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(Bill Filed Sept. 11, 1924.)

Docket 56-476.

**In Chancery of New Jersey.**

<p>ALLIANCE-HOLT DYE WORKS, INC., body corporate, and TEXTILE BANKING COMPANY, INC., a bank- ing corporation,</p> <p style="text-align: center;">Complainants,</p> <p style="text-align: center;"><i>and</i></p> <p style="text-align: center;">HENRY H. FREUND, Defendant.</p>	}	BILL OF COMPLAINT.
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		20

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

Complainants Alliance-Holt Dye Works, Inc., a body corporate organized and existing under the General Corporation Act of the State of New Jersey, having its residence and principal office at Rutherford, New Jersey, and Textile Banking Company, Inc., a banking corporation of the State of New York, having its residence and principal place of business in the Borough of Manhattan, City and State of New York, complaining against Henry H. Freund, the defendant herein, say:

(1) At all times herein stated up to about the month of March, 1923, D. G. Dery was engaged in the manufacture and sale of silk fabrics and in allied lines of industry, on a very large scale, with locations at different points in the eastern part of the United States

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For financial reasons and in order to escape the taxation burdens incident to a concentration in a single corporation or organization, said enterprises were carried on in part under the name of D. G. Dery individually and in part under the name of various corporations, the capital stock of which was owned and controlled by said D. G. Dery individually. In general, the business of manufacture or production was carried on by said Dery in corporate form, and the selling or merchandising part of said enterprises was carried on by said Dery in his individual name.

All of said enterprises, however, were controlled and directed by said D. G. Dery and his executive staff from a main office in the City of Allentown, Pennsylvania, and from a general office in the City of New York.

(2) In the year 1919, said D. G. Dery determined to engage in the business of dyeing and finishing silk and silk fabrics in connection with his various other business enterprises in the silk industry, and in carrying out such purpose caused to be incorporated under the General Corporation Act of the State of New Jersey, by certificate filed December 19, 1919, Alliance-Holt Dye Works, Inc., with an authorized capital stock of \$500,000., divided into shares of the par value of \$100. each, of which 2500 shares were preferred stock and 2500 shares were common stock.

The object of said corporation as stated in its charter was "to conduct the business of dyeing and finishing silks, silk materials and fabrics of all kinds and descriptions" and other objects and powers incident thereto.

Said corporation upon organization took over the business and property of the Alliance Dye Works, at Rutherford, New Jersey, and the James

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Holt Piece Dye Works, at Phillipsburg, New Jersey, and has ever since been engaged in the business of dyeing silks and silk fabrics for which it was incorporated.

Upon organization, said D. G. Dery became the holder and owner of the entire capital stock, common and preferred, of said corporation, of the par value of \$500,000., except directors' qualifying shares, which latter at all times were under the control and equitable ownership of said D. G. Dery.

(3) In November, 1919, defendant Henry H. Freund, representing himself to be a chemical engineer specializing in silks, natural and artificial, and specially qualified in matters relating to such business, entered into the general employment of said D. G. Dery in connection with his various business enterprises, whether carried on under individual or corporate form, for a term of three years, at an initial retainer of \$3,500., and an annual salary of \$10,000.

A memorandum of said contract was reduced to writing and a true copy thereof is hereto annexed as part hereof, marked Exhibit A.

Thereafter said Freund entered upon his duties under the aforesaid contract, continuing thereunder for the term of three years and receiving the full agreed compensation specified therein, performing services under the general direction of said D. G. Dery in connection with his various enterprises, whether carried on under his individual name or under the name of corporations controlled by him as aforesaid.

Complainants are informed and believe that such services as were performed by said Freund under said contract were chiefly in connection with the establishment of a silk dyeing business

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and experimental laboratory under the name of S. & H. Dyeing Company, Inc., at West New York, Hudson County, New Jersey, which latter corporation was likewise organized, controlled and financed by said D. G. Dery until about the month of March, 1923, aforesaid.

10 In addition to the services rendered by said Freund in connection with the affairs of said S. & H. Dyeing Company, Inc., said Freund claims to have rendered some service in connection with the affairs of Alliance-Holt Dye Works, Inc., as hereafter more particularly set forth.

(4) Although said D. G. Dery was the owner of all of the capital stock of said Alliance-Holt Dye Works, Inc., following a general policy, he refrained from appearing as a director or officer thereof, and caused the nominal organization to be placed in the hands of various employees, said defendant Freund becoming a director thereof at the first annual meeting of stockholders following organization, and Vice-President upon the organization of said board of directors.

Said Freund never had any interest in said corporation or its capital stock and served in both capacities as the nominee and representative of said Dery, being then in his general employ as above stated.

Said Freund continued as Vice-President and director of Alliance-Holt Dye Works, Inc., until December 15th, 1922, when he tendered his resignation as such in compliance with a request from D. G. Dery Corporation.

(5) On January 15, 1923, New York Trust Company loaned to said D. G. Dery the sum of \$175,000. for the use of said Dery in his various business enterprises, and took as security therefor a promissory note made or endorsed by said

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D. G. Dery, in the customary form of a collateral note, pledging as security for the payment thereof shares of stock in various corporations controlled by said Dery, including the entire capital stock, common and preferred, of Alliance-Holt Dye Works, Inc., of the par value of \$500,000., as aforesaid.

Said note contained a provision that said collateral should also cover any and all other indebtedness at any time owing by said Dery to said New York Trust Company, and, further, contained the customary power of sale authorizing said Trust Company, upon default in payment thereunder, to sell said securities and apply the proceeds thereof to the payment of said indebtedness.

On the same date, January 15, 1923, said D. G. Dery became indebted to Textile Banking Company, Inc., in the sum of \$265,000., for money borrowed for use in the business enterprises of said D. G. Dery, and in order to secure the same, said D. G. Dery did assign to said Textile Banking Company, Inc., as collateral security for such indebtedness as might be by him owing from time to time, his equity of redemption in the aforesaid collateral pledged with the New York Trust Company, subject to such indebtedness as might be due from time to time to the Trust Company either upon the aforesaid note or renewals thereof.

(6) In March, 1923, the financial affairs of the said D. G. Dery became involved and under date of March 26, 1923, receivers were appointed by the United States District Court for the Southern District of New York for D. G. Dery Corporation, in an equity action, and under date of

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April 2, 1923, a petition in bankruptcy was filed against D. George Dery individually in the District Court of the United States for the Eastern District of Pennsylvania, resulting in an adjudication of bankruptcy and the administration of the individual assets of said D. G. Dery as a bankrupt.

Thereafter, New York Trust Company, acting under the power of sale contained in the collateral note held by it pledging the shares of stock of Alliance-Holt Dye Works, Inc., and other collateral, advertised a public sale of said collateral for the satisfaction of the debt then due to it amounting to the sum of \$187,898.43, said sale being advertised for April 25, 1923.

Said D. G. Dery then being very largely indebted to Textile Banking Company, Inc., as aforesaid, said Banking Company, in order to protect its interest in said collateral pledged to it as aforesaid, caused the same to be purchased at said foreclosure sale for the sum of \$187,898.43 in the name of James D. Hopkins, who was then and still is a Vice-President of said Textile Banking Company, Inc.

Thereafter said James D. Hopkins, at the instance and request of said Textile Banking Company, Inc., did assign, transfer and set over, under date of December 31, 1923, to Dye Works Securities Corporation, a holding corporation, all rights acquired by him at the foreclosure sale in and to the collateral securities, including the stock of Alliance-Holt Dye Works, Inc., to hold the same for the benefit of said Textile Banking Company, Inc. Said Dye Works Securities Corporation has since assigned and transferred said stock to Textile Banking Company, Inc.

By virtue of the premises said Textile Banking Company, Inc. has become and now is the owner

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of the entire capital stock of said Alliance-Holt Dye Works, Inc., and of all rights and equities of the said D. G. Dery with respect thereto, including all equities enuring to said D. G. Dery by reason of his aforesaid contract with the defendant Henry H. Freund, so far as the same affects the relations of said Freund to the business and affairs of Alliance-Holt Dye Works, Inc.

(7) On October 23, 1923, said Henry H. Freund brought suit in the New Jersey Supreme Court, Hudson County, against Alliance-Holt Dye Works, Inc., to recover for services alleged to have been rendered by him to said Alliance-Holt Dye Works, Inc., between September 17, 1920, and May 16th, 1923, in the management of its business, and, also, to recover the price of two automobiles alleged by him to have been purchased in connection with his said employment.

Said services are therein alleged to be of the reasonable value of \$50,000., and the price of said automobiles is alleged to be the sum of \$5,250.

Alliance-Holt Dye Works, Inc., has filed an answer to said suit denying the allegations thereof, and also setting up as a defense thereto, in substance, that said Alliance-Holt Dye Works, Inc., was part of the business organization of said D. G. Dery and that the said Henry H. Freund was under contract with said D. G. Dery above referred to, dated November 21, 1919, and that any services which may have been rendered by said Henry H. Freund in connection with the business of said Alliance-Holt Dye Works, Inc., were covered by the provisions of said contract, and that said Freund had received full compensation therefor;

Further, that said Freund made no claim to such compensation until after the termination of

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his connection with said Alliance-Holt Dye Works, Inc., and that in the meantime Textile Banking Company, Inc., had made large loans on the security of the capital stock of said corporation, upon the faith and credit of the financial condition of said corporation as set forth upon its books, without notice of any kind that said Freund had any claim against the same; that said loans were unpaid upon maturity and that said Banking Company had been compelled to purchase said stock upon foreclosure, for the protection of said loans, and that by reason thereof plaintiff Freund was estopped from now asserting his said claim.

Issue has been joined in said suit and the same is now noticed for trial at the September Term, 1924, of the Hudson County Circuit Court.

Annexed hereto and made part hereof is a true copy of the complaint and answer in said action, marked Exhibits B and C respectively.

Complainants show that the services for which compensation is claimed by said Freund in the aforesaid action, if rendered at all, were rendered pursuant to the aforesaid contract between said Freund and D. G. Dery, and have been fully paid for by the payments made under said contract, and that in any event the same were rendered in the business of dyeing of silks, or the counseling, advising or influencing of others, directly or indirectly, on matters relating to said industry, and that said Freund, under said contract, was obliged to render such services to the business enterprises of said Dery in whatever form conducted, and was directly prohibited from rendering such services to others, and that it is inequitable for said Freund to maintain said action at law against Alliance-Holt Dye Works, Inc., because of the relation of said Dery thereto and of

*Bill of Complaint.*

his privy in interest, said Textile Banking Company, Inc.

Complainants being without remedy at law, therefore pray for relief as follows:

(1) That the defendant Henry H. Freund may make answer to this complaint and to the several allegations thereof as fully as though the same were here repeated, but without oath. 10

(2) That said Henry H. Freund, his agents and attorneys, may be enjoined and restrained from further prosecution of the aforesaid suit at law pending in the New Jersey Supreme Court against Alliance-Holt Dye Works, Inc., and particularly with the causes of action set forth as the first count and the third count in plaintiff's complaint. 20

(3) That complainants may have such other and further relief as may be equitable and just.

(4) That the State's writ of subpoena may issue in this cause directed to the said Henry H. Freund according to the course and practice of this Court.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel with  
Complainants. 30

**Exhibit "A".**

November 21st, 1919.

Mr. H. H. Freund,  
7 West 45th St.,  
City.

10 Dear Sir:—

Confirming our understanding in connection with your employment by me, I beg to say that the following is my final agreement on the subject.

1. I agree to employ you, and you agree to enter into my employ as supervising chemical engineer for a period of three (3) years.
- 20 2. You to establish a silk dyeing plant for dyeing of fast colors on grege and thrown silk, both natural and artificial, with a capacity as I will determine.
3. The plant is to be located in the vicinity of New York.
4. You agree, during the term of this contract, to transfer to me all inventions, processes and improvements relating to the dyeing of silks natural and artificial, have same on record and at my disposal.
- 30 5. All such processes, inventions and improvements are to become my exclusive property.
6. You agree also to supervise the purchase of all chemicals, dyes and supplies, test the same in a laboratory and experimental dye-house which I will equip, and you will also be responsible for the proper management of this establishment.
- 40 7. It is understood that you are not to be required to devote your entire time and attention to my business, but give and de-

*Exhibit "A", Annexed to Bill of Complaint.*

vote such time and attention as may be necessary for the successful operation of the dye-house under your management. You may engage in any other business during the said period of employment, but shall not engage in the dyeing of silks, nor counsel, advise or influence anyone, directly or indirectly, on any matters relating to this industry. 10

8. I agree to pay you for your services, upon the signing of this contract, the sum of thirty-five hundred dollars (\$3500.-) as a retainer, also ten thousand dollars (\$10,000.-) per annum in equal monthly installments at the end of each month, beginning January 1st, 1920, also ten cents (10 cents) for each lb. of silk dyed fast under your direction, payable at the end of each month and only during the life of this agreement, the basis of compensation to be the weight of the raw silk as received in the dyeing plant. 20
9. I will also reimburse you for all actual outlays and travelling expenses, which you may incur in connection with your services.
10. This agreement is to run for a period of three (3) years, commencing on the day of its execution, and is renewable thereafter from year to year, unless either party of this agreement gives notice in writing on or before the 1st day of August, 1922, or of any year thereafter. 30

If the above correctly sets forth our agreement, please confirm same by signing this letter under the word "Accepted".

Yours very truly,

D. G. DERY. 40

ACCEPTED.

Nov. 26/19. H. H. FREUND.

**Exhibit "B".**

**Complaint.**

NEW JERSEY SUPREME COURT,  
HUDSON COUNTY.

10

HENRY H. FREUND, Plaintiff,  <i>vs.</i>  ALLIANCE-HOLT DYE WORKS, INC., a corporation, Defendant.	}	Action at Law.
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Plaintiff, HENRY H. FREUND, residing at West New York, in the County of Hudson and State of New Jersey, complaining, says:

FIRST COUNT.

1. The defendant, Alliance-Holt Dye Works, Inc., is, and at all times herein mentioned was, a corporation organized and existing under the laws of the State of New Jersey.

30

2. Plaintiff at all times herein mentioned was, and still is, a chemical engineer, specializing in silks, both natural and artificial, and as such was known to defendant, and its agents and representatives.

3. Defendant, in the month of September, 1920, was in the silk-dyeing business and the owner of two silk dyeing works located at Rutherford and Phillipsburg, New Jersey, respectively.

40

4. Defendant's said mills and business being in poor financial condition and losing money by

*Exhibit "B", Annexed to Bill of Complaint.*

its operations and management, plaintiff was, on the 17th day of September, 1920, employed by defendant to, and plaintiff agreed to, take full charge of the management of its said dye works in such manner as he deemed necessary and advisable and for the best interests of the business of defendant; to hire and discharge help; to create an organization such as in his opinion would be suitable for the proper conduct of its said business; to purchase materials and supplies for said business; to use his best endeavors to work up the business of the company, and endeavor to create a reputation for its product, and to exert himself in the interest of the business of said company in such manner as he deemed necessary in order that his said work and efforts might enure to the benefit and advantage of said company.

10

20

5. For such services and the benefits and advantages which would enure during the actual employment of plaintiff, and which would reasonably accrue and enure to the benefit and advantage of the defendant and its business by reason of plaintiff's employment and the work to be done by him, defendant promised and agreed to pay plaintiff proper and reasonable compensation therefor.

30

6. Plaintiff, pursuant to said agreement and understanding, entered the employ of the defendant on or about the 17th day of September, 1920, and continued in such employ until the 16th day of May, 1923, when his services being no longer required or necessary, defendant requested him to resign.

7. Plaintiff complied with said promise and agreement in all things on his part to be done and performed, but defendant has failed, refused and

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*Exhibit "B", Annexed to Bill of Complaint.*

neglected to carry out its part of said promise and agreement.

8. Proper and reasonable compensation for such services is \$50,000; wherefore, plaintiff demands damages on this Count in the sum of \$50,000, with interest from the 16th day of May, 1923, and costs of suit.

## SECOND COUNT.

1. Plaintiff repeats paragraphs 1 to 4, inclusive, of the First Count.

2. Plaintiff repeats paragraph 6 of the First Count.

3. In connection with the employment of plaintiff, it became necessary for plaintiff to have the use of an automobile, and defendant authorized and empowered plaintiff to purchase two automobiles and then and there promised and agreed to repay plaintiff any and all moneys expended therefor upon request.

4. Plaintiff purchased two automobiles so necessary as aforesaid at a cost of \$5,250.

5. Plaintiff has duly demanded payment of the aforesaid sum of \$5,250., but defendant has failed, refused and neglected to make such payment; wherefore plaintiff demands damages on this Count in the sum of \$5,250., together with interest and costs of suit.

## THIRD COUNT.

1. Plaintiff repeats paragraphs 1, 2 and 3 of the First Count.

2. Between the 17th day of September, 1920, and the 16th day of May, 1923, plaintiff rendered

*Exhibit "B", Annexed to Bill of Complaint.*

services to the defendant, at its request, as the general manager of its dye works at Rutherford and Phillipsburg, New Jersey.

3. For said services defendant undertook and promised to pay the plaintiff reasonable compensation.

4. The reasonable compensation for the said services is \$50,000.; wherefore, plaintiff demands damages on this Count in the sum of \$50,000., together with interest and costs of suit.

## FOURTH COUNT.

1. Plaintiff repeats paragraph 1 of the First Count.

2. Between the 17th day of September, 1920, and the 16th day of May, 1923, plaintiff purchased for and on account of said defendant, and at its special instance and request, two Peerless automobiles at a cost of \$5,250.

3. Defendant promised to reimburse plaintiff for the sum so expended by him.

4. Plaintiff has duly demanded payment of the aforesaid sum of \$5,250., but defendant has failed, refused and neglected to make such payment; wherefore, plaintiff demands damages on this Count in the sum of \$5,250., together with interest and costs of suit.

LICHTENSTEIN & LICHTENSTEIN,  
Attorneys for Plaintiff.

**Exhibit "C".**

**Answer.**

NEW JERSEY SUPREME COURT

HUDSON COUNTY.

10

HENRY H. FREUND,

Plaintiff,

vs.

ALLIANCE-HOLT DYE WORKS, INC.,  
a corporation,

Defendant.

Action at Law.

20

Defendant for answer to the complaint in the above entitled action says:

FIRST DEFENSE, FIRST COUNT.

(1) Defendant denies the allegations of paragraphs 4, 5, 6, 7 and 8 of the First Count.

SECOND DEFENSE, FIRST COUNT.

30 (2) Defendant denies the allegations of paragraphs numbered 4, 5, 6, 7 and 8 of the First Count.

(3) At the times stated in plaintiff's complaint, the defendant corporation was part of the business organization of D. G. Dery, who was engaged on a very large scale in various business enterprises connected with the manufacture, dyeing, finishing and trade in silks and other textiles and the entire capital stock of defendant corporation was owned or controlled by said D. G. Dery.

40

(4) On information and belief, that plaintiff at all times stated was in the general employ of

*Exhibit "C", Annexed to Bill of Complaint.*

said D. G. Dery under a contract dated November 21, 1919, for a term of three years, renewable thereafter from year to year, providing for compensation to the said plaintiff by payment of a retainer of \$3500, and the further sum of \$10,000 per annum in equal monthly installments at the end of each month, beginning January 1, 1920, and also the additional sum of ten cents for each pound of silk dyed fast under plaintiff's direction; also the reimbursement to the plaintiff of all actual outlays and traveling expenses incurred incident to the service.

10

Said contract further provided that:

"you" (the plaintiff) "are not to be required to devote your entire time and attention to my" (meaning D. G. Dery) "business, but give and devote such time and attention as may be necessary for the successful operation of the dyehouse under your management. You may engage in any other business during the said period of employment, but shall not engage in the dyeing of silks, nor counsel advise or influence anyone, directly or indirectly, on any matters relating to this industry."

20

(5) Any and all services which may have been rendered by plaintiff in connection with the business of the defendant were rendered by the plaintiff at the direction of the said D. G. Dery, or his agents or representatives under the aforesaid contract, and the said plaintiff has received full satisfaction and payment therefor.

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THIRD DEFENSE, FIRST COUNT.

(6) Defendant denies the allegations of paragraphs 4, 5, 6, 7 and 8 of the First Count.

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*Exhibit "C", Annexed to Bill of Complaint.*

(7) Defendant repeats the allegations of paragraphs 2, 3, 4 and 5 of the Second Defense, First Count.

10 (8) That at the instance and request of the said D. G. Dery, the plaintiff became Vice President and Treasurer of the defendant corporation and continued as such until the month of December, 1922, at which time plaintiff resigned as such Vice President and director at the request of said Dery, or his representative, and said plaintiff received notice of termination of his employment under the aforesaid D. G. Dery contract.

20 During said interval, said plaintiff made no claim or demand of any sort upon or against the defendant but continued to receive and accepted the monthly compensation provided for under the D. G. Dery contract aforesaid, and no liability or obligation of any sort was set up upon the books of the defendant corporation in favor of the said plaintiff.

30 (9) During said interval, Textile Banking Corporation extended large credit to the defendant corporation and accepted the shares of the capital stock of the defendant corporation as collateral security therefor, all upon the faith and credit of the financial condition of the defendant corporation as set forth upon its books, and without notice of any kind that the plaintiff had any claim whatever upon the defendant corporation.

Said loans remaining unpaid at maturity, said Textile Banking Corporation has been compelled to foreclose the same and is now the holder and owner of said capital stock pledged with it as aforesaid.

40 By reason of the premises, defendant alleges that the plaintiff is now barred and estopped from

*Exhibit "C", Annexed to Bill of Complaint.*

now asserting its claim against the defendant corporation.

## DEFENSE—SECOND COUNT.

(10) Defendant denies the allegations of paragraphs 4 and 6 of the First Count, repeated as part of the Second Count. 10

(11) Defendant denies the allegations of paragraphs 3, 4 and 5 of the Second Count.

## DEFENSE—THIRD COUNT.

(12) Defendant denies the allegations of paragraphs numbered 2, 3 and 4 of the Third Count.

## DEFENSE—FOURTH COUNT. 20

(13) Defendant denies the allegations contained in the paragraphs numbered 2, 3 and 4 of the Fourth Count.

McDERMOTT, ENRIGHT & CARPENTER,  
Attorneys of Defendant.

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## IN CHANCERY OF NEW JERSEY.

Between

ALLIANCE-HOLT DYE WORKS, INC.,  
body corporate, and TEXTILE  
BANKING COMPANY, INC., a  
banking corporation,  
Complainants,

*and*

HENRY H. FREUND,  
Defendant.

ANSWER.

The defendant, Henry H. Freund, of the Town-  
ship of Weehawken, Hudson County, New Jersey,  
answering the Bill of Complaint in the above  
cause, says:

1. He admits that D. G. Dery was engaged in  
the manufacture and sale of silk fabrics up to the  
month of March, 1923, but he has no knowledge  
as to whether the said D. G. Dery, at all times up  
to the month of March, 1923, was engaged in al-  
lied lines of industry. He has no knowledge of  
the other allegations contained in paragraph 1 of  
the Complaint.

2. He has no knowledge of the allegations con-  
tained in paragraph 2, excepting as follows:

That a corporation known as Alliance-Holt Dye  
Works, Inc., was organized December 19, 1919,  
under the General Corporation Act of the State  
of New Jersey, and that the charter of said cor-  
poration had as one of its objections, the object  
set forth in paragraph 2, and that said corpora-  
tion took over the business and property of the  
Alliance Dye Works and James Holt Piece Dye

*Answer.*

Works, and he denies upon the organization of  
said company D. G. Dery became the holder and  
owner of the entire capital stock, common and  
preferred, of said corporation, except directors'  
qualifying shares, or that the shares other than  
those alleged to be held by said Dery were under  
the control or equitable ownership of the said  
Dery.

3. He admits that in November, 1919, he rep-  
resented himself to be a chemical engineer special-  
izing in skein silks, natural and artificial, but not  
in silk fabrics, and that he was especially quali-  
fied in matters relating to the skein silk dyeing  
business, but denies that he entered into the gen-  
eral employ of the said D. G. Dery in connection  
with his various business and enterprises, wheth-  
er carried on in individual or corporate form, for  
a term of three years or other period, as set forth  
in paragraph 3. He admits that Exhibit A an-  
nexed to the Complaint is a copy of a contract  
entered into between him and the said D. G. Dery.  
He admits that he entered upon his duties under  
the aforesaid contract, Exhibit A, and continued  
his employment thereunder for the period of three  
years and upwards, but denies that he received  
the full compensation specified therein, and denies  
that he performed services under the general di-  
rection of the said D. G. Dery in connection with  
his alleged various enterprises, whether carried  
on under his individual name or under the name  
of corporations controlled by him, as set forth in  
paragraph 3. He admits that the services ren-  
dered by him under said contract, Exhibit A, were  
not only chiefly but wholly in connection with the  
establishment and management of a silk skein  
dyeing business and experimental laboratory con-  
structed under the terms of said contract under  
the name of S. & H. Dyeing Company, Inc., at  
West New York, Hudson County, New Jersey, but

*Answer.*

denies that said corporation was organized, controlled and financed by D. G. Dery until about the month of March, 1923.

10 He admits that in addition to the services rendered by him in connection with the affairs of the S. & H. Dyeing Company, Inc., he claims to and did render services in connection with the affairs of the Alliance-Holt Dye Works, Inc., as particularly set out in the Complaint filed by him in the New Jersey Supreme Court, a copy of which is annexed to the Bill of Complaint in this cause and marked Exhibit B.

20 4. He denies that D. G. Dery was the owner of all the capital stock of the Alliance-Holt Dye Works, Inc., but has no knowledge as to what his general policy was with relation to refraining from appearing as director or officer thereof, and denies that said Dery caused the nominal organization of said company to be placed in the hands of various employes, and says that he has no knowledge of having been elected a director of said Alliance-Holt Dye Works, Inc., at the first annual meeting of stockholders following organization, or that he was appointed Vice President upon the organization of said Board of Directors, and says that he never had knowledge of his being 30 elected, either as director or Vice President of said corporation, until some time after having entered into the employ of said Alliance-Holt Dye Works, Inc., on the 17th day of September, 1920; that he never attended any meeting of either the stockholders or directors of said corporation, and does not know the date or fact of his election as such director and stockholder, excepting through information received from one, Alfred Sohland, 40 who was the treasurer of said corporation, and who advised this defendant of the fact of his election as a director and Vice President after the agreement of September 17, 1920, was entered

*Answer.*

into between him and the said Alliance-Holt Dye Works, Inc., set out in the Complaint, Exhibit B. He admits that he never had any interest in said corporation, or its capital stock, other than such interest as he had therein under and by virtue of the agreement of September 17, 1920, with said Alliance-Holt Dye Works, Inc., and denies that he 10 served in the capacity of a director or Vice President of said corporation, as the nominee or representative of the said Dery, or under the general employment with him, but says that all services rendered by him in connection with said Alliance-Holt Dye Works, Inc., were under and by virtue of said agreement of September 17, 1920, and that he was made a director and Vice President of said corporation merely for the purpose of facilitating his carrying out his said agreement with said Alliance-Holt Dye Works, Inc. He admits that he 20 continued as Vice President and director of the Alliance-Holt Dye Works, Inc., until December 15, 1922, when he tendered his resignation as such in compliance with the request of D. G. Dery Corporation, and the President of said Alliance-Holt Dye Works, Inc., Mr. Erich Muelberger, but says that he continued in the employ of said Alliance-Holt Dye Works, Inc., after his said resignation 30 and until the 16th day of May, 1923.

5. He has no knowledge or information sufficient to form a belief as to the allegations contained in paragraph 5.

6. He has no personal knowledge of the allegations contained in paragraph 6.

7. He admits the allegations contained in paragraph 7, excepting as follows:

40 He denies that he made no claim to compensation from said Alliance-Holt Dye Works, Inc., until after the termination of said connection with said company, and has no knowledge that any

*Answer.*

loans were made by the Textile Banking Company, Inc., on the security of the capital stock of said corporation, or upon the faith and credit of its financial condition, as set forth upon its books, or without notice of any kind of the claim of said defendant; and that he has no knowledge that  
 10 any such loans were unpaid or that said Banking Company was compelled to purchase said stock upon foreclosure, and denies that by reason of anything alleged in said paragraph 7 he was estopped from now asserting his said claim.

He denies that the services for which compensation is claimed by him in the aforesaid action now pending in the New Jersey Supreme Court, were rendered pursuant to the contract Exhibit A between him and the said D. G. Dery, or that his  
 20 said services so rendered to said Alliance-Holt Dye Works, Inc., have been fully or otherwise paid for by payments made under said contract with Dery; and further denies that in any event that the services rendered and sued for by him were rendered in the business of the dyeing of silks, or the counseling, advising or influencing of others, directly or indirectly, on matters relating to said industry, or that under said contract this defendant was obliged to render the services rendered by him to the said Alliance-Holt Dye  
 30 Works, Inc., to the business enterprises of said Dery in whatever form conducted; and further denies that he was directly or otherwise prohibited from rendering the services rendered by him, as alleged in his complaint in the Supreme Court, to others, or that it is inequitable for him to maintain his said action at law, as in paragraph 7 alleged.

