New Jersey Court of Errors and Appeals

GEORGE SIEGEL, *Plaintiff-Respondent,* *vs.* RIVERSIDE BOX & LUMBER CO., a New Jersey Corporation, JAMES J. NEARY, LOUIS ROMANOFF and WILLIAM MORRIS, *Defendants-Appellants.*	*Action at Law.* *On Appeal from Circuit Court.*

APPELLANTS' BRIEF.

1.

STATEMENT OF THE CASE.

Louis Romanoff, William Morris, James J. Neary and Charles Lefkowitz were the promoters of Riverside Box and Lumber Company, which was incorporated on June 5, 1914; on June 6, 1914, the first meeting of incorporators and directors was held, and at the directors' meeting it was resolved:

"That ten shares of the capital stock be issued to one Louis Romanoff, for services performed by him and other persons who assisted him in organizing and developing said company, and that such stock shall be issued to any person designated by him for the use of said person, and that all said

above referred to stock shall be considered fully paid up and not liable to any assessment." (Exhibit P. 1, p. 76, l. 30.)

On June 9, 1914, in accordance with above resolutions, a certificate for ten shares of the capital stock was issued, in the name of Annie Kashowitz, and on June 10, 1914, said certificate was assigned to George Siegel, the plaintiff. (Exhibit P. 3—P. 78, 79.)

On September 11, 1914, George Siegel requested that the shares of stock be transferred on the books of the Riverside Box and Lumber Company, but the officers refused to comply with said request. Suit was thereupon instituted against Riverside Box and Lumber Company, and against Louis Romanoff, William Morris and James J. Neary, three of the officers, who were also three of the promoters, to recover damages.

On the day of the organization of the Riverside Box and Lumber Company, Charles Lefkowitz, who is a brother-in-law of George Siegel, the plaintiff, agreed with Louis Romanoff, in the presence of William Morris, that the aforesaid ten shares of stock were to be issued to a person agreeable to both Louis Romanoff and Charles Lefkowitz; that if Charles Lefkowitz would extend credit to the Riverside Box and Lumber Company for two years, to the extent of Three Thousand or Four Thousand Dollars, that at the expiration of said two years the said ten shares of stock, which form the basis of this suit, were to be delivered to Charles Lefkowitz. (P. 25, 26, 43, 44.) These facts are denied by plaintiff. (P. 51, 52, 63, 64.)

After the certificate of stock was issued the blank assignment was endorsed by Annie Kashowitz, the

name of George Siegel was filled in by Samuel I. Kessler, and George Siegel became the holder of said certificate of stock. Neither Annie Kashowitz nor George Siegel paid any money for said stock certificate or parted with any value.

On September 11, 1914, George Siegel requested that the shares of stock be transferred on the books of Riverside Box and Lumber Company, and at that time, and continuing down to the day of the trial of this case, the affairs of Riverside Box and Lumber Company were precarious, the liabilities exceeded the assets and no dividends had been declared. (P. 27, l. 30, p. 28, p. 41, l. 8-27.)

The plaintiff claims that because of the refusal to transfer the shares of stock on the books of the company, he is entitled to recover the sum of One Thousand ($1,000) Dollars, besides interest, representing the par value of the stock. The jury was directed to give the plaintiff a verdict of One Thousand and Sixty ($1,060) Dollars.

The appellants' claims are:

1. That plaintiff's remedy is in the Court of Chancery.

2. That plaintiff did not prove value of stock.

These questions were raised by the defendants' motion for a non-suit, and by their exception to the charge of the trial Judge.

GROUNDS OF APPEAL.

The grounds of appeal which the appellants have asserted, and which they intend to urge on this appeal, are as follows:

1. That the Court committed error in denying the appellants' motion for a nonsuit at the conclusion of plaintiff's case (See Case—p. 22, 23), because:

(a) The plaintiff's remedy is in the Court of Chancery.

(b) The plaintiff failed to prove damages, or the value of the stock.

2. The Court was in error in charging the Jury:

"You may render a verdict in favor of the plaintiff and against the defendants for the sum of One Thousand and Sixty ($1,060) Dollars." (P. 70, l. 20, p. 71.)

3. The Court committed error in refusing to submit the case to the Jury as to the question of damages (P. 71.)

BRIEF OF ARGUMENT.

1. The motion for nonsuit should have been granted.

a. The certificate of stock in question was issued in pursuance of the resolution introduced in evidence and marked (Exhibit P-1, p. 76, l. 30). It will be seen from the language used in this resolution that the stock was issued to Louis Romanoff for services performed by him and other persons who assisted him in organizing and developing said company. The testimony introduced by the defendants was to the effect that both Louis Romanoff and Charles Lefkowitz had an interest in this stock and that said stock was not to become the property of Lefkowitz until he had carried out the conditions of a certain contract which he entered into with the defendant company; that the said Lefkowitz never

carried out the terms of his contract and therefore was not entitled to the stock, and the only conclusion that can be drawn is that the ownership of the stock would then revert back to the said Louis Romanoff. The testimony of Charles Lefkowitz, introduced on behalf of the plaintiff, is to the effect that this certificate of stock was in fact his without any claim on the part of any other person to it, but that for the reasons stated by him the stock was not taken in his name. The stock was issued to one Annie Kashowitz, who was the trustee either for Charles Lefkowitz or for Louis Romanoff and Charles Lefkowitz, as the case may be. The resolution itself does not mention the name of Charles Lefkowitz but does mention the name of Louis Romanoff and was drawn by an attorney who was representing all the parties at the time, and which said attorney was prior to the drawing of this resolution the attorney of the said Charles Lefkowitz and did not know the said Louis Romanoff until he was introduced to him by the said Charles Lefkowitz. All the evidence tended to show that the said Annie Kashowitz was holding the stock in trust for Louis Romanoff and Charles Lefkowitz; that said Charles Lefkowitz, without the knowledge of the said Louis Romanoff, secured said certificate from said Annie Kashowitz by a blank assignment of same, and that subsequently the name of the plaintiff in the action, George Siegel, was filled in; that subsequently the said George Siegel demanded that the stock be transferred to him on the books of the corporation by Louis Romanoff, who was designated as the attorney to make transfers by the assignments. The corporation refused to make the transfer and hence the suit for damages.

The evidence shows that the stock originally was issued for services performed; that no definite

figure was arrived at as to the value of the services but simply an arbitrary value of One Thousand Dollars was placed thereon and the certificate issued in accordance therewith; that the plaintiff, George Siegel, paid no value for the transfer to him of said certificate is admitted by Annie Kashowitz. Under these circumstances the plaintiff certainly cannot be deemed to be a holder for value so as to entitle him to maintain an action for damages. It is submitted that he should have been required to show that he was a holder for value without notice of intervening equities before being allowed to maintain an action at law for the recovery of damages for the refusal to transfer said stock to him on the books of the corporation. The plaintiff, the said George Siegel, could acquire no better title than his assignor and therefore it must be assumed that he was holding this stock in trust for Romanoff and Lefkowitz or for Lefkowitz only, as the case may be, and not as the owner of the stock himself.

In 10 Cyc., page 621 b., we find the following doctrine laid down: "Although there has been some wavering of judicial opinion on this question, yet most of the cases unite in holding that where the shares are so registered on the books of the company as to convey to the officers of the company notice that they are held in trust for a third person, the corporation is bound to see, before it permits a conveyance on its books by the trustee, that he has the consent of the cestui que trust where that is necessary, or that he is otherwise acting within the authority conferred upon him by the instrument creating the trust or by the decree of a court of competent jurisdiction; otherwise the corporation will be obliged to make good any loss accruing to the trust estate from the unauthorized transfer. In short if the corporation, having notice of the

trust, permits the trustee to transfer without authority, it is liable if he misappropriates the fund. Therefore one who holds corporate shares on the books of the corporation as trustee of another cannot insist upon their transfer by the corporation without exhibiting his authority in full."

At page 617 we find this statement of the rule: "But the true view seems to be that the holder of a certificate of shares of stock, with an irrevocable power of attorney from the owner to transfer them, is the presumptive equitable owner, and if shown to be a holder for value without notice his title cannot be impeached, although the attorney's name is in the blank; that such a power of attorney may be filled up and executed, by any one of several successive *bona fide holders,* whenever his interests may require it; and that the power is neither exhausted by its first use, revoked by the maker's death, nor affected by passing through any number of hands, until its execution by an actual transfer. As he is presumptively the equitable owner, the corporation cannot, before permitting a transfer to him of the shares on its books, put him to *further* proof of his title, without first producing evidence impeaching it."

It will be seen from the language of this rule that although the holder of the stock is presumptively the equitable owner, it must be shown also that he is the *holder for value without notice before the corporation is under a duty to transfer the stock on its books.*

At page 624, speaking of the liability of a corporation for issuing new certficate where trustee transfers in breach of his trust, we find this statement: "A corporation which has issued a certifi-

cate of stock to a person as trustee, and has notice of the name of the cestui que trust, but on the trustee's wrongful transfer of the certificate issues a new one, without making inquiry, is liable to the rightful owner thereby injured, without proof of collusion between the trustee and itself."

At page 636, speaking of who are and who are not bona fide purchasers, we find this rule: "To entitle a party to the character of a bona fide purchaser, without notice of a prior right or equity, he must not only have obtained the legal right to the property, but he must have paid the purchase money or some part thereof, or have parted with value on the faith of the purchase, before notice of such prior right or equity."

In the case of The Mount Holly, Lumberton and Medford Turnpike Company vs. Ferree et al, 17 N. J. Eq. 117, at page 118 the court said: "The certificate of stock, accompanied by the power of attorney authorizing the transfer of the stock to any person, is prima facie evidence of equitable ownership in the holder, and renders the stock transferable by the delivery of the certificate. *And when the party in whose hands the certificate is found, is shown to be a holder for value, and without notice of any intervening equity,* his title as such owner cannot be impeached. The holder of the certificate may insert his own name in the power of attorney and execute the power, and thus obtain the legal title to the stock, whenever the loan for which it was hypothecated becomes due, or whenever, by the terms of his contract, he becomes entitled to the stock. And such a power is not limited to the person to whom it was first delivered, but inures to the benefit of each bona fide holder, into whose hands the certificate and power may

pass. And the title of the holder is in no wise affected by a provision in the charter or by-laws of the corporation, that the stock is transferable only on the books of the corporation. Such provision is intended merely for the protection and benefit of the corporation."

At page 120 the court said: "It is objected that Manderson could transfer no higher or larger interest in the stock than he himself held, and it is certain that he could not do so to any party having notice of his real title. But his title upon its face was absolute."

In the case of Prall vs. Tilt, 28 N. J. Eq. 479, at page 483 the court said: "And where the party in whose hands the certificate is found is a holder for *value without notice of any intervening equity,* his title cannot be impeached."

In the case of Morris vs. Hussong Dyeing Mach. Co. et al, 86 Atlantic Reporter, page 1026, at page 1029 the court said: "The right to relief in this court, if the directors under this by-law are not entitled to withhold approval and complainant is entitled to a transfer, was not disputed at the hearing. The right to equitable relief is based on the fact that the complainant's title under the assignments is an equitable title only, as between him and the company, and equitable relief is *necessary* to acquire the legal title and rights on the shares transferred. Hussong, as the assignor, is a proper party defendant to a suit against the company, being interested as the alleged assignor, and as entitled to have the transfer made on the books, relieving himself and constituting complainant to the obligations to the company as the legal and record holder of the stock."

The court should have granted a nonsuit unless the consent to the transfer of the stock to Siegel by all persons for whom it was held in trust was shown. The plaintiff, George Siegel, is not the owner of the stock but is only a trustee, inasmuch as he acquired title through assignment by Annie Kashowitz and she was holding this certificate in trust for Romanoff and Lefkowitz or Lefkowitz only, as the case may be. The plaintiff should first have established his right to the legal title to this stock, as between himself and the company, and in order to do this, according to the doctrine laid down in the case of Morris vs. Hussong Dyeing Mac. Co. et al, 86 Atlantic Reporter, page 1026, equitable relief is *necessary* to acquire the legal title and rights on the shares transferred. The plaintiff failed to show that he was the holder for value and without notice of any intervening equities, but from all the circumstances surrounding the case, he must be chargeable with notice that this stock was held in trust for Romanoff and Lefkowitz, or Lefkowitz only, as the case may be, and that he had no right to demand a transfer of it to himself on the books of the corporation; that before being in a position to maintain an action at law for damages for the refusal of the company to transfer the stock to him on its books, he must establish his right to the legal title to said shares of stock and this must be done in a court of equity.

The corporation must not transfer shares held in trust if it has knowledge of that fact, for if it does permit the trustee to transfer without authority, it is liable if he misappropriates the stock. Under these circumstances the corporation cannot be held liable in damages for refusing to do something which it had a legal right to refuse to do in order to protect itself.

b. Plaintiff failed to prove that the stock had any value but on the contrary all the evidence tended to show that the stock had no value and was void under the law, and hence there could be no damages for refusal to transfer it on the books of the corporation.

Plaintiff rested his case after he offered in evidence Exhibit P-1, p. 72-77; Exhibit P-2, p. 78; Exhibit P-3, p. 78-79.

The evidence tended to show that the stock was issued for services rendered by Louis Romanoff and other persons and without any other consideration.

Sections 48, 49 and 50 of the Corporation Act of New Jersey, General Statutes page 1630, specifically state for what stock may be issued. It has been held that where stock is issued for property purchased or services rendered that the value of the property purchased or the value of the services rendered must equal the value of the stock issued.

In the case of Easton National Bank vs. American Brick and Tile Company, 70 N. J. Eq. page 722, at page 740 the court said: "The express prohibition of Section 54 (which is now Section 48 of the Corporation Act, Compiled Statutes page 1630) and the whole spirit and policy of the act are so clearly opposed to any arrangement by which corporate stock shall be issued without receipt by the company of an equivalent in value to its par, that any agreement to this effect must be deemed *void* as contrary to the policy of the law. If any doubt has existed upon this question it must be taken as settled by the decision of this court in Volney vs. Nixon, 68 N. J. Eq. page 605."

In the case of Easton National Bank vs. American Brick and Tile Company, 70 N. J. Eq. at page 741 the court said: "The case of Scovill vs. Thayer (1881), 105 U. S. 143, is a clear illustration of the relation of the 'trust fund theory' to the more positive rules of law that depend upon express statutory enactments. Here a corporation, organized under the laws of the State of Kansas, had commenced with $100,000 capital, and had undertaken to successively increase its capital—first, to $200,000; then to $300,000, and afterwards to $400,000. Thayer, who held stock of each of the first two issues, attended, by proxies, the meetings of the stockholders at which the third and fourth issues were voted, and he became a holder of a part of each of those issues. None of his stock was paid up by him in full, and the company having become insolvent, the assignees in bankruptcy petitioned for an assessment against the stockholders, including Thayer. He insisted—first, that the third and fourth issues of stock, having been made in excess of the limit of capital prescribed by the laws of Kansas, were absolutely void, and that no assessment could be made against him by reason of his holding shares of those issues; and secondly, that the sums voluntarily paid by him upon his void stock should be applied to the payment of the balance due upon his valid stock. The court held that the third and fourth issues were in excess of the limit prescribed by law and therefore void, and that notwithstanding Thayer's assent to those issues, and the fact that after such increase the company had held itself out as possessing a capital of $400,000, and invited and obtained credit on the faith of such representations, he was not estopped from denying the validity of this stock and his obligation to pay for it in full. With respect to

his valid stock, it appeared that by the agreement between him and the company he was not to be called upon to pay any further assessments upon it, the same contract being made with all the other shareholders and the fact being known to all. The court held that as between them and the company this was a valid agreement, since it was 'not forbidden by the charter or by any law or public policy.' *It is entirely clear that if there had existed in Kansas any prohibition similar to that contained in our Corporation act, the court would have reached a different conclusion upon the latter question.*"

At page 743 the court stated: "Dickerman v. Northern Trust Co. (1900), 176 U. S. 181, 203 (a case arising under our Corporation act of 1875), contains a dictum by Mr. Justice Brown to the effect that as between the corporation and its stockholders a declaration upon the face of the certificate that the shares are fully paid and unassessable is binding, although untrue. The learned justice quotes from Scovill v. Thayer to the effect that such an arrangement was 'not forbidden by the charter or by any law or public policy,' apparently overlooking that what might be true of the Kansas statutes was not true of the Corporation law of New Jersey."

In the case of Volney vs. Nixon the court said that the purpose of the bargain in that case was plainly illegal and said at page 610: "It is the settled policy of the courts in this State not to aid in the enforcement of such contracts, having either an illegal or an immoral purpose, even although the objectionable feature has been accomplished, and there remains only the distribution of the proceeds among the contracting parties."

In the case of Carver vs. Southern Iron & Steel Co., 78 Atlantic Reporter page 240, at page 245 the court said: "With respect to the suggestion of the defendant that the complainant is the holder of a small amount of stock, and that the proposed issuance of new stock at less than par cannot injure her interests, the complete answer, in my view, is contained in the language of the present chancellor in the case of Easton National Bank v. American Brick Company (Ct. of Er. & Ap. 1906) 70 N. J. Eq. at page 740, 64 Atl. at page 920 (8 L. R. A. (N. S.) 271). He there says: 'The express prohibition of section 54 and the whole spirit and policy of the act are so clearly opposed to any arrangement by which corporate stock shall be issued without the receipt of the company of an equivalent in value to its par, that any agreement to this effect must be deemed as contrary to the policy of the law.'

