, makes the start at which the company commenced business, supposed to be the plant, on the 31st of July, 1875.

Q. Now, you say, $260,000, assuming that all the debts were collected?

A. Yes, sir.

Q. Now, if any part of the accounts were not collected, how would you then get what part of the $260,000 was divisible at any particular time?

A. Less the amount that was not collected.

Q. You would deduct the amount of the accounts not collected?

A. Yes, sir.

Q. Now will you look over that trial balance that is before you and state each of the accounts in the ledger which are there represented which go to make up the total of $391,982.39 to which you have just referred and which are uncollected to-day?

A. The Massachusetts Rolling Stock Company.

Q. The Massachusetts Rolling Stock Company's account. Now what amount is there on that trial balance of that account included in the $391,000?

A. $48,000.

Q. And what part of that, if any, has been paid?

By the Court:

Q. I understand you to say that $48,000 is the sum remaining unpaid?

A. Yes, sir; I think there has been about $3,000 of that paid.

Further direct:

Q. You think about $3,000 of the $48,000 has been paid up to the present time?

A. Yes, sir.

Q. Is there any other account there?

A. The Texas and St. Louis railroad.

Q. Read the account just as it is there?

A. " Texas and St. Louis railroad, $64,912.81."

Q. That is as it is included in that statement; now what part, if any, of that has been paid?

A. I do not think over $5,000, but I won't be positive about that.

Q. Now is there any other account there?

A. The Toledo, Cincinnati and St. Louis Railroad bond account, $52,000.

Q. What part, if any, of that has been paid?

A. I think about $3,000, if I am not mistaken; probably I have made a mistake. I think the Massachusetts Rolling Stock Company, out of the $48,000 and $52,000, if my memory serves me right, have paid in the neighborhood of $20,000.

Q. On the two?

A. Yes, sir; but they are one and the same thing in reality.

Q. Now on what page—(interrupted).

By Mr. Emery:

Q. Well, that would make $20,000 paid on the two, but you have only given us $6,000, if I understand right?

A. Sir?

Q. You only gave us $6,000 as paid, before?

A. Well, out of the $48,000 and $52,000, I think, if my memory serves me right, there has been in the neighborhood of $20,000, paid on account of them. Their amount was $100,000 altogether.

Further direct:

Q. Will you tell us on what page of the ledger the account of the Massachusests Rolling Stock Company appears?

A. Page 175.

Q. Now what changes have been made in that account since the 1st of January, 1882?

A. There is a credit to cash on February 12.

Q. What amount?

A. $17,920.64, and there has has been a charge of $45,-000 since the 1st of January.

By Mr. Emery:

Q. Well, was that for other sales?

A. Yes, sir.

Further direct:

Q. There has been no other entry of a payment except that $17,920.64?

A. No, sir; not that I know of. The balance sheet also shows on December 31 we owed $126.913.37 for merchandise and wages.

Q. And when was the amount of that due for wages or payable?

A. Either the first Saturday in January, or it might have been the second Saturday in January; I have forgotten whether the pay day came on the first or second Saturday.

Q. Can you tell by looking at the cash book which is before you?

A. Yes, sir.

Q. Just look at the cash book and tell us and state what that amount of wages was and when it was paid?

A. It was paid on the 6th day of January; $15,262.50 and merchandise was due on the 15th.

Q. Now the amount that was due for merchandise amounted to how much, and when was that payable?

A. It was paid on January 15th.

Q. How much?

A. $63,152.52 less three or four hundred dollars paid on or about the 20th, and between the 4th and the 8th. (After referring to book). There is about $2,300 that we paid between the 4th and the 8th and on the 20th. The balance was paid on the 15th.

Q. What part of the cash are you reading from?

A. 90, 91 and 92.

Q. And the aggregate of that was what?

A. $53,153.52.

Q. And what amount of what was due for materials on the 1st of January, 1883, was payable at any later date than January?

A. Part of it was payable on the 15th of February.

Q. How much was payable on the 15th of February?

A. In the neighborhood of $28,000.

Q. There was $27,733.57?

A. About that.

Q. Was that paid at that time?

A. It was paid on the 15th day of February.

Q. What part of the cash book does that appear on?

A. Page 94.

Q. Was there also a balance due for materials on the 1st of January, 1883, which was not payable till the 15th of March?

A. Yes, sir.

Q. What amount of that?

A. In the neighborhood of $16,000.

Q. And on what page of the cash book does that appear?

A. 99.

Q. Was that amount $17,136.83?

A. I could not say that.

Q. You could not give the exact figures?

A. Not without going over it; it was the balance that was due, of course, after January and February was taken out.

Q. The balance of this balance sheet of January 1st, 1883?

A. Yes, sir.

Q. And it was payable—the amount that was stated in the balance sheet was payable on those three dates?

A. Yes, sir.

Q. January 15, February and March 15, at about the amounts you have given?

A. Yes, sir.

Q. You were asked in regard to taxes, whether you kept any separate account; what taxes were payable in 1882?

A. The yearly taxes?

Q. To whom?

A. Paterson city.

Q. And were the payment of the taxes simply made in one single payment?

A. Yes, sir.

Q. And can you tell from the cash book what day that was?

A. Yes, sir.

Q. Look and see if it was about the 15th of October?

A. (Reading from cash-book.) "Paterson city taxes paid to E. A. S. Allen, Receiver, $4,564.43."

Q. What is the date?

A. The 15th of October.

Q. What year?

A. 1883.

Q. Now, go back to 1882, please, same date?

A. (Reading.) "Paterson city taxes on October 15, 1882, $4,602.73."

Q. The taxes became payable yearly?

A. Yes, sir.

Q. And you paid them on the same day?

A. Yes, sir.

Q. There were no other taxes to pay?

A. No, sir.

Q. In what account did you enter them?

A. Merchandise.

Q. That is the account you described as the account of the running of the works?

A. Yes, sir.

Q. Now, you were asked in regard to the insurance; look at the date of March 15, 1882?

A. (Reading.) "March 15, 1882, Saddler, Bostwick & Martin, $1,053.80."

Q. And were they insurance brokers?

A. Insurance agents.

Q. Now, look at the date of June 15, same year?

A. (Reading.) "Saddler, Bostwick & Martin, $458.68."

Q. Now, look at the date of September 8th, same year.

A. (Reading.) "September 8th, Saddler, Bostwick & Martin, $807.75."

Q. In what book are those entries made?

A. Cash book.

Q. And the date of the payment is entered?

A. Yes, sir.

Q. And the person to whom the payment was made?

A. Yes, sir.

Q. And what the payment was for?

A. No, sir.

Q. The amount of it?

A. Yes, sir.

Q. To what account is that posted in the ledger?

By Mr. Emery:

Q. You say there is no entry of what it is for?

A. Well, the invoice book will show that, sir.

Further direct:

Q. Now, in what account in the ledger is the payment of insurance premiums carried?

A. Merchandise.

Q. The same account of the running of the works?

A. Yes, sir.

Q. Now, where old machinery is entirely worn out and unfit for any other purpose, in 1882, what was done with it?

A. If it was no earthly use we threw it in the scrap, or if we could sell it we sold it.

Q. If it was no use for your business purposes you sold it?

A. Yes, sir.

Q. Take the case of an old planer for instance?

A. Yes, sir.

Q. Did you sell any such?

A. Yes, sir.

Q. Where they were sold, in what book was the entry of the price received made?

A. Cash book.

Q. To what account in the ledger was it passed or credited to?

A. Machinery account.

Q. That was the account on page 4 of the ledger, was it?

A. Yes, sir.

Q. And that represented what; what does the machinery account represent?

A. The machinery in the shop at its value as taken at the commencement—at January 1st, 1875.

Q. Yes?

A. And the balance of the account it is supposed to be.

Q. Then the machinery account is opened on the first of July with the entry of $160,000, that is the way that account is opened?

A. Yes, sir; as was agreed in the settlement between the creditors.

Q. That is what you took the machinery to be?

A. Yes, sir.

Q. And that is the start of this account?

A. Yes, sir.

Q. Now the entries on the debit side after that are what?

A. Merchandise bought.

Q. When you bought new machinery it was charged to this machinery account?

A. Yes, sir.

Q. Now, where you sold old machinery, like an old planer, or anything of that sort, for cash, where was that put?

A. On the credit side.

Q. And those are the entries that appear here by cash?

A. Yes, sir.

Q. $925. $295?

A. Yes, sir.

Q. Now what is this entry of $8,550, on page 203 of the journal?

A. Merchandise to depreciation account.

Q. Yes.

A. Balance of account.

Q. Balance of what account?

A. Balance of depreciation account.

Q. What is the first entry in regard to that; what is the opening of that depreciation account?

A. What is the page, please?

Q. 203.

A. " Dr. To merchandise account, amount paid for new machinery, $8,550?"

Q. And that is the amount paid for new machinery?

A. Yes, sir.

Q. That appears in what account?

A. The depreciation account to machinery debit, and depreciation account to machinery credit.

Q. Now, page 237, what entries do you find there?

A. Machinery account is debited and merchandise credited.

Q. That is what page?

A. 237 of the journal.

Q. What is it?

A. $8,450.50.

Q. What is that?

A. Machinery bought.

Q. New machinery?

A. Yes, sir.

Q. What else?

A. That is all.

Q. Is there any further entry there?

A. Depreciation account.

Q. What is it?

A. "Depreciation account to merchandise account by new machinery from January 1st, 1882, to December 31st, 1882, $9,530.50."

Q. Is there any other entry there?

A. Depreciation account to sundries.

Q. What is that?

A. Depreciation account to sundries. That is all there is in relation to machinery on that page.

Q. Take the next page?

A. "Depreciation account Dr. to machinery account, 20 per cent. depreciation on machinery from July 1st, 1875 to January 1, 1883, $32,000."