And this defendant further answering says that  
 40 before entering the employ of said Alliance-Holt Dye Works, Inc., and the making of the contract by him with it as set forth in his Complaint, Ex-

*Answer.*

hibit "B", annexed to the Bill of Complaint herein, and before having full knowledge of the exact nature of all the work intended to be required of him by said Alliance-Holt Dye Works, Inc., and being desirous of avoiding any possible contention in the future as to his rights under said contract, Exhibit "A" to enter such employ, and  
 10 to avoid any possible violation of any provision contained in paragraph 7 thereof, this defendant went to see the said D. G. Dery and informed him that he had been approached by an officer of the Alliance-Holt Dye Works, Inc., to take charge of the management of its business and to give such technical advice as he possessed in connection with the business of said company in the dyeing of  
 20 silks, and to render other services to said company, the exact nature of which had not been fully discussed by him with the representative of said company. He also told Mr. Dery that he did not desire any dispute to arise between them under said agreement of November 21, 1919, in the event that he entered the employ of said company in any capacity desired by it and asked the said Dery whether, under his contract with him, he considered that the defendant had no right so to do, and whether he had any objection to his entering into  
 30 any contract of employment he might make with said company to become its manager and to give technical advice in connection with its business of dyeing silks; that the said Dery informed him that he had no objections to his so doing, and that this defendant had his consent to enter into any agreement he desired with said Alliance-Holt Dye Works, Inc., and that any agreement that he might so enter into would not be considered by him as a violation of any provision of the agreement this defendant had made with him as aforesaid.  
 40

LICHTENSTEIN & LICHTENSTEIN,  
 Solicitors for Defendant.

**Minutes of Final Hearing.**

IN CHANCERY OF NEW JERSEY.

10 Between  
 ALLIANCE HOLT DYE WORKS, INC.,  
 Complainant,  
 and  
 HENRY H. FREUND,  
 Defendant.  
 On Bill, etc.

Appearances:

20 For the Complainant, MESSRS. McDERMOTT,  
 ENRIGHT & CARPENTER.

20 For the Defendant, MESSRS. LICHTENSTEIN &  
 LICHTENSTEIN.

Before:

HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J.,

July 8th, 1925.

30

THE CASE FOR THE COMPLAINANT.

WILLIAM ARTHUR CUNNINGHAM, SWORN.

*Direct examination by Mr. Enright:*

40 Q. Mr. Cunningham, you are the secretary, at  
 the present time, of Alliance Holt Dye Works, In-  
 corporated? A. I am.

*William Arthur Cunningham, for Complainant*  
 —Direct.

Q. And when did you become secretary? A. In  
 about the month of April, 1923.

Q. You are also connected with the Textile  
 Banking Company, Incorporated, of New York,  
 are you not? A. Yes.

Q. In what capacity? A. I am counsel, and also 10  
 assistant secretary of that Company.

Q. You are not engaged in general practice,  
 are you? A. In the general practice of the law,  
 no, sir—only in that Company's affairs.

Q. And how long have you been associated with  
 the Textile Banking Corporation? A. Since the  
 formation of that Company, in June, 1919.

Q. Are you acquainted with D. G. Dery, per-  
 sonally? A. I am.

Q. How long have you been acquainted with 20  
 him? A. At least, five years.

Q. Prior to January of 1923 did Mr. Dery, or  
 any of his corporations, have banking relations  
 with the Textile Banking Corporation? A. They  
 did.

Q. And were you familiar with the conduct of  
 those transactions? A. I was.

Q. In that connection, did you also become 30  
 familiar with the banking transactions between  
 Mr. Dery, or any of his companies, and the Lib-  
 erty National Bank, and its successor, the New  
 York Trust Company? A. Yes, sir; I knew of  
 such transactions.

Mr. Enright: If the Court please: Inas-  
 much as the formal proof of our case, show-  
 ing the devolution of the stock of the Alli-  
 ance Holt Dye Works runs through some  
 rather complicated loan transactions with  
 these institutions, I communicated with Mr.  
 Lichtenstein before the trial so as to shorten 40

*William Arthur Cunningham, for Complainant*  
—Direct.

up the formal proof, and, at his suggestion, a transcript was furnished by the New York Trust Company of its transactions; if there is no objection, I will put that in, without going through the formality of calling the officers.

10

Mr. Lichtenstein: If the Court please, as to any testimony that the complainants desire to offer, so far as the relations between D. G. Dery and the Textile Banking Company, or the New York Trust Company, are concerned, I object to any such testimony being offered, on the ground that it is entirely incompetent, irrelevant and immaterial, and has absolutely no bearing upon the issues involved in this cause; and the mere fact that Dery had business relations, and borrowed money from either one of these institutions, as a result of which, they, the Textile Banking Company, became the owners of the stock of the Alliance Holt Dye Works, is entirely immaterial, because they could not take advantage of any of the allegations contained in the complaint, insofar as the complaint attempts to show that the Textile Banking Company has any rights in this action. Now, I merely make this objection now, if the Court please, because I want to facilitate it, and prevent a great mass of books being brought in here, and I do not want to admit them all in without objection. I am making this objection sincerely, because I believe, and it is my own personal opinion that there is foundation for my objection, and I do not want to make a whole lot of objections as we proceed. May I, then, have the benefit of this general

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*William Arthur Cunningham, for Complainant*  
—Direct.

objection to all testimony that Mr. Enright may see fit to introduce to show that either the Textile Banking Company or the New York Trust Company made loans to D. G. Dery, as set forth in the complaint, and that, as a result of these loans, these institutions, or one of them, ultimately became the owner of the capital stock of the Alliance Holt Company.

10

The Vice Chancellor: When you refer to "the complaint," you mean the bill of complaint?

Mr. Lichtenstein: Yes, sir; I do.

The Vice Chancellor: What do you say to that, Mr. Enright?

Mr. Enright: I am content with his having a general objection; my understanding is that it is a general objection to the materiality of the evidence, and not to the competency of the proof.

20

Mr. Lichtenstein: Oh, I am objecting to the competency of the proof, too; I say it is incompetent, irrelevant and immaterial; but I am not going to ask for strict proof of these things.

The Vice Chancellor: In other words, you do not object to the fact that a statement is produced?

30

Mr. Lichtenstein: No, sir.

The Vice Chancellor: Well, I will overrule the objection. (Transcript admitted and marked Exhibit C, 1).

Mr. Lichtenstein: Now, there is only one thing I desire to observe—I have not gone over this mass of figures; I do not want to admit, in any wise, that D. G. Dery was the owner of all the capital stock in the

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*William Arthur Cunningham, for Complainant*  
—Direct.

Alliance Holt Dye Works, and I expect that to be proved.

The Vice Chancellor: Well, it (referring to the transcript) may be offered in evidence, with the right to investigate—

10 Mr. Lichtenstein: Well, if anything of that kind is offered here, I do not want to be obliged to be put to the burden of disproving something they are obliged to prove; that is something I expect them to prove.

The Vice Chancellor: It may be offered.

20 Mr. Enright: Well, I will start this by the offer of an original promissory note, in the usual collateral form, dated July 30, 1920, addressed to The Liberty National Bank of New York, signed D. G. Dery; and, subjoined, an assent by "D. G. Dery, Inc. by H. J. Weidinger, Treasurer." Among other things, that purports to carry 2500 shares of the Common and 2500 shares of the Preferred Stock of the Alliance Holt Dye Works, Inc.

(Admitted and marked Exhibit C, 2).

30 Mr. Enright: I offer a statement from New York Trust Company, by Harry Knox, Assistant Treasurer, with a tabulation attached, showing the history of the loan with the Liberty National Bank, and the various changes.

(Admitted, and marked Exhibit C, 3).

40 Mr. Lichtenstein: Now, as to all of these documents (they are not only documents, but it is a letter which gives the history of a great many transactions, written by Mr.

*William Arthur Cunningham, for Complainant*  
—Direct.

Cunningham),—now, I have no objection to the letter going in, excepting that I desire to have the advantage of the objection that I made before; and also, that it is not to be taken as an admission of the number of shares of the capital stock of the Alliance Holt Dye Works, or that Mr. Dery was the owner of all the capital stock of the Alliance Holt Dye Works. 10

The Vice Chancellor: In other words, if a witness was produced, he would testify to all that these documents that are offered in evidence contain.

Mr. Lichtenstein: I assume they are correct.

The Witness: They are quite so, I can assure Mr. Lichtenstein. 20

Q. Now, Mr. Cunningham, did you handle the transaction between Mr. Dery and the Textile Banking Corporation, under which a loan was made, January 15th, 1923? A. I did, with Mr. Maguire; in conjunction with Mr. Maguire I handled that transaction.

Q. And Mr. Maguire is an executive—Vice-President of the Company, is he not? A. Of the Textile Banking Company, yes. 30

Q. And, as security for that loan, what did you take?

(Same objection; same ruling).

A. That loan was a loan of \$265,000; and we took, as security, 5,000 shares of the Preferred Stock of the D. G. Dery Corporation—a Delaware corporation; also— 40

*William Arthur Cunningham, for Complainant*  
—Direct.

Q. Now, wait; you took those shares as security?

A. Took those shares as security; that was part of the collateral; the rest of the collateral was an assignment by Mr. Dery to us of his equity in all collateral he then had pledged with the New York Trust Company as security for his obligations there.

Q. Is this instrument which I show you the instrument of assignment which you then took from Mr. Dery, covering his equity in the New York Trust Company collateral (Exhibiting to the witness a paper)? A. It is, sir.

Mr. Enright: I offer this assignment in evidence.

Mr. Lichtenstein: All of this is subject to the same general objection, I understand?  
The Vice Chancellor: Oh, yes.

(The Assignment is admitted, subject to the objection, and is marked Exhibit C-4).

Q. Did you ascertain, at that time, how much was due upon the primary pledge to the New York Trust Company? A. We did, sir; as matter of fact, that is incorporated in the assignment; it was in the neighborhood of \$175,000.

Q. By the way, between 1920 and 1923, the Liberty National Bank had been merged into the New York Trust Company, had it not? A. It had been legally merged, I think, on April 1st, 1921; the date is mentioned in the letter of the New York Trust Company, a previous exhibit.

Q. Now, generally, what happened to the Dery interests in 1923?

Mr. Lichtenstein: What "interests" are you speaking of now?

*William Arthur Cunningham, for Complainant*  
—Direct.

Mr. Enright: D. G. Dery, Individually, and D. G. Dery Corporation.

Mr. Lichtenstein: I object to what happened to Dery, individually, or to his organization; I do not think this witness is competent to testify to that.

Mr. Enright: I want to show that D. G. Dery was petitioned into bankruptcy.

Mr. Lichtenstein: I will admit that.

Q. What was the date? A. His individual petition was in the month of April, 1923; the corporation was put into equity receivership March 26th, 1923.

Mr. Lichtenstein: Is that all taken under the same general objection?

The Vice Chancellor: Oh, yes.

Q. Was this stock of the Alliance Holt Dye Works put up for sale by the New York Trust Company, under its collateral pledge?

Mr. Lichtenstein: That is all contained in one of these letters that I permitted to go in, is it not?

The Witness: Yes, sir.

A. The foreclosure of the collateral by the New York Trust Company is recited in Mr. Knox' letter; and its purchase by James D. Hopkins.

Q. Who is he? A. He is an associate of mine, and the Vice-President of the Textile Banking Company.

Q. And what did he do with it?

Mr. Lichtenstein: I think that is all set out in these letters.

*William Arthur Cunningham, for Complainant*  
—Direct.

The Witness: That is in a subsequent letter, Mr. Lichtenstein.

Mr. Enright: Well, read that letter over. I will put it in as a convenient recital. (Referring to a letter now produced by examining counsel.)

Mr. Lichtenstein: I am willing to permit this letter of July 6th, 1925, addressed to Mr. W. Arthur Cunningham, Secretary Alliance Holt Dye Works, Incorporated, from Textile Banking Company, to go in, subject to the same objection.

Mr. Enright: The letter is offered, under that designation.

(Admitted, subject to the general objection, and marked Exhibit C-5.)

Q. And, by virtue of these various transactions, is all the stock of the Alliance-Holt Dye Works now held by the Textile Banking Company?

Mr. Lichtenstein: I object to the question, as calling for a conclusion of law.

The Vice Chancellor: I will sustain the objection. You may prove that by the books.

Q. (Producing and exhibiting to the witness two books): Do you recognize these stock books?

Mr. Lichtenstein: I will admit that those are the stock books, if you will let me have them a minute. (The two books were thereupon handed to Mr. Lichtenstein for his inspection.) I do not have any objection to the formal offer of these books, as being the stock books, both Common and Preferred, of Alliance Holt Dye Works, Inc., and I

*William Arthur Cunningham, for Complainant*  
—Direct.

would like to have an opportunity of examining them during recess.

Mr. Enright: All right; I offer in evidence both the Common and Preferred Stock Certificate Books of the Alliance Holt Dye Works, Inc., and the cancelled certificates therein contained, and the stubs.

(The two books are admitted and marked, respectively, Exhibit C-6 (Preferred) and Exhibit C-7 (Common).)

The Vice Chancellor: Are these books offered to show the number of shares issued and outstanding, and the ownership?

Mr. Enright: Yes, sir.

Q. Do you know who Herbert J. Stroh is? A. Yes; he is an employee of the New York Trust Company. Shares of stock held by them were carried in his name.

Q. Calling your attention to the Common Stock Certificate Book, I direct your attention to a cancelled certificate issued to D. George Dery for 2,500 shares, dated July 15, 1920, the transfer being filled in to Stroh, April 4th, 1923, and cancelled certificate issued to Herbert J. Stroh, dated April 4th, 1923—which of those certificates did Hopkins get at the time of the foreclosure sale? A. He got the certificate of Stroh.

Q. You attended at the sale, didn't you? A. Yes, sir.

Q. And you bid in the property? A. I did.

Q. And gave in Hopkins' name? A. I gave his name; yes, sir, used his name. I also made these transfers myself, as Secretary of the Dye Works.

*William Arthur Cunningham, for Complainant*  
—Direct.

The Vice Chancellor: What are the numbers of those certificates you are talking about?

The Witness: Nos. 2 and 3, your Honor.

10 Mr. Lichtenstein: Mr. Enright, for convenience, while at these books, will you get the date of each one of these certificates?

Mr. Enright: I am offering the whole book.

Mr. Lichtenstein: Well, I will have to dig them out, in some way.

Q. And then the certificate issued to Hopkins was turned in and cancelled under what date?

20 A. The cancellation was in May, 1923; I don't know the exact date.

By Mr. Lichtenstein:

Q. Have you given the cancellations of the first?

A. Yes, sir; they are given here: Certificate No. 2, as of April 4, 1923, and Certificate No. 3, as of May 16, 1923.

By Mr. Enright:

30 Q. Then, when the Hopkins Certificate was turned in, there was issued, in place of that Certificate No. 5, to Dye Works Securities Corporation, dated the 27th of March, 1924? A. Yes, sir.

Q. And that shows, on the back, an assignment to Textile Banking Corporation under what date? A. January 6th, 1925.

40 Q. And there was issued, in place of that, on January 6, 1925, a certificate, numbered 6, for 2,500 shares, the entire authorized Common, to Textile Banking Company, and that certificate is still outstanding? A. It is in our vault, sir.

*William Arthur Cunningham, for Complainant*  
—Direct.

Q. In your vault? A. Yes, sir.

Q. Now, calling your attention to the Preferred Certificate Book, just point out what certificate you received at the sale? A. No certificates were actually delivered at the sale; but subsequent to the sale I received a certificate of D. G. Dery, 10 Certificate No. 8.

Q. For 2,495 shares? A. Of the Preferred Stock, yes; and, at the same time, received a request that that be transferred to the name of Herbert Stroh, the nominee of the New York Trust Company; and later, after Mr. Hopkins had purchased all the collateral sold by the New York Trust Company under foreclosure, I received, as Secretary of the Alliance Holt Dye Works, for 20 transfer, Certificate No. 7, for 2,499 shares, in the name of Herbert J. Stroh.

Q. Well, now was that certificate filled up? A. It came from the Certificate No. 8, which is 2,495 shares, and also Certificates Nos. 7, 6, 4 and 3, each for 1 share, and standing, respectively, in the names of Eric Muelberger, Alfred Sohland, A. T. Jarrett and Hans Fischer, who, as appears from the minute book, had been Directors of the Alliance Holt.

Q. And that certificate was split up how? A. 30 By the issuance of Certificate No. 10, to James D. Hopkins, for 2,495 shares, and Certificate 11, to F. H. Wandelt for 1 share (a qualifying director's share—he is President to-day); Certificate No. 13, for 1 share, to Anthony J. Oliva, a director; Certificate No. 14, for 1 share, to P. F. Henahan, a director; Certificate No. 15, for 1 share, to C. S. Hasbrouck, a director (also Assistant Treasurer of the Alliance Holt Dye Works, and also of the 40 Textile Banking Company; and Certificate No. 16,

*William Arthur Cunningham, for Complainant  
—Direct.*

for 1 share, to myself, W. A. Cunningham, also a director and Secretary of the Dye Works.

10 Q. Now, what happened to the certificate issued to the Dye Works Securities Corporation for 2,495 shares? A. That certificate, No. 17, was issued under date of March 27, 1924, for 2,495 shares, in place of and upon surrender and cancellation of Certificate No. 10, issued to J. D. Hopkins.

Q. I asked you what happened to it? A. Certificate No. 17 was surrendered by the Dye Works Securities Corporation, under date of January 6, 1925, and, in its place, was issued Certificate No. 19, for 2,495 shares, to Textile Banking Company, Inc.

20 Q. And is that latter certificate still outstanding? A. It is, and in our vaults—the Textile Banking Company's.

Q. To your knowledge? A. To my own knowledge.

Q. What are the other certificates now outstanding? A. The other five certificates of Preferred, now outstanding, are also in our vaults, in my custody, and are endorsed by the respective persons named in the certificates; they are directors.

30 Q. Will you please name them? A. Certificate No. 20, to Howard J. Stroh—

Q. And he took by transfer from whom? A. From Anthony J. Oliva.

Q. Yes? A. Certificate No. 18, to Norman S. Mackie, by transfer from Philip F. Henahan. That is all; the others are the same.

40 Q. Well, I am asking you, in summing it up, to give these other five; you have given two of them? A. The others are F. H. Wandelt, named in Certificate No. 11; myself (W. A. Cunningham)

*William Arthur Cunningham, for Complainant  
—Direct.*

named in Certificate No. 16; and C. S. Hasbrouck, named in Certificate No. 15.

10 Q. Now you have said that the Textile Banking Company received Certificate No. 9, for 2,499 shares, in the name of Stroh—did you receive the certificate for the other share at that time? A. 10 We did, yes, sir; we received a certificate for the entire capital stock, or, rather, certificates for the 5,000 shares of capital stock. By going through this book you can find out which the odd one was. If I may make a correction, I believe that the share in the name of Fischer was kept because he was still around and available for duty as a director of the corporation. Both Fischer and Muelberger were there, and I cannot tell, without going into my office records, 20 whether Fischer's or Muelberger's was kept.

Q. You are the Secretary of the Company at the present time? A. Yes, sir.

Q. Is this the Minute Book of the incorporation (showing the witness a book)? A. It is.

The Vice Chancellor: I presume that those five certificates, of 1 share each, that were originally issued and surrendered, were given to the holders as Directors, to qualify them as Directors; I do not think that appears. 30

The Witness: Yes, sir; I know that that is so.

Mr. Lichtenstein: Well, he has answered that, but I would like to examine the witness on his knowledge on that subject.

40 Q. Well, do you know, as a fact, that at the time of the sale of this collateral by the New York Trust Company, you received, on behalf of the

*William Arthur Cunningham, for Complainant*  
—Direct.

Textile Banking Company, certificates for all of the issued capital stock of the corporation, including the five shares standing in the names of directors?

10 Mr. Lichtenstein: I object to that, if the Court please. They have gone into, or produced the Stock Certificate Book. I have asked Mr. Enright to save me a lot of work and go back to the beginning of the certificates, which he has refused to do several times, right here, and he is compelling me to do it; now, I object to his asking this general question, which calls for a conclusion of the witness.

20 The Vice Chancellor: He has shown that the 2,500 shares are held by them, has he not?

Mr. Lichtenstein: He has a piece of paper for 2,500 shares, but I am not admitting the validity of the certificate.

30 The Vice Chancellor: Does it now appear that, from the time the New York Trust Company first made this loan down to the present time, the 2,500 shares of stock have been owned and controlled by the New York Trust Company, or its assignee?

Mr. Enright: To clear up any possibility of doubt, that is the question I thought I was asking him—whether he got stock certificates for the entire 2,500 shares.

A. For the entire shares.

40 Mr. Lichtenstein: Well, I object to the conclusion of the witness.

*William Arthur Cunningham, for Complainant*  
—Direct.

The Vice Chancellor: Well, the best evidence is the books of the corporation, I suppose.

Mr. Enright: Well, he has produced them.

Mr. Lichtenstein: Then, all right; there is no need of asking him the question. 10

The Vice Chancellor: Well, if you have it in, that is all there is to it.

Mr. Enright: I am cleaning it up, if there is any doubt about it; I asked him the question whether he got the actual certificates at that time?

Mr. Lichtenstein: I think you could very well have done that by taking the first certificate and going right through them. 20

Mr. Enright: Won't you let me ask it in my own way?

Mr. Lichtenstein: Well, that is what I say—when I ask you to do something, you refuse to do it.

The Vice Chancellor: (After further argument) I think I had better withdraw my question then.

Mr. Lichtenstein: You see, it is one of the things I desire to know, and I don't know it; and it is one of the things I reserve. 30

Q. Well, what I am asking you is whether, at the time you took over these stock certificates resulting from the sale by the New York Trust Company, you got certificates representing these five shares?

Mr. Lichtenstein: What five shares?

Mr. Enright: Standing in the names of the individuals. 40

*William Arthur Cunningham, for Complainant*  
—Direct.

Mr. Lichtenstein: I object to the question, as calling for the conclusion of the witness. The books are here, and, if they show it, why, they show it.

10 Mr. Enright: Well, I am asking him whether he got those particular pieces of paper, or not?

The Vice Chancellor: I will allow the question to be answered to prove that there were certificates of stock issued, or delivered to him, or to his company, aggregating 2,500 shares, without, in any manner, admitting that they were regularly issued or transferred on the books of the company.

20 A. I did receive the actual certificates, personally, for the five shares, of one share each, as well as the 2,495 of Preferred, and one certificate for 2,500 Common—the entire thing checking up to be the five thousand authorized outstanding shares.

Q. Are you familiar with the signature of Hans Fischer? A. I am, sir.

Q. Was he the Secretary of the Company on December 29, 1920, as appears from the Minute Book? A. My only knowledge of that is that it

30 appears on the Minute Book.

Q. And you are the present Secretary and the custodian of the Minutes? A. I am, sir.

Mr. Enright: I offer in evidence Minutes of Annual Meeting of Stockholders of Alliance Holt Dye Works for December 29, 1920, signed "Hans Fischer, Secretary."

40 Mr. Lichtenstein: I have no objection—I mean, no formal objection—to the minutes being offered, but I object to the minutes being offered upon the general ground al-

*William Arthur Cunningham, for Complainant*  
—Direct.

ready urged, that it is not competent, not relevant, not material, and has no bearing upon the issues involved in this proceeding.

The Vice Chancellor: I will overrule the objection.

(The minutes is admitted, and marked 10 Exhibit C, 8.)

Mr. Enright: I read from the minutes offered, as follows: "Present, in person, Alfred Sohland, 1 share common stock; Hans Fischer, 1 share common stock; by proxy: Henry Danziger, as proxy for D. George Dery, 2,495 shares common stock; Henry Danziger, as proxy for Eric Muelberger, 1 share common stock; Henry Danziger, as proxy for D. George Dery, 2,500 shares preferred stock." 20

Mr. Lichtenstein: I do not know what the purpose of this offer is, but I presume Mr. Enright offers it for the purpose of endeavoring to show by this minute that Mr. Dery is shown here to be the owner of 2,495 shares; if that is his purpose, I object to it for another reason. I do not know what he offers it for. May we inquire, Mr. Enright, 30 what the purpose of the offer is?

Mr. Enright: Yes. You are quite wrong.

Mr. Lichtenstein: Well, may I ask what it is? I don't know what the purpose can be.

Mr. Enright: It is for the purpose of showing the election of Mr. Freund as a director.

Mr. Lichtenstein: Well, I will admit that Mr. Freund was elected a director; and we admit it in our documents, in our answer. 40

*William Arthur Cunningham, for Complainant*  
—Direct.

10 Mr. Enright (Resuming reading from the Minutes): "On motion, duly made, seconded and unanimously carried, the following were placed in nomination for directors of the corporation for the ensuing year: Eric Muelberger, Alfred Sohland, Hans Fischer, H. H. Freund and Henry Danziger."

Mr. Enright: Also, for the same purpose, I offer the Minutes of the Annual Meeting of the Directors, held January 12, 1921: "Present: Messrs. Eric Muelberger, Alfred Sohland, Hans Fischer, H. H. Freund, Henry Danziger.

20 "The Chairman declared that the election of officers for the ensuing year was in order. On motion, duly made, seconded and unanimously carried, the following were placed in nomination: For President, Eric Muelberger; Vice President, H. H. Freund; Treasurer, Alfred Sohland; Secretary, Hans Fischer; Assistant Treasurer, E. M. Lee.

30 "There were no further nominations; and on motion, duly made, seconded and unanimously carried, no candidate voting for himself, said nominees were each duly elected to the office for which he was nominated."

40 Mr. Lichtenstein: Now, if the Court please, since Mr. Enright has stated the purpose of his offer, I object to those minutes going in, upon the ground that they do not bind Mr. Freund; that, at best, they are self-serving declarations; and, further than that, they do not prove the facts contained in the Minutes. Minutes may be written

*William Arthur Cunningham, for Complainant*  
—Direct.

up, and anything may be said about a person, and that person know nothing about it. It is perfectly evident, even from a reading of these minutes, that Mr. Freund was never elected a director of this corporation, because he never owned a share of stock of the corporation and still they put him down there as having been elected a director. 10

The Vice Chancellor: I will admit the minutes in evidence for what they are worth.

Mr. Enright: (To Mr. Lichtenstein) I think you admitted that he was elected a director. 20

Mr. Lichtenstein: No, I admitted that you purported to elect him as a director.

The Vice Chancellor: Well, the minutes import verity, and if he was not present, as stated in these minutes, he can say that he was not.

(The minute was thereupon marked Exhibit C-9.)

Mr. Enright: I also offer the Minutes of Annual Meeting of Stockholders of Alliance Holt Dye Works, held December 31, 1921. 30

Mr. Lichtenstein: Same objection, if the Court please, as the last objection concerning the admission of the minutes.

The Vice Chancellor: Same ruling.

Mr. Enright: These minutes show the election, as Directors for the ensuing year, Eric Muelberger, Hans Fischer, John Young, John Van Tongelen, H. H. Freund, and Arthur Coen. 40

(The minutes is marked Exhibit C-10.)

*William Arthur Cunningham, for Complainant*  
—Cross.

10 Mr. Enright: I also offer Minutes of Annual Meeting of Directors, held January 11, 1922, reciting as present Messrs. Muelberger, Fischer, Young, Van Tongelen, Freund and Coen; and the election of the following officers: President, Eric Muelberger; Vice President, H. H. Freund; Treasurer, John Young; Secretary, Hans Fischer.

(Same objection; same ruling.)

(The Minute is marked Exhibit C-11.)

*Cross-examination by Mr. Lichtenstein:*

20 Q. Your Minute Book, Exhibit C-8, shows the election of H. H. Freund as a director of this company—will you turn to your Common or Preferred Stock Book and show me where Mr. Freund ever had a share of stock in the company which warranted him being elected as a director of this company? A. What minute is that?

Q. The minute under date of December 29, 1920?  
A. I know nothing about the affairs of this company before April, 1923, when I came into it.

30 Q. Turn to either your Preferred or Common Stock Book, and show me where Mr. Freund ever had a certificate issued to him for any shares of stock of the Alliance Holt Dye Works, Inc.? A. Frankly, my recollection is that he had not. I will look through, if you wish to make sure (After examining the Preferred Stock Book): His name does not appear in the Preferred Book. (And after examining the Common Stock Book): Nor in the Common.

40 Q. Are they the only two classes of stock that were ever issued by the Alliance Holt Dye Works, Inc.? A. So far as I know, yes.

*William Arthur Cunningham, for Complainant*  
—Cross.

The Vice Chancellor: Is it necessary, Mr. Lichtenstein, that stock should be transferred on the books of the Company to qualify a man for director?

Mr. Lichtenstein: Why, there would have to be a certificate of stock issued; and I have asked him whether there was a certificate of stock issued. 10

The Vice Chancellor: Couldn't he hold by assignment?

Mr. Lichtenstein: He might; but then he would have to have it; he could not vote unless there was a transfer on the books of the Company.

Q. Will you turn to your books and tell me whether Mr. Freund was ever the holder, by way of assignment, of a single share of stock, either Common or Preferred, of the Alliance Holt Dye Works, Inc.? A. By assignment? 20

Q. Yes. A. I don't know that I can tell that from the books, sir.

Q. Well, I mean, as far as your certificates show? A. I do not believe his name ever appeared on a certificate.

Mr. Enright: I looked over these certificates, and his name does not appear on any of the certificates. 30

Mr. Lichtenstein: The complaint sets forth that Mr. Freund was elected a Director and some other officer, and that he owned stock; and Mr. Freund sets forth that he never attended any meeting of the corporation, and did not know that any attempt was made to elect him until he was told by somebody afterwards that they at- 40

*William Arthur Cunningham, for Complainant*  
—Cross.

tempted to elect him an officer, and did elect him an officer.

The Witness: I do not find Mr. Freund's name on any of these books (referring to the stock books).

10

Q. Do you find his name in the Stock Transfer Book, either as an original holder of a certificate of stock, or by way of assignment? A. I don't know, but my impression is that his name does not appear; I haven't the book with me, and I have not looked at it recently to confirm that; my recollection is that his name does not appear.

Q. Taking up the Common Stock Certificate Book, and referring you to Certificate No. 1—when did Certificate No. 1 pass out of the hands of Mr. Sohland—what date? A. I have no knowledge, whatever.

