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New Jersey Court of Errors and Appeals.

Between CHARLES E. BRUGLER, *et als.*, Complainants-Appellants, AND UNITED SHOE MACHINERY COMPANY, *et als.*, Defendants-Respondents.	**On Appeal from order denying injunction.**

BRIEF FOR DEFENDANTS-RESPONDENTS.

This is an appeal from an order advised by Vice Chancellor Lane refusing to enjoin a proposed merger or consolidation between the United Shoe Machinery Company and the United Shoe Machinery Corporation. For brevity the two companies will hereinafter be styled respectively the Company and the Corporation. The appellants are preferred stockholders in the Company. In the court below intervention was had, and complaint made as well by a common stockholder. He, however, has not appealed.

The Company was incorporated on the 7th of February, 1899, with a capital stock of $25,000,000., divided equally into preferred and common shares. The charter provided (p. 17)

> "The preferred stock shall be entitled, out of the surplus net earnings, after all amounts which may be determined upon have been re-

served as working capital, to a fixed cumulative preferential dividend at the rate of, but never exceeding six per cent. per annum on the par value of said stock and such dividends shall be declared in January of each year, unless some specified day or days for that purpose be fixed by the by-laws. If, in any year, dividends amounting to six per cent. per annum, shall not be paid on such preferred stock, the deficiency shall be a charge on said net earnings over and above the amount reserved as working capital, and be payable, but without interest, before any dividends shall be paid upon or set apart for the common stock. In the event of the dissolution of the corporation, or the distribution of its assets, the holders of the preferred stock and the holders of the common stock shall share and share alike."

The charter further provided:

"The common stock shall be subject to the prior rights of the preferred stock."

and continued:

"If, after appropriating the accumulated profits of the company, in excess of the amount reserved as working capital, to such dividends on the preferred stock of the company as may be required, there remain further accumulated profits, over and above the amount reserved as working capital, the Directors shall, in January of each year, unless some specific day or days for that purpose be fixed in the by-laws, declare a dividend of said profits on the common stock."

When the Company was incorporated, chapter 143 of the Laws of 1904, referred to by this Court in *Goodnow* v. *American Writing Paper Co.*, 73 N. J. Eq. 692, 694, had not yet been passed. The Act of 1896 (P. L. 1896, p. 286) then governed the declaration of dividends. It provided:

"No corporation shall make dividends except from surplus or net profits arising from its business * * *"

As suggested by *Mr. Justice Swayze* in the *Goodnow case, supra,* the words "net profits" and "surplus" were evidently synonymous, and hence we conclude that the common stockholder, after the preference of the preferred holders to a dividend had been recognized, was entitled to such dividends from so much of the "accumulated profits" of the Company, as, after reservations for working capital, the directors should determine to divide.

It is obvious that the preferred stockholder upon dissolution of the Company has no preference in the distribution of its assets (*Lloyd* v. *Pennsylvania Electric Vehicle Co.*, 75 N. J. Eq. 263). And it is very questionable whether, under the charter, he would have any preference, even to accumulated arrears on preferential dividends. The Company's charter is perpetual, and that should the Company in the future fail to prosper, and its management determine to dissolve, the preferred stockholder might readily be compelled to share alike with the common stockholder in the depleted assets of the Company.

The Company has outstanding at the present time 435,628 shares of common stock and 398,863 shares of preferred stock. As each class of stock has equal voting power, the control of the company is obviously in the common stock, and there is, therefore, nothing to prevent the directors from distributing its surplus or "accumulated profits" to the common stock (always recognizing the strict contractural rights of the preferred holder to his preferential dividend of 6 per cent.). At the present time the preferred stockholder has no interest whatever in, or right to, this surplus. See *Scott* v. *Baltimore & Ohio R. R. Co.*, 49 Atl. Rep. 327.

The position of the preferred stockholder in the corporation is quite different and very much better. It was originally incorporated in 1905, its charter being amended in February, 1917 (p. 51), to overcome the objections found by Vice Chancellor

Stevens, and this court, in *Copeland* v. *United Shoe Machinery Co.*, 84 N. J. Eq. 276; 85 *Id.* 209, of dissimilarity in the nature of their business. The original charter of the Corporation was evidently drawn in view of the amendment of chapter 143 of the laws of 1904, above referred to. The preferred stockholders in the corporation (p. 31):

> "shall be entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits arising from the business of the corporation, after all amounts which shall have been determined upon by the Board of Directors shall have been reserved as working capital, cumulative dividends at the rate of, but never exceeding six per cent. per annum * * *, in preference and priority to the declaration or payment of any dividend on the common stock."

The charter further provides (*Id.*):

> "In the event of liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid thirty-five dollars ($35.) per share *and the unpaid dividends accrued thereon*, out of the capital of the corporation or the proceeds thereof before any amount shall be paid therefrom to the holders of the common stock, * * * the remaining assets and funds of the corporation shall be divided and paid to the holders of the common stock according to their respective shares."

Here, upon dissolution, there is a preference to the extent of $10. a share above par, and to all cumulated unpaid preferred dividends, in the preferred stockholder. The common stockholder, during the existence of the corporation, is entitled (p. 34) to such dividends as may be declared by the directors out of any remaining surplus, or net profits, after the preference of the preferred stockholder has been provided for.

Immediately after the formation of the Corporation (p. 82) it offered, to all the holders of the

stock, preferred and common, of the Company, to exchange their stock for that of the Corporation, in precisely the same proportion and manner as is provided by the consolidation agreement here under review. At that time there were 3,925 preferred stockholders, holding 398,863.38 shares. In the *interim* 3,793 individuals, holding 391,881 shares of the preferred stock, have exchanged their holdings, so that there now remain outstanding, not owned by the Corporation, one hundred and thirty-two individual preferred stockholders of the Company owning 6,982.38 shares of preferred stock. At the time the offer of exchange was originally made (p. 91) there were 2,119 preferred holders of the Company's stock who have since made the exchange, who held no common stock, and there were 820 individuals who were common stockholders only. There were 1,806 individuals who made the exchange, who were holders of both common and preferred. At the present time there remain outstanding (p. 91) one hundred and thirty-two preferred stockholders, and six common stockholders of the Company who have not accepted the offer. It is of no little consequence that a plan as mature as this, should have received not only the unanimous approval of the directors of both companies, but the assent of so large a majority of both preferred and common stockholders, and that this consent should have been obtained not under the whip of a proposed merger, with the alternative in the holder of either acceptance or appraisal of his stock, but largely, before the birth of the merger agreement, which proposes to consummate an exchange which has now almost unanimously been effected.

The provisions for merger or consolidation of corporations are contained in sections 104 to 109 inclusive of our Corporation Act. The statute (subject to which the complainants became holders of stock in the Company) provides that the directors of the several corporations proposing to merge, may,

in their discretion, enter into a joint agreement providing, among other things, for

> "The manner of converting the capital stock of each of said merging or consolidating corporations into the stock or obligations of such new or consolidated corporation."

The scheme of consolidation section 104) involves the merger of one or more of the consolidated companies into the other, or the creation of a new company. The present agreement adopts the former alternative, and proposes to merge the Company into the Corporation. By the express language of sections 106 and 107 the consolidated Company shall possess all the *rights, privileges, powers and franchises as well of a public as of a private nature, and be subject to all the restrictions, disability and duties of both companies. All property rights, powers and privileges, and all and every other interest shall, after the merger, be as effectually the property of the consolidated corporation as they were of the several and respective former corporations, and the title to any real estate, however, vested in either of such companies shall not revert or be in any way impaired by reason of the merger. The former corporation is deemed to continue in existence to preserve all rights of creditors, and all liens upon the property.*

I.

The merger will not work a "dissolution" of the Company as that word is used in its charter.

The strength of the appellants' case depends upon the contrary of this proposition. They argue that they have, as preferred stockholders, under the provisions of the Company's charter as above quoted—

> "In the event of the dissolution of the corporation or the distribution of its assets, the holders of the preferred stock and the holders of the common stock shall share and share alike."

a right to an equal share in the book value of the assets with the common stockholders, and they estimate such value to be $56. a share.

Our contention is that the words "dissolution of the corporation or the distribution of its assets" found in the Company's charter, apply to the entirely distinctive feature of our corporation act, by which in certain emergencies a corporation is wound up and dissolved, either voluntarily or involuntarily; its franchises terminated, and its privileges revoked. In the case of dissolution the corporate entity ceases to be; it dies; while in the case of a merger the analogy is that of marriage and not of death; the two, though united, still exist. It is submitted that the procedure in section 31 for voluntary dissolution is distinctive and peculiar, as is also the result. That instead of the franchises, privileges, rights and duties of the company being preserved, as they are in the merger provisions, the corporate existence upon dissolution (section 53) is continued only for the purpose of prosecuting and defending suits by or against the company, and enabling it to settle and close its affairs, "*but not for the purpose of continuing the business for which they were established*".

We are not required to enter the domain of speculation as to whether (irrespective of statutory regulation) consolidation is equivalent to dissolution. This general proposition depends upon the language of the governing statute (*Central R. R. & Banking Co.* v. *Georgia*, 92 U. S. 665; *Chicago, etc.* v. *Ashling*, 43 N. E. 373).

In *Wabash, etc.*, v. *Ham*, 114 U. S. 594, we find:

> "But upon the consolidation, under express authority of statute, of two or more solvent corporations, the business of the old corporations is not wound up nor their property sequestered or distributed, but the very object of the consolidation, and of the statutes which permit it, is to continue the business of the old corporations. Whether the old corporations are dissolved into the new corporation, or are continued in existence, under a new name and with new powers, and whether, in either case, the consolidated company takes the property of each of the old corporations charged with a lien for the payment of the debts of that corporation, depend upon the terms of the agreement of consolidation, and of the statutes under whose authority that consolidation is effected."

In the case of *Hale* v. *Cheshire R. R. Co.*, 161 Mass. 443, where a consolidation was made on the terms, in part, that each holder of four (4) Preferred shares in the Cheshire R. R. Co. should receive five (5) Preferred shares in the new Company, and each holder of two (2) shares of the Common stock should receive one (1) Preferred share in the new Company, it was said:

> "The plaintiffs contend that under the public statutes common and preferred shareholders should stand on the same footing. That is true in case of an ordinary liquidation or winding up of the affairs of the corporation, if there is nothing in its charter or articles to show otherwise. But the rule is not applicable to a case of consolidation like the present."

Indeed, this seems to be the view of Vice Chancellor Emery in the *Colgate case*, upon which the

complaint places great reliance. In determining in that case whether the proposed plan was unfair and inequitable to the Preferred stockholders, the Vice Chancellor considered the question whether the effect of the consolidation was to terminate any debt, duty or liability owed to the complaining stockholder.

> "Is then the obligation of the United States Leather Company to its Preferred stockholders, under its organization and stock certificates, a debt, liability or duty which in any respect or to any extent continues against the consolidated company under the act? So far as relates to the right to terminate by consolidation the existence of the United States Leather Company, and the right to a continuance of further dividends, the question is to be answered in the negative. But the right to consolidate, terminating as it does the right to future dividends, against the consolidated company, does not necessarily affect the right to dividends existing at the time of the consolidation."

It will be remembered in that case that the Preferred stockholder of the United States Leather Company (whose dividends were in arrears) was entitled, under the charter, to have the accumulated dividends charged upon the earnings of the Company before anything was paid on the Common stock. This right, which was in a sense a mortgage right, was not preserved under the terms of the proposed merger, and it was, for that reason, and that reason only, that the merger failed.

Again, the very quotation from Vice Chancellor Emery's opinion, cited by the complainant on page five of his brief, apparently refers to the dissolution effected by the merger as a dissolution otherwise than by liquidation, and negatives the theory of the complainant that the dissolution by merger is a dissolution under which he has the rights he would have in liquidation.

Again, the provisions in the charter of the Company, under which the Preferred stockholders are

claimed to be entitled to share and share alike with the Common stockholders of the Company upon dissolution, are not the expression of the grant of any right to the Preferred stockholders. It negatives the existence of a preference upon the assets to such Preferred stockholders, and if the provisions were entirely absent from the certificate of incorporation, the rights of the Preferred stockholders would be the same.

But this right, if it be called a right, is not a debt, liability or duty existing between the Company and its Preferred stockholders. It is a right, like the right to future dividends, which may be terminated by merger, and which the Preferred stockholder has agreed in advance may be so terminated.

In the case of dissolution under our statute, the stockholder *must* accept the situation and receive his quota of corporate assets on distribution. On the other hand, in the case of merger, if he does not like the plan he can (section 108-1/2) have the value of his stock appraised, and require the payment in cash of its value.

II.

As the proposed consolidation will not constitute a dissolution, the complainants have no present right in the surplus of the Company as upon dissolution.

We have already shown that the common stockholders control the Company, and hence, as shown by Vice Chancellor Pitney in the case of *Beling* v. *American Tobacco Co.*, 72 N. J. Eq. 32, 34, the directors elected by the common stockholders can, and undoubtedly would, declare among the common stockholders a dividend of so much of accumulated

profits or surplus as in their judgment they saw fit. Hence, if at any time they should conclude to dissolve the Company, this court is bound to, as Vice Chancellor Pitney did, assume, that they, before so doing, would dispose of the whole, or at least a large part, of such surplus among the common stockholders; hence it follows that the preferred stockholders, as such, have no present interest whatever in the surplus. So long as their fixed dividend is paid they are not interested in the accumulated profits. Such profits belong to the common stockholders, and the directors at any time are justified in dividing them among them.

The appellants seem to claim that the words "accumulated profits" in the Company's charter exclude any surplus (which, as we have seen, is under the Act of 1896 synonymous with net profits) arising from any source other than from strict earnings. There is no basis whatever for this contention (*Mills* vs. *Northern Ry., etc., Co.*, L. R., 5 Ch. 61; *Mercantile Trading Co.*, L. R., 4 Ch. 475. *Hoole* vs. *Great Western Ry.*, L. R., 3 Ch. 262; *Beers* vs. *Bridgeport Spring Co.*, 42 Conn. 17). The respective rights of preferred and common stockholders in a large surplus, are reflected in the market value of the common and preferred stocks respectively, of many of the large industrial corporations at the present time.

III.

The proposed merger can only be prevented by the complainants upon their demonstrating that it is unfair and inequitable.

As we have already seen, the statute wisely leaves it to the judgment of the directors, and the necessary quota of stockholders to agree upon fair

and equitable terms. The phraseology of the act which reposes, first, in the directors the right to determine the "manner of converting the capital stock of each of said merging or consolidating corporations *into the stock or obligations of such new or consolidated corporation*", indicates that the stockholder is not entitled to receive the identical thing he held in the way of stock or security before the merger. By the very nature of the case his relation and situation must be somewhat changed, and when he became a stockholder (the merger act being in existence) he acquired the stock subject to the right of the statutory quota of directors and stockholders to merge on fair and equitable terms. See the opinion of Vice Chancellor Emery in the *Colgate case*, 3 Buch. 72, 98. What could be fairer or more equitable than the plan under consideration? The preferred stockholder of the Company who has no preference on dissolution, either as to assets or for accumulated dividends, receives for each of his preferred shares a share of preferred stock in a company that will own exactly the same assets; will pay the same dividend; be under the same management, and in the event of dissolution he will be entitled to a preference not only as to accumulated dividends but in assets up to $35. for every $25. of stock owned by him. Here is certainly a very great and beneficial change, and we can easily comprehend why so many holders of the preferred stock have accepted the offer.

But it is claimed that complainants are injured, because no express right is reserved to the preferred stockholder of the Corporation to pre-emption, upon an increase of its stock.

Indeed, by the express terms of the charter of the Corporation, the preferred stockholder is excluded from any right to subscribe to or to take any common or preferred stock upon an increase.

The Company's charter is entirely silent in this respect, and any pre-emptive right which a preferred stockholder in the Company may have must exist by virtue of general principles.

It is exceedingly doubtful, and very uncertain, whether, in view of the peculiar contractual rights which a holder of preferred stock in a corporation has, he inherently enjoys this pre-emptive right to share upon an increase of stock in all cases. If, as we have seen, he has, as against the common stockholder, no present right in the surplus, and the Company is justified in dividing that surplus by way of dividend among the common stockholders, then surely the preferred stockholder has no right in such a stock dividend. So too, as held by this Court in *Meredith* v. *Zinc & Iron Co.*, 11 Dick. 454; affirming the opinion of Vice Chancellor Pitney in 10 Dick. 211, 220, he has no interest in an increase of stock covering an acquisition by the Company of property. In view of these plain limitations in the case of a preferred stockholder upon this so-called general pre-emptive right to share in an increase, it is obvious that the general rule approved of by Vice Chancellor Pitney in *Wall* v. *Utah Copper Co.*, 70 N. J. Eq. 17, and there applied to a common stockholder, has no application to a preferred stockholder, so that we deny that the complainants have at present any such pre-emptive right in the stock of the Company, as by their bill of complaint, and in their brief, they assume.

Assuming, however, such right to exist, in view of the great benefit otherwise accruing to the preferred stockholder by reason of the proposed exchange under the merger, we insist that the mere failure to have a similar right in the Corporation is not of sufficient importance to make the plan unfair and inequitable. The reserved right in the Company to merge carried with it, as we have seen, a right to impose terms upon the exchange of stock into securities that, if you will, deprive the old stockholder

of some of his rights, and, notwithstanding this, unless the alteration be both unfair and inequitable, the stockholder is given the alternative of either accepting it; of having his stock appraised, or of suing at law for damages (*Meredith* v. *Zinc Co.*, *supra*). The circumstances of this case, together with the very large support from the preferred stockholders which the plan has received, make it plain that the mere absence of this pre-emptive right in the preferred stockholder of the Corporation is infinitesimal. Surely, this Court must agree with the Vice Chancellor, that the practically unanimous view of the preferred stockholders, as to the expediency and judiciousness of the plan, will not be thwarted.

IV.

The case at bar is entirely different from that of Copeland v. United Shoe Machinery Co., affirmed in this court in 85 N. J. Eq. 209.

The decision, both by Vice Chancellor Stevens, and by this Court, which simply adopted its opinion in the *Copeland case*, *supra*, was that the Charters of the Company and the Corporation, as they then existed, were so dissimilar that a merger between them was illegal. The defendants offered no proof whatever, relying wholly upon the alleged imperfections of the case as stated by the complainants' bill. Here, on the other hand, full affidavits disclose not only the large sanction the plan has received, but the fact that such plan is identical with an offer made by the Corporation for the stock of the Company long anterior to the suggested merger; the fact that there is no longer any reason for the continuance of a mere holding company, against which the Legislative policy of this State is plainly expressed—

Bull v. *International Power Co.*, 99 At. Rep. Ill.; *Buck* v. *Pittsburgh Coal Co.*, opinion by Stevens, V. C., not reported—and the fact that under present and projected tax laws, national and state, the longer maintenance of both companies entails a duplication of burdensome taxation, all of which reasons now appear but were absent from the *Copeland case*, and are cogent and determinative in the conclusion that the plan should be permitted to be carried out.

It is, therefore, respectfully submitted that the order appealed from was in all respects correct, and should be affirmed.

ARTHUR F. EGNER,
ROBERT H. MCCARTER,
Counsel for Defendants-Respondents.

June Term, 1917.

(5568Y)

New Jersey Court of Errors and Appeals.

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Between CHARLES E. BRUGLER *et als.*, Complainants-Appellants, and UNITED SHOE MACHINERY COMPANY *et als.*, Defendants-Respondents.	On bill, etc.

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Notice of Motion for Stay Pending Appeal.

Take notice that on Tuesday, June 19, 1917, at the opening of court on that day, or as soon thereafter as the matter can be heard, I will move the Court of Errors and Appeals, at the Capitol Building, in the City of Trenton, New Jersey, for an order continuing the restraint contained in the order to show cause herein, made on the 18th day of May, 1917, and continued by an order made June 6, 1917, and enjoining, pending the hearing and determination of the above entitled appeal, the merger of the United Shoe Machinery Company and the United Shoe Machinery Corporation complained of in the bill. Complainant will use the state of the case, appellants' brief and the annexed affidavit on the said motion.

