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BILL OF COMPLAINT.

Filed August 27, 1920.

In Chancery of New Jersey

Between

MARY PARNES, executrix of the Last
Will and Testament of Samuel
Parnes, deceased, *et al.*,

Complainants,

and

GNOME MANUFACTURING COMPANY, a
corporation,

Defendant.

On Bill, etc.

*Bill of
Complaint.*

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

The complainants, Mary Parnes, executrix of the last will and testament of Samuel Parnes, deceased, and Julius A. Parnes, residing at 172 Jaques street, in the City of Elizabeth, County of Union and State of New Jersey, respectfully show that:

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1. On March 18, 1920, the Surrogate of Union County appointed the complainant as the executrix of the last will and testament of Samuel Parnes, deceased, late of Union County, New Jersey.

2. On or about June 4, 1919, the defendant, the Gnome Manufacturing Company, a corporation of the State of New Jersey, was organized as such corporation under the provisions of "An Act Concerning Corporations" (revision of 1896), and the several acts supplementary and amendatory thereof, with its principal place of business in the

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City of Elizabeth, County of Union and State of New Jersey, having as its statutory agent Albert F. Bender.

3. The objects of said corporation, as expressed in the certificate of incorporation of said company, was to engage in the manufacture of toys, games and articles of a kindred nature.

10 4. The authorized capital of said corporation, as expressed in said certificate of incorporation, was sixty thousand dollars (\$60,000), divided into three hundred (300) shares of preferred stock each of the par value of one hundred dollars (\$100), and three hundred (300) shares of common stock each of the par value of one hundred dollars (\$100).

20 5. The original subscribers to the capital stock of said corporation, and the respective amounts of their several subscriptions were Frederick A. Hemphill, one share; August J. Bender, one share, and Albert F. Bender, eight shares, but none of said subscribers have paid any of the consideration by them agreed to be paid for their subscriptions.

6. The duration of said company, as expressed in said certificate of incorporation, was intended to be perpetual.

30 7. Thereupon, and between June 4, 1919, and on or about February 1, 1920, said corporation issued two hundred and twenty-nine (229) shares of common stock provided for by its certificate of incorporation to the following named persons in the amounts as set forth opposite each respective name severally.

	Name.	Shares.
	Joseph Balinski	70
	Stanislaw Balinski	25
	E. Conrad	25
	E. Shumock	4
	A. Stetsnsko	3
	J. B. Dane	51
40	C. S. Cannon	51
	Total	229

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8. The shares issued as said in paragraph 7 were issued without any consideration having been paid to the corporation, received by the corporation, or contracted to be paid to the said corporation; said shares were issued without the corporation receiving any value, property or services whatsoever for the issuance thereof, and given to the holders thereof as a "bonus" merely because said holders had become holders of the common stock of the corporation, and as to such thereof as were not holders of the preferred stock, merely to give such non-holders the control of the corporation's directorate, management and officers. 10

9. Between June 4, 1919, and on or about February 1, 1920, said corporation issued one hundred and eight (108) shares of the preferred stock authorized by its certificate of incorporation to the following named persons in the amounts as set forth opposite each respective name severally: 20

Name.	Shares.	
Joseph Balinski	60	
Stanislaw Balinski	20	
E. Conrad	5	
E. Shumock	12	
A. Stetsnsko	9	
Mrs. W. Brown	2	
	<hr style="width: 10%; margin-left: auto; margin-right: 0;"/>	
Total	108	30

10. The shares issued to Joseph Balinski, as stated in paragraph 9, were issued without any consideration having been paid to the corporation, received by the corporation, or contracted to be paid to the said corporation; said shares were issued without the corporation receiving any value, property or services whatsoever for the issuance thereof.

11. On or about February 17, 1920, the defendant, in order to induce the late Samuel Parnes to purchase sixty 40

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(60) shares of the preferred stock of that company, by its duly authorized officer, Mr. C. S. Cannon, stated and represented to said late Samuel Parnes, FIRST, that it, the said corporation, was the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing; 10 SECOND, that it then had in hand over twelve thousand dollars (\$12,000) worth of unfilled orders; THIRD, that said corporation had then in its employ, by a written contract, the original patentee of said toy aeroplane at a salary of thirty dollars (\$30) per week for one year and a salary of fifty dollars (\$50) per week for one year thereafter; FOURTH, that one Albert F. Bender, a lawyer of Elizabeth, was an officer, director and stockholder of the company; FIFTH, that no royalties, compensation or any other form of compensation was due or payable to any person or persons whatsoever by reason of the manufacture of said toy 20 aeroplane, and SIXTH, that it could issue to said Samuel Parnes twenty (20) shares of the common stock of the corporation fully paid and non-assessable, upon the said Samuel Parnes, agreeing to pay for sixty (60) shares of the preferred stock of the company, without said Samuel Parnes paying for, or being obliged to pay for, said common stock.

12. The defendant, at the time that said representations and statements were made, knew, FIRST, that it was not 30 the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing, and, SECOND, knew that it did not then have on hand over twelve thousand dollars (\$12,000) worth of unfilled orders, and, THIRD, also knew that said corporation had not then in its employ, by a written contract, the original patentee of said toy aeroplane at a salary of thirty dollars (\$30) per week for one year and a salary of fifty dollars (\$50) per week for one year thereafter, and, FOURTH, also knew that Albert F. 40 Bender, a lawyer of Elizabeth, was neither an officer,

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director or stockholder of the company, and, FIFTH, also knew that royalties, compensation or some other similar form of compensation exclusive of salaries was due and payable to the patentee by reason of the manufacturing of said toy aeroplane, and, SIXTH, that said defendant also then knew that it could not issue to said Samuel Parnes twenty (20) shares of the common stock of the corporation, fully paid and non-assessable, without said Samuel Parnes paying for, or being obliged to pay for, said common stock. 10.

13. The defendant intended that said late Samuel Parnes should rely upon each and all of the statements and representations made, as stated in paragraph eleven (11) above, which statements and representations were also made by the defendant with reckless disregard of whether such statements were in fact true or not.

14. The said late Samuel Parnes relied upon the statements and representations made, as alleged in paragraph eleven (11) above, and because of his reliance thereon entered into a contract for the purchase of sixty (60) shares of the preferred stock of the defendant company, paying at said time the sum of twenty-five hundred dollars (\$2,500) on account thereof, and received from the said corporation sixty (60) shares of the preferred stock of the company, for fifty (50) shares of which a certificate was issued, a true copy of which is hereunto annexed, expressly made a part hereof marked Exhibit A, and for ten (10) of which a certificate was issued to the complainant, Julius A. Parnes, by reason of an assignment of said ten (10) shares made by Samuel Parnes, a true copy of which certificate issued to Julius A. Parnes is hereunto annexed, expressly made a part hereof marked Exhibit AA. Contemporaneously with the receipt of said certificates, as above stated, said late Samuel Parnes also received of said corporation a certificate for twenty (20) shares of the common stock of the company, a true copy 20 30 40

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of which certificate is hereunto annexed, and expressly made a part hereof marked Exhibit B.

15. The late Samuel Parnes died on March 7, 1920.

16. On or about March 18, 1920, complainant received a letter from the defendant, a true copy of which is hereunto annexed and expressly made a part hereof marked
10 Exhibit C.

17. On or about March 20, 1920, the complainant, by her attorneys, Messrs. Kanter & Kanter, replied to the defendant company, by letter, a true copy of which is hereunto annexed and expressly made a part hereof marked Exhibit D.

18. On or about April 16, 1920, the defendant, by its attorneys, Messrs. Gilhooly & Bender, replied by letter, a true copy of which is hereunto annexed, and expressly made a part hereof marked Exhibit E.

19. A copy of the proof of claim referred to in Exhibit E is hereunto annexed and expressly made a part hereof marked Exhibit F.
20

20. On or about April 17, 1920, the complainant, by her attorneys, Messrs. Kanter & Kanter, replied to the defendant company, by letter, a true copy of which is hereunto annexed, and expressly made a part hereof marked Exhibit G.

21. Thereupon on or about May 1, 1920, the defendant furnished to the complainant two financial statements, true copies of which are hereunto annexed, and expressly made a part hereof marked, respectively, Exhibit H and Exhibit I.
30

22. On being advised by their counsel that such action was permissible, proper and desirable, complainants on or about August 25, 1920, by their attorneys, Messrs. Kanter & Kanter, tendered to the said corporation the return of the shares hereinbefore described, true copies of the certificates for which are hereunto annexed, expressly made a part hereof, marked respectively Exhibit A, Exhibit
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AA and Exhibit B, and accompanied said tenders by written statements, true copies of which are hereunto annexed and expressly made a part hereof, marked respectively Exhibit J and Exhibit K.

23. The said defendant refused to accept said tenders of return and has refused to pay the property and moneys received by it from the late Samuel Parnes and has refused to cancel, or to deliver to complainants, all written and other evidences of the contract between the defendant and the late Samuel Parnes relating to the purchase of the Sixty (60) shares of preferred stock herein referred to.

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24. Complainants are ready, able and willing and hereby offer to deposit with the Clerk of this court, or with any other person designated by the order of this Court, the certificates of stock, true copies of which are hereunto annexed, and expressly made a part hereof marked Exhibit A, Exhibit AA and Exhibit B respectively.

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25. Complainants are without adequate remedy at law and therefore pray:

FIRST. That the defendant company, the Gnome Manufacturing Company, a corporation, which is the defendant in this suit, may answer this bill of complaint without oath, and each statement therein made.

SECOND. That the defendant, its officers, directors, agents and employees, may be decreed to surrender to the complainants all contracts and other written, printed and typewritten evidences of the contract whereby Samuel Parnes agreed to acquire any preferred or any common stock of the capital stock of the Gnome Manufacturing Company, and particularly that the defendant be enjoined from enforcing any of the claims or demands stated in Exhibit F.

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THIRD. That the defendant may be decreed to pay to the complainants the sum of Twenty-five Hundred Dollars (\$2,500) with interest from February 17, 1920, and that said defendant may further be decreed to surrender and

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deliver up all other property, or the equivalent of such property, received by the defendant as the result of any agreement on the part of the late Samuel Parnes to purchase any of the preferred stock or to acquire any of the common stock of the Gnome Manufacturing Company, a corporation.

10 FOURTH. That the defendant, its agents, servants, and attorneys be restrained by both temporary and permanent injunctions against the bringing of any suit or suits for enforcing the payment of any balance due, or alleged to be due, to the defendant by reason of any contract made by the late Samuel Parnes for the purchase of any of the stock of the defendant company, and particularly that the defendant company be restrained both by temporary and permanent injunctions from enforcing the claim set up in the affidavit and proof of claim a true copy of which is here-
20 unto annexed and expressly made a part hereof marked Exhibit F.

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

SIXTH. That the Gnome Manufacturing Company, its directors, officers, agents and employees be enjoined and restrained from exercising any of the privileges or franchises granted to the said company, and from collecting
30 or receiving any debts due to the said corporation, and from paying out, selling, assigning, or transferring any of the estate, money, funds, and other effects or property of the said corporation; and also that a receiver may be appointed to take charge of the effects and property of the corporation in accordance with the statutes of this State.

Dated Newark, N. J., August 26, 1920.

KANTER & KANTER,
Solicitors of Complainants.

ELIAS W. KANTER,
Of Counsel with Complainants.

Bill of Complaint.

EXHIBIT A.

Incorporated Under the Laws of the State of New Jersey.

Number	Shares
8	50

GNOME MANUFACTURING CO.

Capital Stock \$60,000

Preferred Stock	Common Stock	10
\$30,000	\$30,000	
	Shares \$100 each	

THIS IS TO CERTIFY that SAMUEL PARNES is the owner of Fifty (50) Shares of the PREFERRED Capital Stock of GNOME MANUFACTURING Co., transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

20
 Holders of the Preferred Stock are entitled to receive, and the Corporation is bound to pay out of any and all surplus or profits whenever ascertained, non-cumulative dividends thereon at the rate of seven per cent. per annum, payable annually before any dividends shall be declared on the Common Stock. The Preferred Stock is subject to redemption at par on the 4th day of any year after the date hereof. The holders of Preferred Stock shall have no vote in the Corporation.

30
 WITNESS the Seal of the Corporation and the signatures of its duly authorized officers affixed this 17th day of February, 1920.

E. V. CONRAD,
Treasurer.

C. S. CANNON,
President.

Fully Paid and Non-assessable.

Preferred Stock.

(SEAL)

Bill of Complaint.

EXHIBIT AA.

Incorporated Under the Laws of the State of New Jersey.

Number	Shares
9	10

10 GNOME MANUFACTURING CO.
Capital Stock \$60,000

Preferred Stock	Common Stock
\$30,000	\$30,000
	Shares \$100 each

THIS IS TO CERTIFY that JULIUS ALFRED PARNES is the owner of Ten (10) Shares of the PREFERRED Capital Stock of GNOME MANUFACTURING Co., transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

20 Holders of the Preferred Stock are entitled to receive, and the Corporation is bound to pay out of any and all surplus or profits whenever ascertained, non-cumulative dividends thereon at the rate of seven per cent. per annum, payable annually before any dividends shall be declared on the Common Stock. The Preferred Stock is subject to redemption at par on the 4th day of any year after the date hereof. The holders of Preferred Stock shall have no vote in the Corporation.

30 WITNESS the Seal of the Corporation and the signatures of its duly authorized officers affixed this 17th day of February, 1920.

E. V. CONRAD,
Treasurer.

C. S. CANNON,
President.

Fully Paid and Non-assessable.

Preferred Stock.

(SEAL)

Bill of Complaint.

EXHIBIT B.

Incorporated Under the Laws of the State of New Jersey.

Number	Shares
10	20

GNOME MANUFACTURING CO.

Capital Stock \$60,000 10

Preferred Stock	Common Stock
\$30,000	\$30,000
Shares \$100 each	

THIS IS TO CERTIFY that SAMUEL PARNES is the owner of Twenty (20) Shares of the COMMON Capital Stock of GNOME MANUFACTURING Co., transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

20
 Holders of the Preferred Stock are entitled to receive, and the Corporation is bound to pay out of any and all surplus or profits whenever ascertained, non-cumulative dividends thereon at the rate of seven per cent. per annum, payable annually before any dividends shall be declared on the Common Stock. The Preferred Stock is subject to redemption at par on the 4th day of any year after the date hereof. The holders of Preferred Stock shall have no vote in the Corporation.

30
 WITNESS the Seal of the Corporation and the signatures of its duly authorized officers affixed this 17th day of February, 1920.

E. V. CONRAD,
Treasurer.

C. S. CANNON,
President.

Fully Paid and Non-assessable.

Common Stock.

(SEAL)

Bill of Complaint.

EXHIBIT C.

March 18th, 1920.

Mrs. S. Parnes,
Jaques Street,
Elizabeth, N. J.

10 My dear Mrs. Parnes:

On February 18th, 1920, Mr. Parnes purchased sixty (60) shares of preferred stock of this company's issue, par value \$100.00 per share, paying on account at that time \$2,500.00, agreeing to pay the balance of \$3,500.00 in three (3) monthly installments.

In order that we may have some record of the transaction from you we would appreciate your advising us in writing that you will assume this obligation making the payments as outlined in the agreement with Mr. Parnes,
20 or as soon as you can conveniently do so.

Thanking you for your courtesy in this matter, I am,

Yours truly,

C. S. CANNON,
Gnome Manufacturing Company.

CSC/EM

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Bill of Complaint.

EXHIBIT D.

March 20, 1920.

Gnome Manufacturing Company,
Willow Grove Place,
Elizabeth, N. J.

Gentlemen:

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Mrs. Mary Parnes, executrix of the estate of the late Samuel Parnes, has handed us, her protectors and attorneys, your letter of March 18th, for reply by us.

There are very many details in connection with this estate that must be cleared up before we can come to the matter that you write of in your letter, and accordingly we must defer any consideration of this matter until this estate is in a more settled condition. We trust that this course will prove entirely satisfactory to you.

For our own information and in order to advise the executrix intelligently as to these matters, we will appreciate your sending us at your early convenience the following data:—Copy of agreement referred to in your letter; Copy of your 1919 income tax statement; Copy of your last balance statement.

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Very truly yours,

KANTER & KANTER,
By ELIAS A. KANTER. E.

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Bill of Complaint.

EXHIBIT E.

April 16th, 1920.

Messrs. Kanter & Kanter,
31 Clinton Street,
Newark, N. J.

10 Gentlemen:

*Re Gnome Manufacturing Co., vs. Estate of
Samuel Parnes, Des'd.*

We are enclosing herewith proof of claim of the Gnome Manufacturing Co. against the above estate and will thank you to acknowledge receipt of same on behalf of the executrix.

20 Our client has referred to us your letter of March 20th in which you ask us for certain data. A copy of the agreement referred to was delivered to Mr. Parnes at our office when the same was executed and a duplicate thereof is at this office for inspection by you whenever you may care to do so.

The 1919 tax income statement and balance sheet may be examined by you on behalf of the executrix at any time at the office of the company.

Very truly yours,

GILHOOLY & BENDER,
By ALBERT A. BENDER.

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Bill of Complaint.

EXHIBIT F.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

Charles S. Cannon, being duly sworn on his oath according to law, deposes and says:

I am the President of the Gnome Manufacturing Co., a corporation organized and existing under the laws of the State of New Jersey, and having its principal place of business in the City of Elizabeth, in the County of Union and State of New Jersey. On February 18th, 1920, Samuel Parnes purchased from the said Gnome Manufacturing Co. sixty shares of its preferred capital stock, of par value of One Hundred Dollars per share at a total price of Six Thousand Dollars and paid on account of said purchase price the sum of Twenty-five Hundred Dollars, balance to be paid in three equal monthly installments, one on the 18th day of March, one on the 18th day of April and one on the 18th day of May, 1920. No part of said balance has been paid. One installment became due on March 18th, 1920, the second will become due April 18th, 1920 and the third will become due on May 18th, 1920. There are no off-sets against this indebtedness to the knowledge of this deponent and the said debt is not secured by judgment or mortgage upon, or expressly charged upon the real estate of the said Samuel Parnes, now deceased, or any part thereof, and no note has been given for the same.

CHAS. S. CANNON.

Subscribed and sworn to before me
this 14th day of April, 1920.

GERTRUDE L. NORRIS,
Notary Public of N. J.

Bill of Complaint.

EXHIBIT G.

April 17th, 1920.

Messrs. Gilhooly & Bender,
207 Broad St.,
Elizabeth, N. J.

10 *Re claim Gnome Manufacturing Company vs.
 Estate of Samuel Parnes.*

Dear Sirs:

Receipt is acknowledged, in behalf of Mary Parnes, executrix of the estate of Samuel Parnes, deceased, of your letter of the 16th inst., containing enclosure therein specified.

20 We note that your client does not answer our letter of March 20th. It is highly important that that letter be fully answered, the information being necessary for a number of reasons, which, as lawyers, you are fully familiar with. We believe that our client should not incur the expense of making the examinations that you suggest, particularly when it is apparent that the data are ready for inspection, and the inspection can be avoided at the present time if we were favored with copies of the instruments, as requested.

30 We do not desire to be contentious in this matter. Our sole desire is to have estate settled expeditiously and economically. You can materially assist us by giving this matter your renewed, and usual courteous, attention. We, on our part, are confident of your good will in settling this matter.

Yours very truly,

KANTER & KANTER,
By ELIAS A. KANTER. E.

Bill of Complaint.

EXHIBIT H.

Corporation Tax Declaration from
June 3d, 1919—to—Dec. 31st, 1919.

Gross Sales	\$6,944.00	
Cost of same.....	9,253.29	
Labor	4,698.29	10
Executive Salaries	2,795.00	
Material	1,760.00	
Insurance	169.34	
Rent	196.00	
Royalties	166.88	
Stock on hand	661.34	

I certify that the above is a true statement to the best of my knowledge of the corporation tax declaration of this company, filed at Elizabeth, N. J.

C. S. CANNON, *Pres.* 20

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Bill of Complaint.

EXHIBIT I.

Statement April 13th, 1920.

ASSETS.

	Bills Receivable	\$ 874.99
	Bank Balance	307.60
10	Equipment	1,379.23
	Improvements	647.96
	Raw Material	3,110.00
	No. 1 Machines	9,222.50
	Due from Parnes Estate	3,500.00
		<hr/>
		\$19,042.28

LIABILITIES.

	Stock Sold	\$16,800.00
	Bills Payable	2,253.28
20	Notes Payable	3,447.50
		<hr/>
		\$22,500.78

ORDERS ON HAND.

\$4,650.00

RAW MATERIAL ON HAND WILL MAKE UP

	10,000 #4 machines	\$6,122.55
	2,500 #3 machines	3,432.00
	1,000 #2 machines	3,195.50
30		<hr/>
		\$12,750.05

I certify that the above is a true statement to the best of my knowledge of the finances of this company.

C. S. CANNON, *Pres.*

Bill of Complaint.

EXHIBIT J.

Elizabeth, N. J.
August 23, 1920.

To Gnome Manufacturing Co.,

Gentlemen:

The undersigned, Mary Parnes, executrix of the last will and testament of Samuel Parnes, deceased, hereby tenders to you, and offers the return of the following certificates of stock issued by your company:— 10

Certificate #8 for fifty (50) shares of preferred stock of Gnome Manufacturing Company, dated February 17, 1920 issued to Samuel Parnes.

Certificate #10 for twenty (20) shares of common stock of Gnome Manufacturing Company, dated February 17, 1920, issued to Samuel Parnes.

Said certificates are hereby returned to you because of fraudulent representations made in order to induce Samuel Parnes to become a stockholder of the corporation. 20

You are further required to deliver to the undersigned all contracts or other evidences of contract made by the late Samuel Parnes, referring to the certificates of stock above set forth, or to cancel same, and you are further required to deliver to the undersigned all moneys and property received from Samuel Parnes by reason of the issuance of the said certificates. 30

Yours very truly,

MARY PARNES,
*Executrix of the last will
and testament of Samuel
Parnes, deceased.*

Bill of Complaint.

EXHIBIT K.

Elizabeth, N. J.
August 23, 1920.

To Gnome Manufacturing Co.,

Gentlemen:

10 The undersigned, Julius A. Parnes, hereby tenders to you, and offers the return of the following certificate of stock issued by your company:—

Certificate #9 for ten (10) shares of preferred stock of Gnome Manufacturing Company, dated February 17, 1920, issued to the undersigned.

Said certificate is hereby returned to you because of fraudulent representations made in order to induce the undersigned to become a stockholder of the corporation.

20 You are further required to deliver to the undersigned all contracts or other evidences of contract made by the undersigned, referring to the certificate of stock above set forth, or to cancel same, and you are further required to deliver to the undersigned all moneys and property received from the undersigned by reason of the issuance of the said certificate.

Yours very truly,

JULIUS A. PARNES.

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Answer of Defendant.

ANSWER OF DEFENDANT.

Filed September 27, 1920.

The defendant, a corporation organized and existing under the laws of the State of New Jersey, and having its principal place of business in the City of Elizabeth, in the County of Union and State of New Jersey, answering the bill of complaint herein says that: 10

1. It admits paragraphs Nos. 1, 2, 3, 4, 5, 6 and 7.

2. It denies all of the allegations contained in paragraph No. 8 except so much as charges that the common stock issued to Joseph Balinski, Stanislaw Balinski, E. Conrad, E. Shumock and A. Stetnske were issued without a consideration.

3. It admits paragraph No. 9.

4. It denies paragraph No. 10. 20

5. It denies paragraph No. 11.

6. It has not sufficient information to form a belief as to the allegations contained in paragraph Nos. 12, 13 and 14.

7. It admits paragraph No. 15.

8. It has not sufficient information to form a belief as to the allegations contained in paragraphs Nos. 16, 17, 18, 19, 20 and 21.

9. It denies paragraphs Nos. 22 and 23. 30

Further answering the bill of complaint herein this defendant says that the charter granted to it by the State of New Jersey permitted it to issue preferred and common stock. This defendant sold its preferred stock to all holders thereof at par and gave to the various purchasers common stock as a bonus, it being fully understood by all purchasers thereof that said stock was liable to be assessed for the par value thereof as the company's needs should arise. Through inadvertence and mistake of the attorneys who incorporated this defendant and pre- 40

Replication.

pared its stock certificates a stock form of certificate was used which bore an endorsement to the effect that the common stock, as also the preferred stock were fully paid and non-assessable, but such endorsement was never brought to the attention of this defendant until after the stock certificates were carefully scrutinized after the filing of the bill of complaint herein. The Samuel Parnes in question fully understood when the stock was purchased by him that the common stock was not fully paid and non-assessable, but on the contrary that it was liable to be assessed up to its par value as the company's needs should arise.

This defendant prays that the bill of complaint herein may be dismissed and the defendant paid its full costs to be taxed.

GILHOOLY & BENDER,
Solicitors of Defendant.

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REPLICATION.

Filed October 4, 1920.

The replication of the complainants to the answer of the defense in the above-entitled cause:

In reply to the defense stated in the last two paragraphs of the answer, and not anticipated in the bill of complaint, complainants, by leave of Court, say that they deny the allegations made in said defense, and further say, that as a matter of law said matters do not constitute a valid defense to the cause of action stated in the bill of complaint herein.

That complainants join issue upon the remainder of the answer.

KANTER & KANTER,
*Solicitors for and of Counsel
with Complainants.*

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Order of Reference.

ORDER OF REFERENCE.

Filed October 13, 1920.

On motion of Messrs. Kanter & Kanter, solicitors for and of counsel with the complainants in the above-entitled cause, and with the consent of Messrs. Gilhooly & Bender, solicitors of the defendant, hereunder written, it is hereby on this 13th day of October, A. D. 1920, ordered that: 10

The above-entitled cause be and hereby is referred to Hon. J. E. Foster, one of the Vice-Chancellors of this court, to hear the same for the Chancellor and to advise him what order or decree should be made therein.

E. R. WALKER,
C.

October 1, 1920.

A true copy. 20

JESSE R. SALMON,
Clerk.

We hereby consent to the making and entry of the foregoing order.

GILHOOLY & BENDER,
Solicitors of the Defendant.

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Designation.

DESIGNATION.

Filed October 20, 1920.

10 The above-entitled cause having been referred to me by the Hon. E. R. Walker, Chancellor, to hear the same for the Chancellor and to advise him what order or decree should be made therein, and the matter now being opened to the Court on motion of Messrs. Kanter & Kanter, solici-
10 tors for and of counsel with the complainants herein, and with the consent of Messrs. Gilhooly & Bender, solici-
tors of the defendant, hereunder written, it is hereby on this 19th day of October, A. D. 1920, ordered that:

1. Said cause shall be heard before me at the Chancery Chambers in the Prudential Building, #763 Broad street, Newark, New Jersey, on Tuesday, the 14th day of De-
20 cember, A. D. 1920, at 12 o'clock noon, or as soon there-
after as counsel can be heard; and the aforesaid time and place is hereby designated as the time and place for the hearing of the said cause.

JOHN E. FOSTER,
V.-C.

October 16, 1920. We hereby consent to the making and entry of the foregoing designation.

30 GILHOOLY & BENDER,
Solicitors of the Defendant.

Order.

ORDER.

Filed.

This matter having been opened to the Court on November 24, 1920, on motion of Messrs, Kanter & Kanter, solicitors of the complainants, on due notice to Messrs. Gilhooly & Bender, solicitors of the defendant, Mr. Vincent H. Seiler appearing for said defendant's solicitors, on motion of said complainants for an order enjoining the defendant from prosecuting a suit instituted by it on or about November 11, 1920, in the Union County Circuit Court against Mary Parnes, executrix of the last will and testament of Samuel Parnes, deceased, and for further relief thereon, and the Court having heard the argument of counsel and having considered the said matter, and with the consent of the defendant's solicitors hereunder written it is hereby on this seventh day of December, A. D. 1920, ordered:

1. The said action in the Union County Circuit Court shall be proceeded with in accordance with the rules and practices of the Union County Circuit Court. The plaintiff in said action shall not move the trial of said Union County Circuit Court cause until the entry of a final decree in favor of the above-named defendant in this cause. This defendant shall not at any time during the pendency of this cause move for summary judgment in the action instituted in the Union County Circuit Court. The restraints herein imposed are likewise imposed upon the agents, servants, and attorneys of the defendant in the above-entitled cause, and upon all persons acting in their behalf in the action instituted in the Union County Circuit Court cause above referred to.

2. The filing of an affidavit of merits, and the filing of any pleadings in said Union County Circuit Court

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Notice of Motion to Amend Bill.

action by the defendant in that action, shall be without prejudice to the rights of the complainants in this action.

Respectfully advised,

JOHN E. FOSTER,
V.-C.

10 December 2, 1920.

We hereby consent to the making and entry of the foregoing order.

GILHOOLY & BENDER,
Solicitors of Defendant.

NOTICE OF MOTION TO AMEND BILL.

20 *To the above-named defendant or to whom it may concern.*

PLEASE TAKE NOTICE that at the trial of the above-stated cause of action, complainants, with the leave of the Court, will move to amend the bill of complaint herein by inserting after paragraph 13 thereof, the following allegations to be numbered consecutively as paragraphs 13 A and 13 B:

30 13A. On February 17, 1920, the defendant knew FIRST that it then had outstanding 108 shares of its preferred capital stock, SECOND that it then had outstanding 229 shares of its common capital stock, THIRD, that of said common stock at least 127 shares had been issued without any consideration being paid to or contracted to be paid to the defendant corporation, FOURTH, for the period of its existence ending with December 31, 1919, its gross sales had been \$6,944, while the cost of producing these goods was not less than \$9,253.29, FIFTH, that its assets were not over \$8,935.52 while its liabilities were \$11,804.56, SIXTH, that the original subscribers to the capi-

Notice of Motion to Amend Bill.

tal stock of the company had not paid any of the consideration agreed by them to be paid for their subscriptions, SEVENTH, that the corporation was in fact insolvent, EIGHTH, that up to December 31, 1919, it had expended at least \$166.88 for royalties and NINTH, that the corporation had been a losing and unprofitable venture.

13B. Notwithstanding its knowledge of the facts in paragraph 13A recited, and well knowing that these facts were material and proper to be disclosed to the late Samuel Parnes, who was then negotiating for the purchase of the shares of the defendant corporation, the defendant corporation fraudulently failed to disclose these facts to the late Samuel Parnes, the plaintiff's testator; and by reason of such failure to disclose said late Samuel Parnes was deceived into purchasing stock of the defendant company as hereinafter referred to. 10

KANTER & KANTER. 20
Solicitors of Complainants.

Service of the within notice of motion is hereby acknowledged this 11th day of December, 1920.

GILHOOLY & BENDER,
Solicitors of Defendant.

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*Interrogatories.***INTERROGATORIES.***To the above-named defendant:*

PLEASE TAKE NOTICE that the complainants require the defendant to answer the following interrogatories, and that service of answers under oath shall be made within
 10 ten (10) days after service of these interrogatories upon you:

1. What consideration, if any, did J. B. Dane, pay or give to the defendant for the issuance to him of the fifty-one (51) shares of stock referred to in paragraph seven (7) of the bill of complaint?

2. Where was such consideration, if any, paid?

3. What consideration, if any, did C. S. Cannon pay or give to the defendant for the issuance to him of the fifty-one (51) shares of stock referred to in paragraph
 20 seven (7) of the bill of complaint?

4. Where was such consideration, if any, paid?

5. What consideration, if any, was paid by Joseph Balinski for the sixty (60) shares of stock referred to in paragraph nine (9) of the bill of complaint?

6. Who, in behalf of the defendant, conducted the negotiations with the late Samuel Parnes, preliminary to the sale to the late Samuel Parnes of the stock referred to in paragraph eleven (11) of the bill of complaint?
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7. In the course of the preliminary negotiations referred to in interrogatory six (6), what statements were made to the late Samuel Parnes by the representative of the defendant?

8. On or about February 17, 1920, was the defendant the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing?

9. On or about February 17, 1920, was the defendant the holder and owner of any patents embracing the con-
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Interrogatories.

struction, operation and design of a certain toy aeroplane which it was then manufacturing? If so, state the number of the patents, the name of the original patentee and how the defendant became the holder and owner of such patent or patents.

10. On or about February 17, 1920, did the defendant have on hand over Twelve Thousand Dollars (\$12,000) worth of unfulfilled orders? 10

11. On or about February 17, 1920, what was the amount of the unfulfilled orders that the defendant then had on hand? State the names and addresses of the persons from whom such orders were held, the quantity of each order respectively, and the sale price of each of such order.

12. On or about February 17, 1920, did the defendant have in its employ, the original patentee of the toy aeroplane which it was then manufacturing? 20

13. Did the contract of employment call for the payment to such patentee; of a salary of Thirty Dollars (\$30) per week for one year and a salary of Fifty Dollars (\$50) per week for one year thereafter?

14. Give all the terms of the contract under which such patentee was employed by the defendant, and if the contract of employment is evidenced by a written instrument, set forth a copy of the instrument.

