INDEX

PAGE

Proceedings on Last Accounting of Trustee, 1921 1
Petition on Account of 1921 3
Last Account, 1921 7
Exceptions to Account 12
Amended Exceptions 14
Trustee's Petition for Discharge 16
Order Discharging Trustee 18
Decree on Last or "Final" Account 19
Notice of Motion to Set Day for Hearing .. 21
Order of Designation 26
Notice of Appeal from Orphans' Court to Prerogative Court 27
Petition of Appeal from Orphans' Court to Prerogative Court 28
Answer to Petition of Appeal 31

TESTIMONY IN PREROGATIVE COURT:

J. LEAVITT GRIGGS:—
Direct 38
Cross 56

JOHN W. GRIGGS:—
Direct 57

GEORGE B. GRAVES:—
Direct 82

JOHN H. REYNOLDS:—
Direct 85

CARRIE S. BEAM:—
Direct 87

Opinion 134
Decree 143
Statement of Trustee 145
Record of Motion of October 14, 1925..... 151
Notice of Appeal to Court of Errors and Appeals 173
Petition of Appeal 176
Answer to Petition of Appeal 181

EXHIBITS:

B-1—Article from Financial Chronicle of Sept. 27, 1919, on Brooklyn City R.R. 93
B-2—Letter of April 13, 1920, from John L. Connolly to Mrs. John R. Beam, enclosing List of Securities 96
B-3—List of Securities, enclosed in letter, Ex. B-2 97
B-4—Statement of Changes in Carrie S. Beam Trust, from April 1919 to April 1920 98
B-5—Letter, February 25, 1915, from Wm. Berdan to Attorney for Carrie S. Beam in re Division of Trust into five Parts .. 99
M-2 (for Ident)—Reply to B-5 of March 8, 1915, refusing to make Selection of Securities on Division of Trust 100
M-3 (for Ident.) Statement of Trustee of July 7, 1914, showing Rebate of its Commissions to Amount of $137.85 101
M-4 (for Ident.) Articles from N. Y. Evening Post of Sept. 20, 1907, Wall Street Journal of August 31, Sept. 26 and Nov. 4, 1907 103

M-5 (for Ident.)—Article from Wall Street Journal of March 28, 1907 117
M-6 (for Ident.)—Article from Wall Street Journal of June 13, 1907 120
B-7—Letter from Wm. B. Berdan, V.P., to Carrie S. Beam, of Sept. 8, 1911 122
B-8—Letter, same to same, of September 9, 1911 123
M-9 (for Ident.) Letter, Jan. 28, 1915, from Arthur Ryle to Wm. B. Beam 124
M-10— (for Ident.)—Letter of Wm. B. Beam of January 26, 1915, to Arthur Ryle .. 125
B-9—Petition of Solomon H. Kohn 127
M.11—Petition of Griggs, Baldwin & Pierce to Governor Hughes 128
M.13 (for Ident.) Letter of August 26, 1908, from A. J. Baldwin, of Griggs, Baldwin & Pierce, to Secy of Gov. Hughes 129
M-14 (for Ident.)—Letter of Nov. 19, 1909, from A. J. Baldwin to Gov. Hughes 129
B-12—Statement of Income by Trustee, dated January 6, 1915 130
B-13—Statement of July 1914, by Trustee, Showing Rebate of Commissions to the Amount of $137.85 132

Last Account of Trustee,
Paterson Safe Deposit & Trust Co.
in
Passaic County Orphans' Court.

(Filed January 21, 1921.)

ACCOUNT.

Notice is hereby given that the accounts of the subscriber, as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the Tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated January 5th, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
By FRED LABAUGH,
Treasurer.

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

T. W. HENDERSHOT, of full age, being duly sworn, on his oath saith that he is the bookkeeper of The Call Printing and Publishing Company,

and that the annexed notice was published on January 6, 13, 20, 27, 1921, February 3, 1921, in The Morning Call, a newspaper printed and published at Paterson, in this State.

T. W. HENDERSHOT.

Sworn and subscribed before me this 3rd day of February, 1921.

Garrett H. Sturr,
Notary Public of New Jersey.

Page 9, 10, 11 are out.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as trustee for Carrie S. Beam, under the will of Sarah A. Cooke, deceased, will be audited and stated by the surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the tenth day of February next, at which time application will be made for the allowance of commissions and counsel fees.

Dated January 5th, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

By FRED LABAUGH,
Treasurer.

State of New Jersey } ss.:
County of Passaic }

Louis Kievit being by me duly sworn according to law, on his oath saith, that he put a copy of the annexed notice at each of the five following

public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office and on the corner of East Main St., and North Main St., all in the City of Paterson, N. J., on the 7th day of January A. D. 1921

LOUIS KIEVIT.

Sworn and subscribed this 7th day of January A. D. 1921 at Paterson, before me

George L. King,
A Commissioner of Deeds of New Jersey.

PETITION.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased.	On Accounting. Petition.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC.

The petition of THE PATERSON SAFE DEPOSIT AND TRUST COMPANY of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the Last Will and Testament of Sarah A. Cooke, deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator who resides at No. 552-15th Avenue in the City of Paterson, State of New Jersey.

Edward Beam, of full age, a grandson of testator who resides at No. 188 River Street, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552-15th Avenue in the City of Paterson, State of New Jersey.

John C. Beam, of full age, a grandson of testator, who resides at No. 552-15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account.

As to Corpus.

Accountant charges itself as follows:

Balance as per book and appraisal value in the hands of Trustee as shown by its last previous accounting,	$18,706.10
Amount received during period covered by this account,	None
Total Charges,	$18,706.10
Accountant prays allowance as follows:	
Amount of disbursements,	None
Balance of Corpus in hands of Trustee	$18,706.10

As to Income.

Accountant charges itself as follows:

Balance in hands of Trustee as shown by its last previous accounting,	$ 145.00
Amount received during period covered by this account,	$ 1,637.18
Total Charges	$ 1,782.18
Accountant prays allowance as follows:	
Amount of disbursements as shown by said account,	$ 1,652.48
Balance of Income in the hands of Trustee	$ 129.70

Last Account of Trustee.

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commissions and counsel fees.

Dated, Paterson, N. J.
Jan. 5, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
FRED LABAUGH, Treasurer.

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

Fred Labaugh, being duly sworn upon his oath deposes and says that he is the treasurer of the Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me this
10th day of January, 1921.

Elva M. Bensen,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the surrogate of the County of Passaic and reported for final settlement to the Orphans' Court of said county on

the 10th day of February next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5th, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

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

ELVA M. BENSEN, being duly sworn upon her oath according to law, deposes and says that on the fifth day of January, Nineteen Hundred and Twenty-one, she deposited in the United States mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice, addressed to

Carrie S. Beam, 552 Fifteenth Avenue, Paterson, N. J.

Edward Beam, 188 River Street, Paterson, N. J.

William B. Beam, 552 Fifteenth Avenue, Paterson, N. J.

John C. Beam, 552 Fifteenth Avenue, Paterson, N. J.

ELVA M. BENSEN.

Subscribed and sworn to before me this 5th day of January, 1921, at Paterson, N. J.

Chas. C. Stalter,
An Attorney at Law of New Jersey.

Last Account of Trustee.

THE FINAL ACCOUNT OF THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the fifteenth day of April, 1919, to fifth day of January, 1921, both of the money and property received by the said trustees on account of the trust estate and its disbursements out of the same.

This accountant charges itself:

DEBTOR.

Balance of Corpus at Book Value as per last accounting.		$18,706.10
Balance as per last accounting	145.00	
Income received (Schedule A)	1,637.18	
	1,782.18	
Disbursements from Income (Schedule B)	1,652.48	129.70
Total Trust January 5, 1921		18,835.80

INCOME ACCOUNT.
(Schedule A.)

To Income received as follows:

1919					
Apr.	15	Balance as per last accounting			$145.00
May	1	Cps. Passaic Lighting Company			25.00
June	1	Reg. Int. Lehigh Valley R. R.			30.00
"	"	Cps. Baltimore & Ohio R. R.			25.00
"	"	" Consolidated Traction Co.	25 1		24.00
"	"	" Paterson Railway Co.	90 10		80.00
"	"	" First Liberty Loan			1.75
"	"	" Int. on Tax Mortgage to date			13.89
"	23	" On Warren Mtg. to June 30, 1919			30.00
July	1	Cps. Mobile & Ohio R. R. Co.	15 5		10.00
"	"	" Passaic Water Company			25.00
"	15	Div. Brooklyn City R. R. Co.			10.00
Aug.	1	Reg. Int. United New Jersey R. R. Co.			20.00

Last Account of Trustee.

	"	18	Int. on Sharpe Mtg. to June 30, 1919		60.00
	Sept.	1	Cps. Paterson & Passaic Gas & Electric Co.		25.00
	"	15	" Third Liberty Loan		2.13
	Oct.	1	" Long Dock Co.	60 10	50.00
	"	"	" Mobile & Ohio R. R.	15 5	10.00
10	Nov.	1	" Passaic Lighting Co.		24.00
	Dec.	1	Int. Lehigh Valley R. R.		30.00
	"	"	Cps. Baltimore & Ohio R. R.		25.00
	"	"	" Consolidated Traction Co.	25 1	24.00
	"	"	" Paterson Railway Co.	90 10	80.00
	"	15	" Victory Liberty Loan		14.91
	"	"	" First Liberty Loan		1.75
	"	26	Int. on Max Gold Mtg. to Dec. 31, 1919		60.00
	1920			15	
	Jan.	2,	Cps. Mobile & Ohio R. R. Co.	5	10.00
20					

INCOME ACCOUNT.

(Schedule A.)

	1920				
	Jan.	2,	Cps. Passaic Water Co.		$25.00
	"	"	Int. on Catherine Warren Mtge. to 12/31/19		30.00
	Feb.	2,	Div. United New Jersey R. R. Co.		20.00
	Mar.	1,	Cps. Pat. & Pass. G. & E. Co.		25.00
30	"	16,	" Third Liberty Loan		2.12
	Apr.	1,	" Long Dock Co. Prem.	60 10	50.00
	"	"	" Mobile & Ohio R. R. Co. Prem.	15 5	10.00
	May	1,	" Passaic Lighting Co. Prem.	25 1	24.00
	June	1,	" Baltimore & Ohio R. R.		25.00
	"	"	" Consolidated Tract. Co. Prem.	25 1	24.00
40	"	"	" Paterson Railway Co. Prem.	90 10	80.00
	"	"	Reg. Int. Lehigh Valley Annuity bonds		30.00

Last Account of Trustee.

"	15,	Cps.	First Liberty Loan		1.75
"	"	"	Victory Liberty Loan		17.77
"	28,	Int.	on Catherine Warren Mtge. 6/30/20		26.60
"	30,	"	on Max Gold Mtge to 6/30/20		60.00
				15	
July	1,	Cps.	Mobile & Ohio R. R. Co.	5	10.00
"	"	"	Passaic Water Company		25.00
Aug.	4,	Div.	United New Jersey R. R. Co.		20.00
Sept.	1,	Cps.	Paterson Passaic Gas & Electric Co.		25.00
"	15,	"	liberty Loan (Third)		2.13
Oct.	1,	"	Long Dock Co.	60	
				Prem. 10	50.00
"	"	"	Mobile & Ohio R. R. Co.	15	
				Prem. 5	10.00
Nov.	1	"	Passaic Lighting Company	25	
				Prem. 1	24.00
Dec.	1	Cps.	Baltimore & Ohio R. R. Co.		25.00
"	"	"	Consolidated Traction Co.	25	
			Prem.	1	24.00
"	"	"	Paterson Railway Company	90	
			Prem.	10	80.00
"	"	Reg.	Interest Lehigh Valley Annuity Bonds		30.00
"	15	Cps.	First Liberty Loan		1.75
"	"	"	Victory Liberty Loan		22.61

INCOME ACCOUNT.

(Schedule A.)

1920				
Dec.	30	Int.	on Catherin Warren Mtg. to Dec. 31 1920	25.02
"	31	Int.	on Max Gold Mtg. to Dec. 31, 1920	60.00
1921				
Jan.	1	Cps.	Mobile & Ohio R. R.	15.00
"	"	"	Passaic Water Company	25.00
				$1782.18

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1919					
June	5	To	Paterson Safe Deposit & Trust Co. Commission	1	87.96
"	9	To	Frederic Beggs, Surrogate Commission	2	31.91

Last Account of Trustee.

July	3	To Carrie S. Beam	3	280.00
"	15	To Interest on Victory Bonds Purchased	4	3.52
Oct.	2	To Carrie S. Beam	5	160.00
1920				
Jan.	2	To Carrie S. Beam	6	300.00
Apr.	1	To Carrie S. Beam	7	105.00
"	12	To interest paid on Victory Bonds purchased	8	3.09
July	3	To Carrie S. Beam	9	350.00
"	15	To interest paid on Victory Bonds purchased	10	1.00
Oct.	4	To Carrie S. Beam	11	100.00
1921				
Jan.	5	To Carrie S. Beam	12	230.00
				$1652.48

(Schedule C.)

This accountant further reports that the principal fund of said Trust is invested as follows:

Par Value		Book Value
$1000	Baltimore & Ohio R. R. Co. bonds	$1000.00
400	Brooklyn City Railway Co. Stock	800.00
4500	Central Park North & East River R. R. Co. Stock	1.00
1000	Consolidated Traction Co. Bonds	1021.00
1000	Lehigh Valley Annuity Bonds	1330.00
100	Liberty Loan of 1917, Bonds	98.00
2000	Long Dock Company Bonds	2290.00
100	Third Liberty Loan Bond	100.00
200	Victory Liberty Loan Bonds	191.84
200	Victory Liberty Loan Bonds	195.00
550	Victory Liberty Loan Bonds	550.00
1000	Mobile & Ohio R. R. Co. Bonds	1000.00
1000	Passaic Lighting Co. Bonds	1002.00
1000	Passaic Water Company, Bonds	1000.00
1000	Paterson & Passaic Gas & Electric Co. Bonds	1010.00
3000	Paterson Railway Co. Consolidated Mtg. Bonds	3180.00
1000	United New Jersey R. R. & Canal Co. Bonds	1000.00
2000	Bond and Mortgage Max Gold	2000.00
800	Bond and Mortgage Catherine Warren	800.00
	Uninvested cash	137.26
		$18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.,

FRED LABAUGH,
Treasurer.

Last Account of Trustee.

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

Fred Labaugh, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant and as to the credits claims thereto, according to the best of his knowledge and belief.

FRED LAUBAUGH.

Subscribed and sworn to before me
this 10th day of January, 1921

Elva M. Bensen,
Notary Public of N. J.

To the Judges of the Orphans' Court of the County of Passaic:

The above account having been placed on the files of my office on the twentieth day of January, 1921, and being by me audited and stated, is now reported for settlement.

FREDERIC BEGGS,
Surrogate.

Dated, Paterson, N. J.,
February 10th, 1921.

Exceptions to the Account.

(Filed Feb. 10, 1921.)

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.	On Trustee's Final Account.

William B. Beam and John C. Beam, two of the cestuis que trust under the last will and testament of Sarah A. Cooke, deceased, hereby except to the final account of The Paterson Safe Deposit and Trust Company, trustee under the will of Sarah A. Cooke, deceased, for Carrie S.

Exceptions to the Account.

Beam, for the following reasons:

1. The accountant does not state the actual or market value of the securities set forth in Schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in Schedule C of said final account.

3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C of said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the number of the bonds and stocks held by it as trustee and mentioned in schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co. mentioned in schedule C of said final accountant.

WILLIAM B. BEAM,
JOHN C. BEAM.

Dated, February 9th, 1921.

Amended Exception to the Account.

(Filed Feb. 16, 1921.)

PASSAIC COUNTY ORPHANS' COURT.

IN THE MATTER *of* THE ESTATE OF SARAH A. COOKE, Deceased.	On Trustee's Final Account.

Edward Beam, John C. Beam and William B. Beam, the three remaindermen of a trust created under the last will and testament of Sarah A. Cooke, deceased, hereby except to the final account of The Paterson Safe Deposit and Trust Company, trustee under the said will, for Carrie S. Beam, for the foliowlng reasons:

1. The accountant does not state the actual or market value of the securities set forth in schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in schedule C of said final account.

3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C of said final account has been acquired by it as trustee as aforesaid.

Amended Exception to the Account.

4. The accountant does not set forth the number of the bonds and stocks held by it as trustee and mentioned in schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co., mentioned in schedule C of said final account.

WILLIAM B. BEAM,
JOHN C. BEAM,
EDWARD BEAM,

Dated, Paterson, N. J.,
February 16, 1921.

Sworn and subscribed to before me this
16th day of February, A. D. 1921.
Beulah Lockwood,
[L.S.] A Notary Public of New Jersey.