Q. What is the balance of that entry to depreciation account?

A. Building account.

Q. What is that?

A. 20 per cent. depreciation on building from July 1st, 1875 to January 1, 1883.

Q. Amounting to how much?

A. $22,000; making the total $54,000.

Q. That appears, you say, on page 237 of the journal?

A. Yes, sir.

Q. And is posted to what page of the ledger?

A. Depreciation account, page 5 and machinery account page 5, and building account, page 5.

Q. Now, how was the building account started?

A. The same way as the machinery account.

Q. With what amount?

A. $110,000.

Q. On what date?

A. July 1st, 1875.

Q. And after this charge the balance of this account was how much?

A. $88,000.

Q. That's all.

Cross-examination by Mr. Emery:

Q. Now, Mr. Evans, you have referred to an account here as the depreciation account; will you just show us that account on the ledger?

A. Here it is. (Pointing to book.)

By the Court:

Q. On page 5?

A. Page 5.

Further cross:

Q. When was the first entry made in that account?

A. 1881, December 31.

Q. What does that represent?

A. Represents the amount of machinery that was put in to replace the old machinery.

Q. And anything else?

A. And one item of 20 per cent. of depreciation.

Q. In what does that appear?

A. Here. (Pointing to book.)

Q. $54,000 ?

A. Yes, sir.

Q. Entered on December 31, 1882 ?

A. Yes, sir.

Q. From the journal?

A. Yes, sir.

Q. Page 237?

A. Yes, sir.

Q. Just turn to that, please; was that entry made at that time?

A. Yes, sir.

Q. By whom?

A. By me.

Q. By whose direction?

A. The president and board of directors, I presume.

Q. You presume; do you know that anybody but the president gave you that direction?

A. I do not.

Q. Did Mr. Grant give you the direction to charge in that $54,000?

A. Yes, sir.

Q. What effect would that entry have on the balance sheet of the company to be made up to that day in reference to the profits of the company?

A. It will decrease profit and loss that much more.

Q. Will you turn to your minutes and see whether there was any direction of the board of directors to make that charge against profit and loss?

A. I do not recollect.

Q. You do not recollect of any?

A. No, sir.

Q. Do you recollect that that item was submitted at any meeting of the board of directors?

A. I do not. But that is the depreciation from 1875 to 1883—eight years.

Q. It is a charge directed to be made by the president and you made it at his direction?

A. Yes, sir. That is in addition to what had been paid —what expenses had been paid for keeping up the works.

Q. Which have been entered regularly as they have been made in the merchandise account?

A. Yes, sir. There has nothing been kept up only what was actually necessary.

Q. And what has been kept you have charged for in your accounts?

A. Yes, sir.

Q. Did I understand you, Mr. Evans, that items of depreciation in the machinery account are arrived at by charging the machinery account with the amount you paid for new machinery?

A. Yes, sir.

Q. That is, if you buy a new machine you charge so much as depreciation?

A. If we replace an old machine with a new one we charge machinery with it, and that is depreciation. The concern is no better off.

Q. You charge the machinery account with the amount you pay for the new machine?

A. Yes, sir, and balance with the depreciation, which would make the same amount prior to the putting in of the new tool.

Q. You did not keep a construction account in that name, I suppose?

A. No, sir.

Q. You kept a building account and a machinery account?

A. Yes, sir. We constructed very little in the way of tools.

Q. Well, I mean in reference to the manner of keeping the account; you kept two accounts, building and machinery account?

A. Yes, sir.

Q. Turning to your balance sheet of December 31, 1882, you stated that the amount there due sundry parties $123,413.27, that that included the amount of wages due in January, and merchandise due on the 15th of January, and also on the 15th of February, and also on the 15th of March. Now, before these payments were made wasn't other cash received by the company than this which is mentioned in the balance sheet of December 31, 1882?

A. The cash book will show.

Q. Well, look at your cash book if you cannot state from memory. You seem then to have had on hand the amount which is shown there. Now, the first payment was made on the 6th of January, $15,000. What additional amount of cash had you received by that time?

A. On the 2d of January we received $7,600.

Q. Go on.

A. On the 5th, . . .	$857 00
On the same day, . . .	750 00
On the same day, . . .	20,570 00
On the same day, . . .	178 87

Q. That is up to the fifth?

A. Yes, sir.

Q. How much did you receive on the sixth?

A. None.

Q. That is on the fifth—how much was that from the second to the fifth altogether?

A. About $29,500.

Q. And the next payment was on the 15th?

A. Yes, sir.

Q. Have you given me all the amounts you received up to that date?

A. Yes, sir; that is all up to the 15th, sir.

Q. And how much was that ?

A. That is the amount I named.

Q. Up to the 15th ?

A. Yes, sir.

Q. Now go on for the month of January ?

A. The 16th, we received from P. Suydam

Grant, - - - - - - -	$45,000
From another party, - - - - -	57
From another, - - - - - -	39
From another party, - - - - -	20,000
From another party, - - - - - -	11,439
And from the St. Louis & Iron Mount. Co., -	347

About $77,000 all told.

Q. That is in the month of January ?

A. Yes, sir ; that is $77,000, from the 15th.

Q. And you had received $49,000, I think you said before that ?

A. Yes, sir ; but other wages were due after the 15th. There were wages due two weeks after the 6th, which would bring it on the 20th. On the 20th we had another amount of wages due of $16,779.24.

Q. How much did you receive from the first of February to the fifteenth of February ?

A. Up to the 15th of February we received in the neighborhood of $27,500.

Q. And from that time to the end of February ?

A. We received about $98,000.

Q. Additional ?

A. Yes, sir.

Q. From February to the 15th of March—I mean between the 1st and the 15th of March ; what did you receive ?

A. $160,000.

Q. You can make out, I suppose, the amount that has been paid from July 1st, 1875, for taxes on this property ; can you not ?

A. Yes, sir.

Q. You can also make out the amount that has been paid for insurance since 1875 ?

A. Yes, sir.

Q. And you can also make out, by going through the books, a statement of the amount that has been paid for the maintenance of the works since July, 1875?

A. Approximately; I would not say that it would be exactly accurate, but I could get at it very closely.

Q. That would require you to go through several of the books?

A. Well, we used to buy a few planks or pieces of lumber so as to maintain the floors and that kind of small items. That is all we have been doing—just patching up where it was actually necessary. It was intended that we should bring the buildings back in the condition in which they were, and that is the reason this $54,000 was put there; but owing to the press of business we have been unable to do so. We expected to do it this year.

Q. Well, that has been the talk between you and Mr. Grant?

A. Yes, sir; and that is the reason for that.

Q. Were the creditors consulted about that?

A. I presume so.

Q. Do you know?

A. Not of my own knowledge; these meetings were held in New York, sometimes when I wasn't there.

Q. Turn to the Massachusetts Rolling Stock Co. account?

A. Yes, sir; page 175.

Q. The Massachusetts Rolling Stock Co. is charged with a balance of $48,000 on the first of January, 1883; simply a balance on the account. Now what did you have representing that debt?

A. Just as the books show there.

Q. Anything else?

A. That is all, sir.

Q. Did you have bonds?

A. It says so there—$52,000.

Q. No; that is after that amount—in October 30, 1882; you have got the $52,000 on some bonds?

A. Those were the bonds of the Toledo, Cincinnati and St. Louis Railroad.

Q. And then there was $48,000 still due?

A. Yes, sir; that left the balance of $48,000 still due as represented on the balance sheet.

Q. And this is after crediting the whole amount of that as cash?

A. No, sir; as bonds in the opening of the bond account.

Q. Have you a bond account on the book?

A. Yes, sir.

Q. Just turn to that, please?

A. Here it is. (Producing same to counsel).

Q. It is not entered as a special bond account, but it is for these particular bonds?

A. Yes, sir; Toledo, Cincinnati and St. Louis Railroad bond account.

Q. Then you mean that special bond account; I thought you meant a general bond account?

A. No, sir; the account is to each special bond. There is the Texas and St. Louis Car Trust bond account on the next page.

Q. On that interest seems to have been paid along?

A. Yes, sir.

Q. Well, then, the name of those bonds was the Toledo, Cincinnati and St. Louis Railroad bonds?

A. Yes, sir.

Q. And that is the name of the bonds?

A. Yes, sir.

Q. Have you got the bonds?

A. The counsel has them.

By Mr. Forster—Which kind do you want?

By Mr. Emery—The Toledo, Cincinnati and St. Louis (reading from bond handed him by Mr. Forster) Toledo, Cincinnati and St. Louis 6 per cent. Equipment trust bonds, series C.

By the Court—Payable when?

By Mr. Emery—The 1st day of August, 1883.

By the Court—Are they payable then?

By Mr. Emery—That is when they were due. These bonds are payable to bearer. They are not registered, but there is a provision for the registry of the bonds. They are all payable to bearer.

Q. Is this the Massachusetts Rolling Stock Co. stock; I understood you took these from the Massachusetts Rolling Stock Co.?

A. They were the parties through whom the negotiations were made.

Q. What negotiations?

A. For the sale of the engines.

Q. For the sale of the engines?

A. Yes, sir; we sold to them. Our original contract was with the Massachusetts Rolling Stock Co., but the engines were intended for the Toledo, Cincinnati and St. Louis Railroad Company.

Q. Well, have you these contracts here?

A. No, sir; there was no written contract, anything further than the specifications.

Q. Mr. Grant said he thought there were written contracts?

A. There were written contracts in the case of the Texas and St. Louis Railroad. Those are the only ones that had written contracts.

Q. Where are the bonds of the Texas and St. Louis Railroad?

A. Mr. Forster has them.

Q. What are those called—Texas and St. Louis Car Trust Bonds?

A. Yes, sir.

By Mr. Emery (reading from bond produced by Mr. Foster)—These are dated—I don't see any date. They are series A, 13. I think it is called and are payable April 1st, 1884.