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JULIAN C. HARRISON,
Solicitor of Complainants-Appellants,
Wilsey Building,
Ridgewood, N. J.

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To McCARTER & ENGLISH, Esqs.,
Solicitors of Defendants-Respondents
United Shoe Machinery Company *et als.*

PITNEY, HARDIN & SKINNER, Esqs.,
Solicitors of Complainant-Respondent
Frederic W. Webster.

10 NEW JERSEY COURT OF ERRORS AND APPEALS.

Between

CHARLES E. BRUGLER *et als.*,
Complainants-Appellants,

and

20 UNITED SHOE MACHINERY COMPANY *et als.*,
Defendants-Respondents.

Julian C. Harrison, being duly sworn, on his oath, says: I am the solicitor of the complainants-appellants and familiar with all the proceedings in this cause. The bill was filed May 18, 1917, and a temporary restraining order made the same day 30 enjoining the holding of the meeting of stockholders of the United Shoe Machinery Company and the United Shoe Machinery Corporation, which was scheduled to be held on May 22, 1917, for the purpose of voting on a merger agreement for the consolidation of the said United Shoe Machinery Company and the United Shoe Machinery Corporation. Argument was had upon the order to show cause on June 2, 1917, and the case was decided on June 4, 1917. At the time Vice-Chancellor Lane an- 40 nounced the decision he stated that he would grant a stay until such time as the complainants could apply to the Court of Errors and Appeals to continue such restraint, pending the hearing and determination of the appeal.

The order continuing such restraint and the order discharging the rule to show cause were both signed on June 6, 1917, notice of appeal being filed simultaneously. On June 7, 1917, the petition of

appeal was filed by the complainants and a formal answer thereto was filed by the defendants-respondents on June 8, 1917. The state of the case is now in the hands of the printer and the printed papers and briefs will be ready and the counsel for the appellants will be ready to argue this case when it is reached. 10

Notice of argument for June 28 next has been duly served; and a notice of motion has also been served to advance the case under the additional rule amended at the June term, 1909. The case can therefore be heard upon the merits within a very few days of the opening of the June term. 20

The complainants rely among other things upon a decision of this Court in the case of Copeland vs. United Shoe Machinery Co., affirming on the opinion of Vice-Chancellor Stevens below, an injunction order to restrain a merger of the two defendant companies upon the same terms as are proposed in the present merger, with the following exceptions: (1) Since the decision in the Copeland case, the charter of the United Shoe Machinery Corporation has been amended so as to make its purpose clause identical with the purpose clause in the charter of the United Shoe Machinery Company. (2) The other respect in which the situation is different is this: The common shareholders of the United Shoe Machinery Company under the plan of merger enjoined in the Copeland case were offered 2¼ shares of common stock in the corporation for each share of common stock held by them in the company. They are now offered 2½ shares of common stock in the corporation for each share of common stock in the company. 30 40

It is considered that the decision of this Court in the case of *Copeland vs. United Shoe Machinery Company,* 85 New Jersey Eq., 209, affirming on the opinion below, reported in 84 N. J. Eq., 276, went upon two grounds and that only one of the grounds of objection to the propsed merger has been re-

10 moved by the amendment of the certificate of incorporation of the United Shoe Machinery Corporation.

The complainants pray therefore for an order restraining the defendants from merging the United Shoe Machinery Company and the United Shoe Machinery Corporation upon the terms contained in the merger agreement of April 18, 1917, until the hearing and determination by the Court of Errors and Appeals of the appeal now pending from the
20 order denying an injunction.

JULIAN C. HARRISON.

Subscribed and sworn to before me }
this 11th day of June, 1917. }

GEORGE V. HALSEY,
Master in Chancery of New Jersey.

Service of a copy of the within notice of motion and affidavit is acknowledged this 11th of June,
30 1917.

McCARTER & ENGLISH,
Solicitors of Defendants-Respondents,
United Shoe Machinery Company,
et als.

PITNEY, HARDIN & SKINNER,
Solicitors for Webster.

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New Jersey Court of Errors and Appeals,

Between CHARLES E. BRUGLER *et als*, Complainants-Appellants, and UNITED SHOE MACHINERY COMPANY *et als.*, Defendants-Respondents.	Appeal from Order denying Injunction.

BRIEF FOR COMPLAINANTS-APPELLANTS, CHARLES E. BRUGLER, ET ALS.

Statement of the Case.

This is an appeal from an order denying an injunction restraining the defendants until final hearing from merging the United Shoe Machinery Company and United Shoe Machinery Corporation upon the terms outlined in a certain agreement of merger adopted by the Directors of the two corporations and executed by them on April 18, 1917.

The meeting of stockholders of the two Companies to approve the merger agreement was called for May 22 last. The complainant's bill and affidavits were filed May 18 and an order to show cause with a temporary restraint obtained from Vice-Chancellor Merritt Lane on the same day. Argument was had June 2, 1917. In an opinion delivered on June 4, 1917, the Vice-Chancellor an-

nounced that he would discharge the rule, but stated that in view of the decision in *Copeland vs. United Shoe Machinery Company,* 84 N. J. Eq., 276, affirmed 85 N. J. Equity, 209, he would continue the restraint pending an application to the Court of Errors for its further continuance during the appeal.

The United Shoe Machinery Company, which will be referred to as the Company, is a corporation of the State of New Jersey, organized February 7, 1899. It has an authorized capital of $25,000,000 divided equally between preferred and common shares, 500,000 of each, with a par value of $25 each. There have been issued of these shares 435,-628 38/100 shares of common and 398,863 38/100 shares of preferred stock. The complainant Brugler is, and since the year 1904 has been, the owner of 500 shares of said preferred stock. The Copelands, who were the complainants in the former case, and have now intervened in this case, own 1,692 shares of preferred stock in the company; and Messrs. Smith and Champlin, owning 390 shares of preferred stock, have also been joined as complainants; so that the holders of 2,582 shares of preferred stock are complaining against the proposed merger. The preferred stock of the company, by the terms of the certificate of incorporation, is entitled to a fixed cumulative preferential dividend at the rate of, but never exceeding, six per centum per annum; and it is further entitled to share equally with the common stock in the event of dissolution of the company, or the distribution of its assets. It also has equal voting rights with the common stock and (although this is not expressly granted by the charter), complainant has under the cases the right to participate by subscription in any additional issues of common or preferred stock.

The United Shoe Machinery Corporation, which will be referred to as the Holding Corporation, the

other corporate defendant, has acquired all but 215 62/100 shares of the common stock of the Company, and all but 6,982 38/100 shares of the preferred stock of the Company.

The Holding Corporation has a capital of $50,000,000, divided into 2,000,000 shares of the par value of $25 each, of which 500,000 is preferred stock and 1,400,000 is common stock. The holders of the preferred stock in the Holding Corporation can receive, in case of dissolution whether voluntary or involuntary, no more than $35 per share out of the assets. The balance goes to the common stock. The preferred shareholders of the Holding Corporation instead of having equal voting rights with the common shareholders, as is the case in the Company, are not allowed to vote on the question of increasing the authorized capital stock by additional common stock or stock deferred to the preferred stock, unless the dividends on the present preferred in the Holding Corporation are in arrears.

The right of the holders of the preferred stock in the Holding Corporation to subscribe to, take or receive any preferred or common stock, however issued, is expressly denied in the Charter of the Holding Corporation. In the Charter of the Company there is no such limitation upon the rights of the preferred shareholders.

The merger agreement of April 18, 1917, offers to each preferred shareholder in the Company one share of preferred in the Holding Corporation for each preferred share in the Company held by him, and to the common stockholders of the Company 2½ shares of the common stock of the Holding Corporation for each share of common stock (Merger Agreement—Article 4).

It appears from the bill and affidavits that the book value of the preferred and common shares of

the Company at the present time, giving effect to the provision of the Company's Charter regarding equality of rights in the case of dissolution, exceeds $56 per share, according to the figures contained in the Company's own reports.

The market value of the shares offered in exchange for each share of old common is about $138 a share; and of the shares offered in exchange for the old preferred, $28 per share. The book value of each share of preferred and common stock of the company being $56 a share, a share of preferred and a share of common together represent a book value of $112. The market value of the shares offered in exchange is $166 for one share of preferred and common together, of which only $28 is accounted for by the market value of the preferred share.

ARGUMENT.

I.

The merger will work a dissolution of United Shoe Machinery Company.

A

The Company is to terminate its existence, its stock is to be wiped out and its entire assets are to be transferred to the United Shoe Machinery Corporation.

In the case of *Colgate vs. United States Leather Co.,* 73 N. J., Equity 72, Vice-Chancellor Emery entertained no doubt of the proposition that the effect of merging the United States Leather Co. with Central Leather Co. under circumstances similar to those here present worked a dissolution

of the United States Leather Co. He says (page 295):

> "But this clause in the certificate was, in my judgment, intended to apply to and regulate only the declaration of dividends by the company as a going concern, and is not to be held to affect the right of the preferred stockholder, *on the termination of the business of the company by dissolution otherwise than by liquidation,* to the earnings of the company which had been accumulated and invested for the continuance of its business, and which, being accumulated and invested, were "subject to this express charge in his favor." (Italics ours.)

Viewed as a sale of the entire assets of the United Shoe Machinery Company to the United Shoe Machinery Corporation, which is the substance if not the form of the transaction the merger agreement clearly contemplates the dissolution of the Company.

The merger statute (P. L., 1893, p. 121) clearly indicates that the effect of the consolidation is to dissolve the constituent companies. The references in Section 107 of the Corporation Act to the companies which have consolidated as "former corporations," and the provision that said former corporations "shall be deemed to continue in existence" for certain purposes show beyond doubt that the merger works a dissolution of the corporations which enter into it.

B.

In this case there can be no doubt of the dissolution of the company of which complainants are preferred stockholders, for that is what the merger agreement specifically provides shall occur.

Article 5 of the agreement provides (page 58):

"The corporate name and organization of the said United Shoe Machinery Company, except so far as the same are continued by statute, shall cease upon the filing in the office by the Secretary of State of the State of New Jersey, of this agreement and of the written approval thereto of the Board of Public Utility Commissioners of said State of New Jersey."

II.

By the express terms of the charter the preferred stockholders are entitled to share and share alike with the common stockholders of the company upon such dissolution.

The Charter of the company, Article Fourth, provides: "In the event of the dissolution of the corporation, or the distribution of its assets, the holders of the preferred stock and the holders of the common stock shall share and share alike." Page 17, line 12.

The complainants insist that they, as preferred stockholders, are entitled by the terms of the contract above quoted to receive whatever is received by the common shareholders to represent their share in the corporate assets of the United Shoe Machinery Company. It is axiomatic that where the burden of loss is to be borne equally by two parties the gains should be shared equally unless the contract specifically provides otherwise. It was doubtless the intention that the preferred stockholders of the company should run the risk of losing their capital equally with the common shareholders (See Hellman vs. Pennsylvania Electric Vehicle Co., 73 N. J., 270). It would be abhorrent to all principles of equity to construe the contract so as to deprive the preferred shareholders of the benefits of the contract when upon a like

contingency but in less prosperous circumstances they might well have been called upon to bear its burdens.

Where the charter provides, as it does here, that in case of dissolution the preferred and common stockholders shall share and share alike, the preferred stockholders are entitled upon the completion of the merger to receive the equivalent of whatever is received by the common stockholders.

Simpson vs. Palace Theatre, Limited, 69 Law Times Rep., 70 (1893), is a case in point.

The capital of the company was divided into preference and ordinary shares of one pound each fully paid up, the holders of preference shares not being entitled to any priority as regarded capital. Resolutions were passed for the voluntary winding up of the company with a view to carrying out a scheme of reconstruction under Section 1 of the Companies' Act of 1862, whereby a new company was to be formed, with a capital similarly divided but with five shillings per share treated as unpaid and each preference and ordinary shareholders in the old company was to receive respectively a preference and ordinary one pound share in the new company. An action was brought by a shareholder on behalf of himself and all other shareholders who were opposed to the resolutions for an injunction to restrain the company from giving effect thereto.

It was held on appeal, the opinion being written by Lord Justice Lindley, and concurred in by Bowen, L. J., and Lopes, L. J., that an injunction was rightly granted because the scheme denied the right of the ordinary shareholder in the old company to receive his *pro rata* of preference shares in the new.

Birch vs. Cropper, L. R., 14 App. Cas., 525 (1889), is also applicable. In that case the entire assets of a canal company were disposed of at a

price which was sufficient after paying the ordinary and preference shares in full to leave a balance of about 500,000 pounds. In a contest between the preferred and common shareholders as to how this fund should be distributed, it was held that the fund should be divided *pro rata* among both classes of stock according to the number of shares.

The case of *In re* Chrichtons Oil Company, Limited [1901], 2 Ch., 184, illustrates the same principle. There were not enough assets on liquidation to pay ordinary and preference shares in full. The articles of association authorized the directors to set aside as much of the profits as they thought best to reserve, and provided also that no larger dividend could be declared than was recommended by the directors. The preferred stockholders contended that a profit earned in one year but not declared as a dividend should be considered as belonging to them but the Court held otherwise declaring that the amount so earned and not declared as a dividend fell into the general assets and should be divided equally between the ordinary and preference shareholders.

It is beside the point to say that if the company continued in business and did not enter into the merger its assets might be lost or impaired and the preferred stockholders might never realize $56 a share for their stock. The fact remains that the company is not going to continue in business and the majority stockholder is absorbing $56 worth of assets per share of stock and giving in return a preferred stock certificate with a par value of $25 a share, a market value of $28 a share, and a right to share in the assets on dissolution only to the extent of $35 a share. And let it be remembered that there is not a syllable in the opposing affidavits which contradicts the complainants' statements as to value—not a word to indicate what the corporate

assets really are worth! If they were worth less the defendant would have said so. How much more than $56 a share is the real value of the assets?

It will be urged on the part of defendants that all the surplus belongs to the common stock and may be distributed in dividends to the entire exclusion of the preferred stock, relying on a dictum by Vice Chancellor Pitney in Beling vs. American Tobacco Company, 72 N. J. Eq., 32, 35. This dictum was expressly stated by the Vice-Chancellor not to represent a "definitive opinion" as to the rights of common and preferred shareholders respectively in the surplus.

So far as the surplus represents an increase in the value of capital assets—an unearned increment, so to speak,—it is clear that such a claim by the common stockholders is untenable. The right of the common stockholders to dividends depends not upon the existence of surplus assets but of "Accumulated profits" and there is nothing in the case from which the Court is justified in assuming that the surplus is made up of accumulated profits.

The actual facts are all within the knowledge of defendants who remain discreetly silent, contenting themselves with the statement that they believe the plan to be fair, without giving any facts from which its fairness or unfairness, can be ascertained. Surplus which is not accumulated profits clearly belongs equally to the preferred and common stockholders. Birch vs. Cropper (*supra*). If there is any presumption one way or the other it is that the directors have distributed all the accumulated profits over and above working capital as required by Section 47 of the Corporation Act.

Nor does it follow that the common shareholders have any greater rights than the preferred shareholders in the surplus even if it consists of accumulated profits which might have been but have not been paid out in dividends. Until a dividend is

declared no stockholder has any right thereto. Nor should it be assumed that the directors, having determined to dissolve or merge the company, will for the purpose of defeating the rights of the preferred stockholder to an equal distribution, distribute any accumulated profits to the common shareholders.

The fact is they have not done so and the court is dealing with actual conditions, not with a theoretical case.

It is not pertinent to say that if the company were going to continue in business the common stock would be worth much more than the preferred stock because of the unlimited right to dividends out of profits over working capital after the payment of six per cent on the preferred shares. The hypothesis that the company is to continue in business is contrary to the fact. Dissolution is contemplated and will become effective unless enjoined. For no other reason is the complainant in court asking an injunction.

The rights of the parties must be considered in the light of a pending dissolution of the company—whose majority stockholder for its own purposes, for its own sole benefit, has decided to take over all its assets, wipe out its stock and terminate its existence.

Dissolution proceedings under the Sherman Act are also pending against defendants in the United States Courts as appears from the affidavits filed. See also 222 Fed. Rep. 349. Since the bill in this case was filed a reargument of the case brought under the Sherman Act and now on appeal from the Circuit Court of Appeals has been ordered by the Supreme Court of the United States so that not only is a voluntary dissolution planned, but an involuntary dissolution is also threatened.

III.

Neither complainant's rights nor the fairness of the plan can be determined by the action of other stockholders.

Much is sought to be made in the answering affidavits of the fact that large numbers of stockholders have assented to the plan and have already surrendered their stock upon terms similar to those now offered. This circumstance seems to have influenced the Court below in reaching its conclusion as to the fairness of the plan. There is no doubt a presumption that all these stockholders knew what they were doing and acted with full knowledge of their rights, but it is only a presumption and it is insisted that any inferences based thereon as to the fairness of the plan are the result of a presumption which may be quite the reverse of the fact.

It is to be observed that the merger agreement discloses nothing as to the difference in voting rights, subscription rights, and rights on dissolution between the preferred stock of the company and the corporation, but contains only the cryptic phrase. "The rights of the holders of the common stock and preferred stock respectively shall be as set forth in said certificate of Incorporation of the United Shoe Machinery Corporation." (Merger Agreement Article 3.)

While it may be a permissible presumption that all the preferred stockholders of the company who surrendered this stock knew the terms of the company's charter and the rights flowing therefrom, it is going very far to say that they knew also of the provisions of the Charter of the corporation with regard to its preferred stock. Certain it is that if they did have such knowledge it was not obtainable from the literature issued by defendants.

When all is said it is still evident that no less than ~~125~~ 132 preferred stockholders holding nearly 7000 shares of preferred stock have failed to come in, as against 5 common shareholders holding less than 200 shares still standing out. It is insisted that these figures are even more persuasive in demonstrating the unfairness of the plan so far as the preferred stockholders are concerned than are the other figures in showing its fairness.

In his opinion Vice-Chancellor Lane refers to the question of business expediency. May it not be that many stockholders if they did know the facts, considered the plan unfair but nevertheless actuated by notions of business expediency deposited their stock rather than resort to the Courts for the protection of their rights.

IV.

The plan is unfair and oppressive and should be enjoined.

(a) THE NEW PREFERRED IS NOT EQUAL IN VALUE TO THE OLD.

Entirely apart from the affidavits, it is evident that the common shares of the company are valued for purposes of exchange at 2½ times their par value, namely, $62.50; and as it must be assumed that the stock of the holding corporation is not being issued below par or for property worth less than par, a minimum value of $62.50 for each share of common stock in the company is at once established. Assuming that this valuation is dependent upon the valuation of the preferred stock of the company at $25 per share, it is still clear that the common stock is receiving a premium of $37.50 per share which is not being received by the preferred stock on dissolution. This means that an interest in property to the extent $17.75 per share is

being transferred from the pocket of the preferred stockholders to the pockets of the common stockholders. The preferred stockholders of the company can never under any circumstances, if he takes the new preferred stock, realize $7.75 of this amount. By limiting the amount which will be payable on the preferred stock of the corporation on dissolution to $35 per share, the complainant is sought to be deprived of any interest present or future in property in which on these figures he has an interest to the extent of $7.75 per share.

(b) THE NEW PREFERRED UNLIKE THE OLD HAS NO RIGHT OF PREEMPTION.

The proposed merger is an attempt to deprive the complainant of his right to subscribe for any new shares which may be issued. The charter of the company gives to the preferred stockholder equal voting rights with the common shareholders. As a corollary to this right, and the right to share equally on dissolution, he has the right to subscribe equally with the common shareholders to any new shares which may be issued (*Way vs. Grease Co.,* 16 New Jersey Equity, 263; *Wall vs. Utah Copper Co.,* 17 New Jersey Equity, 17, whether he be a preferred or a common stockholder, *Jones vs. Concord, etc., R. R. Co.,* 67 N. H., 119, S. C., 67 N. H., 234.