Trustee's Petition for Discharge of Trustee.

(Filed January 5th, 1921.)

PASSAIC COUNTY ORPHANS' COURT.

In the Matter
of
The Estate of
Sarah A. Cooke,
Deceased.

To the Orphans' Court of the County of Passaic:

The petition of The Paterson Safe Deposit and Trust Company of the City of Paterson, County of Passaic and State of New Jersey, respectfully shows:

1. That your petitioner is the trustee for Carrie S. Beam named in the last will and testament of Sarah A. Cooke, deceased, which said will was duly proved before and letters testamentary thereon duly issued by the Surrogate of the County of Passaic on the fifteenth day of May, 1905; petitioner has entered on the duties of its office but has not fully performed the same.

2. Your petitioner desires to be discharged from the further performance of the duties of its said office and is informed that such discharge is consented to by the beneficiaries.

3. The persons interested in this application are as follows:

Trustee's Petition for Discharge of Trustee.

Carrie S. Beam, who resides at No. 552 Fifteenth Avenue, Paterson, N. J.

Edward Beam, who resides at No. 188 River Street, Paterson, N. J.

William Beam, who resides at No. 552 Fifteenth Avenue, Paterson, N. J., and

John C. Beam, who resides at No. 552 Fifteenth Avenue, Paterson, N. J.

The said Carrie S. Beam being the person entitled to the income from said trust during her life and the said Edward Beam, William B. Beam and John C. Beam being the remaindermen under said trust created by the said last will and testament of Sarah A. Cooke, deceased; all of the aforesaid parties in interest are of full age.

Your petitioner therefore prays that it may be discharged from the further performance of the duties of its said office of trustee of the aforesaid estate.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

Dated, Paterson, N. J.,
January 5th, 1921.

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

Order Discharging Trustee.

(Filed Feb. 24, 1921.)

PASSAIC COUNTY ORPHANS' COURT.

In the Matter *of* The Estate of Sarah A. Cooke, Deceased.	On Petition of trustee of Carrie S. Beam for Discharge.

It appearing from the petition of The Paterson Safe Deposit and Trust Company filed herein that the said The Paterson Safe Deposit and Trust Company is the trustee of Carrie S. Beam under the last will and testament of Sarah A. Cooke, deceased and that the said trustee has entered upon the duties of its office, but has not fully performed the same, and that the said petioner prays that it may be discharged from the further performance of its duties as such trustee; and it appearing that due notice of this application has been given to all parties interested in the said trust for Carrie S. Beam under the last will and testament of Sarah A. Cooke, deceased, and the court having examined into the matter and it appearing that there is sufficient reason for such discharge;

It is thereupon, on this tenth day of February, 1921, ordered, that the said The Paterson Safe Deposit and Trust Company, be and it is hereby

relieved and discharged from all further duties of its said office, except accounting for and paying over the moneys or assets received by it by virtue of its said office.

WILLIAM W. WATSON,
Judge.

Decree on Final Account.

(Filed Feb. 24, 1921.)

(Term A. D., 19)

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Final Account of the PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee for Carrie S. Beam, under the last Will and Testament of SARAH A. COOKE, Deceased.

The surrogate having audited and stated the final account of The Paterson Safe Deposit and Trust Company, trustee for Carrie S. Beam under the last will and testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the tenth day of February, A. D., 1921 and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having been proved to the satisfaction of the court that notice of intention to settle the said account on said

tenth day of February, A. D., 1921 in this court was given by said accountant according to law,

And the court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and no exceptions being made thereto by William B. Beam and John C. Beam and proofs and allegations of the parties having been heard and considered by the court and said exceptions overruled in their entirety,

It is, on this Twenty-fourth day of February A. D., nineteen hundred and Twenty-one ordered, adjudged and decreed that the said account be in all things allowed as reported and the said exceptions be and the same are hereby overruled and that there is a balance remaining in the hands of said accountant amounting to the sum of Eighteen Thousand Seven Hundred and Six Dollars and Ten cents ($18,706.10) to be disposed of according to law, which balance is corpus at accountant's book value.

It is further ordered that from the aforesaid balance the said accountant be allowed the sum of Four Hundred dollars as and for its commissions, and that a counsel fee of Two Hundred and Fifty dollars be allowed to Griggs & Harding, proctors for said accountant, and that a further commission of $81.86 on income received during the period of said account be also allowed to said accountant; and that the Surrogate be allowed the sum of thirty seven and $^{39}/_{100}$ dollars for fees, advertising and posting notices, two and $^{99}/_{100}$ dollars for citations and six and $^{12}/_{100}$ dollars for Sheriff's fees.

WILLIAM W. WATSON,
Judge.

Notice of Motion to have Day Set for Hearing.

(Filed Feb. 19, 1923.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.	On Petition.

TO MESSRS. GRIGGS & HARDING:

PLEASE TAKE NOTICE that on Monday, February 19, 1923, at 10:00 A. M. or as soon thereafter as counsel can be heard, I will appear before Hon. John Griffin, Vice Ordinary, at the Court of Chancery, Jersey City, New Jersey, for the purpose of having a day set for the hearing of the above entitled cause.

WILLIAM B. BEAM,
Proctor Pro Se.

February 10, 1923.

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

LEWIS BURLING being duly sworn upon his oath according to law, deposes and says that on the 14th day of February, 1923, he served the foregoing notice upon Messrs. Griggs & Harding, by showing the original to John L. Griggs, Esq., of said firm and by deliveriny to him personally said original by mistake at his office, 152 Market Street, Paterson, N. J.

LEWIS BURLING.

Subscribed and sworn to before me, this 17th day of February, 1923, at Paterson, N. J.

John E. Tyler,
A Master in Chancery of New Jersey.

Notice of Motion to have Day Set for Hearing.

(Filed Feb. 19, 1923.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.	On Petition.

To JOHN L. GRIGGS, Esq.:

PLEASE TAKE NOTICE that on Monday, February 19, 1923, at 10:00 A. M. or as soon thereafter as counsel can be heard, I will appear before Hon. John Griffin, Vice Ordinary, at the Court of Chancery, Jersey City, New Jersey, for the purpose of having a day set for the hearing of the above entitled cause.

WILLIAM B. BEAM,
Proctor Pro Se.

February 10, 1923.

Proof of Service.

(Filed Feb. 19, 1923.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. TEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.	On Petition.

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

LEWIS BURLING, being duly sworn upon his oath according to law, deposes and says, that:

1. On February 14, 1923, I served the notices of motion hereto annexed in the above stated cause upon John L. Griggs, personally, and upon John L. Griggs as representing the firm of Griggs & Harding, at the offices of the Paterson National Bank, 152 Market St., Paterson, N. J.

2. In serving upon the said Griggs the notice addressed to Messrs. Griggs & Harding it was by him received for the said firm, he stating to me that he would take it for the firm.

3. In both cases I served the original signed notice by mistake in place of the copy of each herebefore annexed.

Notices of Motion.

4. On February 15, 1923 I called upon the said Griggs at the office of the Paterson National Bank and requested that I be given the original notices in place of the copies hereto annexed which I then and there tendered to him.

5. I was then and there informed by the said Griggs that after my departure from his office on the day previous he had torn the papers that I had given to him and which he had then and there accepted in two and thrown the pieces in the basket, that subsequently they had been carried out and burned up by the person having charge of the cleaning of the offices and that that was all that either he, the said Griggs, or the firm of Griggs & Harding care about the said cases.

LEWIS BURLING.

Subscribed and sworn to before me, this 17th day of February, 1923, at Paterson, N. J.

John E. Zell,
A Master in Chancery of New Jersey.

Order of Designation.

(Filed Feb. 19, 1923.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.	On Petition.

This matter being opened to the court by William B. Beam, the Appellant herein, Proctor Pro Se, and it appearing that due and legal service of notice of the application to have a day set for the hearing of the above entitled cause has been made upon counsel for the respondent:

It is, on this nineteenth day of February, 1923, ORDERED that Thursday, the tenth day of May, 1923, at the Chancery Chambers in the City of Paterson, be and it is hereby fixed as the time and place for the hearing in this cause.

JOHN GRIFFIN,

V. O.

E. R. WALKER,
Ordinary.

Notice of Appeal.

(Filed May 23, 1921.)

PASSAIC COUNTY ORPHANS' COURT.

In the Matter
of
The Estate of
Sarah A. Cooke,
Deceased.

William B. Beam, one of the next of kin of Sarah A. Cooke, deceased, and remainderman under her last will and testament, hereby appeals to the Prerogative Court from the decree entered herein, on the 24th day of February, 1921, allowing the final account of the Paterson Safe Deposit and Trust Company, trustees under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, and every part thereof.

William B. Beam,
Proctor Pro Se.

Dated, Paterson, N. J.
May 23, 1921.

Petition of Appeal.

(Filed June 21, 1921.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from the decree of the Orphans' Court of the County of Passaic allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY.

To the Ordinary of the State of New Jersey:

The petition of William B. Beam, of the City of Paterson, County of Passaic and State of New Jersey, respectfully shows that,

1. On January 21, 1921, Paterson Safe Deposit and Trust Company, trustee under the last will and testament of Sarah A. Cooke, deceased, presented its final account as such trustee to the Orphans' Court of the County of Passaic and exceptions having been filed thereto by your petitioner, the Orphans' Court on February 24, 1921, made its order overruling all of said exceptions "in their entirety" and ordering the said account to be allowed.

2. Your petitioner hereby appeals from the said order,

(a) From that part of the said order of the

said Orphans' Court overruling the exceptions of appellant and John C. Beam, and Edward Beam "in their entirety".

(b) From that part of the said order of the Orphans' Court which overrules the first exception filed by appellant and John C. Beam and Edward Beam that the accountant did not state in said final account the actual or market value of the securities set forth in Schedule C of the final account.

(c) From that part of the order of the said Orphans' Court overruling the exception of the appellant and John C. Beam and Edward Beam, that the accountant did not set forth in its account the correct value of the stock in the Brooklyn City Company mentioned in Schedule C of said final account.

(d) From that part of the order of the said Orphans' Court which overruled the third exception filed by appellant and John C. Beam and Edward Beam, that the said accountant did not set forth in its final account the method by which the bond and mortgage of Max Gold mentioned in Schedule C of said final account was acquired by it as trustee of aforesaid.

(e) From that part of the order of the said Orphans' Court which overruled the fourth exception filed by appellant and John C. Beam and Edward Beam alleging that the accountant did not set forth in its final account the number of the bonds and stocks held by it as trustee and mentioned in Schedule C of said final account.

f) From that part of the order of the said Orphans' Court which overruled the fifth exception filed by appellant and John C. Beam and Edward Beam alleging that the accountant had

not annexed to its said final account, a full statement or list of securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in securities since the settlement of the last intermediate account.

(g) From that part of the said order of the Orphans' Court overruling the exception of appellants and John C. Beam and Edward Beam to the said final account alleging that the accountant had not set forth the correct value of the stock in the Central North and East River Railroad mentioned in said Schedule C of said final account.

(h) From that part of the said order of the Orphans' Court allowing to said trustee the sum of $400.00 as and for its commissions and a counsel fee of $250.00 to Griggs & Harding, proctors for said accountant, and a further commission of $81.86 on income received during the period of said account.

WILLIAM B. BEAM,
Proctor Pro Se.

Dated, Paterson, N, J.,
June 22. 1921.

Answer to Petition of Appeal.

(Filed July 6, 1921.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT OF THE COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.

The answer of the National Trust Bank of Paterson, incorporated under the Federal laws, formerly The Paterson Safe Deposit and Trust Company, a corporation of the State of New Jersey, respondent to the petition of appeal of William B. Beam, appellant:

1. This respondent answering admits the allegations contained in the first paragraph of appellant's petition of appeal filed herein.

2. This respondent is advised, believes and submits that the portions of said decree complained of by appellant are justified and lawful, and this respondent denies that the aforesaid portions of the said decree or any part thereof are erroneous, improper or illegal, and alleges that the said portions of said decree are legal, proper and correct.

And it, therefore, prays that the said petition of appeal maye be dismissed with costs.

JOHN L. GRIGGS,
Proctor for and of
Counsel with Respondent.

Testimony.

NEW JERSEY PREROGATIVE COURT.

In the Matter
of
The Estate of
Sarah A. Cooke,
Deceased.

Upon appeal of William B. Beam from an order of the Orphans' Court of the County of Passaic allowing the final account of Paterson Safe Deposit and Trust Company.

Chancery Chambers,
Paterson, N. J.,
May 10, 1923.

Before:

Hon. John Griffin,
Vice Ordinary.

D. Eugene Blankenhorn, Esq. (with whom was Mr. Harold R. Medina of the New York Bar) for the Appellant.

John W. Harding, Esq. (of Griggs & Harding) for the Respondent.

Colloquy.

MR. HARDING: I understand that there are three different appeals to be heard here, and I am interested in two of them—two separate appeals—and, for the sake of the record, inasmuch as there are different parties, I would like the stenographer to take down just who appears for the different parties in this appeal.

THE VICE ORDINARY: Oh, that, of course, he will do.

MR. HARDING: Well, I was about to suggest that before the opening of counsel.

MR. BLANKENHORN: I appear for the parties in all of the appeals; there are four appeals.

THE VICE ORDINARY: Are there any other appearances on your side?

MR. BLANKENHORN: I wish to introduce to the court Mr. Harold Medina, of the New York Bar, and ask that he have the privilege of being heard.

THE VICE ORDINARY: Oh, yes; Mr. Medina was here before (referring to the appearance of Mr. Medina in the Chancery suit).

MR. BLANKENHORN: In the Matter of the appeal of William B. Beam from an order of the Orphans' Court—

THE VICE ORDINARY: Are you now going on with your argument? If you are, we will have the other appearances noted, and we will know who appears.

MR. HARDING: I appear for the Paterson National Bank (it is now) in the appeals where the Paterson National Bank is respondent.

THE VICE ORDINARY: Are there any other appeals?

MR. DUMONT: I appear in two matters that are on appeal, one in the Orphans' Court with reference to the Courtney Trust; and the other taken from an Orphans' Court order made by Judge Watson in the matter of some $54.00 which is involved and was paid in to the surrogate.

THE VICE ORDINARY: If there is no other appearance to be noted, you may proceed, Mr. Blankenhorn.

MR. BLANKENHORN: In the matter of the appeal of William B. Beam from the order of the Orphans' Court of the County of Passaic, allowing the final account of the Paterson Safe Deposit and Trust Company, that is one of the matters in which your Honor granted an order to take testimony to-day. Now, the subject of that appeal is similar to the subject-matter of the suit in Chancery, which your Honor heard, between Edward Beam and others, complainants, and the Paterson Safe Deposit and Trust Company, defendants; and it occurred to me that your Honor would not want me to go into an opening in the matter, because I think your Honor is familiar with the facts.

THE VICE ORDINARY: If there are no further facts, I am.

MR. BLANKENHORN: We wish to offer the testimony taken in that case in evidence in this case, and we wish to supplement it with further proofs that I stated to your Honor were lacking in that particular case. I now offer the record of that case.

Colloquy.

THE VICE ORDINARY: Is there any objection?

MR. HARDING: If your Honor please, I do not know that I apprehend just exactly what counsel, at this time, purposes to prove.

THE VICE ORDINARY: Well, as to testimony, and all that is before me in the case in Chancery, I presume Mr. Blankenhorn desires to offer it in this case.

MR. HARDING: Well, as to the offering of the record, I should suppose that the case that has been tried in the Court of Chancery, on the issues there involved, is complete, so far as that case is concerned; and I do not see how the issues there can be involved in this case; but if they are in any respect, they, of course, are complete. That case has been fully tried and argued on the testimony that was before your Honor; and it would seem to me that it is altogether immaterial and irrelevant to go into that issue at all, that has now been tried, in these proceedings; but if you should go into it, it would only, I assume, be for the purpose of having that record introduced. Certainly no additional testimony would appear to be competent or material. They are two entirely different matters.

THE VICE ORDINARY: Well, the first question to determine is whether the record in Chancery, if that is offered, is objected to. After that, there will be discussed the question of the additional testimony.

MR. HARDING: Well, as I say to your Honor, I do not see the relevancy or materiality of it. If your Honor feels that it

should be taken for that purpose, why, of course, I would have to acquiesce in that. I do not see the materiality of it.

THE VICE ORDINARY: Well, I do not want to rule contrary to law. Mr. Blankenhorn says that the issue in this bill he is now disscussing is the same as in the Chancery suit; and if he did not desire to take additional testimony, then, by offering that record and its not being objected to, that would complete that appeal.

MR. HARDING: Well, I do not want to appear as in any wise admitting the relevancy of it. If your Honor wishes to take it that way, I should say you might take it for what it is worth, as you go on.