20

Q. Well, according to your Stock Certificate Book? A. Well, I do not believe the Stock Certificate Book tells; it may have been a year earlier or a year later; any date could have been put in here.

Q. That is not what I asked you—tell me what date it passed out of his hands, as far as this record shows? A. That it passed out of his hands?

30

Q. Yes.

Mr. Enright: I make the objection that the witness says he does not know anything about these early transactions, except what the record shows. Now, I have offered the entire record in evidence.

Mr. Lichtenstein: You have asked him a lot of questions that I think were unimportant now; you asked him about all these earlier certificates.

40

*William Arthur Cunningham, for Complainant*  
—Cross.

The Vice Chancellor: He is asking him what date the record shows.

Mr. Enright: If he confines him to that; because we all know that certificates are endorsed in blank, and not dated until they are transferred on the books of the company.

10

Q. So that you have no knowledge of the actual date of transfer, excepting as appears by these certificates in the book? A. As to which certificates?

Q. As to Certificate No. 1 and Certificate No. 2? A. No, as to Certificate No. 2 I have knowledge; I handled the transaction, personally.

Q. When did that pass out of the hands of D. G. Dery? A. I cannot tell you the exact date, but I know that the certificate was down in the New York Trust Company as collateral for loans throughout the years '21 and '22, and up to the time of the transfer.

20

Q. When was Certificate No. 1 transferred?

The Vice Chancellor: On the books of the Company?

Mr. Lichtenstein: Yes, sir.

30

A. It appears to be transferred, Mr. Lichtenstein, as of July 15, 1920.

Q. When, according to this record, did Certificate No. 1, of preferred stock, pass out of Alfred Sohland? A. The assignment is dated July 15, 1920.

Q. And Certificate No. 2, to Ugnon? A. On or about April 4th, 1923.

Q. Did you attend to the transfer of that certificate? A. I did, sir.

40

*William Arthur Cunningham, for Complainant  
—Re-direct.*

Q. You got Mr. Ugnon to sign that certificate?

A. No, sir, I did not attend to that; as soon as I received that certificate from the New York Trust Company (together with others, which I will explain, making up the 2,500 shares), and asking that it be transferred to the name of Stroh, their nominee, I had the then Treasurer of the Alliance Holt Dye Works (as it appeared from the Minute Book, Mr. John Young, who was also an officer of the Dery Corporation) make the transfers under my direction.

*Re-direct examination by Mr. Enright:*

Q. I show you form of a letter addressed to H. H. Freund, signed "D. G. Dery", dated November 21, 1919, being the original of Exhibit A, attached to the complaint: Are you familiar with the signature of Mr. Dery? A. I am.

Mr. Lichtenstein: That is admitted.

Q. That is his signature? A. Yes, sir.

Q. And is that Mr. Freund's signature? A. Yes, sir.

Q. Where did you get this particular paper from?

Mr. Lichtenstein: Objected to, as being entirely immaterial, where he got it from.

The Vice Chancellor: I will overrule the objection, and let it go in.

A. I found that paper in the files, marked "Alliance Holt Dye Works", at the office of the D. G. Dery Corporation, when I went in as one of the attorneys of the equity receivers.

Mr. Lichtenstein: I ask that that be stricken out, as not being binding on this

*Hans Fischer, for Complainant—Direct.*

defendant—what he found, or where he found it.

The Vice Chancellor: I cannot see the force of this, either. It is a contract, for what it is worth, unless the complainant is, by indirection, asserting that it knew nothing about this contract.

Mr. Enright: No; we are not asserting that.

The Vice Chancellor: Well, I will overrule the objection and let it go in; I had better let it in, than exclude it.

Mr. Enright: I offer the document.

(Admitted and marked Exhibit C-12.)

HANS FISCHER, SWORN.

*Direct examination by Mr. Enright:*

Q. Mr. Fischer, where do you live? A. 4 East Twenty-eighth Street, New York City.

Q. By whom are you now employed? A. Morton H. Meinhard & Co.

Q. Have you any present relation either with the Alliance Holt Dye Works, or with the Textile Banking Company? A. I have not.

Q. Were you formerly engaged in business with D. G. Dery? A. I was.

Q. When were you first associated with him? A. October, 1914.

Q. And how long did that association continue? A. Until the receivers were appointed; and I continued under the receivership until December 31, 1923.

Q. Will you state, generally, what was the nature of Mr. Dery's business during that in-

*Hans Fischer, for Complainant—Direct.*

terval? A. Mr. Dery was in the silk manufacturing business; at the time when I went with him he had around twenty-eight mills, and—

10 Mr. Lichtenstein: I object to the statement of the witness that Mr. Dery had about twenty-eight mills. How can he state that he had twenty-eight mills?

The Witness: Owned twenty-eight mills.

The Vice Chancellor: Why cannot he state, if he knows.

Mr. Lichtenstein: Well, could a man state that your Honor was the owner of twenty houses?

20 The Vice Chancellor: If he knew it, I suppose he could. You may examine him as to that, if you want to.

Mr. Lichtenstein: I would like to examine the witness on that.

The Vice Chancellor: You may do so.

By Mr. Lichtenstein:

Q. Mr. Fischer, what position did you hold with Mr. Dery? A. I was the Assistant Manager of the Piece Dye Department.

30 Q. And the business was that of dyeing silk—broad silks—was it? A. Dyeing?

Q. Dyeing broad silks—was it? A. I don't know what you are talking about; I don't understand what you say—the business was what?

Q. That of dyeing silks? A. I had nothing to do with that.

Q. I thought you said you were the Assistant Manager of the Piece Dye Department? A. Yes, sir.

40 Q. In what plant? A. I was not at any plant.

*Hans Fischer, for Complainant—Direct.*

Q. Well, where were you located? A. New York City.

Q. In an office there? A. Yes.

Q. At what number? A. 381 Fourth Avenue.

Q. And what company was that? A. D. G. Dery.

Q. That was D. G. Dery, the individual, was it— 10  
Mr. D. G. Dery alone? A. D. G. Dery, Selling Agent for D. G. Dery, Incorporated.

Q. Your duties were clerical, were they, in the office there? A. I should say not.

Q. What else were they, outside of being clerical—you took charge of records and books, and things of that kind? A. If you will give me a chance, I will explain the whole thing; I made out constructions for piece dye goods; I handled the purchasing of all the raw material, with the exception of raw silk; laid out the manufacturing plans for the different plants; supervised the manufacturing end, as far as perfection was concerned; I handled the converting of piece dye goods; sold merchandise to the trade— 20

Q. (Interrupting) So that, in fact, you did everything—

Mr. Enright: Well, I submit, I would like to hear the rest of the narrative. 30

A. (Resuming)—and took care of all the shipments of woven goods. That is about all.

Q. So that you did practically everything excepting buy raw silk and attend to the manufacturing itself—that is, the actual operation of manufacture? A. Yes, sir.

Q. That sums the whole thing up? A. Yes.

Q. Now, D. G. Dery, as an individual, was a selling agent, was he not? A. To the best of my knowledge. 40

*Hans Fischer, for Complainant—Direct.*

Q. Yes, to the best of your knowledge; he had an office at this place where you were employed?

A. Yes.

Q. And you were paid by D. G. Dery, were you not? A. If my memory serves me right, the checks were made out by D. G. Dery, Inc., and signed by  
10 Mr. Dery, personally.

Q. That you don't remember? A. No.

Q. You might have been paid by checks of D. G. Dery, personally, is that so? A. The only thing I know is that each check carried his signature; whether it was his own personal check, that I could not say.

Q. That you could not say, whether it was a personal check, or a corporation check; you don't know? A. I think most of them were "D. G. Dery,  
20 Incorporated."

Q. Now, when you say that D. G. Dery had—I think you said twenty-eight mills— A. I think so.

Q. What did you mean by that? A. He operated at that time—I am talking about 1914, when I started with him—twenty-eight weaving mills, throwing plants, and other plants where merchandise was manipulated.

Q. Well, what did you mean by saying that he  
30 "operated twenty-eight plants"—what do you mean by that—that he had twenty-eight plants on his letter-head, as selling agent for those plants—is that what you mean? A. No; he manufactured merchandise in those plants.

Q. I am asking you what you meant in answer to Mr. Enright's question when you said that Mr. Dery operated twenty-eight plants; what did you mean by that? A. He was producing woven goods in these plants, and preparing materials for weaving  
40 purposes.

*Hans Fischer, for Complainant—Direct.*

Q. When you say "he was producing", you mean twenty-eight different corporations were producing, don't you—that is what you mean, don't you? A. No, sir, I do not.

Q. You do not? A. No.

Q. Well, mention the names of the twenty-eight plants, or some of them, that you say Mr. Dery  
10 was "operating"? A. Hamburg, Pa.

Q. The name of it? A. D. G. Dery, Incorporated.

Q. D. G. Dery, Incorporated? A. Yes.

Q. Now, the next one? A. That is all.

Q. That is all? A. I am talking about 1914.

Q. 1914? A. That is what I am talking about.

Q. Well, you mentioned "twenty-eight plants" that you say he operated—now, I want to know the names of some of those plants? A. I started  
20 in to say "Hamburg, Pa."

Q. Well, what was the name of the plant at Hamburg? A. Well, you are repeating yourself now; I told you it was D. G. Dery, Incorporated.

Q. You have mentioned that; now I am asking you for some other name? A. There were no other names.

Q. There were no others? A. Not to my knowledge.

Q. Where were the "twenty-eight plants" you  
30 spoke of, and what were their names? A. They were under the name of "D. G. Dery, Incorporated."

Q. Well, where were they located? Mention another one than the one in Hamburg? A. You have got that in the letter there.

Q. I am asking you, sir; never mind what I have. A. Emaus.

Q. What was the name of the plant that was  
40 operated there? A. "D. G. Dery, Incorporated."

*Hans Fischer, for Complainant—Direct.*

Q. Are you speaking now of 1914? A. Yes, sir.

Q. And in 1914 Mr. Dery had twenty-eight plants, operated under the name of "D. G. Dery, Incorporated"? A. That is to the best of my knowledge.

10 Q. That is to the best of your knowledge? A. Yes.

Q. You think so? A. No, I don't "think so",—I may be mistaken as to the number of plants.

Q. Well, you told us that all of those plants were operated by a corporation under the name of "D. G. Dery, Incorporated"? A. Yes, sir.

Q. Well, were they known by any other name—these mills—other than "D. G. Dery, Incorporated"? A. Not to my knowledge.

20 Q. That is all you know? A. That is all I know.

Q. So that, in 1914, Mr. Dery, you say, sold goods that were manufactured in twenty-eight plants, or thereabouts? A. Yes.

Q. Which were manufactured by companies known as "D. G. Dery, Incorporated"? A. By a company.

Q. By a company? A. Yes.

Q. One company? A. Yes.

30 Q. And D. G. Dery, as an individual, sold the product of the twenty-eight plants of D. G. Dery, Incorporated? A. Mr. Dery did not sell any goods.

Q. Oh, I mean he was the selling agent, is that right? A. The name of the selling agent was D. G. Dery.

Q. So that the selling agent was D. G. Dery? A. Yes.

40 Q. And D. G. Dery sold the product of twenty-eight plants which were operated, you say, by D. G. Dery, Incorporated—is that right? A. Yes.

Q. Now, how do you know that these twenty-eight plants were operated by D. G. Dery, Incor-

*Hans Fischer, for Complainant—Direct.*

porated; were you ever at any of those plants? A. Most decidedly.

Q. What was the name on the front of each one of those buildings? I don't remember now what the name was on each mill; but, on certain mills, I recollect distinctly the name of "D. G. Dery, Incorporated." 10

Q. Well, all that you know is that you were working at the office that Mr. Dery had, and that he was selling the product of twenty-eight mills; you, of your own knowledge, don't know who those mills belonged to, do you; you don't know that, do you? A. At the time when I was employed by D. G. Dery I was given to understand that he owned those plants.

Mr. Lichtenstein: That is all. If the Court please, I submit that this witness cannot testify to whom these mills belonged, or what they were, or who operated them. 20

The Vice Chancellor: I think I will let it go, for what it is worth.

By Mr. Enright:

Q. I ask you to describe, generally, the business carried on by Mr. Dery during the time that you were associated with him, which began in 1914 and ended in the Spring of 1923? A. At the time when I started with him we had 124 looms running on piece dye goods, and the balance on skein dye; and I was hired for the purpose of developing the piece dye goods. 30

Q. Now, what was the nature of the business going on in 1920—1919 and 1920? A. Well, by that time Mr. Dery had increased his plants considerably; he had purchased additional plants. 40

*Hans Fischer, for Complainant—Direct.*

Q. Do I understand that some of your duties were in connection with the selling organization in New York? A. Yes, sir.

Q. Did you have any duties with respect to the producing part of the business? A. Do you mean the producing part of it?

10 Q. Of the business, yes? A. Most decidedly.

Q. Did you make frequent visits to the mills? A. Sometimes frequent, and some other times, perhaps every two or three months.

Q. About how many mills were manufacturing in the organization in 1919?

20 Mr. Lichtenstein: I object to the question, and to this line of testimony (and I want it to apply, if your Honor will permit, to this entire line of examination), upon the ground that it is entirely incompetent, irrelevant and immaterial what business Mr. Dery, personally was engaged in, or what business D. G. Dery, Incorporated, was engaged in, or where they were in business.

The Vice Chancellor: Well, I think I had better admit it in evidence; it is easier to admit it in evidence than to exclude it—that is, when I say “easier” I mean “better”.

30 Mr. Lichtenstein: I understand that; I do not want to lose the benefit of the objection.

The Vice Chancellor: Oh, yes.

40 Mr. Lichtenstein: It may be understood, then, that all of the questions that are going to be asked of this witness concerning the operations of D. G. Dery as an individual, and those of D. G. Dery, Incorporated, may be subject to this objection?

*Hans Fischer, for Complainant—Direct.*

The Vice Chancellor: Yes, they may be so. (Last question repeated).

Mr. Lichtenstein: Well, I object to the term “organization”; I would like to have it more specific.

The Vice Chancellor: I understand that refers to the “Derry, Incorporated”—that is all that has been mentioned, so far. 10

Mr. Lichtenstein: If that is so, I withdraw this last suggestion.

A. Do you mean how many mills he had in 1919?

Q. Yes. A. To the best of my recollection, Mr. Dery started to have increased mills around 1918, and in 1919 the total mills controlled and operated by him amounted to 43. 20

Mr. Lichtenstein: I ask that that part of the answer be stricken out, that “the number of mills controlled and operated by Mr. Dery amounted to 43”, as being a conclusion of the witness.

The Vice Chancellor: I think I will permit it to stand. Let him state what mills they were, and how he “controlled” or “operated” them.

Q. Are you including in that the throwing mills? 30  
A. Yes, sir.

Q. Did you have anything to do with the sending of the product to converters to be dyed? A. Yes, sir.

Q. What were your duties in that respect? A. I supervised the dye orders and assortments; the finish; and gave orders as to the dyer to whom the merchandise had to be sent.

Q. Up to 1919, did Mr. Dery, or the Dery Company, sell much goods in the grey? 40

*Hans Fischer, for Complainant—Direct.*

Mr. Lichtenstein: I object to the question, if the Court please; it is a double question, and I think he ought to separate it; there will be an answer, and I don't know which it is going to be an answer to.

Mr. Enright: Well, strike it out.

10

Q. Were any mills, either weaving mills or throwing mills, operated by Mr. Dery, individually, as far as you know?

Mr. Lichtenstein: I would like to object to the question, if the Court please, upon the ground that the term "operate" implies a great many things, and I do not know what Mr. Enright refers to.

20

The Vice Chancellor: I will overrule the objection. You can ask him.

(Last question repeated.) A. I am afraid you will have to phrase that a little different, because he would not operate any mills individually—I mean, himself, in other words, he could not do the work.

30

Q. No, I don't mean that; I mean, were there any mills operated by him trading or doing business as an individual rather than as a corporation, or was all the manufacturing, so far as you know, done by this corporation? A. No; a number of mills were being operated under different names.

Q. Well, what were the different names? A. Well, Cedar Cliff Silk Company—

40

Mr. Lichtenstein: If this is important, in any way at all, (I don't know whether I make myself clear to your Honor) but he is asking this man, who apparently does not know anything about Mr. Dery's personal financial affairs, or business, whether Mr. Dery operated any of these plants in

*Hans Fischer, for Complainant—Direct.*

his own name; then the witness goes on and states that he operated them under different names—now, that is a conclusion of the witness, it seems to me.

The Vice Chancellor: I think I will let the witness answer, and overrule the objection.

10

A. (Resuming)—Alliance Holt Dye Works; S. & H. Dyeing Company; William Buckley.

Q. I meant to direct your attention to the manufacturing—the weaving, or the throwing, that was going on up to 1919—was that in the name of the corporation, or did Dery's individual organization have anything to do with it? A. Well, Mr. Dery bought a number of plants during 1918 and 1919—

20

Mr. Lichtenstein: I would like to examine this witness as to his knowledge as to Mr. Dery buying a lot of plants.

The Vice Chancellor: I think I will let the witness finish, and you may cross-examine the witness.

A. (Resuming)—some of which were run under the previous name, or a new name.

Q. Where was the general office of the manufacturing end of the business? A. Allentown, Pennsylvania.

30

Q. And the selling organization was where? A. 381 Fourth Avenue, New York.

Q. Did your duties take you, part of the time, to the Allentown office? A. Yes, sir.

Q. Were you personally acquainted with Mr. Dery? A. Yes, sir.

Q. And sometimes your duties had reference to the selling organization in New York, and some-

40

*Hans Fischer, for Complainant—Direct.*

times to the manufacturing organization in Allentown? A. Yes, sir.

Q. Now, up to 1919, was Mr. Dery engaged, in any way, in the dyeing business? A. Not before.

10 By the Vice Chancellor:

Q. Not before 1919? A. Not before 1919.

Q. Before that time his whole business was the manufacturing of silk? A. Yes.

By Mr. Enright:

Q. Now, his product, up to 1919, was that partly sold in the grey? A. Yes, sir.

Q. That means undyed, doesn't it? A. Undyed.

20 Q. And then part of the product was sent out to dyeing establishments, was it not? A. Yes, sir.

Q. Did he have general supervision of the placing of—

Mr. Lichtenstein: If the Court please, I do not think this man should go on and testify to what this business was.

The Vice Chancellor: If you object to the question as leading, I will sustain it.

30 Q. What did you have to do with the placing of such of the goods as were sent to custom dyers? A. Well, I stated that before—that I made out dye orders; I decided which dyer was to manipulate the goods; gave instructions at to the finish, and so on.

Q. About, relatively, what part of the business consisted of goods in the grey, and what part of the sales, I mean, consisted of converted goods, up to 1919? A. Why, I should say that we sold about  
40 60% of the piece dye goods in the raw state.

*Hans Fischer, for Complainant—Direct.*

By the Vice Chancellor:

Q. That is, in the grey? A. Yes, sir; and 40% in the dyed state. Sometimes we sold more goods in the grey than 60%.

By Mr. Enright:

10

Q. What were the principal dyeing concerns that you were doing business with in 1919? A. Up to 1919 the businesses were The United Piece Dye Works, Lodi, N. J.; Lyons Piece Dye Works, Paterson, N. J.; Alliance Silk Dyeing Company in Paterson.

Q. And who was the man whom you dealt with in the Alliance Company? A. It was a man by the name of Ugnon.

20

(Recess until two o'clock, p. m.)

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock, p. m., pursuant to adjournment, in the presence of the counsel of the respective parties.

HANS FISCHER recalled.

30.

*Direct examination resumed by Mr. Enright:*

Q. Did you have knowledge of the acquiring of control by Mr. Dery of the Holt Dye Works at Phillipsburg? A. Yes, sir.

Q. How did that come to your knowledge? A. Mr. Muelberger—

Q. That is Eric Muelberger? A. Mr. Eric Muelberger, yes—spoke to me first, and stated that Mr. Dery had in mind to buy that plant—

40

*Hans Fischer, for Complainant—Direct.*

Mr. Lichtenstein: I object to what Mr. Muelberger told this witness as to what Mr. Dery wanted to do.

Q. Well, as a result of what Mr. Muelberger told you, did you visit the Holt plant? A. I did.

10 Q. At Phillipsburg? A. Yes, sir.

Q. When was that, to the best of your recollection? A. Well, it was in 1919, the latter part of the summer.

Q. Who was in charge of the Dye Works at the time? A. Mrs. Holt.

Q. Did you make an inspection and report? A. I did.

Q. To whom did you furnish the report? A. To Mr. Muelberger, in duplicate.

20 Q. What? A. I made a report in duplicate, and gave it to Mr. Muelberger—one for himself, and one for Mr. Dery.

Q. At the time of your inspection, according to your information, had Mr. Dery already acquired the Holt concern, or was he negotiating for it?

Mr. Lichtenstein: I object to that; it calls for a conclusion.

Mr. Enright: I am fixing a relative date.

30 Mr. Lichtenstein: I know, but you incorporated in that question an assumption.

The Vice Chancellor: I think I will let it go.

A. To the best of my recollection, it had not been concluded yet; they were yet negotiating.

By the Vice Chancellor:

40 Q. That is, as to the Holt plant? A. Yes, sir.

*Hans Fischer, for Complainant—Direct.*

By Mr. Enright:

Q. What was Mr. Muelberger's connection with Mr. Dery, by the way? A. Mr. Muelberger was the Sales Manager and General Office Manager of the office in New York.

Q. That is the selling office? A. Yes, sir. 10

Q. Did you have knowledge of the negotiations (without saying what anybody told you) for the acquiring of the Alliance Company? A. I started that transaction.

Q. You started that transaction? A. Yes, sir.

Q. What was the name of the company at the time you started the transaction? A. It was "The Alliance Silk Finishing Company"—I am not quite sure about that.

Q. And that was a concern that you have already 20 referred to as having done some of your piece dyeing work? A. Yes, sir.

The Vice Chancellor: Well, is that the Alliance Dye Works?

Mr. Enright: Yes, sir.

Mr. Lichtenstein: The predecessor in name.

Q. Where was the plant located at the time you started the negotiation? A. The plant was located 30 at Paterson, near Riverside.

Q. Was there anything at Rutherford? A. They had acquired property in Rutherford, and had also put up a building—a dye house, a finishing plant, etc.

Q. Well, was the building equipped? A. The building was not equipped; it was empty.

Q. Did you have any interview with Mr. Freund, at about this time? A. No. 40

*Hans Fischer, for Complainant—Direct.*

Q. You never went to visit Mr. Freund, or call on him? A. No, sir, not around that time.

Q. When was the first time you went to see him? A. Why, I haven't got it clear in my mind, any more. I was requested to call it Mr. Freund's place on a certain Sunday morning (referring to a paper now produced by the witness).

Q. Well, use your best recollection, Mr. Fischer; just use your recollection? A. (Putting aside the memorandum) I think it was in 1920.

Q. Was there anybody with you? A. Mr. Muelberger—Eric Muelberger.

Q. Was that before the organization of the Alliance Holt, or afterwards? A. Oh, it was quite some time afterwards.

Q. Well, do you know anything about the organization of the S. & H. Dyeing Company? A. I do not, at that time.

Q. Do you know about the organization of the Alliance Holt Dye Works? A. Yes, sir.

Q. Well, the certificate of incorporation of that Company is in evidence, dated the 17th of December, 1919; had the Dery people acquired the Alliance Company and the Holt Company before that time? A. Oh, yes.

Q. About how long before? A. The Holt Dye Works were acquired about three months before, or more; and the Rutherford and Paterson outfit was also acquired some time previous to the date.

By the Vice Chancellor:

Q. Who do you mean by "the Rutherford outfit"? A. In Rutherford there was only a building; the machinery was out in Paterson—see?

Q. Well, what was the name of the Rutherford outfit? A. The Alliance Holt, in Paterson, had the machinery there; and in Rutherford there was

*Hans Fischer, for Complainant—Direct.*

only the building; so that building had to be put in shape in order to function properly.

Q. What was the name of what you call "the Rutherford outfit"? A. Well, it was known, before Mr. Dery bought it, as "The Alliance Silk Dyeing Company."

By Mr. Enright:

Q. Now, after the organization of the Alliance Holt Company, what was done with this Phillipsburg plant and the Alliance plant? A. Well, in Phillipsburg we put in a new manager; and in Rutherford we installed the steam pipes, water pipes, and made all kinds of other improvements before the machinery was moved from Paterson to Rutherford.

Q. Do you remember about when it was you got the whole plant completed in Rutherford? A. It was in the early part of 1920, somewhere around March, I think, because it was due to a railroad strike.

Q. And what happened to the Paterson plant of the Alliance? A. The Paterson plant was only leased, at the time, and then, when the machinery was moved out it was turned over to the owner.

Mr. Enright: At this point I will offer the Minutes of the first meeting of the Incorporators of the Alliance Holt Dye Works, set forth in the minute book,—that part of it which contains the offer of Alfred Sohland to transfer these two plants to the Company for its capital stock. The pages are unnumbered.

Mr. Lichtenstein: May I have the objection noted to this that was urged in opposition to the previous minutes that were offered in evidence?

*Hans Fischer, for Complainant—Direct.*

The Vice Chancellor: The objection may be taken, and it will be overruled.

(The Minute was thereupon marked Exhibit C-12-A.)

10 Mr. Enright: Apparently it is misdated the 14th of December. The certificate was not issued until a later date; so, to cover that, I also offer the Minutes of the organization meeting of the Directors, held December 19th, which ratifies the offer.

(Same objection; same ruling).

(The Minutes last offered are marked Exhibit C-13).

20 Q. What was Mr. Sohland's connection with the Dery business? A. He was what I would call a "promoter," and, in such capacity, he acquired additional plants for Mr. Dery.

Mr. Lichtenstein: Of course I assume that your Honor recalls that this is all subject to my objections?

The Vice Chancellor: Oh, yes.

30 Mr. Lichtenstein: And also the objection that it is not based upon any facts elicited to show that this man had any knowledge on it.

The Vice Chancellor: I am permitting it until I know how it is going to be connected up.

40 Q. Well, how did you become first informed of Mr. Freund's connection with any of the Dery enterprises? A. That was shortly after that visit that Mr. Muelberger and myself had at his plant, when he—

*Hans Fischer, for Complainant—Direct.*

Q. (Interrupting) "At his plant"—who do you mean? A. Pardon me—at the S. & H. plant.

Q. That is in West Hoboken? A. West Hoboken.

Q. Yes. A. On which occasion he had demonstrated to us his process of fast dyeing of skein silk. 10

Q. Was anything said, in that interview, that you recall, about the application of that process to piece dyeing? A. To the best of my recollection, that matter came up later on.

Q. Well, now, how long after that interview was it that you received any information respecting Mr. Freund's connection with the enterprises? A. Well, that was seven weeks after, when Mr. Freund brought in a shade card of his fast colors; at which time Mr. Muelberger stated that he was— 20

Mr. Lichtenstein: I object to what Mr. Muelberger stated.

The Vice Chancellor: Was Mr. Freund present?

The Witness: Mr. Freund was present.

The Vice Chancellor: Did he hear what Mr. Muelberger said? 30

The Witness: Mr. Freund brought the shade card in. I don't know whether he was present when that information was given to me, that he now belonged to the D. G. Dery organization.

Mr. Lichtenstein: I ask that that be stricken out, as utterly immaterial.

The Vice Chancellor: I think I will strike it out; it does not show that Mr. Freund was there. Mr. Muelberger may swear to that. 40

*Hans Fischer, for Complainant—Direct.*

By Mr. Enright:

Q. Now, from the acquiring of the Holt plant and the Alliance plant, will you tell us what you had to do with the conduct of those two businesses?

10 A. Well, in a few words, I was practically in charge of the two plants, which were continued, as I stated before, under a new superintendent in Phillipsburg, and under the previous owner of the Alliance Silk Dyeing Company in Rutherford.

Q. His name was Ugnon? A. Mr. Ugnon.

Q. And you became the Secretary of the Company, on incorporation, I see here? A. Yes.

Q. And how long did you continue as Secretary?

A. Until the latter part of 1923.

Q. At the time of the Dery failure? A. Yes.

20 Q. In addition to your duties at the Alliance Holt Company, did you continue your general duties in the Dery organization? A. Yes, sir.

Q. Did you continue your duties with respect to the manufacturing plants that you previously described? A. Yes, sir.

Q. And also, with respect to the selling organization? A. Absolutely; yes, sir.

30 Q. Did you receive more than one salary, or form of compensation, for all of these duties? A. No, sir.

Mr. Lichtenstein: I object to that, as being immaterial.

Q. Did you receive any separate salary from the Alliance Holt Dye Works?

Mr. Lichtenstein: I object to that, as being immaterial?

40 The Vice Chancellor: I think it is, but I will admit it, and overrule your objection.

A. No, sir.

*Hans Fischer, for Complainant—Direct.*

Q. Now, how long after the organization of the Company was it before Mr. Freund had any activities with respect to the Alliance Holt Company?

A. That was in 1920, after the Alliance Holt Dye Works had been operating at a loss. I had found out that the head dyer in Rutherford used inferior grades of ingredients—

10

Mr. Lichtenstein: I do not think this is material, if the Court please.

The Vice Chancellor: Well, I will let it go; I will overrule the objection.

A. (Resuming)—and that the business had been conducted in a rather inefficient way; and it was at that time that I suggested to Mr. Muelberger that we should avail ourselves of the services of

20

Mr. Freund to test these ingredients.

Mr. Lichtenstein: I object to conversation between him and Mr. Muelberger.