A Court of law could not compensate complainants for the deprivation of this right.

(c) THE PROVISIONS REGARDING DIVIDENDS ON THE COMMON STOCK OF THE CORPORATION OPERATE TO THE DISADVANTAGE OF THE PREFERRED STOCKHOLDERS.

The common stockholders of the *company* may receive dividends only from accumulated profits. In the case of the *corporation* the common stockholders are entitled, after dividends on the pre-

ferred stock have been provided for, to receive as dividends not only the accumulated profits of the company, but also all of its surplus in so far as the same shall not from time to time be reserved for working capital. This distinction is quite important. (*Goodnow vs. American Writing Paper Co.*, 73 N. J. Eq., 692, at page 694.)

A surplus may be created by increasing the value of the stock of subsidiary companies upon the books to a point where a sufficiently large surplus exists to justify the distribution of a large portion of the surplus, or part or all of the capital assets may be sold at a profit. In the one case the surplus on the books and in the other the proceeds of the sale would still be assets in which the preferred and common stockholders would have an equal interest and not "accumulated profits," within the meaning of the charter of the company. Where, however, as in the case of the *company,* the right to receive dividends is not out of the surplus but from accumulated profits, the right of the directors to vote dividends from a surplus created by increasing the value of the assets as carried upon the books, where such value resulted from accretion and not from earnings, is to say the least extremely doubtful.

Birch vs. Cropper, L. R., 14 App. Cas., 525 (1889).

V.

Section 108b of the Corporation Act is not applicable.

The defendant, United Shoe Machinery Company, falls within the class of corporations referred to in Section 108-b and not within the class of Public Utilities Corporations mentioned in Section 108-a of the Corporation Act. It is there-

fore under the terms of the statute, optional with the complainant as to whether he will accept the provisions of the statute and apply to the Circuit Court for the appointment of appraisers. He should not be compelled to do so because the act provides for the determination of the market value of the shares of the dissenting stockholder without regard to any depreciation of appreciation thereof in consequence of the said merger or consolidation. In the present case it is the merger or consolidation which creates the contingency upon which the equal right of the complainants as preforred shareholders depends; so that the statute by its very terms attempts to nullify the contract existing between the preferred and common shareholders.

The statute, by leaving the stockholder free to avail himself of its provisions or not as he sees fit, negatives the right of a private corporation, to take *in invitum* the stock of a dissenting shareholder by paying him its appraised value. The stockholder must be accorded his lawful rights under the charter.

"This power to the directors to prescribe terms and conditions, cannot, however be held to be an unlimited, irresponsible power, but must be understood as authorizing only lawful terms or conditions."

Colgate vs. U. S. Leather Co., 73 N. J. Eq., 72, 89.

VI.

Defendants should not be permitted to accomplish by indirection the substantial alteration in the complainants rights as preferred stockholders which they could not bring about by amending the charter of the company.

There are only two objects apparent in the proposed plan of merger—one is to effect a saving in taxes, the other is to destroy the rights of the preferred stockholders of the company. The saving in taxes will benefit only the corporation, by relieving it of the burden of paying an income tax on the dividends which it receives from its holdings of shares in the company. There will not be a dollar actually saved to the company so far as has been pointed out. Directly or indirectly it will pay the same taxes as heretofore and in the same proportion. The other object of the merger under the circumstances can hardly commend itself to a court of equity. The defendant corporation seeks on the one hand to absorb the company in order to effect a saving for itself alone, while, on the other, offering terms which deprive the preferred shareholders of the company of substantial rights.

Owing to the fact that there is in the charter of the company no reservation of the right to alter or amend, the corporation could not force an amendment of the charter of the company which would change the rights of the preferred stockholders to the extent now proposed.

> Pronick vs. Spirits Dist. Co., 58 N. J. Eq., 97.

Defendants should not be permitted to accomplish indirectly what they cannot do directly.

VII.

The case presented is within the principles laid down in Copeland vs. United Shoe Machinery Company, 84 N. J. Equity, 276, affirmed 85 N. J. Equity, 209.

In affirming upon the opinion of Vice-Chancellor Stevens the order granting the injunction in the case of Copeland vs. United Shoe Machinery Company, this Court adopted as its own the following language from the opinion of the Vice-Chancellor:

> "It is obvious that whatever be the comparative market value of these respective rights they are *different*. If the actual value of the stock and of the property which the stock represents should greatly exceed the par value of all the stock, preferred and common, then the stockholder would, as far as can now be seen, lose by the merger; if it should fall short of that par value, he would gain. In two cases recently decided by me (Day vs. Faulks, 79 N. J. Eq., 66, 81 Atlantic, 354; Ballantine vs. Young, 79 N. J. Eq., 70, 81 Atlantic, 119), it appeared that the stock of the companies, which was the subject of the litigation, was selling at a very large premium. Such an agreement applied to a stock like that of the Singer Manufacturing Company, worth, at the time, six times its par value, would be manifestly unfair to the stockholder. How far extrinsic circumstances such as these will or ought to enter into the account, when we have to decide the question of its fairness, I need not now determine. It seems to me that enough is shown, both as to this and the question of voting power, to warrant a preliminary injunction."

It appears from the uncontradicted statements in the bill and affidavits that the total assets of the company are worth more than 225 per cent. of their par value,—how much more the complainant is unable to show and the defendants do not disclose. Enough, however, is shown to bring the case squarely within the conditions suggested in Vice-Chancellor Stevens' opinion and to entitle the complainants here to an injunction.

The order appealed from should be reversed.

Respectfully submitted,

JULIAN C. HARRISON,
Solicitor for and of Counsel,
with Complainants-Appellants,
Brugler, Copeland, Smith and Champlin.

TUNIS G. BERGEN,
of Counsel.

Stillman Appellate Printing Co.

INDEX.

Bill of Complaint.

Filed May 18, 1917.

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

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Humbly complaining shows unto your Honor your orator, Charles E. Brugler, of Lakewood, New Jersey, a stockholder of the preferred stock of the United Shoe Machinery Company, a corporation of the State of New Jersey, one of the defendants herein, for and on behalf of himself and all other preferred stockholders of said Company, similarly situated, who may come in and contribute to the expenses of this suit.

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1. That as appears by the certificate of incorporation, a certified copy of which is hereto annexed and marked Exhibit A., the United Shoe Machinery Company, hereinafter referred to as the Company, is a corporation incorporated under the laws of the State of New Jersey by a certificate duly filed in the office of the Secretary of State on the 7th day of February 1899.

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2. That the authorized capital stock of said Company, as appears by the said certificate, is $25,000,000 divided into one million shares with a par value of $25 each, and said capital stock is further equally divided between preferred stock and common stock, there being 500,000 shares of preferred and 500,000 shares of common. By the terms of said certificate of incorporation it is provided that the preferred stock shall be entitled out of the surplus net earnings after all amounts which may be determined upon have been reserved as working capital to a fixed, cumulative preferential divi-

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dend at the rate of but never exceeding six per cent. per annum on the par value of said stock; and it is further provided that if in any year dividends amounting to six per cent. per annum shall not be paid on such preferred stock the deficiency shall be a charge on such net earnings over and above the amount reserved as working capital and be payable, but without interest, before any dividends shall be paid upon or set apart for the common stock. It is further in said certificate provided that in the event of the dissolution of the Company or the distribution of its assets, the holders of the preferred stock and the holders of the common stock shall share and share alike. The said certificate of incorporation further provides that the shares of preferred and common stock should have equal voting power. Of the total authorized capital stock of the Company there have been issued and are now outstanding certificates for 435,628 38/100 shares of common stock and for 398,863 38/100 shares of preferred stock. That your orator is and continuously since the year 1904 has been the owner of and holder of 500 shares of the said preferred stock. That the defendant, United Shoe Machinery Corporation, hereinafter referred to as the Holding Company, has acquired and now owns, as your orator is advised, 435,412 76/100 shares of the said common stock of the Company and 391,626 49/100 shares of the said preferred stock of the Company, and is enabled by virtue of such ownership to control absolutely the voting and action taken at any stockholders' meeting of the Company.

3. That the said Holding Company, United Shoe Machinery Corporation, as appears by its certificate of incorporation, a certified copy of

which is hereto annexed and marked Exhibit B., filed on May 2nd, 1905, and the amendment thereto filed February 24th, 1917, a certified copy of which is hereto annexed marked Exhibit C., is a corporation of the State of New Jersey having an authorized capital stock of $50,000,000, divided into two million shares of the par value of $25 each, of which authorized capital stock 600,000 are preferred stock and 1,400,000 are common stock. By the certificate of incorporation of the said Holding Company it is provided that the holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits arising from the business of the Holding Company, after all amounts which shall have been determined upon by the Board of Directors, shall have been reserved as working capital, cumulative dividends at the rate of but never exceeding six per cent. per annum, payable quarterly on dates to be fixed by the by-laws or by the Board of Directors, in preference and priority to the declaration or payment of any dividend on the common stock. It is by the said certificate of incorporation further provided that in the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the said Holding Company, the holders of the preferred stock shall be entitled to be paid $35 per share and the unpaid dividends accrued thereon out of the capital of the Holding Company or the proceeds thereof before any amount shall be paid therefrom to the holders of the common stock and after payment to the holders of the preferred stock of the sum of $35 in respect to each share thereof and the accrued dividends thereon, the remaining assets and funds of the corporation shall be

divided and paid to the holders of the common stock according to their respective shares; and it is further provided in the said certificate of incorporation of the Holding Company that the holders of the preferred stock therein be entitled to no other or further share in the surplus or net
10 profits of the Holding Company, nor shall they be entitled to any other or further payment or distributive share in the capital of the Holding Company in the event of liquidation, dissolution or winding up than as above metioned and provided, nor shall they be entitled in any event to any right to subscribe to, or to take, or to receive, any preferred or common stock of the Holding Company which is hereby authorized, or preferred, common or other stock which shall be
20 hereafter authorized, whether preferred, common or other stock, now or hereafter authorized, shall be issued for cash at prices at or above par, to be determined by the Board of Directors, or on account of payment for property purchased, or by way of stock dividends, or by way of capitalization of the surplus, or net profits, or however, otherwise lawfully issued. It is further provided with respect to the rights of the preferred stockholders of the said Holding Company, that so
30 long as dividends on the said preferred stock shall be paid quarterly, the holders of the said preferred stock shall have no voting power on any question as to the increase of the authorized capital stock by additional common stock, or by any stock deferred to the preferred stock in respect to dividends and lien upon the capital of the Holding Company. That of the total authorized capital stock of the said Holding Company of $50,000,000 divided into two million shares of
40 $25 each there have been issued and are now

outstanding 1,260,279 25/100 shares of common stock and 391,624 shares of preferred stock.

4. That on the 27th day of April, 1917, there was issued by the Company a circular letter addressed to the stockholders of the Company, a copy of which letter is hereto annexed marked Exhibit D. Inclosed in said circular letter was a proposed agreement of merger purporting to have been made on the 18th day of April, 1917, which agreement of merger is hereto annexed marked Exhibit E., and that there was also inclosed with said circular letter a proxy and notice of special meeting, a copy of which is hereto annexed marked Exhibit F.

5. Your orator is informed and believes that the same persons constitute the Board of Directors of the Company and the Holding Company, to wit, William Warren Barbour, Edwin P. Brown, George W. Brown, John H. Connor, Louis A. Coolidge, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Edward P. Hurd, George E. Keith, Joseph C. Kilham, Rudolph Matz, Charles G. Rice, Wallace F. Robinson, Alfred R. Turner, Samuel Weil, Sidney W. Winslow, Sidney W. Winslow, Jr., and William Woodward.

6. That at the special meeting of the stockholders of the Company called to be held on the 22nd day of May, 1917, referred to in the notice thereof, schedule (F), it is proposed to submit the said merger agreement, schedule (E), to the stockholders of the said United Shoe Machinery Company, and your orator is informed and believes that the votes of the holders of at least two-thirds in amount on each class of the capital stock of the said Company outstanding,

including the capital stock of the said Company owned as aforesaid by the United Shoe Machinery Corporation will, unless prevented by the order of this honorable court, be cast in favor of the adoption of said merger agreement.

10 7. That your orator has never consented directly or indirectly to said merger or consolidation of the United Shoe Machinery Company with United Shoe Machinery Corporation, but has, ever since learning that the directors of United Shoe Machinery Company were proposing to merge or consolidate said Company as provided in said merger agreement, opposed, protested and hereby does protest against said merger, that your orator is advised and believes 20 that by virtue of his ownership of the stock owned and held by him as aforesaid he has become vested with certain contractural rights, among which is the right to receive, in the event of the dissolution of the Company or the distribution of its assets, an equal share in the assets of said Company with the holders of the common stock of said Company, whereas, under the said merger agreement your orator will be entitled to receive for each share of such pre- 30 ferred stock of the Company owned and held by him one share of the preferred stock of the Consolidated Corporation or Holding Company, which will entitle him in the event of dissolution or liquidation (whether voluntary or involuntary) to be paid only $35 for each of such shares and that by such exchange his contract right with the said Company upon said shares of preferred stock therein will be unlawfully altered and impaired.

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8. That your orator is advised and believes that by virtue of his ownership of the said preferred stock of the Company held by him as aforesaid, he is entitled to have equal voting powers therein with the holders of common stock in said Company, whereas, under the said merger agreement he will be entitled to receive for such share of such preferred stock owned and held by him one share of the preferred stock of the Consolidated Corporation or Holding Company which will not entitle him to such equal voting rights, but only to restricted voting rights of the character and extent set forth in the charter of the Holding Company as shown by provisions heretofore recited.

9. That your orator is informed and believes that the liquidating value of the shares of preferred stock in the Company, which are now owned and held by your orator, based upon the right of equality of distribution conferred by the charter of the Company, largely exceeds $50 per share, whereas, under the proposed merger agreement the liquidating value of the said preferred shares of the Consolidated Corporation or Holding Company which are offered in exchange for the shares of the Company owned and held by your orator, share for share, the liquidating value in the case of dissolution or upon the happening of any other contingency, can in no event exceed $35 per share; and your orator is furthermore advised and believes that proof of the actual value of the preferred shares of the Company held by your orator in an action at law for damages sustained by reason of the completion of the contemplated merger would be impossible by reason of the ownership of pat-

ents and other property by the Company, the prices or even approximate value of which is not susceptible of proof.

10. That your orator is advised and believes that by virtue of his ownership of the said preferred stock of the Company he is entitled to subscribe ratably for any new shares of stock of the Company which may hereafter be issued, whereas, under the said merger agreement it is attempted to deprive him of such right.

11. That the said proposed merger or consolidation is, for the reasons hereinbefore stated and for other reasons, contrary to law and equity, illegal, unfair and oppressive and violative of the property rights of your orator as preferred stockholder in said Company and that the proposed merger or consolidation is without the consent of your orator, an invasion of his rights and without authority of law as against him.

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

In consideration whereof and in as much as your orator is without adequate remedy in the premises at and by the strict rules of the common law and can only obtain relief in this honorable court where matters of this nature are properly cognizable and relieveable.

To the end therefore, that the said United Shoe Machinery Company, United Shoe Machinery Corporation, William Warren Barbour, Edwin P. Brown, George W. Brown, John H. Connor, Louis A. Coolidge Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Edward P. Hurd, George E. Keith,

Joseph C. Kilham, Rudolph Matz, Charles G. Rice, Wallace F. Robinson, Alfred R. Turner, Samuel Weil, Sidney W. Winslow, Sidney W. Winslow, Jr. and William Woodward, may, but without oath, which is hereby waived, pursuant to the statute to the best of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular matters aforesaid and that as fully and particularly as if the same were here repeated and they and every of them distinctly interrogated thereof.

And that the said United Shoe Machinery Company, its directors, officers and agents be enjoined from submitting to the special meeting of the stockholders of said Company called to be held at the principal registered office of the Company, Paterson Safe Deposit and Trust Company, 152 Market street, Paterson, New Jersey, on the 22nd day of May, 1917, at 11.30 o'clock A. M., or any adjournment thereof, or any other meeting called for the purpose of ratifying the agreement for the consolidation or merger of the said Company and Holding Company in the foregoing bill of complaint referred to, or any other agreement for like purpose, and from holding said meeting or any other meeting for like purpose and from receiving the votes at said meeting or any adjournment thereof or any other meeting called for a like purpose, of any stock, preferred or common, of said United Shoe Machinery Company, owned or controlled by any defendant herein named in favor of said consolidation or merger agreement or any other agreement for like purpose; and that the said United Shoe Machinery Corporation, its officers, agents, proxies, attorneys and servants

may be restrained from voting any stock, preferred or common, of the United ShoeMachinery Company, owned or controlled by it in favor of the adoption of the said agreement for the consolidation or merger of the United Shoe Machinery Company and the United Shoe Machinery Corporation, made April 18th, 1917, entered into in accordance with resolutions respectively of the Boards of Directors of said Company and Holding Company for the merger and consolidation of said two corporations on the terms and conditions in said agreement set forth, being the consolidation or merger agreement in the foregoing bill of complaint referred to, at the special meeting of the stockholders of the said United Shoe Machinery Company, called to be held at the principal registered office of the Company, Paterson Safe Deposit and Trust Company, 152 Market street, Paterson, New Jersey, on the 22d day of May, 1917, at 11.30 o'clock A. M. and from taking any corporate action, signing any consents, or doing anything whatsoever looking to the merger or consolidation of the United Shoe Machinery Company and the United Shoe Machinery Corporation; and that the said United Shoe Machinery Company, its directors, officers and agents be enjoined from taking any corporate action, signing any consents or doing anything whatsoever looking to the merger or consolidation of the United Shoe Machinery Company and the United Shoe Machinery Corporation; and that the said merger or consolidation agreement may be declared null and void and that your orator may have such other or further relief as the nature and circumstances of the case may require and shall be agreeable to equity.

Bill of Complaint.

May it please your honor to grant unto your orator the State's Writ of Subpoena to be directed to the said United Shoe Machinery Company, United Shoe Machinery Corporation, William Warren Barbour, Edwin P. Brown, George W. Brown, John H. Connor, Louis A. Coolidge, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Edward P. Hurd, George E. Keith, Joseph C. Kilham, Rudolph Matz, Charles G. Rice, Wallace F. Robinson, Alfred R. Turner, Samuel Weil, Sidney W. Winslow, Sidney W. Winslow, Jr. and William Woodward, commanding them and each of them at a certain date and under a certain penalty therein to be expressed, personally to be and appear before your Honor in this honorable court, then and there to answer the premises and to stand to and abide by and perform such decree therein as to your Honor shall seem meet and your orator will ever pray etc.

JULIAN C. HARRISON,
Solicitor for and of
Counsel with Complainant.

Exhibit A to Bill of Complaint.

(Charter of United Shoe Machinery Company)

CHARTER

of

10 UNITED SHOE MACHINERY COMPANY

February, 1899.

Registered Office:

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,

152 Market Street, Paterson, New Jersey.

EXHIBIT A.

20 UNITED SHOE MACHINERY COMPANY

(U. S. Internal Revenue Stamp, 10c, cancelled.)

CERTIFICATE OF INCORPORATION.

First: The name of the corporation is UNITED SHOE MACHINERY COMPANY.

Second: The location of its principal office in the State of New Jersey is at No. 152 Market Street, in the City of Paterson, County of Passaic.

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The name of the agent therein and in charge thereof, upon whom process against this corporation may be served, is The Paterson Safe Deposit and Trust Company.

Third: The objects for which, and for any of which, this corporation is formed are to do any or all of the things herein set forth, to the same extent as natural persons might or

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could do the same, and in any part of the world, namely:

To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools and implements and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate and deal in and with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber and materials and fabrics of all sorts and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other materials or fabrics; and in general to produce, prepare, manufacture and deal in and with goods, wares, merchandise, property materials and things of every class and description.

To purchase, acquire, erect, establish, hold and dispose of manufactories, workshops, plants and buildings of every description, and to fully equip the same with a view to carrying out the purposes herein set forth, or any of them.