THE VICE ORDINARY: The difficulty is that the testimony of none of the witnesses sworn in that suit, excepting those who might be said to be for the bank itself, individually, is relevant.

MR. HARDING: Well, I will say, so far as that is concerned, if your Honor thinks it is at all relevant, or should be put in, subject to future ruling, I would not object to the record being used, instead of producing the witnesses, of course.

THE VICE ORDINARY: It will save time, of course.

MR. HARDING: Yes; but I do not like to appear as at all admitting the relevancy of it. It would save a lot of time, of course; and, subject to that, I won't object.

THE VICE ORDINARY: Well, we will consider it in evidence, excepting that you can object to it later, to the relevancy of it;

and of course I presume I would have to conclude that the testimony of all of the witnesses of the bank, standing in the position of an individual—that is, for the bank as an individual—would be relevant; but I do not think the testimony of the other witnesses produced, who are not interested in the litigation directly, is relevant—I doubt if their testimony is relevant.

MR. HARDING: Well, suppose your Honor takes it, and takes into consideration the question, later, whether it be relevant, or not. And I do not object, if you should consider it relevant, that that testimony be used.

THE VICE ORDINARY: The only difference is that the witnesses can be re-produced here in court and testify over again to the same thing.

MR. HARDING: I do not wish to put myself in any such position as that.

THE VICE ORDINARY: Well, then, I will admit it.

MR. HARDING: I am objecting to the relevancy of it; that is all.

MR. BLANKENHORN: I would like to call Mr. John W. Griggs.

MR. J. L. GRIGGS: Counsel calls for Mr. John W. Griggs; Mr. Griggs had a previous engagement which necessitated his presence elsewhere; he told me to tell the court that if he was called before twelve o'clock, if the court would delay his testimony, he would try to be here at that time.

THE VICE ORDINARY: (To Mr. Blanken-

horn) Well, suppose you take up some other matter, then.

MR. MEDINA: Well, we may go ahead with the other witnesses, or one of the other witnesses, in the meantime; I will call Mr. Leavitt Griggs.

J. LEAVITT GRIGGS, Esq., sworn.

DIRECT EXAMINATION BY MR. MEDINA:

Q. As I recall the testimony that you gave on December 7th, before the Court of Chancery, it was to the general effect that you had followed the securities in question in this controversy, and had frequently taken the matter up with the other members of the Finance Committee of the bank—was that right?

MR. HARDING: If the court please, I object to this testimony, on the ground that it is immaterial and irrelevant. I can see no materiality or relevancy in it, unless it leads, in some wise, to affect the issues that have already been fully investigated by the testimony on the last hearing in the Chancery suit that has been referred to and has been fully argued. It has no relevancy to the issues in this case. That case was for the purpose of holding the bank responsible for an alleged lack of care and discretion in holding on to the securities that were mentioned in the bill of complaint filed in that cause. These issues have been fully tried, heard and argued. If it were attempted to

re-argue those same questions in these proceedings it would obviously be improper and not according to practice; but it may be said, if you will look at these exceptions, that there is not an exception on which this appeal has been taken that pretends in any wise to raise the issue that was raised in the Court of Chancery.

THE VICE ORDINARY: Let me see the exceptions.

MR. MEDINA: I may say, if the court please, that my question was not intended to go into those things as being the points of this case, but that it was purely a preliminary question to bring the mind of the witness to the subject that I wish to examine him upon. We make no pretension that the issues are the same here in each and every particular respect; and my question was purely a preliminary one to bring the mind of the witness to the point so that I might go ahead.

MR. HARDING: Your Honor has asked to know, and I think you should know now what the exceptions are.

THE VICE ORDINARY: I would like to see the exceptions.

Mr. Harding thereupon read to the court the five exceptions filed, and said: "There is no pretense, in these exceptions, to raise the issues that were tried in the Chancery suit; and it was my thought, as counsel asked this question (because I could not see any other relevancy or materiality to it) that he was trying to ask something in this suit now that related solely to a matter that

had already been tried and argued before your Honor.

THE VICE ORDINARY: (To Mr. Medina) What exception does this evidence support?

MR. MEDINA: I understand that it comes under the one that they have not stated the actual value of the securities, and that the statements in this account as to the securities themselves are inaccurate.

THE VICE ORDINARY: Well, why don't you prove it?

MR. MEDINA: Well, I supposed, in this case, we were going to go ahead and show that these officers knew perfectly well what the situation was, or had reason to know it, right along; and that they did nothing; and that they filed an improper account which did not set forth the actual situation.

THE VICE ORDINARY: Well, why don't you show it? He has testified in the former trial —now, if you want to supplement his testimony and ask any other question, I will permit you to do it.

MR. MEDINA: Well, as I explained, my question was purely preliminary, to bring the mind of the witness to the subject. One cannot plunge, as it were, into the middle of things.

THE VICE ORDINARY: Well, you can state that it appears by his former testimony "thus and so"—then, if you lead off that way, it is immaterial whether he answers it or not; then ask another question. You can ask him if he did not state at the former trial that he had consulted with the Board of Finance about these investments.

Q. That is the question, Mr. Griggs: You stated in the former trial that you frequently consulted with the Board of Finance Committee on these investments—you did that, did you not? A. Did what?

Q. Consult with the Board of Directors and Finance Committee of the bank? A. On what subject?

Q. With reference to these securities? A. Which ones?

Q. The securities of the Central Park North and East River Railroad Company, the Brooklyn City Railroad Company, the Second Avenue Railroad Company, and others in the Metropolitan system, held by you in this Beam trust? A. In the first three, I will say, yes; I don't know what you mean by the others in the last part of your question.

Q. Taking, then, the three you do remember and can identify, did you follow up these particular securities, from time to time, in the "Wall Street Journal" and the "Financial Chronicle"?

MR. HARDING: I still object; it is asking over the same things that were asked before; I apprehended that was what it was for.

MR. MEDINA: Well, that is not going over the same ground as I went before, if your Honor please; I have here a considerable number of documents that were not produced before, and if I am not to naturally lead up to the subject, as I am doing, it will deprive our side, I believe, of the very force of it.

THE VICE ORDINARY: Well, to cut the thing short, I do not propose to sit here two

or three days on mere argument; I will let you go ahead with it; I overrule that objection.

Q. (Question repeated). A. Wasn't that answered? I cannot understand whether counsel is asking me if I testified to this, or did I do it.

THE VICE ORDINARY: No, did you do it.

Q. That is the question. A. Yes, I did it.

Q. And you did it prior to the time when those securities greatly depreciated in their market value, did you not? A. No.

MR. HARDING: If the court please, to save time—I see the attitude your Honor is taking—is it necessary for me to object to all of these questions, or may my objection be considered—

THE VICE ORDINARY: I consider your objection as a general objection.

MR. HARDING: To this whole line of testimony?

THE VICE ORDINARY: Yes.

Q. Then you did not desire to give the court the impression, in the testimony which you gave in December, that you had followed up these securities in the "Wall Street Journal" and the "Financial Chronicle" so as to keep advised as to when and under what circumstances they should be sold or retained, as the case might be?

THE WITNESS: You see, I cannot answer those questions that way, if the court please —put that way—because counsel is not familiar with all of the testimony that was

given in that case, and I will have to qualify my answers; I cannot answer them "yes" or "no".

THE VICE ORDINARY: Well, you may answer it the best way you can.

A. I was not connected with the Paterson Safe Deposit & Trust Company prior to 1917, therefore I had no particular individual charge of the securities at that time; so previous to 1917 I did not; from 1917 on I did.

Q. Very good: Referring, then, to the Brooklyn City Railroad securities, do you remember that they did not become of the value of approximately 10, or 8, or 9, until some time considerably after 1917—is not that right? A. No, that is not right.

Q. When was it that the precipitate fall in the value of those particular securities took place? A. In the Fall of 1920, just after the receivership of the Brooklyn Traction.

Q. And it was your position, as I understood it, that you, as trust officer, had followed up that particular security, from time to time, and examined the statements in the "Financial Chronicle" and "Wall Street Journal" with respect to it—am I right in that? A. No, you are not right.

Q. Very good: Did you observe, in the course of your duties as trust officer, this article which I show you, in volume 109, page 1272, of the "Financial Chronicle" with reference to the Brooklyn City Railway Company (showing the witness the article referred to)? A. No.

Q. That was not one of the issues that you referred to in your testimony given on December 7th, was it? A. No.

MR. MEDINA: May I have this marked for identification, if the court please.

(The article was marked M-1 for identification.)

Q. But you did testify that you had examined the "Financial Chronicle" during the period of the difficulties of the Brooklyn City Railroad Company, did you not? A. No, I don't think I testified that; I testified—in fact, I knew the purport of that article that you have just referred to in the "Financial Chronicle" before it was printed in the "Financial Chronicle", because when the difficulty with the traction situation existed, or suddenly came to a head in Brooklyn, I was in communication with the company itself and knew that the lessor was going to default in the payment of the Federal income tax, and I knew that necessarily the Brooklyn City Company would have to pay the tax, therefore it would have to either omit or decrease its dividend; but, unfortunately, neither I, nor anybody else, knew that before the market knew it; and before it was generally known, the stock had depreciated. But an examination of the affairs of the company at that time led me to believe—and I so reported to my board—that if there was any cessation of dividends, that perhaps it would only be temporary, which opinion has literally been substantiated, because the company has resumed dividends at eight per cent.

MR. MEDINA: I offer in evidence Exhibit M-1 for identification, in view of the statement of the witness that he knew, in substance, of this before it was published.

MR. HARDING: I object to it, as immaterial and irrelevant.

THE VICE ORDINARY: I think this is going over the same matter, so far, as in the other case.

MR. MEDINA: I regard the statement made by this witness that he knew of the prospective default considerably, or several months, indeed, before it took place as one of the most—

THE WITNESS: Oh no; I did not say that.

MR. MEDINA: Must you interrupt, Mr. Griggs?

THE VICE ORDINARY: You say the witness said he knew it?

MR. MEDINA: He has just testified so.

THE VICE ORDINARY: Oh, no; he said he learned before that was printed that there was going to be a default in the payment of the income tax; he said the market knew it as well as he did; so it was not "several months before"; the witness has not said so. And this testimony is simply a re-hash of what went in in the former trial. Now, I am not going into a re-trial of that case now. If you have any new matter, offer it.

MR. MEDINA: Well, our chief witness was Mr. John W. Griggs, who was under subpoena, and we are proceeding with the rest of the action on the request of counsel, who suggests that Mr. Griggs had another engagement and would rather come a little later.

THE VICE ORDINARY: I know, but you are going into the same matter now, practically,

that Mr. Griggs testified to at the last hearing. As I recall his testimony, he said he made an investigation; that he saw bankers and took the advice of those who ought to know something about it; and, as a result, he concluded to hold it. That is my impression of the case. I haven't read the testimony over, but counsel wanted to go into new matter—

MR. MEDINA: Well, I offer this upon the claim that it is new matter.

THE VICE ORDINARY: Well, I will admit it.

MR. HARDING: I object to it.

THE VICE ORDINARY: I overrule your objection, Mr. Harding.

(The paper was thereupon marked Exhibit B-1.)

MR. MEDINA: There were some additional letters that were not offered in the other record, which make some of the letters in that record a little difficult to understand; and for the purpose of supplementing those other letters, I now offer letter of April 13, 1920, signed by John L. Connolly, addressed to Mrs. Beam, together with the list of securitits thereto attached, also signed by Mr. Connolly; and a supplemental schedule, also signed by him (showing the same to Mr. Harding).

THE WITNESS: May I leave the stand long enough to look at those?

THE VICE ORDINARY: Oh, yes.

(The witness thereupon left the stand and examined papers offered.)

MR. HARDING: I object to them, on the

ground that I have already stated—that they are immaterial and irrelevant, and have no bearing, except on the case in Chancery that has already been tried; and, more than that, we make the objection that the letters cannot be proven without being proven in the usual way.

MR. MEDINA: In view of the objection, I will withdraw these letters until we prove the signature of Mr. Connolly.

Q. Do you know John L. Connolly? A. Yes, sir.

Q. Who is he? A. He is an Assistant Vice President of the Paterson National Bank.

Q. Did he entertain any relation to the bank in April, 1920? A. Yes, sir.

Q. Was he somebody in the bank at that time? A. He was.

Q. Will you look at these three papers and see if you recognize his signature? A. Yes.

MR. MEDINA: With that supplemental proof, I again offer the letter and the two attached schedules in evidence.

MR. HARDING: I submit, if your Honor will examine them, you will see they have no materiality in this case, or relevancy.

THE VICE ORDINARY: I would like to see the letters.

(The papers were thereupon handed to the court.)

MR. MEDINA: They merely supplement the other letters.

MR. HARDING: Well, the mere supplementing of them don't make them relevant or material, and I object to them on that ground.

THE VICE ORDINARY: I will overrule the objection.

(The papers are admitted, and marked, respectively, Exhibits B-2, B-3 and B-4.)

Q. Mr. Griggs, I refer to your testimony on the former suit, at page 54, to the effect that Mrs. Beam selected, of her own free will, the securities which form part of what is known as the Carrie S. Beam Trust—did you not make an error in that statement? A. I don't think so.

MR. MEDINA: I call for the production of letter of March 8th, 1915, addressed to Mr. Reynolds.

THE WITNESS: Well, I have had no notice to produce any letter, and it is rather indefinite.

MR. HARDING: A letter addressed to Mr. Reynolds?

MR. MEDINA: Yes.

THE WITNESS: Mr. Reynolds represented Mrs. Beam at one time.

MR. HARDING: Well, this purports to be a letter to Mr. Reynolds from Mrs. Beam.

MR. MEDINA: Well, I am asking you if you have the original of that letter; if you have not, say so.

MR. HARDING: No. It has no materiality in the case, that I can see.

Q. Do you know Mr. Berdan, or did you know him before his death—do you recognize his signature to that letter (showing witness a paper)? A. Yes.

Q. It was that very letter that you had in

mind when you testified that Mrs. Beam had made the selection, was it not? A. I would not say that.

MR. MEDINA: I offer this letter in evidence.

THE WITNESS: That letter says that she is to have first choice.

Q. But still, that was not what you had in mind when you made the statement? A. I would not say so; I only know she took first choice.

MR. HARDING: I object to this letter, as irrelevant and immaterial, and as having no bearing on this issue.

(The letter was thereupon handed to the court for his inspection.)

THE VICE ORDINARY: I will overrule the objection.

(The letter was thereupon marked Exhibit B-5.)

Q. Who is Mr. Reynolds? A. Which Mr. Reynolds do you refer to?

Q. Did you look at this letter? A. Yes.

Q. Did you notice that it was addressed to "Mr. John H. Reynolds, Paterson, N. J."? A. Yes.

Q. Do you know Mr. John H. Reynolds? A. I do.

THE VICE ORDINARY: One moment: I did not read to whom it was addressed. I will withdraw that acceptance in evidence until it is proved what connection Mr. Reynolds has with the bank, and I overrule the previous allowance of it in evidence, and you may now prove its legality.

Q. Please tell the court who Mr. Reynolds is? A. He has no connection with the bank.

MR. MEDINA: I move to strike out that answer, as irresponsive.

THE WITNESS: Well, that is what the court said.

BY THE VICE ORDINARY:

Q. Was he connected with the bank at the time this letter was written? A. No, sir.

MR. MEDINA: I am not seeking to prove that; we know that to be the fact, if your Honor please. I am asking the witness to testify as to who Mr. Reynolds was. He has a very clear connection with this matter, known to the witness, I believe.

THE VICE ORDINARY: Well, I guess the witness and the court do not quite follow you in your questions. Repeat your question.

Q. I ask you who Mr. Reynolds was, at the time of this letter, February 25, 1915?

THE VICE ORDINARY: Who Mr. Reynolds was?

MR. MEDINA: Yes; he was the counsel for Mrs. Beam, as is well known to this witness, I believe.

MR. HARDING: Well, now, I object.

THE VICE ORDINARY: Strike that out.

BY THE VICE ORDINARY:

Q. Do you know Mr. Reynolds? A. I know Mr. John H. Reynolds, yes, sir, to whom that letter is addressed.

Q. Do you know what his connection was

with this estate? A. He was Mrs. Beam's personal counsel, as I was informed at the time by him.

THE VICE ORDINARY: Is that all in the testimony?

MR. MEDINA: That is not in the testimony. if your Honor please; and I renew my offer of the letter.

MR. HARDING: I make the same objection to it.

THE VICE CHANCELLOR: Well, this is written by Mr. Berdan to Mr. Reynolds, who was counsel for Mrs. Beam. I will allow it in evidence. It may retain the marking before given it.