Q. Were there any others?

A. No, sir.

Q. Only two that you know of?

A. Yes, sir.

Q. How much has the company now of each of these?

A. I could not say.

Q. Did you have the custody of them?

A. No, sir.

Q. Who did?

A. Mr. Grant.

Q. So that you cannot tell about them?

A. No answer.

By Mr. Forster—Here is a list of them and you will find it there.

By Mr. Emery—He has no knowledge.

By Mr. Forster—No; but I say if you want to know you will find it there.

By Mr. Emery—Well, but Mr. Grant was going to produce the bonds.

By Mr. Forster—He testified as to the amount.

By Mr. Emery—Only what amount was originally taken.

Q. Has money been borrowed on them?

A. Not that I am aware of, sir.

Re-direct examination:

Q. Mr. Evans, you spoke of various receipts; now will you tell us what your payments were for January and February, 1883?

A. For January and February the total amount paid was:

For merchandise, . . .	$125,074 37
And	617 35
And for wages, ...	69,995 62
And for sundries, . . .	4,925 00

Q. Making a total of what?

A. $200,612.84, or sundries altogether $154,925, and adding $150,000, making a total of $350,612.84.

Q. These are the total payments?

A. Yes, sir.

Q. What was the total amount of payments in March and April for merchandise?

A. For merchandise $120,422.05 and $811.58, and wages $92,396.90; sundries, including dividend and discount, $196,851.44.

Q. That included the dividend and the discount?

A. Yes, sir.

Q. What was the amount of dividend included in that?

A. $104,714.23.

Q. That was the dividend paid on the 12 per cent.?

A. On this resolution that has been read in evidence?

Q. And the total payments for the two months was what?

A. $410,482.01.

Q. And after the dividend and these other payments had been made what was the cash balance on the 30th of April?

A. First of May?

Q. Yes.

A. $3,479.74.

Q. That is all the company had on hand after paying the dividend?

A. Yes, sir.

Q. Did the company borrow any money of the Fulton Bank on the 17th of March to make these payments, in 1883?

A. From the Fulton National Bank it borrowed $25,000.

Q. Was that what you spoke of with reference to discounts?

A. Yes, sir, that is part of that.

Q. Borrowed when?

A. On the 17th of March.

Q. 1883?

A. Yes, sir.

Q. And that was repaid before the 1st of April?

A. Yes, sir, it was repaid on the 19th and 20th, $10,000 and $15,000.

Q. You kept your accounts, as I understand you, every two months?

A. Yes, sir.

Q. Now, will you make up a statement of the taxes paid, also the insurance paid in each year since 1875, and hand it in to us from the books?

A. Yes, sir.

By Mr. Forster—We have prepared, as a matter of convenience, if your honor please, a statement of what this cash book shows, for your honor's convenience. It is rather a difficult thing to go through the book, and I have had it summarized.

Q. Did you go over, with me, these books with a view of summarizing and tabulating what the books show for the year 1882, from the 1st of January, to the 31st of December?

A. Yes, sir.

Q. Showing the gross receipts from the works and other miscellaneous receipts, and expenses of the works, bills payable, interest on money borrowed, amount paid for taxes, amount paid for insurance, and cash on hand, etc.?

A. Yes, sir.

Q. And the dividend?

A. Yes, sir.

Q. Just look that over and see if you are able to recognize that as correct?

A. That is the summary of the cash book.

Q. Now, as I understand you, the books are here?

A. Yes, sir.

Q. Which show these figures which are summarized there?

A. Yes, sir.

Q. Now, you have spoken in regard to this matter of depreciation; was the amount which was charged that depreciation fair, or not?

Objected to.

Q. State what you know about that?

A. The way we come to charge it at all was because we had run the concern for all we could get out of it during the prosperous times and had no time, neither could we allow any of the buildings to stand still or any of the machinery when there was a possible chance to make anything, so we run them to the limit of what each would go, or nearly so, and made all the money that was possible to make while there was a chance, supposing in the year 1883, there would be less business and we would have an opportunity to bring the buildings back to the condition in which they were to be under the agreement, and the same with the machinery, and after carefully looking over the matter we concluded that it would require of us nothing less than that amount to put them in shape to run and do business, and compete with other parties in the same line of business, and unless that amount was spent or even more than that, it would be useless for us to attempt to compete with other people in that business.

Objected to.

By the Court—Would the president or secretary or any other officer of the company have a right upon his own judgment, no matter how fair or sound that judgment, to make this charge without the judgment of the board of directors?

By Mr. Forster—The reply is: first, that this is a mere matter of book entry. The company parted with nothing. They had just as much money in hand after it was made as before, and my view in regard to the matter is that so far as this question of agreement is concerned the matter is immaterial for this reason. Is it supposable for one minute—suppose Mr. Grant, who is quite as much interested as Mr. Park, in having a dividend and getting as much money as he can out of the concern, suppose he had

seen fit to say: "Well, bricks have gone up, iron has gone up, and everything else, we will mark up the company $300,000, and that makes our profit and loss account show 600 and odd thousand dollars, and having marked it up and showing that amount and inasmuch as we can only show $300,000 in money how are we going to divide it, when we haven't got the money? Why, we will issue our obligations and borrow the money in the street to pay it. That would not be carrying out the agreement, but what this gentleman did, as I understand, in regard to the matter of depreciation, is precisely what Mr. Evans did in the matter of the inventory.

This company has certain assets and the inventory shows it by the items of this and that character, steel and iron; they put them down each year, as the inventory shows, apparently at what they supposed their value was for the purposes of the business, and they could go on at that value quite safely for a number of years; but these buildings had stood there and this machinery had stood there, fixed, at a fixed sum—$110,000, and $160,000 from April 1st, to July, 1875, and when there came to be a hole in the floor they merely put down a plank to repair it—(interrupted.)

By the Court—You say as a matter of book-keeping. My question is, take it to be clear, as a matter of book-keeping, that these entries are right, had the president and secretary any right to change that account without the action of the directors?

By Mr. Forster—I beg your pardon for not answering your question directly. I do not know that they had; I haven't examined that question because as I understand it, this was done with the action of the directors. I understand it was done in this way; that it was talked over and a statement showing how it should be done was presented to the directors and was accepted by them. And we have Mr. Prosser

here with a view to showing, as I understand, and as Mr. Grant has already said, that this was not a mere arrangement between the president and secretary, but was accepted by the directors.

By the Court—Proceed then; your question was objected to; my question was put to you in consequence of the objection.

By Mr. Emery—I do not care to go into any argument now, I will make the objection and it can come up before the Court on the hearing.

By Mr. Forster—We now offer for the inspection of counsel all the bonds and securities mentioned by Mr. Grant at the last hearing with the schedule of description and numbers, which we also offer for identification, schedule marked January 2, 1884, defendant.

(Mr. Forster then asked that the present witness might stand aside in order that a messenger from New York who had brought the bonds to court for the purpose of allowing inspection of them by plaintiff's counsel, might be examined and return to New York, as it was not safe for him to have in his possession so large an amount of valuable property).

Franklin H. Smith, a witness called on behalf of the defendant, being sworn according to law, testified as follows :

Direct examination by Mr. Forster :

By Mr. Forster—We produce in court $42,000 of the bonds of the Texas and St. Louis Railroad Co. Car Trust certificates at six per cent. coupons collateral, as shown on the paper marked " List of bonds, exhibit of this day for the defendant," beginning with the bonds which are marked thereon. The principal is due April 1st, 1884; one of which bonds, being the bond marked "series No. A 13, 73," we propose to retain

as a sample of the others. We also produce $52,-000 of the bonds of the Toledo, Cincinnati and St. Louis Railroad Company, 6 per cent. Equipment Trust bonds as shown on the same exhibit, one of which, being the bond marked "series C, No. 2," we propose to retain in the same way ; also $72,000 worth of the six per cent. Equipment Trust bonds of a thousand dollar seach of the Cincinnati Northern railway, due May 1st, 1884, one of which, being "series No. F. 5," we propose to retain in the same way as a sample.

Q. Now the remaining bonds except the one sample bond which we have had in court since morning, from whom did you receive these?

A. Mr. Grant.

Q. When?

A. This morning.

Q. With what direction?

A. To bring them here, show them to you, have you examine them and return them to him as quickly as possible, so that I can get back to New York with so large an amount of securities as soon as I can.

Cross-examination by Mr. Emery:

Q. In whose employ are you?

A. In the employ of Grant & Co.

Q. Were these bonds produced from the Grant Locomotive works or Mr. Grant?

A. All I know is Mr. Grant gave them to me; I don't know who they belong to; I am just acting as a messenger.

Q. You are a messenger from Mr. Grant to produce them here?

A. Yes, sir.

By Mr. Forster—There is no objection, is there, to his taking them back except the ones we will keep as samples?

By Mr. Emery—No; I would prefer he would take them back.

By Mr. Forster—Do you want to ask Mr. Evans any more questions?

By Mr. Emery—Yes, sir.

William Evans recalled for further cross-examination.

By Mr. Emery:

Q. Will you please turn to your cash book for March, the month in which the dividend was paid—(interrupted).

By Mr. Forster—One moment; I want to ask Mr. Evans a question which I omitted.

By Mr. Emery—Very well.

Re-direct examination:

Q. This entry you made in regard to this depreciation account or these entries in regard to the machinery; did it increase or diminish the value of the property in any respect?

A. No, sir.

Q. Did it increase or diminish the amount of assets the company had?

A. No, sir.

Q. Or the amount of money that they had available for dividend?

A. No, sir.

Q. It was a mere book entry?

A. Yes, sir.

Q. And could be corrected at any time?

A. Yes, sir.

Q. And if it was corrected would it change the assets that they had on hand?

A. No, sir, in no way.

Q. That's all?

Further cross:

Q. The effect of the charge would be to decrease the amount of profit and loss, would it not?

A. Yes, sir.

Q What was the total amount of payments you mentioned as being made for discounts ?