To purchase, lease or otherwise acquire, and to sell, let, mortgage, or otherwise dispose of, to the same extent that a natural person might do, lands, buildings and all sorts of property, both real and personal, within or without the State of New Jersey, and in any part of the world.

To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign or otherwise dispose of any and all trademarks, trade names and distinctive marks, copyrights and patent rights, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the like, or any such property rights and information so acquired, and, with a view to the working and development of the same, to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects, or any of them.

To acquire the good will, rights, stock and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporations, bonds, or otherwise.

To issue from time to time, so far as may be convenient for the accomplishment of the purposes, or any of them, herein contained, bonds of the corporation to such amount, in such denomination and on such terms as the

Board of Directors may determine, and, if desired, to secure the same by pledge or mortgage of any or all of its property, and, if deemed advisable, by mortgage of the franchises of the company, in such manner as may be allowed by law.

To hold, purchase, or otherwise, acquire and invest in, sell, assign and transfer, mortgage, pledge guarantee or otherwise dispose of shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations; and, while the holder of such stock, bonds and debentures, to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

To make and enter into contracts of every sort and kind with any individual, firm, association, corporation—private, public or municipal—and with the Government of the United States, of any state, territory or colony thereof, or any foreign government.

To carry on any other business, and to do any and all other things which may seem to the Company capable of being conveniently carried on or done in connection with the objects hereinbefore set forth, or any of them, or calculated, directly or indirectly, to develop the Company's business, or to enhance the value of the company's property or rights; and to do all or any of the above things within or without the State of New Jersey, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone or in conjunction with other individuals, firms, associations or corporations.

Exhibit A. to Bill of Complaint.

It is Intended that the objects specified and clauses contained in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to, or inference from the terms of any other clause of this, or any other paragraph in this charter, but that the objects specified in each of the clauses of said third paragraph shall be regarded as independent objects, and shall further be regarded as in furtherance of and not in limitation of the general powers conferred by the laws of the State of New Jersey.

Fourth. The total amount of the capital stock of said corporation is to be twenty-five million dollars ($25,000,000), divided into one million (1,000,000) shares, with a par value of twenty-five dollars ($25) each. Of said capital stock, five hundred thousand (500,000) shares, amounting at par to twelve million, five hundred thousand dollars ($12,500,000), are to be preferred stock, and five hundred thousand (500,000) shares, amounting at par to twelve million, five hundred thousand dollars ($12,500,000), are to be common stock.

From time to time, the preferred stock and the common stock shall be issued in such amounts and proportions as shall be determined by the Board of Directors, and as may be permitted by law.

The rights, privileges and conditions following shall attach to the shares aforesaid, that is to say:

The preferred stock shall be entitled, out of the surplus net earnings, after all amounts which may be determined upon have been reserved as working capital, to a fixed cumulative preferen-

tial dividend at the rate of, but never exceeding six per cent. per annum on the par value of said stock and such dividends shall be declared in January of each year, unless some specified day or days for that purpose be fixed by the by-laws. If, in any year, dividends amounting to six per cent. per annum, shall not be paid on such preferred stock, the deficiency shall be a charge on said net earnings over and above the amount reserved as working capital, and be payable, but without interest, before any dividends shall be paid upon or set apart for the common stock. In the event of the dissolution of the corporation, or the distribution of its assets, the holders of the preferred stock and the holders of the common stock shall share and share alike.

The common stock shall be subject to the prior rights of the preferred stock, as herein declared, but the shares of preferred and common stock shall have equal voting power.

If, after appropriating the accumulated profits of the company, in excess of the amount reserved as working capital, to such dividends on the preferred stock of the company as may be required, there remain further accumulated profits, over and above the amount reserved as working capital, the Directors shall, in January of each year, unless some specific day or days for that purpose be fixed in the by-laws, declare a dividend of said profits on the common stock.

Fifth. The names and the post-office addresses of the incorporators, and the numbers of shares of the common stock subscribed for by each, the aggregate of which being three thousand dollars ($3,000), is the amount of capital stock with which

the corporation shall commence business, are as follows:

Names.	P. O. Address.	No. of shares of common stock.
J. Wilson Smyth	14 Hill St., Newark, N. J.	Forty shares
Robert Miller	Main St., Paterson, N. J.	Forty shares
John S. Tylee	Van Houten St., Paterson, N. J.	Forty shares

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SIXTH. The duration of the corporation is to be perpetual and unlimited.

SEVENTH. The property and business of the corporation shall be managed by a Board of Directors, who shall have power, among other things, without the assent or vote of the stockholders, to make, alter, amend and rescind the by-laws of this corporation; 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 corporation, to issue bonds of the corporation, and, if deemed advisable, to secure the same, and from time to time to sell, assign transfer or otherwise dispose of any or all of the property of the corporation, but no such sale of all the property shall be made except pursuant to a vote of at least two-thirds of the Board of Directors.

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The corporation may use and apply its surplus earnings or accumulated profits, authorized by law to be reserved, to the purchase or acquisition of property, and to the purchase or acquisition of its own capital stock, from time to time, to such extent and in such manner and upon such terms as its Board of Directors shall de-

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termine. And neither the property nor the capital stock so purchased and acquired, nor any of its capital stock taken in payment or satisfaction of any debt due to the corporation, shall be regarded as profits for the purposes of declaration or payments of dividends, unless otherwise determined by the Board of Directors. 10

The Board of Directors may from time to time sell, assign, transfer or otherwise dispose of any or all of the property or the capital stock so purchased and acquired, and may reinvest or reserve the proceeds thereof as working capital.

The corporation, in its by-laws, may prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number; and, by vote of the Board of Directors, the number 20 of Directors may at any time be increased or altered, and, in case of such increase, the Board of Directors shall have power to elect additional directors to fill the directorship created by such increase, such additional directors to hold office until the next annual meeting of the stockholders, or until their successors shall be elected.

The Board of Directors, by resolution passed by a majority of the whole board, may designate 30 three or more directors to constitute an Executive Committee, which committee, to the extent provided in said resolution, or in the by-laws of the corporation, shall have and may exercise the power of the Board of Directors in the management of the business and affairs of the corporation, and shall have power to authorize the seal of the corporation to be affixed to all papers which may require it.

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Exhibit A. to Bill of Complaint.

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

The Board of Directors shall have power to hold its meetings, to have one or more offices, and to keep the books of the corporation (except the stock and transfer books) outside of this State, at such places as may be from time to time designated by them.

We, the Undersigned, for the purpose of forming a corporation in pursuance of an Act of the Legislature of the State of New Jersey, entitled "An Act Concerning Corporations" (Revision of 1896) and the various acts amendatory thereof and supplemental thereto, do associate ourselves into a corporation, and do make, record and file this certificate, and do respectively agree to take the number of shares of stock hereinbefore set forth, and accordingly hereunto have set our hands and seals.

Dated at Paterson this seventh day of February, 1899.

J. WILSON SMYTH (L. S.)
ROBERT MILLER (L. S.)
JOHN S. TYLEE (L. S.)

In presence of

Wm. I. Lewis.

Exhibit A. to Bill of Complaint.

STATE OF NEW JERSEY, }
COUNTY OF PASSAIC. } *ss:*

Be it remembered that on this seventh day of February, A. D. eighteen hundred and ninety-nine, before the undersigned personally appeared J. WILSON SMYTH, ROBERT MILLER and JOHN S. TYLEE, who, I am satisfied, are the persons named in and who executed the foregoing certificate, and, I having first made known to them, and each of them, the contents thereof, they did each acknowledge that they signed, sealed and delivered the same as their voluntary act and deed.

WM. I. LEWIS,
A Master in Chancery of New Jersey.

(ENDORSED)

"Received in the Clerk's Office of the County of Passaic, on the 7th day of Feb., A. D. 1899, at o'clock in noon, and recorded in Book C of Certificates for said county, on pages 308, etc.

A. D. WINFIELD,
Clerk."

(ENDORSED)

Filed Feb. 7, 1899.

GEORGE WURTS,
Secretary of State.

Exhibit B. to Bill of Complaint.

STATE OF NEW JERSEY

DEPARTMENT OF STATE

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY, that the foregoing is a true copy of Certificate of Incorporation of the UNITED SHOE MACHINERY COMPANY, as the same is taken from and compared with the original filed February 7th, 1899, and now remaining on file and of record in my office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal at Trenton, this Eleventh day of May, A. D. 1917.

THOMAS F. MARTIN,

[SEAL] *Secretary of State.*

Exhibit B to Bill of Complaint.

(Charter of United Shoe Machinery Corporation)

STATE OF NEW JERSEY, *ss:*

We, the undersigned, in order to form a corporation for the purposes hereinafter stated under and pursuant to the provisions of the Act of the Legislature of the State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and the Acts amendatory thereof and supplemental thereto, do hereby certify as follows:

FIRST: The name of the corporation is

"UNITED SHOE MACHINERY CORPORATION."

SECOND: The location of its principal office in this State is at Number 152 Market Street, in the City of Paterson and County of Passaic. The name of the agent therein and in charge thereof upon whom process against this corporation may be served is "The Paterson Safe Deposit and Trust Company." 10

THIRD: The objects for which the corporation is formed are:

To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools and implements and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate, deal in and with all sorts of boot and shoe machinery, lasts, trees, forms and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other materials or fabrics; and in general to produce, prepare, manufacture and 20 30 40

deal in and with goods, wares, merchandise, property, materials and things of every class and description.

To carry on the business of manufacturers of and dealers in all kinds of eyelets, hooks, buttons, studs, nails, wires, rivets, tacks, metallic and other plates, metallic, wood and other fastenings, laces, cloth, linen, tape and other fabrics, brushes, abrasive materials, cements, dressings, stains, blackings and other requisites for the improvement and treatment of boots and shoes, threads, elastic material, buttons and inner sole, and other articles or substances for protecting feet from damp or heat and other articles or substances used in connection with the manufacture of boots and shoes, corsets, stationery, sails, tents, clothing and for analogous purposes, and to carry on the business of manufacturers of and dealers in all kinds of appliances, devices, findings, tools, mechanisms, accessories, processes and things which may be used or useful in connection with the manufacture or treatment of any of the above named articles or substances.

To acquire, own, lease, occupy, use or develop any lands, containing coal, metals or minerals, or other ores or oil which shall be useful or convenient in carrying on said business. To mine or otherwise extract or remove and deal in coal ores, minerals, or timber from any lands owned, acquired, leased or occupied by the Company.

To purchase, acquire, erect, establish, hold and dispose of manufactories, workshops, plants and buildings of every description, and to fully equip the same with the view of carrying out the purposes herein set forth or any of them;

to purchase, lease or otherwise acquire, hold and dispose of in any manner lawful for individuals, lands, buildings, houses for employees and all sorts of property both real and personal, within or without the State of New Jersey or in any part of the world, which shall be necessary or convenient for carrying out the purposes herein set forth or any of them.

In connection with and in furtherance of the general business of the company, to lay out lands for building purposes and to build on, improve, let on building lease, advance money to persons building thereon or otherwise develop the same in such manner as may seem expedient to advance the company's interests.

To construct bridges, buildings, machinery, shops, boats, engines, cars and other equipment, railroads, docks, slips, elevators, waterworks, gas works and electric works, viaducts, aqueducts, canals and other waterways and any other means of transportation, and to sell or otherwise dispose of the same, or to maintain or operate the same but not to maintain or operate any railroad or canal in the State of New Jersey.

To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, introduce, sell, assign or otherwise dispose of any and all trademarks, trade names and distinctive marks, copyrights, patents and patent rights, and all inventions, improvements and processes used in connection with or secured under Letters Patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trademarks, patents, licenses, concessions, processes and the

like, or any such property, rights and information as acquired, and, with a view to the working and development of the same to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects or any of them.

To acquire the good will, rights, stocks and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, carrying on any business which this corporation is authorized to carry on, and to pay for the same in cash, shares of stock of this corporation, bonds or otherwise.

To purchase, acquire by subscription or otherwise, and to hold for investment or otherwise, use, sell, assign, transfer, mortgage, pledge, or otherwise dispose of and to guarantee any shares of stock, bonds, securities, or other obligations of any other corporation or association carrying on any business which this corporation is authorized to carry on; to aid in any manner any such corporation or association whose shares of stock, bonds or other obligations are held in any manner guaranteed by the company, and to do any other acts or things now or hereafter permitted by law for the preservation, protection, improvement or enhancement of the value of such shares of stock, bonds, securities or other obligations, and to do any acts or things permitted by law designed for any such purpose; and while owner of any such shares of stock, bonds, securities or other obligations, to exercise all the rights, powers and privileges of ownership thereof; and to exercise any and all

voting powers thereon to the same extent as a natural person might or could do.

To enter into partnership or into any arrangement for sharing profits, union of interest, joint adventure or co-operation with any person, partnership, association or corporation carrying on or engaged in any business which this corporation is authorized to carry on or engage in.

To establish and support, or to aid in the establishment and support of associations, institutions or conveniences calculated to benefit employees or ex-employees of the company, or any of its predecessors in business, or the dependents or connections of such persons, and to grant pensions and allowances and to make payments towards insurance, and to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, or for any public, general or useful object.

To issue from time to time, when and as may be convenient for the accomplishment of the purposes or any of them herein set forth, bonds and other securities, or obligations of the corporation to such amount and in such denomination and on such terms as the Board of Directors shall determine; and, when authorized by the stockholders as hereinafter provided, to pledge, mortgage or convey in trust any and all shares of stock, bonds, securities, obligations or other property of the corporation, to secure any bonds, securities or other obligations so issued.

To make, enter into and guarantee contracts of every sort and kind with any individual, firm, association, corporation—private, public or municipal,—or with the Government of the United States of America, or of any State, Terri-

tory or Colony thereof, or any foreign government, for the purpose of attaining or furthering any of the purposes herein set forth; and to carry on any other business and to do any and all other acts which may seem to the corporation capable of being conveniently carried on or done in connection with the purposes herein set forth or any of them or calculated directly or indirectly to develop the business of the corporation, or enhance the value of the property or rights of the corporation, and to do any or all of the above things within or without the State of New Jersey, or in any part of the world as principals, agents, contractors, trustees, guarantors or otherwise, or by or through trustees, agents or otherwise, and either alone or in conjunction with other individuals, firms, associations or corporations, and to exercise any and all other powers for the accomplishment and furtherance of the purposes herein set forth, which a co-partnership or natural person could do or exercise, and which now is or hereafter shall be authorized or permitted by law.

To use and apply from time to time its surplus or net profits arising from its business to the purchase or acquisition of its bonds, securities or other obligations or shares in its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall determine; and from time to time accept as security for, or in payment on account of or in satisfaction of any claim or demand of the corporation, shares in its own capital stock on such terms as the Board of Directors may determine.

To do all and everything necessary or convenient for the accomplishment of the purposes, objects and powers above mentioned, or inciden-

tal thereto, and to conduct its business, or do anything which it is authorized to do, in every State and in the Territories and Colonies of the United States of America and in foreign countries, and to have one office or more than one office, and to keep the books of the corporation outside of the State of New Jersey, except as otherwise may be provided by law; and to hold, purchase, mortgage and convey real and personal property either in or out of the State of New Jersey, but not to engage in any business hereunder which shall require the exercise of the right of eminent domain within the State of New Jersey or which is prohibited to corporations formed under the statutory provisions aforesaid.

It is declared that the objects and powers specified, and the clauses contained in this paragraph "Third," shall be in no wise limited or restricted by reference to or inference from the terms of any other clause of this or any other paragraph in this certificate.

Fourth. The total amount of the authorized capital stock of the corporation is Fifty Million Dollars ($50,000,000) divided into two million (2,000,000) shares of the par value of Twenty-five Dollars ($25.00) each. Of such authorized capital stock Six Hundred Thousand (600,000) shares, amounting at par to Fifteen Million Dollars ($15,000,000) shall be preferred stock, and One Million Four Hundred Thousand (1,400,000) shares amounting at par to Thirty-five Million Dollars ($35,000,000) shall be common stock. The amount of the capital stock with which the corporation shall commence business is Thirty Thousand Dollars ($30,000).

From time to time the amount of the capital stock hereby authorized may be increased according to law and as provided in this certificate, and the preferred and common stock, hereby authorized, and all capital stock which shall hereafter be authorized, may be issued from time to time by the Board of Directors, in such amounts and proportions and for such considerations as shall from time to time be determined by the Board of Directors and as shall be permitted by this certificate and by law.

The rights, privileges and conditions following shall attach to the shares aforesaid:

The holders of the preferred stock shall be entitled to receive, when and as declared by the Board of Directors, from the surplus or net profits arising from the business of the corporation, after all amounts which shall have been determined upon by the Board of Directors shall have been reserved as working capital, cumulative dividends at the rate of, but never exceeding six per cent. (6%) per annum, payable quarterly on dates to be fixed by the by-laws or by the Board of Directors, in preference and priority to the declaration or payment of any dividend on the common stock. Shares of preferred stock issued between the dates fixed for payment of dividends shall be entitled at the next dividend date to a dividend at the rate aforesaid from the date of issue.

In the event of any liquidation or dissolution or winding up (whether voluntary or involuntary) of the corporation, the holders of the preferred stock shall be entitled to be paid thirty-five dollars ($35) per share and the unpaid dividends accrued thereon, out of the cap-

ital of the corporation or the proceeds thereof before any amount shall be paid therefrom to the holders of the common stock; and after the payment to the holders of the preferred stock of the sum of thirty-five dollars in respect to each share thereof and the accrued dividends thereon, the remaining assets and funds of the corporation shall be divided and paid to the holders of the common stock according to their respective shares.

The holders of the preferred stock shall not be entitled to any other or further share in the surplus or net profits of the corporation, nor shall they be entitled to any other or further payment or distributive share in the capital of the corporation in the event of liquidation, dissolution or winding up, than as above provided, nor shall they be entitled in any event to any right to subscribe to or to take, or to receive, any preferred or common stock of the corporation, which is hereby authorized or preferred, common or other stock which shall be hereafter authorized, whether the preferred, common or other stock now or hereafter authorized shall be issued for cash at prices at or above par to be determined by the Board of Directors, or in or on account of payment for property purchased, or by way of stock dividends, or by way of capitalization of the surplus or net profits, or however otherwise lawfully issued.

If, in respect to any quarterly dividend period, a dividend at the rate of six per cent. per annum upon the par value of the preferred stock shall not be declared and paid the deficiency shall be a charge on the surplus or net profits arising from the business of the corporation

over and above the amount which the Board of Directors shall have reserved as working capital, and shall be payable, but without interest, before any dividends shall be declared or paid in respect to the common stock.

So long as dividends on the preferred stock shall be paid quarterly as aforesaid, the holders of the preferred stock shall have no voting power on any question as to the increase of the authorized capital stock by additional common stock, or by any stock deferred to the preferred stock in respect to dividends and lien upon the capital of the corporation; but should any dividend on the preferred stock be not declared and paid, when payable as above provided, and remain so unpaid for a period of three months, then and so long as such dividend or any part thereof remains unpaid by reason of any default or neglect of the corporation, the holders of the preferred stock entitled to such unpaid dividend or part thereof, shall be entitled to the same voting powers thereon as belong to the holders of common stock, but upon the payment of such unpaid dividend or part thereof, the voting power upon said preferred stock shall again cease as aforesaid, and so on from time to time as long as any dividend or part thereof, upon the preferred stock shall remain unpaid for three months after the same has become payable as above provided. Upon all other questions, and, in particular, upon questions relating to the increase or decrease of the authorized preferred stock, the holders of the preferred stock and the holders of the common stock shall, at all times have equal voting powers.

Exhibit B. to Bill of Complaint.

Whenever all cumulative dividends on the preferred stock for all previous years shall have been declared and shall have become payable, and the accrued quarterly instalments for the current year shall have been declared, and the corporation shall have paid for such cumulative dividends for previous years, and such accrued quarterly instalments, or shall have set aside from its surplus or net profits a sum sufficient for the payment thereof, the Board of Directors may declare dividends on the common stock, payable then or thereafter, out of any remaining surplus or net profits.