Q. Do you know whether or not, subsequent to the sending of that letter addressed to Mr. John H. Reynolds, that Mr. Reynolds had a conference with Mr. Berdan? A. I do not.

Q. Did you ever speak to Mr. Berdan on the subject? A. Yes.

Q. Did he ever say anything to you to indicate whether or not Mr. Reynolds had seen him at that particular time?

MR. HARDING: Just a minute. I have already stated to your Honor that I was objecting to the general line of this; I do not know whether I should renew it now, or not.

THE VICE ORDINARY: You might repeat your objection.

MR. HARDING: I repeat it, on the same ground—that it is irrelevant and immaterial to this issue. I do not want to be hopping up every minute, but I want to preserve my

rights. Perhaps I had better object every time.

THE VICE ORDINARY: Well, perhaps you had better.

(Question repeated.)

A. Yes.

Q. What did he say?

MR. HARDING: Objected to, on the same ground.

THE VICE ORDINARY: I will overrule the objection.

A. He said that the securities that had been set off for Mrs. Beam from the whole estate were the ones that she had picked out.

Q. Did Mr. Berdan tell you that Mr. Reynolds had said that Mrs. Beam had selected the securities? A. Yes.

Q. In the course of your conversation with Mr. Berdan was any reference made to a letter, the substance of which is shown in the paper I now show you? (To Mr. Harding) Do you wish to see this, Mr. Harding?

MR. HARDING: No; show it to the witness first, if you want to.

MR. MEDINA: No, I would rather you would see it first (handing the letter to Mr. Harding).

MR. HARDING: Counsel has shown me this letter for inspection, and I object to it as irrelevant and immaterial to this issue.

THE VICE ORDINARY (To the witness): Do not answer yet, Mr. Griggs. (The court then examined the letter). I will sustain the objection. This letter, addressed by

Carrie S. Beam to her counsel, does not affect, as I see it, in the least, anything that the trust company did. There is no communication from the trust company, that I know of.

MR. MEDINA: May I have an objection? By the way, (off the record) in New York we take exceptions, and I understand the practice here is to note an objection?

THE VICE ORDINARY: No, you state your objection. What I said is the fact, is it not—that there is no evidence here, so far, of a communication of that character—that is, of the character of the letter that was written by either Mrs. Beam or Mr. Reynolds to the bank?

MR. MEDINA: No, there is no such proof.

THE VICE ORDINARY: Then I will sustain the objection, on the ground that there is nothing in that paper, in merely showing it to the other side, which bound them to take notice of it.

MR. MEDINA: May I have that marked for identification?

THE VICE CHANCELLOR: You may have it marked for identification.

(And the paper was thereupon marked for identification M-2.)

Q. In the course of that conversation with Mr. Berdan did he tell you that Mr. Reynolds had informed him that Mrs. Beam wished to have any selection of securities made by the court?

MR. HARDING: I object to that, on the same ground, and that is hearsay.

THE VICE ORDINARY: Mr. Berdan is dead, is he not?

THE WITNESS: Yes, sir.

THE VICE ORDINARY: He was an officer of the company at that time?

THE WITNESS: Yes, sir.

THE VICE ORDINARY: I think I will overrule the objection. I think hearsay, in that situation, is admissible.

A. I cannot answer that question in that way. There was not any particular conversation between Mr. Berdan and myself. The controversy, or the business in relation to this account and this estate ran over a long period of time. What I have testified to heretofore is probably more than the result of any one particular conversation; and the result of all these conversations was that I, as counsel of the bank, had been informed that this was Mrs. Beam's choice; and that, consequently, I drew up the account, which was presented to the Orphans' Court of Passaic County, in which all five of these particular and specific trusts were set off and divided. That account was presented in due course, and allowed; and from that time on the estates were divided into five parts instead of one. Now, that was all the result of innumerable conferences and talks, and not any one particular one.

Q. So that you have no personal knowledge of the fact that Mrs. Beam, herself, selected and picked out the particular securities that formed part of the trust known as the "Carrie S. Beam trust"? A. Only by what I was told.

Q. Mr. Griggs, has there been, for any time,

any ill feeling between you, as an officer of the bank, and Mrs. Beam? A. No, sir; there has not been any feeling between me, as an officer of the bank and Mrs. Beam, from my standpoint; I cannot say as to Mrs. Beam's.

Q. Has there been any such ill feeling by you, as an individual, as distinct from an officer of the bank? A. Absolutely none, sir.

Q. Have you, in all respects, tried to be as fair to Mrs. Beam as to any other person dealing with the bank? A. Fairer.

Q. I call your attention to a photographic copy of a statement purporting to be issued by the Trust Department of the Paterson Safe Deposit & Trust Company, under date of July 7th, 1914, and ask you to note particularly the item of May 22nd, 1914, entitled "Rebate of Commission paid in excess to Paterson Safe Deposit & Trust Co. $137.85"—will you kindly examine that statement? (The witness examined the paper). A. What was the particular item that you referred to?

Q. The item of $137.85—just look at that item, Mr. Griggs; it is on that page that I now hand you? A. Yes, I see it.

Q. Do you remember that item? A. No, sir.

Q. Do you remember the circumstances under which the rebate of the commission became necessary? A. No, sir.

MR. MEDINA: May I have this photographic copy marked for identification?

THE VICE ORDINARY: Yes.

(And the same was thereupon marked M-3 for identification.)

New Jersey State Library

Q. Do you know for how many years that item of $137.85, as excess commissions, had been due and payable to Mrs. Beam, or to the trust fund? A. That it had been due or payable, at all?

Q. Do you know how it was that you happened to subsequently credit to the trust an amount of $35.37 on this rebate? A. I don't know anything about that; you have not called my attention to it.

Q. You have no recollection of that item whatsoever? A. The thirty-five dollar item?

Q. Or the other one, as well? A. No.

MR. MEDINA: That is all.

CROSS EXAMINATION BY MR. HARDING:

Q. When did you become an officer of the trust company? A. 1917.

Q. So that was three years before you had anything to do with this company, and you know nothing about it? A. Yes.

John W. Griggs—Direct.

JOHN W. GRIGGS, ESQ., sworn.

DIRECT EXAMINATION BY MR. MEDINA:

Q. Since the hearing last December, Mr. Griggs, have you been able to further refresh your recollection with reference to the petition for removal from office of Mr. Jerome as District Attorney of the County of New York, which was filed on February 27th, 1908 by Messrs. Griggs, Baldwin & Pierce? A. No, I have not.

MR. HARDING: Just a minute. I want to state an objection first, and get it on the record. I object to the question on the ground that this whole line of inquiry that is indicated is immaterial and irrelevant to the issues in this cause. It is an attempt to reopen and rehash the same things that were contested there.

THE VICE ORDINARY: Well, it was examined into before in the Chancery Court, and he pleaded the utmost ignorance of it, and this is a mere continuation of it, to see whether he, since that time, has refreshed his memory and knows more about it. The witness says "no".

MR. HARDING: Well, my objection is that it is immaterial to this issue.

Q. My recollection of your testimony there was that the only knowledge you had of the Metropolitan securities system was derived from the newspapers—is my recollection correct in that respect? A. I don't know whether it is, or not.

Q. I call your attention to your testimony, on page 93 of the record— A. What record?

Q. The record of the testimony taken on December 7th of last year, and particularly the following question and answer: "Q. Well, now, let me see if this will refresh your recollection (reading from page 26 of the petition): 'The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the railroad company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money,' didn't you know that that was the ground upon which, in February, 1908, Mr. Jerome's removal was being sought by your office? A. I don't know whether I did, or not; but if I did know it, it was a mere matter of general information, more derived from the newspapers than from anything in my office"— calling your attention to your testimony then, Mr. Griggs, is it, or is it not the fact, that such knowledge as you had of the situation you derived from the newspapers? A. I repeat what I said before, that it was general information, largely derived from the newspapers; and I will add that I knew from, oh, just talk around the office, that Mr. Franklin Pierce was engaged in some proceeding to have Mr. Jerome removed as District Attorney.

Q. But you did read, from time to time, articles in the newspapers referring to the condition of the Metropolitan system, did you not? A. I can only say I presume I did; I do not remember reading any newspapers.

Q. Did you not so testify in your testimony on December 7th? A. I testified, as understand it, to what you read, assuming that you read correctly that testimony; that is all I remember about my testimony.

Q. Have you any recollection of the fact that the "New York Evening Post" was, during the year 1907 and the year 1908, taking a particularly aggressive attitude in defense of the public rights, with reference to the Metropolitan system? A. I have no recollection of such a fact.

Q. Did you, at that time, and from time to time, read the "Evening Post", or was not that your regular newspaper? A. It was not my regular newspaper, but I very often read it.

Q. How about the "Wall Street Journal"—were you, from time to time, acquainted with that paper? A. No; I know there was such a paper, but it was not my custom to read it.

Q. Referring to the "New York Evening Post", I show you a photographic copy of the first page of that newspaper, bearing date Friday, September 20th, 1907, and ask you whether you recall reading that particular article? A. (Examining the paper referred to) Which do you mean?

Q. The article with reference to Metropolitan? A. "Merger Receiver"—is that it?

Q. Yes, that is the one. A. I have no recollection of ever having seen that before.

Q. You said something in your testimony on

December 7th about reading in the newspapers about the Metropolitan system pyramiding one company upon another—do you remember that? A. Do I remember saying that in my testimony?

Q. Yes—that they were pyramiding? A. No, I do not; I do not remember whether I said it or not.

Q. I show you photographic copies of three articles in the "Wall Street Journal", dated August 31, 1907, September 26, 1907 and November 4, 1907, and ask you whether, upon examining those articles, you have any further recollection of reading in the newspapers about the impending disaster to the Metropolitan system? A. I have no recollection of ever having seen those articles.

Q. Do you recall having heard, at that time, the general subject discussed? A. I do not recall any discussion of the subject.

Q. Do you remember the time when the New York City Railway receivership did begin? A. I remember the fact—I knew the fact at that time, but I could not give you the date of it now.

Q. It was in September, 1907, wasn't it, as matter of fact? A. I should think that is right.

Q. That caused considerable discussion in the newspapers and the public press, generally, at the time, did it not? A. If by "discussion" you mean *comment,* yes.

Q. *Comment*—and you participated in that comment, did you not? A. I do not know just what you are inquiring about there.

Q. You discussed the subject? A. Do you mean to say that I probably commented on it?

Q. Yes—I do not mean that you commented in the public press, but I mean you spoke of it

with your friends and associates? A. I probably did.

Q. Did you, at the time, regard it as an ominous sign? A. Well, I regarded it as an unfortunate occurrence.

Q. Did you not believe, at that time, that it might have the effect of disintegrating the Metropolitan system, and impairing the value of the various securities held by the Metropolitan company? A. No; I did not have enough information of the circumstances at that time to form any such opinion.

Q. Do you recall whether or not, at the time of the receivership, the question of retaining these securities in the Carrie S. Beam trust was discussed at meetings of the bank officers, at which you were present? A. I do not remember the time; but it was discussed from time to time.

Q. And, as a result of the discussion, it was determined to retain the securities, was it not? A. It was.

Q. Now, in your answer—I say "your" not in the sense, of course that you were a party to the proceeding, as you were not—but the answer in the main suit, which went to the Court or Errors and Appeals, which answer was filed by John W. Harding, of counsel for the defendant, the statement was made, at folio 12, "The said John W. Griggs, president of this defendant was in frequent communication with bankers, attorneys, and others interested in the said Metropolitan system or various parts thereof, and in the said three companies in said bill of complaint mentioned, and in that way obtained all possible information as to the prospects of the successful

operation of said railroads by the companies themselves or of their successful reorganization", —will you kindly tell the court what communication with bankers, attorneys and others you had? A. I can only do it in a general way. I talked with Mr. Coe, of A. M. Kidder & Co., from whom the Second Avenue securities had been bought; I talked with Mr. Towles, of Davis, Stone & Auerbach, who were counsel for some of the parties (I forget just which ones) and I talked with the general manager of the Metropolitan system, whose name I cannot now recall, but you would know it in a moment if I could think of it; and I talked with members of the Finance Committee of the Trust Company; and, as time went on, I gave particular attention to the proceeding in the receivership pending in the United States Circuit Court before Judge Lacombe. I met various counsel concerned in the various interests and in the litigation—I cannot remember all the names of them now.

Q. When you say "concerned in various interests" you mean, do you not, that you consulted the people who were retained or interested on behalf of the various constituted companies? A. No, I don't mean that.

Q. What do you mean then? A. I mean I consulted all persons that I thought could give me any valuable information about the situation, or about the prospects.

Q. Well, now, is it, or is it not the fact that each and every person whom you so consulted was interested in maintaining the credit of the Metropolitan system, if possible? A. No.

Q. Kindly tell us whom you consulted on the other side, and by "the other side" I mean attack-

ing it? A. There were many sides; there were many interests—

Q. Attacking the system, now? A. Well, go on now; ask your question.

Q. I did not intend to interrupt you, in the slightest, but I am trying to get you to take now the side that was attacking the Metropolitan—did you consult anyone who was publicly known as being opposed to the Metropolitan and the bankers and attorneys who were attacking it? A. Well, the Bondholders' Committee of the Second Avenue Railroad Company were not at all in the interests of the Metropolitan, and I talked with the chairman of that committee, who was, at that time, I think, President of the Guarantee Trust Company. That is one. I don't know that I ever talked with anybody that I understood was interested for personal or selfish reasons in maintaining the integrity of the Metropolitan system; but there were large public reasons why the integrity of that system should have been maintained; it would have been to the interest of the Second Avenue stockholders and bondholders to have maintained the integrity of that system; and it was the disintegration of the system that worked the wrong; and it was expected for a long time after the receivership (that was what turned out) that the system would not have to be broken up, because —if you want me to go on—Judge Lacombe, in his order when he appointed the receiver, and in his memorandum that he filed, referred to the importance of preserving the system as an entity and not having it broken into individual units.

Q. One point I would like to get clear, Mr. Griggs, is whether or not you were thoroughly

familiar, in August, September and October, 1907, with the fact that various people and various newspapers expressed publicly the conviction that the Metropolitan system was rotten to the core? A. No, I cannot say that I recall being familiar with that fact.

Q. Were you familiar with the fact that there were persons who considered that the whole system had been mismanaged and its securities badly watered? A. Not at that time. It subsequently developed that that had happened.

Q. When did you first discover that? A. Oh, I cannot tell you. As different litigations went on that developed—these different facts. The litigations continued over ten years and it really is not ended yet.

Q. But you do know there was a great deal of agitation in the public press on this subject of the mismanagement of the Metropolitan system? A. I think there was.

Q. And that was true in 1907, was it not—that is, the time of the receivership? A. No, I cannot say that it was true in 1907.

Q. Well, is it not likely that, as soon as the New York City Railway receivership started, that that would serve to precipitate such discussion, if any fact or circumstances would? A. You can judge of that as well as I can.

Q. No, but we are interested in your recollection of the fact? A. You are not asking my recollection, you are asking what I thought.

Q. Well, now, I ask as to your recollection, as to whether or not—— A. (Interrupting) I do not remember.

Q. Returning to your expression about "pyramiding", I refer to page 99 of your testimony on

December 7th, the following question and answer: "Q. Well, tell us what your recollection of those accusations, as they appeared in the newspapers at that time, and were thus brought to your notice, was? A. The accusations or charges were that this group of bankers had, by the process of putting together the various surface lines of the City of New York greatly enriched themselves by the manipulation of the various securities of the various underlying lines, and improperly done it by piling one kind of system on another——" A. (Interrupting) Did I say "improperly done it" or "had done it"? A. It just reads "and improperly done it"—you probably said "and had improperly done it"—"by piling one kind of system on another kind of a system, etc—pyramiding combinations"—now, with your recollection thus refreshed, from your testimony given in December, will you kindly tell me what you meant by the expression "pyramiding combinations"? A. I think the meaning is explained by what precedes the use of that term, in my testimony there.

Q. Well, may I be favored with a repetition, as it were, of what your present idea of the meaning of "pyramiding combinations" is? I confess I do not understand it. A. Why, I think, if you read what preceded, when I specified the very things that they had done, and then called that "*pyramiding*", you ought to be able to understand what I mean by the word.