A. I said $558.38 and $10.83.

Q. Was that all ?

A. Yes, sir.

Q. Then I misunderstood you ?

A. Which will be $568, $569.

Q. You spoke just now of 196 odd thousand dollars ?

A. Yes, sir.

Q. Please give the details going to make up that item ?

A. $104,714 of it is dividends paid and $50,000 paid for Texas and St. Louis Car Trust Bonds to Kohn, Loeb & Co.

Q. You paid that for these bonds ?

A. Yes, sir.

Q. What else ?

A. $25,000 paid to the Fulton National Bank for borrowed money, and we paid P. S. Grant $10,000. That makes the total amount.

Q. Did you then buy these bonds of Kohn, Loeb & Co. ?

A. We were to take the bonds of Kohn, Loeb & Co., who were the bankers through which that business was done. The arrangement was that we were to take $50,000 in these bonds, and the money was received through our company to buy the bonds, that is, the money passed through the Grant Locomotive Works office.

Q. I do not know as I understand that. The Grant Locomotive Company you say paid Kohn & Loeb $50,000 for these bonds ?

A. Yes, sir, but they received it from Post, Martin & Co., and carried it to Kohn, Loeb & Co., and got the bonds. Post, Martin & Company got up the Car Trust, and their agreement with the Grant Locomotive Works was that we should take $50,000 in bonds and the balance in cash, and the cash to buy these bonds with came through Post, Martin & Co.

Q. Then you received $50,000 from Post, Martin & Company ?

A. Yes, sir.

Q. When did you receive that?

A. I don't know, sir. It came from the Texas & St. Louis road.

Q. You paid cash for the bonds?

A. Yes, sir.

Q. State how you received that cash?

A. We received on March 3d $19,000, and on March 19th $9,000, and on—(interrupted).

By the Court:

Q. I thought these bonds were taken in payment of locomotives?

A. They were, sir; they were. It is all straight enough.

Further cross:

Q. Proceed.

A. And on the 26th day of December, 1882, we got $50,-000.

Q. From whom?

A. We credited it to the Texas and St. Louis Railroad Company as coming from them.

Q. But here is my point, Mr. Evans. You paid in cash to Kohn, Loeb & Co., $50,000 for these bonds?

A. Yes, sir.

Q. Of the cash of your company?

A. No, sir. Well, it might in one sense be called the cash of the company, but that was our agreement and the way in which the locomotives were sold.

Q. But is not your cash account entered with the receipt and disbursement of that cash?

A. Yes, sir.

Q. Then if you entered that you paid Kohn, Loeb & Company $50,000, wasn't that a payment of cash?

A. Yes, sir.

Q. How was it paid; by check?

A. I presume so.

Q. Now you paid out $50,000 of money of this company which you had, by its check?

A. Yes, sir.

Q. Now, will you show me where you received the $50,-000?

A. Here is one item of $50,000. December 26, Texas and St. Louis Railroad, $50,000. It may have been that $50,000 turned right over.

Q. Do you know about that?

A. No, sir.

Q. Wasn't there some other besides that payment?

A. Yes, sir; I named three or four payments just now,

Q. How many more purchases did this company make of that kind of Kohn, Loeb & Company?

A. They didn't make any more. They didn't make that purchase, but that was their agreement when the locomotives were sold that we were to take $50,000 worth of bonds, and they were bought as part of the agreement.

Q. Then what is the reason for this entry?

A. As I tried to explain to you, Post, Martin & Co. were the parties who got up the car trust, and the parties to whom we sold the locomotives, with the understanding that $50,000 of that amount was to be paid for in bonds, and Kohn, Loeb & Company were the bankers of the road, and they held all the bonds, and through Post, Martin & Co., and through Kohn & Loeb, we received the bonds. We may have received the money from Post, Martin & Co. and paid it to Kohn, Loeb & Co., because the bonds might not have been ready, or we gave the road credit for the money, and when we took the bonds we charged them.

Q. You say that Post, Martin & Co. paid you?

A. They paid along as fast as we could get out bills.

Q. More than $50,000?

A. Yes, sir, the books will show that.

Q. How much was the whole amount of bonds you were to receive from the Texas and St. Louis Railroad?

A. I think it was $50,000.

Q. What other transaction did you have than that with Post, Martin & Co., in reference to that?

A. They were the parties who got up the car trust company, as I said.

Q. But this one receipt of $50,000 is the amount that you paid to Kohn, Loeb & Co.; what are the other receipts?

A. The ledger will show all that there is there.

By the Court:

Q. Let me see whether I exactly understand. Your bargain for the sale of these locomotives was made with whom?

A. Indirectly with the Texas and St. Louis Railroad Company.

Q. No; I want to know who it was made with directly?

A. The money was to go through the Car Trust, and that was raised by Post, Martin & Co., and Kohn, Loeb & Co. raised money for the Car Trust.

Q. Well, your bargain was made with Post, Martin & Co.?

A. The bargain was originally made with the president of the Texas and St. Louis Railroad Company as to the prices for the locomotives, aud the next thing was the payment, and the payment was made through Post, Martin & Co., and through Kohn & Loeb, they being the bankers and the ones who raised the money.

Q. You agreed to take in payment of these locomotives bonds of this corporation?

A. Yes, sir; $50,000 worth.

Q. And they were in the custody of Kohn, Loeb & Co.?

A. Yes, sir.

Q. Now, in order to get them from Kohn, Loeb & Co., you had to put down the money?

A. Oh; we got our first money from Post, Martin & Co. in order for the railroad company to have their bills receipted, and then we carried that money to Kohn, Loeb & Co. and took the bonds we had agreed to take.

Q. So that Post, Martin & Co. furnished the $50,000 which you paid to Kohn, Loeb & Co. for the bonds?

A. Yes, sir.

Further cross:

Q. When did Post, Martin & Co. furnish it?

A. On the several days when they were credited.

Q. When?

A. $50,000 December 26th.

Q. Now, did they furnish any more?

A. The ledger will show it all.

Q. You were to pay $50,000. Now why didn't they furnish you with more than $50,000 at that time?

A. That is all there was due at that time.

Q. Well, you say you received it from Post, Martin & Co.; what entry shows it in your books?

A. An entry to the Texas & St. Louis Railroad.

Q. What date?

A. December 26.

Q. 1882?

A. Yes, sir.

Q. Was that $50,000 in cash?

A. Yes, sir.

Q. How long did you hold that?

A. We didn't hold it specially. We put it right in the business. It was received on the 26th and credited on the 26th and used in the business.

Q. Then you paid for the bonds when?

A. We paid for the bonds on March 8.

Q. What were these other payments made to you by Post, Martin & Co. which you referred to a little while ago?

A. Payments on account of locomotives supplied to the Texas and St. Louis Railroad Company.

Q. This same $50,000?

A. No, sir; the account was a good deal more than $50,000.

Q. I thought you said $50,000?

A. That was the amount of the bonds we were to take and the balance was to be paid us in cash.

Q. Just turn to the account and see how much it was?

A. We sold them $444,412.81.

Q. From when?

A. We commenced dealing with them in 1880.

Q. And that is the total amount of the account?

A. No, sir; the total amount of the account from July 1st, 1882, to December 1st, 1882, was $444,412.81 less $76,256.81 of the balance due between May 1st, 1881, and June 10th, 1882.

Q. You spoke of a contract with the Texas and St. Louis Company?

A. Yes, sir.

Q. Where did you get the detail of that contract?

A. All the contract we have is a specification for the locomotives with the price; that is all—the price as charged in the books.

Q. Was there no correspondence or letters showing the terms?

A. Not that I am aware of.

Q. Mr. Grant has them if there are any?

A. I believe they are in Paterson; they are something we never look at after the engine is delivered and charged.

Q. But you file them?

A. Yes, sir; we have got them.

Q. You said you would make out a statement of the taxes and insurance from July, 1875; can you also make out a statement of the amount paid for the maintenance of the property since that time?

A. Well, I can come pretty close to it. I don't say that I can give you that accurately, because there would be a plank here and a plank there, and I possibly would not have it all in detail.

Q. Well, you can give it to us approximately?

A. Yes, sir; but there has been as little as possible done in the last four years with the exception of making general repairs.

Q. That's all.

Thomas Prosser, a witness called on behalf of the aforesaid defendant, being duly sworn according to law, testified as follows:

Direct examination by Mr. Forster:

Q. What is your business?

A. I am a merchant in railway material.

Q. What are your relations with the Grant Locomotive Works?

A. The old concern was a debtor of ours.

Q. To what amount?

A. About $75,000; I think it is.

Q. Are you the Thomas Prosser who was named or nominated by the general creditors as one of the three who were put in a board of five under the 8th article of agreement that was made between the company and the creditors in July, 1875?

A. Yes, sir.

Q. And have you continued a director from that time to the present?

A. Yes, sir.

Q. Have you continued interested in the company to the same extent?

A. Yes, sir.

Q. And have parted with none of your stock?

A. No, sir.

Q. Assigned to you as creditor?

A. No, sir.

Q. Now, Mr. Prosser, in regard to this matter of depreciation that has been spoken of; tell us what you know about that?

A. I remember it was talked over at the time the figures were submitted, and I believe we thought it right that the charge should be made. I didn't see that it affected anything whether it was made or not. It didn't make a dollar's worth more money or property or less.

Q. How was it talked over and where was it talked over?

A. Mr. Grant's office.

Q. Who were present?

A. Mr. Grant, and I presume the other directors.

Q. At a meeting of the board?

A. I don't know whether it was a meeting of the board or not; I don't remember.

Q. But the directors were present?

A. Yes, sir; and when the statement was submitted there was undoubtedly a meeting of the board.

Q. A statement showing the exact figures?

A. Yes, sir.

Q. And you think the matter had been talked over before?

A. Yes, sir; I think so.

Q. Were there meetings of you directors who represented the interests of the creditors under this agreement, and Mr. Grant, in addition to the formal and called meetings of the board, for the discussion of the affairs of the company?