Fifth. The names and post-office addresses of the undersigned incorporators and the number of shares of stock for which severally and respectively we do hereby subscribe, (the aggregate of our subscription being thirty thousand dollars ($30,000), which is the amount of the capital stock with which the corporation will commence business), are as follows:

Name	Post Office Address	Number of Shares Common Stock	Number of Shares Preferred Stock
John Reynolds	Paterson, N. J.	400	
William Berdan	Paterson, N. J.	400	
Frank Gledhill	Paterson, N. J.	400	

Sixth. The duration of the corporation shall be perpetual.

Seventh. The first Board of Directors of the corporation shall consist of three persons to be elected by the stockholders at their first meeting. Thereafter the number to constitute the Board shall be fixed from time to time by the by-laws or by the Board of Directors.

The Board of Directors shall have the management and entire control of all the property

and business affairs of the corporation, and, for that purpose, they shall have and exercise all the powers of the corporation which are not reserved to the stockholders by this certificate or by the Laws of the State of New Jersey, now or hereafter in force.

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Among all other powers which may be exercised by the Board of Directors, the Board shall, subject to by-laws made by the stockholders, have full power with respect to the following:

1. To make by-laws and from time to time to alter, amend and repeal any by-laws made by the Board of Directors may be altered or repealed by the stockholders at any annual meeting, or at any special meeting, provided notice
20 of such proposed alteration or repeal be included in the notice of the meeting.

2. To prescribe the number necessary to constitute a quorum of the Board of Directors, which number may be less than a majority of the whole number; and, by vote of the Board of Directors, the number of Directors may at any time be increased or altered, and, in case of such increase, the Board of Directors shall
30 have the power to elect additional Directors to fill the directorships created by such increase, such additional Directors to hold office until the next annual meeting of the stockholders, or until their successors shall have been elected and qualified. In case of any vacancy among the Directors through death, resignation, disqualification or other cause, the Directors remaining in office may elect a successor director to hold office for the unexpired portion of the term of the Director whose office shall have become va-

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cant and until the election and qualification of a successor.

3. By the affirmative vote of a majority of the whole Board to designate three or more Directors to constitute an Executive Committee, and to determine what number thereof shall constitute a quorum, which Committee, to the extent provided in said vote, or in the by-laws of the corporation, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the corporation, including power to authorize the seal of the corporation to be affixed to all papers which may require it.

4. By the affirmative vote of a majority of the whole Board, to appoint other standing, and such standing committees shall have and may exercise such powers as shall be conferred upon them or authorized by the by-laws or by the votes appointing them.

5. To elect or appoint one or more Vice-Presidents, one or more Assistant Treasurers, and one or more Assistant Secretaries; and to the extent provided in the by-laws the persons so appointed respectively shall have and may exercise all the powers of the President, of the Treasurer, and of the Secretary respectively. To elect, appoint and at their discretion remove, all officers and committees; to employ and remove at their pleasure managers, agents, clerks and workmen; to fix the compensation of all officers and employees, and to require of them security for the faithful performance of their respective duties; and to confer by vote or resolution upon any officer or committee, the right to appoint and remove at pleasure all offi-

cers, managers, agents, clerks and workmen, except the President, the Treasurer and the Secretary.

6. To fix and determine and vary the amount to be reserved as working capital from time to time; to issue bonds, debentures, notes, or other obligations or evidences of the debt of the corporation; and from time to time, to sell, assign, transfer or otherwise dispose of any or all the property of the corporation; but no such sale of all the property shall be made except pursuant to a vote of at least two-thirds of the Board of Directors.

7. To declare and pay dividends, but only from the surplus or from the net profits arising from the business of the corporation, after deducting therefrom the amount, at the time when any dividend is declared, which shall have been reserved by the Directors as working capital.

8. To use and apply from time to time, the surplus or net profits arising from the business of the corporation, to the purchase or acquisition of property and to the purchase or acquisition of its bonds, securities or other obligations or shares of its own capital stock, to such extent and in such manner and upon such terms as the Board of Directors shall determine; to sell, assign, transfer or otherwise dispose of from time to time any or all of the property, obligations or shares of stock so purchased or acquired, unless such shares shall have been retired for the purpose of decreasing the corporation's capital stock, as provided by law; and to reinvest or reserve the proceeds thereof as working capital, or dispose of the same as surplus or net profits of the corporation.

9. To hold meetings of the Board of Directors, to have one or more offices, and to keep the books of the corporation, except the stock and transfer books, outside of the State of New Jersey, at such places as the Board shall from time to time designate.

10. To determine from time to time, by the by-laws or by vote, whether and to what extent, and at what times and places, and under what conditions and regulations the accounts and books of the corporation, or any of them shall be open to the inspection of the stockholders; and no stockholder shall have the right of inspecting any account, or book, or document of the corporation, except as conferred by statute, or authorized by the Board of Directors, or by a resolution of the stockholders.

Unless authorized by votes given in person or by proxy by stockholders holding at least two-thirds of the capital stock of the corporation, which is represented and voted upon in person or by proxy at a meeting specially called for that purpose, or at an annual meeting, the Board of Directors shall not mortgage or pledge any of its real property, or any shares of the capital stock of any other corporation; but this prohibition shall not be construed to apply to the execution of any purchase-money mortgage or any other purchase-money lien.

As authorized by the Act of the Legislature of the State of New Jersey, passed March 22, 1901, amending the seventeenth section of "Act Concerning Corporations (Revision of 1896)" any action which theretofore required the consent of the holders of two-thirds of the stock at any meeting, after notice to them given, or re-

quired their consent in writing to be filed, may be taken upon the consent of, and the consent given and filed by the holders of two-thirds of the stock of each class represented at such meeting in person or by proxy.

The corporation reserved the right to amend, alter or repeal any provision contained in this Certificate of Incorporation in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation, except that there shall be no change in the per centum or cumulation of quarterly dividends upon the preferred stock, or of the lien of the preferred stock upon the capital of the corporation in case of liquidation, dissolution or winding up.

In Witness Whereof the undersigned have hereto set their hands and seals the first day of May, A. D. One Thousand Nine Hundred and Five.

JOHN REYNOLDS (L. S.)
WM. BERDAN (L. S.)
FRANK GLEDHILL (L. S.)

Signed, Sealed and Delivered
in the presence of

John W. Griggs.

State of New Jersey,
County of Passaic. } *ss.*

Be It Remembered, That on this first day of May, A. D. Nineteen Hundred and Five, before the undersigned, personally appeared John Reynolds, William Berdan and Frank Gledhill 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 and delivered the same as their voluntary act and deed.

JOHN W. GRIGGS,
A Master in Chanery of New Jersey. 10

Exhibit C to Bill of Complaint.

(Amendment to charter of United Shoe Machinery Corporation)

CERTIFICATE OF AMENDMENT OF CERTIFICATE OF INCORPORATION OF UNITED SHOE MACHINERY CORPORATION. 20

The United Shoe Machinery Corporation, a corporation duly organized and existing under the laws of the State of New Jersey, by its President and Secretary does hereby certify:

1. That the principal office of the Corporation is at No. 152 Market street, Paterson, New Jersey, and that the agent therein in charge thereof and upon whom process against the Corporation may be served is the Paterson Safe Deposit & Trust Company. 30

II. That the Board of Directors of said Corporation, at a meeting duly convened and held on the thirteenth day of December, 1916, passed a Resolution, declaring that the changes and amendments in the Certificate of Incorporation hereinafter set forth are advisable and calling a meeting of the stockholders to take action thereon. 40

III. That a copy of said Resolution of the Board of Directors is hereto appended.

IV. That thereafter, on the sixth day of February, 1917, pursuant to such call of the Board of Directors, upon notice given to each stockholder as provided in the by-laws, a special meeting of the stockholders of the Corporation was held, at which meeting stockholders holding 272,999 shares of the preferred stock and stockholders holding 1,036,245 shares of the common stock, being more than two-thirds in interest of each class of the stockholders having voting powers, were present in person or represented by proxy, and that all of said stockholders so present or represented at said meeting, being more than two-thirds in interest of each class of stockholders having voting powers, voted in favor of adopting the following Resolution in which such changes and amendments are more particularly set forth, viz.:

"Resolved, That for the purpose of making it clear that the purposes of the United Shoe Machinery Corporation are identical with the purposes of the United Shoe Machinery Company, so that it will be evident beyond question that the two corporations are organized for the purpose of carrying on business of the same or a similar nature, it is advisable to amend Article Third of the Certificate of Incorporation of the United Shoe Machinery Corporation by substituting therefor a new Article Third which shall be identical with Article Third of the Certificate of Incorporation of the United Shoe Machinery Company, so that said Article Third of the Certificate of Incorpora-

tion of the United Shoe Machinery Corporation as amended shall read as follows:

THIRD. The objects for which, and for any of which, this corporation is formed are to do any or all of the things herein set forth, to the same extent as natural persons might or could do the same, and in any part of the world, namely:

EXHIBIT C.

To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools and implements, and mechanical devices and contrivances of every name and nature whatsoever, and especially to manufacture, buy, sell, lease, operate and deal in and with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and deal in and with boots, shoes and footwear and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other ma-

terials or fabrics; and in general to produce, prepare, manufacture and deal in and with goods, wares, merchandise, property, materials and things of every class and description.

To purchase, acquire, erect, establish, hold and dispose of manufactories, workshops, plants and buildings of every description, and to fully equip the same with a view to carrying out the purposes herein set forth, or any of them.

To purchase, lease or otherwise acquire, and to sell, let, mortgage, or otherwise dispose of, to the same extent that a natural person might do, lands, buildings and all sorts of property, both real and personal, within or without the State of New Jersey, and in any part of the world.

To apply for, obtain, register, purchase, lease, or otherwise acquire, and to hold, own, use, operate, sell, assign, or otherwise dispose of any and all trade-marks, tradenames, and distinctive marks, copyrights and patent rights, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and, with a view to the working and development of the same, to carry on any legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, di-

rectly or indirectly, to accomplish these objects, or any of them;

To acquire the good-will, rights, stock and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds, or otherwise.

To issue from time to time, so far as may be convenient for the accomplishment of the purposes, or any of them, herein contained, bonds of the corporation to such amount, in such denomination and on such terms as the Board of Directors may determine, and, if desired, to secure the same by pledge or mortgage of any or all of its property, and, if deemed advisable, by mortgage of the franchises of the company, in such manner as may be allowed by law.

To hold, purchase, or otherwise acquire and invest in, sell, assign and transfer, mortgage, pledge, guarantee, or otherwise dispose of shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations; and, while the holder of such stock, bonds and debentures, to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

To make and enter into contracts of every sort and kind with any individual, firm, association, corporation—private, public or municipal—with the Government of the United States, of any state, territory or colony thereof, or any foreign government.

To carry on any other business, and to do any and all other things which may seem to the company capable of being conveniently carried on or done in connection with the objects hereinbefore set forth, or any of them, or calculated, directly or indirectly, to develop the company's business, or to enhance the value of the company's property or rights; and to do all or any of the above things within or without the State of New Jersey, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise and either alone or in conjunction with other individuals, firms, associations or corporations.

It is intended that the objects specified and clauses contained in this third paragraph shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to, or inference from the terms of any other clause of this, or any other paragraph in this charter, but that the objects specified in each of the clauses of said third paragraph shall be regarded as independent objects, and shall further be regarded as in furtherance of and not in limitation of the general powers conferred by the laws of the State of New Jersey."

V. That there were on the day of said meeting of said stockholders, issued and outstanding 391,479 shares of the preferred stock and 1,259,910 shares of the common stock of said United Shoe Machinery Corporation and no more.

In Witness Whereof the said United Shoe Machinery Corporation has caused this certificate to be signed by Sidney W. Winslow, its President, and Harold G. Donham, its Secretary, and its corporate seal to be hereto affixed this eighth day of February, 1917.

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UNITED SHOE MACHINERY CORPORATION.

By SIDNEY W. WINSLOW,
(SEAL) *President.*

HAROLD G. DONHAM,
Secretary.

COPY OF RESOLUTION OF THE BOARD OF DIRECTORS.

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I, Harold G. Donham, Secretary of the United Shoe Machinery Corporation, hereby certify that at a meeting of the Board of Directors of said Corporation duly held on Wednesday, the thirteenth day of December, 1916, a quorum being present and acting, the following resolutions were unanimously passed:

"Resolved, That for the purpose of making it clear that the purposes of the United Shoe Machinery Corporation are identical with the purposes of the United Shoe Machinery Company, so that it will be evident beyond question that the two corporations are organized for the purpose of carrying on business of the same or a similar nature, it is advisable to amend Article Third of the Certificate of Incorporation of the United Shoe Machinery Corporation by substituting therefore a new Article Third which shall

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be identical with Article Third of the Certificate of Incorporation of the United Shoe Machinery Company, so that said Article Third of the Certificate of Incorporation of the United Shoe Machinery Corporation as amended shall read as follows:

10 THIRD. The objects for which, and for any of which, this corporation is formed are to do any or all of the things herein set forth, to the same extent as natural persons might or could do the same, and in any part of the world, namely:

To manufacture, buy, sell, lease, operate and deal in and with all kinds of machinery, tools and implements and mechanical devices and contrivances of every name and 20 nature whatsoever and especially to manufacture, buy, sell, lease, operate and deal in and with all sorts of boot and shoe machinery and every kind of mechanism, contrivance, implement, tool, material or thing in any way whatsoever connected with, or useful in connection with the manufacture of boots, shoes and footwear, or the manufacture of leather and rubber goods, or goods made from materials and fabrics of 30 any description whatsoever, or useful in connection with the manufacture or operation of any of the machinery, mechanical devices or contrivances hereinbefore mentioned; to produce, prepare and manufacture, buy, sell and deal in and with leather and rubber, and materials and fabrics of all sorts, and the raw materials from which said leather, rubber materials or fabrics are produced; to manufacture, buy, sell and 40 deal in and with boots, shoes and footwear

and all articles and things of every description that may be produced or manufactured, in whole or in part, from leather, rubber or any other materials or fabrics; and in general to produce, prepare, manufacture and deal in and with goods, wares, merchandise, property, materials and things of every class of description.

To purchase, acquire, erect, establish, hold and dispose of manufactories, workshops, plants and buildings of every description, and to fully equip the same with a view to carrying out the purposes herein set forth, or any of them.

To purchase, lease or otherwise acquire, and to sell, let, mortgage, or otherwise dispose of, to the same extent, that a natural person might do, lands, buildings and all sorts of property real and personal, within or without the State of New Jersey, and in any part of the world.

To apply for, obtain, register, purchase, lease or otherwise acquire, and to hold, own, use, operate, sell, assign, or otherwise dispose of any and all trade-marks, trade-names and distinctive marks, copyrights and patent rights, and all inventions, improvements and processes used in connection with or secured under letters patent of the United States or elsewhere, or otherwise, and to use, exercise, develop, grant licenses in respect of, or otherwise turn to account any such trade-marks, patents, licenses, concessions, processes and the like, or any such property, rights and information so acquired, and, with a view to the working and development of the same, to carry on any

legal business whatsoever, whether manufacturing or otherwise, which the corporation may deem calculated, directly or indirectly, to accomplish these objects, or any of them.

To acquire the good-will, rights, stock and property of all kinds, and to undertake the whole or any part of the assets and liabilities of any person, firm, association or corporation, and to pay for the same in cash, stock of this corporation, bonds, or otherwise.

To issue from time to time, so far as may be convenient for the accomplishment of the purposes or any of them, herein contained, bonds of the corporation to such amount, in such denomination and on such terms as the Board of Directors may determine, and, if desired, to secure the same by pledge or mortgage of any or all of its property, and, if deemed advisable, by mortgage of the franchises of the company, in such manner as may be allowed by law.

To hold, purchase, or otherwise acquire and invest in, sell, assign and transfer, mortgage, pledge, guarantee, or otherwise dispose of shares of the capital stock, bonds, debentures, or other evidences of indebtedness created by any other corporation or corporations; and, while the holder of such stock, bonds and debentures, to exercise all the rights and privileges of ownership, including the right to vote thereon, to the same extent as a natural person might or could do.

To make and enter into contracts of every sort and kind with any individual,

firm, association, corporation—private, public or municipal—and with the Government of the United States of any state, territory or colony thereof, or any foreign government.

To carry on any other business, and to do any and all other things which may seem to the company capable of being conveniently carried on or done in connection with the objects hereinbefore set forth, or any of them, or calculated, directly or indirectly, to develop the company's business, or to enhance the value of the company's property or rights; and to do all or any of the above things within or without the State of New Jersey, and in any part of the world, as principals, agents, contractors, trustees, or otherwise, and by or through trustees, agents or otherwise, and either alone in conjunction with other individuals, firms, associations or corporations.

It is intended that the objects specified and clauses contained in this third paragraph, shall, except where otherwise expressed in said paragraph, be nowise limited or restricted by reference to, or inference from the terms of any other clause of this, or any other paragraph in this charter, but that the objects specified in each of the clauses of said third paragraph shall be regarded as independent objects, and shall further be regarded as in furtherance of and not in limitation of the general powers conferred by the laws of the State of New Jersey.

Further Resolved, That a special meeting of the stockholders to take action upon

the foregoing resolution and the amendment therein set forth be called to be held at the principal and registered office of the Corporation, to wit, the office of the Paterson Safe Deposit & Trust Company, 152 Market street, Paterson, New Jersey, on Tuesday, the 6th day of February, 1917, at 10:30 o'clock in the forenoon."

And that the foregoing are true copies of said resolutions from the minutes of said meeting.

WITNESS my hand and the seal of said Corporation this eighth day of February, 1917.

HAROLD G. DONHAM,
(SEAL) *Secretary.*

(Here follows list of stockholders.)

ENDORSED:

"Filed and recorded February 24, 1917.

THOMAS F. MARTIN."
Secretary of State."

STATE OF NEW JERSEY,
DEPARTMENT OF STATE.

I, THOMAS F. MARTIN, Secretary of State of the State of New Jersey, DO HEREBY CERTIFY that the foregoing is a true copy of Certificate of Amendment of the Certificate of Incorporation of the UNITED SHOE MACHINERY CORPORATION, not including the assent of the stockholders, as the same is taken from and compared with the original filed February 24th, 1917, and now remaining on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed my Official Seal at Trenton this eleventh day of May, A. D. 1917.

THOMAS F. MARTIN,
(SEAL) *Secretary of State.*

EXHIBIT C. 10

Exhibit D to Bill of Complaint.

(Circular Letter to Stockholders.)

To the Stockholders of the United Shoe Machinery Company:

Your attention is directed to the enclosed notice of a special meeting of the stockholders of the United Shoe Machinery Company which has been called for the purpose of taking action upon a proposed merger and consolidation of the United Shoe Machinery Company with the United Shoe Machinery Corporation. 20

The corporation has acquired by the exchange of its stock for stock of the company, upon terms substantially the same as those provided in the merger agreement, and now owns all but a very few shares of the stock of the company, both preferred and common, the outstanding shares amounting to less than one per cent. of the total. 30

Under these circumstances and in view of the economies which it is felt can be brought about in the maintenance of one corporation instead of two, your Directors have considered it advisable to take steps at this time which, if approved by the stockholders, will result in the merger and consolidation of the company with the corporation in accordance with the provisions 40

of the Corporation Laws of the State of New Jersey under which both the company and the corporation were formed.

A merger agreement has been prepared which has been approved by the Directors of both the Company and the Corporation and which is to be submitted to the stockholders at the forthcoming meeting. Under this agreement, if approved, the United Shoe Machinery Corporation will continue under its present Charter but will take over the business heretofore conducted by the Company. The stockholders, both Preferred and Common, of the Corporation will continue to hold their shares of stock in the Corporation with the same rights and privileges as at present, and provision is made for the exchange of the few remaining shares of the Company stock upon the basis of one share of the Preferred stock of the Corporation for each share of Preferred stock of the Company, and of two and one-half shares of the Common stock of the Corporation for each share of Common stock of the company.