Q. Well, what was the inherent wrong involved? A. The parties who obtained the control of these surface lines executed leases of the lines to larger companies—I cannot now distinguish, but there were two or three different companies,

one succeeding and probably being piled on top of the other, which would explain my idea about *pyramiding.* These leases, which these gentlemen having control of the boards of the various underlying companies caused to be executed, in most instances were for a long period of years, and provided that the lessee should pay to the stockholders various rates of dividend on their stocks, running from nine to ten per cent. per annum, should pay the interest on the bonds, and all expenses connected with it; so that, to one looking at the transaction on the face of it, as in the case of the Second Avenue—this property was leased to a company operating most, if not all, of the surface lines of New York City on a perpetual basis of dividend of I think 10%, and with no expenses connected with the organization; that gave to the stock of that company, and of all companies similarly leased, an investment status; and those stocks were regarded generally by bankers and brokers and investors as investment stocks. Afterwards, and without the knowledge of the stockholders of these various companies, these gentlemen that had got control caused additional mortgages to be executed by the various companies, and the charge was that they used the bonds secured by such additional mortgages for their own purposes, although they loaded on the mortgagor, the mortgaging company, the obligation of vast sums of bonded indebtedness, which the stockholders knew nothing about, and which, as it turned out when the crash came, the company was not worth enough to pay.

Q. Now, it was that very sort of pyramiding, was it not, that is referred to in the following statement from the March 28th, 1907 issue of the

"Wall Street Journal" as follows; "But the greatest factor in the situation is the New York City Railway Co., burdened with the necessity of paying dividends not earned. If the merger eventually results disastrously the failure will be traced to the New York City Railway Co., and not to the Manhattan Elevated or the Subway, although the latter in a smaller way may be responsible"? A. What is your question about that?

Q. As to whether that is not referring to the same general subject of this pryamiding? A. Well, I don't know that is is, or not, it don't strike me it contains anything about "pyramiding" there.

Q. Would not the effect of the "pyramiding" that you described be to fasten on these companies the obligation to pay dividends far greater than they could possibly earn? A. On which corporations?

Q. The ones that were making the leases, that you were testifying to? A. Oh, no; they did not pay the dividends—the lessees paid the dividends, or agreed to pay them.

Q. Well, but was not that the trouble with the system—that they obligated themselves to pay sums that it was utterly impossible for them to pay? A. I don't know whether they did, or not. The lessor companies, like the Second Avenue, did not obligate themselves to pay anything. It was the lessee company that obligated itself to pay the dividends and the interest on the mortgages.

Q. Well, now, do you recall that in 1907, from time to time, it was charged in the public prints and the public press that the Metropolitan system was obligating itself to pay dividends, or was

about to pay dividends, or to continue to pay dividends which were not earned? A. No; I have no recollection of any such charge.

Q. I show you a typewritten copy of the article of March 28, 1907, from the "Wall Street Journal", and ask you if, glancing over that tends to refresh your recollection in any way? A. (After examining the article referred to) I do not think it does.

MR. MEDINA: May I have that marked for identification?

THE VICE ORDINARY: Yes.

(The paper was thereupon marked M-5 for identification.)

Q. Did you know that, in 1907, a large percentage of the dividends of the Metropolitan stock had been paid out of property account of the New York City Railway Company? A. I don't know whether I did, or not.

Q. Did you know that it was charged in the public press that such was the fact? A. I don't think I did, but I have no recollection now.

Q. You would not wish to testify that you had no such knowledge? A. How is that?

Question repeated. A. I would not testify that I never read an article in the newspaper asserting that, no.

Q. I show you another article, dated June 13, 1907, containing a comparative schedule of the prices of the stocks of the various constituent companies of the Metropolitan system, as of 1906 and 1907, showing the market, and consequent depreciation from 1906 to 1907, and ask you whether that tends to refresh your recollection

on that subject? A. (After examining the paper): No, I do not think it does.

Q. Didn't you know that the prices, the market value of the stock of the Central Park North and East River Railroad Company, at the end of 1906 was "Bid, 198," and "Asked, 202"? A. I don't know whether I did, or not.

Q. Was not that subject discussed from time to time with the Finance Committee and in the Board of Directors, as you have already testified? A. I have no recollection of that, specifically.

Q. Have you any recollection of the fact that in 1907 the same stock had gone down to 180? A. I have no recollection now, no.

MR. MEDINA: May I have this page marked for identification?

THE VICE ORDINARY: Yes.

(The paper was thereupon marked M-6 for identification.)

Q. Will you tell us, perhaps a bit more specifically than you already have done, the nature of these conferences which you had from time to time with the other officers of the bank with reference to this particular trust fund—and I am referring now to the years 1906, '07 and '08, for example? A. It is nearly sixteen years ago; I cannot remember except in a general way; but, knowing that there was a receivership of the New York City Railway Company, the members of the Finance Committee spoke of the securities which we held in the companies that were a part of that system; we referred to the fact that the Trust Company held securities of this kind as trustee, and that it also held some of these securities in its own right. Mr. John S. Cooke, a

member of the Finance Committee, also owned some of those securities. We discussed the advisability of holding or selling these securities, from time to time. We arrived at the conclusion that it was wisest and best not to sell them. We particularly alluded to the fact that Judge Lacombe, in appointing the receivers in September, 1907, had referred judicially to the importance of keeping the system intact, and that he had ordered the receiver to continue to pay the rental—that is to say, to continue to pay the dividends called for by the lease on the stock, and the interest called for by the bonds, upon the bonds; and they continued for nearly a year —the receivers did—to make those payments, in the hope and expectation that the system would not be disintegrated, but that the lease would be intact and that the rental would go on being paid; and it was our view that if this happened, the stock paying 10% should not be sold at any such prices at that time.

Q. It is the fact, notwithstanding, that, from prices aggregating well over 200 these stocks gradually went down, little by little, until, long before the final crash, they had dropped down to one-half of their former value? A. I do not remember the figures and the gradations of it.

Q. But you do recall, do you not, that there was a gradual lessening of the market value of these stocks as time went on, during the years 1905, '06, '07 and '08? A. No, I cannot say '05, '06 or '07; I don't remember that; but after the appointment of the receiver—I don't remember— but there was a fall in the prices, of course, but just what the prices were I don't know. The

schedules have been put in two or three times in this case.

Q. Mr. J. Leavitt Griggs has testified with reference to some information that was had prior to the publication of one of these articles about the Brooklyn City Railroad Company—did you have any prior knowledge that the receivership of the New York City Railway Company was about to come before the application was actually made to the court? A. The New York City Railway Company?

Q. Yes. A. No.

Q. In your discussions with various attorneys, did you have any intimation of it, prior to the time when the blow fell? A. No.

Q. Now, how much stock of these various systems was held, in 1907, by the Paterson Safe Deposit & Trust Company, in its own right? A. My own recollection is that it was three hundred shares.

Q. There hundred shares of which stock? A. Second Avenue.

Q. And how many of the bonds, if any? A. I do not remember that we held any bonds.

Q. Do you recall how heavy the stockholdings of the other people in the bank were, to which you have already referred? A. No, I do not; I think Mr. John S. Cooke had between one hundred and two hundred shares—maybe two hundred shares.

Q. Did you own any, yourself? A. No.

Q. Did any member of your family own any, as far as you know? A. No.

Q. Will you kindly tell us the situation, just for the purpose of the record, prior to the death of Sarah A. Cooke, of the various members of her family in relation to this bank? A. Why,

John S. Cooke, her son, was a Director of the Trust Company from the time of its formation, about 1890. He was also, I think, from the beginning, a member of the Finance Committee. Frederick W. Cooke, another son of Sarah A. Cooke, was a stockholder of the Trust Company, but I do not think—I know he was not a director. I do not recall whether Mr. Charles D. Cooke had any stock of the Trust Company, or not.

Q. But it was the fact that several members of her family were very much interested in the bank? A. Those that I have mentioned.

Q. And it was the fact, was it not, that at the time of the death of Sarah A. Cooke she had outstanding loans of various officers of the bank, aggregating $81,000, and cash deposits with the bank aggregating $48,000? A. I cannot tell you.

Q. Don't you recall that—in substance, I do not mean the exact amounts? A. Oh, I certainly do not recall the amount of deposits of any particular persons at the time they died.

Q. No, I do not mean to ask you the particular amount of the deposits, but whether you knew, in a general way, that she had an extraordinary large amount on deposit? A. No, I don't know now that that was the case. I may have known it then.

Q. In the course of your duties as President of the bank you had a general supervision of the Treasurer—was it Mr. Berdan? A. Yes.

Q. And the work that he did he did under your supervision and direction, did he not? A. Why, theoretically yes—and practically, in many instances.

Q. Had you ever seen this letter from Mr.

Berdan, addressed to Mrs. Beam, dated September 8, 1911? (Showing the witness a letter.)

MR. HARDING: That is the letter you had a while ago, is it?

MR. MEDINA: No, this is another one; this is the one in which he speaks of the mismanagement of the Metropolitan system.

A. (After examining the letter): I do not remember that I ever saw that letter, and yet I might have seen it.

Q. Did you give him the information with refeence to the bad management of the Central Park North and East River and the Second Avenue Railroad Companies? A. I do not remember having done so.

MR. MEDINA: I offer that letter in evidence.

MR. HARDING: Well, my general objection goes, I suppose, to this line of testimony, on the same ground?

THE VICE ORDINARY: Well, it is a communication from the Trust Company to Mrs. Beam. I will admit it in evidence.

(The letter was thereupon marked Exhibit B-7.)

MR. MEDINA: There is another one, of the following date, also from Mr. Berdan to Mrs. Beam, that I may offer at the same time. (Producing another letter.)

THE VICE ORDINARY: Show it to Mr. Harding.

(Mr. Medina thereupon handed the letter to Mr. Harding for his inspection. It was then handed to the court.)

THE VICE ORDINARY: This may be admitted.

(The letter was thereupon marked Exhibit B-8.)

Q. Referring now to these brothers of Mrs. Carrie S. Beam who were interested in the bank as directors and stockholders, don't you know it to be the fact that she was on unfriendly terms with her brothers? A. Not at that time.

Q. When did you first learn that to be the fact? A. I cannot tell you, exactly.

Q. 1907? A. Oh, no; I did not know it then.

Q. 1922? A. I knew it before that.

Q. Did you know it before you filed the final account in this matter? A. When did we file the final account?

Q. 1921, is my recollection. A. Oh, yes.

Q. Now, give us the date, as near as you can approximate it? A. It was shortly after—the only recollection I have for fixing the date was shortly after the death of John S. Cooke.

Q. And that was? A. And I cannot tell you when that was; I should think it was six or seven years ago. There was an incident that happened at that time, or was reported to me at that time, which assured me that she was not on friendly terms with her dead brother.

Q. When did you, or any other member of the bank, first reach a situation where the relations between the bank and Mrs. Beam became strained? A. Oh, I wouldn't say they were strained. She had Mr. Pierre Cook, of Jersey City, right away, making a demand that we make good the depreciation of the securities; and when we declined to do it, stating that under the cir-

cumstances we were not bound, Mr. Pierre Cook brought suit in the Court of Chancery for Mrs. Beam.

Q. Well, but during all of those proceedings, which began at that time and have continued since, do you mean to say that the relations between the officers of the bank and Mrs. Beam have been friendly? A. Well——

Q. (Interrupting) Why do you and Mr. Leavitt Griggs smile at one another on that point? A. I did not look at him; I did not see him smile. I smiled because your question is an exceedingly difficult one to answer. I do not think that I have spoken to Mrs. Beam since that suit was begun; I do not think I have written to her; and, therefore, I could not say that I had had any relations, friendly or unfriendly, with her.

Q. Is it, or is it not the fact, that the attitude of Mr. J. Leavitt Griggs toward Mrs. Beam has been singularly hostile for the last five or six years?

THE VICE ORDINARY: I do not want to object myself, but it really does not seem to me that it makes a particle of difference what the relation of the trustee is to his *cestui-que-trust;* it is his duty to do his duty, friendly or otherwise. Now, I do not see that that has anything to do with it.

MR. MEDINA: May I have an objection?

THE VICE ORDINARY: No, you cannot have an objection, for I am not ruling on it; I am simply stating my views now on the subject. The trustee had no right to do wrong and prejudice his *cestui-que-trust's* interests just because he is unfriendly.

Q. Do you recall, Mr. Griggs, the conversation which you had in January, 1915, with John Beam and William Beam with reference to certain incomes from the trust funds, which you refused to pay to Mrs. Beam? A. I do not recall it now.

Q. Do you recall their coming into your office at that time to see you? A. I have a dim recollection of their coming into the Trust Company, I think, but maybe it was into my office; but it is a very dim recollection.

Q. Do you recall that you refused to pay certain dividends that had been received as incomes from the trust fund to Mrs. Beam until the costs of the Chancery suit had been paid? A. I do not recall that.

Q. Do you have any recollection of ever refusing to pay income from the trust fund to Mrs. Beam? A. I have no recollection of that; I do not say I did not.

Q. Who is Mr. Ryle—and I refer to Mr. Arthur Ryle? A. Mr. Ryle is a gentlemen who was born and formerly resided here in Paterson, and bebecame a stockholder and director of the Trust Company when it was organized, and continued as such down to four or five years ago, when he resigned because he had removed to New York.

Q. He was for many years Vice President of the Paterson Safe Deposit and Trust Company, was he not? A. Well, now, really, I don't remember whether he was, or not; probably he was; I have forgotten.

Q. Well, now, look at this letter-head, and see if we can straighten it out—look at the letter-heads on Exhibits B-5, B-7 and B-8, and see if they refresh your recollection as to whether or not Mr. Arthur Ryle was Vice President of the

bank in 1911? A. He must have been, but I had forgotten it.

Q. Were your relations with him very friendly? A. With Mr. Ryle?

Q. Yes. A. Yes, sir.

Q. Did he ever speak to you, in the early part of 1915, about certain letters that he had received from William Beam? A. I think he did.

Q. What did he say? A. He said "He must be crazy".

Q. But did not tell you what the nature of the letter was, did he? A. I think he showed it to me.

Q. Is this it, or a copy of it (showing the witness a paper)? A. (After examining the paper): Well, I could not tell now whether that is a copy of it.

Q. Well, don't you know that that letter was in reference to the dividends that you had refused to pay out of the income of this trust fund of Mrs. Beam? A. I would not know it, except by inference from the fact that you presented to me what you say is a copy of it.

Q. Well, I now present you with the original letter, signed by Arthur Ryle, and ask you if that further refreshes your recollection?

THE VICE ORDINARY: I must say I cannot follow you on this line of testimony.

MR. HARDING: I am objecting to it.

A. (Referring to the letter): That sounds like Arthur Ryle, and it is his signature; but I don't know.

THE VICE ORDINARY: What difference does all this make? The law imposes the burden upon the trustee to fulfill his trust. If he is negligent, or takes such little or poor care

of the trust that there is loss, and he does not obey his duty, the law charges him. If he does all in the world that can be expected of a reasonable man, a reasonable trustee, and, through misfortune or misadventure, the property is lost, is it not perfectly plain that the trustee cannot be held liable? Now, this testimony, I will say now, has not made the slighest impression on my mind, and I want to give you every chance and opportunity to show any evidence whatsoever that the trust was negligently managed; and I think that is the only issue in this case. It is not a question of whether the officers of this Trust Company and Mrs. Beam, or any of the Beams, were on unfriendly relations; the question is whether they did their duty; and that is the only question I am here to try.

MR. MEDINA: May I have these papers marked for identification?

THE VICE ORDINARY: Yes.

(The two papers were thereupon marked, respectively, M-9 and M-10 for identification.

Q. Mr. Griggs, did you have knowledge of the stipulation appearing on pages 21 and 22 of the record in the case of *Carrie S. Beam vs. Paterson Safe Deposit & Trust Company*, which was appealed to the Court of Errors and Appeals (showing the witness printed book)? A. Why, I was familiar with the record of that case, and must have been familiar with that at the time. That is argumentative, not recollection, however.

Q. I merely wanted to see whether or not the stipulation there, which referred to certain proceedings in an action known as the Pennsylvania

Steel Company and Degnon Contracting Company, complainants, against the New York City Railway Company and Metropolitan Street Railway Company were matters of which you had some information and knowledge—now, they were, were they not? A. Well, my recollection is that the Pennsylvania Steel Company, is it——

Q. Yes. A. ——was the complainant in the suit in which the original receivers were appointed.

Q. That is right. A. And, further, if you will allow me to say, the proceedings in all the various collateral branches that arose subsequently were carried on under that title—under the original title.

MR. MEDINA: I have here a certified copy of the intervening petition of Solomon H. Kohn in that proceeding, which is verified November 25, 1907, the certificate being by Alexander Gilchrist, Jr., Clerk of the District Court of the United States for the Southern District of New York, which I offer in evidence, together with a copy of the stipulation appearing on page 21 and 22 of the appeal book in the case of *Carrie S. Beam, Complainant, vs. The Paterson Safe Deposit & Trust Company, Defendants.*

MR. HARDING: I object to them, on the ground that they are irrelevant and immaterial to this issue.

THE VICE ORDINARY: I will overrule the objection. I suppose it is referred to in the stipulation, and it is in the case.

(The petition is marked Exhibit B-9.)