"It may well be that in cases where the corporation has dealt with its own directors, or with a corporation that has mutual directors, and there is a discretion in the court to affirm or disaffirm the contract when applied to by a stockholder, the court will weigh the benefits and injuries; *but this cannot be applicable to a case where the thing sought to be done is contrary to the statute, is prohibited by law,* and only needs the attention of the court to be called to it to cause the latter to restrain it."

These two cases plainly indicate that where stock is issued without any consideration or for an inadequate consideration, that said stock is *void as against the policy of the law* and that the courts will not lend their aid in enforcing any of the alleged rights of the holders of such stock. The policy of the courts in this State is to refuse to have

anything to do with the enforcement of alleged rights of the holders of stock which has been issued contrary to the laws of this State.

According to the doctrine laid down in the case of Easton National Bank vs. American Brick and Tile Company, above cited, the stock issued to Annie Kashowitz in trust was illegally issued and is void as contrary to the policy of the law. This being true, the certificate in question is void and of no value and the plaintiff, George Siegel, by taking an assignment of it, received nothing of value. The certificate being void is of no value and the defendant company cannot be held liable for damages for refusing to transfer stock on its books which has no value. A nonsuit should have been granted for this reason and for the further reason that the certificate being void as contrary to law the holder thereof is not entitled to the aid of the court in enforcing his alleged rights thereunder.

2. The court committed error in its charge to the jury (p. 71) as to the amount of damages and also committed error in refusing to submit the case to the jury to determine the amount of damages.

The testimony showed that the stock was issued for services rendered and that no money had been paid for the stock; that the stock was issued to Annie Kashowitz in trust for Louis Romanoff and Charles Lefkowitz or for Charles Lefkowitz alone; that George Siegel, the plaintiff, paid nothing for the stock.

In the case of Galbraith vs. Building Association, 43 N. J. L. page 389, at page 390 the court said: "In Rex vs. Bank of England, Doug. 524, Lord Mansfield refused a mandamus to compel the transfer of stock, on the ground that an action will

lie for complete satisfaction, equivalent to a specific relief."

This case was cited, and its authority recognized, in Shipley v. Mechanics' Bank, 10 Johns, 484, where the court says: "The applicants have an adequate remedy, by special action on the case, *to recover the value of the stock.* There is no need of the extraordinary remedy in so ordinary a case. It might as well be required in every case where trover would lie."

In the case of Morton vs. Timken, 48 N. J. L. page 87, which was a case where stock had been issued under resolutions passed by the Board of Directors, which resolutions read as follows: "Resolved, That in consideration of valuable services, and in further consideration of the sum of $8.33 per share, to be paid by said incorporators and subscribers, certificates of stock of this company, of the par value of $25 each, be issued to each of said incorporators and subscribers to date, each share of said stock to be full paid and unassessable, and to be endorsed for property purchased.

Whereas, Horace H. Farrier, Theo. L. Parker, Robert Morton and J. C. Chamberlin have devoted a great deal of labor and expense in organizing and obtaining valuable franchises for this company; and

Whereas, It is fitting and proper that the above named parties should be compensated; therefore,

Resolved, That one hundred and fifty shares of the stock of this company be and are hereby directed to be issued and delivered to them for their services aforesaid, the said stock to be full paid and unassessable, for property purchased."

And the court said in that case at page 88, speaking of this sort of a contract: "The second resolution declares that the relators had rendered the company valuable services, for which they should be paid, but there is nothing to show that an account had been stated between them, or that the relators had a claim equal to the sum which would represent one hundred and fifty shares of stock at par."

"The resolution, without specifying the amount due to the relators, directs a certificate for one hundred and fifty shares of the capital stock to be issued to them, to be endorsed like the other shares, full paid and unassessable for property purchased."

"I think the fair presumption for this action of the stockholders is that the indebtedness to the relators did not exceed the value of one hundred and fifty shares, estimated at $8.33 per share."

"At all events the transaction is not so free from the appearance of wrong that the court should lend its sanction to the consummation of it."

In this case the court entirely disregarded the value of the services rendered for which the stock was issued, and simply stated that the value of the one hundred and fifty shares of stock did not exceed the sum of $8.33 per share.

In 10 Cyc. page 613, speaking of the measure of damages for refusing to transfer, the general rule is stated to be as follows: "The general rule as to the measure of damages in an action of trover is the value of the goods at the time of the conversion, to which may be added interest up to the time of the trial, unless there were some special circumstances of outrage in the case, *when the jury are at liberty to give more*; and this may be laid down as

the general rule where the subject of the conversion is shares of stock in a corporation. The measure of damages in such actions is (1) the value of the shares at the time of the refusal of the officers of the company to register the transfer; (2) the dividends accrued thereon at that time; (3) with interest to the date of the trial, or in some states (and this is the better rule), to the date of the judgment."

In Sedgwick on Damages, Vol. 1, page 542, Sec. 276, it is said that: "Where payment is to be made in notes, which are not money, the notes are mere commodities; the contract becomes one for the delivery of chattels, and upon breach of it the measure of damages is the value of the notes at the time of breach."

In the case of Ware vs. McMurray, 74 N. J. L. page 37, which was an action upon contract to recover for services rendered by the plaintiff's intestate in the organization of a company, the claim was that the services of the plaintiff's intestate in securing a party to finance a new company to take over the fruit jar and bottle closure company were to be compensated by his receipt from the defendant of five thousand dollars of stock in the new company. The court in this case at page 38 said: "We think that the plaintiff, on the proof, was entitled to go to the jury, and if nothing were proven other than the mere promise to give $5,000 worth of stock in the reorganized company, *and there was no evidence of the value of the stock, that the plaintiff would have been entitled to a verdict of six cents on this proof,* but, in any event, we think that a nonsuit could not be ordered."

"Where compensation is to be made in some other thing than money, and there is a refusal to comply

with the agreement to compensate in the specific way provided, *the plaintiff is entitled to recover as compensation what the specific thing which he was to receive is worth.* This is to be ascertained in the usual way of arriving at the value of real and personal property. Hinchman v. Rutan, 2 Vroom 497. So here, *if the plaintiff had proven the value of the stock, that would have been the measure of his right to compensation under his contract,* but the fact of his failure to prove this value did not entitle the defendant to a nonsuit, *but might have limited the plaintiff's right to recover to merely nominal damages."*

In the case of Wilson vs. Jones, 8 Ala. 536, the court said: "In an action on such a note, it is necessary to aver and prove, or in case of appeal to prove at least, the value in money of solvent notes and accounts of individuals at the time of maturity of the note. The difference between the value of such notes and accounts and money—gold and silver coin—may not be very great; it may, in fact, be a mere trifle. Still, they are not money, nor equivalent to money, and therefore, the charge of the court to the jury under the proof, that they must find for the plaintiff, the amount of the note, was erroneous."

In the case of Williams vs. Sims, 22 Ala., 512, the court held: "The contract would have been substantially the same, if it had been simply a promise to send or deliver the two notes in four weeks. The measure of damages, or satisfaction, due for the breach of such a contract, was obviously the value of the two designated notes. It could not be the amount mentioned in the face of these notes, without regard to their value, for this court has decided, that even a promise to pay insolvent notes

to a certain amount is not equivalent to a promise to pay so much in dollars."

In the case of Elizabeth Trust Company vs. Henry W. Rogers, tried in Union Circuit Court, Judge William H. Speer said: "Is a suit to recover damages for the non-delivery of the stock of an incorporated company 'a suit to recover unliquidated damages consequent upon the breach of a contract?' That it is such seems to me to be indubitable. *The value of such stock at the time and place of the breach, with interest, would be the measure of the damages in such a suit.* The value of such stock depends upon a variety of considerations and would require the intervention of a jury in its determination. The stock could hardly be worth par if the company was insolvent, or unable to pay its debts promptly and have something left over thereafter for dividends on said stock. It is perfectly manifest, therefore, that if the stock could be said to have a definite value, a fortiori the promissory notes of such an organization, which must be paid before the stockholders could obtain any dividends on their stock, must likewise have a definite value. That such obligations have no such definite value, and that an action of debt would not lie upon an agreement to pay a certain sum in such notes, is perfectly settled in New Jersey. Perhaps the most illuminating case on this subject to be found in our books is Scott v. Conover, 1 Halst., 223, decided before 'the legal tender acts.' In the case, Kirpatrick, P. J., at page 226, said: 'I think an action of debt will not lie upon a contract to pay in bank notes. Bank notes are no money. They are not always, and in all places, of the value of money. They were not so at the time of this contract; the two kinds specified were of different values, and both, counting them upon the face,

much under the value of money. I mean money of the United States, which is the only lawful money we know of; but it is of no consequence whether they were of less, or equal, or of greater value, still they are not the thing itself; they are no standard of value.' "

In the case of Coldren vs. Miller, 1 Blackf. (Ind.) 296, the syllabi are as follows: "In covenant on a sealed note for a certain sum payable in current bank paper, it is not the sum named in the note, but the value of the paper when due, which regulates the amount to be recovered."

"The value of bank paper of any description, at any given time or place, is a proper subject for the investigation of a jury."

In Van Vleet, Administrator, vs. Adair, 1 Blackf. 346, the court said: "Covenant on an obligation for the payment of a certain sum one-half in specie, and the other in bankable paper. Held, *that the damages should be assessed by a jury, not by the court, and that the measure of damages was the value of the bankable paper at the time it was to be paid.*"

In the case of Hecksher vs. Trotter, 48 N. J. L., 419, at page 424, the court said: "It seems to me that neither the contract nor the law prescribes any standard for measuring the damages accruing to the plaintiff on breach of this covenant, sufficiently definite for their proper ascertainment *without the intervention of a jury.* * * * "

The court, in the case in question, charged the jury as follows (p. 71): "Gentlemen of the Jury. You may render a verdict in favor of the plaintiff and against the defendants for the sum of $1060."

The charge, that the jury, upon the evidence, should find a verdict for the amount of the face value of the stock with interest, could not be correct, unless the testimony was such as to show conclusively that the shares of stock were of value equal to the number of dollars mentioned in the certificates. The burden of proof as to the value of the stock was upon the plaintiff because that was an essential ingredient of his case.

The failure to transfer the stock does not entitle the plaintiff to a judgment for the face value of the stock. The value of the stock depends upon a variety of considerations. The company might be insolvent, and the testimony produced at the trial tends to show that such was the case. A valid and complete defense might exist to the suit in question which would make the stock valueless, and the testimony in this case shows that such is the fact. Stock cannot be presumed to be worth its face value, but the value must be determined from the financial condition of the company at the time the question as to the value of the stock is raised. The testimony plainly showed that the company was running behind, and, assuming that there could be no defense interposed to the validity of the stock, its value would be entirely dependent upon what it was worth after all the obligations of the company had been paid.

We respectfully submit that the Circuit Court committed error:

1. In refusing to grant a nonsuit for the following reasons:

a. Because Siegel was not a holder for value so as to entitle him to bring an action for damages for refusal to transfer the stock to him.

b. Because the stock was issued contrary to the laws of the State of New Jersey and therefore void, and the holder thereof was not entitled to the aid of the courts to enforce his alleged rights thereunder.

c. Because Siegel was only the equitable owner as between himself and the company and in order to sue must show that he is the owner of the legal title, and this must be done in a court of equity.

d. Because the plaintiff's assignor was the holder of said stock as trustee and plaintiff could not demand a transfer of said stock to himself without showing the consent of all of the persons for whom it was held in trust to such a transfer.

e. Because the testimony showed that the stock had no value in that it was void under the law and therefore no cause of action arose on account of the refusal to transfer it.

2. In charging the jury as to the amount of damages and also in refusing to submit the case to the jury to determine the amount of damages.

a. Because the measure of damages is not the face value of the stock but the real value at the time of the refusal to transfer, plus dividends accrued, if any, and interest to the date of the judgment.

b. Because the question as to what was the value of the stock was a question of fact for the jury to determine and not for the court to decide.

c. Because a question of fact arose as to whether the stock was held in trust by Annie Kashowitz for Romanoff and Lefkowitz or for Lefkowitz only; which should have been submitted to the jury, with instructions to the effect that if they found

that the stock was held for Romanoff and Lefkowitz that no recovery could be had because as a matter of law the corporation was justified in refusing to transfer a certificate of its stock which was held in trust, unless all the persons for whom it was so held agreed to the transfer; and if on the other hand they found that it was held for Lefkowitz only, and that his consent to the transfer of said certificate to Siegel had been shown, then they could go into the question of the value of the stock and the liability, if any, of the company for its refusal to transfer it.

For the reasons stated above the judgment of the Circuit Court should be reversed.

Respectfully submitted,

DAVID BOKER,

Attorney for Defendants-Appellants.

CHARLES B. CLANCY,

Of Counsel with Defendants-Appellants.

Arthur W. Cross, Law Printer, 243 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals

GEORGE SIEGEL, *Plaintiff and Respondent,* *vs.* RIVERSIDE BOX AND LUMBER COMPANY, a New Jersey Corporation, JAMES J. NEARY, LOUIS ROMANOFF and WILLIAM MORRIS, *Defendants and Appellants.*	*Action at Law.* *On Appeal from Cicruit Court.*

Plaintiff-Respondent's Brief.

Statement of the Case.

Louis Romanoff, William Morris, James J. Neary and Charles Lefkowitz were the promoters of the Riverside Box and Lumber Company, incorporated June 5, 1914 (page 16), admitted by stipulation. Mr. Lefkowitz was the moving factor of the organization (p. 63). The company was organized for the purpose of buying out at a bankruptcy sale and continuing the business of the bankrupt Newark Box and Lumber Company (p. 63). The scheme was carried out, the new company organized (pp. 63, 64, 48, 49) and the property bought for eighteen or nineteen hundred dollars, and its appraised value was four thousand or five thousand (p. 64). The stock of one hundred dollars par was to be issued to each of the four promoters, ten shares each (pp. 52 and 64). Mr. Lefkowitz was engaged in the same kind of business (p. 47) (p. 63), and for business reasons his allotment of ten shares was, by resolution of the

company, to be assigned to a nominee (p. 64), (p. 65). The resolution was as follows:

> "That ten shares of the capital stock be issued to one Louis Romanoff, for services performed by him and other persons who assisted him in organizing and developing said company, and that such stock shall be issued to any person designated by him for the use of said person, and that all said above referred to stock shall be considered fully paid up and not liable to any assessment." (Exhibit P. 1, p. 76, l. 30).

The person referred to by the resolution was Mr. Lefkowitz (p. 65). The nominee was Annie Kasowitz (pp. 56, 66, 36) and the certificate was made out in her name. See Exhibit P. 2 (p. 78), testimony (pp. 18-20) and admitted by stipulation (p. 17) and certificate entered in her name on the stock ledger of the corporation (p. 19). Miss Kasowitz assigned the certificate to plaintiff (p. 20), P. 2 (p. 79). Annie Kasowitz was the trustee of these shares for Lefkowitz. "Q Who is Mr. Charles Lefkowitz? A Well, he is the party I was to hold these shares in trust for" (p. 42). Demand was made by plaintiff on the corporation for the transfer of stock and refusal admitted by the pleadings and by stipulation (pp. 21-22). The certificate was for ten shares $100 each (Exhibit P. 2, p. 78). It was part of that with which the company commenced business, paid for by property and services in excess of its value, issued by corporate resolution concurred in by all of its present incorporators, stockholders and directors and bore upon the face of the certificate the representation of its par value, $100 a share. The defendant admits that there was no question of fraud in its issuance and indeed

argues this point strenuously. See paper book, page 22, line 30.

On these facts a verdict was directed for $1,060, being par value of the stock plus one year's interest from the time of the refusal to transfer.

Argument.

I. It will be observed that the appellant assigns six grounds of appeal (paper book, p. 2). Of these six grounds of appeal, the second and third, relating to admission of evidence, are not either argued or briefed by the appellant and are, therefore, to be considered as abandoned.

> "Grounds for reversal not discussed in either argument or brief will not be considered."
>
> *Lavin* vs. *Public Service Co.,* 48 Vroom, 217.
>
> *Martin* vs. *Brown,* 52 Vroom, 599.

The fourth ground, failure to non-suit, is not now before this Court because:

> "The refusal of a non-suit for failure of proofs is not reversible error if such proofs were afterwards supplied by either party in the progress of the trial."
>
> *Bostwick* vs. *Willet,* 43 Vroom, 21.
>
> *Esler* vs. *Camden and Suburban Railroad Company,* 42 Vroom, 180.
>
> *Carey* vs. *Hamburg American Trans. Co.,* 43 Vroom, 229.
>
> *D., L. & W. R. R. Co.* vs. *Dailey,* 8 Vroom, 526.
>
> *May* vs. *North Hudson R. R. Co.,* 20 Vroom, 445.

If any proofs of damage were lacking at the motion to non-suit, which we deny, they were abundantly supplied during the progress of the trial.

See State of Facts, this brief, p. —, l. —.

It will be observed that the first ten pages of argument in the appellant's brief is devoted to the refusal to non-suit, a question not now before this Court, the question at issue being whether or not upon the whole case the judgment should be affirmed.

Hence, only the first, fifth and sixth grounds of appeal are now before this Court. These three grounds of appeal raised but two issues, to wit:

(a) Appellant contends respondent's remedy was in the Court of Chancery.

(b) Appellant claims damages were not proven.

II. It will also be observed that the appellant in his brief argues several grounds not pointed out by assignment and hence such grounds are not now before this Court and cannot be argued.

"Errors not presented by a bill of exception will not be reviewed."

"A ground of error not pointed out by any assignment will not be considered."

Benz vs. *Central Railroad of N. J.*, 53 Vroom, 197.