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

Q. Well, as the result of the conversation which you had with Mr. Muelberger, was there a further conference at which Mr. Freund and Mr. Muelberger and yourself were present? A. That was

30

later on. Q. It was after this conversation you have told us about with Muelberger? A. Yes, sir.

Q. And in that conversation (without telling us what was said)—the conversation with Muelberger—did you make certain recommendations?

A. I had.

Q. And, following those recommendations, was there a conference where the three of you were present? A. Yes, sir.

40

*Hans Fischer, for Complainant—Direct.*

Q. Muelberger, Freund and yourself? A. Yes, sir.

Q. And that was before Freund had been assigned any duties at the Alliance Holt?

10 Mr. Lichtenstein: I object to the term that "Freund was assigned any duties at the Alliance Holt."

Q. Before he discharged any duties at the Alliance Holt? A. Yes, sir.

Q. Will you tell us what was said in that conference where you, Muelberger and Freund were present, respecting any connection of Freund's with the business?

20 Mr. Lichtenstein: I object to the question, on the ground that it is incompetent, irrelevant and immaterial. If they are attempting now to prove a defense to the action at law, certainly they should not be permitted to prove it here. If they are going to show the hiring of Mr. Freund by an arrangement under Mr. Dery's contract to work there, why have they a right to prove that here? Is not that their answer to the action at law? Haven't they so answered—that there was no contract between Freund and the Alliance Holt?

30 The Vice Chancellor: I don't know; it is a peculiar sort of case; I am going to let the testimony go in and see where the complaint stands. I will overrule the objection.

A. Mr. Muelberger advised me that—

40 Mr. Lichtenstein: I object to what Mr. Muelberger advised him.

*Hans Fischer, for Complainant—Direct.*

The Vice Chancellor: Well, was it in the presence of Mr. Freund?

The Witness: Yes, sir.

The Vice Chancellor: All right.

A. Mr. Muelberger advised me that he had referred the matter to Mr. Sohland, who had approved of the suggestion which I had made, and that Mr. Dery had also given his O. K. in the matter, and that, from now on, he would be in charge of the purchasing of any material required for the converting in the two plants. 10

By the Vice Chancellor:

Q. Who would be in charge? A. Mr. Freund. 20

By Mr. Enright:

Q. Would be in charge of what? A. Of the purchasing of the material required for the converting of the merchandise in the two plants.

Q. Was there any discussion at that time, in the presence of Mr. Freund, as to what your recommendation was—the recommendation which you had previously made to Muelberger? A. Yes, sir.

Q. Now, was that discussed? A. Well, in a certain way. 30

Q. Well, tell us in that way—what was said about what Freund's duties were to be, and what your recommendations were, if anything?

Mr. Lichtenstein: I object to the question. Let the witness state the conversation.

The Vice Chancellor: I think that is correct; I will sustain the objection.

A. Well, the thing that was stated was simply that I had originally suggested that Mr. Freund should take over the purchasing of the material required for the dye plants, and that the matter had been 40

*Hans Fischer, for Complainant—Direct.*

submitted to Mr. Sohland, approved by Mr. Dery, and, under the circumstances, he was now in charge of the purchasing department.

Q. Was anything said about any compensation to Freund? A. No, sir.

10 Q. Did Freund say anything about compensation? A. Not to my knowledge.

Q. You were there all the time, weren't you? A. I was there, taking part in the conference.

Q. Weren't you there all the time? A. They discussed other matters afterwards, and my presence was not required.

20 Q. At that time what other duties was Freund performing, with respect to any of the businesses of Mr. Dery, or with which he was connected? A. He was in charge of the S. & H. Silk Dyeing Company, or whatever the name was, in West New York.

Q. Did you have knowledge of his doing anything in the throwing mills? A. At a period later on, yes.

Q. And what was that?

30 Mr. Lichtenstein: May I have an objection, if the Court please, on the ground that what Mr. Freund may have done in any throwing mills is immaterial and incompetent?

The Vice Chancellor: I do not know what it is going to lead to. I overrule the objection.

40 A. We experienced considerable trouble, at one period, on woven goods, on account of heavy tinting of the filling material, which had been tinted too heavily, and it did not disappear in the boiling, and was therefore not suitable for whites and ivories. At that time I referred this com-

*Hans Fischer, for Complainant—Direct.*

plaint to Mr. Muelberger, with the idea of having him take it up with Mr.—

Mr. Lichtenstein: I object to what his idea was, and what he referred to Mr. Muelberger.

The Vice Chancellor: I will strike the question and answer out. 10

By the Vice Chancellor:

Q. You had a talk with Mr. Muelberger about it, hadn't you? A. Yes, sir.

Q. And as a result of this talk or conversation, did you do anything? A. He took the matter up with Mr. Dery—

20 Mr. Lichtenstein: I object to his stating that he took it up with Mr. Dery.

Q. Do you know that he did? A. I know that he did, because I prepared him the samples and everything; and, in the natural course of business—

30 Mr. Lichtenstein: I object to "the natural course of business"; I object to his stating that of course he did because he prepared some samples, and necessarily it therefore came to the knowledge of Dery.

The Vice Chancellor: I overrule the objection; I do not know where it is going to lead to. Go ahead.

By Mr. Enright:

40 Q. Proceed. A. I say, in the course of the business it was submitted to the Purchasing Agent in Allentown, who used to buy the tinting material, and, upon suggestion from the Mill, if my memory

*Hans Fischer, for Complainant—Direct.*

serves me right, the matter was referred to Mr. Freund.

Mr. Lichtenstein: This is all under my objection, your Honor.

The Vice Chancellor: Of course.

10

Q. Did you have anything to do with communicating to Mr. Freund what was desired of him at the throwing mills? A. No, sir.

Q. Do you know what he did up there? A. Not from direct knowledge.

Q. You never saw any of his reports? A. I saw some of the reports, yes, sir.

Q. Reports made by Mr. Freund? A. Yes, sir.

20 Q. After Mr. Freund was active in the business, did you ever go up to the S. & H. plant in West Hoboken? A. No, sir.

Q. Did you have any communications with Mr. Freund, up there at the S. & H. plant? A. Perhaps a letter, or two.

Q. To your knowledge, did Mr. Freund ever do anything for Mr. Dery, individually, or for the part of the business that was carried on under Mr. Dery's individual name—D. G. Dery?

30 Mr. Lichtenstein: I object; if your Honor please, that, necessarily, must be incompetent. How can this man testify to what Mr. Freund did or did not do for Mr. Dery?

Mr. Enright: Well, he has shown a rather very general connection with this entire business; he was, as I understand it, what they call in the business a "contact man" between the different departments of it.

40 Mr. Lichtenstein: *Very* general—I will use the same language Mr. Enright used—"very general."

*Hans Fischer, for Complainant—Direct.*

Mr. Enright: Yes; the duties of a General Manager are necessarily *general*.

The Vice Chancellor: I will let the question go.

(Question repeated).

10

The Vice Chancellor (To Mr. Enright): What plants do you refer to?

Mr. Enright: He says that the selling end of the business was carried on under the name of "D. G. Dery," and then these other enterprises under other names; I am now asking him whether Mr. Freund, to his knowledge, ever rendered any service to Mr. Dery individually, or to the part of the business that was carried on under Mr. Dery's individual name? A. Yes, sir. 20

Q. He did? A. Yes, sir.

Q. What (Former question repeated). A. No, sir.

Q. What is the answer? A. No, sir.

Q. When you answered "Yes" a moment ago, did you understand the question? A. I understood you to say "D. G. Dery, Incorporated"; that is what I had in mind. 30

Q. Do you know of any activities of Mr. Freund, other than those for the S. & H. Dyeing Company, D. G. Dery, Incorporated, which operated the throwing mills, and the Alliance Holt? A. No, sir.

Mr. Enright: I offer in evidence Certificate of Incorporation of the S. & H. Dyeing Company.

(The certificate is admitted and marked Exhibit C-14). 40

*Hans Fischer, for Complainant—Cross.*

*Cross-examination by Mr. Lichtenstein:*

Q. Mr. Fischer, as I understand it, the various factories that turned out the work that you were interested in were what was known as "piece dye goods" and "skein dye goods" factories—that is right, is it not? A. Yes, sir. 10

Q. That is, the manufacture of the goods themselves—that is right, is it not? A. Yes, sir.

Q. In none of the organizations that Dery represented was there any dyeing done—that is right, is it not? A. During what period?

Q. Up to the time that you say the Holt and the Alliance concerns were purchased? A. No dyeing was done.

Q. And then, after the Holt and Alliance concerns were purchased, as you say and the Alliance Holt Dye Works was organized, there were two dyeing plants that you were interested in? A. Yes, sir. 20

Q. One at Phillipsburg, and the other at Rutherford? A. Yes, sir.

Q. Now, you didn't know anything about the finances of Mr. Dery, did you? A. What are you driving at?

Q. Well, just answer it, if you please—you had nothing to do with the finances of Mr. Dery, had you? A. I did not handle any money. 30

Q. The financing Mr. Dery did himself, didn't he? A. Yes.

Q. You were only engaged in seeing to it that goods were purchased and goods were sold and goods were gotten out—that was your interest? A. Also to see that financial arrangements were made when I bought raw material from Europe.

Q. That is, that when you bought raw material in Europe, you would see to it, through some 40

*Hans Fischer, for Complainant—Cross.*

channel, that the money was forthcoming to pay for those goods? A. Yes, sir.

Q. That is, so far as the goods that you purchased were concerned? A. Yes, sir.

Q. You would make a report to somebody, and that somebody would see to it that the money was forthcoming? A. I instructed them to make arrangements for the payment. 10

Q. That was part of your duty as purchasing agent, to try to see to it, when goods were purchased, that the bills were paid, so that the credit of the institution would be upheld? A. Yes, sir.

Q. Now, when you said that prior to 1919 Mr. Dery owned, or was interested in about twenty-eight mills, you did not know what his interest in those mills was—of your own knowledge, now? A. I was given to understand that— 20

The Vice Chancellor: No, of your own knowledge?

Q. Of your own knowledge? A. I knew that they belonged to him.

Q. Where did you get that knowledge from, that they belonged to him? That is what I want to know?

The Vice Chancellor: It is a very simple question—did someone tell you? 30

A. Muelberger told me.

Q. Mr. Muelberger told you? A. And other people.

Q. And other people told you? A. Yes, sir.

Q. And that is how you know, and that is how you make up your mind that Mr. Dery was the owner of these twenty-eight mills? A. Yes, sir. 40

*Hans Fischer, for Complainant—Cross.*

Q. Now, then, about the other mills that were afterwards acquired, amounting, as a whole, to forty-three— A. I think that is the figure.

Q. Which were the result of acquisitions, as you put it, after 1919— A. Yes.

10 Q. Did you get your information that Mr. Dery was the owner of those mills from Mr. Muelberger, too? A. I know from Mr. Sohland, who bought those mills for Mr. Dery.

Q. In other words, Mr. Sohland told you that he bought the mills for Mr. Dery? A. Pardon me; we bought one mill, and I was the cause of it; I was in close touch with Mr. Sohland, and whatever additional weaving mills he purchased he reported to me.

20 Q. So that all of your information as to the ownership of mills by Mr. Dery came through Mr. Muelberger or Mr. Sohland? A. In certain instances I saw the checks myself that paid for them.

Q. You saw some checks? A. Yes, sir.

Q. But what those checks were for you do not know? A. In certain instances I do.

Q. Well, who told you what they were for? A. Because I could read the name on it.

Q. Well, you could see a name on it—to the order of somebody? A. Yes.

30 Q. And, from looking at the name, you think you know who owned the mill—is that so? A. Who bought the mill.

Q. Well, now, you have already stated that prior to 1918 you thought—you didn't know, but you thought—that all the mills, the twenty-eight, were run under the name of D. G. Dery, Incorporated? A. Yes, sir.

40 Q. Well, now how about the mills—the difference between twenty-eight and forty-three mills—that were afterwards acquired, as you say—whose

*Hans Fischer, for Complainant—Cross.*

name were they run under? A. Some under "D. G. Dery, Incorporated", some under the original names.

Q. Under the original names? A. Yes, sir; after Mr. Dery had purchased them.

By the Vice Chancellor: 10

Q. You say, about seventeen more mills were acquired after 1919? A. Yes, sir.

Mr. Enright: After 1914.

The Vice Chancellor: 1919.

The Witness: I think the original figure was twenty eight, and afterwards it was forty-three; I haven't got the exact figures; that would be fifteen. 20

By Mr. Lichtenstein:

Q. Now, when you first took any interest in the Alliance and in the Holt plants, and afterwards as amalgamated into the Alliance Holt Dye Works, that was the first time that you ever knew of your business having anything to do with dyeing of silks directly, was it? A. No, sir.

Q. It was not? A. No, sir; I had had previous experience.

30 Q. Well, I am not speaking about your experience, I am speaking about your interests, or the interests of the people that you were working for? A. Oh, that is right.

Q. Whatever goods Mr. Dery sold he used to have dyed outside? A. Yes, sir.

Q. Well, now, who would give the orders for dyeing that stuff outside? A. I did.

40 Q. I mean, in whose name would you give the order? A. In the name of "D. G. Dery, to be billed to D. G. Dery, Incorporated."

*Hans Fischer, for Complainant—Cross.*

Q. So that, in all of these bills, the instructions would be to do the work for the account of D. G. Dery, and then the bill was to D. G. Dery, Incorporated? A. Yes, sir.

Q. But for the account of D. G. Dery? A. Well, that is the heading he had on his bills.

10 Q. Then the stuff would be billed to Mr. D. G. Dery, would it not? A. I just told you it was billed to D. G. Dery, Incorporated.

Q. I mean the material itself would be billed to Mr. D. G. Dery, wouldn't it? A. Which material?

Q. The material from the plants?

The Vice Chancellor: When completed?

Q. I mean the original, in the raw, in the grey?  
20 A. No, that was billed on the bill-head of D. G. Dery, Incorporated, but billed to William Iselin & Co., or whoever the factor may be.

Q. Well, you were in charge there—what was the purpose of having goods sent to a dye house to be dyed in the name of D. G. Dery, to be billed to D. G. Dery, Incorporated, do you know? A. D. G. Dery was the selling agent for D. G. Dery, Incorporated.

30 The Vice Chancellor: D. G. Dery, Incorporated, sent the goods to be dyed to whoever it might be, and they were returned to D. G. Dery—

Mr. Lichtenstein: No, D. G. Dery sent the goods to be dyed.

Mr. Enright: The selling agent gives the finishing orders, or, rather, the converting orders; but the manufacturer pays the bills.

40 Mr. Lichtenstein: I don't know about that; that is what I am trying to find out. That is your statement; I am not assuming that that is so, at all.

*Hans Fischer, for Complainant—Cross.*

Q. Now, you spoke of a time, of a certain morning, you say, you went to Mr. Freund's place? A. Yes, sir.

Q. When was that? A. That was in West New York.

Q. In West New York—was it at his house, or  
10 factory? A. At the factory.

Q. At a factory? A. Yes.

Q. And that was the first time you ever met Mr. Freund? A. To the best of my recollection.

Q. That was the first time you ever heard of him? A. Yes.

By the Vice Chancellor:

Q. What month and year was that? A. I think  
20 it was around the latter part of the Summer of 1919, as I can recollect.

Q. The latter part of the Summer? A. Yes.

By Mr. Lichtenstein:

Q. Wasn't it earlier in the year? A. I am telling you the best of my recollection.

Q. Well, see if I can fix it in your mind—wasn't  
it shortly after you took charge of the Alliance  
Holt Dye Works? A. If you give me a better con-  
30 nection I can answer it, but otherwise I cannot.

Q. I mean, how long was it after the organiza-  
tion of the Alliance Holt Dye Works? A. I do not  
recollect that.

Mr. Enright: That was in the winter-  
time; that was in December, 1919.

Q. Well, wasn't it some time in March or April?  
A. I do not recollect.

Q. You cannot recollect it? A. I told you be-  
40 fore what I recollected, and that is all.

*Hans Fischer, for Complainant—Cross.*

Q. And, at that time he just submitted some samples to you? A. He did not submit any samples; we looked at samples.

Q. You looked at samples of dyeing in fast colors, is that right? A. In skeins.

10 Q. That is a hank of silk? A. No, we didn't have hanks.

Q. Well, what do you call "skeins"? A. Taken from skeins.

Q. But a skein of silk is a hank of silk? A. Yes.

Q. And the work you understood that Mr. Freund was doing was dyeing in fast colors—that is right, is it not? A. The work he expected to do.

20 Q. And he showed you some samples of fast-color dyeing, in skeins or part of skeins? A. He showed me samples of colors, which he said he dyed fast. There is a big difference between them.

Q. Oh, I don't want to be technical. And the colors that you were having your goods dyed, were they fast colors? A. Your question cannot be answered, because there is all kind of skein dyeing, and there was lots of skein-dyeing which was not fast.

30 Q. You were in charge of these two plants, but not actually in charge of the manufacturing, were you—that is, the two plants of the Alliance Holt Dye works? A. There was no manufacturing done there.

Q. Well, dyeing is "manufacturing," too? A. Well, there is a big difference.

Q. Well, you did not have charge of any of the work that was being done there, did you? A. I had my men there for that.

40 Q. But you, yourself, did not have charge of that work, did you—of doing the actual work around the place? A. No, sir.

*Hans Fischer, for Complainant—Cross.*

By the Vice Chancellor:

Q. I do not understand that—were you in the position of a foreman, or superintendent in charge? A. No; I was sort of general manager of the two plants.

10 Q. Well, did you superintend the work? A. I had my superintendent in each plant—one man in each plant.

By Mr. Lichtenstein:

Q. And then you said that "the plant was being operated at a loss," that is right? A. Yes, sir.

Q. At a great loss, wasn't it? A. At a loss.

20 Q. Well, the loss amounted to \$70,000, did it not, in less than a year of the operation?

Mr. Enright: I object to that, as being immaterial. We are not trying to show the value of services here.

Mr. Lichtenstein: No, you are not; but you brought it out.

Mr. Enright: Pardon me; I brought nothing out as to the result of the business operations.

30 Mr. Lichtenstein: You did; after this witness answered your question as to when Freund came into the Alliance Holt, he said "That was in 1920, after the Alliance Holt Dye Works had been operating at a loss."

Mr. Enright: That was his volunteered statement.

Mr. Lichtenstein: Well, you brought it out.

40 The Vice Chancellor: I do not see what difference it makes.

*Hans Fischer, for Complainant—Cross.*

Mr. Lichtenstein: They are bringing out a great mass of material here that they do not connect up, and leave it in the air; I do not know how far it is going to go, and how they are going to connect it up.

10 The Vice Chancellor: You may go ahead.

Q. And it was after you had a considerable loss that you made some recommendations to Mr. Muelberger, you said—that is right, is it not? A. Right.

Q. Now, when were those recommendations made? A. I do not recollect, exactly, the date.

Q. Well, your recommendations were that your dyeing was poor there, weren't they? That is right, is it not? A. Yes, sir.

20 Q. And your recommendations were that you were unable to pay your debts—that is right, is it not? A. With whom—debts to whom?

Q. To your trade—to the trade; the Alliance Holt Dye Works owed money, and was unable to pay—those were your recommendations, weren't they? A. Yes, I admit that.

Q. And your recommendations were that there was an unusual amount of damaged goods being turned out there? A. That may be.

30 Q. As much as 25% of your entire output—is that right? A. No.

Q. Cannot you remember that? A. I say, no.

Q. Not so much, eh? A. I hope not.

Q. Well, as a matter of fact, wasn't it as much as 25%, and that that was the reason that you were in such desperate shape? A. If you know, why do you ask me?

The Vice Chancellor: Well, why don't you answer the question?

40 A. There were quite some bad goods.

*Hans Fischer, for Complainant—Cross.*

Q. Quite some? A. Yes, sir.

Q. More than, in the course of any business, there should be, is not that so? A. I don't know.

Q. You don't know? A. No.

Q. Well, is it that you don't know because you are not a practical man in that line, or because you actually do not know whether it was more or less than it should be in the ordinary course of business? A. I am not in a position to make any statement as to the amount of poor merchandise turned out by other converters. 10

Q. Well, you were in charge—you were General Manager there for that plant—will you say whether or not one of your recommendations was not that there was an unusual amount of spoiled goods turned out and returned? A. The goods were not spoiled. 20

Q. They were not spoiled? A. Some of them.

Q. Well, they were returned, then, because they were poor? A. There were some returns, but if I would have to give an explanation it would lead too far.

Q. And one of your recommendations was, was it not, that you owed more money than you had received—that your payables were more than your receivables—is not that so? A. On the face of it, because I tell you— 30

Q. (Interrupting) Now, is not that the fact? A. I say, on the face of it.

Q. And didn't you also report that the credit was so bad that you could not get any goods—you could not get any material with which to go on with your dyeing? A. I don't remember that.

Q. And didn't you also make, as one of your recommendations, that the production was away below what it should be, or below what it should be? A. I don't remember that. 40

Q. You cannot remember that? A. No.

*Hans Fischer, for Complainant—Cross.*

Q. I show you a letter, dated December 3d, 1920, addressed "H. H. Freund," and signed "Alliance Holt Dye Works, Inc.," with an initial, and ask you whether that is your initial? A. Yes.

Q. It is? A. Yes, sir.

10 (The letter was thereupon marked, at the request of cross-examining counsel, J. L. 1 for identification).

Q. I read from this letter, and ask you whether the statement that you made at that time in this letter was correct, or not: "In going over the figures of outstanding accounts and bills to be paid, we find that our obligations amount to about \$30,000 against accounts receivable amounting to 20 \$19,250 of which a certain percentage is doubtful on account of the poor financial condition of the customer"—do you recall that statement being made by you, and was it correct at the time you made it?

Mr. Enright: I object to this line of testimony, your Honor. It seems to me that we are going so far afield. We are importing a foreign issue here, as to the financial condition of the Company, which has nothing to do with this matter. 30

The Vice Chancellor: I will say frankly, at the present time, that I do not see much evidence in this case—

Mr. Lichtenstein: I would not be asking this question if there was not such a mass of testimony introduced that your Honor allowed to come in subject to being connected up. Now, I cannot tell.

Mr. Enright: This letter could not possibly have been the report he testified to, be- 40

*Hans Fischer, for Complainant—Cross.*

cause the report preceded the designation of Mr. Freund as a connection of the Company, and that took place long before December 3d, 1920.

The Vice Chancellor: I will overrule the objection. I think I will let it in. 10

A. Yes, sir.

Q. And I read a further part of this letter, and ask you whether the statement is correct that you made before: "You can readily see that there is something radically wrong at the mill. As we stated in our letter of yesterday, there is a lack of production. During the past month 18,000 yards had to be returned to the dye-house, mostly on account of dyeing defects, and a very large percentage on account of finishing defects. This yardage represents about 25% of the production of this mill, and we do not think it necessary to make any further remarks on this matter"—do you recall that? A. Yes. 20

Q. And that was true, was it, about the condition of the mill? A. I admit it.

Q. That letter was written long after this interview and the recommendation that you made, was it not? A. I don't remember.

Q. You cannot remember that? Well, this letter was dated in December, 1920, so that it must have been after the recommendation that you made to Mr. Muelberger, is not that so? A. I cannot remember. 30

Q. Now, after you made certain recommendations to Mr. Muelberger, then you say that you, Muelberger and Freund met—you met together? A. Yes, he came to the office.

Q. And you do not know what took place between Freund and Mr. Dery, or Mr. Muelberger, 40

*Hans Fischer, for Complainant—Cross.*

personally, do you, before this meeting, of your own knowledge? A. I don't know whether they had a meeting, or not.

10 Q. No, you don't know anything about it; and at this meeting between the three of you, Mr. Muelberger advised you, as you said, that he referred your recommendations to Mr. Sohland? A. Yes, sir.

Q. And that Mr. Sohland had approved of your suggestions? A. Yes.

Q. And that, "from now on, Mr. Freund was going to take charge of the Alliance Holt Dye Works?" A. No.

Mr. Enright: That is not a fair question; he did not say anything like that.

20 The Witness: I did not say that.

Q. Of what was he to take charge? A. Charge of the purchasing.

Q. Charge of the purchasing of the material for the plant, that is right, is it? A. Yes, sir.

Q. And that is all that you heard Mr. Sohland say? A. That is all I heard Mr. Sohland say in my presence.

30 Q. He did not say anything, in your presence at that time, that the financial condition of the Alliance Holt Dye Works was so poor that Mr. Freund would have to give his personal guarantee, did he—you did not hear anything like that, did you? A. No, I do not recollect that.

Q. You do not recollect that? A. No.

Q. And I don't suppose you even know that he had to guarantee all the accounts of the Alliance Holt Dye Works in order to permit them to go on and do business—you don't even know that? A. I differ with you.

40 Q. You differ with me? A. Yes.

*Hans Fischer, for Complainant—Cross.*

By the Vice Chancellor:

Q. Well, what do you mean? A. The arrangement was made that any materials purchased by Mr. Freund should be paid for on maturity, and they were.

10

By Mr. Lichtenstein:

Q. You did not know that there was any arrangement made by which he had to even guarantee the payment of the accounts, did you, before you could even get a barrel of soap—you did not know that, did you? A. It was not brought to my attention.

Q. As a matter of fact, the only thing that was called to your attention was that Mr. Muelberger—he was your superior officer, wasn't he? A. No doubt.

20

Q. That he just came to you and said, "Here, from now on, Mr. Freund is going to take charge of the purchasing in your plant," that is, in the Alliance Holt Dye Works—that is all that you heard, and all you know? A. Well, that is the effect of it, yes.

Q. Well, I don't want the "effect," I want to have just exactly what he said. A. Well, as stated before.

30

Q. As stated before: I show you letter, dated December 8th, 1920, addressed to the "Attention of Mr. H. Fischer," and ask you whether you recall receiving the original of that letter from Mr. Freund? A. I do not recollect it.

Q. Well, do you recollect that you had a creditor named the Holbrook Manufacturing Company? A. Yes.

Q. And they are right down here in Jersey City? A. I don't know.

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*Hans Fischer, for Complainant—Cross.*

Q. And they are soap manufacturers, are they not? A. Yes.

Q. And do you recall his writing you, "I did everything in my power, and as the Holbrook Manufacturing Company extended credit solely upon my recommendation, I cannot do anything more in this matter"—do you recall that? A. I cannot recall that.

Q. You do not deny it, do you? A. I do not recollect it.

Q. Is it not a fact that you gave instructions at the plant that no goods were to be purchased unless there was money to pay for them—do you recall that? A. I do not recall that.

Q. You do not recollect that? A. No.

20 (The letter last shown the witness is marked, at the request of cross-examining counsel, J. L, 2 for identification.)

Q. I show you another letter, dated December 3d, 1920, and ask you whether that is your initial, under the heading of "Alliance Holt Dye Works"? A. Yes, that is mine.

30 (The letter is marked, at the request of cross-examining counsel, J. L, 3 for identification.)

Q. I call your attention to this statement and ask you whether it is correct: after quoting a number of figures, there is this statement—"above figures show that we are unable to meet our obligations, and we cannot tell at the present time what will happen if our creditors push us for payment"—do you recall that? A. That is my letter.

40 Q. Well, was it true when you wrote it? A. Surely.

*Hans Fischer, for Complainant—Cross.*

Q. Certainly it was. Now, you were asked a question as to whether Mr. Freund did any work, other than for the Alliance Holt Dye Works, and you referred to the throwing mill work—you recall that? A. Yes.

Q. And you referred to "tinting" in that work? A. Yes. 10

Q. Now, that work was in connection with the dyeing that had to be done at the Alliance Holt Dye Works, wasn't it? A. More or less.

Q. Well, the "tinting," when you were working it up in the Alliance Holt Dye Works, would not discharge, would it? A. That is right.

Q. And that was the thing that bothered you? A. Yes, sir.

Q. Now, at that time Freund was doing work for the Alliance Holt Dye Works, wasn't he? A. Not to my knowledge. 20

Q. Not to your knowledge? A. No; he was purchasing.

Q. Certainly; well, he was working there; I don't care what he was doing. A. All right.

Q. And it was while he was doing the purchasing for the Alliance Holt Dye Works, as you say, that the trouble arose in one of your throwing mills—wasn't that right—because your tinting was such that it would not discharge, in the dye house? A. Yes. 30

Q. And that had to be looked after? A. Yes, sir.

Q. And Mr. Freund, having charge of doing some work around your dye house, went up there to look over that—is that right? A. To look what over?

Q. To look over your throwing mill, or the tinting, or what was to be done in connection with the tinting, to find out what the trouble was? A. So I was told. 40

*Hans Fischer, for Complainant—Cross.*

Q. So you were told? A. Yes.

Q. So what you are talking about now is something you were told, about the tinting? A. No; I was told that he went up to the tinting plant.

Q. You were told that? A. Yes, sir; that is plain English.

10 Q. You don't know anything of the work that was being done by Mr. Freund at the Alliance Holt Dye Works, do you—you yourself, now? A. Except the purchasing of the material, that is all.

Q. You were not out to the Alliance Holt Dye Works every day, were you? A. No.

Q. You were always over in New York, in the office? A. Not always.

Q. Well, unless you were out somewhere else? A. Yes.

20 Q. But you were never over to these plants? A. Oh, yes, I was.

Q. Well, were you over in these plants in the month of August, 1920? A. I cannot recollect any such things.

Q. I know, but you will have to try to recollect some of them. A. I cannot.

Q. Will you say, in the month of August, 1920, after Mr. Freund was put in charge, as you say, of the purchasing, that you went over to the Alliance Holt Dye plant? A. I don't recollect.

30 Q. You never did? A. I don't recollect.

Q. So, you haven't any personal knowledge of what Mr. Freund was doing over there, have you—personal knowledge? A. Mr. Bruyere was sent out—

Q. (Interrupting) Please answer my question: since you were not there during all of those years, you don't know what Mr. Freund was doing there, do you? A. What are you talking about now; you use the expression "years."