15. On or about February 17, 1920, was Albert F. Bender, an officer of the defendant? 30

16. On or about February 17, 1920, was Albert F. Bender a director of the defendant?

17. On or about February 17, 1920, was Albert F. Bender a stockholder of the defendant?

18. On or about February 17, 1920, were royalties, or any other similar form of compensation, exclusive of salaries, due and payable to the patentee by reason of the use of the patent in the manufacture of the toy aeroplane which the defendant was then manufacturing? 40

Interrogatories.

19. Specify all compensation, all and every kind, character and amount of royalties, bonuses, fees or other compensation (exclusive of salaries) due and to become due by reason of the use of the patent used in the manufacture of the toy aeroplane which the defendant was manufacturing on or about February 17, 1920.

10 20. What consideration, if any, had ever been received by the corporation for the issuance of the twenty (20) shares of the common stock referred to in paragraph twelve (12) of the bill of complaint, prior to the time that such shares were issued to the late Samuel Parnes?

21. What contract was made between the late Samuel Parnes and the defendant relating to the purchase, by the late Samuel Parnes, of the sixty (60) shares of preferred stock referred to in paragraph fourteen (14) of the bill of complaint?

20 22. If the contract referred to in interrogatory twenty-one (21) is evidenced by written instruments, set forth copies of the written instruments.

23. What certificates were originally issued for the sixty (60) shares of the preferred stock referred to in paragraph fourteen (14) of the bill of complaint?

24. Were these original shares transferred in any way?

30 25. If there was a transfer, or transfers, of these original sixty (60) shares of preferred stock, state to whom the shares were transferred, the dates whereon they were transferred, the numbers of the certificates by which the transfers were evidenced, and the names and addresses of the transferees.

26. Was a certificate, of which a copy marked Exhibit A. is attached to the bill of complaint, issued by the defendant?

40 27. Was a certificate, of which a copy marked Exhibit AA. is attached to the bill of complaint, issued by the defendant?

Interrogatories.

28. Was a certificate, of which a copy marked Exhibit B is attached to the bill of complaint, issued by the defendant?

29. Did the defendant write a letter, of which a copy marked Exhibit C. is annexed to the bill of complaint?

30. Did the defendant receive a letter, of which a copy marked Exhibit D. is annexed to the bill of complaint? 10

31. Did the defendant request Messrs. Gilhooly and Bender to reply to the letter marked Exhibit D. annexed to the bill of complaint?

32. Did the defendant, by Messrs. Gilhooly & Bender, write a letter, of which a copy marked Exhibit E is annexed to the bill of complaint?

33. Did the defendant authorize, direct or ratify the making of the claim set forth in Exhibit F. attached to the bill of complaint?

34. Did Messrs. Gilhooly & Bender receive a letter, of which a copy marked Exhibit G. is annexed to the bill of complaint? 20

35. Did the defendant, on or about May 1, 1920, furnish to the complainants or to their attorneys, Messrs. Kanter & Kanter, or to anybody else in behalf of the complainants, a statement of which a copy marked Exhibit H. is annexed to the bill of complaint?

36. Did the defendant, on or about May 1, 1920, furnish to the complainants or to their attorneys, Messrs. Kanter & Kanter, or to anybody else in behalf of the complainants, a statement of which a copy marked Exhibit I. is annexed to the bill of complaint? 30

37. On or about August 25, 1920, did Mr. Elias A. Kanter tender to the president of the defendant company certificates of which copies are annexed to the bill of complaint marked Exhibit A., Exhibit AA. and Exhibit B.?

38. Were such tenders accompanied by written instruments, copies of which are annexed to the bill of complaint marked Exhibit J. and Exhibit K.? 40

Interrogatories.

39. On or about August 25, 1920, did Mr. Elias A. Kanter tender to the treasurer of the defendant company certificates of which copies are annexed to the bill of complaint marked Exhibit A., Exhibit AA. and Exhibit B.?

40. Were such tenders accompanied by written instruments, copies of which are annexed to the bill of complaint marked Exhibit J. and Exhibit K.?

41. Did the president accept the tenders referred to in interrogatory thirty-seven (37)?

42. Did the treasurer accept the tenders referred to in interrogatory thirty-nine (39)?

Yours, etc.,

KANTER & KANTER,
Solicitors of Complainants.

20 *To the above-named defendant:*

PLEASE TAKE NOTICE that the above-named defendant is required to answer interrogatory No. 1 to No. 42, inclusive.

KANTER & KANTER,
Solicitors of Complainants.

Service of the within interrogatories is hereby acknowledged this 19th day of October, A. D. 1920.

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GILHOOLY & BENDER,
Solicitors of Defendant.

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Answers to Interrogatories.

ANSWERS TO INTERROGATORIES.

Kanter & Kanter, Esqs.,
Solicitors for Complainant.

SIRS:

Take notice that the following are the answers to the interrogatories heretofore served by complainants upon defendant:

1. Answer to interrogatories numbered 1, 2, 3, 4 and 8. J. B. Dane and Charles S. Cannon expended moneys and performed labor and services in connection with the perfecting of a metal doll, and in connection with the application for a patent therefor. A patent for said doll was granted on December 29th, 1919. The interest of J. B. Dane and Charles S. Cannon in connection with said patent have not been formerly assigned to the defendant, but Charles S. Cannon is ready and willing to assign all his right, title and interest in and to the said patent to the defendant. J. B. Dane and Charles S. Cannon were also performing work, labor and services upon models of toy airplanes, but had not formally made application for patent thereon. On October 22nd, 1919, formal application for patent toy airplane was filed in the United States Patent Office and was given serial number 332,488. The application for this patent was made by James H. Steenson and Charles S. Cannon. The patent for toy airplane was finally granted on September 14th, 1920. The right, title and interest in said patent has not yet been formally transferred to defendant, but the patentees, James H. Steenson and Charles S. Cannon, are ready and willing upon request by defendant to convey all the right, title and interest therein to the defendant. The foregoing describes the consideration for the issuance of the stock referred to in interrogatory numbered 1 and interrogatory numbered 3.

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Answers to Interrogatories.

2. Answer to interrogatory numbered 5. Six thousand dollars (\$6,000).

3. Answer to interrogatory numbered 6. Stanislaw Balinski and Edward V. Conrad conducted the negotiations preliminary to the sale of stock by the defendant to complainant's testator.

10 4. Answer to interrogatory numbered 7. Defendant declines to answer on the ground that the matter contained in this interrogatory lies peculiarly within complainants' knowledge.

5. Answer to interrogatory numbered 9. On or about February 17th, 1920, patent upon toy airplane then being manufactured by defendant had not yet been granted. It had, however, been applied for on October 22nd, 1919, and was given serial number 332,483. The original applicants for patent were James H. Steenson and Charles
20 S. Cannon. This patent was granted on September 14th, 1920, and the original patentees, James H. Steenson and Charles S. Cannon, are ready and willing at defendant's request to assign all their right, title and interest therein to defendant.

6. Answer to interrogatory numbered 10. Defendant did not have \$12,000 worth of unfilled orders on hand.

7. Answer to interrogatory numbered 11. On February 17th, 1920, defendant had no unfilled orders on hand.

30 8. Answer to interrogatory numbered 12. On or about February 17th, 1920, one of the original applicants for patent for toy airplane, Charles S. Cannon, was in the employ of defendant, but the other original applicant, James H. Steenson, was never in defendant's employ.

9. Answer to interrogatory numbered 13. No contract such as referred to in interrogatory number 13 was ever made between defendant and either patentees named in answer to interrogatory numbered 12.

40 10. Answer to interrogatory numbered 14. There are two original patentees of the toy airplane, Charles S. Can-

Answers to Interrogatories.

non and James H. Steenson. Charles S. Cannon is the president and general manager of defendant and receives a weekly salary of \$60. Copies of two agreements between defendant and James H. Steenson are hereto annexed and made part hereof. The agreement dated July 26th, 1919, was superseded by the agreement dated March 27, 1920.

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11. Answer to interrogatories numbered 15, 16 and 17. No.

12. Answer to interrogatory numbered 18. On or about February 17th, 1920, no royalties were due.

13. Answer to interrogatory numbered 19. Compensation referred to in this interrogatory is set out in the agreement hereto annexed and made part hereof and marked Exhibit "D. 1."

14. Answer to interrogatory numbered 20. No consideration.

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15. Answer to interrogatory numbered 21. The contract referred to in interrogatory numbered 21 made between the late Samuel Parnes and defendant was in writing, a copy of which was given Mr. Parnes at the time of its execution and delivery.

16. Answer to interrogatory numbered 22. ———

17. Answer to interrogatory numbered 23. One certificate of stock was originally issued for sixty shares of the preferred stock referred to in paragraph numbered 14 of the bill of complaint to Samuel Parnes.

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18. Answer to interrogatory numbered 24. The certificate representing the original shares referred to in answer to interrogatory numbered 23 was surrendered to the defendant company, and two certificates, copies of which are marked Exhibit A. and AA. and annexed to the bill of complaint, were issued in its place and stead.

19. Answer to interrogatory numbered 25. The names of the persons to whom the sixty shares referred to in interrogatory number 25, appear in the copies on the

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Answers to Interrogatories.

said certificate annexed to the bill of complaint and marked Exhibit A. and AA. The dates when transfer was made also appear in the said copies. The number of the certificates also appear in said certificate and the addresses of the transferees are unknown to the defendant.

20. Answer to interrogatories numbered 26, 27, 28,
10 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40. Yes.

21. Answer to interrogatories numbered 41 and 42.
No.

GILHOOLY & BENDER,
Solicitors for Defendant.

STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

20 Charles S. Cannon, President of the defendant company,
being duly sworn on his oath, deposes and says, that he is
familiar with the matters set forth in the foregoing an-
swers to interrogatories, and basing this affidavit upon
his knowledge, information and belief, the foregoing an-
swers are true to the best of his knowledge, information
and belief.

CHARLES S. CANNON.

30 Subscribed and sworn to before me
this 30th day of October, 1920.

VINCENT H. SEILER,
Master in Chancery of N. J.

Answers to Interrogatories.

EXHIBIT "D. 1."

It is herein agreed that the Gnome Manufacturing Co. will pay to J. H. Steenson a royalty of ten cents (\$.10) each on each and every toy aeroplane known as the Gnome Flier #1, sold by them at a retail price of three dollars and fifty cents (\$3.50), less 33 1-3%, less 2% off ten days, and for every one sold for less than above price, a royalty in proportion to five cents (\$.05) per each, based on a retail price of two dollars and fifty cents (\$2.50), less same discount. 10

It is herein agreed that J. H. Steenson will devote time sufficient to keep the Gnome Mfg. Co. supplied with proper and correct working drawings for above model, and will devote sufficient time to and for the improvement of above model to keep it salable and up to date, and will also act in an advisory capacity and pass on all matters pertaining to above model, and will as far as possible handle all communications addressed to him relative to above model. 20

Agreed this 26th day of July, 1919.

GNOME MANUFACTURING CO.,

C. S. CANNON, Pres.
JAMES H. STEENSON.

Elizabeth, N. J., July 26, 1919.

GNOME MANUFACTURING CO. 30

The Gnome Manufacturing Company and J. H. Steenson, do herein agree to the following terms covering the payments of royalties on model airplanes and other toys designed and perfected by the said J. H. Steenson and manufactured by the Gnome Manufacturing Company.

J. H. Steenson is to receive five per cent. (5%) of the gross sales on said model airplanes and toys designed or perfected by him, payments to be made on the 10th of each month covering all shipments made up to and including 40

Answers to Interrogatories.

the end of the preceding month. For this consideration it is agreed by J. H. Steenson that he will act as and assume the title of Engineer, for the company, agreeing also to devote sufficient time to the work to supply proper and correct working drawings for model airplanes and other toys designed and perfected by him, also that he will
 10 devote sufficient time to and for the improvement of same in order to keep them up to date and salable.

He does also agree not to enter into a like contract with any other party or parties manufacturing a similar line.

It is understood that this contract is for a period of one (1) year and will terminate on March 27th, 1921, unless otherwise cancelled in writing by the parties mentioned herein. It is also understood that this contract or agreement cancelled contract or agreement previously entered into and dated July 26th, 1919.

20 Agreed this 27th day of March, 1920.

GNOME MANUFACTURING COMPANY,

C. S. CANNON, Pres.

JAMES H. STEENSON, Engineer.

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Answers to Interrogatories.

ANSWERS TO INTERROGATORIES 7 AND 21.

Kanter & Kanter, Esqs., Solicitors for Complainant.

SIRS:

Take notice that the following are the answers to interrogatories 7 and 21 heretofore served by complainants upon defendant. 10

22. Answer to interrogatory Number 7. On or about February 2nd, 1920 (this date is approximate), in the course of a conversation held between Samuel Parnes, deceased, and E. V. Conrad, and Stanislaws Balinski, E. V. Conrad stated to said Samuel Parnes, deceased, that Mr. Stanislaws Balinski, had invested \$2,000, in the Gnome Manufacturing Company, that Mr. Joseph Balinski, had invested \$6,000 in the Gnome Manufacturing Company and Mr. Conrad had invested \$500 in the Gnome Manufacturing Company. 20

On or about February 6th, 1920 (this date is approximate), the above statement was confirmed by Mr. Stanislaws Balinski, to Samuel Parnes, deceased.

On or about February 14th, 1920 (this date is approximate), Mr. Charles S. Cannon gave to the late Samuel Parnes a pencil memorandum as follows:

	Pfd.	Common.	
Joseph Balinski	60	70	
Stanislaws Balinski	20	25	30
E. Conrad	5	25	
Stetnsko	9	3	
Carl Shumak	12	4	
C. S. Cannon		51	
J. B. Dane		51	

At the same time that the above pencil memorandum was given to Samuel Parnes, deceased, a financial statement of which the following is a copy was given to said Samuel Parnes, deceased. 40

Answers to Interrogatories.

Statement Gnome Manufacturing Company

Dec. 29, 1919.

ASSETS.		• LIABILITIES		
	Bills Receivable	\$ 2,857.23	Stock Issued	\$10,600.00
	Deposits in Bank.....	1,185.10	Mrs. Brown Deposit.....	200.00
	Deposit Pub. Serv. Corp.	40.00	Bills Payable	1,004.56
	" Eliz. Gas Light Co.	10.00		
	Raw Material on Hand..	1,260.00		\$11,804.56
10	Finished Machines.....	756.00	— 378 machines	
	Unfinished Machines....	800.00	— 800 " "	
	Equipment Shop	1,019.43		
	" Office	268.30		
	" Paint Shop...	91.50		
	Improvements	647.96		
		\$ 8,935.52	— Total	

Active Accounts.

Dec. 29, 1919.

QUICK ASSETS		LIABILITIES		
	Bills Receivable.....	\$ 2,857.23	Bills Payable.....	\$ 1,004.56
	Deposits in Bank.....	1,185.10		
20	" Public Service..	40.00		
	" Eliz. Gas Co...	10.00		
	Finished Machines	756.00		
		\$ 4,848.33	— Total	

COPIES:

- Mr. Jos. Balinski.
 Mr. Stanislaw Balinski.
 Mr. E. V. Conrad.
 Mr. J. B. Dane.
 30 Mr. Carl Chumak.
 Mr. Alex Stetnsko.

23. Answer to interrogatory Number 21, Samuel Parnes agreed to purchase 60 shares of the preferred stock of the Gnome Manufacturing Company at the par value of \$100 per share paying for the same as follows: \$2,500 at the time of making the agreement (February 17, 1920), balance as follows: \$1,200 on the 16th day of April, 1920, \$1,200 on the 16th day of May, 1920, and
 40 \$1,100 on the 16th day of June, 1920.

Answers to Interrogatories.

The defendant reserves the right to object to the offer of the foregoing answers to interrogatories, by complainant on the ground that the said answers are incompetent.

GILHOOLY & BENDER,
Solicitors for Defendant.

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STATE OF NEW JERSEY, }
COUNTY OF UNION. } ss.

Charles S. Cannon, Stanislaw Balinski, E. V. Conrad, being duly sworn, on their oaths depose and say, that they are directors of the Gnome Manufacturing Company, the defendant in this action, that they are familiar with the matters set forth in the foregoing answers to interrogatories and basing this affidavit upon their knowledge, information and belief, the foregoing answers are true to the best of their knowledge, information and belief.

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CHAS. S. CANNON,
STANISLAW BALINSKI,
EDWARD CONRAD.

Subscribed and sworn to before me
this 20th day of November, 1920.

VINCENT H. SEILER,
Master in Chancery of N. J.

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*Request for Admissions.***REQUEST FOR ADMISSIONS.****(Pursuant to Rule 88.)**

To the above-named defendant or to whom it may concern:

10 PLEASE TAKE NOTICE that you are hereby called upon to admit, for the purposes of this action, the following facts:

1. No consideration was paid to the defendant, received by the defendant, or contracted to be paid to the defendant, for the issuance of the fifty-one (51) shares of stock issued to J. B. Dane referred to in paragraphs seven (7) and eight (8) of the bill of complaint.

20 2. No consideration was paid to the defendant, received by the defendant, or contracted to be paid to the defendant, for the issuance of the fifty-one (51) shares of stock issued to C. S. Cannon referred to in paragraphs seven (7) and eight (8) of the bill of complaint.

3. No consideration was paid to the defendant, received by the defendant, or contracted to be paid to the defendant, for the issuance of the sixty (60) shares of stock issued to Joseph Balinski referred to in paragraphs nine (9) and ten (10) of the bill of complaint.

30 4. On or about February 17, 1920, the defendant, in order to induce the late Samuel Parnes to purchase sixty (60) shares of the preferred stock of that company, by its duly authorized officer, Mr. C. S. Cannon, stated and represented to said late Samuel Parnes: First, that it, the said corporation was the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing; Second, that it then had on hand over twelve thousand dollars (\$12,000) worth of unfulfilled orders; Third, that said corporation had then in its employ, by a written contract, the original patentee of said toy aeroplane at a salary of thirty dollars (\$30) per week for one year and
40 a salary of fifty dollars (\$50) per week for one year

Request for Admissions.

thereafter; Fourth, that one, Albert F. Bender, a lawyer of Elizabeth, was an officer, director and stockholder of the company; Fifth, that no royalties, compensation or any other form of compensation was due or payable to any person or persons whatsoever by reason of the manufacture of said toy aeroplane, and Sixth, that it could issue to said Samuel Parnes twenty (20) shares of the common stock of the corporation fully paid and non-assessable, upon the said Samuel Parnes, agreeing to pay for sixty (60) shares of the preferred stock of the company, without said Samuel Parnes paying for, or being obliged to pay for, said common stock. 10

5. On or about February 17, 1920, the defendant was not the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing, and it was not the holder and owner of any patent embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing. 20

6. On or about February 17, 1920, the defendant did not have on hand over twelve thousand dollars (\$12,000) worth of unfulfilled orders; and as a matter of fact had on hand no orders.

7. On or about February 17, 1920, the defendant did not have in its employ by a written contract, the original patentee of the toy aeroplane (which it was manufacturing) at a salary of thirty dollars (\$30) per week for one year and at a salary of fifty dollars (\$50) per week for one year thereafter. 30

8. On or about February 17, 1920, Albert F. Bender was not an officer of the defendant.

9. On or about February 17, 1920, Albert F. Bender was not a director of the defendant.

10. On or about February 17, 1920, Albert F. Bender was not a stockholder of the defendant. 40

Request for Admissions.

11. On or about February 17, 1920, royalties, bonuses, fees and other forms of compensation, exclusive of salaries were due and payable, or were to become due and payable by reason of the patent used in the manufacture of the toy aeroplane which the defendant was then manufacturing.

10 12. On or about February 17, 1920, the twenty (20) shares of the common stock issued to the late Samuel Parnes had not theretofore been paid for by property, services, or any other consideration, received by the defendant.

20 13. The defendant intended that the late Samuel Parnes should rely upon each and all of the statements and representations made to the late Samuel Parnes in the course of the negotiations finally consummating in the sale to the late Samuel Parnes of the stock of the defendant company.

14. On or about February 17, 1920, the defendant company issued sixty (60) shares of the preferred stock of the defendant company, of which fifty (50) shares were issued by a certificate a copy of which is annexed to the bill of complaint marked Exhibit A, and for ten (10) of which shares a certificate was issued a copy of which is annexed to the bill of complaint marked Exhibit AA.

30 15. On or about February 17, 1920, the defendant received the sum of twenty-five hundred dollars (\$2,500) from the late Samuel Parnes.

16. On or about February 17, 1920, the defendant issued twenty (20) shares of the common stock by a certificate, a true copy of which is annexed to the bill of complaint marked Exhibit B.

17. On or about March 18, 1920, the defendant mailed a letter, a copy of which is annexed to the bill of complaint marked Exhibit C.

Request for Admissions.

18. On or about March 20, 1920, the defendant received a letter, a copy of which is annexed to the bill of complaint marked Exhibit D.

19. On or about April 16, 1920, the defendant's attorneys, Messrs. Gilhooly & Bender mailed a letter, a copy of which is annexed to the bill of complaint marked Exhibit E. 10

20. On or about April 16, 1920, the defendant approved the making of the claim, and the execution of the proof of claim, marked Exhibit F.

21. On or about April 17, 1920, the defendant's attorneys received a letter, a copy of which is annexed to the bill of complaint marked Exhibit G.

22. The defendant, issued the statements, copies of which are annexed to the bill of complaint marked Exhibit H and Exhibit I, respectively.

23. The defendant has refused to accept the return of the certificates, copies of which are marked Exhibits A, AA and B attached to the bill of complaint. 20

24. The defendant has refused to repay the property and moneys received by it from the late Samuel Parnes at the time of delivery to the late Samuel Parnes the certificates of stock of the defendant company.

25. The defendant has refused to cancel, or to deliver to the complainants, all written and other evidences of the contract between the defendant and the late Samuel Parnes relating to the purchase of the sixty (60) shares of preferred stock issued to the complainants. 30

Yours, etc.,

KANTER & KANTER,
Solicitors of Complainants.

Service of the within request for admissions is hereby acknowledged this 19th day of October, A. D. 1920.

GILHOOLY & BENDER,
Solicitors of Defendant. 40

Answer of Defendant to Requests for Admission.

**ANSWER OF DEFENDANT TO REQUESTS FOR
ADMISSIONS.**

The above-named defendant answers complainant's requests for admissions served upon defendant's solicitors on October 19, 1920, as follows:

- 10 1. Defendant refuses to admit the facts contained in requests numbered 1, 2, 3 and 4.
2. Defendant admits the facts contained in requests numbered 5, 6, 7, 8, 9 and 10.
3. Defendant refuses to admit the facts contained in request numbered 11.
4. Defendant admits the facts contained in requests numbered 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24 and 25.

Dated October 23, 1920.

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GILHOOLY & BENDER,
Solicitors for Defendant.

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IN CHANCERY OF NEW JERSEY.

Between

MARY PARNES, executrix of the Last
Will and Testament of Samuel
Parnes, deceased, *et al.*,
Complainants,

and

GNOME MANUFACTURING COMPANY, a
corporation,
Defendant.

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Transcript of shorthand notes of testimony taken in the
above-entitled matter on Friday, March 18, 1921, at
eleven-thirty o'clock in the afternoon, at the Chancery
Chambers, Prudential Building, Newark, New Jersey, be-
fore Hon. John E. Foster, Vice-Chancellor.

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Appearances:

Elias A. Kanter, Esq., solicitor of complainants.

Albert F. Bender, Esq., solicitor of defendant.

Vincent H. Seiler, Esq., of counsel with defendant.

Mr. Kanter. Mr. Parnes died in Elizabeth March 3,
1920. About fifteen to twenty days before his death he
went to the office of Mr. Cannon—I think he was the
president of the company at the time—and agreed to buy
sixty shares of the preferred stock of the company at one
hundred dollars a share, and they gave him twenty shares
of the common stock of the company as a bonus, the as-
sertion having been made by the company that the common
stock had all been theretofore paid for in accordance with
the statutes of New Jersey requiring that no common
stock be issued except for cash consideration. As a mat-
ter of fact, that statement was incorrect, because Mr.

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Parnes was getting some additional advantage in the shape of dividends as the result of the common stock. The common stock had never been paid for. In addition to that fact they told him they had certain large orders on hand. Cannon is the one who made the representations. He was president of the defendant company. When I
 10 say "they" I refer to the company. They told him that they had over twelve thousand dollars worth of orders on hand. They told him they were the owners of certain patents; that they were not paying any royalties, and it turned out after the decedent's death that these statements were absolutely incorrect.

The Court. In other words, they induced him to buy this stock by misrepresentation?

Mr. Kanter. Yes.

The Court. And did he purchase this stock on those
 20 misrepresentations?

Mr. Kanter. Yes, sir. We are seeking to rescind the sale. We have tendered our stock, although part of it is held in the name of the son, and the son has joined with us.

The Court. You made the offer to restore them?

Mr. Kanter. Yes, sir.

The Court. And the defense is what—general denial?

Mr. Bender. Absolute denial.

Mr. Kanter. I will read the proposed amendment.
 30 "On February 17, 1920, the defendant knew, first, that it then had outstanding 108 shares of its preferred capital stock; second, that it then had outstanding 299 shares of its common capital stock; third, that of said common stock at least 127 shares had been issued without any consideration being paid to or contracted to be paid to the defendant corporation; fourth, for the period of its existence ending with December 31, 1919, its gross sales had been \$6,944, while the cost of producing these goods
 40 was not less than \$9,253.29; fifth, that its assets were not

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over \$8,935.52, while its liabilities were \$11,804.56; sixth, that the original subscribers to the capital stock of the company had not paid any of the consideration agreed by them to be paid for their subscriptions; seventh, that the corporation was in fact insolvent; eighth, that up to December 31, 1919, it had expended at least \$166.88 for royalties, and, ninth, that the corporation had been a losing and unprofitable venture. Notwithstanding its knowledge of the facts in paragraph 13A recited, and well knowing that these facts were material and proper to be disclosed to the late Samuel Parnes, who was then negotiating for the purchase of the shares of the defendant corporation, the defendant corporation fraudulently failed to disclose these facts to the late Samuel Parnes, the plaintiff's testator; and by reason of such failure to disclose said late Samuel Parnes was deceived into purchasing stock of the defendant company as hereinafter referred to."

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The Court. Is the amendment any surprise to you?

Mr. Bender. No.

The Court. Then you don't need time. You can file the amendment actually. Let it appear on the record that counsel for defendant said that they are not surprised by the nature of the amendment, no objection is made to it being granted, and their answer thereto is a general denial of each and every feature.

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Mr. Bender. Each and every element.

Mr. Kanter. Your Honor will notice paragraph 1 of the bill of complaint is admitted by the answer; paragraph 2 of the bill of complaint is admitted by the answer.

The Court. The first paragraph you say is admitted?

Mr. Kanter. Yes—that is, it alleges one of the complainants is the executrix. The second paragraph alleges the incorporation of the company on June, 1918, and the next is that Mr. Bender is the principal agent with principal offices in Elizabeth. The next is that it was manu-

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facturing toys, games and articles of a kindred nature. The capital stock of the corporation was thirty thousand preferred and thirty thousand common. Fifth, that the original subscribers to the capital stock of said corporation, and the respective amounts of their several subscriptions were Frederick A. Hemphill, one share, August J. Bender, one share, and Albert F. Bender, eight shares, but none of said subscribers have paid any of the consideration by them agreed to be paid for their subscriptions. That is admitted.

Mr. Bender. No; it is denied.

Mr. Kanter. Paragraph 5?

Mr. Bender. Pardon me, that is admitted.

Mr. Kanter. Paragraph 6, the duration of the company is perpetual.

Seven. Thereupon, and between June 4, 1919, and on or about February 1, 1920, said corporation issued two hundred and twenty-nine shares of common stock provided for by its certificate of incorporation to the following named persons in the amounts as set forth opposite each respective name. Then it gives a list of a hundred and twenty-seven shares issued to various persons, and that leaves a hundred and two shares issues to two men—Dane and Cannon. The other hundred and twenty-seven were issued to various persons, and that is referred to in the bill.

Eight. The shares issued as said in paragraph 7 were issued without any consideration having been paid to the corporation, received by the corporation, or contracted to be paid to the said corporation; said shares were issued without the corporation receiving any value property or services whatsoever for the issuance thereof, and given to the holders thereof as a "bonus" merely because said holders had become holders of the common stock of the corporation, and as to such thereof as were not holders of the preferred stock, merely to give such non-holders

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the control of the corporation's directorate, management and officers. In paragraph 8 I allege two hundred and twenty-nine of the shares were issued without consideration, but Mr. Bender in his answer denies that, excepting he admits the common stock of a hundred and twenty-seven was issued without consideration. He denies those as to Dane and Cannon. He apparently claims that it was issued with considerations to them, but he admits as to the hundred and twenty-seven, that they were issued without consideration; is that correct? 10

Mr. Bender. That is correct.

Mr. Kanter. A hundred and eight shares were issued up to February 1st, the time my client comes in, a hundred and eight preferred and two hundred and twenty-nine common. Of the two hundred and twenty-nine common it is admitted by the defendant a hundred and twenty-seven was issued without any consideration. Your Honor will see the proportion there. That is in support of our amendment, and that is denied. 20

Paragraph 11, which contains the statement of what the fraud was is entirely denied, and I will have to go into that.

Paragraph 12 alleges that the defendant at the time said representation—referring to paragraph 11—was made, first, knew that it was not the holder and owner of all the patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing; second, that it knew that it did not then have on hand over twelve thousand dollars worth of unfulfilled orders, and, third, also knew that said corporation had not then in its employ, by a written contract, the original patentee of said toy aeroplane at a salary of thirty dollars per week for one year and a salary of fifty dollars per week for one year thereafter, and, fourth, that it also knew that Albert F. Bender, a lawyer of Elizabeth, was neither an officer, director or stockholder of the company; fifth, that it also knew that royalties, compensation or 30 40

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some other similar form of compensation exclusive of salaries, was due and payable to the patentee by reason of the manufacturing of said toy aeroplane; and, sixth, that the said defendant also then knew that it could not issue to said Samuel Parnes twenty shares of the common stock of the corporation fully paid and non-assess-
 10 able, without said Samuel Parnes paying for, or being obliged to pay for, said common stock. In its answer the defendant says it has no information of this.

I will read to your Honor admission No. 5 made by the defendant. I call upon him to admit the fact. He admits that on or about February 17, 1920, the defendant was not the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing, and it was not the holder and owner of any patent embracing the
 20 construction, operation and design of a certain toy aeroplane which it was then manufacturing. That is admission No. 5.

Mr. Bender. I think that is correct.

Mr. Kanter. They have since made this admission. Admission No. 6: On or about February 17, 1920, the defendant did not have on hand over twelve thousand dollars worth of unfulfilled orders; and as a matter of fact had on hand no orders.

30 Admission No. 7: On or about February 17, 1920, the defendant did not have in its employ, by a written contract, the original patentee of the toy aeroplane (which it was manufacturing) at a salary of thirty dollars per week for one year and at a salary of fifty dollars per week for one year thereafter.

Admission No. 8: On or about February 17, 1920, Albert F. Bender was not an officer of the defendant.

Admission No. 9: On or about February 17, 1920, Albert F. Bender was not a director of the defendant.

40 Admission No. 10: On or about February 17, 1920, Albert F. Bender was not a stockholder of the defendant.

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The Court. Are these the representations? I assume they were the representations relied upon, as well as those not disclosed.

Mr. Kanter. Yes. Admission No. 12: On or about February 17, 1920, the twenty shares of the common stock issued to the late Samuel Parnes had not heretofore been paid for by property, services, or any other consideration, received by the defendant. 10

Paragraph 13 says that the defendant intended that the late Samuel Parnes should rely upon each and all of the statements made by them as stated in paragraph 11, which statements and representations were also made by the defendant with reckless disregard of whether such statements were true or not. That is denied in the answer. I mean this—13, the defendant intended that the said Samuel Parnes—

Mr. Bender. That isn't denied. We simply say we haven't sufficient information to form a belief. He said first we deny that in our answer. We say we know nothing about it. 20

Mr. Kanter. It was not admitted in the answer—we will put it that way. Admission No. 13 is this: The defendant intended that the late Samuel Parnes should rely upon each and all of the statements and representations made to the late Samuel Parnes in the course of the negotiations finally consummating in the sale to the late Samuel Parnes of the stock of the defendant company. 30

14. The said late Samuel Parnes relied upon the statements and representations made, as alleged in paragraph 11 above, and because of his reliance thereon entered into a contract for the purchase of sixty shares of the preferred stock of the defendant company, paying at said time the sum of twenty-five hundred dollars on account thereof, and received from the said corporation sixty shares of the preferred stock of the company, for fifty of which a certificate was issued, a true copy of which 40

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is hereunto annexed, expressly made a part hereof and marked Exhibit A, and for ten of which a certificate was issued to the complainant, Julius A. Parnes, by reason of an assignment of said ten shares made by Samuel Parnes, a true copy of which certificate issued to Julius A. Parnes is hereunto annexed, expressly made a part hereof and marked Exhibit AA. Contemporaneously with the receipt of said certificates as above stated, said late Samuel Parnes also received of said corporation a certificate for twenty shares of the common stock of the company, a true copy of which certificate is hereunto annexed, and expressly made a part hereof and marked Exhibit B. They say they have no information about that.