MR. MEDINA: I presume this stipulation in the printed appeal book need not be marked?

THE VICE ORDINARY: That is in evidence, as I understand it.

MR. HARDING: If your Honor please, that stipulation is from the printed book of the first case in Chancery.

THE VICE ORDINARY: Well, I understand the testimony taken before me was to supplement that testimony, and that stipulation is in, is it not?

MR. HARDING: That stipulation is in the record.

THE VICE ORDINARY: And it refers to this exemplified copy of the record.

Q. Now, Mr. Griggs, do you have any recollection of a petition that was filed with Govornor Hughes by Bernard A. Rosenthal and others, verified September 7, 1907, and setting forth a large number of alleged acts of mismanagement and wrongful conduct on the part of those in charge of the Metropolitan system? A. I presume that is the same petition I was asked about before.

Q. No, this is another one. A. I have no knowledge or recollection of ever having seen or known of such an application.

Q. I show you what purports to be a copy of that, and ask you to glance over the list of those who signed it and see if you know any of those persons? A. (Examining the paper): No, I don't know any of them.

Q. Did you know whether, or not, prior to the death of Mr. William Berdan, various loans were

made to him by the bank out of the trust funds held by the bank?

MR. HARDING: Objected to, as immaterial.

THE VICE ORDINARY: How is it material?

MR. MEDINA: Well, I was going to try to connect it up with this, but if the witness has no knowledge of it, or of any loans, then I obviously cannot connect it up.

MR. HARDING: Well, what can you connect it up with so as to make it material at this time?

MR. MEDINA: Well, I do not like to reveal such evidence as we may have in that respect.

THE VICE ORDINARY: I will sustain the objection. If you prove that the money was not paid back, and was lost, I will permit it.

MR. MEDINA: I now offer in evidence the letter of Mr. Ryle, together with the copy of the letter from Mr. William Beam to Mr. Ryle, subject to my calling later a witness who will identify the copy as being a correct copy.

MR. HARDING: I object to them as immaterial and irrelevant, on the same ground.

THE VICE ORDINARY: You do not object to it as a copy?

MR. HARDING: No, I do not object to it as a copy.

THE VICE ORDINARY: I overrule the objection, and admit them.

(The papers were thereupon marked, respectively, Exhibit B-10 and Exhibit B-11.)

MR. MEDINA: It is my understading that the figures with reference to the losses on these various stocks are already fully in the record, so that subject need not be touched upon further. That is all.

No cross examination.

Recess until two o'clock, P. M.

AFTERNOON SESSION.

Hearing of the cause resumed at two o'clock, P. M.

GEORGE B. GRAVES, sworn.

DIRECT EXAMINATION BY MR. BLANKENHORN:

Q. Are you connected with the office of the Governor of the State of New York? A. I am.

Q. In what capacity? A. Assistant Secretary of the Governor.

Q. And have you, in your possession, a petition for removal from office of the District Attorney of the County of New York to the Governor, on February 27, 1908, filed in your office? A. I have.

Q. Will you produce it? A. (The witness produces a paper.)

Q. Is that the original document? A. That is the original document, yes sir, filed in the office of the Governor.

MR. BLANKENHORN: I offer it in evidence.

MR. HARDING: I object to it, as immaterial and irrelevant to the issues here.

THE VICE ORDINARY: Do you propose to show that anyone connected with the defendant company had knowledge of this petition?

MR. BLANKENHORN: This is the petition, if I understand it, that has been referred to by Governor Griggs in his examination, the admission of which was denied on one of the grounds, namely, that the copy that was of-

fered was a photoscopic copy; and we now offer the original document.

MR. HARDING: This is the petition to Gov. Hughes, is it not?

MR. BLANKENHORN: Yes.

MR. HARDING: It is the one about which Gov. Griggs said he knew nothing.

MR. BLANKENHORN: In the testimony which was taken in the Chancery proceeding, I think, if your Honor will read that, you will find that he admits that he knows of the petition, and knows, in a general way, of the contents.

THE VICE ORDINARY: He said he knew nothing about it. He was confronted at great length by Mr. Medina with parts of it, and he said he knew nothing about it; and it was primarily on that ground that I rejected the offer.

MR. BLANKENHORN: May I have it marked for identification?

THE VICE ORDINARY: Oh, you may have it marked for identification. (And the same was marked M-11 for identification).

MR. BLANKENHORN: May we use the photographic copy in order that the original may be returned?

THE VICE ORDINARY: I suppose there is no objection to that. I will exclude the offer for the reason given before, that Gov. Griggs was confronted with the document and his attention called to the various parts of it, and his testimony, up to the time of the offer and subsequent to it, was to the effect that he knew nothing about it and never had seen it.

Q. Have you a letter of June 15, 1908, addressed to the Honorable Charles E. Hughes by Franklin Pierce? A. I have such a letter (producing a paper).

MR. BLANKENHORN: If your Honor please, I offer that in evidence.

MR. HARDING: Same objection— I object to it, on the grounds already stated.

THE VICE ORDINARY: I will rule as before —I will exclude it. It does not appear that anyone of any responsibility and authority in the Paterson Safe Deposit Company had any knowledge of this letter. It may be marked for identification, however.

(The letter was thereupon marked M-12 for identification.)

MR. BLANKENHORN: And, in that case may we use a copy?

THE VICE ORDINARY: There is no objection to the use of a copy?

MR. HARDING: No, I object to them on the ground that I have stated—that they do not bind us in any respect.

Q. Have you a letter of August 26th, 1908, addressed to Mr. Robert H. Fuller, Secretary of the Governor, by A. J. Baldwin? A. Yes, I have.

Q. Also a letter of November 19, 1909, addressed to the Honorable Charles E. Hughes by Alfred J. Baldwin? A. I have those letters (producing same).

MR. BLANKENHORN: I ask that they be received in evidence.

MR. HARDING: I object to them on the same ground.

THE VICE ORDINARY: Same ruling.

(Copies of the two letters were thereupon marked respectively, M-13 and M-14 for identification.)

No cross examination.

JOHN H. REYNOLDS, Esq., sworn.

DIRECT EXAMINATION BY MR. BLANKENHORN:

Q. You are an attorney and counsellor-at-law of this State? A. Yes, sir.

Q. Practicing in Paterson, New Jersey? A. Yes, sir.

Q. And in February, 1915, and for a time thereafter, were you the attorney for Mrs. Beam—Mrs. John R. Beam? A. I acted as counsel for her for some time, yes.

Q. I show you Exhibit B-5 in this cause, and ask you if you communicated the contents of that letter to Mrs. Beam? A. (The witness examined the letter): Well, I couldn't say whether I did, or not.

Q. Have you, in your possession, a letter addressed to you on March 8, 1915, by Mrs. Beam, a copy of which I show you, which has been marked M-2 for identification? A. I have not been able to find such a letter.

Q. Well, did you have a conversation with Mrs Beam at about that time? A. Well, I couldn't remember about the date of it—anything about it; I know there was some conversation between us about the matters, concerning the mother's es-

tate, but just what time they were I don't know.

Q. Well, would you say that you did receive such a letter as I have shown you from Mrs. Beam?

MR. HARDING: I object to that as not the proper way to prove it.

THE VICE ORDINARY: I think he may testify whether he received such a letter; I will overrule the objection.

A. I do not recall whether I received such a letter, or not, but I think it is very likely I did.

MR. HARDING: I think the last part of the testimony should be stricken out. I ask that it be stricken out.

THE VICE ORDINARY: I will strike it out.

Q. Did you say anything to Mr. Berdan, or to any officer of the Safe Deposit and Trust Company as to what securities Mrs. Beam wished to have assigned to her, or allotted to her, on the division of this trust? A. I do not recall anything about it. How long ago is that—eight years ago, ain't it?

Q. 1915. A. 1915? I do not recall it.

No cross examination.

MRS. CARRIE S. BEAM, sworn.

DIRECT EXAMINATION BY MR. BLANKENHORN:

Q. Mrs. Beam, you are the person who is interested in this trust of the Estate of Sarah A. Cooke, are you not? A. I am.

Q. And you are the daughter of Sarah A. Cooke? I am.

Q. Were you present in court when Mr. Leavitt Griggs testified with reference to your having made the choice of the securities in that trust fund? A. Do you mean this morning?

Q. Yes. A. Yes, I was.

Q. Did you ever make any choice? A. I never had an opportunity to; it was never given to me.

Q. Mr. Reynolds was your attorney at that time? A. He was.

Q. What did you say to him with reference to that matter?

MR. HARDING: I object to that as hearsay.

THE VICE ORDINARY: How is that admissible?

MR. BLANKENHORN: I will withdraw the question.

Q. Oh, just a minute—I show you a photograph of a statement which has been marked M-3 for identification, and ask you—— A. I cannot see this.

Q. I ask you whether you received such a statement from the Safe Deposit & Trust Company? A. I cannot see this; I have not got my glasses. I know it is similar to those that I did receive from them.

Q. When did you receive those? A. These?

Q. Yes. A. Oh, I used to get them when I would have my dividends, once in a while.

Q. They came with the dividends? A. Once in a while they did, yes; but I cannot see what is on there.

Q. Possibly you can use these (proffering the witness a pair of glasses)? A. No, I couldn't use anybody else's, I am sorry.

THE VICE ORDINARY: Possibly she could use these (proffering a pair of glasses to the witness).

THE WITNESS: No; I am far-sighted. All I can read is "Paterson Safe Deposit and Trust Company". Cannot you tell me what it is?

Q. Well, I will read it to you: This says, "Trust Department, Paterson Safe Deposit & Trust Company. Mrs. Carrie S. Beam, Bogota, July 7, 1914——

MR. HARDING: Wait just a minute, please. The stenographer is taking it. I object to it.

MR. BLANKENHORN: I do not think it ought to go on the record.

THE VICE ORDINARY: No, it won't go on the record.

(A pair of glasses was then handed the witness, with which she said she could see the paper.)

Q. When did you receive this from the Trust Company? A. Oh, I couldn't remember.

BY THE VICE ORDINARY:

Q. Well, you received them about the day they bear date, didn't you? A. I suppose so.

By Mr. Blankenhorn:

Q. Were these sent with checks? A. Usually, yes. This was sent at the time that the trust fund was all in one big fund, wasn't it—because it has down here all the names of the beneficiaries. You know, at first, my mother said——

Q. (Interrupting) Well, just a minute—you say these were sent to you with your dividend checks? A. Yes, that is so.

Mr. Harding: The stenographer is taking down all of this or a great deal of it, and it seems to me it is encumbering the record.

The Vice Ordinary: Strike out what the witness is testifying to. She now says she thinks she knows what it is (To the witness) Do you?

The Witness: Yes.

The Vice Ordinary: Now ask the questions from now on. The rest will be stricken out.

Q. When did you receive that statement, or similar statements to that, from the Trust Company? A. Probably when the dividend was sent to me; that is all I can say.

Mr. Blankenhorn: I offer this in evidence.

Mr. Harding: I object to it, on the ground that anything that is contained in it is irrelevant and immaterial, and that the witness has not given any statements which would justify anything she said as being accurate or reliable, anyway, and it is not the proper proof, it is only a photographic copy and is not authenticated in any way.

THE VICE ORDINARY: Do you object to it because it is not the original?

MR. HARDING: Yes, I object to it on that ground. We don't know anything about it, your Honor.

MR. BLANKENHORN: I will withdraw the offer, your Honor.

Q. I show you a paper purporting to be a letter addrssed to you, with a statement annexed, under date of January 6, 1915, from the Paterson Safe Deposit & Trust Company, and ask you if you received that from the Company? A. Yes, I had that.

MR. BLANKENHORN: I offer them in evidence.

MR. HARDING: Well, I renew my objection to the paper as being irrelevant, immaterial, and I do not see any suggestion from counsel, or anybody else, as to what the materiality or relevancy of it is. So far as its being an authenticated paper, or not I don't know; But of course, it is on the Company's billhead. It is not signed, however.

THE VICE ORDINARY: Is it disputed that she received this from the Trust Company?

MR. HARDING: I do not say that it is, but we do not know anything about it

BY THE VICE ORDINARY:

Q. Did you receive this from the Trust Company? A. Yes, I did.

THE VICE ORDINARY: I will overrule the objection.

MR. HARDING: The main point is that I do not hear any suggestion from counsel, or

anybody, as to what the relevancy of it is.

THE VICE ORDINARY: Well, I propose to let in every shade of possible evidence. I have very fairly strong views as to what the issues are. Counsel has branched out into a great field, and I propose to give him every opportunity to show that they have not been fairly treated.

MR. BLANKENHORN: I might say that the purpose or justification of this is to show that the commissions were deducted in advance.

THE VICE ORDINARY: I do not care about that; that is a mere detail of accounting.

(The paper was thereupon marked Exhibit B-12.)

BY MR. BLANKENHORN:

Q. I show you a paper purporting to be a communication to you from the Paterson Safe Deposit & Trust Company, July 7, 1914, and ask you if you received that from the Trust Company? A. Yes.

drawing them before there was an order of Court allowing them?

MR. BLANKENHORN: I offer that in evidence.

MR. HARDING: That is objected to, on the same ground.

THE VICE ORDINARY: Same ruling.

(The paper was thereupon marked Exhibit B-13.)

THE VICE ORDINARY: (To Mr. Blankenhorn): I understand counsel's point is that the Trustees pursued the actual practice of drawing the commissions at any time, and

MR. BLANKENHORN: Well, when we sum up the matter it will be found that this statement don't correspond with the account that was filed by the Trustee. I wish to offer the records of the Orphans' Court, if that is necessary, referred to in this case.

THE VICE ORDINARY: You have the transcript here?

MR. BLANKENHORN: The transcript is filed, yes, sir. And I wish to move, if this is the proper time, that this account be restated properly; and that we have an opportunity, when that is done, to apply to re-open the intermediate accounts, upon the ground of fraud and mistake.

THE VICE ORDINARY: Well, I will listen, on the argument, to you on that. You can make the motion on the argument.

MR. BLANKENHORN: Is seems to me we are not going to reach that to-day, and I should like to file a brief on that.

THE VICE ORDINARY: Well, you have two or three other cases?

MR. BLANKENHORN: Well, there are three other cases.

THE VICE ORDINARY: Have you any evidence to offer, Mr. Harding, in this first case?

MR. HARDING: I think not, your Honor.

CASE CLOSED.

Exhibit B-1.

The Chronicle p. 1272, Vol. 9.

BROOKLYN CITY RR.—*October Dividend to be Omitted—Lessee in Arrears on Rental.*—President Frank Lyman in circular of Sept. 19 says:

The Brooklyn Heights RR. Co. [whose entire capital stock is owned by the Brooklyn Rapid Transit Co.—Ed.], as lessee under the lease of Feb. 14 1893, and its receiver Lindley M. Garrison, made default on Sept. 15, in the payment of the third instalment, amounting to $46,034, of the Federal Income Tax for the year 1918, and thereupon this company paid the same in order to avoid the penalties prescribed by law. Under the terms of the lease, this tax was payable by the lessee as part of the agreed rental.

Your company has been advised by the Solicitor for Receiver Garrison that the instalment of rent due Oct. 1 will not be paid because of lack of funds, and that application is about to be made to the United States District Court for instructions to the Receiver in regard to the future possession and operation of the leased property. Non-payment of the rent will prevent the payment of the October dividend. [The 999-year lease calls for quarterly dividends at the rate of 10% p. a. on the $12,000,000 capital stock par $10].

A special committee of directors has been appointed consisting of Messers. Lyman (President), Noyes (Vice-President), Horr, Timpson and White, and has been charged with power to take such steps as may be found to be necessary or advisable to protect the interests of the com-

pany and its security holders, and stockholders will be advised from time to time of material developments. [As to power house matters see V. 108, p. 377; V. 109, p. 675].

Statement from "Brooklyn Eagle" of Sept. 20, 1919.

The lease provides that in the event of a default in payment of rental, the Brooklyn Heights RR. Co. shall have a 60-day period of grace before the Brooklyn City RR. Co. can take its lines, so that the actual separation of the B. R. T. trolley system cannot take place until Dec. 1 [in case such action is decided upon.—Ed.].

The Brooklyn City RR. Co. is the only leased railroad system in the B. R. T., but as it owns 231 miles of single surface track in the borough, it is the backbone of the B. R. T. trolley system. The lines it controls are Avenue C, Bushwick Ave., Calvary Cemetery, Court St., Crosstown, Cypress Hills, Flatbush Ave., Flushing Ave., Flushing Knickerbocker, Flushing Ridgewood, Fulton St., Gates Ave., Graham Ave., Grand St., Greenpoint, Hamilton Ave., Lorimer St., Myrtle Ave., Nassau Ave., Nostrand Ave., Putman Ave., Richmond Hill, 16th Ave., 65th St. Bay Ridge, 65th St. Fort Hamilton, Third Ave., 39th St. Fort Hamilton, Tomkins Ave. and Union Ave.