Same, 54 Vroom, 780.

Hitt vs. *Woolever,* 46 Vroom, 537.

The points so raised by the appellant's brief but not assigned in his grounds of appeal are as follows:

See appellant's brief, page —, l. —.

(1) "b. Because the stock was issued contrary to the laws of the State of New Jersey and therefore void, etc."

"d. Because the plaintiff's assignor was the holder of said stock as trustee and did not demand a transfer of said stock to himself, etc."

"e. Because the testimony showed that the stock had no value in that was void under the law, etc."

(2) "c. Because the question of fact arose as to whether the stock was held in trust by Annie Kasowitz."

These several points argued at length in the appellant's brief, while in no sense admitted to be well taken by us, were not raised as grounds of appeal, and therefore, cannot now be argued.

Hence, as heretofore pointed out, the only questions at issue before this Court are:

(a) Respondent's right to remedy at law.

(b) Proof of damages.

The appellants' motion for non-suit and their exception to the charge of the trial judge are founded squarely upon those two propositions, and no other ground is assigned either to the refusal to non-suit or to the directed verdict. No objection based on a question of fact was raised before the trial court and no question of law other than the two above stated propositions were before the trial court or are now before this court. These are the sole issues and each is a question of law.

III. The respondent claims:

(1) The right to an action at law.

(a) Appellant corporation can impeach this stock only by pursuing the statute, it cannot do so collaterally.

(b) Appellant corporation is estopped to impeach respondent's title.

(c) Respondent is a holder for value.

(2) Damages were proven:

(a) That if any evidence of damages was supplied in the whole case, the motion to non-suit is not reversable error.

(b) Evidence of such damage was supplied.

1. The stock was part of that with which the company began business.
2. Paid for in property and services in excess of value.
3. Issued by corporate resolution concurred in by all stockholders and directors.
4. Bore upon face of the certificate the representation of $100 a share.
5. Admitted by defendant that there was no fraud in issuance.
6. The demand and refusal to transfer was made immediately after the incorporation of defendant company and no new stock had been issued. The value was, therefore, par at least.
7. Appellant adduced no evidence whatever of depreciation during the very short time between the issuance of stock as part of the original incorporation scheme and the refusal to transfer except a general statement that the company was not paying.
8. The appellant corporation is estopped to deny value in the absence of intervening rights of creditors.

IV. The respondent submits that his remedy (among others he might possess) for the refusal of the appellant corporation to transfer shares of its stock to an assignee of one holding a stock certificate is a suit at law for damages and the

ruling of the trial court refusing a non-suit based on the objection that respondent's sole remedy was in Chancery was a correct ruling.

> "Mr. High in his work on Extraordinary Remedies, Section 313, states the rule as follows:
>
> "'In conformity with the general principle that mandamus will not lie where other adequate and specific remedy may be had at law, the courts refuse to lend their interference by this extraordinary writ, for the purpose of compelling the transfer of shares of capital stock upon the books of an incorporated company, or to compel a company to issue certificates of stock.'
>
> "'The doctrine of the text is supported by the clear weight of authority.'"

Van Sycle, *J.*, in *Galbraith* vs. *Peoples Bldg. and Loan,* 14 Vroom, 389, and cases there cited.

Bush vs. *Warren Foundry Co.,* 3 Vroom, 439 at 441.

Curtis vs. *Steever,* 7 Vroom, 304 at 307.

Marton vs. *Timkin,* 19 Vroom, 87 at 89.

Holbrook vs. *N. J. Zinc Co.,* 57 N. Y. S., 616 at 622.

Rottenberg vs. *Utah Gold and Cooper Co.,* 119 N. Y. S., 852.

Lockwood vs. *U. S. Steel,* 138 N. Y. S., 725.

Rex vs. *Bank of England,* Doug., 524.

White on Corporations, 8th Ed., p. 456.

It will be noted that counsel for appellants in his argument for non-suit, p. 40, l. 30, attempts to distinguish the Timkins case, *supra,* by arguing that in the Timkin case a writ of mandamus was refused, because the transaction was not free from the appearance of wrong and drawing the inference that if, as in the case at bar, the transaction

was free from the appearance of wrong, then the writ of mandamus would have been allowed. The attempted distinction is disingenuous, for as a matter of fact, the Court in that very case took cognizance of that possible argument and held, p. 89:

> "Aside from this objection (i. e., appearance of wrong) the relators have an adequate remedy in a suit for damages and are not entitled to a writ of mandamus in such case."

It is interesting to note that the Holbrook case, *supra,* was an action at law for damages, in which the trial judge directed a verdict, and on appeal, the directed verdict was affirmed.

We do not deny that in a case of exceptional character wherein damages at law are inadequate a bill for specific performance would also lie, but we claim no such exceptional character in this case:

Galbraith vs. *Peoples Bldg. and Loan,* 14 Vroom, 389 at 390.

Bush vs. *Warren Foundry,* 3 Vroom, 439 at 441.

Curtis vs. *Steever,* 7 Vroom, 304 at 307.

Archer vs. *American Water Works,* 50 N. J. E., 33.

V. Appellant cannot impeach its own stock collaterally, it must pursue the statute.

> "It is not useful to refer to other authorities than the one in our State which clearly holds that where stock has once been rightfully issued, even though nothing has been paid on it by the subscriber, it can only be forfeited in the mode prescribed by the statute, and the procedure therein prescribed must be strictly followed."

N. Y. & East. Tel. Co. vs. *Great East. Tel. Co.*, 4 Buch., 221 at 231; *aff*, 5 Buch., 297-8.

Downing vs. *Patts*, 3 Zab., 66.

Holbrook vs. *N. J. Zinc Co.*, 57 N. Y., 616 at 622. P. L., 1896, page 284.

VI. The appellant corporation is estopped to impeach respondent's title.

> "By commercial usage, as universally acknowledged by the business community as the law of negotiable paper, and sanctioned by repeated adjudications in our courts as well as those of other states, a certificate of stock, accompanied by an irrevocable power of attorney, either filled up or in blank, is, in the hands of a third party, presumptive evidence of ownership in the holder, and where the party in whose hands the certificate is found is a holder for value, without notice of any intervening equity, his title cannot be impeached. The holder of the certificate may fill up the letter of attorney, execute the power, and thus obtain legal title to the stock. And such a power is not limited to the person to whom it was first delivered, but enures to each bona fide holder into whose hands the certificate and power may come."

Prall v. *Tilt*, 1 Stewart, 479 at 483 (Errors & Appeals).

Mount Holly Turnpike Co. v. *Ferre*, 2 C. E. Green, 117.

Matthews v. *Hoagland*, 3 Dick. Ch. 455 at 486.

Bush v. *Warren Foundry Co.*, 3 Vroom, 439.

Rogers v. *N. J. Ins. Co.*, 4 Halstead, 167.

Broadway Bank v. *McElrath*, 2 Beasley, 24.

Downing v. *Patts*, 3 Zab. 66.

Holbrook v. *N. J. Zinc Co.*, 57 N. Y., 616 at 622.

VII. The fact that the respondent is a volunteer is immaterial. He is a *bona fide* holder within the rule of *Mount Holly Turnpike* v. *Ferre,* 2 C. E. Green, 117.

> "A voluntary transfer of stock, by its owner, perfected by delivery and acceptance, becomes an executed contract and is irrevocable by the owner, for it was founded upon the mutual consent of the parties in reference to a right or interest passing between them."

Walker v. *Dickinson Crucible Co.,* 2 Dick. Ch. 342.

Matthews v. *Hoagland,* 3 Dick. Ch. 455 at 486.

Farrell v. *Passaic Water Co.,* 88 Atl. (N. J.) at 629.

> "The inadequacy of consideration paid for stock in a corporation, or the fact that it was given to the assignee, does not affect the assignee's right to have the stock transferred to him on the books of the corporation."

Senn vs. *Union Premium and Mercantile Co.,* 92 S. W. R. (Mo.) 629.

Williamson vs. *Anderson,* 56 N. Y. S. 833.

VIII. There remains to be determined a sole question of damages. It will be observed that the question of damages does not arise upon a refusal of a vendor to complete a sale of stock, and hence decisions on the measure of damages in such a case do not apply. The question is, what is the measure of damage when a corporation refuses to register a transfer of its own stock from one stockholder to another, and where the registered stockholder has properly assigned? Can the corporation refuse to make the transfer to the assignee and escape liability for its wrong by denying its own act fixing the value of the stock concurred in by all the directors and all the stockholders on the ground that the assignee has not affirmatively

proven that the stock is in fact worth what the corporation, by its own corporate acts, has fixed as its actual value?

If any evidence of damages was supplied by either party in the whole case, a motion to nonsuit on that ground is not reversable error.

See cases this brief, page ..., line .....

Evidence of such damage was abundantly supplied.

1. The stock was part of that which the appellant company issued as full paid, thus qualifying it to begin business.

2. Paid for in property and services in excess of value.

3. Issued by corporate resolution concurred in by all stockholders and directors.

4. Bore upon face of the certificate the presentation of $100 a share.

5. Admitted by defendant that there was no fraud in issuance.

6. The demand and refusal to transfer was made immediately after the incorporation of defendant company and no new stock had been issued. The value was, therefore, par at least. Otherwise none of the qualifying stock is legally issued and the corporation has no legal existence.

7. Appellant adduced no evidence whatever of depreciation during the very short time between the issuance of stock as part of the original incorporation scheme and the refusal to transfer except a general statement that the company was not paying.

IX. The stock having been issued by resolution of the corporation as fully paid up stock for work and labor performed, the corporation is es-

topped to deny its value in the absence of intervening rights of creditors.

> "I am of the opinion that as between the stockholders, *no actual fraud being charged,* the agreement to issue stock as full paid for property purchased, *the agreement having been carried out, is binding upon the company and its shareholders, and that the stock so issued is not subject to further call either directly or indirectly.*"

Goodnaw v. *American Writing Paper Co.,* 2 Buch. 643 at 650.

Arnold v. *Searing,* 3 Bush. 262 at 268.

Holbrook v. *N. J. Zinc Co.,* 57 N. Y. S., 616.

Vineland Grape Juice Co. v. *Chandler,* 10 Buch., 437 at 440 (Errors and Appeals).

There was no fraud in case at bar. See appellant's argument, paper book p. 22, l. 30.

In the latter case it was held, Chief Justice Gummere:

> "It does not lie in the mouth of the corporation to attack the transaction (issue of stock for work and labor) in a court of equity without at the same time tendering itself ready to pay to the parties to whom the stock was issued *or to their assigns,* the full value of the work done or services rendered."

As between the corporation and a party to whom it had issued stock by resolution as fully paid stock, or his assign, the value of this stock was fixed and the corporation is estopped to deny that value.

We submit the verdict as directed below should be affirmed.

JOHN ROSENBAUM,
Attorney of Plaintiff-Respondent.

SAMUEL I. KESSLER and
WILLIAM L. BRUNYATE,
Of Counsel with Plaintiff-Respondent.

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NOTICE OF APPEAL.

Filed November 26, 1916

Essex County Circut Court

GEORGE SIEGEL,

Plaintiff,

vs.

RIVERSIDE BOX AND LUMBER COMPANY, LOUIS ROMANOFF, WILLIAM MORRIS and JAMES J. NEARY,

Defendants.

Action at Law.

Notice of Appeal.

To SAMUEL I. KESSLER,
Attorney for Plaintiff.

Take notice that the defendant appeals to the Court of Errors and Appeals for the whole of the judgment entered in this cause.

DAVID BOBKER,
Attorney of Appellant.
786 Broad street, Newark, New Jersey.

GROUNDS OF APPEAL.

Filed December 24, 1915

New Jersey Court of Error and Appeals.

GEORGE SIEGEL,
Plaintiff and Respondent,
vs.
RIVERSIDE BOX AND LUMBER COMPANY, a New Jersey Corporation; JAMES J. NEARY, LOUIS ROMANOFF and WILLIAM MORRIS,
Defendants and Appellants.

On Appeal.
Grounds

The appellants state the following grounds of appeal:

1. The allegations of the complaint disclose no cause of action. From the face of the complaint it is apparent that plaintiff's remedy is in the Court of Chancery.

2. The check dated June 10, 1914, made payable to the order of Louis Romanoff, indorsed by Louis Romanoff, and signed by Charles Lefkowitz, was admitted in evidence.

The following question was admitted:

3. To the witness, Charles Lefkowitz: "Was there any agreement between you gentlemen whereby the stock issued to Miss Kashowitz and later turned over to you, was ultimately to be refunded either to the company or to Mr. Romanoff?"

4. The Court, after argument, wrongfully denied the motion to non-suit: "I have not time to

look at the cases now. I will do so when I have an opportunity. For the present I will deny the motion to non-suit, in order that I may expedite the case, and will consider the motion, and give you the benefit of it, as far as possible, afterwards."

5. The Court charged the jury: "Gentlemen of the Jury: You may render a verdict in favor of the plaintiff and against the defendant for the sum of one thousand and sixty ($1,060) dollars."

6. The Court refused to submit the case to the jury as to the question of damages.

DAVID BOBKER,
Attorney of Appellants.

JUDGEMENT RECORD.

COMPLAINT

GEORGE SIEGEL, *Plaintiff,* *vs.* RIVERSIDE BOX AND LUMBER COMPANY, a New Jersey Corporation; JAMES J. NEARY, LOUIS ROMONOFF and WILLIAM MORRIS, *Defendants.*	*Action at Law. Complaint.*

Filed October 6, 1914

The plaintiff, residing at 304 Belmont avenue, in the City of Newark, Essex County, N. J., says that:

1. On the 10th day of June, 1914, he became the holder by assignment, dated June 10th, 1914, by Anna Kashowitz, of ten shares of the capital stock of the Riverside Box and Lumber Company, a corporation of New Jersey, of the par value of one hundred dollars ($100) per share; and that annexed hereto and made a part hereof are copies of both the certificate of stock and the assignment herein referred to and marked, respectively, Schedule A and Schedule B.

2. That on September 11th, 1914, plaintiff, through his attorney, did present the original certificate of stock and the assignment thereof at the principal office of the company at the foot of Chester avenue, in the City of Newark, to Louis Romonoff, the treasurer of the said Riverside Box and Lumber Company, and William Morris, the vice-president of the Riverside Box and Lumber Com-

pany, with a request that they or either of them transfer the said shares of stock to the plaintiff on the books of the company.

3. That the said defendants, Louis Romonoff and William Morris, each of them severally refused so to transfer the said shares of stock on the books of the Riverside Box and Lumber Company, and that they still do refuse so to transfer the said ten (10) shares of stock.

4. Plaintiff still owns said shares of stock.

Plaintiff demands as damages the sum of one thousand dollars ($1,000.00), with interest from the 11th day of September, 1914.

JOHN ROSENBAUM,
Attorney for Plaintiff.

"Schedule A."

INCORPORATED UNDER THE LAWS OF NEW JERSEY.

Number 7 Shares 10

THIS CERTIFIES THAT

Annie Kashowitz is the owner of Ten Shares of the Capital Stock of the

"Riverside Box and Lumber Company."

Capital Stock $25,000.00

transferable only on the Books of the Corporation in person or by Attorney upon surrender of this Certificate.

IN WITNESS WHEREOF, the duly authorized officers of this Corporation have hereunto subscribed their names and caused the corporate Seal to be hereto affixed.

this 9th day of June, A. D. 1914.

James J. Neary, Pres. Louis Romonoff, Treas.

Shares
$100.
Each.

"Schedule B."

ASSIGNMENT.

Seal

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto George Siegel, shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Louis Romonoff, Attorney

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.
Dated June 10 1914.

In presence of Anna Kaskowitz

Chas. Lefkowitz.

NOTICE—The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular without alteration or enlargement or any change whatever.

ANSWER

Filed October 16, 1916

Defendants, Riverside Box and Lumber Company, a New Jersey corporation, having its principal place of business at the foot of Riverside avenue, Newark, New Jersey; James J. Neary, residing in the City of Newark, and State of New Jersey; Louis Romanoff, residing in the City of Newark and State of New Jersey, and William Morris, residing in the City of Newark and State of New Jersey, say that:

1. As to the statements in the first paragraph, defendants have no knowledge or information thereof sufficient to form a belief, and they therefore deny the truth of the matters contained in said first paragraph.

2. Defendants do admit that a certificate of stock was presented to Louis Romanoff, as Treasurer, and William Morris, as Vice President of Riverside Box and Lumber Company, but they have no knowledge or information as to whether the said presentation was made on September 11, 1914, or as to whether or not the said certificate of stock and the assignment thereof was the original.

3. The defendants admit the third paragraph.

4. As to the statements in the fourth paragraph, defendants have no knowledge or information sufficient to form a belief, and therefore deny the said statements.

FIRST DEFENSE.

George Siegel, who claims to be the owner of the ten shares of stock, is not a bona fide owner or purchaser of said shares of stock.

SECOND DEFENSE.

George Siegel, plaintiff as aforesaid, parted with no value at the time of transfer of said shares of stock to him or at any other time.

THIRD DEFENSE.

Annie Kashowitz, the original holder of the stock and who signed the assignment, held said shares of stock in trust for Louis Romanoff, of which fact George Siegel, the plaintiff, had due and sufficient notice.

FOURTH DEFENSE.

That the only person who could have the said shares of stock transferred on the books of the Riverside Box and Lumber Company was Louis Romanoff.

FIFTH DEFENSE.

That the signature to the assignment of the ten shares of stock did not correspond in every particular with the name as written upon the face of the certificate of stock.