(Question repeated).

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*Hans Fischer, for Complainant—Cross.*

The Witness (To the Vice Chancellor):  
He says as a matter of "years."

Q. Yes, I am asking about *years*—three years, or pretty near three years; those were the years? A. I thought you meant about the time when he started in to purchase the material.

10

Q. Well, now, I ask you again, since you were not out at the plant from the month of August, 1920, and Mr. Freund was there approximately three years afterwards, whether you, from your own personal knowledge, know anything about what he was doing over there? A. No personal knowledge.

Q. No; and you haven't any knowledge of what Mr. Sohland told him to do over there, have you, during those three years? A. Only what he told me.

20

Q. And you don't know what Mr. Muelberger told him, during those three years, to do, do you, if he told him anything? A. If he had been told to do anything else, I would have known about it; I was in the office.

Q. I know you were in the office; you have a lot of conceit, it seems to me—

Mr. Enright: I object to that characterization.

30

The Vice Chancellor: Well, the witness is not frank in his answering.

Mr. Enright: I do not think he is trying to evade. If the witness would listen to the question and answer it, I think we would all get along better.

Q. You said here a number of times, and you kept on repeating, that during the course of the conversation between yourself and Mr. Freund and

40

*Hans Fischer, for Complainant—Cross.*

Mr. Muelberger, Mr. Muelberger said that "from now on, Mr. Freund was going to have charge of the purchasing." A. Right.

Q. Now, was that before you wrote this letter of December 3, 1920, marked Exhibit D, for identification? A. If I can see the letter?

10 Q. Well, you remember the occasion, don't you—you remember the occasion of sitting down with Mr. Muelberger, and you said it was some time in August, you thought? A. It was, no doubt, previous to that letter.

Q. Now, if Mr. Freund was only hired to take charge of purchases in the Alliance Holt Dye Works, let me read this letter to you and ask you whether this refreshes your memory as to whether he did not have other duties? Did he have anything to do with the payment of bills, or were you looking after that? A. Why, the bookkeeper did that.

Q. Mr. Freund had nothing to do with that? A. I don't know.

Q. That you don't know? A. No.

Q. You don't know whether he had to make arrangements to look after the bills, at all? A. I don't know.

Q. That you don't know? A. No.

30 Q. Well, will you tell us, please, why it was that, in this letter of December 3d, 1920, to Mr. Freund, you said that "we find that our obligations amount to \$30,000 against accounts receivable amounting to \$19,250, of which a certain percentage is doubtful"—now, why were you telling him that, if he was nothing but an ordinary purchasing agent? A. When I ordered material, I wanted to be sure that arrangements were made for the prompt payment of bills.

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*Hans Fischer, for Complainant—Cross.*

Q. That is your explanation? A. That is my explanation.

Q. Now, this sentence: "You can readily see that there is something radically wrong at the mill; as we stated in our letter, there is a lack of production"—now, what had he to do with "production,"—if he was only a purchasing agent, why were you telling him all this? A. If the ingredients which they were using in process of converting are not of the best, then, naturally, the result is that the goods run unsatisfactorily.

Q. Yes, but you were not finding any fault with any work that he had done—this was a report of conditions before he took charge.

Mr. Enright: I object to that question, because it assumes something that is not in the testimony.

Mr. Lichtenstein: Well, I am asking him if it is not so.

The Vice Chancellor: This contract was signed in November 1919, and this was in 1920.

Mr. Enright: The contract with Dery was in November, 1919; and he claims he went to the Alliance Holt in September, 1920.

The Vice Chancellor: That was before this letter was written?

Mr. Enright: Yes.

Q. Well, take this sentence, "As stated to you over the phone, we have again endless complaints on merchandise turned out in Phillipsburg,"—what did he have to do with the plant in Phillipsburg? A. He bought all the ingredients for that plant.

40

*Hans Fischer, for Complainant—Cross.*

Q. He bought the ingredients for that plant?

A. Yes, sir.

Q. (Reading further from the letter): "And it appears that the trouble lies in the dye house?"

A. Yes.

10 Q. Not in the "dye," but the "dye house," that the trouble lies in? A. It is natural, if the ingredients are inferior, that we have trouble in the dye house.

Q. Well, you did not mean to say that the ingredients he purchased were inferior, did you—that is not what you meant? A. No, but they had a lot of old ingredients that had not been yet used up.

20 Q. Now, what had Mr. Freund to do with the operation of your dye house—why did you talk to him about the Phillipsburg dye house, if he was only a purchasing agent for new materials? A. He certainly has a whole lot to do in preparing the dye—the dye which is used in the converting of the goods.

30 Q. All right; that is your answer. Now, here is another part of the letter, "The whole procedure on the part of the mill is so simple that there is absolutely no excuse for these continuous complaints, and if one man is not fit to do the right thing, we must get a man who will do as he is told"? A. Yes, sir.

Q. Now you are referring to the man that was operating the mill up there? A. I was referring to the superintendent.

40 Q. Now, why were you talking to Mr. Freund, who was nothing but a purchasing agent, about looking after the acquiring and discharging of men, if necessary? A. Because the purchasing of the ingredients and the applying of the ingredients is a very fundamental thing in the converting.

*Hans Fischer, for Complainant—Cross.*

Q. So, in addition to his duties as a purchasing agent, you take it for granted, that, as an incidental duty, it was his duty to hire and discharge help, if he found that that was necessary? A. No, sir.

Q. Or if he found they were not skilled? A. He could not fire any help.

10 Q. Well, but why were you talking to him about getting another man? A. Because I wanted him to investigate as to what any of these defects in the converted goods was due to—what was the cause of it.

Q. So that part of his duty was to investigate and find out what the cause of the defect was? A. We had one case in Rutherford—

20 Q. (Interrupting) I mean to say, one of his duties, if goods did not turn out right, was to investigate why they did not turn out right? A. To trace it back to the source of the material used in it.

Q. And also to make chemical tests and analyses of the various products that were purchased? A. That is right.

Q. That is another duty of his? A. That was understood.

30 Q. That was understood. Well, you did not tell us about that before. A. Well, you did not give me a chance to.

Q. Well, did Mr. Muelberger tell you, also, at this conference, that part of his duty was not only to buy material, but also to test material chemically? A. No; to the best of my recollection, Mr. Freund made his tests voluntarily, and brought in a number of samples.

Q. So they were done voluntarily? A. Yes.

40 Q. If he was doing these things voluntarily, why did you tell him "and if one man is not fit to do the right thing, we must get a man who will do

*Hans Fischer, for Complainant—Cross.*

as he is told"? A. Because that man was at Rutherford at one time, and he did not make a success, and they put him in Phillipsburg.

Q. And you wanted him to investigate the man, is that right? A. He had reported about the man, before.

10 Q. Who had reported? A. Mr. Freund.

Q. So Mr. Freund had reported about conditions out in the plant, to you, hadn't he? A. No—well, more or less.

Q. Now, as a matter of fact, don't you know that Mr. Freund made a thorough examination of the entire plant at Phillipsburg, and also at Rutherford—not only an examination of dyes, but also of the machinery, the plant, and the operation and the output, and the possible output, and what 20 could be done with those plants—don't you know that? A. He may have done that, but he is not expert at it.

Q. Well, he did make it? A. I guess he did.

Q. Do you know so little about the work of the Alliance Holt Dye Works, after what you have told us of the knowledge you had about Dery's business, that you don't know that he made an analysis and complete report of the conditions of those plants? A. He made a survey of the plants, and made a report. 30

Q. He made a survey—now you do know that, don't you? A. Yes.

Q. And he made a complete survey didn't he? A. Well—

Q. Didn't he? A. He made a survey.

Q. And it was after the survey that he made that you had this talk where Mr. Muelberger told you that "from now on Mr. Freund was going to be connected with the institution?" A. I don't think so. 40

*Hans Fischer, for Complainant—Cross.*

Q. You don't think so? Well, you don't know, do you? A. Pardon me; he made a survey in general, but he could not qualify as a dyer, or as a finisher, or anything like that.

Q. Well, you are not a dyer, are you? A. I have been in the dyeing and finishing game for a number of years. 10

Q. Have you any technical knowledge of the dyeing business—of dyes? A. Of dyeing.

Q. Of the dyes—have you any technical knowledge of dyes, or dyestuffs? A. I have not.

Q. And it was under your administration that this concern lost seventy thousand dollars, didn't it, in less than a year? A. That included the installation of everything.

Q. And you claim to be able to sit in judgment upon the knowledge of this man, who is designated in this other contract, as a technical expert, do you? A. Yes. 20

Q. You were in charge of this plant, were you not, from the month of March, 1920, up until practically the end of the year? A. I should say I was until Mr. Bruyere came in.

Q. Let me show you what purports to be a report of the Alliance Holt Dye Works, Inc., Rutherford and Phillipsburg Plants, and showing in red figures, for the year 1920, "Net Loss, \$75,054.64,"—do you recall that now, when I show you this? A. I remember it. 30

Q. You do remember it? A. Yes.

Q. And I call your attention to the fact that the outside of this report bears the following legend: "Prepared by H. H. Freund, 681 Fillmore Place, West New York, N. J.?" A. Yes.

Q. So you do know now, after I show you this, that not only was Mr. Freund doing the purchasing, but that he made up a report showing the 40

*Hans Fischer, for Complainant—Re-direct.*

profit and loss during the year—is not that so?

A. I don't know where he got the figures from.

Q. And you were the Secretary of the Company, and don't know where he got the figures from?

A. I was not the bookkeeper.

10 Q. But you do remember that the loss was seventy-four thousand dollars? A. I do remember that.

Q. And you also remember that after Mr. Freund took charge of the plant, in the next year, 1921, he reduced the losses from \$74,000 to \$2342, don't you?

Mr. Enright: I object to that question. Mr. Freund does not stand quite as celestial as that. The profit and loss in this business cannot be attributed to any one man.

20 The Vice Chancellor: I will sustain the objection.

Mr. Lichtenstein: That is all.

*Re-direct examination by Mr. Enright:*

Q. Mr. Fischer, was D. G. Dery, Incorporated, sending all of the goods which it had to be converted to the Alliance Holt Company? A. No, sir.

30 Q. Was part of the grey goods going to outside converters? A. Yes, sir.

Q. So that if there was any difficulty with the tinting at the throwing mill, it would be just as objectionable to the other dye houses that were handling the goods as to Alliance Holt? A. Yes, sir.

Q. Do you know whether any of the other dye houses complained of the tinting results? A. We had complaints from others.

*Hans Fischer, for Complainant—Re-direct.*

By Mr. Lichtenstein:

Q. Just one question that I neglected to ask on cross-examination: Mr. Fischer, you know, do you not, that, for a period of over six months, while Mr. Freund was acting as the "purchasing agent," as you have designated it, of Alliance Holt Dye Works, he refused to do any work for the D. G. Dery interests in that plant—you know that, don't you? A. No. 10

Q. Well, now, think a little bit, sir? A. No, that is news to me.

Q. It is news to you, is it? A. Yes.

Q. You won't deny it, will you? A. I won't deny it.

Q. No, you won't deny that for many months Mr. Freund absolutely refused to take any work in of D. G. Dery, personally, or any of his interests, into the Alliance Holt Dye Works, because they did not pay their debts? A. I don't know a thing about it. 20

Q. You don't know a thing about it? A. No.

By Mr. Enright:

Q. Did you ever hear that the Alliance Holt Company declined to take work from D. G. Dery, Incorporated?

Mr. Lichtenstein: I object to what he heard; that is not material; it is what he knew. 30

Mr. Enright: Well, I am going a step further—I am asking whether he ever even heard of the refusal.

Mr. Lichtenstein: That is not evidence.

The Vice Chancellor: I will permit it.

A. I heard something of the kind. I will tell you why— 40

*Hans Fischer, for Complainant—Re-direct.*

The Vice Chancellor: Just answer the question, and you will get along so much quicker.

Q. Was that because of the credit, or some other reason?

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Mr. Lichtenstein: I object to the cause.

A. Because D. G. Dery didn't pay the bills.

Mr. Lichtenstein: Well, that is what I asked him before, and he said "No."

The Witness: You did not ask that question. They applied the bills rendered by Alliance Holt against the payment that Mr. Dery had made to the Alliance Holt Dye Works out of his own pocket to cover the expense of the installation of the Rutherford plant.

20

Q. When was that? A. I don't recollect the period now.

Q. Can you fix it? A. The records ought to tell; I couldn't give you that information.

Q. You haven't any idea when it was? A. No, I am afraid I am not able to give the definite time—state the definite time.

30

Q. Well, do you know whether work was actually refused, or not? A. No, no; work was not refused.

Q. You do know that, do you? A. I know it, because we shipped goods to that place right along. It was only a hold-up.

Q. How long did it continue? A. How long what?

Q. Frankly, I do not understand your testimony, Mr. Fischer—

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Mr. Lichtenstein: I understand it.

*Hans Fischer, for Complainant—Re-direct.*

Q. You say that the Alliance Holt did not refuse work from D. G. Dery, Incorporated? A. I said I heard some remark was made because D. G. Dery, Incorporated, did not pay the bills because they applied the bills against the payment that Mr. Dery had made to the Alliance Holt people to pay off debts contracted during the period when the Rutherford plant was put up; so they applied the amount of those bills against the money which the Alliance Holt owed to Mr. Dery. But they actually never held up the dyeing of any goods.

10

Q. Well, that is what I am asking you—there never was a time when the Alliance Holt refused work from D. G. Dery, Incorporated? A. No.

Q. Because of the adjustment of these bills between the two companies? A. No.

20

By Mr. Lichtenstein:

Q. You say now that you did hear that the Company would not do any work for Mr. Dery because he did not pay his bills? A. There was some remark passed.

Q. Some remark passed? A. Yes.

Q. And that was after Mr. Freund went in charge there, wasn't it—you know that, don't you? A. Somebody made that remark.

30

Q. It was after Mr. Freund went in charge there, wasn't it? A. It may be; I don't know.

Q. You don't know? Whom did you hear it from? A. Oh, I couldn't tell.

Q. You cannot even remember that? A. No; because there was so much talking being done by everybody.

Q. You always had goods to be dyed, didn't you? A. Yes, sir.

Q. From all of these mills? A. Yes.

40

*Discussion of Counsel.*

Q. And don't you know, for a number of months, none of the goods of D. G. Dery, or D. G. Dery's interests, wherever they may have been, were touched in that plant—that Mr. Freund refused to do a tap of work with them? A. That is news to me.

10 Q. That is news to you? A. Yes, that is news to me; because if such a thing was the case, I would have withdrawn the goods.

By Mr. Enright:

Q. Was there ever a time when Mr. Dery, as you understood it, could not have commanded Alliance Holt to do what he pleased?

20 Mr. Lichtenstein: Now, see where that leads to? Your Honor allowed it to come in, and it was purely speculative; then he got a boomerang when he asked the questions; now we are doing the same thing over again—"was there any time when Dery could not have commanded Alliance Holt—

The Vice Chancellor: I think the Court can tell the status of Mr. Dery, and the control of this corporation, as well as the witness.

30 Mr. Lichtenstein: He could not, at that time, if the Court please. If he called an annual meeting he might have thrown out the directors and changed the management; but he could not do it at that time.

The Vice Chancellor: I understand that. Now this has taken more than a day, and I think it will take more than two days.

Mr. Lichtenstein: I don't know. I think Mr. Enright said he was through.

40 Mr. Enright: I think I am about through.

*Discussion of Counsel.*

The Vice Chancellor: I am not going to sit in this case until after September. I have got work to clean up, and I am not going to sit in this case in July.

Mr. Enright: I have subpoenaed here the Minute Book of the S. & H. Dyeing Company, and I will offer in evidence the minutes of the organization meeting, including the offer of H. H. Freund to sell the assets described as the property purchased by him (Freund) from Ewald Smith and Otto Hoffmann, a copartnership of West Hoboken, used in the business conducted by them, known as the S. & H. Dyeing Company, in consideration of 250 shares of common stock. 10

Mr. Lichtenstein: My objection to the offering of these minutes is in the same form as the objection I interposed to the introduction of the minutes in the case of the other corporations. 20

The Vice Chancellor: I will make the same ruling.

Mr. Enright: I also offer the minute of the organization directors' meeting.

(Same objection; same ruling.)

(The book containing the minutes just offered is marked Exhibit C, 15.) 30

Mr. Enright: I have some other witnesses here, but I cannot offer them to-day.

The Vice Chancellor: I am not going to go on now. The case cannot be finished to-day, and I am not going to take up any more of it now. If you gentlemen can finish in an hour I can put you in on September 15th. 40

*Discussion of Counsel.*

Mr. Lichtenstein: Oh, my case won't take a half an hour. If they rest their case now I will get my case in in five minutes.

10 Mr. Enright: Well, there is one aspect in which we cannot very well close without hearing some testimony from Allentown, apparently, as to the owning of D. G. Dery, Incorporated, by D. G. Dery; but it won't take very long and will probably be covered by documentary evidence.

The Vice-Chancellor: You mean you have to take a commission to go out there?

Mr. Enright: I think probably we will have to take a commission.

20 Mr. Lichtenstein: What is it you want to prove?

Mr. Enright: I want to prove that D. G. Dery owned all the stock of D. G. Dery, Incorporated. I think we will probably have to take some depositions out there.

30 Mr. Lichtenstein: I do not want to go all over creation, taking depositions, if the thing is not material. I cannot conceive what difference it makes whether Mr. D. G. Dery was the owner of six plants or sixteen plants—when I say "the owner" I mean whether he owned the majority of the capital stock in each one of these concerns.

Mr. Enright: Well, do you concede it?

40 Mr. Lichtenstein: No, I do not concede it; but I do not see the materiality of it, and I do not see why we ought to go on and take testimony all over creation on it. If you want me to admit, Mr. Enright, that prior to 1914 there were eighteen plants incorporated under the name of D. G. Dery, Incorporated, and that the majority of the capital

*Discussion of Counsel.*

stock of that company was owned by Mr. D. G. Dery, I will admit it, if you say so—if you say it is the fact.

Mr. Enright: My information is that he owned all the stock of D. G. Dery, Incorporated—that that was merely the manufacturing end of the business. 10

Mr. Lichtenstein: You see, I have no knowledge on the subject; I am not interested in that.

Mr. Enright: That is my information; that is what all these people in the organization say; and when we come down to first-hand, legal evidence, of course we do not have it here.

Mr. Lichtenstein: I don't know that you know it of your own knowledge; you don't even know it from information. 20

The Vice Chancellor: How long will it take to get the evidence of this ownership?

Mr. Enright: My information is that that information is to be obtained in Allentown, which is the general headquarters, and that we will have to take depositions there to get it.

30 Mr. Lichtenstein: Is it not a simple thing for you to get a copy of the stock certificate of these concerns—I mean, just give me the information, or send it to me, the same as you have sent me this mass of stuff, and we won't have any trouble.

40 The Vice Chancellor: I will tell you what I will do: I will place this case down for the 15th of September, at ten o'clock, ahead of the other case; in the meantime, you can take your testimony; and if you have any testimony remaining over, you can come in

*Discussion of Counsel.*

on that day prepared to argue it. I imagine this other case set for that day will not be long; it looks like a divorce case.

10 Case adjourned until Tuesday, September 15th, 1925, at ten o'clock, a. m., at the Chancery Chambers, Jersey City, New Jersey.

Chancery Chambers, Jersey City, N. J.

Tuesday, September 15, 1925.

20 Hearing of the cause resumed, pursuant to adjournment, in the presence of the counsel of the respective parties, before Hon. JOHN GRIFFIN, Vice-Chancellor, at ten o'clock, a. m.

30 Mr. Enright: In reading over the minutes of the first day of trial, there is no reference to the offer in evidence of the certificate of incorporation of the Alliance Holt Dye Works; it was offered in evidence right at the offset, and I think that was probably in the colloquy that I finally agreed should not be transcribed. The exhibit was marked Exhibit C-1A.

Mr. Lichtenstein: I have no objection to the offer.

(The paper was marked Exhibit C, 1-A.)

40 Mr. Enright: At the conclusion of the first day's trial there was some objection made by Mr. Lichtenstein to the testimony of the witness Fischer as to the ownership by D. G. Dery of the stock

*Discussion of Counsel.*

of D. G. Dery, Inc., a Pennsylvania corporation; and according to my recollection, and as the minutes show, Mr. Lichtenstein said he did not know anything about it, and if we could assure him positively of the fact, he would not further question it; and since then I have shown him an agreement between Mr. Dery and the bankers at the time of the reorganization of the enterprise into D. G. Dery Corporation, in which Mr. Dery represents that he owns the entire capital stock of D. G. Dery, Inc., a Pennsylvania corporation, and also appends a list of the properties being turned in by him to the D. G. Dery Corporation, the new company; that list indicating the location of the different mills, and the character of the record ownership of each.

Mr. Lichtenstein: Yes. We are taking Mr. Enright's statement to mean that he has made some sort of an investigation, and that he feels reasonably assured that the statement that Mr. Dery made on August 30, 1922, is correct, namely, to the effect that he was the owner of the entire capital stock of D. G. Dery, Inc.; and, for the purpose of this record, I am willing to concede that that is the fact; and I am further willing to concede, for the purpose of this record, that Schedule B contains a list of the mills claimed to have been owned as appears by this list, namely, some of them were leaseholds, some mills were owned by D. G. Dery, individually, and others owned by D. G. Dery, Incorporated. That is right, is it not?

Mr. Enright: Yes. They were all operated by D. G. Dery, Inc.; but the ownership is as stated.

Mr. Lichtenstein: Well, I do not know by whom they were operated.

Mr. Enright: Well, Fischer so testified.

*Discussion of Counsel.*

10 Mr. Lichtenstein: All right, if he did. Schedule B is the schedule Mr. Enright submitted to me, which was appended to a letter; now, I do not want this whole letter to go in, because it is pages long, and has a great many things in it which have nothing to do with this case. Put in Schedule B, and my admission that he was the owner of the entire capital stock of D. G. Dery, Inc.

Mr. Enright: There was some testimony about the Cedar Cliff Silk Mills Company.

20 Mr. Lichtenstein: For the purpose of this record, I am willing to concede that the capital stock of the Cedar Cliff Silk Company was owned by either D. G. Dery, or D. G. Dery, Inc.; Mr. Enright does not seem to know, and nobody seems to know; but I do not conceive that it is material, at all, and I am willing to concede that it is owned by either one or the other.

Mr. Enright: Then, for certainty, suppose this Schedule B, referred to, be marked as an exhibit?

Mr. Lichtenstein: I have no objection to that.

(The paper was thereupon marked Exhibit C, 16.)

The complainant rests.

30

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THE CASE FOR THE DEFENDANT.

Mr. Lichtenstein: I offer in evidence Exhibit J. L. 1. for identification; Exhibit J. L. 2 for identification and Exhibit J. L. 3 for identification.

40 Mr. Enright: I object to those as being immaterial and irrelevant. They seem to have had to do with the financial condition of the company. I do not see how that is relevant to this case. I assume your Honor will admit them, under the liberal policy that has prevailed.

*Discussion of Counsel.*

The Vice Chancellor: Yes, sir; especially as they have been offered before for identification, and the testimony was taken some time ago and I do not remember it.

(The papers were thereupon marked, respectively, Exhibit D, 1, Exhibit D, 2 and Exhibit D, 3.) 10

Mr. Lichtenstein: With the offering of those exhibits the defendant is content to rest his case.

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Both sides close. Case orally argued and submitted.

20

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**Exhibit "C-1".**

Transcript from record of loans of New York Trust Company (formerly The Liberty National Bank).

This shows loans beginning September 29, 1919, on promissory notes of D. G. Dery, Inc., endorsed by D. G. Dery individually, renewed or incorporated on maturity in new loans until April 28, 1923, when the loan account was closed out by the foreclosure of the collateral. 30

The collateral included 2500 shares of common and 2500 shares preferred stock of Alliance-Holt Dye Works, Inc., which appears as first pledged July 30, 1920.

Balance due at time of foreclosure \$186,838.01.

This is the Schedule referred to as annexed to *Ex. C-3*.

40

## Exhibit "C-1A".

CERTIFICATE OF INCORPORATION  
OF  
ALLIANCE-HOLT DYE WORKS, INC.

10 THIS IS TO CERTIFY that the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of the Act of the Legislature of the State of New Jersey entitled "An Act concerning corporations (revision of 1896)" and the several supplements thereto and acts amendatory thereof and do severally agree to take the number of shares of capital stock set opposite their respective names.

20 FIRST: The name of the corporation is ALLIANCE-HOLT DYE WORKS, INC.

SECOND: The location of the principal office in this State is at No. 8 Feronia Avenue, Rutherford, New Jersey, Bergen County.

THIRD: The name of the statutory agent thereof and in charge thereof upon whom process against this corporation may be served is CLAUDIUS UGNON, No. 8 Feronia Avenue, Rutherford,  
30 New Jersey.

FOURTH: The objects for which this corporation is formed are:

(a) To conduct the business of dyeing and finishing silks, silk materials and fabrics of all kinds and descriptions.

(b) To purchase or otherwise acquire all or any part of the business, good will, rights, prop-  
40 erty and assets of all kinds and assume all or any

## Exhibit "C-1A".

part of the liabilities of any corporation, association, partnership or person engaged in any business included in the foregoing purposes and objects.

(c) To manufacture, purchase or otherwise acquire and to sell and deal in all kinds of materials, goods, wares and merchandise which may be required for any of the purposes of the company's business or which may seem capable of being profitably used or dealt in in connection with such business. 10

(d) To purchase, lease or otherwise acquire real and personal property of any and all kinds that may be lawfully acquired by a corporation organized under this State.

(e) To purchase or otherwise acquire leaseholds, shares of stock, mortgages, bonds, debentures and other securities, merchandise, book debts and claims, copyrights, manuscripts, trade marks, trade names, brands, labels, patents, caveats and patent rights, licenses, grants and any interest in real or personal property in connection with the said business. 20

(f) To make, execute, endorse, sign and issue promissory notes, bills of exchange, bonds, debentures and other obligations from time to time for the purchase of property or for any purpose in or about the business of the company and to secure the payment of any such obligations by mortgage, pledge, deed of trust or otherwise. 30

(g) To enter into, make, perform and carry out contracts of every sort and kind with any person, firm, association or corporation subject to the provisions of law.

(h) To purchase or otherwise acquire, hold and re-issue the shares of its capital stock. 40

*Exhibit "C-1A"*.

10 (i) To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the provisions of any of the powers hereinbefore set forth either alone or associated with other corporations, firms or individuals and to do every act or acts, thing or things incidental or pertaining to or growing out of or in connection with the aforesaid business or powers or any part or parts thereof provided the same be not inconsistent with the law under which this corporation is organized.

20 (j) The corporation shall have the power to conduct its business in all of its branches and to have one or more offices and to hold, purchase, mortgage and convey real and personal property in the State of New Jersey as well as in all other States and in all foreign countries.

FIFTH: The total authorized capital stock of this corporation is \$500,000 divided into 5000 shares of the par value of \$100 each, of which said stock 2500 shares are to be preferred stock and 2500 shares are to be common stock.

30 The holders of the preferred stock shall be entitled to receive out of any and all surplus or net profits whenever declared by the Board of Directors, non-cumulative dividends at the rate of but not exceeding seven percent per annum for the fiscal year beginning on the 1st of January, 1920 and for each and every fiscal year thereafter payable in preference and priority to any payment of dividends on the common stock for said fiscal year and payable semi-annually otherwise as the Board of Directors may from time to time determine. Such dividends on the preferred stock  
40 shall be payable out of the accumulated profits

*Exhibit "C-1A"*.

and not out of any profits of any subsequent year or years. That the remaining surplus or net profits of said year beginning January 1st, 1920 and of any other fiscal year shall be applicable to dividends upon the common stock and payable as the same shall be declared by the Board of Directors. In the event of any liquidation or dissolution or winding up (either voluntary or involuntary) the holders of the preferred stock shall be entitled to be paid in full the par amount of their shares and after the payment to the holders of the preferred stock of its par value the remaining assets and funds shall be divided and paid to the holders of the common stock according to their respective shares. The common stock shall be subject to the prior rights of the holders of the preferred stock as herein declared. 10

On and after one year from the date of the issuance of said preferred stock the whole or any part thereof may be redeemed out of the surplus profits of the corporation at \$105. per share by the affirmative vote of a majority of the Board of Directors thereof upon sixty days notice to the owners or holders of record of the shares to be redeemed. The control of the corporation is to be in the hands of the holders of the common stock and the preferred stock shall be without any voting power whatsoever except as otherwise provided by law. 20

SIXTH: The names and post office addresses of the incorporators and the number of shares subscribed for by each, the aggregate of which subscription being the amount of the capital stock with which the company will commence business are as follows: 30

Exhibit "C-1A".

	<i>Name</i>	<i>Post Office Address</i>	<i>No. Shares</i>
	SAMUEL M. BIRNBAUM,	258 Broadway, New York City.....	5
	ALEXANDER GOLDBERG,	258 Broadway, New York City.....	5
10	ALEXANDER AARONSON,	258 Broadway, New York City.....	5
	HENRY DANZIGER,	258 Broadway, New York City .....	5
	GEORGE M. HOMAN,	258 Broadway, New York City.....	5

SEVENTH: In furtherance and not in limitation of the powers conferred by Statute, the Board of Directors are expressly authorized:

20 (a) To hold their meetings or to have one or more offices and to keep the books of the company within or without the State of New Jersey at such place as may be from time to time designated by them; but the company shall always keep in its principal and registered office in New Jersey the transfer book in which transfers of stock can be made, entered and registered and also the stock book containing the names and addresses of the stockholders and the number of shares held by them respectively which said transfer book and stock book shall be at all times during the business hours open to the inspection of the stockholders in person.