The company has no power houses of its own but it has a contract with Judge Garrison by which the receiver is obligated to supply the company's lines with power in the event of a separation of the leased lines from the borough B. R. T. system. On that score there will be no difficulty in operating the Brooklyn City lines as an independent system.

Exhibit B-1.

The financial problems in connection with the independent operation of the leased lines, however, are not so easily solved. The B. R. T. receiver has been advised by his aides that there will be a monthly deficit of $50,000 in the treasury of the Brooklyn City lines until Aug. 30, 1920. That is, the financial experts estimate that the operating receipts of the Brooklyn City lines until Aug. 30, 1920 will be $50,000 a month less than the oper. expenses.

At the company's office, 44 Court St., today it was stated that the financial statement issued on July 15 showed the company had approximately $200,000 surplus in cash and investments. This would be sufficient to meet the estimated deficits for only four months.

When he asks Judge Mayer to direct the receiver in regard to the Brooklyn City rental problem, Carl M. Owen, as counsel for Receiver Garrison, will also ask the Court to endeavor to straighten out the power problem of the B. R. T. by authorizing the issue of receivers' certificates for the subsidiary lines which owe the B. R. T. large power bills. The Brooklyn Heights Co. on Oct. 1 will owe the B. R. T. $600 000. Mr. Owen stated; the Nassau Electric Co., $718,880; the Coney Island & Brooklyn Co., $160,000; and the Brooklyn Queens County & Suburban Co., $118,000.—V. 108, p. 377, 170.

Exhibit B-2.

THE PATERSON SAFE DEPOSIT & TRUST COMPANY

JOHN W. GRIGGS, president.
J. EDWARDS BARBOUR, 1st vice prest.
JOHN L. GRIGGS, 2nd v. p. & trust officer
FRED LABAUGH, treasurer.
JOHN L. CONNOLLY, secretary.

152 MARKET STREET
PATERSON NEW JERSEY

April 13, 1920.

Mrs. John R. Beam,
552-15th Avenue,
Paterson, N. J.

My dear Mrs. Beam:

Yours of the 7th instant duly received and in compliance with your wishes, I enclose a list of the securities held in your Trust at this writing, showing the rate of interest, the interest dates and the amount the securities are carried at on our books. I also enclose a list showing the changes in your Trust for the past year.

If there is anything that is not clear to you or any further information you may desire in this connection, please command me.

Very sincerely yours,

JOHN L. CONNOLLY.

Exhibit B-3.

THE PATERSON SAFE DEPOSIT & TRUST COMPANY

JOHN W. GRIGGS, prest.
J. EDWARDS BARCLOUR, 1st vice prest.
JOHN L. GRIGGS, 2nd v. p. & trust officer
FRED LABAUGH, treasurer.
JOHN L. CONNOLLY, secretary.

152 MARKET STREET
PATERSON NEW JERSEY

LIST OF SECURITIES IN THE CARRIE S. BEAM TRUST.

(April 13th, 1920.)

Par Value		Rate.	Int. Dates.	Book Value
1,000	Baltimore & Ohio R. R. Co.	5%	June & Dec. 1st	1,000
400	Brooklyn City R. R. Co. 40 shs.	No dividend		800
4,500	45shs. Central Park N. & E. River R. R. Co.	No dividend		1
1,000	Consolidated Traction Co.	5%	June & Dec. 1st	1,023
1,000	Lehigh Valley Annuity Bonds	6%	June & Dec. 1st	1,330
100	First L. L. Bond	3½%	June & Dec. 15th	98
100	Third L. L. Bond	4¼%	March. & Sept. 15th	100
2,000	Long Dock Co.	6%	Apr. & Oct. 1st	2,300
550	Victory L. L. Bonds	4¾%	June & Dec. 15th	550
1,000	Mobile & Ohio R. R. Co. Bds.	6%	Jan., Apr., July, Oct. 1st	1,010
1,000	Passaic Lighting Co. Bds.	5%	May & Nov. 1st	1,004
1,000	Paterson & Passaic G. & E. Bds.	5%	March. & Sept. 1st	1,010
3,000	Paterson Railway Co. Bds.	6%	June & Dec. 1st	3,200

1,000	Passaic Water Co. 5% Jan. & July 1st		1,000
1,000	United N. J. Railroad & Canal 4% Feb. & Aug. 1st		1,000
	BONDS & MORTGAGES.		
	Max Gold	6% June 30th, Dec. 31st	2,000
	Catherine Warren	5% June 30th & Dec. 31st	1,000
	Cash uninvested		28.10
	Total Amount of Trust		$18,706.10

Respectfully submitted,

JOHN L. CONNOLLY,
Secretary.

Exhibit B-4.

THE PATERSON SAFE DEPOSIT & TRUST COMPANY

JOHN W. GRIGGS, prest.
J. EDWARDS BARBOUR, 1st vice prest.
JOHN L. GRIGGS, 2nd v. p. & trust officer
FRED LABAUGH, treasurer.
JOHN L. CONNOLLY, secretary.

152 MARKET STREET
PATERSON NEW JERSEY

CHANGES IN THE CARRIE S. BEAM TRUST FROM APRIL 1919 to APRIL 1920.

June 18th, 1919	Zax Mortgage paid in full	$500	
July 24th	Bought 4¾% Victory L. L. Bonds		$550.
Nov. 11th	Sold Jos. Sharpe Mortgage	2,000	
Nov. 11th	Bought Max Gold Mtg.		2000.
Feb. 2nd	Rec'd. on acct. Warren Mtg.	50	
Mar. 3rd	" " " " "	100	
Apr. 3rd	" " " " "	50	

Respectfully submitted,

JOHN L. CONNOLLY,
Secretary.

Exhibit B-5.

JOHN W. GRIGGS, prest.
WM. BERDAN, vice pres. & treas.
ARTHUR RYLE, vice pres.
FRED LABAUGH, secretary
JOHN L. CONNOLLY, asst. sect'y.

THE PATERSON SAFE DEPOSIT & TRUST COMPANY

PATERSON NEW JERSEY

February 25, 1915.

Mr. John H. Reynolds,
Paterson N. J.

Dear Sir:

We are writing this letter to you as representing Mrs. Carrie Beam. For convenience and economy, we have treated the Sarah A. Cooke trust (of which there are five (5) beneficaries) as one proposition. The death of Mrs. Lavinia Fayerweather has made it necessary to divide this Trust into five (5) equal parts and, in order to save the expense of soliciting the Court to make this distribution, we have prepared a Chart, a copy of which we enclose herewith, showing, in our opinion, how the distribution can be equitably arranged.

The four (4) other beneficiaries other than Mrs. Beam, have agreed to allow her the first choice of selection and we respectfully request that you, as her representative, present the same to her and if possible, have the matter settled.

Kindly favor us with a reply at your early convenience, and oblige

Yours truly,

WM. BERDAN,
Vice President.

Exhibit M-2 for identification.

Paterson, N. J.
March 8, 1915.

Dear Mr. Reynolds:

Will you kindly inform Mr. Berdan of the Safe Deposit & Trust Co. that inasmuch as the Trustee violated the express provisions of the Will of Sarah A. Cooke in not dividing the trust estate in accordance with the terms of the Will at the time it took possession of the funds, I prefer that no division of the trust estate be made at this late date unless decreed by the proper court after consideration of all the facts and circumstances of the case.

I am,
yours most sincerely

(Signed) CARRIE S. BEAM.

Exhibit M-3 for identification.

TRUST DEPARTMENT

THE PATERSON SAFE DEPOSIT & TRUST COMPANY

PATERSON, NEW JERSEY

July 7th, 1914.

Mrs. Carrie S. Beam,
Bogota, N. J.,

Dear Madame:—

We enclose our check for $280.00, being settlement in full to date of income from the Cooke

Please sign voucher herewith and return by mail.

Apr. 1/14	Balance last accounting			516.58
" 15 "	Dividend Brooklyn City R. R. Co.			40.00
May 5 "	Coupons Passaic Lighting Co.		200.	
	" "		17.	183.00
" 22 "	Rebate of Commission paid in excess to P. S. D. Tr. Co.			137.85
June 1 "	Coupons Paterson Railway Co.		540.	
			70.	470.00
" 1 "	Coupons Consolidated Traction		125.	
	Co. " " "		8.50	116.50
" " "	Interest on Registered Lehigh Valley Bonds			240.00
	.....			
" 26 "	Interest on Brown Mtg. to June 30, 1914			32.50
July 1 "	Coupons Mobile & Ohio		90.	
	" "		35.	55.00

Exhibit—M-3.

"	3 "	Interest on Lockwood Mtge. to June 30, 1914		30.00
"	6 "	Coupons Passaic Water Co.	175.	
			12.50	162.50
"	" "	Interest on Kuyper Mtge. to June 30, 1914		62.50
				$2,046.43

PAYMENTS.

May 15/14	Commission to April 15th, 1914	446.08	
" " ""	Jno. L. Griggs, Counsel Fee	50.00	
" " "	Surrogate Fee	30.14	
June 23 "	Income Tax, 1913	19.00	
" 30 "	Interest on Consolidated Light Heat & Power Bond Bought	7.02	
July 7 "	Jno. S. Cooke	280.00	
" " "	Fred W. Cooke	280.00	
" " "	Chas. D. Cooke	280.00	
" " "	Carrie S. Beam	280.00	
" " "	Estate Lavinia Fayerweather	280.00	
			$1,953.24
	Reserved for next accounting		$94.19

Trust as per following statement.

Exhibit M. 4 for Identification.

[N. Y. Evening Post, Sept. 20, 1907.]

MERGER RECEIVER, MAYBE

That is What Wall Street Expects to See.

Thomas F. Ryan, Back from Europe, Is Said to Be on the Verge of an Attempt to Hide Traction Past Through a Friendly Agent Named by the Court.

Among the various reports affecting the tangled traction situation, the one receiving most credence in Wall Street today was that Thomas F. Ryan would endeavor to cause the appointment of a friendly receiver for the entire Interborough Metropolitan combination.

While no such radical action had been hinted by the insiders, such an outcome was prophesied without hesitation in well informed quarters, on the theory that whatever deductions could be made from the recent startling disclosures at the transit investigation indicated no other course as a possible solution.

With the New York City Railway Company deficit of $10,392,434 and cash of only $2,036,119 staring them in the face as brought to light at yesterday's session of the inquiry, it was pointed out that the men in control would not be apt to take a chance of paying any longer the 7 per cent Metropolitan dividend, inasmuch as it had been shown publicly that the finances of the surface road did not warrant it. In that event, they would be compelled to abandon the "guaranteed" payment undertaken at the time of the merger.

Exhibit M-4 for Identification.

Such action would mean suits by stockholders and more disclosures. In order to avoid these, it was argued, there must be a receivership of the absorbed company or of the merger itself. The impression courrent is that Ryan's lawyers have advised him that the courts will hold the Interborough-Metropolitan responsible for the obligations of its constituents, and therefore that the only receivership possible is one for the whole merger concern.

Mr. Ryan Not Telling.

Mr. Ryan, back from Europe yesterday on the steamship Deutschland, remained in the seclusion of his Naussau Street office, having contented himself with the assertion he made on landing—that he had nothing to say "now or ever", so far as he knew. It was learned, however, that he had been receiving his lieutenants and legal advisers for short conferences. That there was a secret meeting of traction directors or committees of directors was denied.

The dividend on the surface railway stock, payable quarterly, is due on October 15. At some time between now and then, there will be a meeting of the New York City Railway board to decide what shall be done about it. Assuming that they will determine not to pay it, and that assumption appears to be a sure one, many and widely different complications may follow.

In the first place, the holders of the minority shares, about $9,000,000 may bring suit for a receivership. If they could convince the courts that the subsidiary concern is responsible, independent of the merger, undoubtedly the Belmont interests, as distinguished from the Ryan interests would be pleased; for such a decision might

Exhibit M-4 for Identification.

pave the way toward a dissolution of the merger in such a way as to atone for Belmont's action in allowing the prosperous subway system to take upon its shoulders the waterlogged surface roads.

But the lawyers who have paid attention to recent traction developments do not regard that result likely, and cases are cited to show that the absorbing corporation must be held accountable in such cases. This means only one thing—an Interborough-Metropolitan receivership.

His Object Discussed.

Interest in the situation today was devoted largely to discussion of Mr. Ryan's personal attitude in the matter. His own statement that he is "out of tractions" is generally credited—that is, he is supposed to have few, if any, traction shares in his possession now, and those who profess to know declare that he got rid of his have only one object in striving to cause a reholdings at high prices. If this is true, he can ceivership, or in meddling with the trouble at all —to hide the past of the Metropolitan and allied systems of surface street railroads, which became what they are under his and his associates' management.

If a receiver is to appointed, naturally those who seek to hide the transactions of former years would prefer a friendly receiver, named at their own request. That Belmont will oppose any such plan, so far as he can, is not to be doubted. but Wall Street is convinced that Ryan is in supreme control, even though he does not own the controlling interest, and that he can use his grip whenever he likes. In short, Belmont got into a tight trap when he consented to the merger, though warned against it by friends and advisers,

and it may be that the subway, because of his action, may be compelled for years to come to bear the burdens of all the depleted roads with which he saddled it.

That the receivership plan, if it is adopted by Ryan, will be intended partially as a move to block the transit investigators, is what one hears in the financial district. But William M. Ivins, the Public Service Commission's special counsel, has declared more than once that he has material enough to prevent suppression of the traction past, whatever may be the methods employed to hide it. Besides, Gov. Hughes is known to be behind Mr. Ivins, taking a personal interest in the proceedings and ready to bring whatever power he has into play in order to make the investigation a success.

Self-Confidence Overflowing.

When it was suggested this afternoon to an acquaintance of Ryan that the traction man must recognize the futility of blocking the investigators, the reply was:

"You don't know Ryan. He has succeeded in so many different lines, and for so long a time, that he regards a hindrance to his plans as an impossibility. Self confidence is a mania with him. He regards it as possible for him to avoid any difficulty and overcome any obstacle. He is no more worried by the inquiry that you or I."

From a man who knows both Belmont and Ryan it was learned that Belmont, prior to the merger, received specific warnings concerning the condition of the surface roads' finances. His entering the deal in the face of this was described as "entirely inexplicable" by the acquaintance.

"Now that he is in", the speaker continued,

Exhibit M-4 for Identification.

"he may see some way to get out, but I don't. If he goes into court and cries that he has been deceived, there will be evidence to show that he knew all about what he was getting. Besides, he has been the official head of the manipulations undertaken since the union was formed and of various acts now under investigation, including the charging of miscellaneous expenses to construction accounts. His loophope, if there is one, must be legal technicality and not his own ignorance."

WALL ST. JOURNAL.
(August 31, 1907.)

VALUE OF METROPOLITAN LEASES IN EVENT OF A REORGANIZATION.

Exactions of Leases in Part Responsible for Financial Difficulities of Surface Line Companies

No Reorganization Would be Necessary If Inter.-Met. Owned All of Metropolitan's Stock—Leases Are Thought to be Strong, But Probably Would be Modified in Case of a Reorganization—Fixed Charges Not Earned on Some of Them.

The belief that the New York City Railway Co. is to default in the dividend on the Metropolitan Street Railway Co. stock, following which a reorganization, or readjustment, of some kind of the surface line companies is entirely probable, has given rise to a discussion of the question of

Exhibit M-4 for Identification.

the value of the leases on minor roads held by the New York City Railway. Providing that all the capital stock of the Metropolitan Street Railway Co. was held by the Interborough-Metropolitan Co., there would be no necessity for a reorganization of the surface line companies in case of the expected default by the New York City Railway. Inasmuch, however, as there is $9,619,700 of the Metropolitan stock in the hands of the public, the situation is one that contains many grave possibilities.

It is not probable that the individual holders of Metropolitan stock will submit to the passing of the dividend, until after legal methods to prevent it have been exhausted. If the Inter-Met people can see their way clear to continue the dividend on the outstanding Metropolitan stock a reorganization may be avoided. As matters stand, however, the New York City Railway cannot longer continue to meet the dividend on the full amount of stock, unless some new plan of financing is found. If the dividend be passed entirely, legal proceedings necessarily must follow.

What concers the stockholders of the leased roads in the Metropolitan system is what value the leases will have in case of reorganization. The leases are thought to be so strong that they cannot be broken, but inasmuch as it is in part because of the heavy exactions of some of these leases that the system is unable to meet the 7% dividend on Metropolitan stock, it is unreasonable to believe that in the event of a reorganization they would not or could not be modified.