OBJECTIONS IN POINT OF LAW.

1. Defendants will object that the complaint, together with the schedules "A" and "B" annexed thereto, disclose no cause of action. It fails to show that Louis Romanoff applied to have the shares of stock transferred on the books to the Company and it further fails to show that the signature on the assignment corresponds with the name as written upon the face of the stock certificate, in every particular without alteration or enlargement, or any change whatsoever.

2. Defendants will contend that the plaintiff's remedy is in the Court of Equity.

DAVID BOBKER,
Attorney for Defendants.

Dated Newark, N. J., Oct. 15, 1914.

Notice of Motion to Strike Out Answer

Filed November 21, 1914

To David Bobker, Esquire,
Attorney for Defendants.

Sir:

Please take notice that on Saturday the 21st day of November, 1914, at 10 o'clock in the forenoon, I shall apply to such Judge as may be hearing motions in the Essex County Circuit Court at the Court House in the City of Newark, for an order to strike out the answer heretofore filed in the above entitled cause on the following grounds:

1st—That the first defense in the answer filed is not a good and sufficient defense in law because a corporation cannot question the bona fides of the transaction between the present holder and the former holder of stock in the said corporation.

2nd—That the second defense in the answer filed is not a good and sufficient defense in point of law because a corporation cannot question the bona fides of the transaction between the former holder of stock and the present holder of the stock.

3rd—That the third defense in the answer filed is not a good defense in point of law because a corporation cannot question the bona fides of the transaction between the present holder of stock and a former holder upon a request by the present holder to transfer the shares on the books of the corporation and that the remedy of the defendant, Louis Romanoff, is in the Court of Equity and not in this Court.

4th—That the fourth defense in the answer filed is not a good and sufficient defense in point of law because the only person who could have the shares of stock transferred on the books of the Riverside Box and Lumber Company is the actual legal owner of the same, and that when presented by the

actual owner with a proper assignment, it cannot be questioned by the corporation or its officers to whom this duty of transferring the same is delegated.

5th—That the fifth defense in the answer is insufficient because it is an immaterial and a minor defect, not going to the merits of the action.

AS TO OBJECTIONS IN POINT OF LAW.

1st—The first objection should be stricken out because it is immaterial, improper and does not disclose any defense to the action.

Louis Romanoff, not being the record owner of the shares of stock in question and not being the legal owner or holder of these shares of the stock certificate, could not possibly have applied to have the shares of stock transferred on the books of the company. That the signature on the assignment differs in a very slight particular in the assignor's Christian name and the objection is therefore immaterial and improper.

2nd—That the Plaintiff's remedy is in this Court and not in a Court of Equity.

JOHN ROSENBAUM,
Attorney for Plaintiff.

Order Striking Out Answer

Filed January 7, 1915

This motion having come on regularly to be heard and the Court having heard argument of David Bobker, attorney for the defendants herein, in opposition thereto, and the Court being satisfied of the application in this behalf made,

It is on this fifth day of January, A. D. 1915, on motion of John Rosenbaum, attorney for the plaintiff,

ORDERED, That the answer heretofore filed by the defendants in the above entitled action, be and the same is hereby stricken out and dismissed; and it is further

ORDERED, That the said defendants have leave to file an amended answer without prejudice, within ten (10) days from the date hereof, upon the payment of the costs of this motion.

Let the foregoing order be entered.

FREDERIC ADAMS,
Circuit Court Judge.

Rule actually entered this 5th day of Jan. 1915.

Rule For Judgement

Filed January 29, 1915

Upon proceedings duly had, according to the statute, to strike out the answer as sham, the defendants had leave of Court to file an amended answer without prejudice, upon the payment of costs, but the defendants failed to comply with said rule and failed to file an amended answer within the time required by law; and because of such failure to file such amended answer and because of the failure of the defendants to take any other steps in response to the complaint within the time limited by the rules of Court;

IT IS ORDERED, That judgment interlocutory be entered against the said defendants, Riverside Box and Lumber Company, a New Jersey corporation; James J. Leary, Louis Romanoff and William Morris, and in favor of the plaintiff;

And the damages of the plaintiff having been assessed by the Clerk of this Court, in the sum of One Thousand dollars ($1,000.00);

IT IS ORDERED, That judgment final be entered against the said defendants, Riverside Box and Lumber Company, a New Jersey corporation; James J. Neary, Louis Romanoff and William Morris, and in favor of the plaintiff, George Siegel, for the sum of One thousand dollars ($1,000.00) with costs of this suit to be taxed.

Rule actually entered this 29th day of January, 1915.

Let this rule be entered,

FREDERIC ADAMS,
Circuit Court Judge.

On motion of
JOHN ROSENBAUM,
Attorney for Plaintiff.

Order Opening Default Judgement

Filed February 8, 1915

It appearing to the Court that judgment for the plaintiff in the sum of one thousand dollars having been entered by default in this action, and application for the reopening of said judgment having been made by the defendants, upon the ground that they have a just and legal defense to said action on the merits of the case and the court having granted a rule requiring the plaintiff to show cause why said judgment should not be opened, and the defendants permitted to defend the said action, and it appearing that said rule to show cause was duly served on plaintiff's attorney, and it also ap-

pearing by the affidavits presented by the defendants that they have a defense to said action on the merits of the case, and after hearing David Bobker, as attorney for the defendants, and Samuel I. Kessler, of counsel to John Rosenbaum, attorney for plaintiff;

It is on this sixth day of February, 1915, on motion of David Bobker, attorney of the defendants,

ORDERED, That the judgment entered in the sum of one thousand dollars in the aforesaid action, said judgment having been entered on the 29th day of January, 1915, be opened and the defendants be and they are hereby permitted to defend the said action upon the immediate filing of the amended answer, and that no execution be issued upon said judgment, as aforesaid, until the further order of this Court. It is further

ORDERED, That the lien acquired by the judgment, as aforesaid, shall remain as security for the satisfaction of any judgment the plaintiff may recover in the action.

Let the foregoing rule be entered,

FREDERIC ADAMS,
Judge of the Circuit Court.

On motion of
DAVID BOBKER,
Attorney of Defendants.

Rule entered February, 1915.

Amended Answer

Filed Februaay 10, 1915

Defendants, Riverside Box and Lumber Company, a New Jersey corporation, having its principal place of business at the foot of Riverside Avenue, Newark, New Jersey; James J. Neary, residing in the City of Newark and State of New Jersey; Louis Romanoff, residing in the City of Newark and State of New Jersey, and William Morris, re-

siding in the City of Newark and State of New Jersey, say that:

1. As to the statements in the first paragraph, defendants have no knowledge or information thereof sufficient to form a belief, and they therefore deny the truth of the matters contained in said first paragraph.

2. Defendants do admit that a certificate of stock was presented to Louis Romanoff, as Treasurer, and William Morris, as Vice President, of Riverside Box and Lumber Company, but they have no knowledge or information as to whether the said presentation was made on September 11, 1914, or as to whether or not the said certificate of stock and the assignment thereof was the original.

3. Defendants admit the third paragraph. Defendants have no knowledge or information sufficient to form a belief, and therefore deny the said statements.

4. As to the statements in the fourth paragraph, defendants have no knowledge or information sufficient to form a belief, and therefore deny the said statements.

FIRST DEFENSE.

George Siegel, who claims to be the owner of the shares of stock, is not a bona fide owner or purchaser of said shares of stock, and Riverside Box and Lumber Company, and the other defendants, had knowledge of this fact on and before September 11, 1914.

SECOND DEFENSE.

George Siegel, plaintiff as aforesaid, parted with no value at the time of the transfer of said shares of stock to him, or at any other time, and Riverside Box and Lumber Company, and the other defendants, had knowledge of this fact on and before September 11, 1914.

THIRD DEFENSE.

Annie Kashowitz, the original holder of the stock, who signed and executed the assignment,

held said shares of stock in trust for Louis Romanoff, of which fact George Siegel, the plaintiff, had due and sufficient notice, and Riverside Box and Lumber Company, and the other defendants, had knowledge of this fact on and before September 11, 1914.

FOURTH DEFENSE.

The measure of damages as claimed by plaintiff is excessive, and does not represent the value of the shares of stock at the time of the refusal to transfer said shares.

OBJECTIONS IN POINT OF LAW.

James J. Neary, Louis Romanoff and William Morris, objecting separately, state that the complaint discloses no cause of action as against them.

DAVID BOBKER,
Attorney for Defendants.

Dated Newark, New Jersey, February 10, 1915.

POSTEA.

Filed November 11, 1915.

This case was tried before Judge Frederic Adams, with a jury, Essex County Circuit Court, on the 10th and 11th days of November, 1915.

The Judge directed the Jury to render a verdict in favor of the plaintiff and against the defendants for the sum of $1,060.

TESTIMONY

ESSEX CIRCUIT COURT

Wednesday, November 10, 1915.

GEORGE SIEGEL

vs.

RIVERSIDE BOX AND LUMBER COMPANY, JAMES J. NEARY, LOUIS ROMANOFF AND WILLIAM F. MORRIS.

Transcript of shorthand notes of testimony taken in the above stated cause, upon the trial thereof at the Court House, Newark, New Jersey, December 10, 1915.

Before Honorable Frederick Adams, Judge, and a Jury.

Samuel I. Kessler and William L. Brunyate, for plaintiff.

David Bobker, for defendants.

Mr. Brunyate opens for plaintiff.

Mr. Bobker opens for defendants.

ARGUMENT ON STIPULATION.

Mr. Brunyate. Your Honor, from the opening of Mr. Bobker, I assume that most of the facts can be admitted. It will greatly shorten this case.

Mr. Bobker, will you admit the minutes showing the officers of the corporation—the original minutes of the corporation of the 6th day of June, 1914?

Mr. Bobker. There are some portions of the minutes, particularly with relation to those ten shares of stock, that I cannot explain. They are ambiguous.

The Court. If it is important to know just what is admitted, the best way is to put it in

the form of a stipulation and put it on the record.

Mr. Brunyate. It would greatly shorten the case. Will you admit, for instance, that Mr. Neary, Mr. Romonoff and Mr. William Morris are the directors and were the directors in September, 1914, of this corporation?

Mr. Bobker. I will admit that.

Mr. Brunyate. Will you admit that the stock certificate No. 7, ten shares, was issued to one Annie Kashowitz?

Mr. Bobker. Yes; I will admit that.

Mr. Brunyate. And will you admit the minutes of the first meeting of the incorporators of the Riverside Box and Lumber Company and the minutes of the first meeting of directors of the Riverside Box and Lumber Company? The one I just wish to prove the officers by and the other—this resolution.

Mr. Bobker. I will admit these minutes, excepting that, as to the resolution, I want to go into that and cross-examine before I permit it to go in as evidence.

The Court. Then you do not admit the minutes of that meeting?

Mr. Bobker. No, sir.

LOUIS ROMONOFF, sworn in behalf of plaintiff.

Direct examination by Mr. Brunyate.

Q Mr. Romonoff, are you the secretary of the Riverside Box and Lumber Company?

A Yes, sir.

Q And you have been the secretary since the organization of the company?

A Yes, sir.

Q I present you a book and ask you what it is (book shown to witness)?

A The bylaws——

Q Just the book itself—the minutes and bylaws, or what?

A The bylaws of the Riverside Box and Lumber Company.

Q It contains the minutes also, does it not?

A Some; yes, sir.

Q Some of the minutes?

A Yes, sir.

By the Court.

Q So far as the minutes are contained in that book, are they consecutive minutes? You apparently distinguish between some minutes and all minutes.

A I believe so.

Q You believe them to be consecutive?

A Yes, sir.

Q Beginning with the beginning?

A Yes, sir.

Q Then there are others at the other end which are not contained in the book?

A I believe these are the last; I am not certain, though.

Q Then do you want to change your statement that it contains some of the minutes?

A I am not certain whether it is all.

Q You are not certain whether it contains all or not?

A No, sir.

Mr. Brunyate. I turn to page 1 of the minutes——

The Court. Do you offer it?

Mr. Brunyate. Yes; I am going to offer it.

The Court. Do you want to cross-examine on the offer?

Mr. Brunyate. I simply want to ask first whether that is his signature to those minutes (indicating)?

Witness. Yes, sir.

By Mr. Bobker.

Q Does that book contain all the minutes of the corporation?

A I believe so; yes, sir.

Q Will you look at that and see?

A As far as I can recollect, this is the last (indicating).

Q I call your attention to the third page of the minutes of the first meeting of directors, and ask you to look at the resolution.

A Which one, Mr. Bobker?

Q There is only one resolution there, is there not (indicating)?

A Oh, yes. Yes, sir; I remember that.

Q Just read that resolution, will you?

Mr. Brunyate. I object, your Honor.

The Court. The question now is as to the admissibility of the book; not as to what it contains specifically, but generally, whether it is a regularly kept book and what it purports to be.

Mr. Bobker. Well, I have no objection to the use of the book for that purpose.

The Court. Let it be marked.

Book marked Ex. P1.

Mr. Brunyate. Did I understand you to say that you admit the stock ledger?

Mr. Bobker. I would rather you would prove that.

By Mr. Brunyate.

Q I show you a book which purports to be the stock ledger (book shown to witness).

A Yes, sir.

Q That is the stock ledger?

A Yes, sir.

Q I direct your attention to page 5 of the ledger, and ask you to read that entry.

The Court. One moment.

Mr. Brunyate. I will offer it first.

(Book marked Ex. P2.)

Q Now, read that please.

A "Annie Kashowitz. When issued, June 9, 1914; from whom received, from treasurer; page 7; number of shares, ten."

The Court. This relates to a certificate for ten shares of stock, I assume.

Mr. Brunyate. Yes, your Honor. I would like to have the certificate marked in evidence

That is the certificate which the gentleman on the other side consented to admit.

(Certificate marked Ex. P3.)

Mr. Brunyate. The certificate is made out to Annie Kashowitz, certificate No. 7; shares, ten.

The Court. What is the date of it?

Mr. Brunyate. The 9th day of June, 1914.

ANNIE KASHOWITZ, sworn in behalf of plaintiff.

Direct examination by Mr. Brunyate.

Q Miss Kashowitz, I show you a paper that purports to be certificate No. 7, ten shares of stock of the Riverside Box and Lumber Company, and direct your attention to the back of the certificate and ask you if that is your signature (paper shown to witness)?

A It is.

Mr. Brunyate. I will offer the assignment on the back of the certificate.

Mr. Bobker. No objection.

Cross-examination by Mr. Bobker.

Q Did you ever have this certificate in your possession, Miss Kashowitz?

A No, sir; I did not.

Q Did you fill in this assignment the name of George Siegel?

A I did not.

Q Did you fill in this assignment the name of Louis Romonoff?

A I did not.

Q Will you tell the Court and jury under what circumstances you came to sign this assignment?

The Court. Are there two assignments?

Mr. Bobker. I refer to the power of attorney, that is all.

The Court. I see that this is an assignment to George Siegel, the plaintiff in this case, I presume. There is only one signature of the witness. So that there is only one assignment.

Annie Kashowitz, cross.

Q Did you ever see Mr. Siegel?

A Yes, sir; I know Mr. Siegel.

Q Before you signed your name to the assignment?

A No, sir; I never saw him in reference to this at all; I just happened to know him.

Q Did you see him before that?

A No, sir; I did not.

Q You did not see Mr. Siegel until after you saw——

A No, I knew Mr. Siegel before then; afterwards, too.

By the Court.

Q Now, pay attention to the question. Otherwise we will lose time. The question, as I understood it, was, first, whether you knew Mr. Siegel, and you said you did, and you were asked whether you knew him, or saw him before you signed this paper?

A I did.

Q You did?

A Yes, sir.

By Mr. Bobker.

Q Did you talk to him about signing this paper?

A No, sir; I did not.

Q Did you know that you had assigned it to Siegel?

A I did not.

Q Did you pay anything for the stock?

Mr. Brunyate. I object, your Honor.

A I did not.

Mr. Brunyate. I simply asked her the one question: whether or not that was her signature. It is not cross-examination.

The Court. I think it is not cross-examination. The witness simply identified her signature.

Mr. Brunyate. Mr. Bobker, in the pleadings it is set out that we have made a demand on the corporation and on these three individuals for the transfer of the stock. You set

up in your pleadings that you admit that we demanded it and that you refused to transfer the stock. Will you admit that on the record?

Mr. Bobker. Yes, we admit that.

The Court. The request to transfer and the refusal are admitted.

MOTION FOR NON-SUIT.

PLAINTIFF RESTS.

Mr. Bobker. May it please the Court, I move for a nonsuit on the following two grounds. The plaintiff in this suit, under our decisions, as I understand it, has not the legal title to that stock. He has the equitable title. The legal title is not perfected until the actual transfer is made on the books of the company. (Citing *Morris* v. *Hussy Dyeing Machine Company,* 86 Atl. Rep. 1026.)

I say to your Honor that in this case they should have applied to the court of equity for a writ of mandamus, or by some other remedy, for the purpose of transferring the stock on the books of the company.

In the case of *Morton* v. *Timken,* 48 N. J. L. 87, the assignee applied for leave to transfer stock on the books of the company, and the court of equity refused because there was fraud connected with the entire transaction, and the Court of Chancery held that they would not take it under advisement in any case where the party's hands were not clean, and they sent them to a court of law. In this case there is no fraud; it is a straight case, and I contend that they should have gone to the Court of Chancery to get their remedy.