Holders of the Preferred or Common stock of the Company may effect such exchange by communicating with the American Trust Company, Transfer Agent, No. 50 State street, Boston, Mass., or with the Hanover National Bank of New York City, No. 11 Nassau street, New York.

Copies of the agreement can be seen at the office of the American Trust Company, Boston, Massachusetts, at the Hanover National Bank, New York City, and at the Paterson Safe Deposit & Trust Company, Paterson, New Jersey.

Attached to the notice is a form of proxy. If you are unable to attend the stockholders' meet-

ing in person please sign and return the proxy at your earliest convenience.

UNITED SHOE MACHINERY COMPANY,

By S. W. Winslow,
President.

April 27th, 1917. 10

Exhibit E to Bill of Complaint.

AGREEMENT OF MERGER.

Agreement, made this eighteenth day of April, 1917, between the United Shoe Machinery Corporation, a corporation organized and existing under the laws of the State of New Jersey, by its Directors, and the United Shoe Machinery Company, a corporation organized and existing under the laws of said State of New Jersey, by its Directors:— 20

Witnesseth,

Whereas the principal and registered office of the United Shoe Machinery Corporation in the State of New Jersey is at No. 152 Market Street, Paterson, Passaic County, New Jersey, and the Paterson Safe Deposit & Trust Company, a corporation of the State of New Jersey, is the agent therein, in charge thereof, upon whom process against said corporation may be served, and 30

Whereas the principal and registered office of the United Shoe Machinery Company in the State of New Jersey is at No. 152 Market Street, Paterson, Passaic County, New Jersey, and the Paterson Safe Deposit & Trust Company, a cor- 40

poration of the State of New Jersey, is the agent therein, in charge thereof, upon whom process against said corporation may be served, and

WHEREAS the said United Shoe Machinery Corporation was heretofore incorporated under the laws of said State of New Jersey, and, under the Certificate of Incorporation thereof, filed in the office of the Secretary of State of said State of New Jersey on the second day of May, 1905, said corporation has an authorized capital stock of $50,000,000, divided into 2,000,000 shares of the par value of $25.00 each, of which 1,400,000 shares are common stock and 600,000 shares are preferred stock, and there have been duly issued and are now outstanding certificates for 1,260,279 25/100 shares of the common stock and 391,624 shares of the preferred stock, and

WHEREAS the said United Shoe Machinery Company was heretofore incorporated under the laws of said State of New Jersey, and, under the Certificate of Incorporation thereof, filed in the office of said Secretary of State on the seventh day of February, 1899, said company has an authorized capital stock of $25,000,000, divided into 1,000,000 shares of the par value of $25.00 each, of which 500,000 shares are common stock and 500,000 shares are preferred stock, and there have been duly issued and are now outstanding certificates for 435,628 38/100 shares of said common stock and for 398,863 38/100 shares of said preferred stock, and

WHEREAS the said United Shoe Machinery Corporation, by the exchange of its own stock for stock of the said United Shoe Machinery Company on terms substantially the same as those herein agreed upon, has acquired and now owns 435,412 76/100 shares of the common stock and

391,626 49/100 shares of the preferred stock of said United Shoe Machinery Company, leaving outstanding and not owned by said United Shoe Machinery Corporation 215 62/100 shares of the common stock and 7,236 89/100 shares of the preferred stock of said United Shoe Machinery Company, and

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WHEREAS said two corporations are organized for the purpose of carrying on business of the same or a similar nature, and the respective Boards of Directors of the said corporations deem it advisable, to the end that greater efficiency and ecenomy of management may be accomplished, and otherwise and generally to the advantage and welfare of said corporations and their several and respective stockholders to merge and consolidate said corporations under and pursuant to the provisions of an Act of the Legislature of said State of New Jersey entitled "An Act Concerning Corporations (Revision of 1896)" and Acts amendatory thereof and supplemental thereto,—

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NOW, THEREFORE, in consideration of the premises and the mutual agreements, provisions, covenants and grants herein contained, it is hereby agreed:—

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THAT the United Shoe Machinery Company and the United Shoe Machinery Corporation shall be and they hereby are merged or consolidated into a single corporation (hereinafter called the "consolidated corporation") which shall be the said United Shoe Machinery Corporation, and the following are hereby prescribed as the terms and conditions of said merger or consolidation and the mode of carrying the same into effect, viz.:—

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Exhbit E. to Bill of Complaint.

ARTICLE I.

The name of the consolidated corporation shall be UNITED SHOE MACHINERY CORPORATION.

ARTICLE 2.

10 The Board of Directors of the consolidated corporation shall be not less than three nor more than twenty-one in number, and the officers thereof shall be a President, one or more Vice-Presidents, a Treasurer, a Secretary, and such other officers as may from time to time be elected or appointed by the Board of Directors. The first Directors and officers of the consolidated corporation shall be the present Directors and officers of the said United Shoe Machinery Corporation, who shall hold office until their suc-
20 cessors are chosen or appointed, as provided by the By-Laws, and whose names and places of residence are as follows:

DIRECTORS.

	Residence.
WILLIAM WARREN BARBOUR	Paterson, N. J.
EDWIN P. BROWN	Newton, Mass.
GEORGE W. BROWN	Newton, Mass.
30 JOHN H. CONNOR	Boston, Mass.
LOUIS A. COOLRIDGE	Milton, Mass.
HENRY B. ENDICOTT	Denham, Mass.
EDMUND LEB. GARDNER	Passaic, N. J.
JOHN H. HANAN	Brooklyn, N. Y.
ELMER P. HOWE	Marblehead, Mass.
EDWARD P. HURD	Newton, Mass.
GEORGE E. KEITH	Campello, Mass.
JOSEPH C. KILHAM	Beverley, Mass.
CHARLES G. RICE	Orleans, Mass.
40 WALLACE F. RORINSON	Boston, Mass.

ALFRED R. TURNER.....Paterson, N. J.
SAMUEL WEIL.....New York, N. Y.
SIDNEY W. WINSLOW.....Orleans, Mass.
SIDNEY W. WINSLOW, Jr.....Beverley, Mass.
WILLIAM WOODWARD .....New York, N. Y.

OFFICERS. 10

		Residence.
President	SIDNEY W. WINSLOW	As above.
Vice-Presidents	GEORGE W. BROWN	As above.
	JOHN H. CONNOR	As above.
	EDWARD P. HURD	As above.
	WALLACE F. RORINSON	As above.
Treasurer	LOUIS A. COOLIDGE	As above.
Secretary	HAROLD G. DONHAM	Medford, Mass.

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ARTICLE 3.

The capital stock of the consolidated corporation shall be $50,000,000, divided into 2,000,000 shares of the par value of $25.00 each, consisting of 1,400,000 shares of common stock and 600,000 shares of preferred stock.

The rights of the holders of the common stock and preferred stock respectively shall be as set forth in said Certificate of Incorporation of the said United Shoe Machinery Corporation. 30

ARTICLE 4.

The manner of converting the capital stock of the said United Shoe Machinery Company and of the said United Shoe Machinery Corporation into the capital stock of the consolidated corporation shall be as follows:—

The shareholders of the United Shoe Machinery Corporation shall retain the shares to which 40

they are now entitled in the consolidated corporation, and each of the shareholders of the United Shoe Machinery Company, other than the United Shoe Machinery Corporation, shall be entitled to receive for each share of common stock of the said United Shoe Machinery Company held by him, two and one-half shares of the common stock of the consolidated corporation, and for each share of preferred stock of the said United Shoe Machinery Company held by him, one share of the preferred stock of the consolidated corporation. The shareholders of the said United Shoe Machinery Company who are entitled under the provisions of this agreement to shares of stock of the consolidated corporation shall receive a certificate or certificates for such shares in exchange for their certificates of stock in the said United Shoe Machinery Company upon surrender of their said certificates of stock in the United Shoe Machinery Company and shall thereupon be registered as stockholders of the consolidated corporation.

ARTICLE 5.

The corporate franchises, rights, privileges, immunities and organization of the said United Shoe Machinery Corporation shall remain intact and shall be those of the consolidated corporation. The corporate name and organization of the said United Shoe Machinery Company, except so far as the same are continued by statute, shall cease upon the filing in the office of the Secretary of State of the State of New Jersey of this agreement and of the written approval thereto of the Board of Public Utility Commissioners of said State of New Jersey. The consolidated corporation, in addi-

tion to the powers conferred by statute, shall have the powers granted by and shall be subject to and governed by the aforesaid Certificate of Incorporation of the said United Shoe Machinery Corporation filed in the office of the Secretary of State of the State of New Jersey on the second day of May, 1905, as amended by a Certificate of Amendment filed in the office of said Secretary of State on the twenty-fourth day of February, 1917. The By-Laws of the consolidated corporation shall be the present By-Laws of the said United Shoe Machinery Corporation until changed or amended as therein provided.

ARTICLE 6.

All property, real, personal and mixed, and all debts due on whatever account of the United Shoe Machinery Company and of the United Shoe Machinery Corporation shall be vested in the consolidated corporation, and all their respective property, rights, privileges, powers and franchises and all and every other interest shall be as effectually the property of the consolidated corporation as they were of the said United Shoe Machinery Company and the said United Shoe Machinery Corporation; *provided,* that all rights of creditors and all liens upon the property of the said United Shoe Machinery Company and the said United Shoe Machinery Corporation shall be preserved unimpaired, and the said United Shoe Machinery Company and the said United Shoe Machinery Corporation may be deemed to continue in existence in order to preserve the same, and all debts, liabilities and duties of either the said United Shoe Machinery Company or the said United Shoe Machinery Corporation shall attach to the consolidated cor-

poration and may be enforced against it to the same extent as if the said debts, liabilities and duties had been incurred or contracted by it. The United Shoe Machinery Company and the United Shoe Machinery Corporation shall respectively at all times hereafter execute all as-
10 signments, assurances in the law or other instruments and do all acts or things necessary or desirable to vest and confirm in the consolidated corporation the title to all and singular the aforesaid property, rights, privileges, powers, franchises and interests, and otherwise to carry out the purposes of this agreement.

ARTICLE 7.

The consolidated corporation shall pay all the
20 expenses of the merger and consolidation, including legal expenses.

ARTICLE 8.

The principal and registered office of the consolidated corporation in the State of New Jersey is at No. 152 Market Street, Paterson, New Jersey, and the Paterson Safe Deposit & Trust Company is the agent therein in charge thereof
30 upon whom process against the corporation may be served.

ARTICLE 9.

This agreement shall be submitted to the stockholders of each of the said corporations, as provided by law, and shall take effect and be deemed and be taken to be the agreement and act of merger and consolidation of the said corporations upon the adoption thereof by the votes of the
40 holders of two-thirds of all the shares of capital

stock of each of said corporations, and upon the doing of such other acts and things as shall be required by said "Act Concerning Corporations (Revision of 1896)" and the several Acts supplementary thereto and amendatory thereof.

ARTICLE 10. 10

This agreement is subject to the approval, in writing, of the Board of Public Utility Commissioners of the State of New Jersey, to be filed as required by law.

Executed in duplicate in accordance with resolutions of the respective Boards of Directors of said United Shoe Machinery Company and said United Shoe Machinery Corporation the day and year first above written.

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UNITED SHOE MACHINERY CORPORATION.

By L. A. COOLIDGE,
Treasurer.

UNITED SHOE MACHINERY COMPANY,

By S. W. WINSLOW,
President.

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Exhibit F to Bill of Complaint.

UNITED SHOE MACHINERY COMPANY

Notice of Special Meeting.

A special meeting of the stockholders of the United Shoe Machinery Company will be held on Tuesday, May 22d, 1917, at 11:30 o'clock A. M. at the principal registered office of the company, to wit, the office of the Paterson Safe Deposit and Trust Company, 152 Market Street, Paterson, New Jersey, for the purpose of considering and acting upon an agreement to be submitted to the said meeting for the merger and consolidation of the United Shoe Machinery Company with the United Shoe Machinery Corporation, and for the transaction of such other business as shall properly come before the meeting.

If you find it inconvenient to attend in person, kindly sign and return the enclosed proxy.

By order of the Board of Directors.

H. G. DONHAM,
Secretary.

April 27th, 1917.

Know All Men by These Presents, That I, the undersigned, stockholder in the United Shoe Machinery Company, do hereby constitute and appoint Sidney W. Winslow or Elmer P. Howe or Edwin P. Brown, of the Executive Committee of said Company my true and lawful attorney, with full power of substitution, for me and in my name, place and stead to vote upon the stock standing registered in my name on the books of said Company, at the special meeting

of the stockholders of said Company to be held at Paterson, New Jersey, on Tuesday, May 22d, 1917, or at any adjournment thereof hereby granting to my said attorney full power and authority to act for me and in my name, in voting for the adoption by the said Company of an agreement for the merger and consolidation of said United Shoe Machinery Company with the United Shoe Machinery Corporation, and in the transaction of such other business as may properly come before the meeting, as fully as I could do if personally present.

.....

Date.....1917.

Note.—If signed by Agent, Attorney, Trustee, Executor, etc., give also the person's name in which the stock stands.

Affidavit of Charles E. Brugler.

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

CHARLES E. BRUGLER, the above-named complainant, being duly sworn, according to law, on his oath says:

I have read the above bill of complaint and know the contents thereof and the same is true of my own knowledge, except as to the matters that are therein stated to be on my information or belief and as to those matters I believe it to be true. And complainant further says:

1. That the allegations of the foregoing bill of complaint as to the value in liquidation of the preferred shares of the United Shoe Ma-

chinery Company are based on the financial statements issued by the said Company and the said Holding Company, United Shoe Machinery Corporation. In the report of the said United Shoe Machinery Corporation for the year 1913 a note is appended to the financial statement of the United Shoe Machinery Corporation, reading as follows:

> "The value of the holdings of the Corporation in the capital stock of the United Shoe Machinery Company is carried on the books of the Corporation at the rate of $25 per share of preferred stock and $87.38 of the common stock."

In the balance sheet of the United Shoe Machinery Company, included in the said annual report for 1913 of United Shoe Machinery Corporation, the total assets of the United Shoe Machinery Company are given as Forty-eight Million, Eight Hundred and Forty-one Thousand, Eight Hundred and Sixty-five 51/100 ($48,841,865.51) dollars, and the total liabilities, exclusive of capital stock, amounts to only Eight Hundred and Forty-two Thousand, Six Hundred and Sixty-three 31/100 ($842,663.31) dollars. The total outstanding stock, according to the same report, consists of common Ten Million, Eight Hundred and Seventy-eight Thousand, Nine Hundred and Thirty-four 50/100 ($10,878,934.50) dollars, preferred, Nine Million, Nine Hundred and Seventy-one Thousand, Five Hundred and Eighty-four 50/100 ($9,971,584.50) dollars, total common and preferred, Twenty Million, Eight Hundred and Fifty Thousand Five Hundred and Nineteen ($20,850,519.00) dollars. In round figures the report shows Forty-eight Million ($48,000,000) dollars of net surplus as-

sets applicable to the issued capital stock, common and preferred, amounting in round figures to Twenty-one Million ($21,000,000) dollars, which would indicate a distributive value for the preferred stock in 1913 of approximately two hundred and twenty-eight per cent. of its par value, or Fifty-six 80/100 ($56.80) dollars a share. 10

Since the date of the said annual report of March 1st, 1913, the net surplus of the said United Shoe Machinery Company has largely increased so that the distributive value of the preferred shares in case of liquidation or dissolution is much larger now than it was then. The valuations placed by the Company in its balance sheet upon some of its assets, namely patent rights and stocks and bonds of other corporations, are purely arbitrary and said items represent much greater actual values than are indicated in the said balance sheet, but the actual facts in regard thereto are not within the knowledge of complainant and can only be elicited from the defendants. 20

2. The allegations of the bill of complaint to the effect that the directors of the United Shoe Machinery Company and the United Shoe Machinery Corporation are the same is based on the copies of the last annual reports of each of said companies on file in the office of the Secretary of State of New Jersey. William Barbour, one of the directors named in said reports has died since the said reports were filed. 30

3. I know from an examination of the annual reports of the said United Shoe Machinery Company and from correspondence and conversations with its officers and directors that it owns and controls patent rights of great value, and I know also from an examination of the opinion 40

in the pending government suit to dissolve the United Shoe Machinery Company for a violation of the Sherman Act, the opinion in which is reported in the case of *United States* v. *United Shoe Machinery Company of New Jersey,* 222 Federal Reporter 349, that the said patent rights are of great value (pages 364 and 370). Many of the subsidiary companies of United Shoe Machinery Company also own patents and the value of such patents enter into the proper determination of the value of their shares. Because of the great number and variety of shoe machines and the variety and number of the patents covering them, both domestic and foreign, it would, I am certain, be hopeless to attempt in an action at law to prove the value of all the assets of the United Shoe Machinery Company for the purpose of showing the damages sustained by complainant by reason of the unlawful consummation of the merger agreement which has been proposed by the Boards of Directors of the two companies, and such attempt, if made, would involve complainant in great and prohibitive expense for the services of expert witnesses and accountants.

CHARLES E. BRUGLER.

Subscribed and sworn to before me
this 16th day of May, 1917.

C. J. PARMETER,
Notary Public.

Affidavit of Julian C. Harrison.

JULIAN C. HARRISON, being duly sworn, on his oath says:

I am solicitor for the complainant above named. The following statement from the opinion of the Federal Court in the case of *United States v. United Shoe Machinery Company,* reported in *234 Federal Reporter, 127,* at *Page 129,* shows the magnitude of the business of the corporate defendants: 10

> "That the New Jersey Company has a capital stock of $20,850,519, all of which is substantially owned by the defendant, the United Shoe Machinery Corporation. That ever since its incorporation it has been engaged in manufacturing, selling, and leasing shoe machinery, and it is the operating company of the business followed by the defendants. Its chief manufacturing plant is at Beverly, Mass., and its officers and directors are, for the most part, the same as those of the other corporate defendants. That the corporation has an authorized capital stock of $50,000,000, and is empowered by its charter to engage in manufacturing, selling and leasing shoe machinery, but its activities have been confined chiefly to those of a holding company. Shortly after its organization it acquired and now owns 98½% of the outstanding capital stock of the New Jersey Company, and through this company dominates the other corporate defendants. In addition it controls the stock of certain other affiliated corporations, engaged in business related to the shoe machinery interest."

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Also at Page 135:

"The bill then sets out how the defendants obtained control of the shoe machinery business, by charging that the New Jersey Company, soon after its organization, acquired and still owns the capital stock of the Goodyear Machinery Company, Goodyear Machinery Company of Canada, the International Goodyear Machinery Company, Consolidated & McKay Lasting Machine Company, McKay Shoe Machinery Company, and Eppler Welt Machine Company, all of which companies were, at the time they were so acquired, engaged in the business of manufacturing, selling, and leasing, and otherwise dealing in shoe machinery; that these companies conveyed to the New Jersey Company all of their business, including letters patent of the United States and all other countries. Afterwards from time to time this corporation secured and still maintains control of 56 other concerns engaged in the manufacture, sale. and leasing of some form of shoe machinery, or supplies, thereby controlling a complete line of 'principal' and 'auxiliary' machinery used in the bottoming of shoes."

Controlling, as it does, between 50 and 60 different subsidiary companies, it is plain that in order to arrive at any correct valuation of the stock of the United Shoe Machinery Company, it will be necessary to ascertain the value of the stock of each of the constituent companies; some of which are located abroad and a great many of which control patents on shoe machinery granted in the countries in which the said companies operate. The difficulty and ex-

pense attendant upon a judicial inquiry into the value of complainant's shares under the circumstances would seem to be apparent.

The discrepancy between the terms offered to the holders of preferred shares of United Shoe Machinery Company and those offered to the common share holders of said company is indicated by the present market quotation for the shares offered by the United Shoe Machinery Corporation.