Requests Nos. 14, 15 and 16 are as follows:

14. On or about February 17, 1920, the defendant company issued sixty shares of the preferred stock of the defendant company, of which fifty shares were issued by a certificate a copy of which is annexed to the bill of complaint marked Exhibit A, and for ten of which shares a certificate was issued a copy of which is annexed to the bill of complaint marked Exhibit AA.

15. On or about February 17, 1920, the defendant received the sum of twenty-five hundred dollars from the late Samuel Parnes.

16. On or about February 17, 1920, the defendant issued twenty shares of the common stock by a certificate, a true copy of which is annexed to the bill of complaint marked Exhibit B.

That takes us up to the time of the issuance of the stock.

Then followed from March 18, 1920, through and inclusive—Well, as a matter of fact, this suit was preceded by a series of letters between myself, the executrix and the other complainant in this case, and the company represented by Messrs. Gilhooly & Bender, in which we asked them for information about this company,

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and we received a statement which we annexed to the bill of complaint. And then on August 25th—that is, about four months after decedent's death—within a reasonable time after his death, we tendered his stock to the president of the company and demanded the return of the consideration paid by us, and they refused to accept the tender, although they deny that they were tendered it and refused to pay the money back to us. Yet admission 23 admits it. Admissions Nos. 18, 19, 20, 21, 22, 23, 24 and 25 will establish that, and I believe Mr. Bender wrote us that our paragraphs through 23 are correct statements of facts. 10

The Court. Do you concede that?

Mr. Kanter. I will read the requests.

The Court. Ask him now whether he will concede it.

Mr. Kanter. The series of letters offering the return of our stock, the refusal by the company to pay the money, and the statement issued by your company about May 1st, I think it was. 20

Mr. Bender. Again we say we haven't sufficient information to form a belief.

The Court. Then you do not concede it?

Mr. Bender. We do not concede it.

Mr. Kanter. Admission No. 17, on or about March 18, 1920, the defendant mailed a letter, a copy of which is annexed to the bill of complaint marked Exhibit C. 30

18. On or about March 20, 1920, the defendant received a letter, a copy of which is annexed to the bill of complaint marked Exhibit D.

19. On or about April 16, 1920, the defendant's attorneys, Messrs. Gilhooly & Bender, mailed a letter, a copy of which is annexed to the bill of complaint marked Exhibit E.

20. On or about April 16, 1920, the defendant approved the making of the claim, and the execution of the proof of claim, marked Exhibit F—showing that they intended to sue us for the balance. 40

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21. On or about April 17, 1920, the defendant's attorneys received a letter, a copy of which is annexed to the bill of complaint marked Exhibit G.

22. The defendant issued the statements, copies of which are annexed to the bill of complaint marked Exhibit H and Exhibit I respectively.

10 23. The defendant has refused to accept the return of the certificates, copies of which are marked Exhibits A, AA and B, attached to the bill of complaint.

24. The defendant has refused to repay the property and moneys received by it from the late Samuel Parnes at the time of delivery to the late Samuel Parnes, the certificates of stock of the defendant company.

25. The defendant has refused to cancel, or to deliver to the complainants, all written and other evidences of the contract between the defendant and the late Samuel
20 Parnes relating to the purchase of the sixty shares of preferred stock issued to the complainants.

That practically completes the bill, with the exception of our allegation that we are ready, able and willing to return the stock and offer it with any depository designated by the Court. We have the stock in our possession. That completes the bill with the exception of the drawing of the statements.

30 There is one thing more I would like to read—interrogatory No. 1 and the answer to interrogatory No. 1. I asked in interrogatory No. 1, What consideration, if any, did J. B. Dane pay or give to the defendant for the issuance to him of the fifty-one shares of stock referred to in paragraph 7 of the bill of complaint? Your Honor will remember they denied that was issued without consideration.

The Court. The same as to Cannon, I suppose.

40 *Mr. Kanter.* Yes. Question 2 is: Where was such consideration, if any, paid? I will read 1, 2, 3, 4 and 8. No. 1 I have read. No. 2 I have read. 3. What con-

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sideration, if any, did C. S. Cannon pay or give to the defendant for the issuance to him of the fifty-one shares of stock referred to in paragraph 7 of the bill of complaint? 4. Where was such consideration, if any paid? No. 8. On or about February 17, 1920, was the defendant the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing? The answers to those five questions are these: J. B. Dane and Charles S. Cannon expended moneys and performed labor and services in connection with the perfecting of a metal doll, and in connection with the application for a patent therefor. A patent for said doll was granted on December 20, 1919. The interest of J. B. Dane and Charles S. Cannon in connection with said patent has not been formerly assigned to the defendant—this answer was made October 30, 1920, long after this bill was filed the patent for said doll was granted—but Charles S. Cannon is ready and willing to assign all his right, title and interest in and to the said patent to the defendant. J. B. Dane and Charles S. Cannon were also performing work, labor and services upon models of toy aeroplanes, but had not formally made application for patent thereon. On October 22, 1919, formal application for patent toy aeroplane was filed in the United States Patent Office and was given serial number 332,488. The application for this patent was made by James H. Steenson and Charles S. Cannon. Steenson is the man who was supposed to be the patentee, who was supposed to be under contract and to receive no royalties. The patent for the toy aeroplane was finally granted on September 14, 1920, six months after decedent's death. The right, title and interest in said patent has not yet been formally transferred to defendant, but the patentees, James H. Steenson and Charles S. Cannon, are ready and willing upon request by defendant to convey all the right, title and interest therein to the defendant. The fore-

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going describes the consideration for the issuance of the stock referred to in interrogatory numbered 1 and interrogatory numbered 3.

10 Now, interrogatory Nos. 21 and 22, referring to the contract with the patentee, I told your Honor of paragraph 11 of the bill showing that fraudulent representations were made, and I show your Honor by admissions that they had to admit that the defendant was not the holder of patents, that they didn't have the patentee as an employee, that Mr. Bender was not a director, stockholder or officer, and the twenty shares of stock were not paid for.

20 I also want to read to your Honor certain answers to interrogatories Nos. 6, 7, 8, 9, 10, 11, 12, 13 and 14. 6. Who on behalf of the defendant conducted negotiations with the late Samuel Parnes preliminary to the sale to the late Samuel Parnes of the stock referred to in paragraph 11 of the bill of complaint? The answer is: Stanislaw Balinski and Edward V. Conrad conducted the negotiations preliminary to the sale of stock by the defendant to complainant's testator.

Mr. Bender. You charge they were conducted by Cannon?

30 *Mr. Kanter.* Yes. 7. In the course of the preliminary negotiations referred to in interrogatory 6, what statements were made to the late Samuel Parnes by the representative of the defendant? This is the answer: Defendant declines to answer on the ground that the matter contained in this interrogatory lies peculiarly within complainants' knowledge.

8. On or about February 17, 1920, was the defendant the holder and owner of all patents embracing the construction, operation and design of a certain toy aeroplane which it was then manufacturing?

40 9. On or about February 17, 1920, was the defendant the holder and owner of any patents embracing the con-

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struction, operation and design of a certain toy aeroplane which it was then manufacturing? If so, state the number of the patents, the name of the original patentee and how the defendant became the holder and owner of such patent or patents. That I think was answered in this fashion: On or about February 17, 1920, patent upon the toy aeroplane then being manufactured by defendant had not yet been granted. It had, however, been applied for on October 22, 1919, and was given serial number 332,488. The original applicants for patent were James H. Steenson and Charles S. Cannon. This patent was granted on September 14, 1920, and the original patentees, James H. Steenson and Charles S. Cannon, are ready and willing at defendant's request to assign all their right, title and interest therein to defendant. 10

10. On or about February 17, 1920, did the defendant have on hand over twelve thousand dollars' worth of unfulfilled orders? The answer is: Defendant did not have \$12,000 worth of unfilled orders on hand. 20

11. On or about February 17, 1920, what was the amount of the unfulfilled orders that the defendant then had on hand? State the names and addresses of the persons from whom such orders were held, the quantity of each order respectively, and the sale price of each of such order. The answer is: On February 17, 1920, defendant had no unfilled orders on hand. 30

12. On or about February 17, 1920, did the defendant have in its employ the original patentee of the toy aeroplane which it was then manufacturing? The answer is: On or about February 17, 1920, one of the original applicants for patent for toy aeroplane, Charles S. Cannon, was in the employ of defendant, but the other original applicant, James H. Steenson, was never in defendant's employ.

13. Did the contract of employment call for the payment to such patentee of a salary of thirty dollars per 40

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week for one year and a salary of fifty dollars per week for one year thereafter? Answer: No contract such as referred to in interrogatory numbered 13 was ever made between defendant and either patentees named in answer to interrogatory numbered 12.

10 14. Give all the terms of the contract under which such patentee was employed by the defendant, and if the contract of employment is evidenced by a written instrument set forth a copy of the instrument.

The Court. That is not material for you.

Mr. Kanter. It was material. It shows two facts—that there were royalties payable to him—

The Court. He was either employed and employed at such and such a time or not.

20 *Mr. Kanter.* He was not only employed, but he also got salaries. That was an important issue. Interrogatory No. 13, that was covered by Mr. Bender, I think.

Mr. Seiler. One minute. You just stated where the patentee is employed on a royalty basis.

The Court. Your answer tells that.

Mr. Kanter. The patentee was getting a royalty. Interrogatories 26 to 40 relate to the proceedings of cancellation. I have gone over this bill rather carefully, your Honor, to show that there was very little after we get the chaff out of the way.

30 *The Court.* The substance of what you so far disclosed to me is this: That if there were any misrepresentations they were not made by Cannon, but were made by Balinski and somebody else. You charge that the representations that were made, if they were made, were made by Balinski? What is your contention?

Mr. Bender. Our contention is we made none of the representations that they say we made. They made the personal representations.

40 *The Court.* What they said was true?

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Mr. Bender. What they said was true absolutely. His admissions are merely to the effect that if the things he said we said are true, then those things are admitted.

(At this point a recess was taken to 1:45 P. M.)

AFTER RECESS.

Mr. Kanter. I call upon Mr. Bender to produce for the record the minute book. I would like to read from the minute book produced by the defendant company the following resolution contained in the minutes dated June 4, 1916, but apparently in error, and should be June 4, 1920.

Mr. Bender. It should be 1919.

Mr. Kanter. The resolution read as follows: "Upon motion of Mr. Conrad, duly seconded by Mr. Balinski, it was resolved that this corporation sell to Mr. Balinski twenty shares of its preferred stock at par for the sum of two thousand dollars, and execute and deliver therewith fifty shares of common stock of this company, and that it sell to Mr. Conrad five shares of its preferred stock at par for the sum of fifteen hundred dollars and execute and deliver to him twenty-five shares of common stock, the said shares of common stock being given as bonus stock in consideration of the purchase of the said preferred stock. The share of stock subscribed for by Augustus J. Bender and heretofore assigned to Conrad, and the share of stock of Frederick Hemphill and heretofore assigned to Edward V. Conrad, being included as part of the said issue of twenty-five shares of common stock to each of said parties."

I would like to read from the minutes of August 25, 1919. I will read the entire minutes. "Special Meeting of the Board held at the regular office of the company on the twenty-fifth day of August, 1919. The following resolution was adopted: 'Resolved, That this company sell to Charles Climak twelve shares of preferred stock of this

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company at par value at one hundred dollars per share, and issue to said purchaser as bonus stock four shares of stock of this company without further consideration.'”

Counsel produces and I will read into the record the minutes of September 25, 1919: “At a special meeting of the Board of Directors of this company held on Sep-
 10 tember 24, 1919, it was agreed to issue and sell to Mr. Alex Stetsko nine shares of preferred stock of this company’s issue at par value of one hundred dollars per share. And it was also agreed to issue to the same party, Mr. Alex Stetsko, three shares of common stock without extra charge.”

The Court. What significance do you attach to these minutes?

Mr. Kanter. The significance I attach is that this company had no right to issue any stock without consid-
 20 eration or as bonus.

The Court. They are admitting all that. How does that invalidate your contract?

Mr. Kanter. It invalidates our contract by their failure to disclose to us the issuance of stock without consideration.

The Court. Were these meetings all antedate?

Mr. Kanter. Oh, yes; all antedate. Of course, we entered a corporation, apparently. November 7, 1919, “At
 30 a special meeting of the Board of Directors held today it was agreed to sell to Mr. Joseph Balinski sixty shares of preferred stock of this company’s issue at par value of one hundred dollars per share. It was also agreed to give Mr. Joseph Balinski as a bonus for purchasing the above stock seven shares of common stock of this company’s issue. It was also agreed by Cannon and Dane that they would each turn back to the treasurer of the Gnome Manufacturing Company twenty-five shares of their common stock. This is done in order to give Mr.
 40 Balinski thirty shares of common stock without chang-

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ing the ratio of the common stock now held in the treasury.”

I ask that they be marked.

(Minutes marked Exhibits C. 1, 2 and 3 respectively.)

(Minutes of June 4th marked Exhibit C. 4.)

The Court. In view of the fact that these minutes are in, is there any question but that this stock was issued prior to the entry into the corporation of Mr. Parnes? 10

Mr. Bender. That is correct.

The Court. And without any consideration therefor except the purchase of the preferred stock?

Mr. Bender. Except you must add this, that of the seventy shares of common stock given to Joseph Balinski fifty shares of that were made up of a contribution by Dane of twenty-five and twenty-five by Mr. Cannon, being fully paid stock.

Mr. Kanter. Of course, the only consideration that was issued for was already read into the minutes. It is a further significance, your Honor, that in the answer of the defendant they say this. I haven't introduced it in evidence, but I will say that the certificates all state full payment. The answer says this. They said that the stock that was issued were full paid and non-assessable, as we say in our complaint; but they say this was a mistake on the part of their attorneys or agents who have charge of drawing up the certificates of stock. 20

The Court. Is that printed on the certificate? 30

Mr. Kanter. It is printed.

Mr. Bender. I stated last December the nature of our answer, and the only inconsistency we can find in our whole case was the fact through an error of mine the words “fully paid and non-assessable,” but they make no claim in their case that Mr. Parnes ever saw that, and I say that is the thing that they pin all their case on in making a case against us. We fully disclose this in our answer and state exactly how those words got there. 40

Julius A. Parnes, direct.

Mr. Kanter. Well, suppose I introduce the certificate in evidence, the whole book. I also ask to produce the preferred stock book.

The Court. Let the book be marked by one number, including the certificates that are in it.

(Marked Exhibit C. 5.)

10 *Mr. Kanter.* The purpose is to show your Honor the care in which they were gotten up; that they were not gotten up hastily.

(Preferred stock book marked Exhibit C. 6.)

Mr. Kanter. I would like to read the minutes of the Board of Directors that this form of certificate was adopted.

Mr. Bender. It is admitted.

20 *Mr. Kanter.* It is admitted that this form of certificate in evidence was adopted at a meeting of the directors on June 4, 1919.

The Court. By formal action of the board?

Mr. Kanter. By formal action of the board.

JULIUS A. PARNES, a witness produced by the complainants, after being duly sworn, testified as follows:

30 *Mr. Bender.* Your Honor, I think Mr. Parnes probably would be called upon to testify as to transactions between the decedent and the company, and probably most of it will be ruled out. We want to state right here that we are not going to take advantage of anything of that sort at all, because we want to get right at the bottom and show our real reason how that got there, and it plays no part in the case at all. We are willing to have the whole thing thrashed out and without taking advantage of any legal objection.

40 *The Court.* Do you mean you waive the provision of Section 4 of the Evidence Act?

Julius A. Parnes, direct.

Mr. Bender. Yes.

Mr. Kanter. They have absolutely no rights under the Evidence Act.

Direct examination by Mr. Kanter.

Q You are a son of the late Samuel Parnes? A Yes, sir. 10

Q And your mother is the executrix in this case of the late Samuel Parnes? A Yes, sir.

Q Do you know Mr. C. S. Cannon? A I do.

The Court. What is his first name?

Q Charles S. Cannon? A Yes.

Q You are one of the complainants in this case? You joined with your mother in this bill of complaint with the shares of stock held in your name? A Yes, sir.

Mr. Kanter. His father took ten shares in his name. 20

The Court. Does he seek cancellation of his contract?

Mr. Kanter. He has no contract with the company.

The Court. That is part of his father's contract?

Mr. Kanter. Yes. 30

Q Do you remember about the time that you and your father first heard of the Gnome Manufacturing Company; do you remember when it was about? A Yes.

Q Were you present on February 17, 1920, when the certificates were delivered to your father? A I was.

Q And when he paid \$2,500? A I was.

Q Where did that take place? A Bender & Gilhooly's office, Elizabeth.

Q At that time were these certificates which I now show you delivered to your father? 40

Julius A. Parnes, direct.

The Court. How many certificates?

Mr. Kanter. There are three certificates.

Q I notice one is in your name and one in the name of Samuel Parnes. These three certificates were handed to your father and your father gave the company \$2,500?

A Yes.

10 *The Court.* Are the three certificates preferred or common?

Mr. Kanter. Two of these certificates are preferred certificates. No. 8 and 9 are preferred shares of stock.

The Court. And issued in whose name?

20 *Mr. Kanter.* Certificate No. 8 issued to Samuel Parnes, fifteen shares, and certificate No. 9 to Julius Alfred, the other certificate being for common stock. No. 10 issued to Samuel Parnes under date of February 17, 1920—

The Court. Who were the officers that signed?

Mr. Kanter. The officers are C. S. Cannon as president and E. V. Conrad as treasurer.

(Three certificates marked as one Exhibit C. 7.)

Q I want you to tell us briefly as you can remember how it happened, as far as you know, that your father gave this \$2,500 to the Gnome Manufacturing Company.

30 *The Court.* Are you directing his attention solely to what happened that day or prior thereto?

Q The first time you heard about the Gnome Manufacturing Company was when? A Why, I think probably about a month before March 17th.

Q February 17th. A Before February 17th; probably about that time, more or less.

By the Court.

40 Q How did you hear of them? A Why, my father came home one night and told me, "I met"—

Julius A. Parnes, direct.

Q (Interrupting.) You need not tell the conversation. He mentioned it to you? A Yes, he mentioned it in the evening.

By Mr. Kanter.

Q Did you and your father ever see any people connected with the Gnome Manufacturing Company after he told you of that? A Yes. I happened to be down towards Balinski's house, and we stopped in just for a personal visit. 10

Q Which Balinski was that? A Stanislaw.

Q Do you recognize him in court? A Yes.

Q Which is he? A He is back there now.

Q The elderly gentleman? A Yes.

Mr. Kanter. It is admitted he was a director, officer of the company at that time?

Mr. Bender. Director of the company, yes. 20

By the Court.

Q Did you and your father both call on him? A Yes.

Q A social call? A A social call, yes.

By Mr. Kanter.

Q At his home in Elizabeth? A Yes, at his home.

Q As a result of this social call did you go up to the place? 30

The Court. What did you do?

Q Did you talk about the Gnome Manufacturing Company on the occasion of this social call with Mr. Balinski?

A Just incidentally. He showed us one of the aeroplanes that were hanging on the wall, and he told us about the manufacturers of it, how well they were going about it.

Q And as the result of that did you go up to the shop of the Gnome Manufacturing Company? A Yes, sometime later I think it was, about a week or ten days later. 40

Julius A. Parnes, direct.

The Court. Did you go alone or with your father?

The Witness. With my father.

Q How big a shop was that? A Why, it wasn't very large; probably about fifty or a hundred. I just cannot say the dimensions.

10 Q Was that on Wall street? A Willowgrove place, Elizabeth.

Q In the rear of some other property? A In the rear of some residence.

Q And when you went up there whom did you meet? A I met Mr. Cannon. He was the only one in the office. I went into the office.

Q You met Mr. C. S. Cannon? A Yes.

Q He was the president at that time? A I didn't know, but I later learned that he was president.

20 Q What did you discuss with Mr. Cannon on the occasion of this visit? A We introduced ourselves, and told him we were interested in the manufacture of the aeroplane. He very gladly told us all about the concern.

Q Did he take you through the place? A Yes, he did.

30 Q What did he say about the concern on that visit, the first visit? A Why, that they were doing very well; in fact, they had more than they could take care of; they had just gotten through an advertising campaign; the business was going along splendidly, but they needed additional capital to promote more aeroplanes on the market.

Q Did you speak to Mr. Balinski about that? A We spoke to Mr. Balinski and he advised us to go up and look at the place.

Q You say this was about a week or ten days after you first spoke to Mr. Balinski about it, which must have been two or three weeks prior to the time your father actually paid the money? A Yes, I think so.

40 Q Do you remember the visit made by you and your father at which it was actually determined by your father

Julius A. Parnes, direct.

to invest \$6,000 in this company; do you remember when that occurred? A Yes, I do, very distinctly. That occurred a day before we bought the stock.

The Court. February 16th?

The Witness. February 16th; yes, sir.

Q Do you remember what day February 17th was? 10

A I think it was Monday or Tuesday, if I am not mistaken, the beginning of the week.

Q And this occurred a day before? A Yes, sir.

Q You went up to the place of the Gnome Manufacturing Company? A Yes, sir.

Q Did you see Mr. Cannon there at that time? A Yes, sir.

Q Did you ask him questions about the business and did he make certain responses about the business? A He did.

20

The Court. When you say "you" whom do you mean, his father or him?

Mr. Kanter. His father.

Q Were you present at all the time of the conversation? A Yes.

Q What time did you get there? A About eleven, a little after.

The Court. What time did you leave?

30

The Witness. I guess we left a little after twelve, if I am not mistaken; I think so; I cannot just recall.

Q When you left what appointment had you made for the following day, if any? A Why, we made an appointment to meet at Bender's, I think, the next day.

Q And to pay the money? A And to purchase the stock.

Q On the occasion of this visit, which must have been on February 16, 1920, what did Mr. Cannon tell you about 40

Julius A. Parnes, direct.

the affairs and the property of the corporation? A
What he told my father?

Q Did your father ask any questions about it? A
Yes, he did.

The Court. State everything that was said.

10 *The Witness.* Why, we asked him about the
patent, and he said they were the owner of all
patents, and, furthermore, they had Mr. Steenson,
the original patentee, working for them at a salary
of thirty dollars a week for the first year and fifty
dollars a week for the second year and under con-
tract. Later we found out—

The Court. (Interrupting.) Not what you later
found out.

20 Q He told you he had the patentee working for them?
A Yes, sir.

The Court. What else did he tell you?

The Witness. That he also had twelve thousand
dollars' worth of unfilled orders and more and more
were coming in every day and more was on the
table, and from the toy show, and they needed ad-
ditional capital to put on more machines. He had
one machine at that time, and they showed us a plan
to put more on the market.

30 Q What machine are you talking about? A The aero-
plane.

Q You had seen this thing up at their place? A Yes.

The Court. Keep on telling us that was said
there that day by any of you.

The Witness. We asked him first of all when
he had so many orders why did he not go ahead with
them. He said he needed the capital; they just had

40

Julius A. Parnes, direct.

a limited amount, and they needed some more money. We asked who were some of the men connected with the corporation. He told us of the Balinski brothers, whom my father knew, and he also told us Mr. Bender, and my father asked, what Bender—the lawyer? He asked whether it was the lawyer Bender, and he said yes, and my dad made a remark if Bender goes into anything he considers it real well. 10

The Court. Your father lived in Elizabeth?

The Witness. Yes.

Q You still live in Elizabeth? A Yes. And we asked him about the stock, what it was selling for, and he told us a hundred dollars a share. First of all he told us it was capitalized—my father didn't know much about corporations—he told us that it was capitalized for sixty thousand dollars, three hundred preferred and three hundred common, and at a par value of a hundred dollars, and furthermore, a share was given as an inducement for every three shares of stock that was bought. And my dad didn't understand much about corporations, and Mr. Cannon explained to him that it had a par value of one hundred dollars, which means it was worth a hundred dollars. And he told us about the large profits that they made in the business. 20

Q What did he say about the profits? A The profits were very large. In fact, he said on the No. 1 machine—that refers to a model aeroplane—that there was over fifty per cent. profit, and that the other machines that were coming out would even be more than that. 30

The Court. What else did he talk about?

The Witness. Well, then we went through the plant again, and he showed us the different machines the girls were working on out there, and told us of the different coats of paint that was going on, and how they were going to save money by the different 40

Julius A. Parnes, direct.

10 forms of operation that they were going to put into practice. He took us into the paint shop and showed us how the machines were painted. And then the Balinski brothers came in, and my father was very well pleased with what Mr. Cannon said, and we decided to go into it, and go down to Mr. Bender's office, the attorney in charge, the next day.

The Court. Did you agree as to how much you would invest?

20 *The Witness.* Yes. My father asked Mr. Cannon who was the largest stockholder, and he said Joseph Balinski had six thousand dollars of preferred stock, and my father first said he puts in five, and then he changed it and said he will put in six. Mr. Cannon figured it out and he said, "Well, he would get twenty shares of common stock as bonus."

The Court. Did you know what relation Mr. Cannon had at that time when you were talking to him?

The Witness. He told us at that time that he was president.

The Court. Anyone else present when this conversation was going on?

30 *The Witness.* No; just the three of us.

The Court. Until the Balinski brothers came?

The Witness. Yes.

The Court. Were they present when your father agreed to take the stock?

The Witness. Yes. Tuesday they came in and he told him he agreed to take the stock.

The Court. What did they say?

The Witness. They were very well pleased.

40 *The Court.* Did he state how much stock he was going to take?

Julius A. Parnes, direct.

The Witness. Yes; \$6,000 he was going to take.

The Court. Anyone else who suggested going to Mr. Bender's office?

The Witness. Mr. Cannon.

The Court. What did he say about it?

The Witness. Mr. Bender was the legal adviser, and, furthermore, he was a member of the corporation; he had all the papers and the stock books down there, and his office is where they usually held their meetings. 10

Q And he told you to meet at Mr. Bender's office the next day? A Yes, sir.

Q For what time was the appointment made? A I think the appointment was made for twelve o'clock. We didn't come in the machine.

Q You didn't keep the appointment? A Yes, the next day. 20

The Court. When you went there the next day whom did you meet?

The Witness. I came there alone. I think I came alone, and Mr. Cannon was there, and Mr. Bender, and all the Balinski brothers, and then my father came in later, about twenty-five minutes later.

The Court. How many Balinski brothers? 30

The Witness. Two of them, and Mr. Conrad.

Q There are two Balinski brothers? A Yes, sir.

The Court. What was said that day? A Not very much was said. He told us further—

The Court. Who told you?

The Witness. Mr. Cannon; also Mr. Conrad explained to us that they had some sort of agreement made between different stockholders, some sort of give and take agreement, and that that agreement 40

Julius A. Parnes, direct.

10 said if a man wanted to get rid of the stock he would first have to submit them to the other directors, and if they approved it—I don't recall what it was all about; we never got one. We signed all the others, and the other that was supposed to go to my father was supposed to be signed with the vice-president, who was not connected with the concern, and if we had his signature we would get it, but we never got it.

Q There was some agreement that you did not get?
A Yes.

By the Court.

Q This give and take agreement, was anything discussed about that in the presence of Mr. Bender and Mr. Cannon? A No discussion. It was just assigned over to me.

20 Q Did you expect to go into the employ of the company or handle its business? A They told me they would take me in.

Q Who were "they"? A Mr. Cannon and Mr. Conrad.

Q That was on what basis? A On a salary basis.

Q How soon after the purchase of the stock? A Right away.

Q At what salary? A Thirty dollars a week.

30 Q Did you actually go to work for them? A I did, yes, sir.

Q How long did you work? A I worked until they didn't pay me any salary.

Q That doesn't tell me anything. A Well, I think I worked two months or three months.

By Mr. Kanter.

Q You left after your father's death? A Yes.

Q Do you remember about when you quit their employ?

40 A I think around the latter part of June.

Julius A. Parnes, direct.

Q Have you visited the place of the Gnome Manufacturing Company since you left their employ up to the present time? A I went up once to serve a subpoena on Mr. Cannon.

Q Have you gone to their place of business? A No, sir.

By the Court.

Q Going back to the seventeenth day of February,—your father had agreed on the sixteenth to purchase six thousand dollars' worth of stock? A Yes, sir.

Q And on the seventeenth he paid twenty-five hundred dollars on account? A Yes, sir.

Q What was said about the balance? A Mr. Cannon asked for all at that time, but my father said he didn't have it, and I think he was supposed to make it in three payments, monthly, without interest.

Q Any memorandum made or signed? A Yes, there was a memorandum made.

Q Who made it? A Mr. Bender dictated it to the stenographer.

Q Were you given the certificates of stock to take away with you when you left that day? A Yes, sir.

Q And your father gave the check for twenty-five hundred dollars? A I wrote the check out and my father signed it.

Mr. Kanter. Mr. Bender is to furnish me with a duplicate copy of the receipt given Mr. Parnes. I have it now, and it is correct. I haven't the original. I offer this.

(Marked Exhibit C 8.)

“Received of Samuel Parnes the sum of \$2,500 on account of the purchase price of sixty shares of stock, the total purchase price being the sum of \$6,000, the balance of \$3,500 to be paid in three installments, one \$1,200 on the sixteenth day of

Julius A. Parnes, cross.

April, 1920, the other on the sixteenth day of May, 1920, and the sum of \$1,100 on the sixteenth day of June, 1920, such monthly payments to be without interest. Gnome Manufacturing Company." This was signed "C. S. Cannon, secretary," and this was made on November 20, 1920.

10 *The Court.* He had ceased to be president and became secretary.

Mr. Kanter. Evidently.

The Court. Let it appear that Mr. Cannon, who signs as secretary, after a certain date—

Mr. Bender. He was president at the same time.

The Court. He was president and secretary always?

Mr. Bender. Yes.

20 *Cross examination by Mr. Bender.*

Q Mr. Parnes, your father was engaged in what kind of business? A Real estate business.

Q And he had been engaged in that business for how many years? A I don't know.

Q Any number of years? A Yes, sir.

Q Twenty years? A I don't know.

The Court. He says a number of years.

30 Q He built many houses in Elizabeth, didn't he? A I think so.

Q Built quite a development, didn't he? A Yes, sir.

Q And he had been very active in business all his life? A Yes.

Q He was also engaged in the purchasing of tax sale certificates wasn't he? A I don't know.

Q He was active up to the moment of his death, wasn't he, as a business man? A No, sir.

40 Q How long before his death did he take sick? A About two weeks, I think.

Julius A. Parnes, cross.

The Court. He died when?

The Witness. He had sudden attacks once in awhile.

The Court. He died when?

Mr. Kanter. March 7, 1920.

Q When did he have his fatal attack? A Why, it was the Saturday before he died, March 6. 10

Q He died the following day? A Yes, sir.

Q And he was home on the day before he was stricken?

A Yes.

Q Came home, had a fatal attack and died the next day? A Yes.

The Court. How old was he when he died?

The Witness. Fifty-two.

Q He operated extensively in real estate in Elizabeth, hasn't he? 20

The Court. What difference does that make?

Mr. Bender. Just to show we were not putting something over on this man. We are trying to show he was quite a real estate man.

The Court. That would not indicate you could not put something over him. There are a great many people who are shrewd business men and yet are defrauded. I don't see its significance. 30

Q You stated that when you had your first session with Mr. Cannon at the factory Mr. Cannon said that the company was in a position to issue preferred stock at one hundred dollars per share, and give away common stock which was full paid and non-assessable.

Mr. Kanter. I object to that as not being a correct statement of the testimony.

The Court. This is cross examination.

Q (Question read.) 40

Julius A. Parnes, cross.

The Court. Did you say that?

The Witness. Give one share of common with three shares of preferred, fully paid and unassessable.

10 Q Is that the language he used—full paid and unassessable? A Yes, sir.

Q He also stated that I was one of the officers and directors of the company, didn't he? A Yes, sir.

Q Do you recall coming to my office with your father?
A Yes.

Q At the time you got the certificates? A Yes, sir.

Q Did you ask me whether that was so?

Mr. Kanter. I object to that question as not being proper cross examination.

20 *The Court.* It is proper examination. Did you ask him?

The Witness. I did not.

Q Did your father? A No, sir.

The Court. Did you hear him ask him?

The Witness.—He talked to Mr. Bender privately.

30 Q Weren't you present all the time during my conversation with your father? A No, sir; my father talked with you privately.

Q When all the rest came in? A Before and after.

Q When the certificate of preferred stock was issued it was issued in one certificate of sixty shares? There was one certificate issued, wasn't there, of sixty shares?
A Yes, that is right.

The Court. Is that the certificate originally issued, the one you are looking at?

The Witness. It looks like it.

40 (Marked Exhibit D 1 for Identification.)

Julius A. Parnes, cross.

Q And when that was surrendered? Two certificates were issued, one to you and one to your father? A Yes, sir.

Q Then what happened to the certificates? A I took them. My father gave them to me, and I put them in my pocket.

Q When did you look at them next? A When I got home. 10

Q Did you read them over? A Yes, sir.

Q Struck you peculiar that it said on there "full paid and non-assessable common stock", when you were told that the stock was full paid and non-assessable?