My second point for nonsuit is that they have shown absolutely no damages at all. Is there any presumption whatsoever that a stock certificate, simply because it has on the face of it, "Par value, $100," that ten shares are worth $1,000? Is it not incumbent on them to prove damages, to prove that they have been

harmed? They have shown absolutely no damages at all. A stock certificate may have on its face "Par value, $1,000," and it may not be worth a penny.

On those two grounds I insist that the nonsuit should be granted.

The Court (after argument). I have not time to look at the cases now. I will do so when I have an opportunity. For the present, I will deny the motion to nonsuit, in order that I may expedite the case, and will consider the motion, and give you the benefit of it, as far as possible, afterwards.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

LOUIS ROMONOFF, called in behalf of defendants.

Direct examination by Mr. Bobker.

Q Mr. Romonoff, are you an officer of the Riverside Box and Lumber Company?

A Yes, sir.

Q What office did you hold on June 10, 1914?

A Secretary and treasurer of the company.

Q Do you know Charles Lefkowitz?

A Yes, sir.

Q On or about the 10th day of June, 1914, did you have any talk with Lefkowitz in the presence of Mr James J. Neary at Mr. Kessler's office?

A Yes, sir.

Q What was said?

A Talked about business matters.

The Court. I will have to feel my way a little. The parties to this case are George Siegel and the Riverside Box and Lumber Company, James J. Neary, Louis Romonoff and William Morris. What is it that makes the declarations of Mr. Lefkowitz evidential?

Mr. Bobker. As I related in my opening, your Honor, Charles Lefkowitz is the gentleman who agreed to deliver lumber to this com-

pany, and whose name was also mentioned by Mr. Brunyate in his opening. He is the gentleman who arranged with Mr. Romonoff as to how these shares of stock were to be held. That is his connection with the matter.

The Court. Is it admitted that Mr. Lefkowitz's declarations are evidential?

Mr. Brunyate. Yes, sir; they are pertinent. Mr. Lefkowitz is a gentleman who should have been a stockholder also, but was not.

The Court. Then you may go on. You were asked to state what the conversation was with Mr. Lefkowitz.

(Question read.)

Witness. In reference to what?

Q In reference to furnishing material to the company.

A Mr. Lefkowitz was to extend credit.

The Court. You are asked what he said.

Witness. He was to extend a credit——

The Court. Do not say that he was to; just say what he said.

Witness. Extend credit to the Riverside Box and Lumber Company for a period of about two years, to the extent of $4,000, or rather, between $3,000 and $4,000.

By Mr. Brunyate.

Q Was that before or after the issuing of this stock?

A That was at the time the stock was to be issued.

By Mr. Bobker.

Q Was it before or after?

A Before.

By the Court.

Q One moment. When was this conversation?

A In Counsellor Kessler's office.

Q When?

A I can't exactly tell you the date. I believe I have it marked here. (Referring to memorandum.) I believe it was on June 5th or thereabouts.

Q What year?

A 1914. I have it marked according to the corporation papers, but I am not certain about what date.

The Court. Go on.

By Mr. Bobker.

Q State the agreement.

A The agreement was, as I stated there, and in consideration of that we were to issue in the name of Mr. Lefkowitz, or some person, ten shares of stock, that were to be kept with a party agreeable to ourselves, and after the transaction would be favorable we were perhaps to turn the stock over to him.

By the Court.

Q Ten shares were to be issued to "some person agreeable to ourselves"?

A Yes, sir.

Q Who are "ourselves"?

A Myself and Mr. Lefkowitz.

By Mr. Bobker.

Q Until when?

A Until the time he was to finance, about two years.

Q What do you mean by "finance"?

A Well, a credit of $3,000 or $4,000 worth of lumber.

Q Tell us what he agreed to do about that.

A Well, he was also to—well, I don't know what more to say with reference to the affair. The fact is that he broke the contract. As soon as we got the lumber from him he was to show the lumber bills. We asked him to show us the bills, and he wouldn't do it, and we found that he was overbilling us.

By the Court.

Q This is the way I understand you: "I know Charles Lefkowitz. He was at Mr. Kessler's office. Mr. Lefkowitz said in the presence of Mr. Neary that he would extend credit to the company for between $3,000 and $4,000 for two years. That

was on June 5, 1914. Ten shares were to be issued to some person agreeable to ourselves; that is, Mr. Romonoff and Mr. Lefkowitz."

A That is right.

Q What more about the shares?

A They were to be kept until the expiration of the two years, and then to be turned over, if everything was satisfactory.

Q Turned over to whom?

A To Mr. Lefkowitz.

By Mr. Bobker.

Q Did he send the corporation lumber?

A He has a little.

Q For how long?

A About $1,800.

Q And then what happened?

A Then we found out that he was over-billing it, and so we asked him to show the bills that he was paying for it, and he refused, and he demanded his money, which we have paid.

By the Court.

Q What money?

A The money of the lumber that he gave to the company.

By Mr. Bobker.

Q What was done with the stock, the ten shares of stock in question?

A We demanded the stock, and he wouldn't turn it over.

Q What was done with the ten shares of stock after your meeting on June 5th?

A We took it home. We both lived in the same house at Belleville, and when we came there Miss Kashowitz, who was a mutual friend of both families, was present, and we came and showed her the stock, and we left it on the table. That is all we know.

Q Did she sign it?

A She has signed it, yes.

Q Do you know what became of it?

A No, sir.

Q After that?

A No, sir; I do not.

Q And after you paid off Mr. Lefkowitz did you demand the return of the stock?

A Yes, sir.

Q What did he say?

A He wouldn't return it.

Q Did Miss Kashowitz pay anything for the stock?

A No, sir.

Q Did Lefkowitz?

A No, sir.

Q I call your attention to the first minutes of the meeting of directors, to the first resolution, on page 3: "Further resolved and ordered that ten shares of the capital stock be issued to one Louis Romonoff, for services performed by him and other persons who assisted him in organizing and developing said company, and that such stock shall be issued to any person designated by him for the use of said person, and that all said above referred to stock shall be considered fully paid up and not liable to any assessment." Is that the——

A That is the ten shares of stock.

Q Is that the ten shares in question?

A Yes.

Q Do you know what the word "persons" means?

Objected to.

(Question withdrawn.)

Q Has the company paid any dividends?

A No, sir.

Objected to.

The Court. I suppose it is offered for the purpose of showing value.

Mr. Bobker. Yes, sir.

The Court. I will take the testimony. I am not prepared to reach any conclusion yet as to the measure of damages. I will hear both sides on that. I will take this proof, perhaps, as tending to throw some light on the

value of the stock.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

(Question read.)

Q Answer the question.

A No, sir.

Q Why not?

A It hasn't paid.

Mr. Brunyate. I object to that, your Honor. I do not suppose there is any necessity of my taking objections right along. I suppose that line will be subject to my objection.

The Court. Yes.

Witness. It hasn't paid because business was poor.

Q What is the position of the company at this time——

A It is at a loss.

Q —as to assets and liabilities?

A The liabilities are superseding the assets.

Q Was Mr. Morris also present at the meeting on June 5, 1914?

A Yes, sir.

The Court. What do the minutes show?

Mr. Bobker. The minutes show that, your Honor (handing book to the Court).

The Court. Mr. Morris appears to have been present.

Cross-examination by Mr. Brunyate.

Q Mr. Romonoff, you live in New York, do you not?

A Yes, sir; at present.

Q How did you happen to come over to this particular meeting in Newark?

A That is the time I met Mr. Lefkowitz, and I got in conversation about business here, and so on, and I finally moved over here.

Q You got interested in this particular deal through Lefkowitz?

A Yes, sir.

Q And he invited you to come over?

A Well, in the course of time. This thing hasn't been taking place in a day or two; it has been——

Q No, answer my question.

A What is it?

The Court. The first question was, I think, not how you came over to Newark, but how you came to attend this meeting. Is that it?

Mr. Brunyate. Yes, sir.

The Court. How did you come to attend this meeting?

Witness. Because I was interested in this business.

Q Had you ever been engaged in this kind of business before?

A No, sir.

Q What was your business?

A Chemist.

Q Do you know the nature of the business which the Riverside Box and Lumber Company was to engage in?

A Yes, sir.

Q What was it?

A Manufacturing wooden packing cases and selling lumber to factories.

Q Was that your business?

A No, sir; it was not; my business was chemist

Q Did you know anything about the manufacturing of boxes?

A. No, sir.

Q Then how did you become interested in this particular line of business?

A Miss Kashowitz, being a friend of Mr. Lefkowitz, and of our family, came over and spoke about it, and brought me over here and introduced me to Mr. Lefkowitz.

Q You became interested in the business through Mr. Lefkowitz?

A Through Miss Kashowitz, rather.

Louis Romonoff, cross.

By the Court.

Q She introduced you to Mr. Lefkowitz?

A Yes, sir.

By Mr. Brunyate.

Q Besides yourself and Mr. Lefkowitz, Mr. Neary and Mr. Morris were interested in this deal, were they not?

A Yes, sir.

Q Were they present at this conversation?

A Yes, sir.

Q Between yourself and Mr. Lefkowitz?

A Yes, sir.

Q Did they have anything to say as to the nature of these ten shares of stock which you were to turn over to a third person?

A No, sir; that was mine personally, between myself and Mr. Lefkowitz.

The Court. Who else did you say besides Mr. Neary?

Mr. Brunyate. Mr. Neary and Mr. Morris.

The Court. The witness has already stated that it was in the presence of Mr. Neary. Now he says it was also in the presence of Mr. Morris.

Mr. Brunyate. Yes, sir.

Q Mr. Morris, then, was a party to this agreement, too, was he?

A Yes, sir.

Q Just what were you to do for Mr. Lefkowitz in return for the assuming of the financing of this corporation?

A After two years we were to turn him over the ten shares of stock.

Q Anything else?

A Yes.

Q What?

A We were to pay him.

Q How much?

A $10 a week.

Q Did you pay him?

A No, sir.

By the Court.

Q $10 a week?

A Yes, sir.

By Mr. Brunyate.

Q How was that $10 a week to be paid him?

The Court. Who was to pay him?

Witness. The Riverside Box and Lumber Company.

A I was to take the money and keep it for as long as I pleased, and then turn that over to Mr. Lefkowitz.

Q You were to take the money?

A Yes, sir.

Q You personally?

A Yes, sir.

Q And keep it as long as you desired?

A Yes, sir.

By the Court.

Q What money?

A The $10 a week.

By Mr. Brunyate.

Q Were you to get any money besides that?

A Yes, sir; I was to draw $25 a week, and my expenditure was greater, and we agreed then that he was to give me the $10 due him for his services, and I was to keep it, and I was to pay him if at a certain time——

Q Do I understand you to say that you were to get $25 a week from this corporation for your services?

A Yes, sir.

Q And out of that $25, $10 was to be paid to Mr. Lefkowitz?

A No, sir; an additional $10 was to be paid to Mr. Lefkowitz.

Q And Mr. Lefkowitz was to pay that $10 over to you?

A I was to get it.

Q He was to pay it over to you? Answer the question.

A Yes, sir.

Q And then you were to get $35 in all?

A Yes, sir.

Q And the arrangement was that you could keep that extra $10 as long as you wished?

A Yes, sir.

Q Indefinitely?

A Well, no time stated; any time at all.

Q Ten years?

A I don't know; I couldn't say. We lived in the same house——

Q No.

A Well, indefinitely.

Q Ten years?

A Ten years.

Q Twenty years?

A I couldn't say; I don't know.

Q Were you ever to pay it over to Mr. Lefkowitz?

A Yes, sir.

Q Did you ever pay it over?

A No, sir.

By the Court.

Q Was this agreement, as you call it, in writing?

A No, sir.

By Mr. Brunyate.

Q Was this part and parcel of the agreement to transfer this stock? Was this part of the same agreement for the transfer of this stock?

A Yes, sir.

Q Now, you said—correct me if I am mistaken—that you were to turn ten shares of stock of this company over to some person agreeable to yourself, and would perhaps turn it over to Lefkowitz. What do you mean by "perhaps"?

A Not perhaps, but if he lived up to the contract for two years, if he would deliver $3,000 or $4,000 worth of lumber to the company, then it was to belong to him.

Q You said "perhaps," though, did you not, in your former testimony?

A Perhaps so; I don't know.

Q What did you mean by it?

A I don't know, except in the course of our conversation.

Q Was there any agreement between you and Lefkowitz and the other men that you were to turn this stock over to Lefkowitz at any specified time?

A After two years, not before.

Q Could you wait any longer than two years—three years, for instance?

A I couldn't say.

Q Was it optional?

A Optional, two years.

Q Was it optional to you to turn it over in two years or four years?

A Two years; that was the agreement.

Q You were going to turn it over to Lefkowitz at the end of two years whether or no?

A Sir?

Q You were going to turn this stock over to Lefkowitz at the end of two years, without any strings on it at all?

A If he lived up to the—provided he lived up to the agreement.

Q How did you happen to arrive at the agreement as to the figures of $3,000 or $4,000 a year?

A We didn't arrive at any figure. That was the account that we spoke about, because we were to pay that other concern, too.

Q Did you mention $3,000 or $4,000?

A Yes, sir.

Q Did you mention $5,000 or $6,000?

A No, sir.

Q Did Mr. Lefkowitz agree to finance the company to the extent of $3,000 or $4,000?

A Yes, sir.

Q Which?

A $3,000 or $4,000.

Q Was Mr. Kessler present?

A It was at his office. I don't know whether he was present or not. He was the attorney.

Q You will not swear that he was not present?

A I will not swear that he was not present.

Q When did you demand this stock of Mr. Lefkowitz?

A Well, a few weeks after the rupture came.

Q Can you not fix it any more definitely than that?

A Several weeks after.

Q When was the rupture?

A I will have to look up dates; I can tell you.

Q Well, look it up.

A (Referring to memoranda.) It must have been some time in July, I think. The whole thing did not last a month.

Q The whole thing did not last a month?

A No.

Q Then it was some time after July that you demanded this stock from Lefkowitz?

A Yes, sir.

Q Where was Mr. Lefkowitz when you demanded the stock from him?

A In his house. We lived in one house.

Q What time of day was it?

A In the evening.

Q Where were you in the house?

A Well, we were—we used to sit on the porch and in the house, because he lived downstairs——

Q Where was he when you demanded the stock?

A I was in the house.

Q Whereabouts in the house?

A Well, it is very hard to say; I couldn't say, but I know some part of the house—most likely in the house.

Q Well, was he in bed or down in the coal-bin?

A No, he must have been in the dining-room.

Q Do you know whether or not he was in the dining-room?

A I am not certain; he might have been on the

veranda or in the dining-room. It was in the summer, and we were on the veranda most of the time.

Q Can you say where you demanded the stock?

A No.

Q Did you demand the stock more than once?

A Yes, we used to talk it over almost every night.

Q How did you come to talk it over almost every night?

A Well, he was very disagreeable about it, and he made it so disagreeable, in fact, that I had to move out of the house.

Q Whose house was that, yours or Mr. Lefkowitz's?

A Mr. Lefkowitz's.

Q Mr. Lefkowitz's house?

A Yes, sir.

Q So that you left?

A Yes, sir.

Q How many times did you demand the stock?

A Oh, I couldn't say; many times.

Q You cannot say how many times?

A No, I can't tell definitely.

Q Was that the reason you left the house?

A No, sir; there were other minor troubles, women, and so on, disagreement, and so on, after this started, so I thought it best to move out.

Q Do you remember passing this stock over to Miss Kashowitz?

(No response.)

Adjourned until tomorrow, Thursday, November 11, 1915, at 10 o'clock A. M.

SECOND DAY.

Thursday, November 11, 1915.

Met pursuant to adjournment.

Present, counsel as before stated.

LOUIS ROMONOFF, resumes the stand in behalf of defendants.

Cross-examination (continued) by Mr. Brunyate.

Q (Question read as follows: "Do you remember passing this stock over to Miss Kashowitz?")

The Court. You may answer that question.

A Yes, sir.

Q When did you turn that stock over to Miss Kashowitz?

A On the same day when we got it from Mr. Kessler's office.

Q Where was it that you turned it over to her?

A In Mr. Lefkowitz's house.

Q Was Miss Kashowitz there at the time?

A Yes, sir.

Q Who turned the stock over to her?

A Mr. Lefkowitz.

Q Did he have it in his possession, or did you?

A No, sir; he had it in his possession.

Q Then the stock was originally given to Mr. Lefkowitz?

A No, sir; it was not.

Q To whom was it given?

A It was mine, given to Miss Kashowitz, in charge, to be kept by her.

Q No. To whom was this stock originally delivered?

A Originally to me. I passed it over to Mr. Lefkowitz.

Q You gave it to Mr. Lefkowitz?

A Yes, sir.

Q Why did you pass it to Mr. Lefkowitz?

A Well, that was the first venture that I ever had to do with stocks; I never knew any more about stocks than the man in the moon, and I merely took it, and we went up to the house, which was the same house, and Miss Kashowitz was there, and I spoke to her, and I gave the stock to him and he passed it to her.

Q Did you pass him any other stock than that?

A No, sir.

Q Well, haven't you any other explanation than the one just given for the reason for your giving that particular stock to Mr. Lefkowitz?

A I can't understand.

Q (Question read.)

A No, sir.

Q Why did you not give your own stock to Mr. Lefkowitz?

A Because the other was made out in my name, and, naturally, I knew I was to keep it.

Q Do you know when Miss Kashowitz turned this stock over to Mr. Lefkowitz?

A I believe at the same time; it was left there.

Q Did you see her?

A No, sir; I did not.

Q You were there, were you not?

A I was there; yes, sir. I walked right upstairs.