30 (b) To determine from time to time whether and if allowed when and under what conditions and regulations accounts and books of the company (other than the stock and transfer books) or any of them shall be open to the inspection of the stockholders and the stockholders' rights in this respect shall be restricted or limited accordingly.

40 (c) To make, alter, amend or rescind the by-laws of this company, to fix the amount to be re-

Exhibit "C-1A".

served as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided always that a majority of the whole board concur therein.

(d) With the consent in writing and pursuant also to the affirmative vote of the holders of a majority of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided always that a majority of the whole board concur therein. 10

(e) By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws to designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws have and exercise all the powers of the Board of Directors which may be lawfully delegated in the management of the business and affairs of the company and shall have power to authorize the seal of the company to be affixed to all papers which may require it. 20

(f) By a majority vote to remove any director or officer with or without cause and with or without notice. 30

IN WITNESS WHEREOF, we have hereunto set our hands and seals the 17th day of December, A. D. 1919.

SAMUEL M. BIRNBAUM (L. S.)  
 ALEXANDER GOLDBERG (L. S.)  
 ALEXANDER AARONSON (L. S.)  
 HENRY DANZIGER (L. S.)  
 GEORGE M. HOMAN (L. S.)

Signed, sealed and delivered }  
 in the presence of }

JOSÉPH P. SEGAL.

40

Exhibit "C-1A".

STATE OF NEW YORK, }  
CITY AND COUNTY OF NEW YORK, } ss.:

10 BE IT REMEMBERED that on this 17th day of December, 1919, before me a Commissioner of Deeds of the City of New York, personally appeared SAMUEL M. BIRNBAUM, ALEXANDER GOLDBERG, ALEXANDER AARONSON, HENRY DANZIGER and GEORGE M. HOMAN, who I am satisfied are the persons named in and who executed the foregoing certificate and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

20 REBECCA ARENWALD,  
Comm. of Deeds, N. Y. City,  
Comm. Exp. April 29, 1921, County Cl. #25.

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

No. 26835 Form 9

30 I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That REBECCA ARENWALD, whose name is subscribed to the Certificate of the Proof or Acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such Proof or Acknowledgment, a COMMISSIONER OF DEEDS in and for The City of New York, duly commissioned and sworn, and authorized by the laws of said State to take  
40 the Acknowledgments and Proofs of Deeds of

Exhibit "C-1A".

Conveyances for Land, Tenements or Hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Commissioner of Deeds, and verily believe that the signature to said Certificate of Proof or Acknowledgment is genuine.

10 IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 18 day of Dec., 1919.

WM. SCHNEIDER,  
Clerk.

STATE OF NEW YORK, }  
CITY AND COUNTY OF NEW YORK, } ss.:

20 BE IT REMEMBERED that on the 17th day of December, 1919, before me the subscriber, personally appeared JOSEPH P. SEGAL, who, being by me duly sworn, on his oath did depose and say, that he saw SAMUEL M. BIRNBAUM, ALEXANDER GOLDBERG, ALEXANDER AARONSON, HENRY DANZIGER and GEORGE M. HOMAN, the persons named in the foregoing certificates, sign, seal and deliver the same as their voluntary act and deed, and that the deponent at the same time subscribed his name thereto as a witness of the execution thereof.  
30

JOSEPH P. SEGAL.

Subscribed and sworn to before me }  
the day and year aforesaid. }

REBECCA ARENWALD,  
Comm. of Deeds, N. Y. City,  
Comm. Exp. April 29, 1921,  
County Cl. #25.

## Exhibit "C-1A".

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

No. 26834

Form 9

10 I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That REBECCA ARENWALD, whose name is subscribed to the Certificate of the Proof or Acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such Proof or Acknowledgment, a COMMISSIONER OF DEEDS in and for The City of New York, duly commissioned and sworn, and authorized by the laws of said State to take the Acknowledgments and Proofs of Deeds of Conveyances for Land, Tenements or Hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Commissioner of Deeds, and verily believe that the signature to said Certificate of Proof or Acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 18 day of Dec., 1919.

30

WM. SCHNEIDER,  
 Clerk.

ENDORSED:

"Received in the Office of the Clerk of Bergen County, New Jersey, on the 18 day of December A. D. 1919 at 9:05 o'clock A. M. and recorded in Book Page of .

GEORGE VAN BUSKIRK,  
 Clk."

40 "FILED AND RECORDED  
 Dec. 19, 1919,  
 THOMAS F. MARTIN,  
 Secretary of State."

## Exhibit "C-2".

July 30, 1920.

The Liberty National Bank of New York,  
 120 Broadway,  
 New York City.

10

Gentlemen:

Referring to the promissory notes of D. G. Dery, Inc. to its own order, endorsed by it to me and by me endorsed in blank and held by you, which notes, including the renewals now being granted by you, are as follows:

Date	Amount	Maturity
May 13, 1920	\$50,000.00	Sept. 13, 1920
May 17, 1920	50,000.00	" 17, 1920
May 28, 1920	100,000.00	" 28, 1920
June 1, 1920	100,000.00	Oct. 1, 1920
June 28, 1920	50,000.00	Sept. 28, 1920
July 30, 1920	25,000.00	Aug. 13, 1920
July 30, 1920	25,000.00	Aug. 30, 1920.

20

In order to induce you to make such renewals and pursuant to the arrangements verbally agreed upon, I herewith hand you, duly endorsed in blank, the following shares owned by the undersigned.

30

1,000 shares of the capital stock of West New York Silk Mills

663 shares of the capital stock of Taunton River Mills.

2,500 shares of the common stock, and

2,500 shares of the preferred stock of Alliance Holt Dye Works, Inc.

40

*Exhibit "C-2"*

10 said shares of stock being deposited with you as collateral security for the payment of said notes and each of them or any renewal or extension of any of said notes and also as collateral security for all other present or future demands of any and all kinds which you have against the under-

20 signed or against D. G. Dery, Inc., whether created directly or acquired by assignment, whether absolute or contingent, and whether due or not due; and I do hereby give to you a lien for all of said demands, including each of said notes or re-

30 newals or extensions upon all property left with you and upon any balance of deposit account with you, and the undersigned hereby authorizes you, at any time, to apply the deposit account or ac-

40 counts of the undersigned on your books, in whole or in part, to the payment, in whole or in part, of any or all of said demands, and hereby authorize you, upon or after the nonpayment of any of said notes or any renewals or extensions thereof or of any of said other demands when due, to sell the whole or any part of said collateral, security, or substitutes therefor or additions thereto, at any Brokers' Board or at public or private sale at your option, without notice of intention to sell or of the time or place of sale and without demand of payment of any of said notes or renewals or extensions or of any of said demands, and after deducting all expenses, including those for legal services, arising from or incidental to the sale, realization or collection of any of said collateral security, substitutions or additions or of any of said demands, including said notes or any of them or any renewals or extensions, to apply the residue of the proceeds to pay any or all of said demands, in whole or in part, whether due or not due, in-

*Exhibit "C-2"*

10 cluding said notes and renewals; and do hereby agree that, at any such sale, you may become the purchaser or any or all of said collateral security and may hold the same thereafter in your own right absolutely free from any claim of the under-

20 signed; and do further agree that in case of deficiency, the undersigned will pay to you the amount thereof forthwith after such sale with legal in-

30 terest; and the undersigned hereby further agrees that, upon the transfer of any of said notes or renewals, you may deliver the said collateral security, or any part thereof, to the transferee, and, whether or not so delivered, such transferee shall become vested with all the powers and rights above given to you in respect thereto.

40 The undersigned further agrees that no delay in exercising any rights hereby, or by any of said notes or renewals, given shall operate as a waiver of said rights. The undersigned hereby waives demand of payment from the maker of said notes or renewals and also waives protest and notice of nonpayment of said notes or any of them or renewals thereof, and hereby consents that the time of payment of any of said notes or renewals thereof may be extended without notice to, or further assent from the undersigned.

50 The undersigned further agrees that any of the collateral security may be transferred into the name of any nominee or nominees of the holder of any of said notes, but requests that directors' qualifying shares be not so transferred.

60 The undersigned further agrees that, so long as any of said notes or renewals remain unpaid, with interest, he will not consent to or, so far as it is within his power, permit the placing of any mortgage or other lien upon any of the property or

*Exhibit "C-2"*

assets of said West New York Silk Mills, Taunton River Mills and Alliance Holt Dye Works, Inc.; and further agrees that, during such time, he will not, so far as it is within his power, permit any additional shares of any said corporations to be issued and if any additional shares shall, for any reason, be issued and he shall, individually, receive the same, either directly or indirectly, the additional shares so issued to or for him will be forthwith deposited with you as additional collateral security for any indebtedness then outstanding. The undersigned further agrees that, in case any mortgage shall be placed on any of the property or assets of any of said corporations or in case any of said corporations shall issue any additional shares and the same shall not be deposited with you as additional collateral, the whole or any indebtedness then outstanding shall, at your option, become due and payable forthwith.

Yours very truly,  
D. G. DERY.

D. G. DERY, INC. the maker of the notes referred to in the foregoing letter, hereby assents to all of the terms and provisions thereof.

D. G. DERY, INC.  
By H. J. WEIDINGER, Treas.

Attest: H. J. WEIDINGER, Secy.

**Exhibit "C-3"**

THE NEW YORK TRUST COMPANY  
100 Broadway  
New York

June 23, 1925.

Mr. W. Arthur Cunningham, Secretary,  
Alliance-Holt Dye Works, Inc.,  
50 Union Square,  
New York, N. Y.

Dear Sir:

Conforming to your request that we furnish you from our records with exact data showing the details of all loan transactions between D. G. Dery of Allentown, Pa. as well as D. G. Dery, Inc., (a Pennsylvania corporation) and this institution, or its predecessor, The Liberty National Bank of New York, with which our present Bank was legally merged on April 1, 1921, in which loans any or all the stock of your Corporation, Alliance-Holt Dye Works, Inc., was involved as collateral security for such obligations, the attached is an accurate transcript of the records in our Bank setting forth the names of the parties to such loans, including the makers and endorsers, the amount, date, and maturity date of each loan, and the collateral held therefor and the subsequent renewals thereof.

We are also enclosing original and a copy of the agreement of July 30, 1920 between D. G. Dery and The Liberty National Bank of New York (to which our present institution is successor from the merger of April 1, 1921), which agreement is assented to by the Pennsylvania corporation known as D. G. Dery, Inc. and under which the

*Exhibit "C-3"*

entire capital stock of the Alliance-Holt Dye Works, Inc., as well as other securities then belonging to and held in the name of D. G. Dery were pledged with our Bank as security for obligations then existing and thereafter arising.

10 On January 15, 1923, according to our records, we were served with a copy and with notice of an assignment of equity made by D. G. Dery in favor of Textile Banking Company, Inc. covering any equity or balance in collateral held by our institution which should remain after payment of all obligations owing to us, and which assignment directed us to deliver any such equity or balance to Textile Banking Company, Inc.

20 On April 17, 1923 our Bank duly demanded payment of the obligations then held by it from D. G. Dery and served notice on Mr. D. G. Dery that in default of payment in full, together with accrued interest, on or before Wednesday, April 25, 1923 at 12:30 P. M. all the collateral held as above mentioned, including 2500 shares of common and 2500 shares of preferred stock, being the entire authorized and outstanding stock of Alliance-Holt Dye Works, Inc., would be sold at public auction in satisfaction of such obligations, and further notifying D. G. Dery to redeem such collateral before the date mentioned.

30 On April 25, 1923, no part of the above mentioned outstanding obligations due our Bank having been paid, we sold the entire lot of collateral held by us, including the entire capital stock of Alliance-Holt Dye Works, Inc. at public auction through Adrian H. Mueller & Sons, public auctioneers, at the Exchange Sales Rooms, 14-16 Vesey Street, Borough of Manhattan, New York City, for the sum of \$187,898.43. We were informed by the auctioneers at the time that the

40

*Exhibit "C-3"*

purchaser upon this public sale was Mr. James D. Hopkins.

If there is any further information you require in connection with any of these transactions our records are open to you and we will be only too glad to have you call upon us.

Yours very truly,

HARRY KNOX,  
Assistant Treasurer.

K.

**Exhibit "C-4"**

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, D. George Dery, residing at Catasauqua, Pennsylvania, for and in consideration of the sum of One (\$1.00) dollar, lawful money of the United States, to him in hand paid by Textile Banking Company, Inc. of the City of New York, the receipt whereof is hereby acknowledged, and for other good and valuable considerations, has assigned, transferred, conveyed and set over and does by these presents assign, transfer, convey and set over unto said Textile Banking Company, Inc. all the right, title and interest of the undersigned in and to any and all equity, equities, right or rights of redemption, of the undersigned, in and with respect to any and all of the property, of every nature and description whatsoever, now held by or which may hereafter come into the possession or control of The New York Trust Company of No. 100 Broadway, New York City, as collateral security for certain loans now outstanding made by said The New York Trust Company to the undersigned, which loans are specifically described as follows:

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Exhibit "C-4".

Date	Amount	Maturity	Collateral
December 2, 1920	\$13,221.73	Demand	
January 15, 1923	175,000.00	April 15, 1923	***

	Estimated Value
***Collateral to loan of Jan. 15, 1923	
10 1000 shares of West New York Silk Mills .....	\$100,000.
2500 shares of Alliance-Holt Dye Works Pfd. } .....	500,000.
2500 shares of Alliance-Holt Dye Works Common }	
2000 shares of D. G. Dery Pfd.....	184,000.

20 To HAVE AND TO HOLD the aforesaid rights and equities, title and interest of the undersigned in and to the property hereby transferred, including any additions thereto or substitutions therefor, unto the said Textile Banking Company, Inc., its successors and assigns, as and for further and additional collateral security for the payment of any and all indebtedness, obligations and liabilities now existing or which may be hereafter contracted or come into existence, or to become due, from the undersigned to the said Textile Banking Company, Inc., or its successors and assigns.

30 The undersigned hereby nominates, constitutes and appoints said Textile Banking Company, Inc. his true and lawful attorney, irrevocably, with full power of substitution, and with full power in the premises to receive and receipt for, demand, collect, sue for and obtain any and all property assigned to it as aforesaid and to fully discharge the said The New York Trust Company, its successors or other holders of said property as fully and completely as the undersigned might or could

40 personally so do, hereby authorizing and direct-

Exhibit "C-4".

ing said The New York Trust Company to transfer, deliver and turn over to said Textile Banking Company, Inc. all the property transferred by this instrument.

All property which shall come into the hands of the assignee herein by virtue of this assignment as such collateral security as well as the proceeds of the sale of any such collateral, may without notice to the undersigned or any other person, in the event of nonpayment of any of the said loans or indebtedness due the said Textile Banking Company, Inc. be applied to the payment of said loans or indebtedness or any part thereof. The undersigned hereby gives to said Textile Banking Company, Inc. full power to sell, assign and deliver the whole or any part of said collateral or any substitution therefor or additions thereto at public or private sale and without notice of the amount due or claimed to be due, without demand of payment, and without advertisement, and without notice of the time or place of sale, each and every of which is hereby expressly waived.

IN WITNESS WHEREOF the undersigned has hereto set his hand and seal this 15th day of January, Nineteen hundred and twenty-three.

D. G. DERY (SEAL)

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30

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*Exhibit "C-4".*

State of New York, }  
 City & County of New York, } ss.:

10 On this 15th day of January, 1923, before me personally came and appeared D. George Dery, to me known and known to me to be the individual described in and who executed the foregoing instrument and he thereupon duly acknowledged to me that he executed the same.

W. ARTHUR CUNNINGHAM,  
 Notary Public.

20 Notary Public, Kings County  
 Kings Co. Clerk's No. 316  
 Kings Co. Register's No. 3056  
 Certificate filed in New York Co.  
 New York Co. Clerk's No. 417  
 New York Co. Register's No. 3321  
 Commission expires March 30, 1923.

**Exhibit "C-5".**

30 TEXTILE BANKING COMPANY  
 Fifty Union Square  
 New York

July 6, 1925.

Mr. W. Arthur Cunningham, Secretary,  
 Alliance-Holt Dye Works, Inc.,  
 50 Union Square,  
 New York, N. Y.

Dear Sir:

40 Conforming to your request that we furnish you from our records with exact data showing the

*Exhibit "C-5".*

10 details of loan transactions between D. G. Dery of Allentown, Pa., as well as the corporation known as D. G. Dery, Inc., with our banking company, in connection with which loans any or all of the stock of your Corporation, Alliance-Holt Dye Works, Inc., was involved as collateral security, please be advised that on Jan. 12, 1923 we loaned Mr. D. G. Dery against his demand promissory note bearing that date \$265,000. and took as security certificates for 5,000 shares of the preferred stock of D. G. Dery Corporation (a Delaware corporation) and also an assignment executed by said D. G. Dery in favor of us, the Textile Banking Company, Inc., covering all his equity and right of redemption in and in respect of all property and securities then held by The New York Trust Company of 100 Broadway, New York as collateral for loans owing from Mr. Dery to them, and in and by which assignment, a copy of which we filed immediately and on January 15, 1923 with such New York Trust Company, the equity in the collateral held by them was assigned to us, such collateral consisting of:—

2500 shares of preferred stock of Alliance-Holt Dye Works, Inc.  
 2500 shares of common stock of Alliance-Holt Dye Works, Inc.  
 1000 shares of West New York Silk Mills stock.  
 2000 shares of preferred stock of D. G. Dery Corporation.

In addition to the foregoing we also took as collateral an assignment of equity executed by Mr. Dery transferring to us any equity he might have in securities pledged with the following banks in Allentown, Pa., viz.: Second National Bank, Penn Trust Company and Allentown National Bank. We were

*Exhibit "C-5"*

never able to realize anything under this assignment from the collateral which was in the hands of these banks.

10 On or about April 25, 1923, after the failure of the D. G. Dery Corporation and after D. G. Dery individually had been put into bankruptcy, our note for \$265,000. was unpaid and at that time The New York Trust Company notified us as assignee under the document filed with them of their intention to sell the collateral held by them and apply it to the payment of their debts. We arranged to have the sale attended by our counsel, and one of our officers, and at the public auction sale the collateral sold for the account of The New York Trust Company, including the entire stock of 5,000 shares, 2500 common and 2500 preferred of Alliance-Holt Dye Works, Inc., was purchased by Mr. James D. Hopkins, who was then and still is a Vice President of our banking company, for a sum equivalent to the amount of the New York Trust Company's outstanding loan plus accrued interest to that date. On May 18, 1923 at a public auction sale we had sold for our account the 5,000 shares of preferred stock of D. G. Dery Corporation held as security for our \$265,000. loan made January 12, 1923, as above mentioned, and Mr. James D. Hopkins was also the purchaser of this collateral at such sale.

20 Under an agreement between Mr. Hopkins and ourselves he held the entire collateral, including the above-mentioned total capital stock of Alliance-Holt Dye Works, Inc., until December 31, 1923, at which time he transferred it all to Dye Works Securities Corporation, a subsidiary corporation formed by our counsel at our request and under our control. All these securities were held in the Dye Works Securities Corporation until the month

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*Exhibit "C-5"*

of December 1924, at which time they were transferred directly into our name and ownership and we, the Textile Banking Company, Inc., are now the owners and holders of the entire outstanding and authorized shares of capital stock of Alliance-Holt Dye Works, Inc., consisting of 2500 shares of preferred and 2500 shares of common stock. 10

We understand that you require this information in connection with trial of a suit brought against your Company by one H. H. Freund. If there is any further information we can supply on this or any other point please do not hesitate to call upon us.

Yours very truly,

H. J. STIEB  
Treasurer. 20

T.

**Exhibit "C-6"**

Preferred Stock Certificate Book of ALLIANCE-HOLT DYE WORKS, INC.

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**Exhibit "C-7"**

Common Stock Certificate Book of ALLIANCE-HOLT DYE WORKS, INC.

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**Exhibit "C-8".**

Minutes of Annual Meeting of Stockholders of Alliance-Holt Dye Works, Inc., pursuant to notice heretofore given on the 29th day of December, 1920, and held at the office of the Corporation, No. 8 Feronia Way, Rutherford, New Jersey.

10 Present in person:

Alfred Sohland, 1 share common stock.  
Hans Fischer, 1 share common stock.

By proxy:

Henry Danziger as proxy for D. George Dery,  
2495 shares common stock;

20 Henry Danziger as proxy for Eric Muelberger,  
1 share common stock;

Henry Danziger as proxy for D. George Dery,  
2500 share preferred stock.

The meeting was called to order by Mr. Danziger, who was thereupon elected temporary chairman.

30 The notice of meeting was read, and ordered that it be annexed to the minutes of the meeting.

The treasurer announced that a statement of the affairs of the corporation was in the course of preparation, and would shortly be ready.

The chairman announced that the next order of business was the election of directors for the ensuing year.

A list of the stockholders was presented and showed that all present were qualified to vote.

40 Mr. Danziger presented proxies from Mr. D. George Dery, holder of 2495 common shares and

*Exhibit "C-8"*.

2500 shares preferred stock. The same was ordered filed.

Mr. Danziger likewise presented proxy from Mr. Eric Muelberger, holder of one share common stock, and same was ordered filed.

On motion duly made, seconded and unanimously carried, the following were placed in nomination for directors of the corporation for the ensuing year: 10

Eric Muelberger;  
Alfred Sohland;  
Hans Fischer;  
H. H. Freund; and  
Henry Danziger.

There being no further nominations, the nominations were declared closed. 20

On motion duly made, seconded and unanimously carried, Mr. Hans Fischer, secretary, was directed to cast one ballot as the ballot of the stockholders for each of the nominees above named as directors of the corporation for the ensuing year.

There being no further business, the meeting was declared adjourned.

(Signed) HANS FISCHER, 30  
Secretary.

**Exhibit "C-9".**

Minutes of Special Annual Meeting of the Board of Directors of Alliance-Holt Dye Works, Inc., held at Room 166, No. 1 Madison Avenue, Boro of Manhattan, City of New York, on the 12th day of January, 1921, at 5:00 P. M. 40

*Exhibit "C-9"*

Present:

Eric Muelberger,  
Alfred Sohland,  
Hans Fischer,  
H. H. Freund,  
Henry Danziger,

10

being all of the directors of said corporation.

Mr. Alfred Sohland, president of the corporation, presided.

The Chairman declared that the election of officers for the ensuing year was in order.

On motion duly made, seconded and unanimously carried, the following were placed in nomination:

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For President, Eric Muelberger;  
Vice-President, H. H. Freund;  
Treasurer, Alfred Sohland;  
Secretary, Hans Fischer; and  
Assistant Treasurer, E. M. Lee.

There were no further nominations, and on motion duly made, seconded and unanimously carried, no candidate voting for himself, the said nominees were each duly elected for the office for which he was nominated. Each accepted the office and entered upon the performance of his duties.

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On motion duly made, seconded and unanimously carried, authority was given to E. M. Lee, as Assistant Treasurer, to sign checks on the bank account of the corporation in behalf of the corporation, the same to be valid when either jointly signed or countersigned by Alfred Sohland, Treasurer, or Hans Fischer, Secretary.

There being no further business, the meeting was declared adjourned.

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(Signed) HANS FISCHER,  
Secretary.

**Exhibit "C-10"**

Minutes of Annual Meeting of Annual Meeting of Stockholders of Alliance-Holt Dye Works, Inc., pursuant to notice heretofore given on the 31st day of December, 1921, and held at the office of the corporation, No. 8 Feronia Way, Rutherford, New Jersey.

10

Present by proxy: Mr. Hans Fischer, as proxy for Mr. D. George Dery, 2500 shares of common stock and 2495 shares of preferred stock.

Present in person: Mr. Hans Fischer, 1 share preferred stock, Mr. Eric Muelberger, 1 share preferred stock.

The meeting was called to order by the President, Mr. Eric Muelberger.

The notice of meeting was read by the secretary, and ordered that it be annexed to the minutes of the meeting.

20

The treasurer announced that a statement of the affairs of the corporation was in the course of preparation and would be shortly ready.

The Chairman announced that the next order of business was the election of directors for the ensuing year.

A list of stockholders was presented, and showed that only common stock was qualified to vote.

Mr. Hans Fischer, secretary, presented proxy from Mr. D. George Dery, holder of 2500 shares of common stock and 2495 shares of preferred stock. The same was ordered filed.

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On motion duly made, seconded and unanimously carried, the following were placed in nomination for directors of the corporation for the ensuing year.

Eric Muelberger,  
Hans Fischer,

40

*Exhibit "C-10"*.

John Young,  
John Van Tongelen,  
H. H. Freund,  
Arthur Coen.

10 There being no further nominations, the nominations were declared closed.

On motion duly made, seconded and unanimously carried, Mr. Hans Fischer, secretary, was directed to cast one ballot as the ballot of the stockholders for each of the nominees above named as directors of the corporation for the ensuing year.

There being no further business, the meeting was declared adjourned.

20 (Signed) HANS FISCHER  
Secretary.

**Exhibit "C-11"**.

Minutes of Annual Meeting of the Board of Directors of the Alliance-Holt Dye Works, Inc., held at the office of the Secretary, No. 381 Fourth Avenue, New York City, N. Y., on the 11th day of January, 1922, at 5 P. M.

30 Present: Messrs. Eric Muelberger, Hans Fischer, John Young, John Van Tongelen, H. H. Freund and Arthur Coen, being all of the directors of said corporation.

Mr. Eric Muelberger, president of the corporation, presided.

The president declared that the election of officers for the ensuing year was in order.

40 On motion duly made, seconded and unanimously carried, the following were placed in nomination:

*Exhibit "C-11"*.

For president—Mr. Eric Muelberger,  
For vice-president—Mr. H. H. Freund,  
For treasurer—Mr. John Young,  
For secretary—Mr. Hans Fischer.

There were no further nominations, and on motion duly made, seconded and unanimously carried, no candidate voting for himself, the said nominees were each duly elected for the office for which he was nominated. Each accepted the office and entered upon the performance of his duties.

There being no further business, the meeting was declared adjourned.

(Signed) HANS FISCHER 20

**Exhibit "C-12"**.

Employment Contract between D. G. Dery and H. H. Freund, dated November 21, 1919.

A copy of this exhibit is printed as Exhibit A attached to the bill of complaint.

**Exhibit "C-12A"**.

Extract from Minutes of First Meeting of Incorporators of Alliance-Holt Dye Works, Inc., held December 14, 1919.

"Upon motion duly made, seconded and unanimously carried, the following preambles and resolutions were adopted:

1: The real estate and buildings heretofore conducted by the Alliance Dye Works at No. 8 Fero-

*Exhibit "C-12A"*

nia Avenue, Rutherford, New Jersey, free and clear of all encumbrances and with taxes paid to date.

2: All of the machinery, equipment and appurtenances of the said Alliance Dye Works, in said building contained, and either installed or in the process of installation, subject only to unpaid machinery contracts amounting to between ten and fifteen thousand (\$10,000.-\$15,000.) Dollars.

3: All of the dye stuffs, supplies, office furniture and fixtures, books, records and papers and all other property of the said Alliance Dye Works, contained within the said building and used in its business.

4: The real estate and building of the James Holt Piece Dye Works, situate at Phillipsburg, New Jersey, free and clear of all encumbrances and with taxes paid to date.

5: All of the machinery, equipment and appurtenances of the said James Holt Piece Dye Works, in said building contained, and either installed or in the process of installation.

6: All of the dye stuffs, supplies, office furniture and fixtures, books, records and papers and all other property of the said James Holt Piece Dye Works, contained in the said building and used in its business.

7: All of the engines, dynamos, shafting, belting, pulleys, and other equipment used by either of the foregoing companies in the conduct of the business of dyeing and finishing silks, or other fabrics, located in the respective buildings and whether attached to the realty or not; and the sum of \$35,000. in cash;

*Exhibit "C-12A"*

in consideration of the issue of stock of this company to the amount of \$500,000. par value, of which \$250,000. is preferred stock, and \$250,000. is common stock; and

Whereas, it appears to the stockholders that such property is necessary for the business of this company and that the same is of the value of \$500,000.;

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 said price and to issue said stock in payment thereof, upon receipt by the corporation of proper itemized bills of sale of the personal property required to be conveyed and sufficient warranty deeds of the real estate hereby required to be conveyed, each of the said transfers to be examined and approved by the counsel or the company and said stock to be issued as directed by the said Alfred Sohland."

**Exhibit "C-13"**

Extract from Minutes of First Meeting of the Board of Directors of Alliance-Holt Dye Works, Inc., held December 19, 1919:

"RESOLVED, that this company accept the offer of Alfred Sohland to sell to this company the property described in his offer as set forth in the minutes of the first meeting of incorporators of this corporation; and the board of directors do hereby adjudge and declare that the said property is of the fair value of \$500,000. and that the same is necessary for the business of this company.

*Exhibit "C-13".*

And it is FURTHER RESOLVED that this board of directors does hereby confirm and accept the terms of the said proposal as in the offer and in the minutes of said incorporators' meeting set forth, and the same are hereby approved; and the president and secretary of the company are hereby authorized and directed to receive proper Bills of Sale and warranty deeds of the property to be conveyed as in said offer set forth, and submit the same to counsel for the corporation, and after counsel has passed the same to issue certificates of the full paid capital stock of this company to the aggregate amount of \$500,000., as provided in said offer, of which one-half shall be preferred and one-half shall be common, and that the same shall be issued to the said Alfred Sohland or to his nominees as directed by him, upon payment by him of the sum of \$35,000."