Mr. Kanter. I object to the question.

The Court. The form of the question is objectionable. What difference does it make? Did you observe? 20

Q Did you observe on there that it was full paid and unassessable? A Yes, sir.

Q Who kept possession of the stock after that? A My father put them in his desk.

Q Your father put them away? A Yes, sir.

Q Was there anything further ever said by your father with reference to that stock? A Yes, sir.

Q What did he say? A Why, after he took it, why, he felt that he did something wrong; he didn't feel right about it. 30

Q He didn't feel right about it? A No, sir.

Q What did he do? A Didn't do anything.

Q Didn't do anything at all? A No.

Q What made him feel there was something wrong about it? A I went to work there and came back and told him that things were not just what we thought they were. 40

Julius A. Parnes, cross.

Q You found out that things were not as you thought they were? A Yes, sir.

Q The way you thought they were, or the way they told you they were? A They told us they were.

Q How did you find things? A In the first place, they didn't have Steenson working there, the patentee;
10 they had his brother.

Q How did that affect the situation?

Mr. Kanter. I object to that question.

The Court. He hasn't finished the first question. What else did you find in respect to what was represented to you?

The Witness. I found a number of orders, but there were nowheres near twelve thousand dollars' worth of unfilled orders.

20 *The Court.* How much did you find they had in unfilled orders?

The Witness. I don't recall. I don't believe they had more than two or three thousand dollars' if I recall correctly.

The Court. That is your recollection?

The Witness. Yes.

30 *The Court.* What else did you find that was not in accordance with their representations? While you were working there you found these things and you reported them to your father?

The Witness. Well, then I found out this was a fact.

By Mr. Kanter.

Q This is the period before your father died? A Yes, sir. They had very little cash on hand. When we paid them the twenty-five hundred, immediately, the next
40 day, it was paid right out in debts that they owed.

Julius A. Parnes, cross.

By the Court.

Q How did you know that? A Mr. Cannon made out the checks. I saw him take it, and saw that there was very little left.

Q Do you know how much there was? A I think he gave most of the twenty-five hundred dollars out.

Q Did you find anything else different than what had been represented to you? A Yes. I discovered this Dane that was connected as vice-president—

Q Is that his name—Dane? A Yes. —that he was put out of the corporation. Mr. Cannon told me they had some misdealings; they could not get along, and they thought it best to let him go; also that there were some others in the corporation whom I didn't know. Mrs. Brown I didn't know about; she was connected with the corporation.

By Mr. Bender.

Q As a preferred stockholder? A I didn't know whether preferred or common.

Q You found out there was another stockholder you did not know anything about? A Yes.

Q What else did you find out? A I found out that the cost of production was very much; they were not making any profit; they had been operating for so long; it cost them a great deal more to produce the aeroplane than they were selling it for.

Q What did it cost them to produce an aeroplane, did you find out?

Mr. Kanter. I object to the question as not being material to the issue.

The Court. I will allow it. When you were there you found out?

The Witness. I just didn't know, but I found out the liabilities were much over the assets.

The Court. How did you know that?

Julius A. Parnes, cross.

The Witness. Mr. Cannon was telling it to me, and then making notes on paper.

The Court. How did he come to tell you that?

The Witness. I was just sitting by his desk, and he got talking during the day. He was just telling us how much the machines had cost to put out. He said that was simply the cost of starting the new business.

The Court. Did he say how much the liabilities exceeded their assets?

The Witness. He did, but I just cannot recall.

The Court. Did you go home and report that to your father? A I did, yes, sir.

Q Did you know what the assets of the company were at the time? A I may have; I have forgotten now.

20 Q Did you know what the liabilities were? A I don't know.

Q Then why did you report to your father?

Mr. Kanter. I object to that. He says he doesn't know now.

The Court. Go on. What did you report to your father?

The Witness. I told him they owed a great deal more money than they had assets for; that I thought that the company was not solvent.

30 Q Did you give your father any figures? A No, sir.

Q It was just your best guess, was it? A It was not my guess; it was what Mr. Cannon told me.

Q Did you ever see a financial statement of the Gnome Manufacturing Company prior to your father's death? A Prior?

Q Yes. A No, sir.

40 Q Didn't you get a copy of the last financial statement of that company when you were down at their place the Saturday before you bought that stock? A Not me.

Julius A. Parnes, cross.

Q Did you see your father get it? A No, sir.

The Court. Did you see it in his possession?

The Witness. No, sir.

The Court. At any time before his death?

The Witness. No, sir.

Q Did you see your father get that receipt in my office? A Yes. 10

Q Did you read the receipt, Exhibit C. 8?

Mr. Kanter. I object to that. That is the receipt Mr. Bender gave me as being a copy.

Mr. Bender. He says he got it.

Q (Question read.)

The Court. Of which Exhibit No. 8 is said to be a copy.

The Witness. I didn't read it. I heard Mr. Bender dictating the receipt to the stenographer, but I was rather excited and didn't pay any attention. 20

The Court. How old are you?

The Witness. Twenty-two.

Q When you got home you read all through the stock certificates, didn't you? A Yes, sir.

Q Did you read that receipt? A No, sir. My father had it in his pocket. 30

Q How is it he kept that separate from the stock certificates? A I don't know.

Q And is this the first time you read that receipt?

The Court. I don't think he has read that yet.

Q Read that receipt now and tell us if that is the first time you have ever read it? A I think it is.

Q It is the first time you ever read the receipt? A Yes, sir. 40

Julius A. Parnes, cross.

Q Do you know where your father's copy of it is? A No, sir.

Q Was it given to Mr. Kanter? A I gave Mr. Kanter a lot of papers. He came down and took them himself. He came down to my father's desk at the time of his death, and I left everything to him.

10 Q You didn't know whether the receipt was tendered, did you? A No, sir.

Q But the stock certificates were? A Yes, sir.

Q How do you fix February 16th as the date? A Why, I remember February 17th very distinctly; it was my sister's birthday; it is my sister's birthday, and I remember that date very distinctly.

Q That was the day you were at my office? A Yes, February 17.

Q How do you fix the sixteenth? A Because we bought the stock the day thereafter.

20 Q Wasn't it a fact that you bought the stock on Saturday afternoon prior to coming down there? A I don't think so.

Q Did you see any stenographer there? A She was sick. Mr. Cannon told me she was off for about two weeks sick.

Q She wasn't there? A No, sir.

30 Q Do you recall Mr. Cannon taking from the stock book a memorandum, making up a memorandum of the stockholders from the stock book and giving your father a list? A No, sir.

Q You say he didn't give any? A He might have mentioned it. I didn't see it.

Q Did he show to your father any list of the stockholders and the respective holdings of the stockholders? A Not that I know of.

Q You saw no financial statement of the company's affairs at that time? A No, sir.

40 Q Now, he said the company owned the patents. How many patents and what patents did he speak about? A

Julius A. Parnes, cross.

The patent about an aeroplane and also the patent of a doll's head, and also a patent of a typewriter.

Q Three patents? A Yes.

Q Did he say patents or patent applications? A He said patents.

Q They owned the patents? A Yes, sir.

Q Did he say who the patentor was of these patents? 10

A He didn't mention the name.

Q You said that the patentor was in the employ of the company? A Yes.

Q Who told you that? Who was the patentor he represented to you? A Well, I found out it was Steenson.

The Court. What did he say on the 16th of February?

The Witness. That he had been working for them at that time.

The Court. Did he mention anyone's name? 20

The Witness. He may have mentioned the name; I don't know.

The Court. Did he say he had the patentee working for him?

The Witness. Yes, sir.

Q You are sure he said they had twelve thousand dollars' worth of orders? A Over twelve thousand dollars unfilled orders. 30

Q And more were coming in? A They were coming in every day.

Q What did he say about needing capital? A Why, they needed capital to put the necessary machines on the market. They had one machine at that time, and they were getting three more, and this order included three machines, and they needed the money to put them out.

Q What was it then that made you mention to your father the fact that after he gave twenty-five hundred dollars to them they spent it right away? A Pardon me? 40

Julius A. Parnes, cross.

Q What made you call that fact to your father's attention? A Why, the fact they didn't use it in buying new materials; they used it in paying old debts.

Q Didn't they tell you they had no money? A They needed it to buy lumber and so forth to put new machines on the market, but they owed it for paper and other expenses.

10 Q They kept on paying you for three months? A No, sir.

Mr. Kanter. I object to the question.

Q How long did they pay you? A About a month or two, if I recall, and then they owed me for six weeks and they never paid me.

Q And they were tied up for working capital?

Mr. Kanter. I object to that.

20 A No, sir; the others were getting their salary and I wasn't.

Q He told you the Balinski brothers were stockholders. Did he say how much stock they held? A He told us Joe Balinski had six thousand dollars.

Q Did you verify that at the time? A No, sir. In what way?

Q Did you find out whether it was true or not? A No, sir.

30 *The Court.* Did you make any further investigation to find out?

The Witness. No, sir.

The Court. Do you know if it is true now or not?

The Witness. Yes, I know now.

The Court. That he had six thousand dollars worth at that time?

Mr. Kanter. Yes, he did, your Honor.

40 Q Were there any other representations made to you at that time aside from those I just mentioned to you,

Julius A. Parnes, cross.

namely, that the company owned all the patents, that the patentee was under contract, that it had over twelve thousand dollars in orders and was getting more, that it needed more capital, that Balinski brothers and myself were stockholders and directors, and that they could issue preferred stock at one hundred dollars per share and give away full paid and unassessable common stock? Were there any other references made to you with reference to the company or the stock? A Only that you were a member of it. 10

Q I just mentioned that. Anything else? A I don't recall.

Q How soon after you began your employment at the company's plant did you report to your father what appeared to you to be irregularities? A Oh, about three days after I imagine.

Q What did he tell you to do then? A Well, he said we will wait and hope for the best. 20

Q You kept on reporting to him every day what was happening, didn't you? A No, sir; I didn't want to trouble him; I didn't want to get him nervous about it; I didn't say anything.

Q Do you mean to say three days after he bought his stock his money was in jeopardy that you didn't mention to him before he died?

Mr. Kanter. I object to that question. He didn't tell him that his money was in jeopardy. 30

The Court. Reframe it.

Q After you mentioned the irregularities to your father, the very day after you took employment there—

The Court. Hardly irregularities,—discrepancies between what he said he represented and what he found to be the fact.

Q Did you speak to your father again after that time about the conditions of the plant? A Yes, I remember I 40

Julius A. Parnes, cross.

did, the Saturday before he died, the same Saturday afternoon. I told him then things looked pretty blue back there, and if he possibly could give back the stock I advised him to do it and get out.

Q You told him to give back the stock and things looked blue. What did you mean by that? A They
10 didn't look good to me. When we went in we thought the business was making money.

Q The business was not doing so well? A I found out you didn't have any orders on hand the way you told us.

The Court. By "you" whom do you mean?

The Witness. Mr. Cannon.

Q What did your father say then? A Why, my
20 brother-in-law happened to be in the room at that time and he told me he was sorry he took the stock, but this is his first venture; he got in and he thinks they rubbed him in on it. Those are just the words he used.

Q Who is your brother-in-law? A Doctor Shapiro.

Q A business man? A A doctor.

Q A business man too? A No, sir.

Q But your father did nothing with reference to the turning back of the stock, did he? A He was to—

Mr. Kanter. (Interrupting) I object.

30 *The Court.* He says he made the suggestion the day before he died.

The Court. He says he made that suggestion on that afternoon.

By Mr. Kanter.

Q He died on Sunday? A Yes, sir.

By Mr. Bender.

40 Q He did nothing about it after your advising him to return the stock?

Julius A. Parnes, cross.

Mr. Kanter. I object to that question.

The Court. I will allow it.

The Court. I think a man would have to have a lot of time to return the stock.

The Witness. That Saturday afternoon he could not do anything.

10

By Mr. Kanter.

Q Did he do anything? A No, sir.

By Mr. Bender.

Q Mr. Parnes, were you still working for the Gnome Manufacturing Company when the suit was started?

Mr. Kanter. No.

The Court. Let the witness answer.

A I don't recall when he told us it was started.

20

The Court. The bill was filed on the twenty-seventh of August, 1920.

The Witness. No, sir.

The Court. That is according to the file mark here?

Mr. Kanter. That is correct.

Q Were you still working for the Gnome Manufacturing Company when Kanter & Kanter, acting as attorneys for your mother, notified the company that it wanted to return the stock? A I don't know when they notified them.

30

The Court. Sometime in June.

Mr. Kanter. Sometime in August, three or four days before suit was started.

The Court. There were three or four letters you referred to. When did you leave the company's employ?

40

Julius A. Parnes, cross.

The Witness. I think it was about the middle of July, your Honor.

The Court. That answers your question. He thinks he left about the middle of July.

By Mr. Bender.

10 Q Do you recall speaking to Mr. Cannon after the suit had been started and Mr. Cannon asked you why the suit was started?

Mr. Kanter. I object to the question.

The Court. After the suit was started. I will allow it. Did you have a conversation with Mr. Cannon after the bill was filed on the 27th of August?

The Witness. I had a number of conversations.

20 Q Do you recall having a conversation with Mr. Cannon when you met him on the trolley car and he rode up as far as your house with you and talked to you?

Mr. Kanter. I object to the question.

The Court. When was it?

Q Well, prior to the commencement of the suit? A I rode in a car with him a number of times.

The Court. He did have such conversation.

30 Q Do you recall telling Mr. Cannon—

The Court. Which conversation are you referring?

Q Do you remember telling him at any time either before or after the suit started that you knew nothing about this action being taken by your mother to rescind the stock and that you had nothing to do with it at all? A No, sir.

40 Q Didn't you tell him it was Kanter & Kanter's business, not yours? A No, sir; I told him it was my mother's business.

Julius A. Parnes, cross.

The Court. Did you tell him it was your mother's business?

A Yes, sir.

Q Didn't you take Mr. Cannon to Newark to Kanter & Kanter's office to see if the thing could not be straightened out? A Yes, sir.

Q Wasn't that your suggestion? A No, sir; Mr. Cannon's suggestion. 10

By the Court.

Q What was that suggestion? A To get the money.

Q When was that? A After my father's death.

Q How long after? A About a week after, ten days after. He said they needed a lot of money to meet the debts, and he sent a letter to my mother to try to get some of it.

Q You mean the balance of thirty-five hundred dollars to be paid on the stock? A Yes, sir. 20

Q Is that the only time Mr. Cannon accompanied you to Kanter & Kanter's office? A Yes.

By Mr. Bender.

Q And didn't you go to Mr. Kanter's office to intercede in getting the money? A I didn't intercede to get the money, but to see that it is straightened out in an amicable way.

Q Didn't you authorize Kanter & Kanter to authorize your mother to pay it over to him? A I didn't try to influence Mr. Kanter in that way. 30

Q You didn't talk against it, did you? A No, sir.

Q And at that time you knew conditions were not right in the company? A Yes, sir.

Q And things had been misrepresented? A Yes, sir.

Q And yet you went over there to induce them to pay the balance of the money to Mr. Kanter? A I thought probably, with conditions the way they were, we might improve it and let things go on; we might be able to make 40

Julius A. Parnes, cross.

the best of a bad thing. I knew how bad we were in, and I wanted to get along.

Q Did you at any time prior to your father's death or before the commencement of this suit tell Mr. Cannon that things had been misrepresented?

Mr. Kanter. I object to the question.

10

The Court. I will allow it.

Mr. Kanter. My objection is taken to the form being double—"prior to your father's death and before the commencement of this suit."

The Court. Answer the question.

Q (Question read.) A Yes, sir.

Q When was that? A I just don't know when.

By the Court.

20

Q Was it before your father died or after? A It was after my father's death.

Q How long after? A Probably a week after I told him.

Q What did he say when you told him? A I didn't say anything. He said things would come around all right as soon as we made some new machines, and he would start out and see the trade and get some orders.

By Mr. Bender.

30

Q Did you ever speak to him again about it? A I don't recall.

Q I show you a letter bearing date July 12th, 1920, and ask you if you wrote that letter to Mr. Cannon.

The Court. You don't need to read it. Look it over. Is that your writing or not?

The Witness. Yes, that is my writing.

Mr. Bender. I won't offer it in evidence.

The Court. You can offer it later.

40

(Marked Exhibit D. 2 for identification.)

Charles S. Cannon, direct.

Re-direct examination by Mr. Kantor.

Q Mr. Parnes, the occasion of your coming to our offices with Mr. Bender was after they had made a demand upon you—with Mr. Cannon was after they had made a demand upon your mother for the thirty-five hundred dollar balance? A Yes, sir.

Q And in response to your invitation to try to get the matter adjusted and cleaned up in some way? A Yes, sir.

16

The Court. What do you mean by that—"in response to your invitation"?

The Witness. Pardon me?

The Court. What do you mean by seeing them "in response to your invitation to get the matter straightened up"?

The Witness. What I mean is this: Mr. Cannon said if we got that money we would put that in, and we may be able to operate at a profit, and I thought, well, as long as we are into it that way, if I get the money and put it in we may be able to go ahead, and I went over to him.

20

The Court. Was there anything said at that time about surrendering the certificates and getting the money back?

The Witness. I don't recall, your Honor.

30

Mr. Kanter. We rest.

COMPLAINANT RESTS.

CHARLES S. CANNON, a witness produced by the defendant, after being duly sworn, testified as follows:

Direct examination by Mr. Bender.

Q You are the president and secretary of the Gnome Manufacturing Company? A Yes, sir.

40

Charles S. Cannon, direct.

Q And you have been since its incorporation? A Yes, sir.

Q Did you know Mr. Samuel Parnes in his lifetime?

A I did.

Q Did you have any conversation with him prior to his becoming a stockholder of that company? A Yes, on one
10 occasion.

Q Tell us when and where. A I believe it was either the Saturday before he purchased the stock or possibly two weeks before. It was a Saturday afternoon at the shop at Willowgrove place.

Q Who was present? A Mr. Joseph Balinski, Stanislaw Balinski, Mr. Conrad, Mr. Samuel Parnes, Mr. Julius Parnes and myself.

Mr. Kanter. All the members of your firm you want to indicate, including Dane, Julius Parnes,
20 Mr. Balinski, Mr. Parnes?

The Witness. And Mr. Conrad.

By Mr. Bender.

Q Were all of these gentlemen present during all of the conversation that took place that afternoon at your office? A Yes.

Q Just tell us what transpired at that time? A I believe they came down for the purpose of looking over the shop. Our understanding is that they had gotten all their information other than seeing the shop in working
30 order from Mr. Balinski and Mr. Conrad previous to that date. I showed them through the shop and explained to them in detail exactly what they were doing. We had a meeting in the office where all were present, and at that time everything was gone into as far as I know. Questions were asked and answers returned by everyone who was there. They got all the information apparently that they wanted. I gave them all they asked for, and I gave other information I thought they should have. In
40 other words, I think they went into the thing in detail.

Charles S. Cannon, direct.

Q Did you at that time, Mr. Cannon, state to Mr. Parnes and his son in effect that the Gnome Manufacturing Company was the owner of three patents, one on a doll's head, one on a typewriter, and one on a toy aeroplane? A No, I did not.

Q Was anything said about patents at that time? A Well, I explained to them that Mr. Dane and I had made application and had been assured by our patent attorneys that the patent in all probability would be granted for the doll head; that we were about to make application for the patents on the aeroplanes, and we were working or developing a toy typewriter. Nothing had been done on that in the way of making application for patents. 10

Q Was there any statement made that the patentee or patentees of these various patents referred to by Mr. Parnes in his testimony were in the employ of the company? A No, there was not; not in that way. It was explained to them. They may have become confused in the names on account of having two Steensons there. 20

The Court. Don't speculate. Strike that out. What was said?

The Witness. I explained to them in detail that Mr. James Steenson was the designer of the toy aeroplanes, with my assistance, and we were working on the development of that at that time, and he was working at a very small royalty in order to help us along. 30

Q Did you state what the royalty was? A Yes, sir.

Q What was the royalty? A At that time it was ten cents on each model aeroplane. We were both making one model.

Q Did you say anything about having Mr. Steenson on your payroll? A No.

The Court. Was he as a matter of fact working for the company; was he on the payroll? 40

Charles S. Cannon, direct.

The Witness. No, sir. He was working for royalty only.

Q Did you say in effect that the company had more than twelve thousand dollars in orders and were getting more from the toy show which was then going on? A I did not. The toy show was a month off then.

10 Q Did you state anything with reference to the amount of orders the company had on hand unfilled? A If I did I said I had absolutely none.

The Court. Answer the question.

Q What did you say? Did you say anything about the number of orders you had on hand? A I believe I did.

The Court. What did you say?

The Witness. We had no orders on hand.

20 Q What did you say in effect that the company needed more working capital? A Yes, and we did need more working capital.

The Court. Did you say so?

The Witness. Yes, sir.

Q What did you say? A We needed working capital at that time to get out the new models we were perfecting, and also to pay the debts that we owed.

30 Q Did you state at that time in effect that the Balinski brothers were stockholders and directors, and that Albert F. Bender was a stockholder and director? A No, I did not.

Q What did you state with reference to this? A I said both the Balinskis were stockholders; one was a director.

Q Was my name mentioned at all? A I would say that is was.

Q In what connection? A That you were an attorney.

40 Q Did you say in effect that the company was in a position to issue and sell preferred stock at one hundred

Charles S. Cannon, direct.

dollars per share and give away common stock, one share for each of preferred, as bonus stock, this stock being full paid and non-assessable? A I did not.

Q What was said if anything about the giving away of bonus stock? A Simply that it was bonus stock, one share of common stock with each three shares of preferred stock.

10

Q Were there any questions asked by Mr. Parnes or his son with reference to the value of this common stock?

A I don't believe so.

Q When all of these statements you testified to were made, were the Balinskis and Conrad present so they could hear them? A They were.

Q Did they join in the conversation at any time? A They did.

Q When next did you meet Mr. Parnes and his son or either of them?

20

The Court. Had they agreed before you parted that day to take some stock?

The Witness. Yes, they had.

The Court. What amount?

The Witness. Six thousand dollars.

The Court. What were the attractive features connected with the proposition that you held out to them to invest six thousand dollars.

The Witness. We offered a share of common stock to each three of preferred stock, but we were not holding it out; he wanted to get his son in the business. He came to see we didn't stick him.

30

The Court. How did you know he wanted to get his son in there?

The Witness. That was the understanding.

Q What was said about his son going into the business? A He told us at the time that his son was working or had been working in Hahne's in Newark in the

40

Charles S. Cannon, direct.

haberdashery department; he had gotten him out of there or wanted to get him out of there and wanted to get him into some reliable business, and after looking over the business there he considered that was the place, and with the understanding that we would take him in and give him thirty dollars a week salary he would invest that much
10 money for the stock.

Q Did he say he would take an active part in the business? A Yes. He said he would like to come down there and help us out, and he could go out on the road if we had to put articles on the market at different times. He offered his real estate experience, his building experience, to help us out in the development of our aeroplanes. He offered to loan us his car any time we wanted it, and to be of help to us.

The Court. Had you known him for some time?

20 *The Witness.* No; I never met him before.

Q Did he say anything to you about a patented aeroplane he had? A Yes, he did. I just recall he said he had put it on the market at one time.

Q Did he say he might be able to make use of it in connection with the business? A Yes, he might be able to use it.

30 Q Mr. Cannon, that same afternoon, did Mr. Parnes make any inquiry as to who the stockholders of this concern were? A Yes, he did.

Q What did he say? A He probably asked who they were.

The Court. Don't state who they probably were.

The Witness. He asked who the stockholders were. I gave him a pencil memorandum of all the stockholders and the amount of stock each one had.

40 Q I show you a paper and ask you to tell me what it is. A That covers the stock issued.

Charles S. Cannon, direct.

The Court. What is it?

The Witness. It is a pencil memorandum in my own writing.

Q When was it made? A I couldn't say.

Q That is not the pencil memorandum you gave Mr. Parnes? A I don't think so. 10

Q Did you give him any memorandum on that day? A I did, yes.

Q What did that memorandum contain? A The names of all the stockholders and the amount of stock each one subscribed for and had.

Q Did you give Mr. Parnes anything else besides that memorandum? A Yes; financial statement.

Mr. Kanter. I object to the question.

Q I show you a paper, Mr. Cannon, and ask you what it is. A That is financial statement of December 29, 1919. 20

The Court. Of your company?

The Witness. Of the Gnome Manufacturing Company.

Q Did you give a true copy of this statement to Mr. Parnes on the day in question? A I did.

Mr. Bender. I offer that in evidence. 30

The Court. It isn't time for you to offer it. I don't see how you can make it competent to admit it. It may be offered for identification.

Mr. Bender. I asked him if he had the original, but he hasn't got it; but we furnished him with a copy of the pleadings.

Mr. Kanter. That doesn't admit that the decedent ever got it.

The Court. No, you don't admit it, but this witness has testified he gave him an original. 40

Charles S. Cannon, direct.

Mr. Kanter. I admit we cannot produce the original copy.

(Marked Exhibit D. 3.)

Q Mr. Cannon, when next did you see Mr. Parnes or his son or both of them? A At your office possibly a week or two later after this meeting.

10 Q Was anything said there by Mr. Parnes with reference to the stock? A In what way?

Q Did he ask any questions about it? A Yes, he did.

Q What did he ask? A I don't recall.

Q The stock was issued and the receipt was executed by you at that time? A Yes.

Q The receipt I refer to was marked C. 8. Is that the receipt that was given to you at that time (handing witness paper)? A Yes, that is the receipt.

Q Did you take Mr. Parnes' son in your employ? A I did.

Q And how long did he remain in your employ? A I would say about three months.

Q During that period of time did he ever mention to you that facts had been misrepresented to his father on the sale of his stock? A No, he never did.

Q When was the first you heard from young Parnes, if ever, that misrepresentations had been made to induce his father to buy the stock? A I never heard that at any time.

30 Q I show you a letter bearing date July 12, 1920. Do you know who wrote that letter? A Yes; Julius Parnes.

Q Did you receive that letter? A Yes.

Mr. Bender. I offer it.

Mr. Kanter. Subject to a motion to strike out being material.

(Marked Exhibit D. 2 for identification.)

(Letter read.)

40 *Mr. Kanter.* I move to strike that out as being immaterial.

Charles S. Cannon, direct.

The Court. Motion will be denied. I think it is quite material, if a man defrauded his father out of twenty-five hundred dollars and he knew it. It is quite significant.

Mr. Kanter. It was not written by the executrix.

The Court. It was written by the young man who makes up the case. 10

Mr. Kanter. He has no proprietary interest.

The Court. It is a question that goes to affect his veracity and credibility.

(Marked Exhibit D. 2.)

Q At the time Mr. Parnes became a stockholder did your company own any patents? A It did not.

Q What did you own in the line of patents? A We had made application at that time for one patent on the doll head. 20

Q Who made that application for you? A The attorney?

Q Yes. A Campfield & Campfield here in Newark, or Dyke & Campfield I believe it was.

Q Was that patent granted? A It was.

Q In whose name? A J. B. Dane and my own name.

Q I show you copy of letters patent 1329509, dated February 3rd, 1920, and ask you if that is the one? A That is the one. 30

Q Is that the doll's head patent you referred to? A That is the doll's head patent I referred to.

(Marked Exhibit D. 4.)

Q Was there any other patent application made by you or anybody for you? A Yes.

Q What application was that? A For the toy aeroplanes.

Q Who was the attorney there? A The same one.

Q And has that been granted? A It has. 40

Charles S. Cannon, direct.

Q Have you a copy of the letters patent here? A No, I haven't.

The Court. Granted to whom?

The Witness. J. H. Steenson and myself.

10 *The Court.* Have you two assigned that patent to the company?

The Witness. No, we have not.

Mr. Bender. I want to state that pending the outcome of the suit I advised these men not to make any move to assign these papers to the company, not wishing to affect the status of the case.

The Court. The advice is a little late on the doll's head patent. The patent was granted on the third of July.

20 *Mr. Bender.* I mean to say when these patents came through. We were the owners of it when the suit was started.

The Court. You were not. These gentlemen and Mr. Dane were the owners of it and still are.

Mr. Bender. At the time the stock was issued to them.

The Court. I am asking now whether they have actually put it in the company and made it an asset of the company.

30 *The Witness.* It was in the original agreement.

The Court. The witness states that there was an agreement between the corporation and them. For its original issue of stock they were to turn over their patents; but they haven't turned over the patents.

Mr. Bender. But that is on my advice.

The Court. You had no occasion to advise them until after the suit was started, had you?

40 *Mr. Bender.* Yes, because we were doing some talking and negotiating for a few days.

Charles S. Cannon, cross.

The Court. August 27th was the date of filing the bill.

Mr. Bender. For several months there were negotiations back and forth.

Q Mr. Cannon, the patent on the toy aeroplane, has that been issued yet? A Yes. 10

Q Have you got the copy of the letters patent? A I have not.

Q Why not? A The reason I believe is we haven't made the last payment on it, the last payment of twenty dollars that is now due in order to put it through.

Q Mr. Cannon, were any of your patent applications made in the name of the Gnome Manufacturing Company? A No, they were not. We were advised they could not be.

Q Isn't it a fact that one was made and then was turned back by the Patent Department saying a corporation could not make application for a patent? A Yes. 20

Q Which device did that relate to? A That was the doll.

Q Now, Mr. Cannon, when the corporation was organized seventy-six shares of common stock were issued to you and seventy-six to Mr. Dane. Can you tell us what the consideration of that issuance of stock was?

Mr. Kanter. I object to it as the best evidence is the records. 30

The Court. Do the records disclose it?

Mr. Bender. Yes; the minutes disclose that. I withdraw the question.

The Court. Unless the minutes are here.

Mr. Bender. They are here.

Cross examination by Mr. Kanter.

Q You and Mr. Dane are not quite agreed upon the question as to whether the patent which you and he hold is the property of the company? A I understand it. 40

Charles S. Cannon, cross.

Q Are you agreed? A Yes.

Q Why didn't you turn it over between February 3rd and 17th? A It has been my understanding until just recently that the first agreement that was made practically turned over our patent rights. After they came in I didn't think it was necessary to do anything further.

10 Q You were advised by your attorneys not to turn over the patent to the company? A Just recently.

Q Why didn't you do it then? A Because I didn't think it was necessary.

Q What agreement did you refer to? A Our original agreement.

Q Where is that? A In the stock records.

The Court. It has been offered, hasn't it?

Mr. Bender. Yes.

20 Q How about the one between you and Steenson, the one you and Steenson hold? A What do you mean?

Q Is that the property of the company?

The Court. The patent, you mean?

Mr. Kanter. Yes, sir.

A Yes, that is the property of the company.

Q Why haven't you turned that over to the company?

30 A We have been advised not to. That matter came up later since the case was started.

The Court. That was issued in September?

Mr. Bender. Yes.

Q Are you and Mr. Steenson agreed that it is the property of the company? A Yes, sir, absolutely.

Q You spoke of a third patent? A No. We were working on a design.

The Court. For a toy typewriter?

The Witness. Typewriter, yes, sir.

Charles S. Cannon, cross.

Q The patent you and Steenson hold is on the aeroplane? A On the aeroplane.

Q And the shares of stock which you received were for the assignment of that patent, weren't they? A As I understood it, it was for anything we might entail from that time on or the time we were connected with the company.

10

Q Anything you and Steenson did? A Anything that I did belonged to the company. That was the original agreement.

Q How did you get in Steenson on this arrangement? A Steenson helped to design the aeroplane with me, and it was his understanding with me for the royalties he was to receive the patent was to be turned over to the company as soon as the patents were issued.

Q For the royalties? A For the royalty on his part.

Q You have explained here before the Court as to everything that was gone into on your last visit to Mr. Parnes prior to the visit to Mr. Bender? A Their visit to me.

20

Q On how many occasions did you and Mr. Parnes come together prior to the time you went to Mr. Bender's office? A Only once.

Q And you say that was about a week or two weeks prior to the date you and Mr. Parnes went out to Mr. Bender's office? A Yes.

Q What is the name of the stenographer you employed at that time? A Miss McCarr.

30

Q Do you know where she lives? A I don't know her address.

Q Does she live in Elizabeth? A Yes.

Q You say this was on a Saturday afternoon? A Yes.

Q And all these men you referred to were present? A Yes.

Q Was it before or after Mrs. Brown became a stockholder of the company? A I don't understand the question.

40

Charles S. Cannon, cross.

The Court. Was it before?

The Witness. It was before.

Q Do you know how much before, sir? A No, I do not.

Q Did you state in Mr. Parnes' statement the fact that Mrs. Brown was a stockholder in the company? A No. She was not a stockholder at that time.

Q Were you indebted to Mrs. Brown at that time in any amount? A Two thousand dollars.

The Court. Personally or the company.

The Witness. The company.

The Court. That appears on the December statement.

Q That statement has not changed any between December and February when you saw Mr. Parnes? A That statement practically has not been changed any. We may have received a few dollars in after that date, but it is practically the same thing.

Q You saw Mr. Parnes only on one occasion? A Previous to meeting him at Bender's office.