Q Then you do not know whether or not Miss Kashowitz turned this stock over at that particular time?

A I know so.

Q How do you know?

A Because we spoke about it, and I found out from Miss Kashowitz that, and found out that he took the stock from her at the same time.

Q Then you knew at that time that the stock was in Mr. Lefkowitz's possession?

A Yes, sir.

Q How did you become acquainted with Mr. Neary and Mr. Morris?

A Through Mr. Lefkowitz.

Q When did you first meet those two gentlemen?

A I believe about two weeks prior to the corporation papers, I think; some time in June, I believe.

Q What was the occasion upon which you met these two gentlemen?

A I have been brought over by Miss Kashowitz to Mr. Lefkowitz, and he took me over to Mr. Morris' house, and there we talked business, and we made an appointment, I believe, for a Sunday evening.

Q What was the purpose of the conference?

Q Was it or was it not for the business purchased from the Newark Box and Lumber Company that you issued the stock of the Riverside Box and Lumber Company?

A Yes, sir.

Q On your direct examination, I think, you testified that the ten shares of stock issued to Miss Kashowitz were to be held pending the performing of certain things by Mr. Lefkowitz, and eventually turned over to him, and if he did not perform those things, to be returned?

A That is right.

Q Do you mean to be returned to the corporation?

A To be returned to me.

Q To you?

A Yes, sir.

Q Why you?

A Well, because it was most of the stock was mine; I had more money in this concern than any one else.

Q Was this your stock?

A Well, it had to be issued in my name.

Q Why?

A Well, in fact, that was the agreement, but he said——

Q What was the agreement?

A That the stock was supposed to be issued in my name. I said perhaps we would make it in his name, and he said no, he couldn't have anything in his name at all, for the reason that he is affiliated in another concern, and that would be contrary to the laws, so we decided to have it in somebody agreeable to both of us, and Miss Kashowitz was decided on.

Q Did you originally intend to issue this stock direct to Mr. Lefkowitz?

A Well, I couldn't say, but I didn't know anything about stocks at that time.

Q Just answer that question.

A Did I?

A Well, talking about business, being Lefkowitz is in the same business and——

Q What business?

A The box manufacturing.

Q With whom was Mr. Lefkowitz connected or associated at that time?

A With the National Box and Lumber Company, the same concern he is with now.

Q And with relation to the business of what company did you have your conference?

A Well, at first it was when he wanted a partner in the business, and then that stopped, and he heard of a firm that went into bankruptcy, and he thought it best that we would buy the other concern out.

Q What was the name of the other concern?

A The Newark Box and Lumber Company.

Q Did you buy it out?

A Yes, sir; bought it from the receiver—the receiver's sale, rather.

Q Who bought it?

A Myself.

Q Who put up the money for the purchase of this concern?

A I did.

Q Your own money?

A Yes, sir.

Q Did Mr. Lefkowitz put up any money?

A No, sir.

Q Did Mr. Lefkowitz advance you the money for the purchase?

A No, sir.

Q Did he advance you any money for that business?

A No, sir.

Q None whatever?

A None whatever.

Q Was it the business of the Newark Box and Lumber Company that was afterwards turned over to the Riverside Box and Lumber Company?

A Yes, sir.

Q I mean the four of you.

A Well, then I didn't know the——

Q You can answer that question yes or no.

(Question read as follows: "Did you originally intend to issue this stock direct to Mr. Lefkowitz?")

A No, sir.

Q Did you not just say a minute ago that the stock would have been issued to Mr. Lefkowitz had it not been contrary to law?

A Well, I didn't know much about stocks at that time and I didn't know just how things should be done.

Q Well, then, it was originally your intention to issue that stock to Mr. Lefkowitz?

A No, he wasn't entitled to it; I couldn't tell whether he would perform his duties or not.

Q I am not asking you that; I am asking you your intention at that time.

A No, sir.

Q Then how did the question of Mr. Lefkowitz's inability to take that stock come up?

A Well, in the course of conversation. There are a lot of things that I learned about stocks at that time that I didn't know before.

Q (Question read.)

A I couldn't exactly say.

Q How did this business prosper the first three or four months?

A It hasn't prospered at all; it went at a loss, because Mr. Lefkowitz was trying to spoil our credit.

Q Did you have any business the first six weeks?

A Yes, sir; because we had some business of the old concern.

Q Did you have any losses the first six weeks?

A Yes, sir.

Q Did you have some profits, too?

A No, we had loss most of the time.

Re-direct examination by Mr. Bobker.

Q What business is the National Box and Lumber Company in?

A The same, manufacturing packing cases and selling lumber.

Q The same line as the Riverside Box and Lumber Company?

A The same line as the Riverside Box and Lumber Company.

Q And in September, 1914, they applied for a transfer of the stock on the books of the company. What was the condition of the business at that time?

A The business was very poor, running at a loss.

Q What was the condition as to assets and liabilities at that time?

Objected to.

A A loss.

The Court. I will take the testimony subject to your objection.

Plaintiff's counsel pray an exception to this ruling of the Court.

Exception noted as ground of appeal.

Q (Question read.)

A The liabilities superseded the assets.

Q Is George Siegel related to Charles Lefkowitz, do you know?

A Yes, that I know of; he is his brother-in-law.

ANNIE KASHOWITZ, recalled in behalf of defendants.

Direct examination by Mr. Bobker.

Q Miss Kashowitz, I show you Exhibit P3 (shown to witness). Did you pay anything for that stock?

A No, sir.

Q Did Mr. Siegel pay you anything?

A No, sir.

Cross-examination by Mr. Brunyate.

Q Immediately after you signed that stock, Miss Kashowitz, what became of it?

A Well, I left it just where I had signed it;

I left it on the table in Mr. Lefkowitz's home, or he took it; I don't remember which.

Q You do not know whether you gave it to him?

A I don't know; I paid no particular attention to the fact.

Q He was there, was he not?

A Yes, sir.

Q Who presented that stock to you to sign?

A I believe Mr. Lefkowitz did. It was in the house that everything was done.

By the Court.

Q At the time you signed the transfer indorsed on the stock had it been filled up?

A Really, I can't remember; I don't know. I paid no particular attention. The thing was done in a friendly mood, and I didn't look into the thing at all.

Q Do you know in whose hand the words "George Siegel," and "Louis Romonoff," and the date, "June 10, 1914," are (paper shown to witness)?

A I do not, sir.

Q Who is Charles—the person that seems to sign as a witness there? Can you read it?

A "Charles Lefkowitz," I believe that is.

Q Who is Mr. Charles Lefkowitz?

A Well, he is the party I was to hold these shares in trust for.

The Court. Possibly I am wrong. I had an idea that Mr. Lefkowitz was not Charles, but someone else.

Mr. Brunyate. That is correct.

The Court. It is Charles, is it?

Mr. Brunyate. Yes, sir.

Q Do you know when Mr. Charles Lefkowitz signed apparently as a witness to your signature? Did you see him sign?

A No, sir; I did not.

Q Was he there?

A He was there; yes, sir.

William Morris, direct.

WILLIAM MORRIS, sworn in behalf of defendants.

Direct examination by Mr. Bobker.

Q Mr. Morris, what business are you in?

A Packing box business.

Q Are you connected with the Riverside Box and Lumber Company?

A Only as an employee.

Q In the month of June, 1914, were you connected with the Riverside Box and Lumber Company?

A Yes, sir.

Q In what capacity?

A Vice-president.

Q And on June 5, 1914, were you in Mr. Samuel I. Kessler's office?

A Yes, sir.

Q Were you present when Mr. Romonoff and Charles Lefkowitz were there?

A Yes, sir.

Q Did you overhear any of the conversation?

A I overheard some of it; yes, sir.

Q Will you tell the Court just what you heard?

A Well, at that time——

By the Court.

Q Can you tell us when that was, what the date was?

A I couldn't exactly say the date, no.

Q Can you mention the month?

A It was in June.

Q 1914?

A Yes, sir; when we were organizing the company, at that time. Mr. Lefkowitz and Mr. Romonoff and Mr. Neary and myself were there, and in forming the company Mr. Lefkowitz agreed to furnish the company with lumber, and for that, if he was to live up to—carry the company on for a couple of years with $2,000 or $3,000 worth of credit, he was to get ten shares of stock.

By Mr. Bobker.

Q Was lumber delivered to the Riverside Box

and Lumber Company?

A. There was some; yes, sir.

Q For how long?

A Well, for about four or five weeks, of course. There were about three cars, I imagine, and the last car there was a dispute on; there was a shortage in the tally, and he had agreed to furnish the original bill, and we asked him for the bill, and he did not show it to us, and there was a dispute arose, and in the course of the dispute he told us he didn't want anything more to do with us.

Cross-examination by Mr. Brunyate.

Q Can you remember any of the particular language used by Mr. Lefkowitz at the conference in Mr. Kessler's office?

A No, I can't remember, outside of the fact that he agreed to furnish us the material.

Q How did he agree, what did he say?

A He said that he would always have to carry us for $2,000 or $3,000 worth of lumber at least.

Q As a matter of fact, did not that conversation occur after the stock was issued?

A No, this was before.

Q Are you sure of that?

A Yes.

Q How did you know that this conference occurred in June, 1914?

A That is the time we were organizing the company.

Q That is the only way you know it?

A That is the only way I know it.

Q Then, if that is the only way you know it, you cannot tell whether or not this conversation occurred before June 14th, on June 14th or after June 14th, can you?

A The only way I know, there wasn't much conferences after the company was organized.

Q That is the only way you know that this conference was before the company was organized and not after?

A That is the only way I know.

Q Did you not have any conference after the corporation was organized?

A No.

Q There was not a single occasion on which you four men met in conference?

A No, not outside of the one time when the dispute arose about the car; that is the only time the four of us ever met.

Q You say that Mr. Lefkowitz was to furnish $2,000 or $3,000 of credit. Were any of these promises in writing?

A Not that I know of.

Q Do you recall the words, the phraseology, with which Mr. Lefkowitz promised two or three thousand dollars of credit?

A Not the exact words, no.

Q Can you not repeat any of the conversation between you four gentlemen at that time regarding this promise?

A Just only what I say, just as to agreeing to furnish the lumber to us, that is all.

Q What do you mean by "agreeing"? Did he say he would do it?

A Saying, just word of mouth.

Q And what were you to do in return for that two or three thousand credit?

A We were to give him the ten shares of stock.

Q Is that all?

A And Mr. Romonoff was to draw $35 a week, and Mr. Lefkowitz, I understood, was to get $10 of that.

Q How did you understand that?

A Well, just by conversation.

Q At that time?

A At that time, yes.

Q Well, was not that the time of the first meeting of the incorporation, when the corporation was organized?

A I don't know whether it was the first meeting or not.

Q When did you fix your salaries?

A I just don't know when, but it was in Mr. Kessler's office, at that time.

Q The same time, was it not?

A I think it was the same time, yes.

Q Was it not the time the company was organized?

A Well, we were down there, I think, twice.

Q Just answer the question, please.

A I don't know.

Q As a matter of fact, you do not know whether this conversation took place before or on or after the day of incorporation?

A Well, I am pretty sure it took place before, because there was not any conversations after the company was organized.

Q Why were you paying Mr. Lefkowitz this $10 a week?

A For what he was supposed to do for us.

Q What was that?

A Furnish us the material.

Q Is that all?

A That is all that I know of.

Q Furnishing material to the company?

A To the company.

Q Did he not furnish the material at the market price?

A At the market price, yes.

Q The company was to pay for that material, was it not?

A Certainly.

Q And besides paying for the material, you were going to give him a $10 a week rebate; is that it?

A Yes.

Q Was Mr. Lefkowitz to perform any other services for the company?

A Not that I know of.

Q Not at all?

A No, sir.

Q Was there not any business arrangement between the Riverside Box and Lumber Company and

Mr. Lefkowitz's company?

A Not that I know of.

Q What were the respective locations of these two companies with regard to the City of Newark?

A To the location?

Q Yes.

A Well, one was on South street and the other was on Riverside avenue.

Q One was on the south side of the city and the other on the north side of the city; is that right?

A Yes, sir.

Q Was anything said about apportioning the business in the City of Newark between these two companies?

A No, sir.

Q Nothing whatever?

A Nothing whatever, that I know of.

DEFENDANTS REST.

LOUIS ROMONOFF, recalled in behalf of plaintiff in rebuttal.

Direct examination by Mr. Brunyate.

Q Mr. Romonoff, I show you a paper and ask you if that is your signature (paper shown to witness)?

A Yes, sir.

(The paper shown to witness is marked P4 for Identification.)

Cross-examination waived.

CHARLES LEFKOWITZ, sworn in behalf of plaintiff in rebuttal.

Direct examination by Mr. Brunyate.

Q Mr. Lefkowitz, you live in Newark?

A Belleville.

Q In business here?

A Yes, sir.

Q What business?

A Box and lumber business.

Q With what company are you connected?

A The National Box and Lumber Company.

Q What position do you hold with that company?

A President.

Q You were instrumental in organizing the Riverside Box and Lumber Company?

A Yes, sir.

Q When was that company organized?

A In June, 1914.

Q Who were the promoters?

A Well, me and Mr. Romonoff and Mr. Morris and Mr. Neary.

Q With whom did the idea of organizing that company originate?

A Mr. Morris and Mr. Neary came over to me when the Newark Box and Lumber Company failed; they came over to me and asked me to take an interest with them, and I told them I couldn't take any interest with them down there, but I will try and get another man, put another man down there with them, and I will hold an interest with the other man, and Mr. Romonoff was introduced to me, so I took him down there and met Mr. Neary and Mr. Morris, and we kept on for about a month, kept going back and forth, one meeting after another meeting, and finally Mr. Romonoff and Mr. Morris and Mr. Neary and I decided that we were going to organize the Riverside Box and Lumber Company.

Q Were you four gentlemen to buy anybody out—any company or any individuals?

A Yes; we were buying out the Newark Box and Lumber Company.

Q Did you follow up that proceeding by buying them out?

A Yes, sir.

Q Who paid for the purchase of that company's business?

A Well, all the money—the company was organized, or practically organized—the Riverside Box and Lumber Company—before the sale of the Newark Box and Lumber Company, or about the sale of the Newark Box and Lumber Company, and they deposited the money of the Riverside Box and

Lumber Company in the bank, and on the day of the sale they paid it over to the receiver——

The Court. Are you sure that you understood the question?

(Question withdrawn.)

Q Did you personally advance any money for the purchase of that business?

A Well, I have loaned them money; I loaned money——

Q To whom did you loan money?

A Mr. Romonoff.

Q I show you Exhibit P4 for identification (paper shown to witness). Do you recognize that?

A Yes, sir.

Q Is that your check?

A Yes; that is the National Box and Lumber Company's check, $250, drawn to Mr. Romonoff, certified in the bank to get the cash money.

By the Court.

Q Is that your check or the check of the lumber company?

A. Yes, sir; my check, the check of the National Box and Lumber Company.

Q I thought you said it was the check of the National Box and Lumber Company. You mean to say that you and the National Box and Lumber Company are the same person?

A. Well, it is practically the same. I have got two——

Q At any rate, it was the check of the company?

A Yes, sir.

Q For how much?

A $250.

Mr. Brunyate. I offer this check in evidence.

By Mr. Bobker.

Q When you gave this check, Mr. Lefkowitz, was the Riverside Box and Lumber Company already incorporated?

A I can't say that; I don't remember the date

when the Riverside Box and Lumber Company was incorporated. It was $250 for the use of the business.

Q This check is dated June 10, 1914.

A Yes.

Q Was not the Riverside Box and Lumber Company incorporated on June 3, 1914?

The Court. Is that June 3d or June 10th?

A Well, they were incorporated.

Mr. Bobker. June 3d.

The Court. I understood you to say in opening that the company was incorporated on June 3d. Is it admitted that that is correct?

Mr. Bobker. It was June 5, 1914.

Mr. Kessler. We admit that it was on June 5th.

Q This check was drawn on June 10, 1914?

A Yes.

Q It was a check drawn to the order of Louis Romonoff?

A Yes, sir.

Q And was not this considered as a loan to Louis Romonoff personally?

A There was no personal loan; it was a loan to the company. He acted there as my agent in the company.

Q Why did you not make the check out to the Riverside Box and Lumber Company?

A Well, he was there, and I gave it to him. He wanted to get the cash right away, and I went right down to the bank and got the cash for him.

Mr. Bobker. I object to the use of this check on the ground that on the face of the check it is drawn after the incorporation of the Riverside Box and Lumber Company, made payable to the order of Louis Romonoff and indorsed by Louis Romonoff; so that, according to the check, it would seem to be a loan to Louis Romonoff personally. I cannot see that it can be used in this issue. It is in-

competent and immaterial.

The Court. I will receive it.

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

By Mr. Brunyate.

Q Mr. Lefkowitz, were you present at the office of Mr. Kessler with Mr. Neary and Mr. Romonoff and Mr. Morris on an occasion in June, 1914?

A Yes, sir.

Q What was the conference about?

A We were organizing the Riverside Box and Lumber Company.

Q And at that conference did you enter into an agreement by and between those men concerning the Riverside Box and Lumber Company?

A Well, we went into organizing the company, and I agreed to certain things to do. I helped them organize the company.

Q What did you agree to do?

A I agreed with them—to help them start in—when they bought out the Newark Box and Lumber Company they hadn't any lumber there of any kind, and I helped them out; I made boxes for their customers and I also delivered lumber to them.

Q What did you agree to do with them at that time?