A. Yes, sir; sometimes Mr. Grant asked me to call in and discuss matters informally and sometimes the other directors would be there, sometimes not, and sometimes he saw us separately as suited our convenience.

Q. And at these informal meetings was the business and interests of the company talked over aside from the regular meetings of the company, at which the formal action of the board was had?

A. Yes, sir.

Q. Now, were you present at the meeting when this dividend was declared?

A. Yes.

Q. Why didn't you divide any more?

A. We thought that would take all there was to divide so as to leave enough to run the place.

Q. Why didn't you divide up these obligations; all the car trust certificates, and these bonds that you had for locomotives which represented these amounts exhibited in the balance sheet; the Massachusetts Rolling Stock Co. and

the Toledo, Cincinnati & St. Louis Railroad and the Texas & St. Louis ?

A. Divide the bonds themselves, do you mean ?

Q. Yes.

A. We never entertained that question.

Q. Why didn't you sell the bonds and divide the proceeds ?

A. I understand from Mr. Grant that they were not salable at that time; that he made some efforts to try to do it and could not do anything with them except at a sacrifice which he didn't think, and we didn't think, was warranted.

Q. How does the amount which you say you are a creditor for of this company compare with the amount due to any other creditor ?

A. I believe we have the honor of being the largest one, and I think Park Bros. are next.

Q. And your associate Mr. Pierson ?

A. I don't remember what his amount was; Mr. Evans can probably tell you. It was a considerable amount.

Q. And you, as I understand, have continued one of the trustees all the time from the commencement of this agreement, and are still ?

A. Yes, sir.

Q. Have you attended all the meetings ?

A. Yes, sir.

Q. And acted for the interests of the creditors ?

A. Yes, sir.

Q. That was the only interest you had, as I understand you ?

A. Yes, sir.

Q. You were not one of the original stockholders of this company at all ?

A. No, sir.

Q. And the interest you had was your own interest as a creditor to the extent of $75,000 ?

A. Yes, sir.

Q. Holding this stock as security under the agreement ?

A. Yes, sir.

Q. Did you consider the action of the board with regard to the dividend and with regard to this depression, as for the interests of the company and for your interests?

A. I did.

Q. Now, do you recollect the correspondence with Park Bros. & Co. after the declaration of this dividend which appears by the company's minutes to have been submitted to the board?

A. Yes; I was shown several letters from them and to them.

Q. You were present at the meeting of the 12th of February, 1883, when the dividend was declared?

A. I don't remember as to the date, but I was present when it was so declared, whatever it does say there.

Q. And at the meeting held on the 13th of March when there were present, yourself, Messrs. Grant, Prosser, the president presented Park Bros.' correspondence, etc. (Counsel here read the entry from the minute book). Do you remember that meeting?

A. Yes, sir.

Q. You can state whether there was considerable discussion on the subject?

Complainants' counsel objected.

By Mr. Williamson—We offer to show what took place at that meeting outside of the minutes, by the testimony of this witness.

By the Court—You have no right to have the witness state what occurred at that meeting, except what is recorded in the book of minutes. The talk between the directors, which led to the adoption of the resolution, or to the action there recorded, is incompetent.

By Mr. Williamson—Well, we offer to prove the fact that before the board of directors met the matter was fully discussed and decided.

By the Court—I overrule your offer.

By Mr. Williamson—Your Honor will allow us an exception.

By the Court—Certainly, your objection appears.

Q. Have you any interest whatever in this company, except your interest as a creditor under this agreement?

A. No, sir.

Cross-examination by Mr. Emery:

Q. Did you attend the last stockholders' meeting in 1882, the first part of the year, or only the directors' meeting?

A. Only the directors' meeting.

Q. Did you ever attend a stockholders' meeting?

A. I think not.

Q. Did you ever get notice of when the stockholders' meeting was to be held. I mean the meeting of all you gentlemen who were creditors under the agreement?

A. No, sir, I think not.

Q. Did you ever know that Mr. Wallace had resigned?

A. Yes, sir.

Q. That was indicated, I suppose, to the meeting of the board or to the directors, in some way?

A. Yes, sir.

Q. Well, do you know that in 1882 there was nobody elected to his place, and that there were only two of you gentlemen creditors under the agreement?

A. Yes, sir.

Q. Do you know why no steps were taken to appoint another creditor?

A. Because we could not find anybody who wanted to serve.

Q. Did you ever speak to the next largest creditor to yourself—Park Bros.—about it?

A. No, sir.

Q. Haven't you understood that they wanted to be represented there?

A. Latterly I have understood so.

Q. When did you understand that?

A. I guess it was quite recently.

Q. Well, before—(interrupted).

A. About the time of the commencement of this suit.

Q. He has not made any application since the commencement of the proceedings?

A. There was none at the time I speak of and none of them were living in New York at the time of the vacancy?

Q. Do some members of his family live near New York in New Jersey.

A. I don't know it.

Q. You don't know then why no other member of the family were elected in order to have three directors?

A. No, sir.

Q. Don't you know there was some question raised by Park Bros. & Co. in reference to the manner of keeping the account of the profits?

A. I knew, of course, when this correspondence came up.

Q. You say you didn't think that the charge of $50,000 off against the real estate, made any difference. Do you recollect how much anybody talked with you about charging off that amount?

A. It was discussed between Mr. Grant, and I presume Mr. Pierson, and myself.

Q. Whereabouts?

A. In the office.

Q. What office; in New York?

A. Mr. Grant's office.

Q. What did he tell you he had charged off—how much?

A. Well, as I understood it, the amount was $50,000, whatever it is on the statement.

Q. Had your attention been called to the agreement at the time the talk of charging off this amount occurred?

A. I don't know as we considered the agreement at all particularly.

Q. You never considered that; that didn't occur to you at the time?

A. I don't know as it did.

Q. Do you say now the charging off $50,000 to the depression of real estate makes no difference in the account rendered under the agreement?

By the Court—It is proper I should call your attention to the fact, and I suppose you are opening the door now which you asked me to close against the defendants.

By Mr. Emery—Well, he said these talks were at the meetings—these talks about charging off, and there is no record in the minutes of any charging off.

By the Court—He speaks now of what occurred at the meeting between Mr. Grant, Mr. Pierson and himself; he says they were present, and as I remember the minutes at which this action was taken, the board consisted of Mr. Grant, Mr. Prosser and Mr. Pierson.

By Mr. Emery—But that was in reference to the dividend. I am asking now about the charging off to the real estate, and that does not appear in the minutes at all.

By the witness—We simply accepted the statement as rendered.

By the Court—I understand his testimony to be that at a meeting of the board this subject was discussed.

By Mr. Emery—My recollection was that he said that it was at an informal meeting of which there was no record.

By the Court—Very well; proceed then.

By Mr. Williamson—We object to this evidence on the ground that the court has already determined

that we could not prove what was said by the directors at their meetings.

By the Court—Mr. Emery is referring to a matter now that does not appear on the minutes at all, but which you have proved as I understand.

By Mr. Emery—Very well, then, I move to strike out all that evidence of what passed at the informal meeting and which now appears on the record.

By the Court—Proceed.

Q. When Mr. Grant spoke to you in New York about this charging off of $54,000, did you have the books of the company there so as to see what the amount originally stood at?

A. No, sir; the books were not there. We had the old statement.

Q. Well, now, do you say now that under that agreement a charge off of $50,000 to the depreciation of real estate makes no difference, in your opinion, to the interest of the creditors under the agreement?

A. I do.

Q. Wouldn't it have the effect to reduce the amount of net profits under the agreement?

A. The charge does not affect the value of the property in any way; it don't take a dollar away or add a dollar.

Q. But suppose the company started with $600,000, and with an agreement that they should divide all made over $600,000, after paying out certain expenses, would not then a charge of $54,000 against the property reduce the amount of your profits?

A. Well, if you were going to make settlement at once, it might, but the only way of our getting our debts paid is by continuing the business, and the business can't be continued without a large expenditure for machinery and repairs, and it is only a matter of saving money two or three years, and also having capital to run the business with.

Q. In order to run the business you think it is necessary

to have a working capital in addition to that provided for by the agreement?

A. There is none provided for by the agreement.

Q. Do you consider that in order to carry on the business it is necessary to have a working capital?

A. Yes, sir.

Q. Do you, in your management of the business, carry it on with a view to accumulating a working capital?

A. Yes, sir; certainly.

Q. Although none was provided for by the original agreement?

A. How could you carry it on without a capital?

Q. Do you then, in the management of the business, consider you had a right to accumulate a working capital in addition to that provided for by the agreement?

A. What do you refer to as provided for by the agreement?

Q. Well, you said none was provided for by the agreement.

A. Well, you say there is. What do you refer to—that in the plan?

Q. Everything; the whole thing. Well, I only wanted to know what your idea was of the way you should carry on the business of this company, and you say you consider it necessary to accumulate a working capital?

A. Yes, sir.

Q. And have carried it on with that view since?

A. Yes, sir.

Q. And you don't understand that any working capital was provided by the agreement itself—that was your understanding of it?

A. There was no cash capital that I am aware of.

Q. Well, that was your understanding of it?

A. Yes, sir.

Q. That the agreement provided none, but in carrying on the business it was necessary to accumulate a working capital?

A. In other words a surplus should be retained to carry on the business.

Q. And in your management of the affairs of the company that is the object you have had in view; to accumulate a surplus for carrying it on?

A. No, sir; my general object had been to get dividends as fast as we could, but that was impossible without money to work with to make them.

Q. Without a working capital?

A. Yes, sir.

Q. That's all.

Re-direct:

Q. I find during this year, 1882, there was paid for interest on the money borrowed to run the works, $7,492.47; how was that necessary?