Q On that occasion you went into the question of the patent? A Yes.

Q What patent did you speak about on that occasion? A The doll.

Q Did you speak about the aeroplane? A Yes. We told him what we were doing about that.

Q Did you go into details about the Steenson relation with the company? A Yes.

Q Did you go into details about the royalties Steenson was to receive? A Yes.

Q Did you tell him you had no orders on hand? A We did.

Q Did you tell him the company needed more working capital for debts and to manufacture the new model? A Yes.

Charles S. Cannon, cross.

Q Did you tell him that both Balinski brothers were stockholders of the company? A Yes, sir.

Q And you told him about Bender being the attorney?
A Yes.

The Court. Did you give him all this information or did anybody else take part in the conversation? 10

The Witness. I gave him most of the information, although everybody was taking part in the conversation.

Q Mr. Cannon, you have signed here answers to interrogatories in the presence of your attorney or someone in his office. "Charles F. Cannon," that is your signature?
A Yes.

Q And you remember going over the questions that were submitted to your attorney and the answers made thereto? A I do. 20

Q And you read this before signing it, didn't you? A I did.

Q I show you another set of answers of November 20. That is your signature there, is it not? A Yes.

Q Together with Mr. Stanislaw Balinski and Edward Conrad? A Yes.

Q Why in this statement, Mr. Cannon, don't you say anything about having given all this information I now claim you did give as having been given to Mr. Parnes on the occasion of his visit to your place of business? A I don't know but what I did. 30

The Court. Do the interrogatories call for such an answer?

Mr. Kanter. Yes, sir.

Q In the course of the preliminary negotiations referred to in interrogatory No. 6—

The Court. What are you doing now? 40

Charles S. Cannon, cross.

Mr. Kanter. I want to show your Honor that refers to it.

Q Do you remember giving an answer to this question referring to alleged fraudulent statements made by you in behalf of your company to Mr. Parnes? You were asked this question: "In the course of the preliminary negotiations referred to in interrogatory 6"—referring to the previous question—"what statements were made to the late Samuel Parnes by the representative of the defendant?" Do you remember that question? A In that paper?

Q Yes. A No, I don't remember that now.

Q When you answered in the way you did you were not fully aware of the question? A I was at the time, absolutely.

Q You notice your answer is Mr. Parnes interviewed with you on or about February 14, 1920? A That might be all right; probably is.

Q And you say you gave Mr. Parnes a pencil memorandum? A I did.

Q Showing the number of shares held by various people? A I did.

Q You gave him a financial statement? A I did.

Q And you don't remember saying anything else but giving this pencil memorandum and financial statement. Why didn't you include the other statements that you made to Mr. Parnes that day? A I think the question is exact there, as near as I remember now. I don't know what is in that paper; I haven't seen it in months.

Q Is that your best answer to the question asked in this interrogatory? A Yes.

(At this point an adjournment was taken to Wednesday, March 30, 1921, at ten o'clock in the forenoon.)

Charles S. Cannon, cross.

Transcript of testimony taken before Hon. John E. Foster, Vice-Chancellor, at the Chancery Chambers, Newark, New Jersey, on Wednesday, March 30, 1921, at 10 A. M.

Appearances:

Counsel as before stated.

10

CHARLES SAMUEL CANNON, recalled for

Further cross examination by Mr. Kantor.

Q At the last hearing you gave us what you claimed was the entire conversation between yourself and Mr. Samuel Parnes, on the occasion of the visit to your plant prior to the time that he actually got the stock of the Gnome Manufacturing Company, is that correct? A The entire conversation.

Q (*By the Court.*) Did you give the entire conversation at the last hearing? A I don't recall now whether I did or not.

20

Q Was there but one meeting between yourself and Mr. Parnes, before the meeting in the office of Mr. Bender, when the stock was actually taken by Mr. Parnes? A Yes.

Q You said, I think, that that meeting occurred at the plant of the Gnome Manufacturing Company? A Yes.

Q And it occurred on the Saturday prior to the meeting in Mr. Bender's office, or the Saturday prior to that Saturday? A Yes.

30

Q Do you remember at that time having told him anything else, but what you told at the last examination? A I recall answering all the questions that were asked me at the last examination.

Q (*By the Court.*) Do you recall anything else? A No.

Q You gave the entire conversation as nearly as you can recall it? A As far as I remember; yes, sir.

40

Charles S. Cannon, cross.

Q You remember, do you not, having called Mr. Parnes' attention to the fact, that for the period ending December 31, 1919, the cost of manufacturing your goods up to that time had been \$9,253.29, and that the gross sales up to that time had been but \$6,944? A Mr. Parnes got a copy of that statement.

10 Q A copy of what statement? A The last financial statement which we had previous to the meeting.

Q Which was that same one which was in evidence at that time. That does not show what the cost of manufacture was and what the gross sales were, does it? A No.

Q Then you didn't tell him what the gross sales were, or the cost of manufacturing had been up to that time? A That gives the gross sales.

20 Q Does it give the cost of manufacturing? A It does not give the cost of manufacturing.

Q Did you tell him at that time what the cost was? A Yes, I believe we did.

Q What was it? A That we were at that time manufacturing—

Q What were the figures that you gave Mr. Parnes? A I cannot tell you.

Q Do you remember what you said to him about that? A Only in a general way.

30 Q What did you say to him then in a general way? A The cost of manufacturing up to that time had been greater than what we actually got for each machine.

Q How much greater? A A very small amount.

Q What percentage would you say? A About 25 cents, possibly, per machine.

Q A machine sells for \$1.00, and they cost \$1.25 to manufacture? A Machines we sold at that time were \$26.00 a dozen.

40 Q That is about an average of \$2.10 each, and they cost you about \$3.00 per dozen more than you were getting for them? A I would say so.

Charles S. Cannon, cross.

Q You say you told him that? A Yes, he understood that thoroughly. We were getting a production, that was understood.

Q That was the only thing you told him about the cost of manufacturing? A No, we went over the thing in detail.

Q At the last time in reference to your sales account, I think you told what the entire conversation was between you and Mr. Parnes, and you said nothing in reference to the manufacture. Is it because I refresh your recollection that you are now able to tell us about it? A Mr. Parnes—

Q (*By the Court.*) In effect, why didn't you state this when you were answering Mr. Bender's question, and whether it is due now, to the fact that he is directing your attention to it specifically that you are able to recall this?

A I believe that I answered the questions that were asked me at that time.

Q I show you the copy of the Exhibit H. annexed to the bill of complaint, which has been admitted by the answers to interrogatories as being correct. You remember that statement as having been gotten up on December 31, 1919? A I don't recognize this statement, but I believe that is a copy.

The Court. What page is that?

Mr. Kanter. Exhibit H. of the complaint.

Q Will you look over that, please? A I believe it is correct.

Q You knew the contents of that statement on February 14? A Yes, I did.

Q You didn't give a copy of that statement to Mr. Parnes, did you? A I cannot tell without seeing the original statement so as to compare them. I believe that is a copy of the same one.

Q You believe that is a copy of the statement you gave to Mr. Parnes? A Yes.

Charles S. Cannon, cross.

Q I show you a statement given in your answer No. 22, in answer to interrogatory No. 7, in which you say, and in which you give a copy of the statement, which you allege was given to Mr. Parnes. This is prepared by your attorney and you say, the statement in your answer is the same as the statement, Exhibit H. Is that correct? A
10 One is a monthly statement, and the other is a statement from the beginning of business up to that time.

Q I have, perhaps, confused you. You said, Exhibit H is a copy of a statement which you gave to Mr. Parnes, on the occasion of his visit to the Gnome Manufacturing Company? A That is not a copy of it.

Q You said so a moment ago. A It is not a copy. There is the copy.

Q Then you didn't give Exhibit H. a copy of the statement which is Exhibit H. annexed to the complaint, to Mr. Parnes? A No.
20

Q Although you knew of the condition of business as shown by the statement, marked Exhibit H. annexed to the complaint? A Knew at the time; yes, sir.

Q Why didn't you give such a statement? A He didn't give a copy of the actual statement. We went over that in detail.

Q What did you tell Mr. Parnes were the gross sales up to that time? A We had the books there at that time.

Q What did you tell him about it? A Exactly what
30 is on the statement.

Q What is it? A I cannot give you that. I got it from the books at the time.

Q Did you tell him that Mr. Pulaski had a mortgage on the plant? A Mr. Pulaski had no mortgage on the plant; no, he did not.

Q Wasn't a mortgage placed on the plant by Mr. Pulaski? A No, there was not.

Q Your counsel has stated in opening to the Court that it was only upon this suit having been brought that
40 you discovered that the shares of stock issued to Mr.

Charles S. Cannon, cross.

Parnes were marked fully paid and non-assessable. Have you, since this suit has been brought, taken any action for renewal of these shares of stock which were issued as bonus stock, and which were not to be paid for? A No, we have not.

Q Are the statements in the minutes of the corporation, showing that the common stock was issued as a bonus stock, false statements? A No, they are not. 10

Q The stock that was issued as fully paid and non-assessable was intended to be bonus stock? A I don't quite understand what you mean by that.

Q It wasn't intended by you that the men who were to get this bonus stock were to pay for it? A It was understood that they—

Q Was it intended by the corporation that the men who were to receive this bonus stock were to be obliged to pay for it? A If it were necessary. 20

Q What did the word "bonus" signify? A I would say "to give something for nothing."

Q And they were not to pay for it, then? A They were to pay for it if an assessment was issued against it.

Q Was that question ever discussed in previous meetings? A No, I don't think it was, but it was understood previous to that.

Q By whom? A By all of the directors.

Q It had never been discussed, had it? A Only at the time we originally got the stock, I would say, at our initial meetings, probably. 30

Q What was the discussion? A We knew at the time that the bonus stock was issued, with the exception of Dane's stock and my stock, that the other stock would be assessed. At least, that was my understanding.

Q Who told you so? A Mr. Bender.

Q And yet that was true on June 4, 1919? A Yes.

Q Do you remember, now, what you said at the last examination in reference to whether this bonus stock 40

Charles S. Cannon, cross.

was to be paid for or not? A I don't recall the question coming up at all.

Q Do you recall whether you told anything about the fact that this bonus stock was to be paid for, to Mr. Parnes?

A No, I do not. You mean at the last session here?

Q Yes. Did you say anything as a matter of fact to
10 Mr. Parnes about that? A No, I don't think so.

Q Did you tell him that the stock had been issued without consideration? A Yes, with the exception of Dane's stock and my own stock.

Q You told him that, did you? A Yes.

Q Did you so testify at the last examination, to your recollection now? A I don't think the question came up at the last examination.

Q Did you explain, for instance, to Mr. Carl Shumock that the four shares of stock issued to him were to be paid
20 for if the corporation desired them paid for? A I had no conversation with him whatever.

Q What about Alexander Stetnske? A The same thing applies to him.

Q To Mr. Edward V. Conrad? A Yes, Mr. Conrad, I did.

Q Mr. Conrad said that he was to pay for the common stock? A Yes, if it was necessary.

Q If the question came up on June 4, 1919, you had a
30 copy of the stock certificate, why did you permit the stock certificate to be issued in the form that it was? A I didn't understand anything about that myself personally, and didn't notice it was on there, probably.

Q You had had the stock for a good number of months? A Yes.

Q You have had it for a good number of months since then? A Yes.

Q Have you requested Mr. Stetnske to join with you in the conveyance of the patents to the corporation? A
40 Yes, I have.

Charles S. Cannon, re-direct.

Q Has he said he would? A He has done so.

Q He has conveyed it? A Yes, he has.

Q Since the last examination? A Yes.

Q And of all the patents? A There is only one involved, that is, the aeroplane, that he and I are interested in, to the company, jointly.

Q I thought there was more than one patent? A No. 10

Q Have you requested Mr. Dane to join with you in the conveyance of the patent? A No, I don't know where he is.

Q You know where he lives? A No, I do not. I have heard recently that he moved to Long Island City; he lived in Elizabeth previous to that.

Q Have you tried to get him? A I haven't been able to; he is out my jurisdiction.

Q When did the corporation cease doing business? A They are still doing some business. 20

Q What? A Selling aeroplanes and parts.

Q When did they stop manufacturing? A In January this year, I believe.

Q Has it been manufacturing since last June or July, 1920? A Yes, right up to the end of December, 1920, or January, 1921. I think it ran to January.

Q Why has it stopped since then? A We decided it would be better to shut the plant down and wait until conditions got better or adjusted themselves. 30

The Court. It is not profitable?

The Witness. There is no business at all. That applies to all toy business in general.

Re-direct examination by Mr. Bender.

Q How are the aeroplanes which were made up and sold at the time just previous to Mr. Parnes entering the corporation and since then been marked? A They are all marked "Patent applied for".

Charles S. Cannon, re-direct.

Q Were any of those aeroplanes exhibited to Mr. Parnes at the time of the meeting at your office when these alleged representations were made ? A At the office, yes

Mr. Kanter. What office?

The Witness. At the plant.

10

The Court. At the time he and his son were there, at that conference they had on Saturday?

The Witness. Yes.

Q I show you a paper purporting to be an assignment of Letters Patent 332488 and ask you if your signature is appended? A Yes, that is mine.

Q And I ask you who else's signature appears there? A James H. Stetnske.

Q You are familiar with his handwriting? A Yes.

Q Is that his signature? A Yes.

20

Q I show you another paper purporting to be assignment of Letters Patent for a doll's head, and ask you if the signature appended is yours? A Yes.

Mr. Bender. I offer both in evidence.

Mr. Kanter. I object to the second paper, on the ground that it is not an executed paper.

The Court. It hasn't the number of the patent.

Mr. Bender. It hasn't Mr. Dane's signature; it has Mr. Cannon's, which is all we can get.

30

The Court. I will receive it for what it is worth.

(Marked Exhibits A. and B.)

Mr. Kanter. Exhibit A. is dated March 26, 1920?

The Witness. Yes.

Mr. Kanter. And the other paper, signed at the time, except the blank day of March, 1921, Exhibit B.?

The Witness. Yes.

40

Q Was it executed since the last hearing? A Yes.

Charles S. Cannon, re-cross.

Mr. Kanter. Don't you know that Dane lives at 1045 Bayway, Elizabeth?

Witness. No; he may be there today; he lives in Short Hills, and I couldn't get down that way.

Mr. Bender. I have an omitted question.

Q At the time when Mr. Parnes was at my office, when the stock was delivered to him, was there anything said at that time as to the amount of money that was required by the corporation for its immediate needs? 10

Mr. Kanter. I object.

A Yes, there was.

Q What was said? A Mr. Parnes asked the question of how much he would be obliged to pay at that time; how much we wanted, in other words. I said the full \$6,000; he said he wasn't prepared to pay it, but he would be very glad to pay at that time the amount that we needed for our immediate use, for our bills, &c., which was \$2,500. 20

Q Was that the amount that was paid? A That was the amount that was paid.

The Court. Was his son or anyone present when this conversation was had?

The Witness. All the directors and his son, we were all present. 30

Re-cross examination by Mr. Kantor.

Q Was there any conversation between yourself and Mr. Parnes prior to the last conversation spoken of? A Yes. Mr. Parnes called at the plant only on one occasion when I was present, previous to the time he bought the stock.

Q You have given us the entire conversation that happened in Mr. Bender's office? A Not the entire conversation. 40

Stanislaw Balinski, direct.

Q What was the entire conversation? A It would take an hour to do that. We were there a good part of the afternoon.

The Court. He has given the conversation. Do you wish to ask anything further?

10 STANISLAW BALINSKI, sworn for defendant,

Direct examination by Mr. Bender.

Q You reside in Elizabeth? A Yes.

Q You have resided there for how long? A Twenty-seven years.

Q You are a stockholder and director of the Gnome Manufacturing Company? A Yes.

Q You were one of the original stockholders? A Yes.

Q One of the first? A Yes.

20 Q How much cash money have you invested in that business? A \$2,000.

Q What did you get for the \$2,000? A 20 preferred stock and 25 common stock.

Q Do you still own that stock? A Yes.

Q Did you know Samuel Parnes in his lifetime? A Yes.

Q For how many years? A I know Mr. Parnes over twenty-five years.

30 Q Do you recall ever speaking to Mr. Parnes about the Gnome Manufacturing Company, in his lifetime? A We was speaking a couple of times, but the first time Mr. Parnes come to my home.

Q When was that, with relation to his death; how soon before his death was that? A That was a couple of months before he was dead.

40 Q He came to your house? A Yes, with his son, and he said, "Do you belong to the Gnome Manufacturing Company?" I said, "Yes." He said, "What do you do there?" We say "a small aeroplane" and he had it in his hand; he looked it up, and his son, and he said, "That

Stanislaw Balinski, direct.

is a nice thing, and I like to come in, too, if you belong there. Who belongs more?" I said, "I, my brother, Conrad, Shumock"; and he said, "How much you put money in?" I said, "\$2,000; Mr. Conrad \$2,000, and my brother \$6,000, and Mr. Shumock he put in over \$1,000", and I said, "One more man, but I don't know how much he put in." I said, "They give us the stock; three preferred stock they give, one common share." He said, "Oh, I don't care much for the common stock; who is the biggest; who got the most money invested?" I said, "My brother"; he said, "How much?" I said, "\$6,000". "Well," he said, "I like to be even with your brother, and if you and your brother belong to it, then I like to come in," and he asked me—he said, "When we have a meeting;" I said, "Mr. Parnes, you can go to Bayway any time and see Mr. Cannon, and he can explain everything," and he said, "I was there with my son, and I went to look it up, but they didn't let me in." I said, "I don't know; maybe they didn't know you." He said, "Well, I know they didn't know me, and I went to look in, but they didn't let me come in." I said, "Any time, if you tell me, we can ring up Mr. Cannon and you can go through the shop."

Q Was there anybody present when this conversation took place at your house? A Yes, my wife.

Q Did you again meet Mr. Parnes before he became a stockholder in the company? A Yes, I met him often.

Q How often between that time and the time that he bought the stock did you meet him and talk about the Gnome Manufacturing Company to him? A Before he took the stock we spoke together about three or four times.

Q About the company? A Yes, about the company. He was asking us all the time; if we meet him, then he ask, "How is that; how is that?"

Q Did he ever say anything in the course of those conversations with reference to his son? A Yes, he said

Stanislaw Balinski, direct.

—he was in my house, and he said he like to put in the business his son, because he was selling shirts, and he is a very smart boy; he works in Newark, and he sells more than anybody else, and he said he like to put him in some different business, because his son, he didn't like that business; he said that is no future for him.

10 Q Did he ever say anything to you in the course of any of those conversations with reference to manufacturing other goods besides toy aeroplanes and dolls' heads?

A He said, "You make only the aeroplanes?" I said, "So far we make that and they want to start to make some doll heads, but that is not enough money to start with." He said, "You know we don't care so much for the aeroplanes, if I be with the good people; I have many ideas in my head from Europe, because I was in such a business in Europe, and we can make different things, and we let that go. If that be necessary, that place be too
20 small, then we put up another building, then I put up a new building for myself and the company got to pay me the rent."

Q Were you present at the office of the Gnome Manufacturing Company when Mr. Parnes and his son came there and met Mr. Cannon? A Yes.

Q Who else was around? A Mr. Conrad, I, and my brother, and Mr. Cannon and Mr. Parnes and his son.

Q During the time that they were there, were they
30 always together? A Yes, sir.

Q Where did this little meeting take place, in what part of the building? A That was in the office.

Q How big is the office? A Very small—about like from here to the window.

The Court. About ten feet wide?

The Witness. About twelve feet square.

Q And you all sat around? A Yes.

Q And talked this thing over? A Yes.

Q How long did that meeting last? A That doesn't
40 last long; about an hour and a half, not longer.

Stanislaw Balinski, direct.

Q During the meeting what was talked over? A Mr. Parnes asked Mr. Cannon how is that, everything, and Mr. Cannon give that pencil memorandum on a piece of paper that was marked, how much work is on hand, how much is done, how much orders, and then he give him the memorandum; how much stock, preferred stock; how much is that common stock everybody have in that—Mr. Parnes with his son he was looked up that memorandum, and after he took that in his pocket. 10

Q The son took it in his pocket? A Yes.

Q Have you seen this financial statement of December 29, Exhibit D. 3—have you seen that or a copy of it? A I saw that, as I have one, too.

The Court. Was it in the office on that day?

The Witness. No, that was only a memorandum Mr. Cannon give to Mr. Parnes.

Examination by the Court. 20

Q Were the books there? A Yes.

Q Were they shown? A Yes, we show all the books that day to Parnes.

Q Relating to the business? A They were lying on the table, and old Parnes, he didn't look at much in the book, but young Parnes looked it up.

Q Mr. Cannon stated on direct testimony that he gave a copy of this statement to Mr. Parnes at that time? A No, it was with pencil, a small piece of paper, a memorandum with pencil. 30

Q Was there more than one paper given to him that you recall? A I didn't see him at that time give him any paper.

Q You only saw one paper given? A Yes.

Q Did you hear everything Mr. Cannon said? A Yes.

Q Were you familiar with the affairs of the company at the time; did you know how the company was situated? A Yes. 40

Stanislaw Balinski, direct.

Q Did you know it didn't have money enough to pay its bills? A Yes.

Q Did Mr. Cannon tell that to Mr. Parnes? A Yes.

Q Did he conceal anything from Mr. Parnes as to the true condition of the company at that time; did he hide or conceal anything from Mr. Parnes? A I don't understand.

10 Q Did he tell him everything about the business? A Yes.

Q Did he show him all the books that were there? A Yes; he said, "We got a couple of new models we want to put on the market, but we cannot do that, because we are short of money."

Q Did he tell him anything about the company that wasn't true? A No.

Q Did he tell him how much the company was in debt? A He gave right from the book that there is so much bills outstanding, and everything he gave him, and how much money was in the bank.

Q Did he tell him whether he had money enough to meet the pay roll? A He said about the pay roll; he didn't say that he couldn't meet the pay roll, only he said that we have only so much money in the bank, and so much we got to pay the bills, and we cannot go ahead with the other models, because we are short that money, and we want to sell more shares so as to go ahead with the other patents.

30 Q (*By Mr. Bender.*) All the books of the company were there? A Yes, and Mr. Parnes and his son were offered the opportunity to inspect them.

The Court. Were they given the opportunity to inspect the books?

The Witness. Yes.

Examination by the Court.

40 Q And young Parnes did inspect the books? A Yes, he looked at the books—not in all, but he looked at the cash book and some other books.

Stamislaw Balinski, direct.

Q Did you advise Mr. Parnes as a friend of yours to invest in this stock at that time? A Mr. Parnes didn't look at it.

Q You didn't understand my question. Mr. Parnes was a friend of yours of long standing? A Yes, I know him for many years.

Q Did you advise him to buy this stock? A I didn't advise him, he come himself. 10

Q When he was at the meeting, did you tell him it was a good thing to buy? A No, he said, "I was thinking only I buy for \$5,000 stock, but your brother has \$6,000; I like to be even with him, but if you people are in it, I like to come in."

Q Did you have anything to do with the manufacturing end of the business; were you working there? A No.

Q You have your independent work somewhere else? A Yes. 20

Q What is your business? A I am in the Gnome Machine and Tool Company.

Q And no connection with this concern? A No.

Q What day of the week was the meeting held? A I don't remember what day it was.

Q Daytime or night? A Afternoon, about four o'clock.

Q Was anything said by anybody at the meeting to induce Mr. Parnes to buy the stock? A No.

Q By you or anybody else? A No, I didn't hear nothing. 30

Mr. Bender. After Mr. Parnes paid the \$2,500 at my office on this stock, did you see him again before he died?

Q Were you in Mr. Bender's office when Mr. Parnes paid \$2,500 for the stock? A Yes.

Q How did you come to be there that day? A Mr. Cannon called up that Mr. Parnes is coming down to pay the money, that he had the stock that has got to be signed 40

Stanislaw Balinski, direct.

something, and he got to be present, and I was there, my brother and Mr. Conrad.

Q Did you have to sign anything? A No, I didn't sign anything.

Q Did you have a directors' meeting in Mr. Bender's office that day? A Yes.

10 Q You did have? A That they signed, Mr. Conrad, Mr. Cannon and Mr. Bender.

Q Why was it necessary for you and your brother to be there? A They called me up, because we were stockholders, we had most of the money there.

Q What were you needed there for? A I don't know what for.

Q You knew before that day, didn't you, that Mr. Parnes was going to buy the stock? A Yes.

20 Q He said that at the meeting you had had at the factory? A Yes.

Q It was agreed that he should pay \$2,500 for the stock? A He said before he pay \$2,000 for the stock, and Mr. Cannon told him in Mr. Bender's office it be not enough; he said, "I got \$2,500 and the last I pay every month—three payments."

Further direct examination by Mr. Bender.

30 Q Was any paper signed at my office that day by you and your brother, Mr. Cannon and Mr. Parnes? A Yes.

Q Did you go to the office to sign that paper? A Yes.

Q Did you sign a paper at my office that day? A Yes; I signed it.

The Court. What was the paper you signed?

Witness. I didn't read that paper.

Q Is that your signature? A Yes.

Mr. Bender. It is a pooling agreement, dated February 17, 1920. I offer it in evidence.

40 (Marked Exhibit C. for defendant.)

Stanislaw Balinski, cross.

Q Did you have any conversation with Mr. Parnes that day at my office with reference to the stock of the corporation? A After he took the shares?

Q Yes. A I cannot remember.

Q Did he ever speak to you after that time with reference to the shares of Mr. Dane? A Yes.

Q After the meeting in Mr. Bender's office did you ever speak to Mr. Parnes about the stock? A Yes. 10

Q When was that? A Mr. Parnes meet me and Mr. Conrad and he said—

Q How long after this meeting? A That was about three weeks after—and he meet me and Mr. Conrad, and he said, “Do you know that Mr. Dane was in my home and he tried to sell me the common stock 51 shares?” and I ask him, “What you tell him?” He said, “I told him nothing. I didn't even ask him how much he want for it, but what for I should buy the common stock; do you want me to—if I buy the common stock of him, then I pay to the company—I buy of him 100 all the 51 shares,” and Conrad said to him maybe he wouldn't sell it to him, and “I am a foxy Jew, and I do that,”—and he said, “You know I am a foxy Jew, and I can do that, and I buy that for the company for 100.” 20

The Court. Afterwards he did what, did he buy it?

Witness. No, he didn't buy it, because shortly he was dead. 30

Q At this meeting did you hear a representation of this kind made by Mr. Cannon to Mr. Parnes and his son—

The Court. How is that competent?

Cross examination by Mr. Kanter.

Q This meeting, after the meeting of February 17, was between yourself, Mr. Conrad and Mr. Samuel Parnes?

A It was no meeting. 40

Stanislaw Balinski, cross.

The Court. Did you meet him on the street?

Witness. No, in the Brokers' Hotel.

Q You and Mr. Dane and Mr. Samuel Parnes were there? A No, we come from the shop and Mr. Parnes was there by the table, and he come down to us and start to talk to us.

10

Q Who was "us"? A Mr. Conrad and I.

Q Mr. Conrad, you and Mr. Parnes were together when this conversation took place? A Yes.

Q And this was about three weeks after Mr. Parnes got his stock in the Gnome Manufacturing Company? A I am not sure that it was three weeks, but about three weeks.

Q How long before Mr. Parnes died was it that you had this talk? A I don't remember how long it was. But after that he didn't buy the stock, and he was dying.

20

The Court. He says he doesn't remember.

Q Was anything else gone into at the meeting in the office of the Gnome Manufacturing Company excepting what you have already told us; was there anything else talked about? A No, nothing else.

Q Did this meeting take place on Saturday? A I suppose so.

Q Don't you remember that it was so? A That it was on Saturday?

30

Q Yes. A I don't remember. I remember that Mr. Parnes was in my home on Sunday, but I don't remember the day the meeting was.

Q Do you remember the meeting in the office of the Gnome Manufacturing Company; at the end of that meeting wasn't it agreed among all of you that on the following Monday or Tuesday you were to go up to Mr. Bender's office and get the stock, and bring Mr. Parnes? A Yes, that was said; we go to Mr. Bender's; we get his shares.

40

Q At the end of the meeting you had agreed to go to

Stanislaw Balinski, cross.

Mr. Bender's office on the following Monday or Tuesday, isn't that right? A Yes.

Q At that time Mr. Cannon didn't say anything about patents, on that Saturday? A He said that we got a patent applied, and that was marked on the aeroplane he was looking at.

Q What did he say about the doll's head? A He said we have another one, that is for the dolls, but he didn't show the doll, because I didn't know if that was finished or not. 10

Q Nothing was said about orders on hand? A Yes.

Q How many orders were on hand? A I don't know; he gave him that pencil memorandum.

Q There was a quantity of orders on hand? A Yes, some orders.

Q Did Mr. Cannon tell him the quantity of orders on hand? A That was evidently marked down how much. 20

Q He gave him a memorandum showing that there were a number of orders on hand? A Yes.

Q That was in the memorandum? A Yes.

Q He also told him that there were a number of orders on hand? A He told him about that, everything, and after he marked it down, and he gave it to him.

The Court. Did he tell him the number of orders on hand? 30

Witness. Yes.

Q Do you remember what that figure was? A I cannot remember that; it was not much.

Q Was it a couple of thousand dollars' worth? A No.

Q A couple of hundred dollars' worth? A I cannot tell you how much that was, because Mr. Parnes was watching out very closely.

Q What do you remember; was it a couple of hundred dollars' worth to the best of your memory? A I don't know how much it was, about a couple of hundred. 40

Stanislaw Balinski, cross.

Q If you don't know, say so. Don't go guessing about it. And that was marked down on this slip that was handed to Mr. Parnes? A Yes.

Q Did he tell him about the common stock? A Yes.

Q Did he say that Mr. Parnes would have to pay for the common stock? A No.

10 Q What was said about that, if anything? A Like the bonus.

Q That is bonus stock? A Yes.

Q Was it explained to him that he didn't have to pay for it? A Yes.

Q Did Mr. Cannon say, "You don't have to pay for this stock"? A Nothing said that he don't have to pay; he said with every three preferred stock go one share of common.

20 Q Did he say why Mr. Parnes wouldn't have to pay for this common stock? A No.

Q Did he say something like this, "Mr. Parnes, you will get one share of common with every three shares of preferred as a bonus"? A Yes.

Q Am I giving it to you about correct? A He said that is like bonus, one share with every three shares.

Q And in reference to the common stock that you received from the corporation, you said that you were not to be obliged to pay for that common stock? A Yes.

30 Q And so did all the other stockholders who received the common stock understand the same way? A Yes.

Q They were not to pay for it? A No.

Q You have heard Mr. Cannon testify that there was some discussion in the original meeting, on or about the time that the corporation was organized, to the effect that the people who got the common stock understood as a result of that discussion, that they would have to pay for the common stock if the corporation called upon them to pay for it; were you present at such a discussion? A I didn't know that.

40

Stanislaw Balinski, cross.

Q You were one of the original stockholders; you were present at the organization meeting? A Yes.

Q Was there any discussion there that the common stockholders would have to pay for the common stock? A No.

The Court. Did you ever understand that you might be called upon to pay for the common stock if the company needed the money? 10

Witness. No.

Q You, in fact, understood that you were not to pay for it? A Yes.

Q Did all the other people who received common stock understand the same way? A Yes.

Q Your brother, Joseph Balinski, have you talked to him about this matter? A He is here.

Q Was Mr. Bender's name mentioned on that Saturday when you were at the factory with Mr. Parnes and his son? A Yes, his name was mentioned. 20

Q What about? A He was asking who is the lawyer, and so we told him that Mr. Bender is, and Mr. Parnes said, "Oh, Mr. Bender, I know him very good long ago, and I was having some business with him, too."

Q I think you started out by saying that Mr. Parnes at the first time he called on you told you that he had been up at the Gnome Manufacturing place and that he had been refused admittance, is that correct? A Yes. 30

Q Did you speak to Mr. Cannon about that afterwards? A Yes.

Q Did Mr. Cannon tell you that he had spoken to Mr. Parnes? A Mr. Cannon told me that he was not home that time, that there was some other man, and Mr. Cannon was not home on that day, and the second time Mr. Parnes was with the son, then he met Mr. Cannon.

Q This Saturday that you say you were at the plant of the Gnome Manufacturing Company, you had arranged the meeting with Mr. Cannon, hadn't you? A Yes. 40

Joseph Balinski, direct.

Q You told Mr. Cannon, in advance before the meeting, that Mr. Parnes was coming up there to learn about the company? A Yes.

Q You told Mr. Parnes to be there and meet you at the plant? A Yes.

10 Q And Mr. Parnes was there when you got there? A Yes.

Q And Mr. Parnes' son was there when you got there? A Yes.

Q They had gone through the plant? A No, that was before.

Q I asked you about that Saturday. A No, we were not in the plant, because he said "that is not necessary to go inside, because I was in there and I see everything."

20 Q But on this Saturday when you came to the plant, Mr. Samuel Parnes and Mr. Julius Parnes were already waiting for you? A I don't remember if I come first or they was in the office.

JOSEPH BALINSKI, sworn for defendant.

Direct examination by Mr. Bender.