A I agreed to give them about $1,000 or $1,500 worth of credit from month to month, and they had a right to buy lumber from anybody they wanted to themselves, but if they couldn't get credit elsewhere I would help them with $1,000 or $1,500 worth of lumber every month, which I did.

Q You did that?

A Yes, sir.

Q Were you to do anything else?

A For them?

Q Yes.

A Well, anything that was to be done I was to do for Mr. Romonoff, because he was the only man there that didn't know anything about the busi-

ness, and he was to ask my advice in the box business, and lumber business, what should be done, and I did give him the best of my advice.

Q Did you or did you not at that conference agree to purchase the stock, the business and material, of the Newark Box Company at the bankruptcy sale?

A Yes, sir.

Q Did you afterwards follow that up by purchasing the business?

The Court. In what sense do you use the word "you"?

Mr. Brunyate. I mean these four promoters

The Court. The question is not what you agreed to do and did do individually, but what the company did—the Riverside Box and Lumber Company.

A Well, we agreed to buy the old Newark Box and Lumber Company out.

Q Did you follow that up by buying the business?

A Yes.

Q Was there any agreement made between you and these other three gentlemen as to the issuing of stock of the Riverside Box and Lumber Company at that time?

A Yes, sir.

Q What was that agreement?

A The agreement was that each one was to get ten shares of stock—each one of us was to get ten shares of stock—and Mr. Romonoff—I said, "We will draw my ten shares of stock—instead of drawing it in my name, we will draw it in a friend of ours' name, Miss Annie Kashowitz"; and the stock was drawn in her name, and I held the stock for about a week or two, and then Miss Kashowitz came over one Saturday, and I told her about it, and she signed the stock, and in my house she transferred it to me.

Q You say that you held the stock for a week or two?

A Yes, sir.

Q You mean that you held the certificate of stock in your possession?

A Yes, sir.

Q Was the certificate of stock given to you at the time of the incorporation of this company?

A At Kessler's office, given to me.

Q Who handed that stock to you?

A Mr. Kessler.

Q Mr. Kessler was the attorney of you four gentlemen at that time?

A Yes, sir.

Q Then when Miss Kashowitz came over and signed that stock, was there any conversation between you two?

A Why, except that she said she wished us luck and lots of success, and she said to Mr. Romonoff that she knew that she met a business fellow that would treat him white and right and do everything that was fair and square. That is what she said right in our presence.

Q Do I understand you to say that the stock, then, was never in the possession of Miss Kashowitz except to sign it and to assign it?

A That is all.

Q Did you make any further agreement with these three gentlemen at that time?

A Yes, sir.

Q What was that?

A There was an agreement made that Mr. Romonoff was to draw $35 a week, and I was to get $10 a week from Mr. Romonoff; he was to pay me $10 every week for organizing the business, and also helping him, showing him about the business.

Q Was there or was there not any agreement between you gentlemen that Mr. Romonoff could retain that $10 indefinitely or for any period of time?

A No; he was supposed to pay me every Saturday; he was supposed to pay that to me every Saturday.

Q Was there any agreement whereby Mr. Romonoff could retain that $10 at all?

A No, sir.

Q Was there any agreement between you gentlemen whereby the stock issued to Miss Kashowitz, and later turned over to you, was ultimately to be refunded either to the company or to Mr. Romonoff?

Objected to.

A No, sir.

Mr. Bobker. The question is entirely too leading.

The Court. I will allow it.

Q After you had received this stock by assignment of Miss Kashowitz did any one ever demand the stock from you?

A No, sir; nobody asked me for it, and I have always had it in my possession.

Q None of these four gentlemen have ever asked you for it?

A No, sir.

Q You heard Mr. Romonoff testify on the stand that somewhere in your house, at various times, he made demands on you for that stock?

A Never said a word——

Mr. Brunyate. Just listen to the form of the question, please.

(Question read.)

Q You heard his testimony?

A Yes, sir.

Q What can you say as to whether that is true or not?

A Not true; he never asked me for it and he never said one word with reference to stock, never asked me one word, never said a word about it.

Cross-examination by Mr. Bobker.

Q How long have you known Mr. Romonoff?

A Why, I have known him about two years, two and a half years.

Q How long before the incorporation of the Riverside Box and Lumber Company, on June 5,

1914, was it that you first met Mr. Romonoff?

A Why, I met him once about probably two years ago or three years ago. Miss Kashowitz brought him over to me, and then after that he came over on his own account, with Miss Kashowitz or without; I don't remember; he came——

Q You do not answer my question. How long before June 5, 1914, did you meet Romonoff?

A About six months before.

Q How long before June 5, 1914, did you talk to Romonoff about the box and lumber business the first time?

A As soon as the Newark Box and Lumber Company went into the hands of a receiver. Mr. Romonoff came over here and——

The Court. How long before?

Witness. About probably four or five weeks.

Q Did it take you four or five weeks to induce Romonoff to go into this box and lumber business?

A Well, it took that long, yes, to get the company organized.

Q How many times did you go over to New York?

A Who?

Q You go over to New York to see Romonoff about organizing this company?

A How many times did I go over there?

Q Yes.

A I went over there once or twice.

Q And how many times did you talk to Neary and Morris about getting a partner for them?

A Oh, about twenty-five or thirty times. They have been at me every day; I have been with them every day for some time.

Q You say your place of business is located in the northern section of the city?

A It is 350 South street.

Q The southern section?

A Eastern section.

Q Do you not cover the entire County of Essex?

A Well, we cover some part of the town: we wouldn't like to deliver very far out.

Q You do not limit yourself to the southern section of the city in soliciting business for the National Box and Lumber Company, do you?

A Well, we wouldn't like to, if we could help it

Q Will you answer my question?

A No; we don't limit ourselves.

Q The Riverside Box and Lumber Company is located on Riverside avenue, is it not?

A Yes, sir.

Q And how far from your residence is this Riverside Box and Lumber Company?

A My residence?

Q Yes.

A Quite a ways.

Q Is it near Belleville, the location of the Riverside Box and Lumber Company?

A Yes; it is in Belleville, but quite a ways——

Q Does the National Box and Lumber Company do any business in Belleville?

A Very little.

Q Will you tell me why you did not take this stock in your name?

A Well, that was the advice of the counsellor at that time; he said that he thought he wanted the stock drawn in some one else's name, and I said—he asked me to name any name and I said, "I will name Miss Kashowitz," and I asked Mr. Romonoff, "Is Miss Kashowitz agreeable to you?" and he said, "Yes," and I said, "We will draw it out in Miss Kashowitz's name."

Q At the time of the incorporation of this company Mr. Romonoff was in the chemist business, was he not, in New York City?

A Well, I have never seen him in a drug store; I seen him in his house. He wasn't doing anything when I met him; he had no business of any kind.

Q Was Mr. Romonoff present when you talked over the advisability of taking that stock in somebody else's name?

A Yes.

Q Will you give me a good reason why it was not taken in your name?

A I can't give you any reason, except that Mr. Kessler thought it was best, and whatever he said, I said, "All right." He was my counsellor at that time.

Q Can you tell me why you assigned this stock to George Siegel?

A That was on the advice of my counsel.

Q Could you not bring suit in your own name as the owner of this stock?

A Could I?

Q Yes.

A I suppose I could; I don't know why I couldn't.

Q Siegel is your brother-in-law?

A Yes.

Q Did he pay you anything for the stock?

A Did he pay me?

Q Yes.

A No.

Q Did not Mr. Romonoff repay you the loan you made on June 10, 1914?

Mr. Brunyate. I object, your Honor. That does not make any difference, whether he paid it or not.

The Court. You may answer the question.

A Yes.

Q Who paid you, the corporation or Mr. Romonoff?

A He paid me in cash.

Q Who did?

A Mr. Romonoff; he paid it by cash.

Q And at the time of the sale of the assets of the Newark Box and Lumber Company by the receiver in bankruptcy, were you present at the sale?

A Yes, sir.

Q Did you purchase any of the assets?

A No.

Q Mr. Romonoff purchased the assets, did he

not?

A Yes, sir.

Q Did you ever demand from Mr. Romonoff that he pay you the $10 due you every week?

A Well, Mr. Romonoff—before I had any chance to ask him for the $10 he owed me more money than that. He always owed me some money, so it didn't make any difference. I knew that Mr. Romonoff didn't have any money; he was hard up——

Q Will you answer my question? Did you demand that Mr. Romonoff pay you the $10 on each Saturday?

A No; I didn't demand it on a Saturday.

Q Why not?

A Why, I am just telling you why: because he owed me more money than that. If he had $250, he borrowed it for two or three days, until money came in, he said, and he owed that for four or five weeks. So what difference did it make? So that instead of owing me $250, he would owe me $290, $40 more.

Q For how long a time did you deliver lumber to the Riverside Box and Lumber Company?

A As long as they have asked me for it; as long as they behaved themselves right, I gave them lumber.

Q Will you answer my question?

A About four or five weeks.

Q And about how much lumber did you furnish that way?

A I can't exactly remember, about $1,500 or $1,800.

Q And why did you discontinue shipping them lumber?

A Well, the lumber market took a drop then. They have been buying the lumber from me, and the lumber came down a little bit then and everybody had plenty of lumber to sell, and they thought they could buy lumber cheaper from somebody else than they could from me, on better terms, some-

thing like that, and they went ahead and bought lumber from somebody else. There was no other reason in the world why they stopped buying.

Q Did they not discontinue buying lumber from you because you overcharged them?

A No, sir. They only bought the lumber by truck. They only bought one carload of lumber from me; one carload was bought from me. The other was delivered by their own trucks. They would send the wagon down and we would give them 1,000 feet, 2,000 feet, sometimes three or four loads a day.

Q Were you paid for the lumber that you sent them?

A Yes; later on I was.

Q Was it understood that you were to submit to them the bills showing how much the lumber cost you?

A There was never any such thing asked for—what it cost me. It didn't cost me, because the lumber laid down in my yard, and they can't figure what it cost me to lay the lumber down in my yard and what it cost to handle the lumber again. They didn't buy any straight cars; they bought one carload of lumber off of me.

Re-direct examination by Mr. Brunyate.

Q Did you ever refuse to honor any order for lumber that they may have made?

A No, sir.

By the Court.

Q Do you know in whose handwriting the name "George Siegel" is written (paper shown to witnes)?

A That is George Siegel's handwriting.

Q And in whose handwriting is the name "Louis Romonoff" written?

A On here?

Q "Louis Romonoff"—the middle line there?

A I don't know.

Q You don't know that?

A No, sir.

Q Is this your signature here (indicating)?

A Yes, sir.

Q When did you put that on?

A When Miss Kashowitz signed that paper, and she signed it with the same pen and ink, and I signed it right there at the table.

Q Did you see Mr. Siegel write that name?

A No, sir.

Q When was it, do you know?

A I can't say. That was left in Mr. Kessler's office and he took care of it for me.

Q When was it left in Mr. Kessler's office?

A I delivered it to Mr. Kessler right after Miss Kashowitz signed it.

Q Right after who signed it?

A Miss Kashowitz.

Q As soon as Miss Kashowitz signed it you delivered it to Mr. Kessler?

A Yes, sir.

Q Well, how did Mr. Siegel's name come to be written in there?

A I can't say that. Mr. Siegel signed it. I turned it over to Mr. Siegel.

Q I thought you said you left it at Mr. Kessler's office?

A Well, to be turned over to Mr. Siegel. Mr. Siegel got that some way.

Q And your instructions to Mr. Kessler were to turn it over to Mr. Siegel?

A Yes; to turn it over to Mr. Siegel.

Q Why?

A Well, because they did not want to honor the stock. We sent down there and we wanted the stock put on the books, and the Riverside Box and Lumber Company laughed at the fellow that came down with the stock; they said, "That isn't worth anything; that is nothing." And they wouldn't put it on the books.

Q How do you know that?

A Well, that is what the fellow that went down there said.

Q When was it that you gave Mr. Kessler instructions to turn this over to Siegel, how long after Miss Kashowitz had signed it?

A Oh, maybe about two months after or three months after; I can't remember the exact time.

Q This date, June 10th, is that the correct date of her signing?

A Yes, sir.

Q Then you think it was two or three months after?

A Yes, sir.

Q September or October?

A Yes, sir.

Q That you gave Mr. Kessler—he was your attorney?

A Yes, sir.

Q —instructions to turn this over to Mr. Siegel?

A Yes, sir.

Q What interest had Mr. Siegel in it?

A Except that he was interested in me.

Q In what way for you?

A Well, I turned the stock over to him at the advice of Mr. Kessler; he said, "You assign it to Mr. Siegel," for some reason or other. I can't explain that.

Q You say that Mr. Siegel was interested for you. In what way was he interested for you?

A Well, Mr. Kessler had asked me to do that.

Q Asked you to put it in Siegel's name?

A Yes, sir.

Q It was before that that you had sent the certificate down to the company and they said it was no good?

A Yes.

Q And it was to put it in another name——

A Yes, sir.

Q —that you made the change afterwards?

A Yes, sir.

Re-cross examination by Mr. Bobker.

Q Who are the other officers of the National Box and Lumber Company?

A Mr. Ross.

Q Was there any agreement between you and the other officers of the National Box and Lumber Company whereby you are forbidden to hold stock in another company of the same kind?

A No, sir; no agreement of the National Box and Lumber Company whereby I can hold or not stock.

Q Did I understand you to say in response to his Honor's questions that you asked that this stock be transferred before the name of George Siegel was inserted?

A Yes, sir.

Q Did you go down there personally?

A No; I didn't go down there. I asked Mr. Romonoff some time ago that he ought to put that in the name, and they didn't, and I gave it to Mr. Kessler and he attended to it. I don't know any more about that.

SAMUEL I. KESSLER, sworn in behalf of plaintiff in rebuttal.

Direct examination by Mr. Brunyate.

Q Mr. Kessler, you are a counsellor-at-law of this state?

A I am.

Q Do you recall having any business with these four gentlemen, Mr. Neary, Mr. Romonoff, Mr. Morris and Mr. Lefkowitz, with relation to incorporating a company?

A I do.

Q Can you recall about what time that was, what time of the year?

A Yes; the conferences started some time in the early part of May, 1914.

Q And culminated in the incorporation when?

A Some time, I think—June 5th, I think, was the exact date, 1914.

Q For whom were you acting at the time?

A On behalf of the four promoters of the company.

Q And the four promoters were whom?

A Mr. Neary, Mr. Morris, Mr. Romonoff and Mr. Lefkowitz.

Q Where did the conferences occur?

A Well, some of them occurred at my office; I don't know where the rest of them occurred.

Q You have heard the testimony of Mr. Romonoff and Mr. Lefkowitz concerning a conference held in your office, during which certain agreements were made. Do you recall that conference?

A I do not recall any conference where such agreements were made as testified by Mr. Romonoff. but I do recall a conference on June 2d or 3d—I don't remember the exact date, but prior to the incorporation—as to the forming of the company, and later on we had a conference and the election of officers and organizing the company and starting them in business.

Q At that conference was or was not any arrangement made between these gentlemen as to the issuing of stock?

A There was.

Q What was the agreement between these gentlemen as to the issuance of stock?

A I would have to go through the history of the organization before I can answer that question, because the history of the organization depends entirely on the answer.

Q Well, let us have it.

A The Newark Box and Lumber Company had gone into bankruptcy and these gentlemen came to me and wanted to buy—wanted to organize a company for the purpose of buying out this bankrupt concern. Mr. Lefkowitz seemed to be a moving factor in the whole organization. He was entirely familiar with the business and had brought these parties together. I know of my own knowledge that Mr. Lefkowitz has spent considerable time in negotiations both with the receiver, and I myself have been in conference with the receiver of this bankrupt concern. And finally these conferences ended by his purchasing the business of the receiver

at an auction sale, and this purchase, I think, was for some $1,800 or $1,900. The appraisal by the four promoters was that the property was worth, I think, $4,000 or $5,000, and they considered that they had made an excellent purchase from the receiver; and in consideration of turning over this business, which was purchased by the promoters in the name of Mr. Romonoff, it was agreed that the company issue stock of ten shares to each member, each of the four promoters, for the business, for the activity in promoting the company, and it was for that activity and that purchase from the receiver that this stock was issued—ten shares to all four of the promoters; Mr. Neary and Mr. Morris and Mr. Romonoff and Mr. Lefkowitz were each to get ten shares.

By the Court.

Q Does that appear on the minutes?

A I think it does; I am not certain about it. I am familiar with the minutes; I think I may be able to find it quicker. (Book handed to witness.) Yes; it appears in the minutes, with this difference, however, as I recall from reading the minutes now. There were five shares of stock to be given Mr. Morris and five shares of stock to Mr. Neary for their activity, and they were to purchase for cash——

Q Do you find a resolution to that effect?

A Yes, sir. (Reading): "Further resolved that five shares of the capital stock of this corporation be given to James J. Neary and William F. Morris for services performed and to be performed in organizing the corporation and continuing in its employment, and that said stock may be issued to any one designated by the said James J. Neary and William F. Morris." And the next resolution: "Further resolved and ordered that ten shares of the capital stock be issued to one Louis Romonoff, for services performed by him and other persons who assisted him in organizing and developing said company, and that such stock shall be issued to any

person designated by him for the use of said person, and that all said above referred to stock shall be considered fully paid up and not liable to any assessment."

Q *(By Mr. Brunyate.)* Did you draw that minute?

A I did; all these minutes were drawn in my office.

Q *(By the Court.)* Then the minutes account for Morris and Neary and Romonoff and for some person or persons?

A Yes, sir.

By Mr. Brunyate.

Q Can you say from your own knowledge whom the person not named referred to is?