According to the New York Times of May 17, 1917, United Shoe Machinery Corporation common stock had a market value on May 16, 1917, of fifty-four dollars per share, so that the holders of common stock of the United Shoe Machinery Company, who are offered under the proposed merger agreement two and one-half shares of stock in the United Shoe Machinery Corporation are to receive the equivalent of one hundred and thirty-five dollars for each share of common stock held by them. The new preferred stock of the United Shoe Machinery Corporation offered in exchange for preferred stock of the United Shoe Machinery Company, share for share, has a market value at present of about twenty-eight dollars a share.

JULIAN C. HARRISON.

Subscribed and sworn to before
me this 17th day of May, 1917.

EMILY STALP,
Commissioner of Deeds for the
City of New York.

Certificates filed in the office of New York County Clerk 1343, register 17180, Kings County Clerk 415, register 7143.

My commission expires October 19, 1917.

Rule to Show Cause.

(Filed May 18, 1917.)

Upon reading the bill of complaint in this cause and the affidavits thereto annexed, and on motion of Julian C. Harrison of counsel with complainant:

It is on this 18th day of May, 1917, ordered that the defendants show cause before the Chancellor at the Chancery Chambers in the City of Newark, Prudential Building, on the 29th day of May, 1917, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an injunction should not issue according to the prayer of said bill, and for such further relief as may be just,

And it is further ordered, that the said defendants, their agents, officers, attorneys, proxies and servants in the meantime and until the further order of this court, in the premises, desist and refrain from doing anything whatsoever looking to the merger or consolidation of United Shoe Machinery Company and United Shoe Machinery Corporation as outlined in the agreement of merger made April 18th, 1917, except to adjourn the meetings of stockholders called to ratify the same.

Application to modify or vacate may be made on one day's notice, not, however, prior to May 21st.

And it is further ordered that a copy of this order and of the said bill and affidavits, all of which may be certified by the solicitor of complainant, be served on the said corporate defendants, respectively, within three days from the date hereof, provided that same be made upon

the corporation defendants within one day of the date hereof.

Respectfully advised,

MERRITT LANE,
V. C.

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Petition of Frederic W. Webster to Intervene.

Filed May 29, 1917.

To His Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

The petition of Frederic W. Webster, of Newton, Massachusetts, respectfully shows:

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1. Your petitioner has been a stockholder of the United Shoe Machinery Company since shortly after its organization and now owns and has for many years owned 176 shares of the common stock and now owns and has for many years owned 66 shares of the preferred stock of said company; that the said shares of stock are registered upon the transfer books of said company and your petitioner holds duly issued certificates for the ownership of such stock.

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2. Your petitioner has never consented directly or indirectly to the agreement for the merger of the defendant United Shoe Machinery Company with the United Shoe Machinery Corporation, whereof a copy is annexed to the bill of complaint in the above entitled cause, or to any merger or consolidation of the said defendants, but has protested and does protest against the said merger or consolidation, and your petitioner is advised and believes that the said pro-

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posed merger or consolidation violate the rights vested in him by the ownership of said stock and that the same is contrary to law and equity and is illegal and void.

3. Your petitioner is willing to contribute to the expense of the above entitled suit and desires to come in and be admitted as a party complainant therein, and to be allowed to appear in and aid the prosecution thereof and take such steps therein for the protection of his interests as he may be advised are necessary and proper, including the right to file supplemental or amended pleadings if the same be necessary and proper for the protection of his rights as a preferred and a common stockholder in said defendant corporation. and for the protection of the rights of all of the other preferred and common stockholders of said corporation who may desire to be admitted to the said cause and contribute to the expenses thereof.

Your petitioner therefore prays that an order may be made admitting him as a party complainant in the above entitled suit, and that he be allowed to appear therein and aid in the prosecution thereof and take such other steps as he may be advised are necessary and proper for the protection of his interests, and for such other and further relief as may be according to equity and good conscience.

And your petitioner will ever pray, etc.

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

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

FREDERIC W. WEBSTER, being duly sworn according to law on his oath says, that he is the petitioner in the foregoing petition named, and that he has read the same and that the statements therein contained are true. 10

FREDERIC W. WEBSTER,

Subscribed and sworn to before me
this 28th day of May, 1917.

BLAIR REILEY,
An Attorney at Law of New Jersey.

Order Admitting Webster as Complainant. 20

Filed May 29, 1917.

Upon reading and filing the duly verified petition of Frederic W. Webster, of Newton, Massachusetts, and it appearing that the said petitioner is the holder of 66 shares of the preferred stock of the defendant United Shoe Machinery Company and 176 shares of the common stock of said defendant company;

It is, on this 29th day of May, 1917, on motion of Pitney, Hardin & Skinner, solicitors for said petitioner, ORDERED, that the said Frederic W. Webster be and he hereby is admitted as a party complainant in this suit and is allowed to appear and aid in the prosecution thereof. and to take such steps as he may be advised are necessary and proper for the protection of his interests. 30

It is FURTHER ORDERED, that no order or decree be made herein dissolving or in any wise modi- 40

fying the restraint contained in the order to show cause made herein on May 18, 1917, without notice to said petitioner and an opportunity for him to be heard thereon, and it is further expressly ordered that the restraint herein contained be continued in full force and effect until the further order of this court.

It is FURTHER ORDERED, that true copies of said petition and of this order, which need not be certified, be served upon the registered agent in the State of New Jersey of the said United Shoe Machinery Company and the defendant United Shoe Machinery Corporation, on or before 10:45 A. M., May 29, 1917, and that such service may be made by reading this order over the telephone and that true copies of said petition and of this order, which need not be certified, be served within one day from the date hereof upon the complainant in the above entitled cause, or his solicitor.

Respectfully advised,

MERRITT LANE,
V. C.

Petition of Henry E. Smith and George B. Champlin to Intervene.

Filed June 2, 1917.

To His Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

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The petition of Henry E. Smith and George B. Champlin of Providence, Rhode Island, respectively, shows:

1. Your petitioners are the owners and holders of 390 shares of the preferred stock of the defendant, United Shoe Machinery Company, and are registered as such upon the books of said Company.

2. Your petitioners have never consented, directly or indirectly, to the merger of the defendant, United Shoe Machinery Company with the defendant, United Shoe Machinery Corporation, in accordance with the terms of a certain merger agreement made April 18th, 1917, a copy whereof is annexed to the bill of complaint in the above cause, or to any merger or consolidation of the said defendants, but on the contrary have protested and do now protest against the said merger upon the ground that the same violates the rights vested in petitioners, by reason of their ownership of said shares of stock, is contrary to law and equity, unjust, oppressive, illegal and void.

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3. Your petitioners are willing to contribute to the expense of the above-entitled suit and desire to come in and be admitted as parties complainant therein and to appear and aid the prosecution thereof for the protection of the rights of all the other preferred and common

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stockholders of said corporation who may desire to be admitted to such cause and contribute to the expense thereof.

Your petitioners therefore pray that an order may be made admitting petitioners as parties complainant in the above-entitled cause and that they be allowed to appear therein and aid in the prosecution thereof and take such other steps as they may be advised are necessary and proper in the protection of their interests and for such other and further relief as may be just.

Your petitioners will ever pray, &c.

JULIAN C. HARRISON,
Solicitor for and of Counsel with Petitioners.

STATE OF RHODE ISLAND,
COUNTY OF PROVIDENCE. } *ss.*

Henry E. Smith and George B. Champlin, being severally duly sworn, according to law, on their respective oaths say; they are the petitioners in the foregoing petition; that they have read the same and that the statements therein contained are true.

HENRY E. SMITH.
GEORGE B. CHAMPLIN,

Subscribed and sworn to before
me this 31st day of May, 1917.

EDGAR H. BURGESS,
(SEAL) *Notary Public.*

Petition of Abby S. and William A. Copeland as Trustees to Intervene.

Filed June 2, 1917.

To His Honor Edwin Robert Walker, Chancellor of the State of New Jersey:

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The petition of Abby S. Copeland and William A. Copeland, trustees under the Last Will and Testament of Daniel T. Copeland, deceased, of Malden, Massachusetts, respectfully shows:

1. Your petitioners, as trustees, are the owners and holders of 1,692 shares of the preferred stock and 17 shares of common stock of the defendant, United Shoe Machinery Company, and are registered as such upon the books of the said Company.

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2. Your petitioners have never consented directly or indirectly, to the merger of the defendant, United Shoe Machinery Company with the defendant, United Shoe Machinery Corporation, in accordance with the terms of a certain merger agreement made April 18th, 1917, a copy whereof is annexed to the bill of complaint in the above cause, or to any merger or consolidation of the said defendants, but on the contrary have protested and do now protest against the said merger upon the ground that the same violates the rights vested in petitioners, by reason of their ownership of said shares of stock, is contrary to law and equity, unjust, oppressive, illegal and void.

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3. Your petitioners are willing to contribute to the expense of the above-entitled suit and desire to come in and be admitted as parties complainant therein and to appear and aid the

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prosecution thereof for the protection of the rights of all the other preferred and common stockholders of said corporation who may desire to be admitted to such cause and contribute to the expenses thereof.

Your petitioners therefore pray that an order may be made admitting petitioners as parties complainant in the above entitled cause and that they be allowed to appear therein and aid in the prosecution thereof and take such other steps as they may be advised are necessary and proper in the protection of their interests and for such other and further relief as may be just.

Your petitioners will ever pray, &c.

JULIAN C. HARRISON,
Solicitor for and of Counsel with Petitioners.

COMMONWEALTH OF MASSACHUSETTS,
COUNTY OF SUFFOLK. } *ss.*

Abby S. Copeland and William A. Copeland, being duly severally sworn, according to law, on their respective oaths say; they are the petitioners in the foregoing petition; that they have read the same and that the statements therein contained are true.

ABBY S. COPELAND,
WILLIAM A. COPELAND.

Subscribed and sworn to before me
me this 31st day of May, 1917.

GEORGE H. NOBBS,
(SEAL) *Notary Public.*

Order Admitting Copelands, Smith and Champlin as Complainants.

Filed June 2, 1917.

Upon reading and filing the duly verified petitions of Abby S. Copeland and William A. Copeland, as trustees under the last will and testament of Daniel T. Copeland, deceased, of Malden, Massachusetts; and of Henry E. Smith and George B. Champlin, of Providence, Rhode Island, and it appearing that the said petitioners Abby S. Copeland and William A. Copeland as trustees, are the owners and holders of 1692 shares of preferred stock and no shares of common stock of the said United Shoe Machinery Company; and that the said Henry E. Smith and George B. Champlin are the owners of 390 shares of the preferred stock of the said defendant company, it is this day of June, 1917, on motion of Julian C. Harrison, solicitor for said petitioners,

Ordered, That said Abby S. Copeland and William A. Copeland as trustees under the last will and testament of Daniel T. Copeland, deceased; and the said Henry E. Smith and George B. Champlin, be, and they hereby are, admitted as parties complainant in this suit and that they be allowed to appear and aid in the prosecution thereof, and to take such steps as they may be advised are necessary and proper for the protection of their interests.

And it is Further Ordered, That copies of the said petitions and of this order, which need not be certified, be served upon the defendants' solicitors within one day of the date hereof.

Respectfully advised,

MERRITT LANE,
V. C.

AFFIDAVITS IN OPPOSITION.

Affidavit of Sidney W. Winslow.

Filed May 29, 1917.

10 COMMONWEALTH OF MASSACHUSETTS, SUFFOLK. } *ss.*

SIDNEY W. WINSLOW, being duly sworn according to law, on his oath deposes and says as follows:

I am one of the defendants in the above entitled cause and reside at Orleans, in the County of Barnstable and Commonwealth of Massachusetts. I am and have been since its organization the president, a director, and member of the 20 Executive Committee of the United Shoe Machinery Company, one of the above named defendants. I am and have been since its organization a director and member of the Executive Committee of the United Shoe Machinery Corporation, one of the above defendants, and am also president of that Corporation.

The United Shoe Machinery Company was incorporated on February 7, 1899, with an authorized capital stock of $25,000,000 divided into 30 1,000,000 shares of the par value of $25.00 each, of which one-half was common stock and one-half preferred stock. There have now been issued and are outstanding certificates of stock of the United Shoe Machinery Company for 398,863.38 shares of preferred stock of the par value of $9,971,584.50 and 435,628.38 shares of the common stock of the par value of $10,890,709.50.

The United Shoe Machinery Corporation was organized under the laws of the State of New 40 Jersey on May 2, 1905, with an authorized cap-

ital stock of $50,000,000 divided into 2,000,000 shares of the par value of $25.00 each of which 600,000 shares are preferred stock and 1,400,000 shares are common stock. There have now been issued and are outstanding certificates of stock of the United Shoe Machinery Corporation for 391,881 shares of preferred stock, and for 1,260,-279.25 shares of its common stock. 10

Immediately upon the formation of the United Shoe Machinery Corporation in 1905 it made a general offer to all holders of preferred stock of the United Shoe Machinery Company to exchange preferred stock of the United Shoe Machinery Corporation for preferred stock of the United Shoe Machinery Company, share for share. At that time there were 3925 stockholders holding preferred stock of the United Shoe Machinery Company. The number of shares held by them was 398,863.38, *i. e.,* the total amount of preferred stock of the company outstanding. Since the making of such offer 3793 of such preferred stockholders holding 391,881 shares of such preferred stock have taken advantage of such offer and have exchanged their holdings of preferred stock of the United Shoe Machinery Company for a corresponding number of shares of preferred stock of the United Shoe Machinery Corporation. Such offer was accepted almost immediately by more than 3000 stockholders holding more than 250,000 shares of such preferred stock of the United Shoe Machinery Company and has been accepted by other such stockholders from time to time from the year 1905 down to the present time, including some even since the date of the merger agreement complained of in this suit. There now remain outstanding, not owned by the United Shoe Ma- 20 30 40

chinery Corporation, of preferred stock of the United Shoe Machinery Company only 6982.38 shares held by 132 individual stockholders, including qualifying shares held by the directors of the Company.

Of the outstanding and issued stock of the
10 United Shoe Machinery Company the United Shoe Machinery Corporation is now the owner of 391,881 shares of preferred stock and 435,-412.76 shares of common stock. All this preferred stock so owned by the United Shoe Machinery Corporation it has acquired by purchase, giving in exchange therefor one share of its own preferred stock for one share of the preferred stock of the Company.

As a result of these purchases of stock of the
20 Company by the United Shoe Machinery Corporation the original owners and holders of stock of the United Shoe Machinery Company are now largely the owners and holders of stock in the United Shoe Machinery Corporation. It appears, therefore, that the vast majority of preferred stockholders of the Company have exchanged their stock for preferred stock in the Corporatiin upon the same terms as those proposed in the merger agreement, and that these
30 terms of exchange have appeared to them fair and equitable.

The United Shoe Machinery Company is actively engaged in the business of manufacturing, buying, selling and dealing in and with all kinds of boot and shoe machinery and contrivances, mechanisms and materials relating thereto. Such has been its business from its organization. The United Shoe Machinery Corporation is not engaged in the active transaction of any business
40 except as a holding company.

The proposed merger and consolidation of the United Shoe Machinery Company and United Shoe Machinery Corporation set forth in the merger agreement made and entered into by the Directors of said corporations April 18, 1917, a copy of which is attached to the Bill of Complaint, marked "Exhibit E," if consummated, will secure greater economy and efficiency in the management of the shoe machinery business now carried on through the United Shoe Machinery Company as the operating company and the United Shoe Machinery Corporation as the holding company. It will save the expense of maintaining two organizations and will effect an extremely large saving in the matter of taxes, both state and federal. For example, under the present Federal Income Tax Law, the earnings of the Corporation received as dividends from the Company are subject to an income tax payable by the Corporation although they have already been subjected to like income tax payable by the Company as a part of its earnings. There is not only this duplication of taxation in the matter of income taxes but the incidence of double taxation is experienced as well in the matter of franchise taxes and other taxes. The action of the directors of both companies in making the merger agreement was prompted wholly by the foregoing considerations.

Under the terms of the merger agreement aforesaid a preferred stockholder of the United Shoe Machinery Company would be entitled to receive for each share of the preferred stock held by him a share of the preferred stock of the consolidated corporation—that is, the United Shoe Machinery Corporation. The preferred stock in the Company is entitled to a preferen-

tial dividend of six per cent. per annum cumulative but without preference in the event of the dissolution of the Company. The preferred stock in the Corporation is likewise entitled to a preferential dividend of six per cent. per annum cumulative but has the further preference of being entitled, in the event of liquidation, to $35.00 per share and accrued dividends.

The charters of both companies are perpetual and no dissolution or liquidation or winding up of either company is or has been contemplated.

The income upon the preferred stock in both corporations is the same, but the preferred stock in the United Shoe Machinery Corporation has a better security behind it and is entitled to a substantial preference in the event of liquidation, whereas the preferred stock of the Company has no preference over the common stock in liquidation, and the common stock in the event of proposed termination of the business would be entitled to have any existing surplus paid to it in dividends before liquidation. The exchange proposed is certainly favorable to the preferred stockholders of the United Shoe Machinery Company.

There is no restriction upon the voting power of the preferred stock of the United Shoe Machinery Company. There is likewise no restriction upon the voting power of the preferred stock of the United Shoe Machinery Corporation, except that so long as dividends on the preferred stock shall be paid regularly at quarterly intervals the holders of the preferred stock shall have no voting power as to increase of the authorized capital stock by additional common stock or by any stock deferred to the preferred stock in respect to dividends and lien

upon the capital of the corporation. This restricted limitation of voting power has no substantial effect upon the value or security of such preferred stock.

It was proposed that the merger agreement before referred to should be submitted at a special meeting of the stockholders of the United Shoe Machinery Corporation called to be held on May 22nd and that it should also be submitted to the stockholders of the United Shoe Machinery Company at a meeting called for the same date. More than two-thirds of the entire capital stock of the United Shoe Machinery Company were represented and would have been cast at the meeting of the stockholders of that Company in favor of the merger had action thereon been taken at such meeting. More than two-thirds of the entire capital stock of the United Shoe Machinery Corporation were represented and would have been cast at the meeting of the stockholders of that corporation in favor of the merger had action thereon been taken at such meeting. Both of these meetings were adjourned without taking any action with regard to the merger agreement on account of the restraining order which had been issued in this suit.

The merger and consolidation proposed is beneficial and advantageous to both corporations, and is for the best interest of both the preferred and common stockholders of the Company and the Corporation.

Indeed so far as the preferred stockholders of the Company is concerned, I can conceive of no fairer terms which could be proposed under a merger agreement. Such a stockholder now has a preferred stock which is not listed upon any Stock Exchange and therefore not readily mar-

ketable which has a preference only as to dividends. In exchange therefor under the proposed merger he will receive a stock in the Corporation better secured as to asests, with the same revenue producing qualities and preferred as to assets in the event of liquidation to the extent of $35.00 a share, and which stock is listed on the Stock Exchange and is readily marketable. I not only think the exchange proposed is a fair one, but I have always thought so since the organization of the Corporation, and when my advice has been sought in the matter I have recommended the exchange on these terms. I was myself a large holder of preferred stock of the Company and exchanged my stock for stock in the Corporation, and in my opinion the preferred stockholders of the Company will profit by the consummation of the merger if it is effected.

SIDNEY W. WINSLOW.

Subcribed and sworn to before me
this 24th day of May, 1917.

HAROLD G. DUNHAM,
(SEAL) *Notary Public.*

Affidavit of Harold G. Dunham.

Filed May 29, 1917.