Q You reside in Elizabeth? A Yes.

Q You are a stockholder in the Gnome Manufacturing Company? A Yes.

30 Q How much stock do you hold in the company? A \$6,000, 60 shares.

Q How much money did you put into the company? A \$6,000.

Q How much common stock did you get? A 75 shares, I think; I am not sure.

Q How many of preferred? A 60.

40 Q Did you ever have any conversation with Mr. Samuel Parnes prior to the time when he received stock certificates in the Gnome Manufacturing Company? A Yes, I was speaking to him many times, and he was satisfied.

Joseph Balinski, direct.

Q How long did you know Mr. Parnes before that time? A I know him maybe eighteen years.

Q When did you first speak to him with reference to the Gnome Manufacturing Company? A That was with the son and Mr. Parnes in the factory; he meet me there.

Q That was the first time you talked with them? A Yes. 10

The Court. When was that?

The Witness. I don't know the day; I was called there, that I should come, and Mr. Parnes was there; he want to buy stock.

Q Was that on Saturday? A I don't know if it was Saturday.

Q Who were present? A I, Mr. Parnes, and Mr. Parnes' son, and Mr. Cannon, Mr. Conrad, and my brother; we try the aeroplane, how it fly. 20

Q What time of the day did this meeting take place? A Afternoon.

Q How long did the meeting last? A Maybe an hour and a half; maybe longer; I think an hour and a half.

Q What was said, if anything, that you can remember, at that meeting; what was said by anybody? A Mr. Parnes was looking all around everything there, how much his machine made, and everything, was looking around, and after we show him everything, how much it is, and young Mr. Parnes took that piece of paper and old Mr. Parnes said, "You take that and we look it over." 30

Q He took a piece of paper and said "Look it over"? A Yes, he made memorandum from that.

Q Who gave him that piece of paper? A Mr. Cannon gave it to everybody; he said everybody should have it, and he show two papers, and he said, "If you want, you can take this," and he said, "I make a memorandum."

Q Who made the memorandum, Mr. Cannon or Mr. Parnes? A This Mr. Parnes' son, Julius Parnes. 40

Joseph Balinski, direct.

Q He made the memorandum from it and took it with him? A Yes.

Q Do you remember anything else that was said that day? A No.

Examination by the Court.

10 Q Was the company in good financial condition at that time? A Pretty good. He didn't come in, if he didn't see that.

Q Did you tell him it was pretty good or bad? A I don't tell him nothing. I was called there; the next day he said he was satisfied he was in.

Q Did Mr. Cannon tell him the condition of the company? A He showed him everything on the paper.

Q Did he tell him whether the company was making or losing money? A He didn't say nothing about losing or making.

20 Q Did he say that the company was in debt and had no money to pay its debts? A No, that was not spoken about.

Q Was that the fact? A I don't hear nothing about that, that was spoken we have no money to pay.

Q Any reason given why they were allowing Mr. Parnes to buy stock in the company? A I don't know how Mr. Parnes come in there, that he buy stock; I don't know that; then after he told me he is satisfied.

30 Q He was satisfied or dissatisfied? A He was satisfied.

Q The next day he told you that? A Yes, he called us to his home and we was in his house there from the meeting.

Q You and your brother? A I and my brother and Mr. Conrad.

Q You went back with Mr. Parnes and his son to Mr. Parnes' home? A Yes.

40 Q Did you talk matters over again there? A No, not about this nothing, only we sat there a few minutes and then go out.

Joseph Balinski, cross.

Further direct examination by Mr. Bender.

Q Did you meet Mr. Parnes again after that day? A Many times I meet him.

Q After that day? A Yes.

Q Did you talk about the company's business? A We didn't talk nothing about the company. I only said, "What will you do?" and he said, "We do that all right." 10

Q What are you talking about? A We start to speak something with Mr. Parnes, "What do you suggest about the company what we do further?"

Q About what? A I cannot speak so good; he said we do something; we do that all right.

Q Weren't you satisfied with the way the company was going at that time? A We say it was all right; I don't know anything. 20

Q How long had you been in the company before Mr. Parnes bought his stock? A I was a couple of months, maybe three months or a month before.

Q Did you have anything to do with the company; didn't you work in the company? A No, I was a couple of times there; Mr. Parnes was there more than I.

Q Anything said about hiring Mr. Parnes' son, giving him a position? A Yes, Mr. Parnes' son was working there.

Q When was that first spoken of? A I think right away Mr. Parnes said—I don't know, because I was not in the factory. I don't know nothing at all about that. I was one time there and Mr. Parnes was working there. 30

Cross examination by Mr. Kanter.

Q At the end of the conversation between you men in the factory it was agreed that Mr. Parnes was to go to Mr. Bender's office to pay his money and get his stock certificates? A Yes. I was at that time in Mr. Bender's office. 40

Joseph Balinski, cross.

Q And that was the meeting you referred to when Mr. Parnes went through the factory? A That was the same day.

Q At that time, before Mr. Parnes said, "Well, we will meet in Mr. Bender's office next Monday or Tuesday, did Mr. Parnes go through the factory with you? A No.

10 Q Did he ever go through the factory with you? A No, he never go with me, only that time I was calling if he was with the son in the factory.

The Court. Were you in the factory or office?

The Witness. We was all around in the factory and then we go to the office.

Q Then this must have happened at some prior time; there were two times that Mr. Parnes went to the factory, then; did you meet him twice at the factory before he bought the stock, or only once? A Only once; we tried
20 the aeroplane how it fly.

Q Did you find Mr. Parnes when you got there that day; who was there first, you or Mr. Parnes? A Mr. Parnes with his son, the first time I met young Parnes, I don't know before.

Q Were they there when you arrived at the meeting? A Yes.

Q They were then talking to Mr. Cannon when you came in? A Mr. Cannon telephoned that I should come, that Mr. Parnes is there.
30

Examination by the Court.

Q Was there anything concealed from Mr. Parnes about the condition of the company when he bought this stock?

Mr. Kanter. I object to that.

Q In anything that was said to Mr. Parnes by any one, was anything about the company's real condition concealed from him? A That was the real condition; that
40 was all right at that time.

Joseph Balinski, cross.

Q Did you tell him anything about it? A I don't tell him nothing, but he have other people; Mr. Cannon, he spoke more, and Mr. Conrad.

Q Did Mr. Cannon tell him everything about the condition? A He said everything what he said is correct, and he look over everything.

Q Did he tell him everything about the financial condition of the company? A He told him everything there, but he was with him more than I. 10

Q What did he say; did he tell him everything about the financial condition of the company? A Yes, he told him everything.

Mr. Bender. He is not a director and stockholder.

Q Were you a director of the company at this time? A I have that stock. 20

Q Were you a director or officer of the company at that time? A No, I was not.

Q Your brother is a director? A Yes.

Q Have you ever been a director of the company? A No, never.

Further cross examination by Mr. Kanter.

Q At that time Mr. Cannon told Mr. Parnes that the company had been losing money in manufacturing the aeroplanes, that the company had been losing about twenty-five cents on each aeroplane that it had manufactured up to that time? A I didn't hear that. 30

Q At that time did Mr. Cannon say that they needed money to pay up the old bills? A I didn't hear that.

Q At that time did Mr. Cannon tell Mr. Parnes that they were paying royalties to either Stetnske or Mr. Dane for using his patents; did he say anything of that kind to Mr. Parnes? A I don't remember that he said something about it.

Edward V. Conrad, direct.

Q Do you remember that anything about that was said?
A No.

EDWARD V. CONRAD, sworn for defendant.

Direct examination by Mr. Bender.

- 10 Q You reside in the City of Elizabeth? A Yes.
Q Resided there for how many years? A 17 years.
Q You are a director and stockholder in the Gnome Manufacturing Company? A Yes.
Q How much stock do you hold? A \$500.
Q What was given to you for that \$500? A Five shares of preferred stock, and 25 common.
Q Did you know Mr. Parnes in his lifetime? A Yes.
Q How many years did you know him? A About 16 years.
- 20 Q Did you have any conversation with Mr. Parnes prior to the time that he came to my office, and paid \$2,500 on account of stock subscription? A Yes.
Q When, prior to that time did you meet him the first time? A The first time we met in Brokers, in the lunch hour.
Q Who was present? A Mr. Balinski and Mr. Parnes.
- 30 Q What was said with reference to the Gnome Manufacturing Company? A We spoke nothing, but we meet together a lot of times, 2 or 3 and 4 times, and he was lunching there, and we never spoke about Gnome Manufacturing Company, but this case that he speak about his son, what kind of bright boy he got, and what kind of business it is, and he said, he would like to put him in some different business, and we spoke that we need a man now, and we need a man, we got to hire someone, and he said, "let me pay good for him, and he like to join the company," and he asked us who belonged there. I told him that I got so much share, and Mr. Balinski stock he got, and those people in. He said, "I know them men, I see
- 40

Edward V. Conrad, direct.

first Mr. Cannon and Mr. Balinski and speak that over;" we talked it over and we notified Mr. Parnes, then we can come together, he should look over first the plant, and go over the books, everything.

Q Did you meet him again, before that meeting at the factory? A Several times before he went to the factory.

Q What was your conversation at these times? A After this he said, he was once over at the factory already, and he wouldn't let him in. He said, "That is funny," Of course, he didn't know him. He said, "Show you in the office." He said, "No, I was not to go in the office, I was to go in the shop, but they wouldn't let me in." I said, "who was the man?" He told me the man. I say, "Mr. Stetnske, the foreman, probably didn't let him in."

Q Then what did he say? A The door was open, and I see how they work. I said, "Do you like to go inside with me, come together or not." I rung up Mr. Cannon, and introduce you so you can get in.

Q Did you do that? A No, after this we went all together. After this we was in the factory, but all together.

Q When was it you were all together at the factory? A Saturday afternoon.

Q What time? A About 2 o'clock, between 2 and 5 something.

Q Who was present? A Mr. Cannon, Mr. Balinski and the other Balinski, and Mr. Parnes and Parnes' son.

Q What transpired while you were all together in that office, in that hour or hour and a half that you were there? A General business.

Q Who took part in the conversation? A I, Mr. Cannon, Mr. Parnes, young Parnes and Balinski was there.

Q Did either one of the Balinski's take part in the conversation? A They stood and listened what was spoken.

Edward V. Conrad, direct.

Q Tell us just what was said in that time that you were there, by you, or Cannon or anybody. A The first thing Mr. Parnes was asking, was how we stand with the whole business, so we went over all the books. Young Parnes went over the ledger, and Cannon helped him out, and put everything on the paper what it was, and went entirely
10 absolutely up to the date, over the books, financial statement and everything.

Q What else was said, and what else was done? A Then it was said about stock when he came to come in, and we settled the day in the office that we can meet in Bender's office.

Q Anything else said? A He said, about some stock, how much anybody got, and what amount of money invested. He said, "I want at least as much as Balinski had." He want to be equal with the most men.

Q Anything said about the amount of orders on hand?
20 A Yes, sir, it was spoken about, but we had very little orders on hand, it was at the end of the year, so we had very little on order.

Q What did Parnes say when he found very little on order? A He said, that had nothing to do with the business, and we went to the book.

Q Did you tell him how much you were in debt? A Yes, we went entirely over everything.

Q How much were you in debt? A I cannot exactly
30 say the figure, but it was over \$2,300, \$2,400 we have bills to pay.

Q Anything else said which you haven't told us so far? A Not that I remember.

Q Anything said about the pay roll? A We never mentioned pay roll.

Q Were there any papers delivered at that time to anybody by anybody? A A financial statement to Mr. Parnes was given—typewriter statement.

Q Who gave it to him? A Mr. Cannon gave it to
40 him, beside it was a memorandum.

Edward V. Conrad, direct.

Q I show you paper marked Exhibit D. 3 purporting to be a financial statement, and ask you if you ever saw that before? A Yes, I saw that; that was handed over to Mr. Parnes.

Q That day? A Yes.

Q By Mr. Cannon? A Yes.

Q Did you ever have a copy of that in your possession? A Yes. 10

Q Did the rest of the directors of the company have a copy of it? A No.

Q Did you have a copy before this meeting in the factory, or after? A No, after I received a copy in my office then. It was mailed to me, a copy of this. I have it yet.

Q Besides this paper, you say another paper was delivered to Mr. Parnes? A One memorandum.

Q Who made that, if you remember? A Mr. Cannon was giving it and took it from the book, and Mr. Parnes was present. 20

Q Young Mr. Parnes? A Yes, when both were sitting there, the books, through the ledger and cash books and so on.

Q Was any condition of the company that you knew of at that time concealed from Mr. Parnes, or his son? A No.

The Court. Was anything said to induce Mr. Parnes to buy this stock? 30

The Witness. Absolutely; Mr. Parnes was after it all the time.

The Court. Did you, or Mr. Cannon or anyone else say anything to induce him to buy it?

The Witness. No.

Q Did you meet Mr. Parnes after the meeting at my office? A He stopped once, very early in the morning about 7 o'clock in my shop. He stopped in. 40

Edward V. Conrad, cross.

The Court. Was anything said about the stock or the company?

The Witness. Nothing.

Q How long after the meeting in Mr. Bender's office did you meet him? A I think about the second or third day, very early.

10

The Court. Before he was taken ill, did he ever complain to you, that he found the condition of the company misrepresented to him?

The Witness. No. The last time I saw him, he stopped—

Q Did you ever see him when he spoke to you about Mr. Dane's stock? A Once.

Q That was after the meeting in my office? A Yes.

20

Q What did he say on that occasion? A Mr. Dane, he wrote him in the Elizabeth Banking Company, and he offer him to sell that common stock what Mr. Dane got, and he asked him how much he wants. Two hundred dollars, he said. He said, he wouldn't take a chance on that, and he wouldn't buy it until he saw us, so he told me, and he asked my advice, as to if he should buy. I said, "If you can get the stock, buy it." He said, "How much do you think it is worth?" He said, "I can get that for \$100." He said, "I buy it for the company." I said,

30

"Go ahead and buy it." Since that time I never saw him.

Cross examination by Mr. Kanter.

Q Did you tell him that every preferred stockholder had one share of common to every three shares of preferred? A Yes.

Q Was that true? A Yes.

Q You had 25 shares of common to 5 shares of preferred? A Yes.

40

Q Is that one to three? A That is a little more.

Edward V. Conrad, cross.

Q Why didn't you tell Mr. Parnes about that? A Mr. Parnes knew that. He has it after he went in. He has everything on the paper what each man got in stock.

Q You were not interested in the company getting this money from Mr. Parnes and the balance of \$3,500, one way or another? A Of course, yes.

Q Because the company is in debt? A No, it was not in debt. 10

Q Is it in debt today? A No, not very much.

Q How much? A I cannot have it in my head.

Q You knew at that time, and you are a director today. You knew what the conditions were in 1920? A Everybody know to.

Q Do you know what the conditions are today? A Yes.

Q What are they today? A They don't stand very good financially. 20

Q Is it out of business today? A No, we close on account of slack orders and material, labor question situation, and we have a pile of stock which we close up now, a couple of months.

Q Have you a business of your own? A No, I don't work for the company.

Q You don't do any work in the factory? A No.

Q At the end of the conversation between yourself and Mr. Parnes on this day, on Saturday, you say it was? A Yes. 30

Q You agreed to go to Mr. Bender's office? A Yes.

Q It was Saturday before you went to Mr. Bender's office? A That was the meeting we had in the factory, then he agreed to go to Mr. Bender's office.

Q That is correct? A Yes.

Q When you got there, Mr. Parnes was already there? A No, Mr. Parnes' son was there, and Mr. Parnes rang up from Newark, he is late, and we were waiting, and he arrived there in a few minutes. 40

Edward V. Conrad, cross.

Q Were the two Balinski brothers there when you got there? A Yes.

Q Both of them were there? A Yes.

Q I am speaking of the meeting in this factory? A No. I speak of Bender's office.

Q Were you there, was Mr. Parnes there when you got there? A Yes, and his son was there, and Mr. Cannon.

Q All the rest of you, except Mr. Cannon, Mr. Parnes, Sr., and Mr. Parnes, Jr., came afterwards? A No, but I came.

Q Who was present when you arrived at the factory on Saturday? A Mr. Parnes—Mr. Cannon, young Parnes. I go with Balinski together. We live not far. I went there with Stephen and Joe Balinski together.

Q Did you say that you had lost money up to December 31, 1919? A No, we didn't lose any money.

Q I show you copy of statement marked Exhibit H. annexed to bill of complaint. Did you ever see that statement before? A Yes, I saw that.

Q Did you tell Mr. Parnes of the facts contained in that statement? A We went through the books.

Q I show you copy of the statement Exhibit H. annexed to the complaint. A I didn't give him any statement.

Q Was that statement in existence at that time? A Yes.

Q Was that in existence December 31, 1919? A Yes.

Q You knew the facts contained in that statement then. You didn't tell that to Mr. Parnes, did you? A I didn't speak nothing.

Q Did anybody else tell him? A Mr. Cannon took up everything.

Q The only statement that Mr. Cannon gave you was the one you have given in answer to question seven. Do you remember when this paper was signed in Mr. Bender's office? A Yes.

Albert F. Bender, direct.

Q That is the answer to interrogatory No. seven and twenty-one. Do you remember being asked to state what happened February 14, 1920, you read over this statement that you made in answer to that? A I read it over.

Q And that statement that you have given in answer is correct? A Yes.

Q And that was the whole thing that happened on February 14, 1920? A You mean in the office there. 10

Q In the plant of the Gnome Manufacturing Company? A Yes.

Q You have given everything? A I didn't give him nothing.

Q Was the answer that you have given in answer to interrogatory No. seven, being your answer No. twenty-two, a correct statement of everything that happened on February 14, 1920, in the plant of the Gnome Manufacturing Company? A We give him the statement. 20

ALBERT F. BENDER, sworn for defendant.

Direct examination by Mr. Seiler.

Q You are Counsellor at Law of this Court? A Yes.

Q Where are you in practice? A City of Elizabeth.

Q You represented the Gnome Manufacturing Company since its incorporation? A Yes.

Q Do you recall a meeting at your office sometime in February, 1920, of the officers of the Gnome Manufacturing Company? A Yes. 30

Q Who was present? A The two Balinski brothers, Mr. Conrad, Mr. Parnes and his son Julius and myself.

Q Will you state what transpired at the meeting?

Mr. Kanter. Objected to as immaterial.

The Court. I will receive it.

A I believe it was just prior to the meeting that Mr. Parnes, Senior, asked to speak to me alone. I wouldn't want to state positively that was prior, or right after the 40

Albert F. Bender, direct.

meeting; it was either before or after the meeting. He said, "Mr. Bender, what do you know about this company?" I said, "All I know about it is that I was retained to incorporate it, and I have acted as advisor and counsel since the day it was incorporated, down to the present time." He said, "What do you know about the
10 preferred stock that I am going to buy in this company?" I said, "Mr. Parnes, the preferred stock, as any stock in any corporation, rises no higher than the ability and the character of the people behind the company." He said, "Well, that is all you can say, I suppose?" I said, "Yes, that is all I can say about it. That is all I know about it." He said, "Of course, this common stock is worth nothing." I said, "Mr. Parnes, that common stock is a liability and not an asset; you are getting that as a bonus, and while you don't have to pay for it now, if the
20 company makes good, you get something for nothing. If the company goes bad, you have got to pay something. That is all." He said, "I understand that."

Q Do you recall anything about the actual payment of the money? A At the time the certificates were written out by myself and I handed them over to Mr. Parnes, and he was asked for a check for \$6,000; he said it wasn't convenient for him to pay the entire amount at that time, but he could pay, I believe he said, \$2,000, and Mr. Cannon said that wouldn't be sufficient to meet the bills that
30 they owed then, that they needed at least \$2,500 to keep them up to date, and Mr. Parnes said, "I can do that." And I said, "Gentlemen, isn't there a written agreement between you people as to the purchase of this stock? How do you know what the balance is and what the price of this stock is?" And they said, "No." I said, "One moment; we will dictate a receipt," and I dictated a receipt, stating what the present payment was, what the total price was, and the balance to be paid and when, and gave a copy of it to Mr. Parnes—gave the original to Mr.
40 Parnes and kept a copy for my files.

Albert F. Bender, cross.

Q What, if anything, was said with reference to the control of the company? A Parnes was interested to know about the control of the company. He said he understood there was some sort of a paper in existence between all of the stockholders other than himself, with reference to a pooling of stock, so that no one could get an advantage over anybody else, and that if anybody wanted to withdraw from the company, each of the directors would have an opportunity to purchase the stock before it could get on the open market. I told him that there was such a pooling agreement, and that I understood from what Mr. Cannon had told me, that they wanted me to draw a new pooling agreement, so Mr. Parnes could be a party to it, and I had prepared that agreement, and read it over to Mr. Parnes and the rest of them, and informed them that we still had to get the signature to it of Mr. Dane, and Mr. Parnes signed it, and it has been held in my office ever since, awaiting Mr. Dane's appearance to sign it. That is the paper that has been marked Exhibit C. for defendant.

Cross examination by Mr. Kanter.

Q This conversation preceding the payment of the check was with you privately? A Yes.

Q Was it with you as attorney with Mr. Parnes? A No.

Q Had you ever acted as his attorney? A I had acted as Mr. Parnes' attorney some eight years before then in a—he was being sued by Judge Davis for counsel fee.

Q There was no relation subsisting between you and him of attorney and client? A Absolutely not.

Q You say you had this agreement which has been marked Exhibit C. prepared when Mr. Parnes came in the office that day? A Yes, that agreement was ready.

Q Apparently, then, in pursuance of some order from Mr. Cannon? A Mr. Cannon was there early; they were

Albert F. Bender, re-direct.

to meet at ten o'clock and they were all there except Mr. Parnes, and I asked just what was to take place, if we could get papers ready, and we got them ready. Mr. Parnes didn't show up, and then they made an appointment to come back in the afternoon.

Q You knew that Mr. Dane wouldn't show up to sign this paper? A I know he didn't come to the meeting, and I haven't seen him since.

Q And he refused to sign the paper? A I don't know that.

Re-direct examination.

Q Mr. Bender, what, if anything, was explained to these different stockholders of the Gnome Manufacturing Company with reference to the bonus stock?

Mr. Kanter. Objected to.

20

The Court. When?

Mr. Seiler. When it was originally issued.

Mr. Kanter. Objected to, as immaterial.

The Court. I will receive it.

Q At the time when they issued the original stock Mr. Cannon came to my office with Mr. Stetnske and Mr. Balinski and Mr. Conrad and wanted to know if it were possible to issue such a thing as bonus stock; he said he had heard of it being issued, and wanted to know if it could be done lawfully. I told him that stock was given for nothing was always subject to an assessment up to its full amount. If the company could proceed on its preferred stock and make money, it could make the common stock good, and the people would have the stock without having paid for it. But if the company got into difficulties, and there was a receiver appointed, the receiver would compel the payment of the stock up to one hundred cents on the dollar. Mr. Joseph Balinski wasn't present at that meeting; he came in later on.

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Albert F. Bender, re-cross.

The Court. Do you know if there was ever an agreement between the stockholders that they should pay for the common stock, if the money were needed by the company?

The Witness. No more than that explanation. It is enumerated in all the minutes as bonus stock.

Re-cross examination.

Q Did you know of the statute permitting the appropriation of preferred and the appropriation of the entire capital stock that was in existence prior to Mr. Parnes becoming a stockholder of the company? A Yes, I don't think it has been violated in this case.

DEFENDANT RESTS.

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Exhibits C. 1—C. 2.

EXHIBIT C. 1.

At a special meeting of the Board held at the Registered Office of the Company on the twenty-fifth day of August, 1919, the following resolution was adopted:—

RESOLVED that this company sell to Carl Chumak twelve
 10 (12) shares of the preferred stock of this company at
 par value of one hundred dollars per share and issue to
 the said purchaser as bonus stock four (4) shares of
 common stock of this company, without further consid-
 eration,

C. S. CANNON, Pres.,
 J. B. DANE,
 E. CONRAD,
 STANISLAW BALINSKI.
Directors.

20

EXHIBIT C. 2.

Letterhead of Gnome Manufacturing Company.

Elizabeth, N. J., Sept. 25th, 1919.

At a special meeting of the Board of Directors of this
 company held on Sept. 24th, 1919, it was agreed to issue
 and sell to Mr. Alex Stetsnko, nine (9) shares of Pre-
 ferred Stock of this company's issue at par value of one
 30 hundred dollars (\$100.00) per share.

It was also agreed to issue to the same party Mr. Alex
 Stetsnko three (3) shares of Common Stock as a bonus
 without extra charge.

C. S. CANNON,
 J. B. DANE,
 E. V. CONRAD,
 STANISLAW BALINSKI.

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Exhibit C. 3.

EXHIBIT C. 3.

Letterhead of Gnome Manufacturing Company.

Nov. 7th, 1919.

At a special meeting of the Board of Directors of this company held today, it was agreed to sell to Mr. Joseph Balinski, sixty (60) shares of Preferred Stock of this company's issue at par value of one hundred dollars (\$100.00) per share. 10

It was also agreed to give Mr. Joseph Balinski as a bonus for purchasing the above stock seventy (70) shares of Common Stock of this company's issue.

It was also agreed by Mr. C. S. Cannon and Mr. J. B. Dane that they would each turn back to the Treasury of the Gnome Manufacturing Company 25 shares each of their common stock. This is done in order to give Mr. Joseph Balinski seventy (70) shares bonus Common stock without changing the ratio of Preferred and Common Stock now held in the Treasury. 20

C. S. CANNON,
E. V. CONRAD,
J. B. DANE,
STANISLAW BALINSKI.

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Exhibit C. 4.

EXHIBIT C. 4.

of all present, it was

RESOLVED that the board of directors be and they hereby are authorized to issue shares of the capital stock of this Company of the full amount authorized by the certificate of incorporation, in such amounts from time to time as shall be determined by the board, and as may be permitted by law, and in their discretion to accept in full or part payment of any share or shares such property as the board may determine shall be necessary for the business of the Company.

Upon motion of Mr. Conrad, duly seconded by Mr. Balinski, it was

RESOLVED, that this corporation sell to Mr. Balinski twenty shares of its preferred stock at par for the sum of Two Thousand Dollars and execute and deliver therewith fifty shares of common stock of this company and that it sell to Mr. Conrad five shares of its preferred stock at par for the sum of Five Hundred Dollars and execute and deliver to him 25 shares of common stock, the said shares of common stock being given as bonus stock in consideration of the purchase of said preferred stock, the share of stock subscribed for by Augustus J. Bender and heretofore assigned to Edward V. Conrad and the share of stock subscribed for by Frederick A. Hemphill and heretofore assigned to Edward V. Conrad being included as part of said issue of its 25 shares of common stock to each of said parties.

Upon motion of Mr. Balinski, duly seconded by Mr. Conrad, it was

FURTHER RESOLVED, that this company accept the offer of Mr. Cannon and Mr. Dane to sell and transfer to this company certain patent applications, toy ideas, models, patterns, templates, moulds, &c., to be used and employed in the manufacture and sale of toys, games, &c., at a price of Fifteen Thousand, Two Hundred (\$15,200) Dol-

Exhibits C. 5—C. 6.

lars, the stockholders being of the opinion that the said price is a fair and reasonable one, and that this company pay for the same by issuing to the said Cannon seventy-six shares of its common stock and to the said Dane seventy-six shares of common stock in full payment of such shares, which when issued to be full paid and non-assessible. Six of the shares subscribed for by Albert F. Bender and heretofore assigned to said Cannon and Dane being included as part of the issue of the seventy-six shares to each of said parties. 10

On motion the meeting adjourned.

.....,
Secretary of the Meeting.

EXHIBIT C. 5.

(Stock Certificate Book.) 20

GNOME MANUFACTURING CO.
 COMMON.

GILHOOLY & BENDER,
 Counsel.

EXHIBIT C. 6.

(Stock Certificate Book.) 30

GNOME MANUFACTURING CO.
 PREFERRED.

GILHOOLY & BENDER,
 Counsel.

Exhibit D. 1 for Identification.

EXHIBIT D. 1 FOR IDENTIFICATION.

Incorporated Under the Laws of the State of New Jersey

Number	Shares
7	60

10 **GNOME MANUFACTURING CO**

Preferred Stock \$30,000	Capital Stock \$60,000 Shares \$100 Each	Common Stock \$30,000
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Fully Paid and Non-Assessable Preferred Stock

THIS IS TO CERTIFY that SAMUEL PARNES is the owner of Sixty (60) Shares of the PREFERRED Capital Stock of GNOME MANUFACTURING Co., transferable only on the books of the Corporation by the holder hereof in person or by duly authorized Attorney upon surrender of this Certificate properly endorsed.

20 Holders of the Preferred Stock are entitled to receive, and the Corporation is bound to pay out of any and all surplus or profits whenever ascertained, non-cumulative dividends thereon at the rate of seven per cent. per annum, payable annually before any dividends shall be declared on the Common Stock. The Preferred Stock is subject to redemption at par on the 4th day of any year after the date hereof. The holders of Preferred Stock shall have no vote in the Corporation.

30 WITNESS the Seal of the Corporation and the signatures of its duly authorized officers affixed, this 17th day of February, 1920.

E. V. CONRAD
Treasurer.

C. S. CANNON,
President.

(SEAL)

Exhibit D. 1 for Identification.

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

FOR VALUE RECEIVED hereby sell, assign and transfer unto Shares of the Capital Stock represented by the within Certificate, and do hereby irrevocably constitute and appoint Attorney to transfer the said stock on the Books of the within named Corporation with full power of substitution in the premises. 10

Dated February 17th, 1920.

SAMUEL PARNES (SEAL)

In Presence of 20
ALBERT F. BENDER.

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*Exhibit D. 2.***EXHIBIT D. 2.**

SAMUEL PARNES

Real Estate
172 Jacques St.,
Elizabeth, N. J.

10

July 12, 1920.

My Dear Mr. Cannon:

Just a few lines to let you know that I am now a full fledge employee of the consolidated ticket office at 64 Broadway.

I started work on June 28, in the accounting dept. at \$100 per month, I remained in that dept. until July 11, when Mr. Rath called me into his office, and complimented me upon my good work, and in consideration promoted me to assistant cashier, at a \$10.00 increase, effective on July 1. I surely was surprised, as I never realized that my work would be appreciated so quickly. You can surely rest assured that I shall try my utmost to do even better; for I am certain Mr. Rath is a man who appreciates good work and will do everything in his power for me.

I like the work, immensely, and the boys I am working with are first rate, they will do anything to help me. Let me at this time express my sincerest thanks to you, for your part in getting me this position. I shall try my hardest to due you justice.

If there is ever an occasion where I can show my appreciation for your kind interest, won't you please call on me, as I assure you it will be a pleasure.

Let me know how you are making out, also how things are progressing at the Gnome.

Cordially yours,

JULIUS A. PARNES.

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*Exhibit D. 3.***EXHIBIT D. 3.**

(Copy)

GNOME MANUFACTURING CO.
Elizabeth, N. J.Statement Gnome Manufacturing Company
Dec. 29th, 1919.

10

ASSETS		LIABILITIES	
Bills Receivable	\$2,857.23	Stock Issued	\$10,600.00
Deposits in Bank.....	1,185.10	Mrs. Brown Deposit.....	200.00
Deposit Pub. Serv. Corp...	40.00	Bills Payable	1,004.56
" Eliz. Gas Light Co.	10.00		<hr/>
Raw Material on Hand....	1,260.00		\$11,804.56
Finished Machines	756.00	— 378 machines	
Unfinished Machines	800.00	— 800 " "	
Equipment Shop	1,019.43		
" Office	268.30		
" Paint Shop ...	91.50		
Improvements	647.96		
	<hr/>		
	\$8,935.52	— Total	

20

ACTIVE ACCOUNTS

Dec. 29th, 1919.

QUICK ASSETS		LIABILITIES	
Bills Receivable	\$2,857.23	Bills Payable	\$1,004.5
Deposits in Bank.....	1,185.10		
" Public Service ..	40.00		
" Eliz. Gas Co.....	10.00		
Finished Machines	756.00		
	<hr/>		
	\$4,848.33	— Total	

30

Copies:

Mr. Jos. Balinski,
Mr. Stanislaw Balinski,
Mr. E. V. Conrad,
Mr. J. B. Dane,
Mr. Carl Chumak,
Mr. Alex Stetsenko.

40

Exhibit A.

EXHIBIT A.

WHEREAS WE, Charles S. Cannon and James H. Steenson of the City of Elizabeth, County of Union and State of New Jersey, did on October 22nd, 1919, file in the patent office an application for patent for toy aeroplane, the same being given serial No. 332488; and whereas the said
 10 application was allowed by the patent office on September 14th, 1920, and whereas we are now the sole owners of record of said patent and all the right under the same, and whereas we have heretofore agreed with the Gnome Manufacturing Company, a New Jersey corporation to assign to it all our right, title and interest in and to said patent:

Now, therefore, to all to whom it may concern be it known that, for and in consideration of the premises and
 20 in further consideration of One Dollar we, the said Charles S. Cannon and James H. Steenson, have sold, assigned and transferred and by these presents do sell, assign and transfer unto the said Gnome Manufacturing Company, all our right, title and interest in and to the said letters patent; the same to be held and enjoyed by the said Gnome Manufacturing Company for its own use and behoof and for the use and behoof of its successors and assigns to the full end of the term for which said letters
 30 patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by us had this assignment and sale not been made.