A. Well, I have understood it that when the concern got short Mr. Grant would loan them money?

Q. And also that they borrowed of the Fulton National Bank?

A. Yes, sir; so I understood by the books.

Q. Did they borrow from any other sources besides Mr Grant's concern and the Fulton National Bank?

A. I couldn't say.

Q. You remember those two?

A. Yes, sir.

Q. And what amounts do you remember that were borrowed at any time?

A. I never examined into that.

Q. You remember the resolution in the minutes in that regard, don't you?

A. That was some time before the concern got into making money; some years back; and Mr. Grant agreed to advance so much money, and since then there has been no specific mention of it.

Q. Do you remember a meeting held August 19, 1880; present, Thomas Prosser, William H. Wallace, J. Frederick Pierson; on motion resolved to meet the expense of this

company for money to pay existing debts and a working capital to carry on the business, the president and secretary be, and they are hereby authorized to make and issue the notes of this company to be used in payment of merchandise or discounts, in such an amount as is necessary?

A. Yes, sir.

Q. You remember that resolution?

A. Yes, sir.

Q. You three gentlemen, representing creditors, were the only directors present and acting at that time?

A. Yes, sir.

Q. Was that the way from that time that you raised a working capital to carry on the business?

A. Yes, sir; as I understand it. I don't know as there has been any necessity for it except occasionally; Mr. Evans can tell more about it than I can.

Q. You acted under that resolution and that was the manner in which you got your working capital to carry on the business?

A. At the time we had no money, and Mr. Grant advanced it, and when it became so that they did have money of its own, Mr. Grant didn't want to loan anymore, and we proposed to run it by the company's means.

Q. Did you, in 1883, after the first of January, borrow any other money besides the $25,000 of the Fulton National Bank?

A. I don't know.

Q. You don't remember whether you did or not?

A. I don't know.

Re-cross;

Q. Do you know whether any money has been borrowed in carrying on the business since that time?

A. Since 1883?

Q. Yes.

A. No; I don't know.

Q. You haven't looked into the affairs of the company for the purpose of obtaining that information?

A. No, sir.

Q. Have you ever seen the books of the company till they were produced here to-day?

A. Yes, sir; I have seen them occasionally at the shop.

Q. In Paterson?

A. Yes, sir.

Q. That's all.

William Evans, recalled.

By Mr. Forster:

Q. On the sixth of January, 1882, was there a note of this company paid?

A. Sixth of January, 1882?

Q. Yes.

A. Yes, sir.

Q. And when was that note made and when was it payable?

A. It was due on December 25, and was paid on January 6th.

Q. What was the amount of it?

A. $70,000.

Q. Was any other paid on January 17th?

A. Yes, sir; $50,000.

Q. When was that due?

A. That was due December 31st.

Q. But neither of those notes were paid for some weeks after their maturity?

A. No, sir; one twelve days and the other seventeen days after.

Q. Were there any other notes paid on the 17th of February, 1882?

A. Yes, sir; $60,000.

Q. And when were those notes made or when were they payable?

A. They were payable on the 17th of February.

Q. And these notes were paid at maturity?

A. Yes, sir; three notes of $20,000 each.

Q. Now, in addition to the $25,000 borrowed of the Fulton National Bank in 1883, were other moneys borrowed of this company for carrying on the business?

A. Yes, sir; whanever it was necessary.

Q. On the 1st of May their cash balance had been reduced to the amount of 3,000 odd dollars?

A. $3,479.74.

Q. Now, from that time, can you say whether they had to borrow any money?

A. Yes, sir; on the 16th of May, they borrowed $50,000.

Q. And then two or three weeks after that?

A. And on the 26th of May they borrowed $20,000.

Q. That's all.

Cross-examination:

Q. You say that $50,000 on the 16th of May, was borrowed; now, how was it borrowed?

A. On a note of two months.

Q. Of whom?

A. R. S. Grant.

Q. Yes.

A. Or of the Fulton Bank, I don't know which.

Q. What did you give as a collateral to secure the note?

A. We didn't give anything that I am aware of.

Q. Who made that loan?

A. Either the Fulton Bank or R. S. Grant, I don't know which; the books will show.

Q. You can't tell?

A. No, sir; in all probability it was R. S. Grant; they were the only parties we borrowed money of—R. S. Grant and the Fulton Bank. They were only temporary loans.

Re-direct:

Q. You said the note was two months?

A. Yes, sir.

Q. Where did the company keep its bank account?

A. The Fulton National Bank.

Q. The same bank you mentioned as the one they borrowed money of?

A. Yes, sir.

Re-cross:

Q. Will you make out that statement of the taxes and insurance and the amount paid for the repairs of the works?

A. The amount paid for the repairs of the works will have to be made at the works, and will take a little while. I can make out the tax and insurance payments from these books.

Q. I want the whole of the items under the agreement and will be glad if you will make your items with reference to the books, so that it can be verified by the books if necessary?

A. Yes, sir.

Re-direct:

Q. You will make that statement out, Mr. Evans?

A. Yes, sir.

By the Court:

Q. I understand that one of the accounts cannot be made here?

A. No, sir; these items for the repairs in maintaining the works are at Paterson.

By Mr. Forster—We offer in evidence this summarized statement of Mr. Evans. I have a copy which the other side may have if they like.

By Mr. Emery—Did you make it out?

By Mr. Forster—Mr. Evans and I made it out.

By Mr. Emery—If you say it is correct, we have no objection to it.

Said statement marked exhibit January 2, 1884, defendants, No. 2.

By Mr. Forster—We want to examine Mr. Grant to make clear what the complainant has asked Mr. Evans about, in regard to the $50,000 paid to Kohn, Loeb & Co. That is all we desire to ask him and

we would prefer, if we can, to adjourn now and to call him on the day that the complainants go on with their examination; this being the first business day of the year it would be more convenient not to call him to-day.

Adjourned till Thursday, the 28th day of February, A. D., 1884, at the hour of 10 o'clock in the forenoon, at the Vice Chancellor's chambers.

Before His Honor, Abraham V. Van Fleet, V. C.

Transcript of shorthand notes of testimony taken at the trial of the above stated cause at the chambers of the Vice Chancellor, Newark, N. J., on Tuesday, the first day of July, A. D. 1884.

Appearances, Mr. John R. Emery, for Complainants, Chancellor Wllliamson, for Defendants.

Mr. Evans produced the original contracts with the Texas and St. Louis Railroad Company for the construction of locomotives, referred to in his previous examination. One dated January 9th, 1882, for constructing twenty locomotives; and one dated January 9th, 1882, for the construction of thirteen locomotive. Said contracts offered in evidence and marked Exhibits 1 and 2 respectively, of this date.

William W. Evans, recalled for further examination.

By Mr. Emery:

Q. You were to make out, Mr. Evans, a statement of the taxes and insurance paid on the Grant Locomotive Works, from 1875, when the operation under this agreement commenced ?

A. Yes, sir.

Q. Have you made out such a list with the assistance of Mr. Lewis?

A. Yes, sir.

Q. (Showing witness a paper). Is this it?

A. It is; yes, sir.

Said statement of taxes and insurance paid on the Grant Locomotive Works, offered in evidence by Mr. Emery, and marked Exhibit 3 of this date, July 1st, 1884.

Q. Have you also made out a statement of the expenses paid for maintenance of the property?

A. Yes, sir.

Q. Is that it?

A. Yes, sir.

Said paper offered in evidence by Mr. Emery, and marked Exhibit 4 of this date

Q. This covers the same interval?

A. Yes, sir.

Q. These amounts, I understand you, were taken from the books and can be verified, if required?

A. Yes, sir.

Q. Were there any other contracts than these two you have here produced, that you know of, made previous to January 1st, 1883?

A. Contract given for what?

Q. For the making of locomotives?

A. There were a great many contracts.

Q. But these were the only ones which relate to the items that were included in the amounts outstanding?

A. Those are the only ones that I know of that have been brought in question.

Q. For what other railroad did you manufacture locomotives which were not paid for on January 1st, 1883, and the purchase money of which was included in that item of the account called "Debts due from sundry parties"?

A. The balance sheet will show it; you have that.

Q. You don't recollect?

A. The balance sheet will show that.

Q. Have you got the balance sheet here?

A. No, sir, I have not. There is no others that there is anything connected with in the shape of bonds, except the Toledo, Cincinnati and St. Louis, and the Texas and St. Louis.

Q. Were all the contracts for the Toledo, Cincinnati and St. Louis—(interrupted).

A. I don't as there were ever any contracts made with them.

Q. I think you said that the only one was the Texas and St. Louis?

A. The only one that had anything to do with bonds. The others were supposed to be cash; and I guess they were cash.

Q. In your evidence given on the 22d day of December, 1883, this statement occurs. I will call your attention to it to see whether there are any contracts with other roads. You were asked: "What was the amount; was one of these parties the Massachusetts Rolling Stock Company? A. Yes, sir. Q. What was the amount of that? A. The sale of locomotives. Q. For what? A. For bonds. Q. What sort of bonds? A. Bonds called bonds series 'C' of the Toledo, Cincinnati and St. Louis Railroad." Now, was there any written contract for the sale of locomotives in that transaction?

A. No, sir, not that I know of.

Q. If there is any written contract it is not in your office?

A. I don't know that I have ever seen any.

Q. You have never seen a written contract for the sale of locomotives in that transaction?

A. No, sir; I don't think that there was one; theirs were made in a different way.

By Chancellor Williamson :

Q. There was somebody up in the office at Paterson in behalf of the other party to examine the books, were there not?

A. Yes, sir.

Q. Were the books shown?

A. Yes, sir.

By Mr. Emery :

Q. You say these were the only contracts for locomotives for which bonds were taken, and which were made in a different way?

A. The contract for locomotives is generally made to specify the kind, class and condition of locomotives.

Q. What do you know about the concluding terms of the contract?

A. That was done in New York.

Q. And you don't know about the terms of the contract?

A. I know what the result was.

Q. You only know what the result was?

A. That's all.

Q. That's all.

Richard S. Grant, recalled for further examination.