A I certainly can; it was Mr. Lefkowitz.

Q Can you say of your own knowledge why the resolution was so drawn?

A At my advice.

Q What was the reason for your giving that advice?

A At the time of organizing the company and the drawing of these minutes and the issuing of stock there was a question in my mind whether Mr. Lefkowitz, as an officer and director of a corporation which did exactly the same business that this corporation intended to engage in—whether he would legally, under our laws, be permitted to hold stock in the corporation. I refer to the Seven Sisters act.

Q What raised that question in your mind?

A The recent enactment of the Seven Sisters law regarding corporations and the interlocking of directors, and so on, in case that he should engage in the same line of business, and whether that was so or not, in order to avoid any possible question I suggested that Mr. Lefkowitz would be just as well protected if he took the stock in anybody else's name but his own, and it was agreed, I think, by the suggestion of Mr. Lefkowitz or Mr. Romonoff—I am not sure about that—that the stock

should be put in Miss Kashowitz's name. There wasn't any question about it.

By the Court.

Q You seem to eliminate Mr. Romonoff. According to the resolution it was to be put in the name of Mr. Romonoff, "for services performed by him and other persons." Apparently Romonoff was to be the depository of the certificate to look after himself.

A Yes. That was explained by the later acts in this way. Mr. Neary and Mr. Morris were to take five shares of stock for their services, because they were experienced lumbermen; they were familiar with the business. The ten shares of stock which were to be issued through Romonoff to Lefkowitz was to be given him for his experience and services performed. Mr. Romonoff was to buy his stock outright, and I know he did, and Mr. Morris and Mr. Neary also bought five extra shares of stock.

Q That is contrary to the language of the resolution: "Services performed by him and other persons."

A I do not believe that is inconsistent; it bears out the statement that the emphasis should be on the "other person," because Mr. Romonoff could not render any assistance, because of his unfamiliarity with this line of business. He hadn't any experience in the lumber business.

Q I am not commenting on that; I am merely referring to the language of the resolution, which says it was to be issued to him for services performed by him and others.

A Other persons to be designated by him.

Q "Performed by him and others."

A Yes.

Q Well, was there any other reason besides those mentioned for issuing the stock in such a fashion?

A No, sir; at least none has been called to my attention.

By Mr. Brunyate.

Q Was Mr. Lefkowitz by the agreement of those parties to receive any other compensation from the corporation?

A Yes, sir.

Q What was that?

A He was to receive $10 a week.

Q How was that to be paid?

A $10 was to be added to the salary agreed upon for Mr. Romonoff, and that $10 was to be turned over to Mr. Lefkowitz.

Q How?

A In cash at the time.

Q When?

A Every Saturday. The reason for that was that Mr. Lefkowitz did not want to appear as an employee on the books of this corporation when he was connected with another corporation.

Q Was that at your advice?

A It was.

Q For the same reason as the other?

A For the same reason, and the apparent business reason that he should not be an employee of another company.

Q Was there any agreement at that time between these gentlemen that Mr. Romonoff could retain that extra $10 indefinitely or for any length of time?

A The first time I heard it was in court yesterday or this morning.

Q Then there was nothing said at that conference concerning it?

A I never heard of it.

Q Do you know whether or not there was any agreement made at that conference that the shares of stock issued in the name of Miss Kashowitz should ultimately be returned either to Romonoff or to the corporation?

A I never heard of that.

Q Nothing said at that time about it?

A I am certain there was nothing said. That

did not enter into any of the negotiations at any time, at any of the conferences that we had.

Q I show you the shares of stock, Exhibit P4, and ask you to look at the assignment of that stock (paper shown to witness). Do you know in whose handwriting the assignment is filled in?

A That is my handwriting.

Q How much of it is your handwriting?

A The word "I," the words "George Siegel," the words "Louis Romonoff," and "June 10, '14," are in my handwriting.

Q At whose request, if anyone's, did you fill it in?

A I am not certain whether it was the request of Mr. Lefkowitz or Mr. Siegel; one of the two I am certain it was; I think, however, it was Mr Lefkowitz.

Q You were the counsel of Mr. Lefkowitz at the time?

A Yes; also of Mr. Siegel.

Q Do you remember whether or not anything was said at that conference regarding Mr. Lefkowitz advancing to the new corporation a credit of from $2,000 to $4,000?

A What conference are you referring to?

Q The conference at which this company was organized and the stock apportioned and so forth.

A There was no such conversation.

Q Was there any conversation between those gentlemen in your presence regarding the financing of this company?

A By whom?

Q By any of these four gentlemen.

A There was no such conversation. There was some conversation after the transaction was closed —a general conversation as to now getting business for the new company—and one of the gentlemen suggested, "Well, it will be hard for us, as a new concern, to get credit, but we need lumber in order to make up the boxes," and Mr. Lefkowitz suggested that, since he has an interest in the com-

pany, his company, the National Box and Lumber Company, would carry them from month to month for $1,500 to $1,800 worth of lumber, and as the bills would come in he would be paid, and he would advance them again for the lumber; but that was subsequent to the incorporation.

Q But you do not know of any agreement between these gentlemen, made in your presence, whereby Mr. Lefkowitz was either to furnish lumber or credit to that extent?

A No, sir.

Cross examination by Mr. Bobker.

Q Is there anything set forth in those minutes, Mr. Kessler, about paying Mr. Lefkowitz $10 a week?

A Yes; in this way. Mr. Romonoff was to draw $35 a week, and that was more than any of the other officers were getting, and these other officers had experience and Mr. Romonoff had not.

Q Does that appear in the minutes?

A That $35 a week? Yes, sir.

Q Will you show it to me?

A (Witness refers to book.) "Further resolved that the following be employed by the corporation in the following capacities and for the following salaries: Louis Romonoff, $35 per week; to do any and all things in the office and in procuring orders and collecting moneys; William F. Morris, $25 a week, to be co-manager of the corporation, and James J. Neary, $25 a week, to be co-manager of the corporation."

Q There was nothing said in the minutes about repaying $10 to Lefkowitz or such other person as he might designate?

A I couldn't set that forth in the minutes.

Q Why not?

A Well, if I could do that I might as well put Mr. Lefkowitz on the payroll at $10 a week, and we didn't want to do that because he was in another company.

Q How long have you known Mr. Lefkowitz?

A Four or five years.

Q And have you represented him ever since you have been admitted?

A Why, not ever since, but for a considerable time.

Q And when did you first meet Mr. Romonoff?

A Mr. Lefkowitz brought him to my office.

Q At the time of the incorporation?

A Oh, weeks prior, at the time of the negotiations for the corporation. But that does not prejudice me one bit.

Q I call your attention to the resolution adopted at the first meeting of the directors, in which there was set forth, "Further resolved and ordered that ten shares of the capital stock be issued to one Louis Romonoff for services performed by him and other persons." Was it not understood that the ten shares of stock were to be used by Romonoff and the other persons who performed the services?

A Certainly not; I am absolutely certain about that, because I had a little difficulty in drawing the minutes.

PLAINTIFF RESTS.

The Court. I would like to hear counsel on two questions which have occurred to me. Is Mr. Siegel a holder for value, within the case of the *Mt. Holly Lumberton & Medford Turnpike Company v. Ferree*, 2 C. E. Green 117? And if he is, what can he recover in an action against the company?

(Counsel argue.)

The Court. I have made up my mind what to do with this case. I want to put it in a good shape for review, and I shall direct a verdict in favor of the plaintiff for the full amount claimed. You, Mr. Bobker, of course, would except. You can take up these questions and have them settled.

What is the amount of your claim, Mr. Brunyate?

Mr. Brunyate. Just $1,000.

The Court. Any interest?

Mr. Brunyate. Yes, there is some interest —interest from September 11, 1914, just one year's interest, your Honor.

The Court. How much do you say one year's interest is?

Mr. Brunyate. $60.

The Court. Then your claim is $1,060?

Mr. Brunyate. Yes.

CHARGE TO JURY.

The Court. Gentlemen of the Jury. You may render a verdict in favor of the plaintiff and against the defendants for the sum of $1,060.

(Verdict accordingly.)

Defendants' counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. Bobker. Does not your Honor think that the question as to the amount of damages should be decided by the jury, at all events?

The Court. No; not in the view that I am taking of it for the purpose of the disposition of the case.

EXHIBIT P1.

THE "RIVERSIDE BOX AND LUMBER COMPANY."

MINUTES OF THE FIRST MEETING OF INCORPORATORS.

The first meeting of the incorporators was held on the 6th day of June, 1914, at 11 o'clock in the forenoon at 9-15 Clinton Street, pursuant to a written waiver of notice signed by all the incorporators fixing the said time and place.

The following incorporators were present in person: James J. Neary, William F. Morris and Louis Romonoff.

On motion Mr. James J. Neary was elected chairman, and Mr. Romonoff was appointed Secretary of the meeting.

The chairman reported that the certificate of incorporation of the company was recorded in the office of the clerk of Essex County, and was filed on the 5th day of June, 1914, in the office of the Secretary of the State, and presented a certified copy of said certificate of incorporation.

The Secretary presented and read the waiver of notice of the meeting.

The Secretary presented a form of By-Laws for the regulation of the affairs of the company, which were read article by article and unanimously adopted.

Miss Blanche M. Woodruff and Wallace M. Norton were appointed inspectors of election and the oath was duly administered to them.

The Secretary presented the following transfers of subscription to take effect when accepted by the Company:

James J. Neary, 4 shares to Julia E. Neary.

William F. Morris, 4 shares to Mary Morris.

Messrs. James J. Neary, William F. Morris and Louis Romanoff were nominated for directors of

the company, to hold office for the ensuing year. No other nominations having been made, the polls were duly opened, and ballot having been duly had, and all the stockholders having voted, the polls were declared closed and the inspectors presented their certificate showing that the aforesaid gentlemen had been elected directors of the company.

Upon motion, duly made and seconded, the transfers of subscription presented at this meeting were approved and accepted in behalf of the company.

Upon motion, duly made and seconded, and by affirmative vote of all present, the following resolution was adopted:

Ordered, that in compliance with the laws of New Jersey and the charter of the company the principal and registered office of the company in New Jersey be established and maintained at 9-15 Clinton Street, Room 609.

That a transfer book, in which transfers of stock may be registered, and a stock book, containing the names and addresses of the stockholders and the number of shares held by each, be kept at said office, open to the inspection of any stockholder as set out in the By-Laws.

That Samuel I. Kessler be and he hereby is appointed the agent of this company in charge of said office and books, and that process against this company may be served upon said Samuel I. Kessler.

That the said Secretary is authorized to register transfers of stock.

The Secretary presented and read a waiver of notice of assessment and of the time and place of payment thereof, signed by all the incorporators.

The Board of Directors were authorized to assess the stock subscribed by the said incorporators one hundred per cent, payable immediately.

Upon motion, duly made and seconded, and by the affirmative vote of all present, it was

Resolved, that the Board of Directors be and they hereby are authorized to issue shares of the capital stock of the company to the full amount

authorized by the certificate of incorporation, in such amounts from time to time as shall be determined by the board and as may be permitted by law, and in their discretion to accept in full or part payment of any share or shares such property as the board may determine shall be necessary for the business of the company.

Upon motion, duly made and seconded, and by the affirmative vote of all present, the following preambles and resolutions were adopted:

Whereas, it appears that the Receiver of the Newark Box and Lumber Company, a bankrupt corporation, is about to sell all its goods, wares and merchandise, including machinery, of the de funct corporation; therefore, it is

Resolved that the Board of Directors of this Company be and they are hereby authorized, in their discretion, to purchase the property above mentioned for the best possible price and to pay for said either in cash or in stock of the company.

On motion the meeting was adjourned.

A true copy of each of the following papers referred to herein is appended to the minutes of this meeting:

Certificate of Incorporation.

Certificate of Secretary of State as to filing same.

By-Laws.

Waiver of notice of this meeting.

Oath and report of inspectors.

Transfers of subscription.

Waiver of notice of assessment.

LOUIS ROMANOFF,
Secretary of Meeting

THE
"RIVERSIDE BOX AND LUMBER COMPANY."

MINUTES OF THE FIRST MEETING OF DIRECTORS.

The first meeting of the Board of Directors was

Exhibit P1.

held at the office of the Register on the 6th day of May, 1914, at 12 o'clock noon.

Present, James J. Neary, William F. Morris and Louis Romanoff, constituting the full board.

Mr. James J. Neary was chosen temporary chairman and Mr. Louis Romanoff was appointed Secretary of the meeting.

The Secretary presented and read a waiver of notice of the meeting, signed by all the directors and the same was ordered filed.

The minutes of the first meeting of the incorporators was read and approved.

The following gentlemen were elected officers of the company to serve for one year and until their successors are elected and qualify:

President—James J. Neary.

Vice President—William F. Morris.

Secretary and Treasurer—Louis Romanoff.

The President thereupon took the chair.

It was ordered that the Secretary take the oath of office and subscribe the oath and enter upon the discharge of his duties.

It is ordered that the treasurer serve without bond.

Upon motion duly seconded it was

Resolved, that the seal presented at this meeting, an impression of which is directed to be made in the margin of the minute book, be and the same is hereby adopted as the seal of this corporation.

Resolved, that the President and Treasurer be and they hereby are authorized to issue certificates of stock in the form submitted at this meeting.

Resolved, that the stock book and transfer book presented at this meeting be and the same hereby are adopted as the stock book and transfer book, and the secretary is hereby directed to leave same at the registered office, to be kept there as required by law.

Resolved, that the Treasurer be, and he hereby is authorized to open a bank account in behalf of the company with the Broad & Market National Bank

of Newark, New Jersey.

Further Resolved, that until otherwise ordered said bank be, and hereby is authorized to make payments from the funds of this company on deposit with it, upon and according to the check of this company signed by its President and Treasurer.

Upon motion, duly made and seconded, it was

Resolved, that an office of the company be established and maintained at 9-15 Clinton Street, Room 609, in the City of Newark, County of Essex and State of New Jersey, and that meetings of the Board of Directors from time to time may be held either at the registered office in New Jersey, or at such office in the City of Newark, or elsewhere, as the Board of Directors shall from time to time order.

Upon motion, duly made and seconded, it was

Resolved, that this company attempt to purchase all the property from the Newark Box and Lumber Company at the best possible price.

Upon motion, duly made and seconded, it was

Resolved, that an assessment of one hundred per cent. be levied upon all shares of stock subscribed for.

Further Resolved, that five shares of the capital stock of this corporation be given to James J. Neary, William F. Morris for services performed and to be performed in organizing the corporation and continuing in its employment, and that said stock may be issued to anyone designated by the said James J. Neary and William F. Morris; and

Further Resolved and Ordered that ten shares of the capital stock be issued to one Louis Romanoff, for services performed by him and other persons who assisted him in organizing and developing said company, and that such stock shall be issued to any person designated by him for the use of said person and that all said above referred to stock shall be considered fully paid up and not liable to any assessment.

Upon motion, duly made and seconded, it was

Exhibit P1.

Resolved, that the proper officers of this company be, and they are hereby authorized and directed in behalf of the company, and under its corporate seal, or otherwise, to make and file the certificate or statement required by law to be filed in any state in which the officers of the company shall find it necessary to file the same to authorize the company to transact business in such state.

The Secretary was ordered to prepare, have executed by the proper officers, and cause to be filed in the office of the Secretary of the State of New Jersey, the report of officers, directors, etc., required by section 43 (as amended) of "An Act Concerning Corporations (Revision of 1896) of New Jersey."

Further Resolved, that the following be employed by the corporation in the following capacities and for the following salaries:

Louis Romanoff, thirty-five ($35.00) dollars per week. To do any and all things in the office and in procuring orders and collecting moneys;

William F. Morris, twenty-five ($25.00) dollars per week; be co-manager of the corporation; and

James J. Neary, twenty-five ($25.00) dollars per week; be co-manager of the corporation.

On motion the meeting was adjourned.

A true copy of each of the following papers referred to herein is appended to the minutes of this meeting:

Waiver of notice of this meeting.
Secretary's oath.
Treasurer's bond.
Form of stock certificate.
Report of Secretary of State.
Agreement.

LOUIS ROMANOFF,
Secretary.

Exhibit P 2

Exhibit P. 2

P. 2 **STOCK LEDGER**

Page 5 When Issued — June 9, 1914	From whom received — Treasury	Page — 7	No. of Shares 10

Exhibit P. 3

"Schedule A."

INCORPORATED UNDER THE LAWS OF NEW JERSEY.

Number 7 Shares 10

THIS CERTIFIES THAT

Annie Kashowitz is the owner of Ten Shares of the Capital Stock of the

"Riverside Box and Lumber Company."

Capital Stock $25,000.00

transferable only on the Books of the Corporation in person or by Attorney upon surrender of this Certificate.

IN WITNESS WHEREOF, the duly authorized officers of this Corporation have hereunto subscribed their names and caused the corporate Seal to be hereto affixed.

this 9th day of June, A. D. 1914.

James J. Neary, Pres. Louis Romonoff, Treas.

Shares $100. Each.

Exhibit P2.

"Schedule B."

ASSIGNMENT.

Seal

FOR VALUE RECEIVED, I hereby sell, assign and transfer unto George Siegel, shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint

Louis Romonoff, Attorney

to transfer the said stock on the books of the within named Corporation with full power of substitution in the premises.
Dated June 10 1914.

In presence of Anna Kaskowitz

Chas. Lefkowitz.

NOTICE—The signature of this assignment must correspond with the name as written upon the face of the certificate, in every particular without alteration or enlargement or any change whatever.