IN WITNESS WHEREOF, I, Charles S. Cannon, have hereunto set my hand and affixed my seal at Elizabeth, Union County, New Jersey this 26th day of March, 1921, and I, James H. Steenson, have hereunto set my hand and affixed my seal at Lewistown, Pennsylvania this 26 day of March, 1921.

Signed, Sealed and Delivered
 in the presence of

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CHARLES S. CANNON (SEAL)
 JAMES H. STEENSON (SEAL)

Exhibit B.

EXHIBIT B.

WHEREAS WE, John B. Dane and Charles S. Cannon of the City of Elizabeth, County of Union and State of New Jersey, did on December 29th, 1919 obtain letters patent for a doll's head from the United States Patent Office, and whereas we are now the sole owners of record of said patent and all the right under the same, and whereas we have heretofore agreed with the Gnome Manufacturing Company, a New Jersey corporation to assign to it all our right, title and interest in and to said patent; 10

Now, therefore, to all to whom it may concern be it known that, for and in consideration of the premises and in further consideration of One Dollar we, the said John B. Dane and Charles S. Cannon, have sold, assigned and transferred and by these presents do sell, assign and transfer unto the said Gnome Manufacturing Company, all our right, title and interest in and to the said letters patent; the same to be held and enjoyed by the said Gnome Manufacturing Company for its own use and behoof and for the use and behoof of its successors and assigns to the full end of the term for which said letters patent are or may be granted, as fully and entirely as the same would have been held and enjoyed by us had this assignment and sale not been made. 20

IN WITNESS WHEREOF we have hereunto set our respective hands and affixed our respective seals at Elizabeth, in the County of Union and State of New Jersey, this day of March, 1921. 30

Signed, Sealed and Delivered
in the presence of

(SEAL)

CHARLES S. CANNON (SEAL)

*Exhibit C.***EXHIBIT C.**

THIS AGREEMENT made and entered into this Seventeenth day of February, Nineteen Hundred and Twenty, by and between STANISLAW BALINSKI, EDWARD V. CONRAD, CHARLES S. CANNON, JOHN B. DANE, JOSEPH BALINSKI and SAMUEL PARNES, of the first part, and ALBERT F. BENDER, Trustee
 10 of the second part:

WITNESSETH, whereas the parties of the first part are stockholders in the Gnome Manufacturing Co., their respective holdings being as follows, viz—Stanislaw Balinski, twenty-five shares, Edward V. Conrad, twenty-five shares, Charles S. Cannon, fifty-one shares, John B. Dane, fifty-one shares, Joseph Balinski, seventy ——— shares and Samuel Parnes, twenty shares, and;

WHEREAS, it was the intention of the parties hereto at the formation of the GNOME MANUFACTURING Co. to vest
 20 the said Charles S. Cannon and John B. Dane with a controlling interest in the then authorized capital stock of the said GNOME MANUFACTURING Co., to the extent of fifty-one per cent. of said authorized amount, for the purpose of securing a fixed policy in the management of the said company as long as the said Charles S. Cannon and John B. Dane, or either of them, should continue as stockholders in said company, the said parties hereto have agreed to the formation of a voting trust on the terms and
 30 conditions hereinafter set forth:

Now, therefore, in consideration of the premises, and of the mutual covenants, promises and agreements hereinafter set forth, it is agreed by and between the parties hereto as follows:

FIRST: The parties of the first part have assigned and transferred and do hereby assign and transfer unto the said party of the second part hereafter called the "trustee," the number of shares of common stock of the Gnome Manufacturing Co. hereinbefore set opposite their
 40 respective names, in trust, nevertheless for the uses and

Exhibit C.

purposes and upon the terms and conditions hereinafter set forth.

SECOND: The powers of the said trustee with respect to the shares of common stock held in trust, as also this agreement, shall continue as long as the said Charles S. Cannon and John B. Dane, or either of them, shall continue to be holders of common stock in the GNOME MANUFACTURING Co. Upon their ceasing to be such holders of stock the powers of the said trustee and also this agreement shall terminate, unless sooner terminated by the written consent of all the parties hereto, and said shares of stock shall thereupon be reassigned to the parties of the first part or their assigns.

10

THIRD: Until the termination of this trust all rights and powers incident to the ownership of common stock in said GNOME MANUFACTURING Co. shall be vested in the parties of the first part to all intents and purposes as if this agreement had never been executed except the power to vote for and elect directors for the said corporation which right is hereby vested completely in the party of the second part with the distinct understanding that the said party of the second part during the existence of this agreement shall, at all times vote for and continue as directors of this company all of the parties of the first part. The trustee may vote the shares of stock held by him in trust pursuant to the aforesaid agreement in person or by proxy to any other person.

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FOURTH: Any and all dividends which may at any time be declared and paid upon the said shares of stock shall when received by the trustee, be by him forthwith paid over, without charge or compensation for his services, to the parties of the first part, pro rata, according to the number of shares of stock so as aforesaid assigned by them to the trustee.

FIFTH: The party of the second part assumes no responsibility in respect of the conduct and management of the directors elected in pursuance of this agreement.

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Exhibit C.

SIXTH: Said trustee may at any time resign from said trusteeship, whereupon he shall assign the aforesaid common stock to such person as may be designated by the written designation of all of the parties of the first part.

SEVENTH: This agreement shall be executed in seven counterparts, each of which so executed shall be deemed
10 to be an original and such counterparts shall together constitute one instrument.

EIGHTH: If at any time during the continuance of this agreement any one of the parties of the first part should desire to dispose of all or any portion of the common stock owned by him in the GNOME MANUFACTURING Co. he shall first submit to each of the other parties of the first part a "give and take" proposition, that is to say he shall give to each of the other parties of the first part the right to purchase all of his stock at a stated price with the
20 understanding that upon refusal of the said parties or any one of them to purchase his holdings he will purchase from them all of their holdings at the same price and upon the same terms as offered by him for the sale of his stock. Such "give and take" proposition shall be in writing. In the event of the remaining parties of the first part within thirty days after the submission of such "give and take" proposition to them, failing to purchase the stock so offered or agreeing to dispose of their stock to the offerer as hereinbefore provided, the said offerer shall
30 have the right to dispose of his stock in the open market and thereupon this agreement shall immediately become null and void and the party of the first part shall at once reassign the said stock to the parties of the first part or to such persons as the parties of the first part shall designate in writing.

Exhibit C.

IN WITNESS WHEREOF the parties hereto have set their hands and seals the day and year first above written.

Signed, Sealed and Delivered
in the presence of

C. S. CANNON,	(SEAL)	
E. V. CONRAD,	(SEAL)	10
JOSEPH BALINSKI,	(SEAL)	
STANISLAW BALINSKI,	(SEAL)	
SAMUEL PARNES,	(SEAL)	
ALBERT F. BENDER.	(SEAL)	

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30

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Conclusions of Vice-Chancellor.

CONCLUSIONS OF VICE-CHANCELLOR.

Filed June 14, 1921.

IN CHANCERY OF NEW JERSEY.

10 *Between*

MARY PARNES, executrix, etc., of
Samuel Parnes, deceased, *et al*,
Complainants,

and

GNOME MANUFACTURING COMPANY,
Defendant.

On Bill, etc.

Submitted
May 16, 1921.

Decided
June 2, 1921.

20 Messrs. Kanter & Kanter, for complainants.
Messrs. Gilhooly & Bender, for defendant.

FOSTER, V.-C.

Complainants in this action seek the recession of a contract for the purchase of stock, the repayment of \$2,500 paid to defendant, under this contract, by the decedent in February, 1920, and they also ask to have defendant enjoined from prosecuting any suit to recover the balance of \$3,500 alleged to be due on the price of the shares of
30 stock purchased under this contract.

The grounds on which relief is sought are: that officers of defendant by misrepresentations relating to its ownership of patents on a toy aeroplane and a doll's head; the amount of its unfilled orders; that the patentee of the aeroplane was then in its employ at a small salary; that Albert F. Bender, a lawyer of Elizabeth was a stockholder and officer of the company, that no royalties were due or payable on the manufacture of the aeroplane, and that the company would issue 20 shares of fully paid
40 common stock, as a bonus; upon the decedent subscribing

Conclusions of Vice-Chancellor.

for 60 shares of its preferred stock; and also, that these officers of defendant by the fraudulent concealment from decedent of certain facts, within their knowledge, respecting the number of shares of preferred and common stock then outstanding; the amount of its gross sales up to December 31, 1919; and the fact that the cost of producing its products up to that date exceeded the amount of sales by about one-third; that its liabilities exceeded its assets; that the original subscribers to its capital stock had not paid their subscriptions; that the corporation was, in fact, insolvent, and was a losing and unprofitable venture; induced Samuel Parnes, the decedent, to purchase the shares of stock mentioned. All of these misrepresentations and concealments are denied by the officers of the defendant and by its witnesses. 10

In support of these allegations reliance is placed by complainants upon certain features of the bill and answer, upon interrogatories and the answers thereto; and on the books of the defendant and principally upon the testimony of Julius A. Parnes, a son of the decedent; and one of the complainants. 20

From the record it appears that Samuel Parnes, a resident for years, in Elizabeth, and a successful business man; bought this stock on February 17, 1920, and died eighteen days later, on March 7th, and that he was ill for some days before his death.

That he knew that a Mr. Conrad and the Balinski brothers, friends of about twenty years standing, were interested in the company as stockholders, but not in its management, that he spoke to all of them several times about the business of the company before purchasing the stock; and asked the amount of their investment in it; and expressed his desire to own as much stock in it as Joseph Balinski, the largest stock owner, who had invested \$6,000 in the company's stock; Mr. Parnes also expressed his desire to these parties to inspect the factory; and to obtain a position in the company for his son; and also 40

Conclusions of Vice-Chancellor.

desired to enlarge the scope of the company's operations, according to ideas which he had obtained in Europe; and he further expressed his willingness to build a larger factory and rent it to the company. Some days preceding February 17th, accompanied by his son, Mr. Parnes inspected the factory and it is on this occasion that it is testified to by his son, that the misrepresentations were made by Mr. Cannon, the president and secretary of the company, and it appears from the testimony of Mr. Cannon and from that of Conrad and the Balinski brothers, the only others present during this inspection and conference which lasted about an hour and a half, that Mr. Parnes and his son were taken over the factory and shown the work that was being done; that they were made fully acquainted with the affairs and operations of the company; and of its financial condition; and of its need of money, that all of the books of the company were opened to his inspection and that he paid little attention to them, but that they were examined by his son, that decedent asked a number of questions about orders on hand; the business and financial condition of the company; about the stock outstanding and about the number of shares each person held; and stated that he wanted to own at least as many shares as the largest stockholder had. These witnesses agree that Mr. Cannon and the others present fully informed Mr. Parnes and his son of everything relating to the company's affairs; including the amount of money it had in bank; and that it had debts to pay; that it could not go on with manufacturing for lack of money; that the company desired to sell more stock to obtain money to go ahead with other patents; and that Cannon then gave Mr. Parnes a pencil memorandum of facts relating to the company's affairs; and that questions were asked by Mr. Parnes and his son and answered by one or more of the others present.

They further agree in their testimony that nothing was said or done to induce Mr. Parnes to become a stock-

Conclusions of Vice-Chancellor.

holder, that he apparently was anxious to get his son in the business; and upon the understanding that the company would employ his son at \$30 a week, Mr. Parnes announced he would pay \$6,000 for 60 shares of the preferred stock, with a bonus of 20 shares of common stock and that he then announced his willingness to take an active part in the business and give the company the benefit of his experience in the real estate and building business; and offered to help out in the development of the aeroplanes, having patented one himself; and that he then also offered the use of his automobile to help the company in its business. 10

From the testimony of Mr. Bender, the attorney of the company, it appears the same parties met at his office a few days later in February, 1920; at this meeting when the stock certificates were ready for delivery, Mr. Parnes was asked for a check for \$6,000, and stated it was not convenient for him to pay the entire amount at that time, but that he could pay \$2,000. Mr. Cannon then informed him that this amount would not meet the bills the company owed, as they needed at least \$2,500 for that purpose; which amount Parnes then paid and Bender wrote a receipt showing the details of the transaction and gave the original to Mr. Parnes and kept a copy for his files. Mr. Parnes then made inquiry about the control of the company and a new agreement pooling the stock of all parties was then signed by all of the stockholders (except one), including Mr. Parnes. 20 30

As stated, practically all of these facts are disputed by Mr. Parnes' son, although he admits being present with his father and inspecting the factory, but he does not recall seeing Mr. Cannon give his father the pencil memorandum containing the list of stockholders and a statement of the company's financial condition. His father transferred to him 10 shares of the preferred stock and he at once entered the employ of the company and remained with it for about three months; and his 40

Conclusions of Vice-Chancellor.

salary was unpaid for about six weeks, although other employees were regularly paid. Shortly after entering upon his work he claims he discovered from his own observation and from remarks of Mr. Cannon that many of the statements which he states were made to his father to induce him to buy the stock were false; and that material facts relating to the company's affairs and to its financial condition had been concealed from him and his father by Mr. Cannon and the others present at their conference; he admits that during his employment he had free access to all books and papers of the company and reported his discoveries almost daily to his father; and that no action was taken by Mr. Parnes, after his son informed him he had been defrauded, to rescind the contract; it also appears that young Mr. Parnes did not complain to Mr. Cannon, nor to any one else connected with the company before, or after, his father's death that he had discovered that his father had been induced to purchase the stock through misrepresentation respecting, or through the concealment, of the real condition of the company's affairs. On the contrary, he continued on very friendly terms with Mr. Cannon and on July 12, 1920, some weeks after leaving the company's employ, he wrote Mr. Cannon that he was now at work in New York and added, "let me at this time express my sincerest thanks to you for your part in getting me this position, I shall try my hardest to do you justice. If there is ever an occasion where I can show my appreciation of your kind interest, won't you please call on me, as I assure you it will be a pleasure."

It seems incredible that this young man about twenty-two years old should write this letter months after he had discovered, as he now claims, that Mr. Cannon and others had defrauded his father out of \$2,500; and at a time when he knew they were attempting to collect from his father's estate \$3,500, additional as part of the proceeds of their fraud. It also requires something more than this

Conclusions of Vice-Chancellor.

young man's uncorroborated statement to justify one in believing his assertion that within three days after this fraud was perpetrated and while \$3,500 was still unpaid for the stock, Mr. Cannon was so indifferent to the consequences that he gave him free access to all the books and affairs of the company; and in effect informed him or allowed him to learn that all of the statements which Cannon had made to his father and himself to induce the purchase of the stock, were false and fraudulent.

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Complainant's proofs are far from establishing that any of the misrepresentations and concealments complained of were ever made or occurred; and such proofs as they offer are completely overcome by the evidence on the part of the defendant. It is contended, however, that the stock certificates themselves are indicative of the fraud, because there is printed thereon, the statement that the capital stock is full paid and non-assessable when in fact, it is not. Aside from the statement of Mr. Bender that this caption was a mistake due to his own act; as attorney for the company, in ordering a standard form of certificate from the stationer; it significantly appears by the proofs that Mr. Parnes never saw a stock certificate of the company bearing this caption until after he had agreed to buy the stock and gave his check for \$2,500 on account of the purchase price; and this caption therefore, could not and did not induce him to make the purchase of the stock. It also appears that Mr. Parnes was informed by Mr. Bender at, or before, the time he made the payment of \$2,500 that the common stock which he received as a bonus was more of a liability than an asset; and that some day he might be called upon to pay for it and Parnes stated that he understood that to be the fact.

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It is further contended that at the time of this transaction, and also, as a result of it, defendant had violated Section 18 of the Corporation Act by having issued and outstanding its preferred stock to an amount which exceeded two-thirds of its common stock paid for in cash or property.

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Conclusions of Vice-Chancellor.

This allegation like the others, is not supported by the proof, which shows 108 shares of preferred stock issued and outstanding and 229 shares of common issued, of which 127 shares had been issued for property purchased (patents or patent rights) and if the 60 shares of preferred included here to be added to the foregoing the proposition between the common and the preferred would still
10 be within the statute.

I will, therefore, advise that the bill be dismissed.

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Final Decree.

FINAL DECREE.

Filed June 28, 1920.

This cause coming on to be heard by the Court in the presence of Kanter & Kanter of counsel with complainants and Gilhooly & Bender of counsel with defendant, upon the pleadings and proofs taken in open court and it satisfactorily appearing therefrom, that the complainants have not established the allegations of misrepresentation, of fraudulent misrepresentation and fraudulent concealment, of the bill of complaint, and it further satisfactorily appearing that the complainants have failed to establish the material allegations alleged in the bill of complaint:

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It is, thereupon, on this 27th day of June, 1921, on motion of Gilhooly & Bender of counsel with defendant, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed that the bill of complaint herein be and the same hereby is dismissed.

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And it is further ordered that the costs of this suit, including a counsel of one hundred dollars, be allowed to the defendant as against the complainants and that the defendant may have execution therefor according to the course and practice of this Court; and that a copy of this decree be served on the complainants or their solicitors within five days from the date hereof, and either party have the liberty to apply to the Court for further direction and relief in the premises as occasion shall require.

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EDWIN R. WALKER,
C.

Respectfully advised,

JOHN E. FOSTER.

The foregoing filed decree is correct as to form.

KANTER & KANTER,
Solicitors for Complainants.

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Notice of Appeal.

NOTICE OF APPEAL.

Filed August 19, 1921.

The complainants hereby appeal from the final decree,
and from the whole and every part thereof, to the Court
of Errors and Appeals in the last resort in all causes.

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KANTER & KANTER,
Solicitors of Complainants.

ELIAS A. KANTER,
Of Counsel with Complainants.

Dated August 17, 1921.

I conceive there is good cause for appeal in the above-
stated cause.

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ELIAS A. KANTER,
Of Counsel with Complainants.

Service of within notice of appeal acknowledged this
17th day of August, 1921.

GILHOOLY & BENDER,
Solicitors of Defendant.

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Petition of Appeal.

PETITION OF APPEAL.

Filed September 17, 1921.

New Jersey Court of Errors and Appeals

Between

MARY PARNES, executrix, etc., of Samuel Parnes, deceased, *et als.*,

Complainants-Appellants,

and

GNOME MANUFACTURING COMPANY,

Defendant-Respondent.

On Appeal, etc.

Petition of Appeal.

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To the Honorable the Court of Errors and Appeals in the last resort in all causes:

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The petition of Mary Parnes, executrix of the last will and testament of Samuel Parnes, deceased, and Julius A. Parnes, the appellants in the above-stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, advised by the Hon. John E. Foster, Vice-Chancellor, bearing date June 27, 1921, wherein the said Mary Parnes, executrix of the last will and testament of Samuel Parnes, deceased, and Julius A. Parnes were the complainants and the said Gnome Manufacturing Company, a corporation, was the defendant, in this respect, to wit: That the said decree adjudges that the complainants have not established the allegations of misrepresentation, of fraudulent misrepresentation and fraudulent concealment, set forth in the bill of complaint and that it adjudges that the complainants have failed to establish the

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Petition of Appeal.

material allegations contained in the bill of complaint, and ordering, adjudging and decreeing the dismissal of the said bill of complaint, and for that, that said decree fails to give to the complainants the relief prayed for in said bill of complaint.

10 Your petitioners humbly appeal from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that same is erroneous, for that, the complainants have established the material allegations of the bill of complaint, justifying the relief prayed for in said bill of complaint.

Your petitioners therefore pray that the said decree of the said Chancellor may be, in the particulars aforesaid, reversed, set aside and for nothing holden. And that your petitioners may have such relief in the premises as to this honorable court shall seem meet.

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KANTER & KANTER,
Solicitors for and of Counsel with
the Complainants-Appellants.

September 15, 1921.

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Petition of Appeal.

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

ELIAS A. KANTER, of full age, being duly sworn according to law, on his oath deposes and says:

On September 19th, 1921, I served the within petition of appeal, by exhibiting same to and leaving a duplicate original thereof with Mr. Albert F. Bender, a member of the firm of Gilhooly & Bender, solicitors of the defendant-respondent at the office of said solicitors, #215 Broad street, Elizabeth, N. J. 10

ELIAS A. KANTER.

Sworn and subscribed to before me
 this 26th day of September, 1921.

CHARLES KANTER,
A Master in Chancery of New Jersey. 20

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Answer to Petition of Appeal.

ANSWER TO PETITION OF APPEAL.

Filed September 27, 1921.

The above-named respondent, reserving the right to move to dismiss the above appeal upon the ground that the petition of appeal was not filed or served within time, answers the petition of appeal filed herein as follows:

1. This respondent, not acknowledging all or any of the matters which in the said petition of appeal are contained to be true, for answer thereto, nevertheless, says and admits that a decree was, on the 27th day of June, 1921, last past, made and entered in the Court of Chancery, in the cause for that purpose mentioned in the said petition, as is therein stated; but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced. And this respondent is advised and believes, that the said decree is agreeable to equity, and it prays that the same may be affirmed with costs to be adjudged to this respondent.

GILHOOLY & BENDER,
*Solicitors for and of Counsel with
the Defendant-Respondent.*

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New Jersey Court of Errors and Appeals

MARY PARNES, executrix, etc., *et al.*,
Complainants-Appellants,

vs.

GNOME MANUFACTURING COMPANY,
Defendant-Respondent.

*On Appeal from
Chancery.*

BRIEF OF COMPLAINANTS-APPELLANTS.

Kanter & Kanter, solicitors for and of counsel with complainants-appellants.

Summary of the Action.

This action was instituted on August 27, 1920, in the Court of Chancery for the purpose of effecting the rescission of a written contract made by the complainants' testator in respect to the purchase of a portion of the capital stock of the defendant company, on the ground that this contract was procured through the fraudulent representations and concealment of the defendant. In the action, the complainants sought to compel the defendant to repay the sum of \$2,500, paid by the late Samuel Parnes, and to enjoin it from prosecuting suits to recover the alleged balance of \$3,500.

The decree orders a dismissal of the action on the ground that "the complainants have not established the allegations of misrepresentation of fraudulent misrepresentation and fraudulent concealment of the bill of complaint," and * * * "that the complainants have failed to establish the material allegations alleged in the bill of complaint" (State of Case, p. 169, ll. 10-20). From this finding, substantially a finding of failure of proof, the present appeal is prosecuted.

Scope of Appeal.

For present purposes, all questions of fact upon which there was a substantial dispute at the trial will not be discussed. The objection to the finding of the decree is that there were certain material allegations of fact all substantially proved, and in good measure not even contradicted by the defense, which should have impelled the learned Vice-Chancellor to advise the relief prayed for in the bill.

An analysis of the record in this case will show that *most of the allegations of the bill of complaint were formally, and in writing, admitted.* Taking up the bill of complaint, paragraph by paragraph, we find the following result:

Paragraph 1, alleging that the complainant, Mary Parnes, is the executrix of the late Samuel Parnes is admitted by paragraph 1 of the answer (p. 1, ll. 30-35, and p. 21, line 12).

Paragraph 2, alleging that the defendant company was organized as a corporation of New Jersey on or about June 4, 1919, is also admitted by paragraph 1 of the answer (p. 1, ll. 35-40, and p. 21, l. 12).

Paragraph 3, stating that the object of the company was the manufacture of toys, is admitted by paragraph 1 of the answer (p. 2, ll. 5-10, and p. 21, l. 12).

Paragraph 4, stating that the defendant's authorized capital was \$60,000, divided into 300 shares of preferred and 300 shares of common stock, each of the par value of \$100, is admitted by paragraph 1 of the answer (p. 2, ll. 10-15, and p. 21, l. 12).

Paragraph 5, stating that the incorporators, named in the bill, subscribed to a total of 10 shares of common stock, but did not pay their subscriptions, is admitted by paragraph 1 of the answer (p. 2, ll. 15-23, and p. 21, l. 12).

Paragraph 6, alleging that the company's duration was to be perpetual, is admitted by paragraph 1 of the answer (p. 2, ll. 23-25, and p. 21, l. 12).

Paragraph 7, alleging that between June 4, 1919, and February 1, 1920, 229 shares of common stock were issued to persons named in the bill is admitted by paragraph 1 of the answer (p. 2, ll. 30-40, and p. 21, l. 12).

Paragraph 8, alleging that all the stock issued, as alleged in paragraph 7 of the bill, was issued as a "bonus" and without consideration, is denied, but it is admitted that 127 shares of that common stock were issued without consideration (p. 3, ll. 15-30, and p. 21, ll. 13-18).

Paragraph 9, alleging that between June 4, 1919, and February 1, 1920, 108 shares of preferred stock were issued to persons named in the bill, is admitted by paragraph 3 of the answer (p. 3, ll. 15-30, and p. 21, l. 19).

Paragraph 10, alleging that 60 shares of the preferred stock, referred to in paragraph 9 of the bill, were issued without consideration, is denied. As this charge of the bill as a ground of relief is unnecessary, its further consideration on this appeal will not be made.

Paragraph 11, alleging various misrepresentations made to Samuel Parnes in order to induce the formation of the contract, which is by the present action sought to be rescinded, is denied. As appellants, on this appeal, insist that some of these misrepresentations were actually made, and proved to have been made, a further consideration of these allegations will be made hereafter.

Paragraph 12, alleging that the defendant knew of the falsity of the misrepresentations, referred to in paragraph 11 of the bill, is met by the assertion that defendant has not sufficient knowledge of the facts (p. 21, l. 28). A discussion of this phase of the case is necessarily bound up with a discussion of the allegations of paragraph 11 and will be made hereafter.

Paragraph 13, alleging that the defendant intended that Samuel Parnes should rely upon the representations made by the defendant, is likewise met with the statement that the defendant had no knowledge of the subject, but proof

of this allegation is ample. Request for Admission, No. 13, reads:

“13. The defendant intended that the late Samuel Parnes should rely upon each and all of the statements and representations made to the late Samuel Parnes in the course of the negotiations finally consummating in the sale to the late Samuel Parnes of the stock of the defendant company” (p. 44, ll. 15-20).

And Answer to Requests for Admissions, No. 4, says:

“4. Defendant admits the facts contained in requests numbered * * * 13 * * *” (p. 46, ll. 17-20).

Therefore, for all practical purposes, it must be taken to be admitted that if the misrepresentations were in fact made, they were made for the purpose of inducing the execution of the contract.

Paragraph 13-A (pp. 26-27) added to the bill by way of amendment (p. 29, ll. 20-30) alleges certain facts with reference to the company's business that it knew when Samuel Parnes was about to purchase its stock. Defendant denies that it had knowledge of these facts, and therefore proof of knowledge of these facts will be hereafter pointed out.

Paragraph 13-B (p. 27) similarly added to the bill by way of amendment (p. 29, ll. 20-30) alleges that the defendant fraudulently concealed the facts referred to in paragraph 13-A of the bill; this allegation is denied by the defendant. A discussion of this proposition will be taken up in connection with the discussion on the allegations of paragraph 13-A.

Paragraph 14, alleging the formation of the contract, the payment made thereon and the stock certificates received is met with the claim that the defendant has no knowledge or information on the subject, but the documentary proof amply sustains the allegations of this para-

graph. Requests for Admissions, Nos. 14, 15 and 16, read:

"14. On or about February 17, 1920, the defendant company issued sixty (60) shares of the preferred stock of the defendant company, of which fifty (50) shares were issued by a certificate, a copy of which is annexed to the bill of complaint marked Exhibit A, and for ten (10) of which shares a certificate was issued, a copy of which is annexed to the bill of complaint marked Exhibit AA.

"15. On or about February 17, 1920, the defendant received twenty-five hundred dollars (\$2,500) from the late Samuel Parnes.

"16. On or about February 17, 1920, the defendant issued twenty (20) shares of the common stock by a certificate, a true copy of which is annexed to the bill of complaint marked Exhibit B" (p. 44, ll. 21-36).

And Answer to Requests for Admissions, No. 4, states:

"4. Defendant admits the facts contained in requests numbered * * * 14, 15, 16 * * *"
(p. 46, ll. 17-20).

Interrogatories Nos. 21 to 28 inclusive (p. 30, ll. 15-40, and p. 31, ll. 1-5) together with the answers thereto, Nos. 15, 17-20 inclusive (p. 35, ll. 20-40) and Answer No. 23 (p. 40, ll. 33-40) also further establish the allegations of paragraph 14 of the bill.

Paragraph 15 of the bill, alleging that the complainants' testator, Samuel Parnes, died on March 7, 1920, is admitted by paragraph 7 of the answer (p. 6, l. 5, and p. 21, l. 25).

Paragraphs 16-21 inclusive, setting forth the written communications passing in behalf of the complainants and the defendant, is again met with the assertion that the defendant has no knowledge of the facts. Yet these allegations are established beyond all peradventure by the force of Requests for Admissions Nos. 17-22 inclusive (p. 44, ll. 35-40, and p. 45, ll. 1-20) and the Answer to Requests, No. 4 (p. 46, ll. 17-20), and also by interroga-

tories Nos. 29-36 inclusive (p. 31, ll. 5-35) and by answer No. 20 (p. 36, ll. 9-10).

Paragraph 22, reciting the tender of the return of the shares, accompanied by two letters, is denied. But here, again, there is ample and conclusive proof of these allegations, by reason of interrogatories Nos. 37-40 inclusive (p. 31, ll. 35 to 40, and p. 32, ll. 1-10) and by the answer thereto, No. 20 (p. 36, ll. 9-10).

Paragraph 23, alleging the refusal of the defendant to accept the tender of return, is denied, but conclusive proof of this fact is found in interrogatories Nos. 41-42 (p. 32, ll. 10-15) and answer No. 20 (p. 36, ll. 9-10).

Summarizing the foregoing, it is respectfully submitted that the only allegations of the bill of complaint (as all other issues are to be deemed conclusively established either by the pleadings, or the defendant's formal and written admissions in this cause, or by the defendant's formal and written answers to interrogatories) that were issuable were the allegations of paragraph 11 (containing the allegations of misrepresentations) paragraph 12 (containing the allegations of the defendant's knowledge of their falsity), and paragraphs 13-A and 13-B (containing allegations of fraudulent concealment).

It will be contended that certain of these allegations of misrepresentation with knowledge and certain of these allegations of concealment with knowledge were so *conclusively* established, that not only is the decree erroneous in directing a dismissal apparently for failure of proof, but it is erroneous in not finding these certain particulars established as facts, and decreeing according to the prayer of the bill.

POINT I.

This Court is justified in examining the testimony in a Chancery cause to determine if the findings of fact are consistent with the testimony, and if found inconsistent, to reverse a decree founded on such inconsistency.

The case at bar, it is respectfully urged, presents the situation where the complainants have established sufficient allegations of fraud to justify the rescission of the contract, but where the Vice-Chancellor has closed his eyes to the probative force of the testimony—even where it was not contradicted—and advises a decree that the case was not proved. The state of the testimony, in the case at bar, is such (as will be later pointed out) that the Court should have found at least those allegations of misrepresentations and concealment hereafter particularly pointed out, proved, irrespective of whether or not all the allegations of fraud were proved.

While it is true that this Court on an appeal from Chancery should give great weight to the Chancellor's findings of fact, this Court is not restrained from ascertaining, by full investigation and analysis of the evidence, what the facts are, and whether the general finding is consistent therewith (*Cartan v. Phelps*, 109 Atl. 291, 91 N. J. E. 312).

It is this investigation which the appellants respectfully urge this Court to make, but of only a very few points which, it is believed, will be decisive in the appellants' favor.

POINT II.

It was fully established that the company represented that it had on hand over \$12,000 worth of unfilled orders, and that this representation was false.

The eleventh paragraph of the bill of complaint, among other things, charges that "on or about February 17, 1920, the defendant, in order to induce the late Samuel

Parnes to purchase sixty (60) shares of the preferred stock of that company * * * stated and represented to said late Samuel Parnes * * * that it then had in hand over twelve thousand dollars (\$12,000) worth of unfilled orders * * * ”

The only witness called by the complainant was Jules A. Parnes, who, on this specific point, testifies:

“Q On the occasion of this visit, which must have been on February 16, 1920, what did Mr. Cannon tell you about the affairs and property of the corporation? A What he told my father?”

“Q Did your father ask any questions about it? A Yes, he did.”

“*The Court.* What else did he tell you?”

“*The Witness.* That he also had twelve thousand dollars’ worth of unfilled orders and more and more were coming in every day and more was on the table * * * ” (pp. 69, 70).

Under cross examination with reference to this item this witness says:

“Q You are sure he said they had twelve thousand dollars’ worth of orders? A Over twelve thousand dollars unfilled orders” (p. 85, l. 28).

Of the three witnesses for the defendant, whose testimony went into the subject of unfilled orders, two corroborate the complainant’s witness.