By Mr. Emery :

Q. Mr. Grant, can you tell us whether there are any written contracts of the Grant Locomotive Company for the engines that were furnished to the Toledo, Cincinnati and St. Louis Railroad Company; we have those that relate to the Texas and St. Louis?

A. I don't think we ever had any contract; I think it was a verbal transaction.

Q. With whom; do you recollect?

A. Well, I think the first one was made with Mr. Pyne or Mr. Philips, who was president of the road, or probably it was made with Mr. Pomeroy, who was then president; I don't know which.

Q. Who made them on behalf of the Grant Locomotive Works?

A. I think the original was made by Mr. Evans and proved by me.

Q. Did you not have memoranda of that contract?

A. There must have been, I presume, some memoranda made. I don't recall where it might be; but I think there must have been some memoranda.

Q. Mr. Evans says that on examination he doesn't find anything relating to them in the Paterson office; have you looked through the papers you have at the New York office to ascertain whether there are any memoranda of this contract there?

A. I have not looked; I can look, I suppose, and find out if there is anything; I can easily give the facts in regard to the case.

Q. I wanted, if possible, to get better evidence; I wanted to get any written memoranda that might have been made at the time for furnishing locomotives to that company?

A. I should have to look that up. I didn't know that was wanted, and I didn't look it up. I thought you wanted some information in regard to the Texas and St. Louis contract—I mean in regard to the transaction of fifty thousand dollars. I thought you wanted something in regard to that transaction by which fifty thousand dollars of bonds were taken. You asked me before and wanted me to produce them.

Mr. Emery—That was your testimony, Chancellor.

By Chancellor Williamson:

Q. State the reason now?

A. They wanted that information. You wanted to know why.

Q. State the reason?

A. Those contracts were made as they are stated. And when the money became due—in fact before it became due

—they indicated that it wouldn't be convenient to pay that on the terms of the contract; and they said if I wanted to take fifty thousand of the car trust certificates they would create a car trust. Believing that to be a good settlement I said to Kohn, Loeb & Company, who were the agents, I said that I would take it; when I was paid in that way I received the money from the company and paid it back to Kohn, Loeb & Company, it being, in my judgment, a judicious method for obtaining that money. That explains why I took car trust certificates, from a different party who don't appear in the contract, and who came to me as the financial agent for the company, and said if you will do so and so we will arrange the payment.

By Mr. Emery;

Q. Do you recollect when you took this money?

A. When I took which money?

Q. You said the company gave you money?

A. They paid after the locomotives were delivered.

Q. Over what period did it extend?

A. It extended over the period from September, 1880; I don't remember what the year was; 1882, 1883—1882, I think, from September to February—even later than that; I don't remember exactly.

Q. Did you not get from the company the money for these locomotives, with which money you afterwards purchased the bonds?

A. I got the money with the understanding that when I was paid I should take the bonds.

Q. This money appears to be received according to my recollection in September, 1882—by the terms mentioned in this contract for twenty locomotives, the locomotives were all to be paid in September, 1882; how did you advance the time of payment by changing those terms?

A. I was obliged to wait until I could get it; I couldn't pay it before; I was obliged to wait as they hadn't effected their arrangements for the issuing of these car trusts; there was $350,000 worth of car trusts; my arrangements to take

the car trusts were made in July; and when the papers were prepared they then tendered me the bonds; that was some time afterwards.

Q. You paid them interest on this money; did you not?

A. The car trusts drew interest; and in addition to that I delayed paying for those bonds because I had an unsettled account with the Texas and St. Louis, which was not covered by either of those contracts, and I wouldn't take the bonds until the whole transaction was settled; so that I delayed until it was possibly March; but I delayed because of this old account, which had no relation to those contracts, was settled. I told Kuhn, Loeb & Co. that I would take those bonds when the railroad company had settled my account; it took me nearly three months to get that account settled. If the company had paid its accounts promptly, the bonds would have been taken at exactly the same time; but the taking of the bonds was simply to effect the arrangement of this transaction.

Q. With whom did you make this arrangement for taking the bonds?

A. The firm of Kuhn, Loeb & Company.

Q. Did Martin, Post & Company have anything to do with it?

A. They were the ones who negotiated the car trusts. They had nothing to do except to pay me the money under the—they received the money for the car trusts.

Q. Car trusts are those things which you describe as the bonds?

A. They are the bonds; they are deposited with the Trust Company; Post Martin & Company were the company who negotiated the car trusts; they took those not only for my locomotives, but for rolling stock. The railroad company decided that it would make a car trust covering that stock, if the Grant Locomotive Works would do something towards taking the bonds; and I consented to take fifty thousand.

Q. How about the bonds for the Toledo, Cincinnati &

St. Louis ; how were those taken ; was the original contract with them for cash ?

A. I think the original contract was for cash ; and then I found they couldn't pay cash and I, having the locomotives built and wanting to sell them, I took the best I could get, which was to accept this settlement.

Q. How many did you furnish for them ?

A. Twenty.

Q. Do you recollect the price of those ?

A. Ten of them were at $10,500 (ten thousand five hundred dollars) ; five of them were at ninety-five hundred dollars ; the rest were at five thousand dollars.

Q. Did you take all of that—was the original agreement for the payment of all those in cash on delivery ?

A. No ; I have to trust to memory to get that straight. The original agreement was ten for ten thousand five hundred dollars a piece ; and I agreed to sell them. I sold them for bonds, and parties interested in the railroad agreed to take half the bonds. So that the original ten I only received fifty thousand of the bonds for. The others were sold for cash, and then they were unable to pay, I having the locomotives built, I took what I could get.

Q. That purchase amounted to $71,000 ?

A. It amounted to more than that ; it amounted to ninety odd thousand dollars, and then they paid eighteen thousand cash, and the balance left $72,000, for which I took car trusts.

Q. Over what time did those extend ?

A. Sixty months.

Q. Now, if you will send out those memoranda you have, to-morrow morning, I will be obliged to you, Mr. Grant. That's all.

A. In asking for papers, I doubt very much that I will find anything that is a document between this railroad company and myself, or the Grant Locomotive Works. It was largely done verbally.

Q. Well, you will find out what you can ?

A. I can find out the dates as near as may be and a state-

ment that those are the facts in the case. I doubt very much that there is anything more of possible communication between Mr. Evans and myself. I will give all the information that I can; I will give all that I can find. I only want to say now, that if it is dependent upon my finding an original agreement, I might as well say I can't find any.

Q. The way your business was carried on, you being in New York and Mr. Evans there, and these other officers of the railroad companies having their own offices, there ought to be memoranda or data in writing from which the original terms of the contract—

By the Court—I understand Mr. Grant to say that he has some such memoranda.

The witness—Something of that kind.

Q. When you were on the stand before I asked for those, and I understood you would get them?

A. It escaped my memory.

Adjourned until Wednesday, the second day of July, A. D. 1884, at the Chambers of the Vice Chancellor, Newark, N. J.

Vice-Chancellor's Chambers, Newark, N. J.,
11 A. M., July 2, 1884.

Owing to the failure of counsel for defendant in this cause to appear, the further hearing hereof stands adjourned until such day as may be determined upon by the respective counsel herein, agreeable to the appointments of the Court.

Before Vice-Chancellor Van Fleet.

Mr. Emery, for complainants.

Mr. Williamson and Mr. George Forster, for defendants.

Transcript of shorthand report of evidence given on the

trial of this cause at Newark, New Jersey, on Friday, the 11th day of July, 1884.

Richard Evans, a witness heretofore sworn, is recalled for further examination.

By Mr. Emery :

Q. You were going to make an examination of the books and papers of the Grant Locomotive Works, at their office in New York, for the purpose of ascertaining whether there was any written memoranda in reference to the sale of locomotives to the Toledo, Cincinnati and St. Louis Railroad Company ?

A. Yes, sir.

Q. Have you made it?

A. I have.

Q. What did you find ?

A. I don't find anything in the way of papers ; but I have refreshed my memory about it and I know about what the transaction was.

Q. In what method have you refreshed your memory ?

A. From the books.

Q. You found no writing except the entries in the books ?

A. In the books.

Q. Were there no letters from Mr. Grant to yourself at the works ?

A. No, sir.

Q. And none from you to him ?

A. No, sir.

Q. Or copies of them ?

A. Not that I am aware of.

Q. And no written memoranda of the contract?

A. The engines were not made on contract. They were made originally for the Denver and Rio Grande Railroad Co., but owing to the failure of the Denver and Rio Grande Railroad Co. to take them, or at least to satisfy us that they were able to pay for them, we refused to deliver them on

their contract and they were placed on storage in the yard at Paterson and Mr. Grant sold them sometime afterwards. After they had been on storage probably three months he sold them direct to the president of the road.

Q. How many were sold?

A. Ten.

Q. At what price?

A. $10,500 each.

Q. And bonds were taken for the whole amount?

A. No, sir.

Q. For how much?

A. Fifty per cent. was cash and fifty per cent. bonds.

Q. Is that all you have ascertained in reference to the transaction?

A. In reference to these ten, yes, sir. The second ten were a part of twenty that I sold myself. Mr. Grant at that time was in Europe. We had five of them under way which we intended to have sold to the Texas and St. Louis Railroad Company, but their inability to take them just at that time left what we supposed was a better sale, open to us, so I sold them direct to the president and general manager of the road myself.

Q. On what terms?

A. Mr. Grant afterwards settled that, because we did not give them the twenty, we only gave them ten.

Q. And he settled the terms?

A. Yes, sir, afterwards; I agreed to sell them for bonds if we had delivered the whole twenty, but we did not, we only delivered ten, and Mr. Grant made the settlement, which was twenty per cent. cash and the balance bonds.

Q. There was no written agreement of sale in that case?

A. No, sir; there was a telegram from the president accepting the terms, and on that the bill was made; an ordinary bill for the engines.