**Exhibit "C-14".**

## CERTIFICATE OF INCORPORATION

of

S. &amp; H. DYEING Co., INC.

THIS IS TO CERTIFY that the undersigned do hereby associate themselves into a corporation under and by virtue of the provisions of the Act of the Legislature of the State of New Jersey entitled "An Act concerning corporations (Revision of 1896)" and the several supplements thereto and acts amendatory thereof and do severally agree to take the number of shares of capital stock set opposite their respective names.

*Exhibit "C-14".*

FIRST: The name of the corporation is S. & H. DYEING Co., INC.

SECOND: The location of the principal office in this State is at No. 316 Barclay Street West Hoboken, New Jersey.

THIRD: The name of the statutory agent thereof and in charge thereof upon whom process against this corporation may be served is EWALD SCHMIDT, No. 316 Barclay Street West Hoboken, New Jersey.

FOURTH: The objects for which this corporation is formed are:

(a) To conduct the business of dyeing and finishing silks, silk materials and fabrics of all kinds and descriptions.

(b) To purchase or otherwise acquire all or any part of the business, good will, rights, property and assets of all kinds and assume all or any part of the liabilities of any corporation, association, partnership or person engaged in any business included in the foregoing purposes and objects.

(c) To manufacture, purchase or otherwise acquire and to sell and deal in all kinds of materials, goods, wares and merchandise which may be required for any of the purposes of the company's business or which may seem capable of being profitably used or dealt in in connection with such business.

(d) To purchase, lease or otherwise acquire real and personal property of any and all kinds that may be lawfully acquired by a corporation organized under this State.

*Exhibit "C-14"*

10 (e) To purchase or otherwise acquire leaseholds shares of stock, mortgages, bonds, debentures and other securities, merchandise, book debts and claims, copyrights manuscripts, trade marks, trade names, brands, labels, patents, caveats and patent rights, licenses, grants and any interest in real or personal property in connection with the said business.

(f) To make, execute, endorse, sign and issue promissory notes, bills of exchange, bonds, debentures and other obligations from time to time for the purchase of property or for any purpose in or about the business of the company and to secure the payment of any such obligations by mortgage, pledge, deed of trust or otherwise.

20 (g) To enter into, make, perform and carry out contracts of every sort and kind with any person, firm, association or corporation subject to the provisions of law.

(h) To purchase or otherwise acquire, hold and re-issue the shares of its capital stock.

30 (i) To do all and everything necessary, suitable and proper for the accomplishment of any of the purposes or the attainment of any of the objects or the provisions of any of the powers herebefore set forth either alone or associated with other corporations, firms, or individuals and to do every act or acts, thing or things incidental or pertaining to or growing out of or in connection with the aforesaid business or powers or any part or parts thereof provided the same be not inconsistent with the law under which this corporation is organized.

40 (j) The corporation shall have the power to conduct its business in all of its branches and

*Exhibit "C-14"*

have one or more offices and to hold, purchase, mortgage and convey real and personal property in the State of New Jersey as well as in all other States and in all foreign countries.

FIFTH: The total authorized capital stock of this corporation is Twenty-five Thousand (\$25,000) Dollars divided into 250 shares of the par value of One Hundred Dollars all of which shall be common stock. 10

SIXTH: The names and post office addresses of the incorporators and the number of shares subscribed for by each the aggregate of which subscription being the amount of the capital stock with which the company will commence business are as follows:—

<i>Name</i>	<i>Post Office Address</i>	<i>No. of Shares</i>	20
Henry Danziger	258 Broadway, N. Y. City	10	
George M. Homan	258 Broadway, N. Y. City	10	
Samuel M. Birnbaum	258 Broadway, N. Y. City	10	

SEVENTH: In furtherance and not in limitation of the powers conferred by Statute, the Board of Directors are expressly authorized: 30

(a) To hold their meetings or to have one or more offices and to keep the books of the company within or without the State of New Jersey at such place as may be from time to time designated by them; but the company shall always keep in its principal and registered office in New Jersey the transfer book in which transfers of stock can be made, entered and registered and also the stock 40

Exhibit "C-14".

book containing the names and addresses of the stockholders and the number of shares held by them respectively which said transfer book and stock books shall be at all times during the business hours open to the inspection of the stockholders in person.

10

(b) To determine from time to time whether and if allowed when and under what conditions and regulations accounts and books of the company (other than the stock and transfer books) or any of them shall be open to the inspection of the stockholders and the stockholders' rights in this respect shall be restricted or limited accordingly.

20

(c) To make, alter, amend or rescind the by-laws of this company, to fix the amount to be reserved as working capital, to authorize and cause to be executed mortgages and liens upon the real and personal property of the company, provided always that a majority of the whole board concur therein.

30

(d) With the consent in writing and pursuant also to the affirmative vote of the holders of a majority of the stock issued and outstanding, at a stockholders' meeting duly called for that purpose, to sell, assign, transfer or otherwise dispose of the property of the company as an entirety, provided always that a majority of the whole board concur therein.

40

(e) By a resolution passed by a majority vote of the whole board, under suitable provision of the by-laws to designate two or more of their number to constitute an executive committee, which committee shall for the time being, as provided in said resolution or in the by-laws have and exercise all the powers of the Board of Di-

Exhibit "C-14".

rectors which may be lawfully delegated in the management of the business and affairs of the company and shall have power to authorize the seal of the company to be affixed to all papers when may require it.

(f) By a majority vote to remove any director or officer with or without cause and with or without notice. 10

IN WITNESS WHEREOF we have hereunto set our hands and seals the 17th day of December, 1919.

Henry Danziger (L. S.)  
George M. Homan (L. S.)  
Samuel M. Birnbaum (L. S.)

Signed, sealed and delivered 20  
in the presence of:  
Joseph P. Segal

CITY & STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

BE IT REMEMBERED that on this 17th day of December 1919 before me a Commissioner of Deeds of the City of New York personally appeared HENRY DANZIGER, GEORGE M. HOMAN and SAMUEL M. BIRNBAUM, who I am satisfied are the persons named in and who executed the foregoing certificate and I having first made known to them the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed. 30

Rebecca Arenwald  
Comm. of Deeds, N. Y. City  
Com. Expires April 29, 1921, 40  
County Ct #25

Exhibit "C-14".

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.: No. 26852

10 I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That REBECCA ARENWALD whose name is subscribed to the Certificate of the Proof or Acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such Proof or Acknowledgment, a COMMISSIONER OF DEEDS in and for The City of New York, duly commissioned and sworn, and authorized by the laws of said State to take the Acknowledgments and Proofs of Deeds of Conveyances for Land, Tenements or Hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Commissioner of Deeds, and verily believe that the signature to said Certificate of Proof or Acknowledgment is genuine.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 18 day of Dec. 1919.

30 (Seal) Wm. F. Schneider  
Clerk.

CITY & STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss:

40 BE IT REMEMBERED that on this 17th day of December 1919 before me the subscriber, personally appeared JOSEPH P. SEGAL who, being by me duly sworn, on his oath did depose and say, that he saw HENRY DANZIGER, GEORGE M. HOMAN and SAMUEL M. BIRNBAUM the persons named in the

Exhibit "C-14".

foregoing certificate sign, seal and deliver the same as their voluntary act and deed and that the deponent at the same time subscribed his name thereto as a witness of the execution thereof.

Joseph P. Segal 10

Subscribed and sworn to before me the day and year aforesaid.

Rebecca Arenwald  
Comm. of Deeds, N. Y. City (SEAL)  
County Cl. #25 Comm. Exp. April  
29, 1921

STATE OF NEW YORK, }  
COUNTY OF NEW YORK, } ss.: No. 26851 20

I, WILLIAM F. SCHNEIDER, Clerk of the County of New York, and also Clerk of the Supreme Court for the said County, the same being a Court of Record, DO HEREBY CERTIFY, That REBECCA ARENWALD whose name is subscribed to the Certificate of the Proof or Acknowledgment of the annexed instrument, and thereon written, was, at the time of taking such Proof or Acknowledgment, a COMMISSIONER OF DEEDS in and for The City of New York, duly commissioned and sworn, and authorized by the laws of said State to take the Acknowledgments and Proofs of Deeds of Conveyances for Land, Tenements or Hereditaments in said State of New York. And further, that I am well acquainted with the handwriting of such Commissioner of Deeds, and verily believe that the signature to the said Certificate of Proof or Acknowledgment is genuine.

40

Exhibit "C-14".

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the said Court and County, the 18 day of Dec. 1919.

Wm. F. Schneider  
Clerk.

10

(Seal)

ENDORSED:

"RECEIVED in the Hudson Co., N. J. Clerk's Office Dec. 19 A. D. 1919 and recorded in Clerk's Record, No. on Page .

John J. McGovern  
Clerk."

"FILED AND RECORDED DEC. 20, 1919

THOMAS F. MARTIN

20

SECRETARY OF STATE."

Exhibit "C-15".

First meeting of incorporators of S. & H. DYEING Co. held at the registered office of the corporation No. 316 Barclay Street, West Hoboken, New Jersey.

30

PRESENT:

<i>Names</i>	<i>Number of Shares</i>
HENRY DANZIGER	Ten (10)
GEORGE HOMAN	Ten (10)
SAMUEL M. BIRNBAUM	Ten (10)

being all the incorporators of the corporation.

40

The meeting was organized by electing Samuel M. Birnbaum, Chairman, and Henry Danziger, Secretary.

Exhibit "C-15".

The Secretary presented a written waiver of notice fixing the time and place of this meeting, and on motion duly made, seconded and unanimously carried, it was

ORDERED filed and prefixed to the minutes of this meeting.

10

A certified copy of the certificate of incorporation was presented, and on motion duly made, seconded and unanimously carried, it was

ORDERED prefixed to the minutes of this meeting, and prescribed to the Minute Book of the corporation.

The proposed By-Laws of this corporation were then presented and read section by section, and after discussion the same were by motion duly made, seconded and unanimously carried, duly adopted and ordered prescribed in its record book and prefixed to the records of this meeting.

20

On motion duly made, seconded and unanimously carried, Miss Esther Lee and Miss Dorothy Deysher were appointed inspectors of election.

The Secretary presented the following transfers of subscriptions to take effect when accepted by the company:

30

HENRY DANZIGER	TO HENRY H. FREUND	TEN (10)	SHARES
GEORGE HOMAN	TO HENRY H. FREUND	TEN (10)	SHARES
SAMUEL M. BIRNBAUM	TO HENRY H. FREUND	TEN (10)	SHARES.

Messrs. Herbert Freund, Henry H. Freund and Augustus T. Jarrett were named 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

40

*Exhibit "C-15"*.

presented their certificates showing that the aforesaid gentlemen had been elected directors of the company.

10 Upon motion duly made, seconded and unani-  
mously carried, the transfers of subscription pre-  
sented in this meeting were approved and ac-  
cepted in behalf of the company.

Upon motion duly made, seconded and unani-  
mously carried, the following resolution was  
adopted:

20 RESOLVED, 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 No.  
316 Barclay Street, West Hoboken, New Jersey,  
and that a sign with the company's name thereon  
be conspicuously displayed at the entrance of said  
office.

FURTHER RESOLVED, 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 inspec-  
tion of any stockholder during business hours.

30 The Board of Directors were authorized to  
assess the stock subscribed by the said incor-  
porators 100%, payable as and when called for by  
the Board of Directors.

Upon motion duly made, seconded and unani-  
mously carried, it was

40 RESOLVED that the Board of Directors be and  
they hereby are authorized to issue shares of the  
capital stock of this company to the full amount  
authorized by the certificate of incorporation as  
permitted by law and in their discretion to accept

*Exhibit "C-15"*.

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, seconded and unani-  
mously carried, the following preambles and reso-  
lutions were adopted: 10

WHEREAS, HENRY H. FREUND, of New York City,  
has offered to sell to this company property as  
follows:

All of the plant, machinery, fixtures, equipment,  
supplies, boilers, engines, dynamos, shafting, pul-  
leys, belting, and other motive power; office furni-  
ture and supplies, merchandise and dye stuffs on  
hand, processes and formulas, books of account,  
book accounts, contracts, records and papers, and 20  
generally without reservation all of the property  
purchased by him from EWALD SCHMIDT AND OTTO  
HOFFMAN, a copartnership of West Hoboken, New  
Jersey, used in the business conducted by them,  
known as the S. & H. DYEING Co., and the sum of  
Fifteen thousand (\$15,000) Dollars in cash, in ex-  
change for all of the shares of the capital stock of  
this corporation, to-wit, 250 shares of common  
stock at the par value of \$100. each; and

30 WHEREAS, it appears to the stockholders that  
such property is necessary for the business of this  
company and that the same is of the value of  
\$25,000;

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 said price and to issue said  
stock in payment thereof, upon receipt by the cor-  
poration of proper itemized bill of sale of the 40  
property required to be conveyed, and such trans-

*Exhibit "C-15"*

fer to be examined and approved by the counsel for the company, and said stock to be issued as directed by the said Henry H. Freund.

There being no further business, the meeting was, on motion duly made and seconded, duly adjourned.

10

SAMUEL M. BIRNBAUM,  
Chairman.

HENRY DANZIGER,  
Secretary.

The undersigned, for good and valuable considerations received, have sold, assigned, transferred and set over and by these presents do sell, assign, transfer and set over unto HENRY H. FREUND, the right, title and interest of the undersigned, as subscribers to and incorporators of S. & H. DYEING Co., to the extent of ten shares of each of the capital stock thereof, and hereby severally request and direct the said company to issue the certificates for said shares to the aforesaid transferee, or his nominees or assigns.

20

This transfer to take effect upon the acceptance thereof by the company, the undersigned meanwhile retaining the right to vote upon said shares.

30

Dated New York, December 23rd, 1919.

SAMUEL M. BIRNBAUM (LS)  
GEORGE M. HOMAN (LS)  
HENRY DANZIGER (LS)

WITNESS:

40

*Exhibit "C-15"*

Minutes of first meeting of Board of Directors of S. & H. DYEING Co., held at No. 1 Madison Avenue, New York City, on the 23rd day of December, 1919, at 4:30 o'clock in the afternoon.

10

PRESENT:

HERBERT FREUND  
HENRY H. FREUND  
AGUSTUS T. JARRETT

being all the directors of the above named corporation.

Mr. Herbert Freund was chosen temporary chairman and Mr. Henry H. Freund was appointed Secretary of the meeting.

20

The Secretary presented a written waiver of notice of the meeting, signed by all of the directors, and the same was ordered filed and prefixed to the minutes of this meeting.

The minutes of the first meeting of incorporators was read and approved.

The following gentlemen were duly elected officers of the company to serve for one year, and until their successors are elected and qualified.

HENRY H. FREUND	PRESIDENT	30
HERBERT T. FREUND	SECRETARY	
AGUSTUS T. JARRETT	VICE PRESIDENT AND TREASURER.	

The President thereupon took the chair.

It was ordered that the Secretary take the oath of office as prescribed by law.

The Secretary thereupon took and subscribed the oath and entered upon the discharge of his duties.

40

*Exhibit "C-15"*.

Upon motion duly made, seconded and unani-  
mously carried, 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. [SEAL]

10 On motion duly made, seconded and unani-  
mously carried, it was

RESOLVED, that the President and Secretary be  
and they hereby are authorized to issue certifi-  
cates of stock in the form submitted to this meet-  
ing.

20 FURTHER 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 send the same to the registered office  
to be kept there as required by law.

On motion duly made, seconded and unani-  
mously carried, it was

30 RESOLVED, that the Treasurer of this corpora-  
tion A. (AGUSTUS) T. JARRETT, Treasurer, hereby  
is authorized to open a bank account in the name  
of this corporation with the TRUST COMPANY OF  
NEW JERSEY, UNION HILL BRANCH, Town of Union,  
New Jersey, and deposit therein such funds of the  
corporation as come into his custody; and that  
until otherwise directed the said bank is author-  
ized to pay out the said funds upon the checks of  
the corporation signed in its name by A. (Agus-  
tus) T. Jarrett, Treasurer and countersigned by  
H. (HENRY) H. FREUND, President.

40 Upon motion duly made, seconded and unani-  
mously carried, it was

*Exhibit "C-15"*.

RESOLVED that an office of the company be estab-  
lished and maintained at No. 1 Madison Avenue,  
in the City of New York, State of New York, 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  
New York, or elsewhere, as the Board of Direc-  
tors shall from time to time order.

10 On motion duly made, seconded and unani-  
mously carried, Henry H. Freund not voting, it  
was

20 RESOLVED that this company accept the offer of  
Henry H. Freund to sell to this company the prop-  
erty described in his offer as set forth in the min-  
utes of the first meeting of incorporators of this  
corporation; and the board of directors do hereby  
adjudge and declare that said property is of the  
fair value of \$25,000., and that the same is neces-  
sary for the business of this company.

30 And it is FURTHER RESOLVED and this Board of  
Directors does hereby confirm and accept the  
terms of the said proposal as in the offer and in  
the minutes of said incorporators' meeting set  
forth, and the same are hereby approved; and the  
President and Secretary of the company are  
hereby authorized and directed to receive proper  
Bills of Sale of the property to be conveyed as in  
said offer set forth, and submit the same to coun-  
sel for the corporation, and after counsel has  
passed the same to issue certificates, of the full  
paid capital stock of this company to the aggre-  
gate amount of \$25,000. as provided in said offer,  
all common stock, and that the same shall be  
issued to the said Henry H. Freund or to his  
nominees as directed by him.

Exhibit "C-15".

Upon motion duly made, seconded and unani-  
mously carried, it was

10 RESOLVED, that an assessment of 100% be levied  
upon the shares of stock subscribed by the incor-  
porators as evidenced by the certificate of incor-  
poration, and that payment of said subscriptions  
and assessments be deemed to be made by the  
property agreed to be sold to the company as set  
forth in the preceding resolution, it having been  
agreed between the vendor and the incorporators  
that the stock to be issued to the vendor, or his  
nominees, under said agreement, should include  
the stock subscribed by the incorporators.

On motion duly made, seconded and unani-  
mously carried, it was

20 RESOLVED that the Secretary prepare, have exe-  
cuted by the proper officers and cause to be filed  
in the office of the Secretary of State of New Jer-  
sey, a report of officers, directors, etc., required  
by Section 43 as amended, of "An Act Concern-  
ing Corporations (Revision of 1896)", of New  
Jersey.

There being no further business before the  
meeting, on motion duly made, the meeting was  
adjourned.

30 H. H. FREUND, Chairman.

HERBERT FREUND,  
Secretary.

Exhibit "C-16".

SCHEDULE B.

Plants (including all machinery and equipment)  
referred to in paragraph 2 of the fore-  
going agreement 10

Place	Owner	
Mill A, Allentown, Pa.	Leasehold	
Mill B, " "	D. G. Dery, individ.	
Mill C, " "	D. G. Dery, "	
Mill D, " "	D. G. Dery, "	
Mill E, " "	D. G. Dery, "	
Mill F, " "	D. G. Dery, "	
Machine		
Shop " "	Leasehold	20
Garage " "	Leasehold	
Catasauqua	D. G. Dery, individ.	
East Mauch Chunk	D. G. Dery, "	
Emaus	D. G. Dery, "	
Forest City	D. G. Dery, "	
Green Lane	D. G. Dery, Inc. (Pa.)	
Hamburg	Leasehold	
Kutztown	{ Plot containing mill, D. G. Dery, individ.	
	{ Vacant plot, D. G. Dery, Inc. (Pa.)	30
Souderton	{ D. G. Dery, individ. or D. G. Dery, Inc. (Pa.)	
South Bethlehem	" Leasehold	
Wind Gap	" D. G. Dery, Inc. (Pa.)	
Mill A, York,	" D. G. Dery, individ.	
Mill B, York,	" D. G. Dery, "	
Diamond Mill, York,	" D. G. Dery, Inc. (Pa.)	
Hornell Mill, N. Y.	D. G. Dery, individ.	
Taunton, Mass.	Taunton River Mills	
Reading, Pa.	D. G. Dery, individ.	40
Nanticoke, Pa.	D. G. Dery, "	

Exhibit "C-16".

<i>Place</i>	<i>Owner</i>
	{ Mill plot, D. G. Dery, Inc. (Pa.)
Swoyersville, Pa.	{ Vacant plot, D. G. Dery, individ. or D. G. Dery, Inc. (Pa.)
10 Scranton, Pa.	
Renard Mill	D. G. Dery, individ.
Providence	D. G. Dery, "
South Side	Leasehold
Olyphant Mill, Pa.	D. G. Dery, individ.
" Warehouse, Pa.	D. G. Dery, "
E. Stroudsburg, Pa.	D. G. Dery, "
Charlottesville, Va.	D. G. Dery, "
Norfolk, Va.	D. G. Dery, "
20 Paterson, N. J.	Leasehold
Cedar Cliff Mills	
Binghamton, N. Y.	{ Title in Cedar Cliff Silk plant Co.
Paterson, N. J. plant	
Lancaster, Pa.	Leasehold
Marietta, Pa.	D. G. Dery, individ.
	{ Parcels 1, 2 & 3, D. G. Dery individ.
Northampton, Pa.	{ Parcel 4, D. G. Dery, Inc. (Pa.)
30	
40	

Exhibit "D-1".

COPY.

ALLIANCE-HOLT DYE WORKS, INC.  
Piece Dyers and Finishers  
All Silk and Silk Mixed Goods

Plants 10  
Rutherford, New Jersey  
Phillipsburg, New Jersey

Main Office	New York Office
8-28 Feronia Way	One Madison Avenue
Rutherford, N. J.	Telephone Gramercy 902
Telephone Ruther- ford 934	

New York, December 3rd, 1920.

Mr. H. H. Freund,  
The S. & H. Dyeing Co.,  
West New York, N. J.

Dear Sir:—

In going over the figures of outstanding accounts and bills to be paid, we find that our obligations amount to about—\$30,000.—against accounts receivable amounting to—

\$19,250.—

30

of which a certain percentage is doubtful on account of the poor financial condition of the customer.

You can readily see that there is something radically wrong at the mill, as we stated in our letter of yesterday. There is a lack of production. During the past month, 18,000 yards had to be returned to the dye house mostly on account of dyeing defects, and a very small percentage on account of finishing defects. This yardage represents about

40

*Exhibit "D-1"*.

25% of the production of this mill, and we do not think it necessary to make any further remarks in this matter.

10 From reports submitted by the mill we understand that the dyer is exceedingly slow and stubborn, which will not help to improve the situation any.

As stated to you over the 'phone, we have again endless complaints on merchandise turned out in Phillipsburg, and it appears that the trouble lies in the dye house. The whole procedure in that part of the mill is so simple that there is absolutely no excuse for these continuous complaints, and if one man is not fit to do the right thing, we must get a man who will do as he is told.

20 We kindly ask you to give this matter your attention as we shall bring same up at to-morrow's meeting.

Yours very truly,

Alliance-Holt Dye Works, Inc.

B.

HF/2.

30

40

**Exhibit "D-2"**.

COPY.

December 8th, 1920

Alliance-Holt Dye Works, Inc., 10  
381 Fourth Avenue,  
New York City.

*Attention Mr. H. Fischer.*

Gentlemen:

On December 2nd I have placed an order with the Holbrook Mfg. Company for ten cases of Soap, this Soap has not yet arrived in Phillipsburg. I was informed that they only have two hundred (200) pounds in stock and Mr. Struppler received word from the Holbrook Mfg. Company that they probably will make shipment tomorrow, but at the same time they reminded him of the over-due bills. and 20

I presume the Holbrook Mfg. Company will make shipment but as a matter of precaution I desire to call your attention to the fact that next week Rutherford will want more Soap and I feel that Holbrook would not want to fill the order except payment is made. I can get Soap from Philadelphia under the same guarantee but the price is four and one-half cents higher. 30

I did everything in my power and as the Holbrook Mfg. Company extended credit solely upon my recommendation I cannot do any more in this matter.

Very truly yours,

HHF :MN

40

## Exhibit "D-3".

COPY.

ALLIANCE-HOLT DYE WORKS, INC.  
 Piece Dyers and Finishers  
 All Silk and Silk Mixed Goods

10

Plants  
 Rutherford, New Jersey  
 Phillipsburg, New Jersey.

Main Office

8-28 Feronia Way

Rutherford, N.J.

Telephone Rutherford  
934

New York Office

One Madison Avenue

Telephone Gramercy 902

New York, December 3rd, 1920.

20

Mr. H. O. Strupler,  
 Alliance-Holt Dye Works, Inc.,  
 Rutherford, N. J.

Dear Sir:—

We received to-day a statement from our office of the outstanding accounts and bills to be paid. The total amount of our obligations is—\$29,815.47.

We have turned out during the month of November, merchandise amounting to the following figures:—

	<i>Rutherford</i>	<i>Phillipsburg</i>
outstanding account	\$6021.65	\$7578.74
from previous months	\$2200.—	\$3500.—

Above figures show that we are unable to meet our obligations, and we cannot tell at the present time what will happen if our creditors push us for payments.

40

## Exhibit "D-3".

We do not want at the present time to open up the matter again as to why the company's finances are to-day in such bad condition, but we feel that we should call your attention to the matter. We have always been under the impression that you think that there was no limit to the resources, and material has been bought left and right without giving the matter of payment any thought.

10

We kindly ask you to study the matter very carefully and advise us as to what you can do to improve the situation.

Yours very truly,

Alliance-Holt Dye Works, Inc.

B

HF/2.

20

## COURT OF CHANCERY OF NEW JERSEY

JOHN GRIFFIN

Vice Chancellor

921 Bergen Ave., Jersey City, N. J.

Messrs. McDermott, Enright & Carpenter, 75  
 Montgomery St., City.

30

Messrs. Lichtenstein, Schwartz & Friedenber,  
 Hoboken, N. J.

Gentlemen:

I have carefully examined the testimony in this case. It seems that one, Dery, owning a great number of mills, individually, and a controlling interest in a large number of corporations, entered into a contract with Freund, on November 21st, 1919, whereby he employed Freund as super-

40

*Exhibit "D-3"*.

10 vising chemical engineer for a period of three years. Dery organized the Alliance Holt Dye Works, and owned all of its capital stock. Freund entered into the service of the Alliance Holt Dye Works and apparently rendered services for three years, during which time, as I understand it, he never asked for nor received any compensation. Dery was indebted to The Textile Banking Corporation and The New York Trust Company, and made an assignment of all of the shares of the complainant, as well as shares of other companies, as collateral to secure his indebtedness, subject to a prior assignment to The New York Trust Company. After Dery went into bankruptcy, The New York Trust Company, under the power contained in its stock notes, sold at public auction 20 the five thousand shares, common and preferred, of the complainant (being all of its capital stock) to James D. Hopkins, who bought in the same for The Textile Banking Company. At the time that Hopkins bought, The Textile Banking Company was unaware of any claim of Freund. After said purchase, Freund began suit in the Supreme Court for \$50,000, with interest from the 16th of May, 1923, and other moneys. The suit seems to be based upon a *quantum meruit*. The defendant 30 filed its answer, and the cause was at issue when the bill was filed and the injunction issued staying the suit at law.

The case presented, it seems to me, is not one of equity cognizance. Every defense and every claim here asserted, may be set up as fully in the court of law as in this court.

I will advise a decree dismissing the bill.

40 The foregoing memorandum, being merely for the guidance of counsel in ascertaining the views of the Court, is not to be printed, published nor

*Exhibit "D-3"*.

filed; if an appeal is taken, however, counsel will notify me of that fact in writing, whereupon I will prepare and file a formal opinion.

Yours truly,

JOHN GRIFFIN.

10

## COURT OF CHANCERY OF NEW JERSEY

51 Newark St., Hoboken, N. J.,  
Jan. 12, 1928.

Chambers of  
VICE CHANCELLOR JOHN J. FALLON.  
Jersey City, N. J.

*Alliance Holt Dye Wks. v. Freund.*

20

Messrs. McDermott, Enright & Carpenter, 75  
Montgomery St., Jersey City.

Messrs. Lichtenstein, Schwartz & Friedenbergl,  
51 Newark St., Hoboken.

Gentlemen:

In looking over the files of the cases undisposed of by the late Vice-Chancellor Griffin, which have been re-referred to me for my consideration, I find in the file relating to the above-entitled cause a letter signed by Vice-Chancellor Griffin, addressed to counsel above named, which was manifestly intended as his determination of said matter. The concluding part of said letter reads as follows:

30

40 "The case presented, it seems to me, is not one of equity cognizance. Every defense and every claim here asserted may be set up as

Exhibit "D-3".

fully in the court of law as in this court. I will advise a decree dismissing the bill."

I am forwarding said letter to you, enclosed herewith.

10 In view thereof, I do not consider that I should give any further consideration to said matter.

I request counsel to present to me, on Monday next, a form of decree to effect the dismissal of the bill of complaint in the above entitled cause.

20 I am returning herewith to the solicitors of the complainant complainant's exhibits C-1-A, C-1 (which apparently should be C-2), C-3, C-4, C-5, C-6, C-7, C-8, C-9, C-10, C-11, C-12, and an additional Exhibit C-12 Dery-Freund Agreement, C-13, C-14, C-16. Exhibit C-15, which I judge from a memorandum I find in the files, relates to organization minutes, is not contained in the file.

I am returning herewith to the solicitor of the defendant his exhibits D-1, D-2 and D-3.

Yours truly,

JNO. J. FALLON.

B

30

40

Final Decree.

(Filed Jan. 23, 1928.)

IN CHANCERY OF NEW JERSEY.

Between

ALLIANCE HOLT DYE WORKS, INC.,  
a body corporate, and TEXTILE  
BANKING COMPANY, INC., a  
banking corporation,  
Complainants,

and

HENRY H. FREUND,  
Defendant.

On Bill, &c.  
FINAL DECREE.