Stanislaw Balinski, one of the defendant’s witnesses, says:

“Q During the meeting what was talked over? A Mr. Parnes asked Mr. Cannon how is that, everything, and Mr. Cannon give that pencil memorandum on a piece of paper that was marked, how much work is on hand, how much is done, *how much orders* * * * ” (top page 121).

And under cross examination he repeats:

“Q How many orders were on hand? A I don’t know; he gave him that pencil memorandum.”

“Q There was a quantity of orders on hand? A Yes, some orders.”

“Q Did Mr. Cannon tell him the quantity of orders on hand? A That was evidently marked down how much.”

“Q He gave him a memorandum showing that there were a number of orders on hand? A Yes.”

“Q That was in the memorandum? A Yes.”

“Q He also told him that there were a number of orders on hand? A He told him about that, everything, and after he marked it down, and he gave it to him.”

“*The Court.* Did he tell him the number of orders on hand? *Witness.* Yes.”

“Q Do you remember what that figure was? A I cannot remember that; it was not much.”

“Q Was it a couple of thousand dollars' worth? A No.”

“Q A couple of hundred dollars' worth? A I cannot tell you how much that was, because Mr. Parnes was watching out very closely.”

“Q What do you remember; was it a couple of hundred dollars' worth, to the best of your memory? A I don't know how much it was, about a couple of hundred.” (P. 127, l. 15-40.)

Edward V. Conrad, another one of the defendant's witnesses on this subject, testifies:

“Q Anything said about the amount of orders on hand? A Yes, sir; it was spoken about, but we had very little orders on hand, it was at the end of the year, so we had very little on order.” (State of Case, p. 138, ll. 19-22.)

The only one of the defendant's witnesses that denies that anything was said on the subject of the amount of orders was Charles S. Cannon, who, at page 96, lines 15-25, says that he expressly told Parnes that there were no orders on hand. But this statement of Cannon is entirely negated by the fact that in answering the interrogatories, particularly interrogatory No. 7 (p. 28, l. 30), wherein the defendant is asked to narrate all the statements made to the late Samuel Parnes in the course of the preliminary negotiation consummated by the sale of the stock, *this witness*, together with the other two

defendant's witnesses already mentioned, *makes no reference whatever that the subject of orders was even alluded to.* (See answer No. 22, contained on pp. 39-40.) If, therefore, in his answer to the interrogatory, the witness plainly shows that the amount of orders was not hinted at in any way, can any weight be attached to his statement at the trial that the positive statement was made to Parnes that there were no orders on hand?

All the testimony in the case on this subject of orders can, therefore, be grouped as follows:

One witness for the complainant, who is certain that the representation of \$12,000 orders on hand was made.

Two witnesses for the defendant, who testify that some representation concerning orders was made, but who are uncertain about the amount.

One witness for the defendant, who testifies that the positive statement was made that there were no orders on hand; contradicted by the statements in his own answer to interrogatories.

In spite of the condition of the testimony, which, it is respectfully submitted, should impel all reasonable men to the conclusion that plaintiff's allegation of misrepresentation in the particular of orders was fully established, the Court, by its decree, finds this fact "not established." It is respectfully urged that there should be a reversal of this finding.

Of course, there cannot be any question on whether this representation was false or not, because of the requests for admissions, and written admissions made in this case, viz.:

"To the above-named defendant or to whom it may concern:

"Please take notice that you are hereby called upon to admit for the purposes of this action the following facts:

"6. On or about February 17, 1920, the defendant did not have on hand over twelve thousand dollars (\$12,000) worth of unfilled orders; and as a matter of fact had on hand no orders."

(State of Case, p. 42 and p. 43, ll. 22-26.)

“The above-named defendant answers complainants’ requests for admissions served upon defendant’s solicitors on October 19, 1920, as follows:

“2. Defendant admits the facts contained in requests numbered * * * 6 * * *”
(State of Case, p. 46, ll. 13-14.)

Here then was a material misrepresentation of fact in respect to the company’s business condition, conclusively established. It was not necessary, it is respectfully contended, for the complainants to establish *all* the misrepresentations. Therefore, with this single misrepresentation of fact established, the Court should have found the allegation of the bill in that respect proved, and this finding would have resulted in the awarding of the relief.

POINT III.

It was fully established that the company represented that it could issue twenty shares of common stock, fully paid and non-assessable.

Another misrepresentation of fact, charged in paragraph 11 of the bill—and conclusively proved to have been made—is the representation of the company that “it could issue to said Samuel Parnes twenty (20) shares of the common stock of the corporation fully paid and non-assessable * * * without said Samuel Parnes paying for, or being obliged to pay for, said common stock.”

In this connection, the first question naturally is, Was the representation made? The complainants’ witness, in respect to this proposition, testifies:

“Q You still live in Elizabeth? A Yes. * * *
* He told us that * * * and furthermore, a share was given as an inducement for every three shares of stock that was bought.”

(P. 71, ll. 15-25.)

“*The Court.* Q Did you agree as to how much you would invest?” “*The Witness.* Yes. My father asked Mr. Cannon who was the largest stock-

holder and he said Joseph Balinski had six thousand dollars of preferred stock, and my father first said he puts in five, and then he changed it and said he will put in six. Mr. Cannon figured it out and he said, 'Well, he would get twenty shares of common stock as bonus.'"

(P. 72, ll. 15-20.)

The cross examination of this witness strengthened this proof, as follows:

"Q Is that the language he used * * * full paid and unassessable? A Yes, sir."

(P. 78, ll. 9-10.)

Stanislaw Balinski, one of the defendant's witnesses, on this subject, testifies:

"Q Did he tell him about the common stock? A Yes."

"Q Did he say that Mr. Parnes would have to pay for the common stock? A No."

"Q What was said about that, if anything? A Like the bonus."

"Q That is bonus stock? A Yes."

"Q Was it explained to him that he didn't have to pay for it? A Yes."

"Q Did Mr. Cannon say, 'You don't have to pay for this stock'? A Nothing said that he don't have to pay; he said with every three preferred stock go one share of common."

"Q Did he say why Mr. Parnes wouldn't have to pay for this common stock? A No."

"Q Did he say something like this, 'Mr. Parnes, you will get one share of common with every three shares of preferred as a bonus'? A Yes."

"Q Am I giving it to you about correct? A He said that is like bonus, one share with every three shares."

"Q And in reference to the common stock that you received from the corporation, you said that you were not to be obliged to pay for that common stock? A Yes."

(Page 128, ll. 5-29.)

The only one of the defendant's witnesses, who in any way attempts to negative these statements concerning the

common stock, is Cannon. He testified (bottom of page 96 and top of page 97 to line 10) that all that he said was that one share of common stock was given away as a bonus with each three shares of preferred stock. Yet, on examining interrogatory 7 (p. 28, ll. 25-30) calling for all the statements made to Samuel Parnes in the course of the preliminary negotiations, this very same witness who made answer to that question, answer No. 22 (pp. 39 and 40), fails to mention a single word to the effect that this subject of "bonus" stock was broached. The only reasonable conclusion that can be reached with reference to Cannon's statements is that it is absolutely untrustworthy.

But there is still more compelling proof that this representation was made. The Court will observe that the stock certificate issued by the defendant for these twenty shares of common stock has printed upon the words—"Fully Paid and Non-assessable." See Exhibit B, annexed to the complaint, (State of Case, p. 11). Here then is a positive written statement that these twenty shares of stock had been fully paid for prior to their issuance to Samuel Parnes, a condition absolutely contrary to the fact.

The effect of this written statement in the stock certificate is sought to be explained away by the defendant, in its answer, by the assertion that this form of stock certificate was gotten out through a mistake, and that Samuel Parnes never saw this certificate.

In respect to the first assertion that the form of stock certificate was gotten out by mistake, there is not a single statement in the evidence, even slightly supporting this pleading of the defendant. There is some positive evidence to the contrary from the stock certificates themselves which are specially printed forms, and from the care with which the covers of the stock certificate books, containing special embossed matter, as Exhibit C. 5 and Exhibit C. 6, on page 151, were gotten up.

Nor is there anything in the defendant's proof to substantiate defendant's claim that Samuel Parnes never saw the certificates. The proof is clear that he saw the certificates (State of Case, p. 79, ll. 6-8 and ll. 25-27).

Of course, there is the testimony of Albert F. Bender, the attorney of the defendant company (p. 144, ll. 1-10), who says that in a private conversation with Samuel Parnes he, Bender, explained to Parnes that if the "company goes bad," Parnes would have to pay something. If this conversation occurred in February, 1920, just immediately prior to the issuance of the certificate and on the same occasion, it is clear that the witness then must have known of the form of the stock certificate; otherwise, there would be no reason for this explanation that the stock was liable to assessment. In the nature of things, the witness claiming that this was a private conversation with the decedent, it was not possible to controvert this statement by direct oral testimony. But very strong contradictory testimony exists in the facts: An attorney knowing that stock, which is about to be issued in his presence, is subject to assessment, and who has that knowledge so strongly in mind as to speak of it specifically, would *undoubtedly* have seen to it that the certificate was issued in the form as he supposed to be in accordance with the facts. Not having taken notice of the latter detail, it is impossible to believe that the alleged conversation took place. A lawyer painstaking enough to have made the explanation which Bender says he did would have been painstaking enough to see that the certificate was in accordance with his statement. In the absence of the act, which would naturally accompany the words, we cannot believe the utterance of the words.

In fact, the record discloses that it seemed to have been the corporation's general idea that it was perfectly lawful, proper and possible to issue this common stock without any consideration. For instance, in Exhibit C.1, page 148, we find a directors' resolution to issue to Carl

Chumak, "as bonus stock four (4) shares of the common stock of this company, without further consideration." A similar resolution, Exhibit C. 2, at page 148, is found to issue to Alex Stetsnko "three (3) shares of the common stock as a bonus without extra charge." In Exhibit C. 3, at page 149, we find a directors' resolution "to give Mr. Joseph Balinski as a bonus for purchasing the above stock seventy (70) shares of common stock of this company's issue." Again, in Exhibit C. 4, at page 150, there is a directors' resolution to deliver to Conrad "25 shares of common stock, the said shares of common stock being given as bonus stock in consideration of the purchase of said preferred stock." All these resolutions, we respectfully submit, lend weight and color to the extreme probability that the representation, here contended for as having been made with respect to the common stock, was actually made.

The proof of the making of this statement rests, therefore, on the following witnesses:

One witness, for the complainant, who is certain that the representation was made.

One witness, for the defendant, who corroborates the complainant's witness.

One witness, for the defendant, who in part denies the making of the statement, and in part corroborates it, but whose testimony is unreliable.

The indisputable documentary proof.

The next consideration, under this point, is whether in point of fact the statement that the company could issue 20 shares of fully paid and unassessable common stock to the decedent was true. This, of course, depends on the fact whether these 20 shares had theretofore been paid for (in accordance with either section 48 or 49 of the General Corporation Act). The written and record testimony in this case is conclusive on this subject:

Interrogatory No. 20. "What consideration, if any, has ever been received by the corporation for the issuance of the twenty (20) shares of the com-

mon stock referred to in paragraph twelve (12) of the bill of complaint, prior to the time that such shares were issued to the late Samuel Parnes?" P. 30, ll. 10-15.

Answer No. 14. "Answer to interrogatory numbered 20. No consideration." P. 35, l. 19.

It is, therefore, respectfully submitted that this Court should determine that the defendant made a false representation with respect to these twenty shares of common stock.

POINT IV.

The defendant fraudulently concealed the fact that 127 shares of its common stock had been issued without any consideration being paid to, or contracted to be paid to, the defendant corporation.

This Court will observe that paragraphs 13-A and 13 B, which charge this ground of fraud, were incorporated as an amendment to the bill, (pp. 26-27 and p. 29, ll. 20-30).

The record admission of the charge that 127 shares of common stock were issued without consideration lies in paragraph 8 of the bill of complaint (p. 2, ll. 28-40) as in part admitted by paragraph 2 of the answer (p. 21, ll. 12-16), and in the resolutions of the board of directors of the defendant company, Exhibits C.1 to C.4 inclusive, on pp. 148-150.

For this purpose, assuming the truth of the defendant's statement that a list of the stockholders and their holdings was delivered to Samuel Parnes (as claimed on p. 99, ll. 12-15 and in the answer to interrogatory on p. 39, ll. 25-35), which list shows that 229 shares of common stock had been issued, it nowhere appears that when giving this list to Samuel Parnes, the officers of the defendant company made known to Samuel Parnes that for 127 of these shares the company had not, and was not, to receive any consideration. They remained silent, and by their silence permitted the only reasonable inference that all the stock

had been or was to be, paid for. By their silence, they managed to conceal the fact that at least 127 shares of the common stock had been issued without consideration. Had they spoken, they would have been bound to reveal how the stockholders got their stock; then the decedent would have seen what was being "put over" on him, a raw and unconscionable fraud, worked in the familiar guise of misrepresentation, "bonus" and concealment.

POINT V.

Refutation of "impeaching" evidence.

Counsel for the defendant makes a point of the claim that the testimony of the complainant's witness, Jules A. Parnes, is not entirely credible, because this young man, twenty-two years of age (p. 83, l. 25), wrote a courteous letter to the president of the defendant company in which thanks and appreciation were expressed for having assisted young Parnes in getting a job (p. 154). The probative force of this letter, in the writer's judgment, is exaggerated by both defendant's counsel and the learned Vice-Chancellor. It is just the kind of a letter that a boy, extremely grateful for having procured a good job, would write; and there is nothing in its contents that reflects on the truth of the testimony given by him at the trial.

Summary of the Argument.

In the first portion of this brief, under the title "Scope of Appeal," we have pointed out how all the material allegations of the bill, with the exception of the averments of paragraphs 11, 12, 13A and 13B, have been admitted by the defendant. And under Points II, III and IV respectively, we have shown that at least three allegations of fraud have been fully and indisputably proved. We, therefore, claim that *all* the material allegations of the bill, necessary to give the complainants the relief prayed

for (as it is not necessary to prove all the allegations of fraud, it being sufficient if *one* allegation is proved) have been proved.

Conclusion.

It is respectfully urged that the decree below be reversed with the direction that the decree, instead of determining that the allegations of the bill have not been proved, should determine that all the necessary allegations of the bill have been established and affording relief in accordance with the prayer of the bill.

Respectfully submitted,

KANTER & KANTER,
Solicitors for and of Counsel
with Complainants-Appellants.

ELIAS A. KANTER,
Of Counsel.

New Jersey Court of Errors and Appeals

Between

MARY PARNES, executrix, etc., of
SAMUEL PARNES, deceased, *et als.*,
Complainants-Appellants,

and

GNOME MANUFACTURING COMPANY,
Defendant-Respondent.

*On Appeal
from Chancery.*

BRIEF OF DEFENDANT-RESPONDENT.

Gilhooley & Bender, solicitors for and of counsel with defendant-respondent.

Counsel for the defendant-respondent are willing to concede, for the purposes of this argument, that the allegations of the bill of complaint, with the exception of those contained in paragraphs 11, 12, 13-A and 13-B, have either been admitted or proved. But the allegations of fraud and misrepresentation contained in paragraph 11 of the bill, and the allegation of fraudulent concealment contained in paragraph 13-A of the amendment to the bill, are the vital points in this case, without which the remaining allegations of the bill of complaint are so much chaff and dust. Paragraph 11 of the bill of complaint contains six allegations of fraudulent misrepresentation, and paragraph 13-A nine allegations of fraudulent concealment. Of these fifteen material allegations, all, except three, have been abandoned by appellants' counsel, so that the argument in this court now proceeds upon the allegations referred to in points 2, 3 and 4 of the brief of counsel for the appellants, and the main question before this court is whether or not one or more of these allegations were sustained at the trial to such a clear and conclusive extent as to warrant this

court in setting aside the decree advised by Vice-Chancellor Foster.

At this time the attention of this court is respectfully directed to the fact that Samuel Parnes, the testator of one of the complainants, sought the directors of the defendant for the purpose of investing money in the defendant company and for the purpose of placing his son in the business. The directors of the defendant company did not seek him for the purpose of inducing him to invest his money (State of Case, p. 118, ll. 29-32; p. 136, l. 23-p. 137, l. 18).

The contention of appellants' counsel, made in the first point of his brief, that the Court has jurisdiction to review findings of fact by the Chancery Court, is conceded.

POINT I.

The alleged misrepresentation that the defendant had over \$12,000 worth of unfilled orders on hand was not proved.

The only witness offered by the complainants at the trial, to prove this misrepresentation, was Julius Parnes, one of the complainants, and this witness testified that the misrepresentation was made.

But how counsel for the appellants can contend that the testimony of Stanislaw Balinski corroborates the testimony of Julius Parnes it is difficult to understand. It is submitted that the reading of this testimony shows that it contradicts the testimony of Julius Parnes.

Q Nothing was said about orders on hand? A Yes.

Q How many orders were on hand? A I don't know; he gave him that pencil memorandum.

Q There was a quantity of orders on hand? A Yes, some orders.

Q Did Mr. Cannon tell him the quantity of orders on hand? A That was evidently marked down how much.

Q He gave him a memorandum showing that there were a number of orders on hand? A Yes.

Q That was in the memorandum? A Yes.

Q He also told him that there were a number of orders on hand? A He told him about that, everything, and after he marked it down, and he gave it to him.

The Court. Did he tell him the number of orders on hand?

The Witness. Yes.

Q Do you remember what that figure was? A I cannot remember that; it was not much.

Q Was it a couple of thousand dollars' worth?

A No.

Q A couple of hundred dollars' worth? A I cannot tell you how much that was, because Mr. Parnes was watching out very closely.

Q What do you remember; was it a couple of hundred dollars' worth, to the best of your memory? A I don't know how much it was, about a couple of hundred (State of Case, p. 127, ll. 14-40).

And the same thing is true of the testimony of Conrad.

Q Anything said about the amount of orders on hand? A Yes, sir; it was spoken about, but we had very little orders on hand, it was at the end of the year, so we had very little on order (State of Case, p. 138, ll. 19-22).

And the testimony of Cannon contradicts the testimony of Julius Parnes.

Q Did you say in effect that the company had more than \$12,000 in orders and were getting more from the Toy Show which was then going on? A I did not, the Toy Show was a month off then.

Q Did you state anything with reference to the amount of orders the company had on hand unfilled? A If I did I said I had absolutely none.

The Court. Answer the question.

Q What did you say? Did you say anything about the number of orders you had on hand? A I believe I did.

The Court. What did you say?

The Witness. We had no orders on hand.

(State of Case, p. 96, ll. 6-18.)

So that it must be clear that the testimony of Julius Parnes, on the subject of the misrepresentation of outstanding orders, far from being corroborated, was decidedly contradicted, and, therefore, did not establish the making of the misrepresentation.

But the witness, Julius Parnes, was impeached.

He testifies that he learned of the falsity of the alleged representation immediately after the purchase of the stock of the defendant by his father, Samuel Parnes. This appears from the following testimony where the witness refers to having observed that things were not as they were represented and that he informed his father of this fact:

Q What made him feel there was something wrong about it? A I went to work there and came back and told him that things were not just what we thought they were.

Q You found out that things were not as you thought they were? A Yes, sir (State of Case, p. 79, ll. 36-40; p. 80, ll. 1-2).

And also from the following testimony:

Q How soon after you began your employment at the company's plant did you report to your father what appeared to you to be irregularities? A Oh, about three days after, I imagine (State of Case, p. 87, ll. 16-19).

Q The business was not doing so well? A I found out you didn't have any orders on hand the way you told us.

The Court. By "you" whom do you mean?

The Witness. Mr. Cannon.

(State of Case, p. 88, ll. 12-16.)

If this testimony is to be believed, then this witness knew that Mr. Cannon had deceived his father and caused his father pecuniary loss within a very short time after he went to work at the defendant's plant and that was a short time after February 17, 1920 (State of Case, p. 74, ll. 20-29). It appeared then that on July 12th, 1920, he wrote Mr. Cannon the following letter:

SAMUEL PARNES
 Real Estate
 172 Jacques St.,
 Elizabeth, N. J.

July 12, 1920.

My Dear Mr. Cannon:

Just a few lines to let you know that I am now a full fledge employee of the Consolidated Ticket office at 64 Broadway.

I started work on June 28, in the accounting department at \$100. per month, I remained in that dept. until July 11, when Mr. Rath called me into his office and complimented me upon my good work, and in consideration promoted me to assistant cashier, at a \$10.00 increase, effective on July 1. I surely was surprised, as I never realized that my work would be appreciated so quickly. You can surely rest assured that I shall try my utmost to do even better; for I am certain Mr. Rath is a man who appreciates good work and will do everything in his power for me.

I like the work, immensely, and the boys I am working with are first rate, they will do anything to help me. *Let Me at this time express my sincerest thanks to you, for your part in getting me this position. I shall try my hardest to due you justice.*

If there is ever an occasion where I can show my appreciation for your kind interest, won't you please call on me, as I assure you it will be a pleasure.

Let me know how you are making out, also how things are progressing at the Gnome.

Cordially yours,

JULIUS A. PARNES.

(State of Case, p. 154.)

The writing of this letter, containing as it does, the warmest expressions of friendly feeling to the man who had defrauded his father, is conduct sufficient to discredit his testimony.

The above testimony, if taken as true, discloses the circumstance that Mr. Cannon, who is alleged to have

made the misrepresentation, within a very short time after the purchase of stock, put the witness in a position where the alleged misrepresentation could be detected, an act of carelessness, of course, that is very difficult to believe of a man of any average intelligence.

In view of the above letter written by the witness to Mr. Cannon, and in view of the inference from this witness' testimony that Mr. Cannon gave him the opportunity to discover the alleged misrepresentations within a few days after it is claimed they were made, and in view of the fact that his testimony is contradicted, it is contended that the facts in this case fall short of the rule laid down by this Court in *Cartan, et al., v. Phelps, et al.*, 109 Atlantic, 291, where this Court said:

“Where the character of a party for truth and veracity is unimpeached, and his testimony is uncontradicted, is not contrary to circumstances in evidence, and contains no inherent improbabilities or contradictions which alone or in connection with other circumstance in evidence excite suspicion as to the truth of the testimony, it will be given effect.”

But in this case the character of the witness for truth and veracity is impeached, his testimony is contradicted and is contrary to circumstances in evidence and contains inherent improbabilities and contradictions which both alone and in connection with other circumstances and evidence excite suspicion as to the truth of his testimony.

In the face, then, of the impeached testimony of Julius Parnes and the contradicting testimony of two of defendant's witnesses, counsel for the appellants concludes that this material alleged misrepresentation is conclusively established. No, counsel for the defendant say that the Vice-Chancellor, before whom this case was tried, was justified in concluding that this allegation was not established. And, further, that this Court would not be warranted in disturbing the conclusion of the Vice-Chancellor on this point.

POINT II.

It was not established by complainants that the defendant represented to Samuel Parnes that it could issue twenty shares of its common stock as a bonus without the possibility that said Parnes at some time might be compelled to pay full value therefor.

The testimony of Julius Parnes for the complainants, and of Stanislaw Balinski and Charles S. Cannon for the defendant, on this point is to the effect that Samuel Parnes was informed by Mr. Cannon that he would receive twenty shares of common stock with his preferred stock subscription, without being obliged to pay for the same. Samuel Parnes, probably being uncertain about this, sought a private interview with Mr. Bender, the defendant's legal advisor, at the time of the purchase of the stock and what transpired, according to the testimony of Mr. Bender, is the following:

Q Do you recall a meeting at your office some time in February, 1920, of the officers of the Gnome Manufacturing Company? A Yes.

Q Who was present? A The two Balinski brothers, Mr. Conrad, Mr. Parnes and his son Julius and myself.

Q Will you state what transpired at the meeting?

Mr. Kanter. Objected to as immaterial.

The Court. I will receive it.

A I believe it was just prior to the meeting that Mr. Parnes, Senior, asked to speak to me alone. I wouldn't want to state positively that was prior, or right after the meeting; it was either before or after the meeting. He said, "Mr. Bender, what do you know about this company?" I said, "All I know about it is that I was retained to incorporate it, and I have acted as advisor and counsel since the day it was incorporated, down to the present time." He said, "What do you know about the preferred stock that I am going to buy in this company?" I said, "Mr. Parnes, the preferred stock, as any stock in any corporation, rises no higher than the ability and the character of the

people behind the company." He said, "Well, that is all you can say, I suppose?" I said, "Yes, that is all I can say about it. That is all I know about it." He said, "Of course, this common stock is worth nothing." I said, "Mr. Parnes, that common stock is a liability and not an asset; you are getting that as a bonus, and while you don't have to pay for it now, if the company makes good, you get something for nothing. If the company goes bad, you have got to pay something. That is all." He said, "I understand that" (State of Case, p. 143, l. 29-p. 144, l. 22).

In view of the testimony of Mr. Bender, above, the statement on the stock certificate, "fully paid and non-assessable," could not in any way have misled Samuel Parnes. And it is insisted that Samuel Parnes, as far as the proof in this case goes, never saw the statement "fully paid and non-assessable" on the common stock certificates. The only testimony in the record on this point is as follows:

Q Then what happened to the certificates? A I took them. My father gave them to me, and I put them in my pocket.

Q When did you look at them next? A When I put them in the safe.

Q Did you read them over? A Yes, sir.

Q Struck you peculiar that it said on there "full paid and non-assessable common stock," when you were told that the stock was full paid and non-assessable?

Mr. Kanter. I object to the question.

The Court. The form of the question is objectionable. What difference does it make? Did you observe?

Q Did you observe on there that it was full paid and non-assessable? A Yes, sir.

Q Who kept possession of the stock after that? A My father put them in his desk.

Q Your father put them away? A Yes, sir.
(State of Case, p. 79, ll. 4-26.)

This testimony, it is submitted, does not show that the words "fully paid and non-assessable" ever came to the

attention of Samuel Parnes, and, again, this is the testimony of the impeached witness, who, upon seeing his father defrauded of a substantial sum of money, retained a heart brimming over with affection for the alleged frauds.

Arguing further, appellants' counsel says that if the testimony of Mr. Bender (p. 143, l. 29-p. 144, l. 22), detailing the explanation to Mr. Parnes about being obliged to pay for the common stock is correct, then Mr. Bender must have known of the form of the stock certificate. But the conclusion does not follow the premise. The testimony of Mr. Bender states that the explanation was made by him to Mr. Parnes as the result of Parnes' inquiry. And it is logical to conclude that Parnes made the inquiry as a result of the statement made to him during the first conference at the factory, that he would receive bonus stock.

The record does not, it is submitted, disclose that it was the corporation's idea that it was lawful and proper and possible to issue the common stock without consideration, for notwithstanding Exhibits C. 1, C. 2, C. 3, C. 4, there is the testimony of Mr. Bender.

Q Mr. Bender, what, if anything, was explained to these different stockholders of the Gnome Manufacturing Company with reference to the bonus stock?

Mr. Kanter. Objected to.

The Court. When?

Mr. Seiler. When it was originally issued.

Mr. Kanter. Objected to, as immaterial.

The Court. I will receive it.

Q At the time when they issued the original stock Mr. Cannon came to my office with Mr. Stetnske and Mr. Balinski and Mr. Conrad and wanted to know if it were possible to issue such a thing as bonus stock; he said he had heard of it being issued, and wanted to know if it could be done lawfully. I told him that stock was given for nothing was always subject to an assessment up to its full amount. If the company could pro-

ceed on its preferred stock and make money, it could make the common stock good, and the people would have the stock without having paid for it. But if the company got into difficulties, and there was a receiver appointed, the receiver would compel the payment of the stock up to one hundred cents on the dollar. Mr. Joseph Balinski wasn't present at that meeting; he came in later on.

The Court. Do you know if there was ever an agreement between the stockholders that they should pay for the common stock, if the money were needed by the company?

The Witness. No more than that explanation. It is enumerated in all the minutes as bonus stock. (State of Case, p. 146, l. 16-p. 147, l. 10.)

It is therefore submitted that the complainants failed to prove that Samuel Parnes acted under any misrepresentation with reference to the so-called bonus stock, and the record does not show that this alleged misrepresentation was conclusively established.

POINT III.

The defendant did not in any way conceal the alleged fact that 127 shares of its common stock had been issued without any consideration having been paid to or contracted to be paid to the defendant corporation.

It would have been a misrepresentation on the part of the officers of the Gnome Manufacturing Company to inform Samuel Parnes before he purchased his stock that there were 127 shares of the common stock issued for which no consideration had been paid.

As a matter of fact, the record shows that 77 shares of the common stock issued were not paid for. Carl Chumack held four shares (Exhibit C. 1). Alex Stetnske held three shares (Exhibit C. 2). Joseph Balinski held 20 shares, his total of 70 shares having been made up by transfer to him from Dane and Cannon of 25 shares each, and 20 shares issued by the company (Exhibit C. 3).

Mr. Conrad held 25 shares and Mr. Stanislaw Balinski 25 shares (Exhibit C. 4). This resolution authorized the issue of 50 shares to Stanislaw Balinski, but the only record of Stanislaw Balinski's holdings is in his testimony:

Q What did you get for the \$2,000? A 25 preferred stock and 25 common stock (State of Case, p. 118, ll. 23-24).

And in answer to interrogatories, where it is stated that he holds 20 shares of preferred and 25 common stock (State of Case, p. 39, l. 30).

Aside from the testimony of Julius Parnes, which we do not consider worthy of credence, Stanislaw Balinski testified as follows:

Q He came to your house? A Yes, with his son, and he said, "Do you belong to the Gnome Manufacturing Company?" I said, "Yes." He said, "What do you do there?" We say "a small aeroplane," and he had it in his hand; he looked it up, and his son, and he said, "That is a nice thing, and I like to come in, too, if you belong there. Who belongs more?" I said, "I, my brother, Conrad, Shumock," and he said, "How much you put money in?" I said, "\$2,000; Mr. Conrad \$2,000, and my brother \$6,000 and Mr. Shumock he put in over \$1,000," and I said, "One more man, but I don't know how much he put in." I said, "They give us the stock; three preferred stock they give, one common share." *He said, "Oh, I don't care much for the common stock; who is the biggest; who got the most money invested?"* I said, "My brother." He said, "How much?" I said, "\$6,000." "Well," he said, "I like to be even with your brother, and if you and your brother belong to it, then I like to come in," and he asked me—he said, "When we have a meeting"; I said, "Mr. Parnes, you can go to Bayway any time and see Mr. Cannon, and he can explain everything," and he said, "I was there with my son, and I went to look it up, but they didn't let me in." I said, "I don't know; maybe they didn't know you." He said, "Well, I know they didn't know me, and I went to look in, but they didn't

let me come in." I said, "Anytime if you tell me, we can ring up Mr. Cannon and you can go to the shop" (State of Case, p. 118, l. 36-p. 119, l. 26).

Again the witness, Stanislaw Balinski, testified:

Q Am I giving it to you about correct? A He said that is like bonus, one share with every three shares (State of Case, p. 128, ll. 22-26).

Further, the discussion between the late Samuel Parnes and the officers of the Gnome Manufacturing Company, on the subject of invested capital, was conducted in terms of United States currency and not in terms of the issued shares of the company. This is clear from the testimony of Stanislaw Balinski (State of Case, p. 118, l. 36-p. 119, l. 26). So that all the money that Mr. Parnes had any right to suppose had been invested in the company, was the sum of \$11,000.

It cannot be seriously contended that the fact that there was bonus stock, or stock for which no consideration had been paid, issued and outstanding, was concealed. Each witness testified more or less on this subject and the testimony of each on this subject is to the effect that Samuel Parnes was informed that there was common stock outstanding for which no consideration had been paid. And the best proof of this is that they offered common stock free to him. Samuel Parnes was at liberty to inquire what the number of outstanding shares was which had been issued without consideration. The books of the company were clear on the subject. The minutes of the Board of Directors (Exhibits C. 1 to 4, inclusive, and the Common Stock Book) show that. And in no place in the record does it appear that there was any act on the part of the officers of the Gnome Manufacturing Company which would warrant, in the slightest degree, the inference that these records were concealed from Samuel Parnes.

It appears clearly that Samuel Parnes must have known that 229 shares of the common stock had been issued (Answer to Interrogatories, State of Case, p. 39,

ll. 24-36), and, it appearing that he was informed that some of this stock had been issued without consideration, he was put upon inquiry to ascertain the total number of shares which had been issued, without consideration, if he was interested in ascertaining the same. That he had little or no interest in the common stock outstanding appears from the testimony of Stanislaw Balinski. I said, "They give us the stock; three preferred stock they give, one common share." He said, "Oh, I don't care much for the common stock; who is the biggest; who got the most money invested?" (State of Case, p. 119, ll. 10-13).

So that it is respectfully submitted, there was no concealment on the subject of the outstanding common stock which had been issued without consideration, and that there is nothing in the record indicating that the decree of the Vice-Chancellor should be disturbed on this point.

It is therefore respectfully submitted that the allegations of misrepresentation and the allegation of concealment discussed by counsel for the appellants were not established and that the decree of this Court of Chancery should be affirmed with costs.

GILHOOLY & BENDER,

*Solicitors for and of Counsel
with Defendant-Respondent.*

VINCENT H. SEILER,

Of Counsel with Defendant-Respondent.