Q. That was a telegram accepting your telegram stating the terms?

A. No, sir; Mr. Grant made the proposition verbally.

Q. The terms of settlement or the original terms of purchase?

A. The terms of settlement.

Q. Where was the telegram dated from?

A. From Cincinnati.

Q. Where did Mr. Grant see him personally?

A. In Boston; Mr. Grant had written to him, "I have your letter of the 11th, the statement is quite satisfactory, etc."

Q. Then the proposition was in writing?

A. So I see.

Q. Did you find that letter?

A. No, sir; I did not.

Q. Is there any copy of that letter?

A. I presume there is a copy in the New York office.

Q. Did you look for copies of letters?

A. Not in the New York office; I looked in Paterson.

Q. I thought that is what you were to do?

A. Well, here is what it is; it is just a proposition to sell ten engines, five of them at $9,500 and five at $9,000.

Q. For what?

A. And agreeing to take fifty per cent. cash and the balance in car trusts.

Q. Is that on the memorandum?

A. No, sir; but that is what it was.

Q. Well, it must have been a writing that contained those terms, and that is just what you were to look for and bring here as I understood?

A. I did not so understand it; I just happened to get that.

Q. There is a copy of that letter in New Yoak?

A. Yes, sir.

By Mr. Emery—I won't trouble you to come back again, but send us a copy of that letter, with your affidavit that it is a copy.

By the witness—Yes, sir.

Cross examination by Mr. Forster:

Q. While Mr. Grant was in Europe you made a sale verbally on this last transaction of twenty locomotives?

A. Yes, sir.

Q. For bonds?

A. Yes, sir.

Q. And when Mr. Grant got back those twenty locomotives had not been delivered?

A. No, sir.

Q. And the whole twenty never were delivered?

A. No, sir.

Q. There were never but ten delivered?

A. Yes, sir.

Q. And they were delivered on a new arrangement which this telegram has reference to?

A. Yes, sir.

Q. And the copy of the letter also?

A. Yes, sir.

Q. Mr. Grant will have that?

A. Yes, sir.

Q. It was only ten of the locomotives that ever were delivered under this new arrangement?

A. Yes, sir.

Q. And that took the place of the arrangement which was made for the twenty locomotives?

A. Yes, sir.

It is understood that the proofs are now all in except a copy of a letter referred to in the telegram and also the telegram.

Said telegram marked for identification 1, July 11th, 1884.

(Copy of letter referred to.)

No. 33 Wall St., N. Y.,
January 11, 1883.

E. B. Phiplips, Esq., Prest.

Dear Sir:—Hereby I beg leave to confirm the agreement made by Mr. Hyde, yourself and me on the 5th inst., for the sale of ten (10) locomotives, as follows—

Toledo, Cincinnati and St. Louis Railroad Co.

To R. Suydam Grant, Dr.

1882.			
Aug. 29th,	For 5 Loco. Engines and Tenders, complete,	$9,500	$47,500 00
Nov. 29th.	For 5 Loco. Engines and Tenders, complete,	$9,000	45,000 00
			$92,500 00
	Less 5 per cent.,		4,625 00
			$87,875 00
	Add 118 days' int. to Feb. 10, 1883,		1,728 21
			$89,603 21
	20 per cent. Cash payment,		17,920 64
			$71,682 57
	2¾ years interest at 6 per cent.,		11,827 61
			$83,510 18

Payable in sixty (60) equal payments, commencing *May 10, 1883*, $1,391.84.

Mr. Hyde was here to-day and will communicate the result of our conversation, both in regard to the Trust ownership and as to the future needs of your Company. Your acknowledgment of the receipt of this and correctness of the statement, will be sufficient contract for both of us, pending the transfer of ownership to the Trustee.

I presume our Secretary has already informed you of his progress in shipping the five locomotives.

Yours respectfully,

(signed) R. S. GRANT.

Exhibit 1, July 11, 1884.

CINCINNATI, O., Jan. 15.

R. S. GRANT, 33 Wall street, N. Y.

I have your letter of the eleventh. The statement is quite satisfactory, and when I return will have the thing put into proper shape. Please hurry the engines on.

E. B. PHILLIPS, Prest.

EXHIBITS FOR COMPLAINANTS.

Exhibit 1, (Page 41).

Statements from balance sheets, July 1, 1875, January 1, 1877, January 1, 1878.

Exhibit 2, (Page 41).

Letter of January 2, 1882, and balance sheet, January 1, 1882, being printed as schedule B, to bill, pages 14, etc., ante.

Exhibit 3, (Page 41).

Statement of balance sheet for January 1, 1883—printed as schedule B, ante pages 16 and 17.

Exhibit 3, July 1, 1884, (Page 132).

Statement of taxes and insurance paid 1875 to 1882 inclusive, being *taxes*, $39,393.46—*insuarnce*, $16,422.58.

Exhibit 4, July 1, 1884, (Page 132).

Statement of expenses paid for maintenance of property from July 1, 1875, to January 1, 1883, being

1875	$2,945 93
1876	2,859 78
1877	12,303 02
1878	1,635 93
1879	12,866 98
1880	10,568 94
1881	27,184 76
1882	28,067 43
	$98,432 27

EXHIBITS FOR DEFENDANTS.

Exhibit January 2, 1884.

List of bonds, page 108.

Exhibit January 2, 1884.

Defendants No. 2. page 130, summarized statement from books.

Exhibit 1, July 1, 1884, (Page 131).

Agreement made this ninth day of January, 1882, between the Grant Locomotive Works of Paterson, N. J., party of the first part, and the Texas & St. Louis Railway Co. in Missouri & Arkansas, party of the second part,

Witnesseth, that the party of the first part, hereby agrees to construct for the party of the second part, twenty locomotive according to the specifications hereunto annexed, and to deliver them at the New York, Lake Erie and

Western R. R. depot in Paterson, N. J., as follows: Ten in and during the month of August, and ten (20 in all), during and in the month of September, 1882, and the party of the second part agrees to pay to the party of the first part the sum of ten thousand dollars in United States currency on presentation of shipping receipt of each of the above locomotive.

And it is further agreed that for each day's delay in the delivery of any of the locomotives beyond the time above named, the party of the first part shall deduct twenty dollars from the above named price to be paid for each locomotive, except such delay shall be the result of stoppage of work caused by fire, strike of employees, or break down of factory.

Witness our hands and seals this ninth day of Jan'y, 1882.

Grant Loco. Wks.,
By R. S. Grant, *Pt.* [L.S.]
Texas & St. Louis Ry. Company
In Missouri & Arkansas,
By J. N. Paromore,
Pres't. [L.S.]

(Specifications annexed.)

Exhibit 2, July 1, 1884, (Page 131).

Agreement made this ninth day of January, 1882, between the Grant Locomotive Works, of Paterson, N. J., party of the first part, and the Texas and St. Louis Railway Company, in Missouri and Arkansas, party of the second part,

Witnesseth, that the party of the first part, hereby agrees to construct for the party of the second part thirteen locomotives, according to the specifications hereunto annexed, and to deliver them at the New York, Lake Erie and Western R. R. depot in Paterson, N. J., as follows: During the month of October, 1882, and the party of the

second part agrees to pay to the party of the first part the sum of eleven thousand five hundred dollars in United States currency on presentation of shipping receipts of each of the above locomotives. And it is further agreed that for each day's delay in the delivery of any of the locomotives beyond the time named, the party of the first part shall deduct twenty dollars from the above named price to be paid for each locomotive, except such delay shall be the result of stoppage of work caused by fire, strike of employees, or break down of factory.

WITNESS our hands and seals this ninth day of January, 1882.

GRANT LOCO. WORKS,
By R. S. GRANT, *Pt.* [L.S.]

TEXAS AND ST. LOUIS RY. COMPANY,
IN MO. AND ARKANSAS,
By J. N. PAROMORE,
President, [L.S.]

(Specifications annexed).

N. J. COURT OF ERRORS AND APPEALS.

BETWEEN WILLIAM G. PARK, ET AL., *Appellants,* AND THE GRANT LOCOMOTIVE WORKS, ET AL., *Respondents.*	On Appeal from decree advised by Vice-Chancellor Van Fleet. Petition of Appeals.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of William G. Park, Richard C. Gray, Winfield S. Kennedy, David E. Park, De Witt C. Clapp, John M. Clapp, James H. Park, Richard G. Park and Sarah G. Park, sole executrix of James Park, junior, deceased, the appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of the State of New Jersey, bearing date the fifth day of December, in the year eighteen hundred and eighty-five, in a certain cause therein depending, wherein your petitioners were complainants, and The Grant Locomotive Works and others were defendants, in this respect, to wit: That the said decree adjudges that under the agreement bearing date June 14th, 1875, set out in the bill of complaint in said cause, and for the purposes of said agreement, the capital of the said corporation The Grant Locomotive Works was fixed at the sum of six hundred thousand dollars, to wit: three hundred thousand dollars capital stock and three hundred thousand dollars profit and loss account; and that the said sum is the basis or standard from which the net profits under said agreement are to be calculated: and that the amount of net profits under said agreement as shown by the balance sheet of December 31st, 1882, was

three hundred and ten thousand dollars; and that the whole of said amount was not divisible as dividends under said agreement; and that your petitioners were not entitled to a greater dividend in eighteen hundred and eighty-three than the directors declared;

And your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous; for that under said agreement and for the purposes therof, the capital of the said corporation should have been held to be fixed at the sum of three hundred thousand dollars, being the capital stock of said corporation; and that the said sum of three hundred thousand dollars should have been held to be the basis or standard from which the net profits under said agreement were to be calculated; and for that, it should have been adjudged that under said agreement the net profits as shown by the balance sheet of December 31st, 1882, was six hundred and ten thousand dollars; and for that it should have been adjudged that the whole of said amount was divisible as dividends under said agreement, and that your petitioners were entitled to a greater dividend in eighteen hundred and eighty-three; and for that the said decree in other respects was erroneous.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden, and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

JOHN R. EMERY,

Solicitor and Counsel for Petitioners.

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