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

HAROLD G. DUNHAM, being duly sworn upon his oath says: I am the secretary of the United Shoe Machinery Corporation, and as such am, of course. familiar with the taxes and other expenses to which the enterprise now operated under the two corporate names of the "Company" and the "Corporation" are subjected. The Company has at all times since its organization declared regular quarterly dividends at the annual rate of six per cent. ($1.50 per share) upon its outstanding preferred stock, and for the past seven years has declared dividends at the annual rate of not less than $4.80 per share upon its common stock. As shown by the affidavit of Mr. Sidney W. Winslow filed herein, the Corporation is the owner of 391,881 shares of the preferred stock of the Company, and of 435,412 shares of the common stock of the Company. As such stockholder it receives annually from the Company $587,821 as dividends upon its holdings of preferred stock of the Company, and something in excess of $2,000,000 as dividends upon its holdings of common stock in the Company, making a total of more than $2,500,000.

Under the existing Federal Income Tax Law the Company is required to pay a tax at the rate of two per cent. upon the entire amount of its net income. It therefore pays such tax upon the entire earnings from the operation of the enterprise. The Corporation in turn is required to pay such tax at the rate of two per cent. upon its

entire net income, which consists, as above indicated, of the dividends it receives upon its holdings of stock of the Company. The tax, therefore, required to be paid by the Corporation under the Federal Income Tax Law upon its income by way of dividends upon its holdings of company stock, amounts annually to a sum in excess of $50,000 which sum would be saved to the stockholders were the Holding Company eliminated and the double taxation thereby avoided.

In addition, under the present Federal Excise Tax Law, both the Company and the Corporation are required to pay a capital stock tax based upon the market value of their respective shares. This, again, results in a duplication of taxation, amounting to many thousands of dollars, which would be saved to the stockholders were the Holding Company eliminated and the business operated by one company, as result of the proposed merger.

In addition, both the Company and the Corporation, so long as they continue to exist as separate organizations, are required to pay the franchise taxes imposed upon corporations organized under the laws of the State of New Jersey. This tax, based upon the authorized capital stock of the Company issued and outstanding, amounts to $4,793 annually, which amount would be saved to the stockholders were the merger permitted to proceed, and the business taken over by one corporation, instead of being operated by two.

In addition, there are many other administrative and other expenses which are rendered necessary, by the maintenance of the two separate organizations, and a substantial part of

which would be saved were the merger consummated.

That time is of importance in effecting these savings is obvious. For example, the next meeting of the directors of the Company will be held in ordinary course on June 13th, for dividend action, and the regular quarterly dividend will be payable during the first week in July. If the merger should be postponed until after such dividend action, the Federal Income Tax will attach to dividends received by the Corporation upon its holdings of Company stock, and as above indicated, this amount is very substantial.

There are at the present time more than 9,500 stockholders of the Corporation. These are constantly changing, and it is necessary, therefore, in order to be sure that the necessary quota of votes exists and is represented, for the Corporation to keep up with the daily changes, notifying all these stockholders of the pendency of the meeting, and eliminating from its list of stockholders those whose shares are transferred. In so vast a number of stockholders the element of postage alone is considerable, not to speak of the other administrative and clerical expenses connected with getting the thing in shape.

At the meetings of both the Company and the Corporation called for May 22nd, 1917, action in which was prevented by the issuance of the restraining order in this cause, stockholders owning more than two-thirds of all the stock issued and outstanding, of both the Company and the Corporation, were present in person or by proxy, ready to vote upon the proposed merger. The expense and inconvenience of keeping these meetings open is obvious.

HAROLD G. DUNHAM.

Sworn to and subscribed before me
this 29th day of May, 1917.

DANIEL B. SMITH (SEAL)
Notary Public for New Jersey.

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Affidavit of Sidney W. Winslow.

Filed June 6, 1917.

COMMONWEALTH OF MASSACHUSETTS,
SUFFOLK, } *ss:*

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

I am and have been since its organization
20 President of the United Shoe Machinery Company, one of the defendants herein. I am also and have been since its organization President of the United Shoe Machinery Corporation.

The United Shoe Machinery Corporation was formed in May, 1905. The United Shoe Machinery Corporation at once offered to the shareholders of the United Shoe Machinery Company to give stock of the United Shoe Machinery Corporation in exchange for stock of the United
30 Shoe Machinery Company, as set forth in the previous affidavits made by me in this cause. The total number of stockholders so holding stock of the United Shoe Machinery Company was Four Thousand, Seven Hundred and Forty-Five (4,745). Of this total number there were Two Thousand, One Hundred and Nineteen (2,119) who held no common stock but were holders of preferred stock of the United Shoe Machinery Company only. There were Eight Hundred and
40 Twenty (820) who held no preferred stock of the

United Shoe Machinery Company but were holders of common stock only, and there were One Thousand, Eight Hundred and Six (1,806) who were holders of both preferred and common stock. The offer of exchange, between the time it was made in 1905 down to the present time, has been accepted by nearly all of the stockholders, including those holding common stock only, those holding preferred stock only, and those holding stock of both kinds. At the present time there remain outstanding only One Hundred and Thirty-two (132) stockholders of the United Shoe Machinery Company holding preferred stock who have not accepted the offer to exchange their stock for stock of the United Shoe Machinery Corporation and Six (6) stockholders holding common stock who have not accepted such offer. The total amount of the holdings of those outstanding stockholders is shown by my previous affidavits.

(Sgd.) SIDNEY W. WINSLOW.

Subscribed and sworn to before me
this fourth day of June, 1917.

(Sgd.) EDWARD N. CHASE,
(SEAL) *Notary Public.*

Opinion of V. C. Lane.

June 4, 1917.

Mr. Julian C. Harrison for complainant.

Mr. Arthur F. Egner for defendants.

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LANE, *V C.*

(Orally.) I am going to decide the case of Brugler *v.* United Shoe Machinery Company *et als.* The application is to enjoin a proposed merger of the United Shoe Machinery Company with the United Shoe Machinery Corporation, and is made on behalf of the holders of 2,582 shares out of a total issue of 398,863 38/100 shares of preferred stock of the United Shoe Machinery Company. There is also an intervening complainant, a holder to the extent of 156 shares out of a total issue of 435,628 38/100 shares, of common stock of the United Shoe Machinery Company. The total authorized issue of stock of the United Shoe Machinery Company is $25,000,000, divided equally between preferred and common, and the respective figures which I have given above are the amounts respectively issued of each class.

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The United Shoe Machinery Corporation was incorporated for the purpose of obtaining control of the United Shoe Machinery Company and is a holding corporation; it has a capital of $50,000,000 divided into two million shares of the par value of twenty-five dollars each, 600,000 preferred and 1,400,000 common. The proposal is to substitute for each share of preferred stock of the Company a share of preferred stock of the Corporation and the insistence of the complainant is that the scheme proposed is unfair. There is but

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little difficulty with respect to the rules of law which must be applied. The statute gives the right to merge provided statutory requirements have been carried out. In this case they have. The courts, however, have held that, notwithstanding the statutory provision, and the fact that if a stockholder is deprived of his right by improper action of his directors, there may be a suit at law, and the privilege given to him by the legislature of having his stock appraised, equity will intervene and prevent a merger if the scheme proposed appears to the court to be unfair. The sole question to be determined in this case is whether or not it now appears that the scheme is unfair. This is not a question of law; it is a matter of business.

The complainants insist that, because a preferred stockholder of the Company has the right to a six per cent. preferred dividend, and also upon dissolution a right to a pro rata share with common stockholders in the assets of the Company, and inasmuch as it now appears that the assets of the Company if converted into cash would mean that the stock of the company would be worth approximately $58, I think, a share, to give in return for stock of such character a share of preferred stock of the Corporation, which is entitled to six per cent. dividend preferred, but is entitled only in case of dissolution to par, plus $10 a share, or a total of $35, is manifestly unfair, that the mere statement of such a scheme shows its unfairness. I think not. The question is what is the market value, what is the real value of the holdings of the complainants, and what is the real value of the thing offered in return. It cannot be said that the statutory scheme contemplated that there should

be given to the stockholders of the merged corporation a security identical in character with that which they held. They must be given something which is equal in value to it, or which may fairly be said is equal in value to it. Obviously to say that preferred stock of the Company is now worth $56 is absurd. The mere fact that, if the Company should be dissolved today and if its assets could be realized upon and make their book value, then the stock would be equal in value to $56 is far from saying that it is really worth at this time $56. The complainants, the minority stockholders, have no right to insist upon a dissolution. A dissolution may never occur. They must wait until some future time, which it is not contemplated ever will come, because the charter of the corporation is perpetual, and it is to be presumed that it will go on and do business so long as it can so long as it has the capital and can do business profitably. So I say that the mere fact that upon dissolution today the stock might possibly realize $56 is no proof of its real value. I can instance the case of the appraisal of stock of the Prudential Insurance Company, in which I figured. There the book value of the stock was over $1,200, if I recollect correctly, and yet the appraisers fixed the value at, I think, in the neighborhood of $800. Furthermore, a large part of the surplus may no doubt be declared as dividends on common stock. As a matter of fact the preferred stockholder of the Company really has not a preferred stock; he has nothing but common stock, plus a preferred dividend. He stands with the common stock the danger of the vicissitudes of the business; he loses as the common stock loses. It may be that he never will get even par if the business

is unsuccessful. He is offered in exchange for this preferred stock, preferred stock of the Corporation, that is in reality a preferred stock ahead of all common stock, and he is entitled to receive his dividends of six per cent., and in case of dissolution his par of $25, plus $10. There is some complaint made that he is deprived of his voting power. The value which may be placed upon that voting power is almost impossible to figure. It is said that he is deprived because of the deprevation of his voting power of the right to subscribile to stock, a new issue of common stock. The value of that right is hard to figure. The scheme really contemplates the conversion of a common stock plus a preferred dividend into a real preferred stock both as to dividends and as to payment of par plus out of assets. I am unable to find upon the facts now before me that this scheme is so unfair that a mere statement of it would lead this court to enjoin the proposed merger. The directors of both the Company and the Corporation have under the statute proposed what they claim to be a fair plan. I do not recede from anything which I said in the case of Morse *v.* The Metropolitan Steamship Company with respect to the obligation of directors who are controlled by a single individual or group of individuals, which controls a corporation towards minority stockholders, and because the United Shoe Machinery Corporation really controls at the present time the United Shoe Company, the action of the directors is not entitled to the weight that it would be entitled to if they were separate and distinct. Nevertheless they have acted under the statute, and unless I could conclude that the scheme is essentially unfair it seems to me that I ought not to interfere with this merger.

Where a question becomes one of business expediency, and this is one, it is wise to look to the acts of the holders of the stock of the company who have been compelled to act upon their own business judgment.

It appears that out of 4,745 individual stockholders of the Company, of which number 2,119—I want that produced in affidavit form, Mr. Egner—2,119 are the holders of preferred stock only, 820 are the holders of common stock only, and 1,806 are holders of both preferred and common; there are now outstanding only 132 individual preferred stockholders and six common stockholders, and the only preferred stockholders who have sought the intervention of this court are five. The fact that the great majority of this stock have accepted this plan while, of course, it would not prevent this court for one moment from acting to protect the rights of individual stockholders, no matter how many or how few shares they hold, yet is rather cogent evidence that the ordinary business man who has held this stock has conceived that this plan is a plan which is fair to preferred stockholders. I am not only asked to reverse the judgment of the directors of this Company, but I am also asked to reverse the judgment of at least 2,119 holders of preferred stock. I am confronted with the opinion of Vice-Chancellor Stevens in the case of Copeland *v.* The United Shoe Machinery Company, affirmed by the Court of Errors and Appeals on his opinion. An application similar to this was made at a time when the charters of the Company were dissimilar. The Vice-Chancellor held that under the Colgate case there could be no merger. He further held or stated that there was sufficient in the case to warrant

him in granting a preliminary injunction upon the ground that the thing which was to be given in return for the thing given up was of unequal value, and therefore apparently unfair. Where application is made for a preliminary injunction each case must be determined upon its own facts, and must be decided as of the time when the application is made. This case has been argued before me practically as if upon final hearing. It is conceded by the defendants that there are no facts in dispute. Before Vice-Chancellor Stevens it is conceded there were no affidavits. The case was argued upon the bare statements of the bill; it did not appear before him that this vast majority of stock had accepted the proposed merger. I think that the facts which now appear before me clearly differentiate this from the case that was before him.

The result will be that I will discharge the order to show cause.

If an appeal is taken I desire counsel to notify me at once and I will prepare formal conclusions for the Court of Appeals.

The fact that the Holding Corporation is now to become an operating corporation, and that the Holding Company is to be gotten rid of, which now is in accordance with the policy of our laws, is one feature which influences me in the result which I have reached. so also the fact that if the few dissenting stockholders are actually injured they have a remedy at law which they may pursue. or they may apply for an appraisal of their stock, so that I am not actually forcing them into any merger. They may if they desire pursue their remedy at law, and the law court can just as readily ascertain the value of the stock at the present time as I could do, and it

seems to me that I must ascertain the value of the stock at the present time if I am going to determine that the plan is unfair, because it is only unfair if they are getting something worth less than what they are giving up. If a mere slight difference in the nature of the thing given for the thing given up would permit the intervention of this court then it is almost impossible to conceive of any merger which might not be prevented by the action of a few stockholders.

Mr. Harrison. In the case of an appeal from your Honor's order I would like to be able to confer with my clients as to any bond your Honor would require to stay any proceedings on the part of the defendants pending the determination of the appeal. Of course we would get nothing but a bare determination of the principle involved on an appeal from this order, if in the meantime the merger was permitted to be put into effect.

The Court. I am inclined to think, Mr. Harrison, that in view of the Copeland case—I would not do it if it were not for that case—but in view of the Copeland case I am inclined to think I should stay the operation of the order dissolving the order to show cause until an opportunity could be had for an application to the Court of Errors and Appeals for a stay.

Mr. Harrison. That would only be two or three weeks.

Order Discharging Rule to Show Cause.

Filed June 6, 1917.

This matter coming on to be heard upon the return of a rule to show cause issued in this cause on the 18th day of May, 1917, and Julian C. Harrison having been heard on behalf of the complainant, and John R. Hardin on behalf of Frederick W. Webster, intervening complainant, and Robert H. McCarter on behalf of the defendants United Shoe Machinery Company and United Shoe Machinery Corporation, and the Court having considered the matter and being of the opinion that the said rule to show cause be discharged.

It is on this 6th day of June, 1917, on motion of McCarter & English, Solicitors of the United Shoe Machinery Company and United Shoe Machinery Corporation, Ordered that the said order to show cause be and the same hereby is discharged, and that the restraint therein contained be and the same hereby is made of no further force or effect.

Respectfully advised,

MERRITT LANE,

V. C.

Notice of Appeal.

Filed June 6, 1917.

To McCarter & English, Esqs.,
Solicitors of Defendant United Shoe Machinery Company, *et als.*, and

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To Pitney, Hardin & Skinner, Esqs.,
Solicitors of Co-Complainant Webster.

Take Notice that the complainants above named appeal to the Court of Errors and Appeals of New Jersey from the order made the 6th day of June, 1917, discharging the rule to show cause and vacating the restraint contained in said rule to show cause, on the following grounds:

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(1) In that it fails to provide that an injunction shall issue according to the prayer of the bill and until final hearing.

(2) That said order is erroneous in that it discharges the rule to show cause and vacates the restraining order.

Dated June 6, 1917.

JULIAN C. HARRISON,
Solicitor for and of Counsel with Complainants Brugler, Copeland, Smith and Champlin.

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I conceive there is good cause for this appeal.

JULIAN C. HARRISON,
Of Counsel with Complainants Brugler, Copeland, Smith and Champlin.

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Service acknowledged this 6th day of June, 1917.

McCARTER & ENGLISH,
Solicitors of Defendants United Shoe Machinery Company and United Shoe Machinery Corporation.

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PITNEY, HARDIN & SKINNER,
Solicitors for Complainant Webster.

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Order Temporarily Continuing Restraint.

Filed June 6, 1917.

An order having been made in this cause on this 6th day of June, 1917, discharging the rule to show cause and vacating the restraint therein contained, and the complainants having thereupon forthwith filed a notice of appeal to the Court of Errors and Appeals, from the said order discharging the rule to show cause and temporary restraint; and having moved that further proceedings on the part of the defendants be restrained until the hearing and determination of said appeal, it is this 6th day of June, 1917, on motion of Julian C. Harrison, solicitor of complainants,

ORDERED: That the restraint contained in said rule to show cause be continued and remain in full force and effect until the hearing and determination of an application to the said Court of Errors and Appeals to continue said restraint pending the determination of said appeal. And it is further

ORDERED: That in case the complainants fail to bring on said application to continue such restraint as early as may be as on or before the 19th day of June next, this order shall be without further force or effect.

Respectfully advised,

MERRITT LANE,
V. C.

Petition of Appeal.

Filed June 8, 1917.

New Jersey Court of Errors and Appeals

Between CHARLES E. BRUGLER, *et als.*, *Complainants-Appellants,* *and* UNITED SHOE MACHINERY COMPANY, *et als.*, *Defendants-Respondents.* FREDERIC W. WEBSTER, *Complainant-Respondent.*	*On Bill, etc.* *Petition of Appeal.*

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To the Honorable, the Court of Errors and Appeals in the last resort in all causes in New Jersey.

The petition of Charles E. Brugler, Abby S. Copeland and William A. Copeland as Trustees, etc., Henry B. Smith and George B. Champlin respectfully shows;

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That your petitioners find themselves aggrieved by an order made in the Court of Chancery by his Honor Edwin R. Walker, Chancellor of New Jersey, and advised by his Honor Merritt Lane, Vice-Chancellor, bearing date the sixth day of June, in the year, 1917, in a certain cause pending in the Court of Chancery wherein the said Charles E. Brugler was complainant, and the other petitioners above named, together with Frederic W. Webster,

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have been admitted as co-complainants; and the said United Shoe Machinery Company, and the United Shoe Machinery Corporation, and the common directors thereof, to wit William Warren Barbour, Edwin P. Brown, George W. Brown, John H. Connor, Louis A. Coolidge, Henry B. Endicott, Edmund LeB. Gardner, John H. Hanan, Elmer P. Howe, Edward P. Hurd, George E. Keith, Joseph C. Kilham, Rudolph Matz, Charles G. Rice, Wallace F. Robinson, Alfred R. Turner, Samuel Weil, Sidney W. Winslow, Sidney W. Winslow, Jr., and William Woodward were defendants, in this respect, to wit: That the said order adjudges that the rule to show cause why an injunction should not issue, restraining the defendants until final hearing from consummating any merger of the said corporate defendants, in accordance with the terms of an agreement made between the same directors acting for each of said corporations, on the 18th day of April, 1917, should be discharged and a temporary restraint against such acts vacated. And your petitioners humbly appeal from that part of the said order of the Chancellor which orders as aforesaid, and from the whole thereof, upon the ground that the same is erroneous for that your petitioners will suffer irreparable injury if the said restraint is dissolved, and will be unlawfully, oppressively and unjustly deprived of their contract rights as preferred stockholders of the defendant United Shoe Machinery Company, unless the defendants are enjoined in accordance with the prayer of complainants' bill; and will be deprived of their preferred stock and the rights appertaining thereto, and particularly of the right to share with the

common stock in the event of dissolution or distribution of assets, upon equal terms; of the right to subscribe for any additional issues of stock; of the right to exercise equal voting rights with the common stockholders; and of the right to receive in case of dissolution their pro rata share of any surplus in excess of $35 per share.

Your petitioners therefore pray that the said order of the said Chancellor may be in all particulars aforesaid reserved, set aside, and for nothing holden; and that the defendants be enjoined until final hearing as prayed for in the bill of complaint; and that your petitioner may have such relief in the premises as to this Honorable Court may seem meet.

Your petitioners further show that the said Frederic W. Webster was admitted as an intervening complainant herein by an order duly filed on June 2, 1917, appearing by Pitney, Hardin & Skinner, his solicitors; that the said intervenor has declined to join in this petition, and is therefore joined as respondent.

JULIAN C. HARRISON,
Solicitor of and of Counsel with
Appellants Brugler, Copeland,
Smith and Champlin.

Formal answer to Petition of Appeal filed by McCarter & English, Solr's for defendants, United Shoe Machinery Company, and United Shoe Machinery Corporation.