10

20 This cause coming on to be heard in the presence of McDermott, Enright & Carpenter, Esqs., solicitors for and of counsel with complainants, and Lichtenstein, Schwartz & Friedenberg, Esqs., solicitors for and of counsel with the defendant, and the pleadings and proofs having been read, and the arguments of the respective counsel having been heard and considered, and the court having duly considered the said pleadings, proofs and arguments, and it appearing to the court that the complainants are not entitled to the relief sought and prayed for by them in their bill of complaint:

20

30

IT IS, on this 23rd day of January, 1928, ORDERED, ADJUDGED AND DECREED that the complainants' bill be and the same is hereby dismissed, with costs.

And it is further ORDERED and DECREED that the complainants pay to defendant the costs of this suit to be taxed, including a counsel fee of seven hundred dollars (\$700.00), and that execution issue therefor according to the practice of this court.

40

Respectfully advised,

JOHN J. FALLON, V. C.

**Notice of Appeal.**

(Filed Jan. 31, 1928.)

IN CHANCERY OF NEW JERSEY.

10

*Between*

ALLIANCE HOLT DYE WORKS, INC.,  
and TEXTILE BANKING COM-  
PANY, INC.,

Complainants,

*and*

HENRY H. FREUND,  
Defendant.

On Bill, &c.  
Docket 56-476

NOTICE OF  
APPEAL.

20

Sat below: John J. Fallon, V. C.

The complainants Alliance Holt Dye Works, Inc., and Textile Banking Company, Inc., each being a body corporate, hereby appeal from the Final Decree of the Chancellor advised by Vice Chancellor John J. Fallon in the above entitled cause, on January 23, 1928, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

30

Dated January 24, 1928.

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of counsel  
with Complainants.

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

40

JOHN M. ENRIGHT,  
Of counsel with Complainants.

**Petition of Appeal.**

(Filed Jan. 31, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

10

*Between*

ALLIANCE HOLT DYE WORKS, INC.,  
and TEXTILE BANKING COM-  
PANY, INC.,

Complainants-Appellants,

*and*

HENRY H. FREUND,  
Defendant-Respondent.

On Bill, &c.  
On Appeal  
from  
Chancery.

PETITION OF  
APPEAL.

20

The petition of Alliance Holt Dye Works, Inc., a body corporate, and Textile Banking Company, Inc., a body corporate, respectfully shows that your petitioners find themselves aggrieved by a Final Decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by Vice Chancellor John J. Fallon, on the 23rd day of January, 1928, in that said Decree orders and adjudges that complainants' bill be dismissed with costs, and further adjudges and decrees that the complainants pay to the defendant the costs of said suit to be taxed, including a counsel fee of \$700., and that execution issue therefor.

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And your petitioners appeal from the said Decree and from every part thereof on the ground that no such Decree should have been entered and that it should, on the contrary, have been adjudged and decreed that the complainants have relief

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*Petition of Appeal.*

against the defendant as prayed for in their bill of complaint.

Your petitioners, therefore, pray that the said Decree may be reversed, set aside and for nothing holden and that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

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McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of counsel  
with Appellants.

JOHN M. ENRIGHT,  
Of Counsel.

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**Answer to Petition of Appeal.**

(Filed \_\_\_\_\_, 1928.)

NEW JERSEY COURT OF ERRORS  
AND APPEALS.

*Between*

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ALLIANCE HOLT DYE WORKS, INC.,  
and TEXTILE BANKING COM-  
PANY, INC.,  
Complainants-Appellants,

*and*

HENRY H. FREUND,  
Defendant-Respondent.

On Bill, &c.  
On Appeal  
from  
Chancery.

ANSWER TO  
PETITION OF  
APPEAL.

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The answer of the above-named defendant-respondent to the petition of appeal of the above-named complainants-appellants.

*Answer to Petition of Appeal.*

This respondent not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a final decree was made and entered in the Court of Chancery having been advised by Vice Chancellor John J. Fallon on the 23rd day of January, 1928, in the cause for that purpose mentioned in that petition as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto that the same shall be produced. And this respondent is advised and believes that the said decree is agreeable to equity; and he prays that the same be affirmed with costs to be assessed to this respondent.

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LICHTENSTEIN, SCHWARTZ & FRIEDENBERG.  
Solicitors for Respondent.

JULIUS LICHTENSTEIN,  
Of Counsel.

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**New Jersey Court of Errors and Appeals**

*Between*

ALLIANCE-HOLT DYE WORKS, INC.,  
and TEXTILE BANKING COMPANY,  
INC.,

Complainants-Appellants,

*and*

HENRY H. FREUND,  
Defendant-Respondent.

On Bill, &c.  
**ON APPEAL  
FROM  
CHANCERY.**

**BRIEF FOR APPELLANTS.**

**Statement of the Case.**

This appeal brings up a Final Decree of the Court of Chancery dismissing a bill praying a restraint against the prosecution of an action at law.

The case was heard by Vice Chancellor Griffin, but remained undecided at the time of his death and was then referred to Vice Chancellor Fallon, who found an undelivered memorandum letter among the papers of Vice Chancellor Griffin addressed to counsel, stating his conclusions.

Vice Chancellor Fallon adopted this letter and advised the Final Decree in conformity therewith.

The complainants in the equity suit are Alliance-Holt Dye Works, Inc., a New Jersey corporation, and Textile Banking Company, Inc., a New York corporation, owning the entire capital stock of the Alliance-Holt Dye Works, Inc., holding as successor to one D. G. Dery.

The suit at law against which restraint is sought is brought in the New Jersey Supreme Court, Hudson County, by Henry H. Freund as plaintiff against the Alliance-Holt Dye Works, Inc., defendant.

The complaint at law, a copy of which is attached to the complaint in equity, sets forth the action against which restraint is sought in slightly differing language in the first and the third counts.

There is a further cause of action set forth in the second and fourth counts, not involved, however, in the equity suit.

In the first count, plaintiff Freund alleges:

That defendant Alliance-Holt Dye Works, Inc., on September 17, 1920, employed plaintiff to "take full charge of the management of its said dye works in such manner as he deemed necessary and advisable and for the best interests of the business of defendant; to hire and discharge help; to create an organization such as in his opinion would be suitable for the proper conduct of its said business; to purchase materials and supplies for said business; to use his best endeavors to work up the business of the Company, and endeavor to create a reputation for its product, and to exert himself in the interest of the business of said Company in such manner as he deemed necessary in order that his said work and efforts might enure to the benefit and advantage of said Company";

that the Company for such services "agreed to pay plaintiff proper and reasonable compensation therefor";

that plaintiff, pursuant to said agreement, "entered the employ of the defendant on or about the 17th day of September, 1920, and continued in such employ until the 16th day of May, 1923, when his services being no longer required or necessary, defendant requested him to resign."

Plaintiff then alleges, generally, a refusal by the Company to carry out its promise and agreement, and alleges \$50,000. as the proper and reasonable compensation for his services and demands judgment for such amount.

The third count of the complaint alleges that plaintiff Freund rendered services to the defendant Alliance-Holt Dye Works, Inc., at its request, between the 17th day of September, 1920, and the 16th day of May, 1923, as General Manager of its Dye Works at Rutherford and Phillipsburg, New Jersey; that the defendant undertook and promised to pay the plaintiff reasonable compensation therefor and that such reasonable compensation is \$50,000., for which amount judgment is demanded.

On the final hearing on the injunction bill, defendant Freund did not offer any testimony.

The evidence produced by complainants (which is uncontroverted) may be summarized as follows:

In the year 1919, and for some time prior thereto, one D. G. Dery was extensively engaged in various phases of the silk industry, other than dyeing, and controlled and operated some forty-three weaving and throwing mills (p. 59, line 15).

The manufacturing operations were mostly carried on by a corporation known as D. G. Dery, Inc. (p. 56).

In some instances, however, Mr. Dery acquired plants through the purchase of their capital stock and continued manufacturing operations under the old corporate form (p. 61).

This applies specifically to the business of the Cedar Cliff Silk Company.

The output of the various manufacturing plants was sold by Mr. Dery as an individual through a selling organization located in New York City doing business under the name of D. G. Dery (pp. 56, 61).

D. G. Dery invidually owned all of the capital stock of D. G. Dery, Inc. (p. 111, line 25).

All of the capital stock of Cedar Cliff Silk Company was owned either by D. G. Dery or D. G. Dery, Inc. (p. 112, line 15).

The ownership of some of the manufacturing plants was in D. G. Dery invidually and some were owned by D. G. Dery, Inc., and by Cedar Cliff Silk Company (p. 112; also Ex. C-16, p. 161).

Prior to 1919, neither Mr. Dery invidually nor any of his corporations was engaged in any way in the dyeing business (p. 62).

The product of his enterprises was sold either in the grey (undyed) or was dyed by independent custom dyers (p. 62).

About 60% of his product was sold in the grey or raw state and 40% as dyed goods (p. 63).

One of the custom dyeing plants patronized by Mr. Dery was the Alliance Dye Works (p. 63).

In 1919, Mr. Dery determined to add the department of silk dyeing to his enterprise, and in separate transactions acquired the plant and supplies of James Holt Piece Dye Works, situate at Phillipsburg, New Jersey, and the plant and supplies of the Alliance Dye Works then in the process of moving from Paterson into a new plant nearing completion at Rutherford, New Jersey (pp. 63, 64, 65).

A new corporation was organized for the purpose of taking over these dye plants, being the complainant herein Alliance-Holt Dye Works, Inc., and the plants and assets acquired from the old Alliance and Holt Companies were transferred to the new Alliance-Holt Dye Works, Inc., in consideration of the issue of its capital stock.

The new corporation Alliance-Holt Dye Works, Inc., was incorporated by certificate dated December 17, 1919, filed in the Office of the Secretary of State on December 19, 1919 (Ex. C-1a, p. 114),

and the plants were taken over and the corporation organized for business on the latter date (Ex. C-13, p. 143).

These plants were apparently acquired in the name of Alfred Sohland, who was employed by Mr. Dery for such purposes (p. 68, line 20), and were conveyed by him to the new corporation in consideration of the issue of the entire authorized capital stock amounting to 2,500 shares of preferred stock and 2,500 shares of common stock of the par value of \$100. each, to him or his nominees (Ex. C-13, p. 143).

Certificates for the entire capital stock, excepting directors' qualifying shares, were actually issued to D. G. Dery as appears by the stock books, Exhibits C-6 and C-7.

Coincident with the incorporation of the Alliance-Holt Dye Works, Inc., another corporation was organized by Mr. Dery's representatives under the name of S. & H. Dyeing Company, Inc. (Ex. C-14, p. 144).

This was a small corporation having an authorized capital stock of \$25,000., organized to take over a dye plant acquired from Ewald Schmidt and Otto Hoffman, copartners trading as S. & H. Dyeing Company.

The defendant herein Henry H. Freund appears to have figured in the organization of the S. & H. Dyeing Company in much the same way that Mr. Sohland figured in the organization of the Alliance-Holt Dye Works, Inc. (See Ex. C-15, p. 152.)

Shortly prior to the organization of these two corporations, the defendant herein Henry H. Freund entered into a written employment contract with D. G. Dery, accepted November 26, 1919, being Exhibit C-12 (printed as Ex. A attached to the bill of complaint, p. 10).

This is in the form of a letter addressed by D. G. Dery to Henry H. Freund, to which Mr. Freund subscribed his name as "accepted".

This agreement states:

"I agree to employ you, and you agree to enter into my employ as supervising chemical engineer for a period of three years. . . .

It is understood that you are not to be required to devote your entire time and attention to my business, but give and devote such time and attention as may be necessary for the successful operation of the dye-house under your management. You may engage in any other business during the said period of employment, but shall not engage in the dyeing of silks, nor counsel, advise or influence anyone, directly or indirectly, on any matters relating to this industry.

I agree to pay you for your services, upon the signing of this contract, the sum of \$3,500. as a retainer; also \$10,000. per annum in equal monthly installments at the end of each month, beginning January 1st, 1920, also ten cents for each pound of silk dyed fast under your direction, payable at the end of each month, and only during the life of this agreement, the basis of compensation to be the weight of the raw silk as received in the dyeing plant. . . .

This agreement is to run for a period of three years, commencing on the day of its execution, and is renewable thereafter from year to year, unless either party to this agreement gives notice in writing on or before the 1st day of August, 1922, or of any year thereafter."

Mr. Freund in his answer admits the making of this employment contract and admits that he entered upon his duties thereunder and continued his employment thereunder for the period of three years and upwards.

At first, Mr. Freund seems to have been chiefly occupied with the affairs of the S. & H. Dyeing Company, but sometime in the Fall of 1920, he became active in the affairs of the Alliance-Holt Dye Works, Inc.

The latter corporation was then under the general management of Hans Fischer, who was Secretary of the corporation under the direction of Eric Muelberger, his superior officer (p. 70).

The operations of the Alliance-Holt Dye Works were unsatisfactory and Mr. Fischer suggested to his superior, Mr. Muelberger, that Mr. Freund's services be used in testing the ingredients used by the Company.

As a result, there was a meeting between Mr. Fischer, Mr. Muelberger and Mr. Freund, in which Mr. Muelberger stated that Mr. Fischer's suggestion that Mr. Freund be used in the Alliance-Holt business, had been referred to Mr. Sohland, who had approved of the suggestion, and that Mr. Dery had also given his O. K., and that "from now on, he would be in charge of the purchasing of any material required for the converting in the two plants" (p. 73).

Mr. Freund thereafter continued quite active in the affairs of the Alliance-Holt Dye Works, Inc., particularly in the purchase and testing of chemicals.

At the following annual meeting of stockholders, held December 29, 1920, he was elected director, the other directors being Eric Muelberger, Alfred Sohland, Hans Fischer and Henry Danziger, and the minutes show Mr. Danziger voted as proxy for D. George Dery holding 2,495 shares of common stock and 2,500 shares of preferred stock (Ex. C-8, p. 136).

At the following directors' meeting, held January 12, 1921, the officers elected for the ensuing year were: President, Eric Muelberger; Vice-President, H. H. Freund; Treasurer, Alfred Sohland; Secretary, Hans Fischer (Ex. C-9, p. 137).

At the annual meeting of stockholders the following year, held December 31, 1921, Mr. Freund was likewise elected a director (Ex. C-10, p. 139),

and at the following organization meeting of the directors, Mr. Muelberger was again elected President; Mr. Freund, Vice-President; and Mr. Fischer, Secretary (Ex. C-11, p. 140).

Mr. Freund resigned as director and officer in December, 1922, but claims to have continued to render services until May 16, 1923.

Mr. Dery was never an officer or director of the Alliance-Holt Dye Works, Inc., leaving the control thereof in the hands of his subordinates, Muelberger and Fischer.

Mr. Freund undoubtedly rendered services in connection with the business of the Alliance-Holt Dye Works at the direction of Muelberger and Fischer, who were officers of that corporation.

Mr. Freund never rendered any services for Mr. Dery individually or for the part of the business which was carried on under Mr. Dery's individual name (p. 76, 77).

The only services of any kind rendered by Mr. Freund were those rendered for the three corporations, S. & H. Dyeing Company, D. G. Dery, Inc., and Alliance-Holt Dye Works, Inc. (p. 77).

On July 30, 1920, D. G. Dery negotiated a loan with the Liberty National Bank of New York and in connection therewith pledged to the Bank as security for this loan, as well as his other indebtedness to the Bank, various stock certificates, including certificates for 2,500 shares of common and 2,500 shares of preferred stock of the Alliance-Holt Dye Works, Inc., being the entire capital stock thereof, including directors' shares.

The loans secured by this pledge aggregated \$400,000., and the pledge expressly covered all renewals and replacements thereof, as well as future indebtedness, with the usual power of sale on default (Ex. C-2, p. 123).

The Liberty National Bank thereafter merged into New York Trust Company which succeeded to the loans and collateral.

On January 15, 1923, D. G. Dery borrowed additional moneys from the complainant herein, Textile Banking Company, Inc., amounting to \$265,000 (p. 31), and as collateral therefor assigned to Textile Banking Company, Inc., his equity in the collateral then held by the New York Trust Company (Ex. C-4, p. 129).

Thereafter Mr. Dery defaulted on his indebtedness to the New York Trust Company and the Textile Banking Company, Inc., and the former offered for sale the collateral held by it, including the aforesaid shares of the Alliance-Holt Dye Works, Inc., and the same were purchased by the Textile Banking Company, Inc., for the protection of its secondary lien thereon, for the amount due the New York Trust Company amounting to \$187,898.43.

The purchase was actually made by the attorney for the Textile Banking Company, Inc., to whom the stock certificates were delivered, but title was taken in the name of James D. Hopkins, who was one of the officers of the Banking Company (Ex. C-3, p. 127).

Thereafter the shares were carried for a time by the Dye Works Securities Corporation, which was a subsidiary of the Textile Banking Company, Inc., but were finally transferred of record to the latter (Ex. C-5, p. 132).

The Textile Banking Company, Inc., however, at all times has been the actual owner thereof, having taken the same over at the time of the sale by the New York Trust Company (p. 42, line 20).

On March 26, 1923, D. G. Dery, Inc., went into receivership, and in April, 1923, D. G. Dery individually was petitioned into bankruptcy.

### Argument.

From the foregoing it appears:

Mr. Freund undoubtedly rendered services to the defendant at law, Alliance-Holt Dye Works, Inc.

Such services were rendered at the request and under the direction of the managing officers of the defendant corporation, thus *prima facie* raising an implied contract to pay therefor the reasonable value thereof.

At the time of such employment and the rendition of such services, however, Mr. Freund was in the regular employ of D. G. Dery as supervising chemical engineer, for a three-year term.

Though not required to "devote your (his) entire time and attention to my business," he was required to give and devote such time and attention as necessary for the successful operation of the dye house under his management.

He was privileged under this contract to engage in any other business during the said period of employment, "but shall not engage in the dyeing of silks, nor counsel, advise or influence anyone, directly or indirectly, on any matters relating to this industry."

For these services he received a retaining fee of \$3,500, and a salary of \$10,000 per year, and an additional payment of ten cents for each pound of silk dyed fast under his direction.

Mr. Dery did not at any time carry on the dyeing business or any other manufacturing business individually, but did carry on such activities through the instrumentality of various corporations of which he owned the capital stock.

It, therefore, seems impossible to believe that both Dery and Freund when they entered into this employment contract, did not intend that it

should apply to all the enterprises in which Mr. Dery had need of a chemical engineer, regardless of the corporate form in which they were carried on, particularly in view of the fact that Mr. Dery in his individual capacity, apart from his corporate interests, had no work whatever for a chemical engineer.

Plaintiff in the action at law is proceeding upon the theory that the Alliance-Holt Dye Works, Inc., is a separate corporate entity which entered into a contract with him, through its officers, and that the corporate entity cannot take advantage of the right which Mr. Dery had to claim that he personally was entitled to the services and had paid therefor.

It is further to be observed that if the Alliance-Holt Dye Works, Inc., is to be considered as a corporate entity wholly distinct in law from Mr. Dery, that Mr. Freund had no right under his contract with Mr. Dery to render the services in question to the Alliance-Holt Dye Works, Inc., because such services violated the covenant of the contract that Freund should not otherwise "engage in the dyeing of silks, nor counsel, advise or influence anyone, directly or indirectly, on any matters relating to this industry."

In the latter aspect, Dery would have had the right while the prohibited services were being rendered, to restrain the same, and, after rendition of the prohibited services, would have the right to compel Mr. Freund to account for the amount realized by him from such violation of his contract.

Mr. Dery, however, has passed out of the picture.

Before the making of the alleged contract between Freund and the Alliance-Holt, Mr. Dery had pledged the entire capital stock of Alliance-Holt to his Bank, and this banker's lien continued

throughout the period of Mr. Freund's employment.

Upon the foreclosure of that lien every right of pledgor and pledgee with respect to the pledged security passed to the purchaser.

By such purchase, the Textile Banking Company, Inc., paid the debt of D. G. Dery to the New York Trust Company, and became subrogated to every right of Mr. Dery as owner, and the New York Trust Company as pledgee of the stock.

Certainly Mr. Dery under the circumstances would have been entitled to stay a recovery against his corporation which would have depleted the assets which belonged to him as a stockholder.

However, the sole defendant to the action at law is the corporation which undoubtedly received services rendered at its request, for which it has not paid.

The defenses against a recovery therefor, are personal to Mr. Dery as the owner of the capital stock and to his successor in interest.

Although the plaintiff may have a legal cause of action against the corporation for the services rendered, it offends against the principles of equity that he should be permitted to assert the same at the expense of the stockholder of the corporation, who was entitled to such services under a personal contract.

Against such a result the intervention of a court of equity is necessary since subrogation is required to fully clothe the Textile Banking Company, Inc., with the rights of Mr. Dery and the New York Trust Company, and also to prevent an unjust enrichment of Mr. Freund at the expense of Mr. Dery, to whose rights the present stockholder has succeeded.

In *Shafer vs. Spruks*, 226 Fed. Rep., 922, C. C. A. 3rd Circuit, the Court dealt with the right acquired by a purchaser of bonds at a sale conducted by a

pledgee, pursuant to a power of sale contained in the instrument of pledge.

The Court said (page 925):

“By this sale Lang's full title as owner was acquired by the Bank, with whatever rights he himself might have asserted against the property of his debtor.”

On this point, we submit that the rights acquired by the purchaser upon foreclosure of the lien by exercise of the power of sale, are of the same character and controlled by the same principles as obtain in case of a foreclosure by judicial process.

With regard to the latter, it has been held in a number of cases that the purchaser at the foreclosure sale acquires the rights of all parties to the suit.

*Parker vs. Child*, 25 N. J. Eq. 41;  
*Chilver vs. Weston*, 27 N. J. Eq., 435, 439;  
*Boorum vs. Tucker*, 51 N. J. Eq., 135, 149;  
*Pettingill vs. Hubbell*, 53 N. J. Eq., 584;  
*Monmouth County Electric Co. vs. Central Railroad of New Jersey*, 54 Atl. Rep. 140.

This is said to be an application of the doctrine of subrogation.

*Parker vs. Child*, *supra*, at pg. 44;  
*Monmouth Co. Electric Co. vs. Central R. R. Co.*, *supra*.

The decree below was rested by the Vice Chancellor solely upon the conclusion that the case is not one of equity cognizance and that every defense and every claim might be set up as fully in a court of law.

This overlooks the fact that the essential complainant in the Court of Chancery is the Textile Banking Company, Inc., which is not a party to the action at law, and that the rights of the Banking Company are the result of the application of the equitable doctrine of subrogation.

**We submit that the decree should be reversed to the end that a decree may be entered in favor of the complainants for the relief prayed for, the facts being uncontroverted.**

McDERMOTT, ENRIGHT & CARPENTER,  
Solicitors for and of Counsel with  
Complainants-Appellants.

3 / 37 MAY.T.1928

## New Jersey Court of Errors and Appeals

Between

ALLIANCE-HOLT DYE WORKS,  
INC., and TEXTILE BANKING  
COMPANY, INC.,

Complainants-Appellants,

and

HENRY H. FREUND,  
Defendant-Respondent.

On Bill, &c.

ON APPEAL  
FROM  
CHANCERY.

### BRIEF FOR RESPONDENT.

#### Statement of Facts.

This suit is brought to restrain the defendant from prosecuting an action at law against one of the complainants herein, Alliance-Holt Dye Works, Inc. The First Count of the Complaint in the action at law (p. 12, State of Case) is an ordinary count in assumpsit to recover compensation for services rendered. The Second Count is the same form of action for repayment of two automobiles purchased by the plaintiff therein, the price of which it is alleged the defendant Alliance-Holt Dye Works, Inc. agreed to repay the plaintiff. The Third Count is a brief, formal action in assumpsit for salary alleged to be due. The Fourth Count is the same as the Second Count.

We submit that there is no equity involved in any of these counts, and no reason why they can-

not be prosecuted at law. The defendant, in its Answer to the Complaint at law (pp. 16 to 18), sets up that it is a part of an organization of D. G. Dery; that the said plaintiff was employed generally by D. G. Dery, and that such employment and payment therefor by said D. G. Dery precluded him from being employed by the defendant Alliance-Holt Dye Works, Inc.

We find no allegations of fraud whatever. We look in vain to find any inequitable conduct. None is alleged; none attempted to be proved.

The sole question involved is: Was Mr. Freund employed to work for the defendant Alliance-Holt Dye Works, Inc., and if so, did he perform, and is there any salary due him for such services, and if so, how much? All such matters are peculiarly questions for the law courts.

Vice Chancellor Griffin concluded by decreeing:

"The case presented, it seems to me, is not one of equitable cognizance. Every defense and every claim here asserted, may be set up as fully in the court at law as in this court. I will advise a decree dismissing the bill."

We submit this decision is amply sustained by the authorities.

#### POINT I.

**Equity will not interfere where legal remedy is adequate.**

Chancellor Magie, in the case of *Standard Roller Bearing Company v. Crucible Steel Company of America*, 71 N. J. Eq. 61, held that where an action at law is pending, to which the defendant has a de-

fense, equity would not withdraw the question from the law court unless the case involved some equitable element which the law court could not apply, but which must be applied to do complete justice, or unless the relief of the law court could not be afforded without the aid of the Court of Chancery.

The case last cited has been frequently cited in this State, and the rule therein announced is thoroughly established.

*Bigelow v. Crucible Steel Co.*, 74 N. J. Eq. 480;  
*Von Bermuth v. Von Bermuth*, 76 N. J. Eq. 182;  
*Lehigh Valley R. Co. v. Andrus*, 91 N. J. Eq. 225;  
*1 Pomeroy Eq. Jur.*, Sections 132 to 135.

#### POINT II.

**Law courts have exclusive jurisdiction in cases of breach of contract.**

In *Schwertzer v. National House & Farms Association*, 93 N. J. Eq. 644, Justice Black, speaking for the Court of Errors and Appeals, held that for a breach of contract and nothing more, the law courts have exclusive jurisdiction.

In *Sternberg v. O'Brien*, 48 N. J. Eq. 370, Vice Chancellor Van Fleet held that the ordinary judicial remedy for a breach of contract is an action at law, and in cases where that remedy will fully answer the purposes of justice, the law courts have exclusive jurisdiction.

Is not this action at law a mere case of breach of contract of employment? There is no element

of unconscionable contract; no conduct shown, indicative of fraud.

The complainants seem to stress in their argument (pp. 10 to 13) the injury that is likely to follow to the purchaser (Textile Banking Company, Inc.) of the corporate stock, who, when it purchased the stock, had no knowledge of the unpaid claim of Mr. Freund against his employer, Alliance-Holt Dye Works, Inc. We know of no principle of law that gives to such possible loser a right to go into equity for relief in the absence of some equitable right.

### POINT III.

#### **Defect of parties defendant in action at law, no basis for transfer of case to equity.**

The complainants-appellants on page 14 of their brief complaining of the decree of dismissal, say that the decision "overlooks the fact that the essential complainant in the Court of Chancery is the Textile Banking Company, Inc., which is not a party to the action at law."

But as to the contention that the Textile Banking Company, Inc. is not a party, we submit that the Practice Act of 1912, Section 6, affords ample relief at law. Under that Section, the Textile Banking Company, Inc., could have been joined as party defendant, and any special rights, either affirmative or defensive, could have been presented and protected.

### POINT IV.

#### **Equitable estoppel enforced alike in law as well as in equity.**

In *La Rosa v. Nichols*, 92 N. J. L., 375, the Court of Appeals speaking through Chancellor Walker held that the doctrine of equitable estoppel is not exclusively of equitable cognizance, for although the creature of equity and depending upon equitable principles, it is enforced alike by court of law and equity.

That case had to do with a suit at law on a contract of an infant. The infant falsely represented that he was of age for the purpose of inducing another to enter into a contract with him. The court then held that the infant was equitably estopped from denying he was not of age.

In *Central Railroad Co. v. MacCartney*, 68 N. J. L., 165, Justice Pitney applied the doctrine of equitable estoppel in an action to recover demurrage. The learned Justice cited at page 175 numerous New Jersey decisions as fully establishing the doctrine.

In *2 Pomeroy, Sec. 802*, it is said

"Estoppel was recognized by the common law at a very early day."

The courts of law have therefore the fullest jurisdiction over equitable estoppel. Any conduct or contract working an estoppel can be pleaded at law as well as in equity.

**POINT V.**

**Subrogation does not give to person subrogated greater rights than the former party held.**

Complainants on page 13 of their brief claim rights as subrogee. Admitting that a corporation which buys the stock of another corporation and pays its debts has the same rights as the seller corporation had, surely it will not be advanced that such buyer has any greater rights.

The word "subrogation" is to be used synonymously with the word "substitution". *37 Cyc. 364 note.*

Complainants in asking to go into equity are urging superior rights and privileges to the predecessor in title; surely such a claim is unsound.

Complainants cite *Shafer v. Spruks*, 226 Fed. 922 as sustaining their right to subrogation, but in that case the court was concerned with mortgage bonds of a corporation, the recitals in which bonds constituted the specific terms sought to be enforced by purchaser at pledgee's sale of the bonds. Such a situation we are not concerned with here. We are rather concerned with whether a purchaser of corporate stock at a pledgee's sale can insist upon going into equity when such corporation is sued at law for unpaid salary earned prior to pledgee's sale.

We know of no such authority. If as complainants insist in their brief (p. 12) the Textile Banking Company, Inc. paid the debt of D. G. Dery and became subrogated to the rights of Mr. Dery, as owner, that fact does not entitle such subrogee to go into equity on a mere contract action.

**We submit that the decree should be affirmed in all respects.**

LICHTENSTEIN, SCHWARTZ & FRIEDENBERG,  
Solicitors for Defendant-Respondent.

JULIUS LICHTENSTEIN,  
of Counsel with Defendant-Respondent.