In addition to those smaller companies which are controlled through stock-ownership, the New York City Railway, through the Metropolitan,

Exhibit M-4 for Identification.

leases the lines of some fifteen companies. Most of these have relatively small mileage as compared with their capitalization and funded debt, while the earning capacity of several is insufficient to meet the fixed charges, which in most instances the Metropolitan, or, more strictly speaking, the New York City Railway, has to meet, along with dividends on the stock.

Below are shown twelve of these companies, along with their mileage, capital stock and funded debt:

	mileage	cap. stock	fund. debt
Bleecker St. & F. F.	4.74	$ 900,000	$ 700,000
B'way & Seventh Avenue	8.27	2,100,000	9,650,000
Central Crosstown	1.8	600,000	2,740,000
Central Pk., N. & E. R.	9.55	1,800,000	1,200,000
Christopher & Tenth St.	2.00	650,000	210,000
Eighth Avenue	10.00	1,000,000	750,000
42d St. & Grand St. Ferry	6.33	748,000	236,000
Ninth Avenue	8.00	800,000	.....
Second Avenue	13.69	1,862,000	7,000,000
Sixth Avenue	11.4	2,000,000	.....
Third Avenue	13.19	15,995,800	41,943,000
Twenty-third Street	1.93	600,000	400,000

The terms of the leases by the Metropolitan of the above companies are as follows:

Bleeker Street & Fulton Ferry—Interest on bonds and one-half of one per cent. on the stock.

Broadway & Seventh Avenue—Fixed charges and 10% on the stock.

Central Crosstown—Interest on bonds, and 8% on the stock.

Central Park, North & East River—9% on the stock.

Christopher & Tenth Street—Interest on bonds and 8% on the stock.

Exhibit M-4 for Identification.

Eighth Avenue—Taxes and annual rental of $215,000 (equal to 21%.)

Forty-Second Street & Grand Street Ferry—18% on the stock.

Ninth Avenue—Annual rental of $64,000 (equal to 8%), and $2,500 annually for organization expenses.

Second Avenue—9% on the stock.

Sixth Avenue—7% on the stock, and $5,000 annually for organization purposes.

Third Avenue—Fixed charges and 6% (present rate).

Twenty-third Street—18% on the stock.

In the event of a reorganization, Third Avenue seemingly would be more favorably placed than any of the other companies shown above because of the fact that it has a greater mileage and in addition controls the Union Railway Co., which concern in turn leases or controls most of the surface lines in the Bronx. The Union Railway lines no doubt are the beginning of an important system, because of the rapid growth of population in the territory through which they run. The Third Avenue also controls a number of small crosstown lines in Manhattan. Consequently, if the necessity arose, it possibly could operate as an independent company. Unfortunately, however, its heavy capitalization and funded debt are against it. Just what its earnings have been the last few years is not known, as they are included with those of the Metropolitan.

Exhibit M-4 for Identification.

WALL ST. JOURNAL.
(Sept. 26, 1907.)

N. Y. CITY RAILWAY RECEIVERSHIP BEGINNING OF LONG LITIGATION.

Every Company in the Merger, including Inter-Met, itself, probably will Become Involved. Proceedings No Doubt Will be Long Drawn Out and One Year From Now May Not See the Situation Entirely Cleared Up—Leases of Underlying Companies Will be Modified and Their Capitalization Readjusted—Inter.-Met.'s Capitalization May be Cut.

The appointment of receivers for the New York City Railway Co. with the consent of counsel for that company and of counsel for the Interborough-Metropolitan Co. probably is but the beginning of many months of litigation which eventually may involve every company in the merger, including the Inter.-Met. itself, in receivership proceedings. The process whereby each of the companies will be brought into the proceedings will be a gradual one, and a year from now may not see the situation cleared up entirely.

The Metropolitan Securities Co. and the Metropolitan Street Railway Co. will no doubt become involved in the proceedings before many months because of the close relations existing between them and the New York City Railway Co. In like manner the Inter.-Met. itself probably will be made a party to the proceedings within course of time, owing to its holdings of the stocks of the other companies, and because of the agree-

ments entered into last May. The Third Avenue and the other leased surface lines will become involved with the Metropolitan.

The traction system of the city, or at least the surface line companies, face in all probability a reorganization similar to that in which the Chicago roads are involved. The Interborough Rapid Transit Co., being in every respect a solvent corporation and a big money-maker, should not by right be dragged into the proceedings, but possibly it may not be able to keep itself entirely clear.

Because of the receivership proceedings there may be within a year's time only one principal surface line company instead of the three existing today. As a matter of fact, there never existed any valid reason for the creating of the two additional companies—the New York City Railway and the Metropolitan Securities. By the time the affairs of the surface line companies are finally adjudicated the 7% lease on Metropolitan stock without question will have been abrogated, the lease of the Third Avenue and other leased lines modified, and the heavy capitalization and bonded indebtedness of the various underlying companies readjusted.

With the capitalization of the underlying companies cut down there will be no further excuse for the existence of the $100,000,000 common stock of the Interborough-Metropolitan Co., providing this corporation survives all of the legal procedure that now seems likely. Furthermore it would appear that even the $55,000,000 of preferred stock would have to be scaled down somewhat, possibly part of it continuing to be preferred stock and the balance converted into common stock.

Exhibit M-4 for Identification.

Incidentally, the appointment of receivers for the New York City Railway means without doubt that the dividend on Metropolitan stock payable October 15 will not be paid. This will afford an opportunity for the non-assenting Metropolitan stockholders to begin proceedings, further complicating matters.

The work of the Public Service Commission in the investigation of the companies will be interfered with temporarily because of the proceedings and it is probable that none of the orders issued by it as to improved service will be obeyed until at least the situation becomes more clear. The commission believes that in the end, however, its work will be facilitated by the receivership proceedings, because, as William M. Ivins says, it will undoubtedly result in leaving the company in a position where it will be able financially to carry out the large general orders of the commission, which it is certainly financially unable to do at the present time. In the reorganization, as well, the commission will pass finally upon the class, character and amount of new securities to be issued.

Exhibit M-4 for Identification.

WALL ST. JOURNAL.

(November 4, 1907.)

PUBLIC UTILITIES SECURITIES SUFFER HEAVILY IN MARKET.

Nineteen of the Most Active Issues Show $468,014,286 Depreciation in Market Values.

Decline in this class of securities has been going on steadily since January of 1906, while de- first of present year—Inter.-Med. issues hard hit cline in general list has been accomplished since first of present year—Inter.-Med. issues hard hit—reasons for decline.

[From Wall Street Journal November 4, 1907.]

The public utility securities traded in on the New York Stock Exchange have been heavy sufferers in the market decline. In their case for the most part, however, the decline began ahead of the decline in the general list. Practically none of the public utility securities has been as high since January of 1906 as during that month. The general list, on the other hand, saw its high point in January of this year, or twelve months later.

Out of nineteen of the most active public utility securities, stocks an dbonds, traded in on the exchange fifteen show declines of fifty or more points from their high prices of 1906, while Consolidated Gas and Third Avenue each shows a decline of more than 100 points. The depreciа-

Exhibit M-4 for Identification.

tion in market values of the nineteen issues from the high of 1906 to the low of 1907 amounts to $468,014,286. Of this amount Inter.-Met. common and preferred, and the company's 4½% bonds, together furnish $107,877,463.

Below are shown the amount of outstanding stock or bonds of the nineteen issues with the high for 1906 and the low for 1907, the number of points decline and the depreciation in market values:

	outstanding Amount	low 1907	high 1906	dec.	depreciat'n.
B. R. T.	$45,000,000	29	94⅛	65⅛	$29,306,250
B. R. T. 4s	32,702,000	62	100	38	12,426,760
B'klyn Un Gas	15,000,000	99⅞	178	78⅛	11,718,750
Consol. Gas	80,000,000	74	181¼	107¼	85,800,000
Con. Gas. 6s	20,000,000	92	168¾	76¾	16,350,000
Detroit United	12,500,000	32¼	102	69¾	8,718,750
Int.-Met. com.	92,928,886	4⅞	55⅜	50¾	47,161,409
Int.-Met. pfd.	45,479,800	15	87⅜	72⅜	32,916,004
Int.-Met. 4½s	67,805,000	49¼	90¼	41	27,800,050
Manhattan Ry.	60,000,000	100⅞	162	61⅛	36,675,000
Met. St. Ry.	52,000,000	30	127	97	50,440,000
Nor. American	29,792,300	41⅛	107	65⅞	19,625,676
Peo. G. L. & C.	32,969,100	70¼	103	32¾	10,797,380
Third Avenue	15,995,800	20¼	139⅛	118⅞	19,015,007
Third Ave. 4s.	36,943,000	45½	95½	50	18,471,500
Tol. Rys & Lt	15,000,000	11½	36	24½	3,675,000
Twin City	20,100,000	70¾	122¼	51½	10,351,500
Unit R. I. com	19,400,000	12	98	86	16,684,000
United R. I. pf.	15,000,000	20⅛	93½	73⅜	11,081,250
Total depreciation					$468,014,286

As before stated, the high prices of practically all the issues shown above were made in January of 1906. The high prices for the Inter.-Met. issues were made within the first few weeks in which they were traded in. Most of the low points shown above have been made during the

Exhibit M-4 for Identification.

last week. The low price for Brooklyn Union as given above does not take into consideration odd lot sales, some of which have been made at eighty the last few days.

In addition to general market conditions there have been many things to help depress market values of the public utility securities. The passing of the eighty-cent gas bill by the State Legislature had a greater effect on Consolidate Gas and Brooklyn Union Gas than did any other event on any security. The cutting of the Consolidated Gas dividend and the passing of the Brooklyn Union Gas dividend resulted from this legislation. The securities of these two companies have also suffered from the attacks of various officials and from the fear that the companies will be the subjects of investigation by the Public Service Commission.

Detroit United, Toledo Railways & Light and Twin City securities have felt the effect of the agitation for better franchise regulation and reduced fares. This agitation together with the monetary situation brought about the passing of dividends by the Detroit and Toledo companies. The attack on its St. Louis subsidiaries has affected the securities of the North American Co. The United Railroads of San Francisco has not fully recovered from the effects of the earthquake and the strikes in San Francisco, and the Philadelphia Co. has had trouble with its patrons in Pittsburg. Both of these companies are controlled by the United Railways Investment Co., and its securities have suffered accordingly. B. R. T.'s heavy decline, apart from general market conditions, is due to the coming into power of the Public Service Commission, with its investiga-

tion and orders for better servce, and to the fact that the company's last annual report did not make as favorable as showing as had been expected in many quarters.

The reasons for the declines in the issues of the Interborough-Metropolitan Co. and its subsidiaries are to well known in the financial world to call for any comment. The revelations made the last six months of earnings far below what were promised, of heavy overcapitalization, and of financial crookedness, have not only depressed the market values of the securities immedlately affected, but have had their harmful effect as well on the entire list.

Exhibit M-5 for identification.

[WALL STREET JOURNAL]

Thursday Morning—March 28, 1907.

(Page 5—Column 4)

INTERBOROUGH-METROPOLITAN'S WEAK POINT IS N. Y. CITY RY.

Paying dividends not earned on stock of Metropolitan may result in failure of merger.

New York City Railway Company cannot continue much longer the payment of dividends on 7% guaranteed Metropolitan stock out of property—where it is to get sufficient funds is a question that seriously affects merger.

The generally prevailing feeling that the merger of the traction interests of this city with the Interborough-Metropolitan Co. at the head has

Exhibit M-5 for Identification.

been far less successful than was anticipated at its inception is due to a number of reasons. The mere fact that there is now no talk whatever of dividends on the common stock of the company is enough to make it certain that the merger is not the success promised for it without even a study of the reports of any of the companies concerned. The earnings of the subway, from which much was expected, have been a disappointment, while the earnings even of the Manhattan elevated have not increased as rapidly as was expected in some quarters. All of these factors have been in part responsible for the belief that the success of the merger is in doubt.

But the greatest factor in the situation is the New York City Railway Co., burdened with the necessity of paying dividends not earned. If the merger eventually results disastrously the failure will be traced to the New York City Railway Co., and not to the Manhattan elevated or the subway, although the latter in a smaller way may be responsible.

As the report of the Interborough Rapid Transit Co. for the year ended December 31, 1906, shows both the subway and the Manhattan elevated are doing their part in making the merger a financial success, although it must be admitted that of the two the Manhattan elevated is contributing the larger share. During 1906 the Interborough earned 10.12% on its $35,000,000 capital stock, as compared with 7.15% earned during 1905, after allowing for the 7% dividend on the Manhattan elevated stock. The Manhattan elevated itself earned 9.14% on its stock, leaving 2.14% to go into the treasury of the Interborough.

Exhibit M-5 for Identification.

A marked contrast to this showing of the Manhattan elevated is afforded in the report of earnings of the New York City Railway Co. Like the Interborough the New York City Railway Co. has a guaranteed dividend to take care of.

On leasing the property of the Metropolitan Street Railway Co. the New York City Railway Co. guaranteed to pay as rental 7% dividends on Metropolitan stock. These dividends it has since paid although they have not been fully earned, with the result that a profit and loss surplus of $4,423,503 possessed by the New York City Railway Co. on June 30, 1903, dwindled to a profit and loss deficit of $3,042,727 on June 30, 1906. In other words, a large percentage of the dividends on Metropolitan stock has been paid out of the property account of the New York City Railway Co. Paying dividends out of property account is not generally considered the best possible kind of financial policy.

Exhibit M-6 for identification.

[WALL STREET JOURNAL.]

Thursday Morning—June 13, 1907.

(Page 2—Column 2)

INTERBOROUGH-METROPOLITAN.

MARKED DECLINES IN UNDERLYING SECURITIES.

Prices of stocks of Metropolitan's subsidiaries considerably below last year's level.

During the last few months the guaranteed stocks of the underlying companies of the New York City Railway Co. have suffered declines of the same proportion as those experienced by the securities of the Interborough Metropolitan Co. itself. No doubt these declines have come about as a natural result of the decline in the stocks of the parent company. In as much, however, as the dividend rates on the stocks are guaranteed, it would appear that there has been fear on the part of some holders that the Interborough Metropolitan system's future is in doubt and that consequently the guaranteeing company may be placed in a position where it will be difficult for it to meet the dividend payments.

Below is given the bid and asked prices at the close of May of both 1907 and 1906, for the stocks of the underlying companies of the New York City Railway Co. and the dividend rate on each:

Exhibit M-6 for Identification.

		1907		1906	
	Div. Rate	Bid	Ask	Bid	Ask
Bleecker St. & Fulton F.	1½%	25	30	32	33
B'way & 7th Avenue	10	200	220	240	244
Central Crosstown	15	250	300	340	360
Cen. Pk No. & E. Riv.	9	180	193	198	202
Christopher & 10th St.	8	160	165	170	179
Eighth Avenue	16	300	350	380	405
42d St. & Grand St. F	18	340	390	390	410
42d M. & S & N Av.	..	68	73	50	70
Metropolitan St. Ry.	7	85	92½	110	114
Ninth Ave.	8	150	175	170	180
Second Ave.	9	185	190	198	200
Sixth Ave.	7	150	165	170	173
Third Ave.	6	104	110	130	131½
Twenty-third Street	18	325	375	395	410

In the case of most of the above companies the majority of the capital stock is owned by the Metropolitan Street Railway Co. The stock in the public's hands is very inactive for the most part and sales are far between. A large majority of Metropolitan stock, on which a dividend of 7% is paid as rental by the New York City Railway, has been exchanged for Interborough Metropolitan securities.

Exhibit B-7.

JOHN W. GRIGGS, president.
WM. BERDAN, vice pres. & treas.
ARTHUR RYLE, vice pres.
FRED LABAUGH, secretary.
JOHN L. CONNOLLY, asst.

THE PATERSON SAFE DEPOSIT & TRUST CO.

PATERSON, NEW JERSEY

September 8, 1911.

Mrs. Carrie S. Beam,
Bogota, N. J.

Dear Mrs. Beam—

Yours of yesterday's date received.

The list of securities sent you represent the investments that were turned over to this company as trustee by the executors of the estate of Sarah A. Cooke. The value of each item is that placed upon them by the executors, and we believe are the same as those appearing on the inventory of the estate, when the same was made by properly appointed appraisors, and, therefore, has nothing whatever to do with the market value of same at the time the list was sent you.

A trustee, appointed under the laws of the State of New Jersey, is not responsible for any fluctuation in the value of securities deposited with him at the time of the formation of the trust. The only explanation that the writer can give to you in regard to the present low quotations of the value of the Central Park,

North & East River stock and the Second Avenue stock is due to the bad management of those properties.

Hoping the above answers your inquiries to your entire satisfaction, we remain,

Yours very truly,

WM. BERDAN,
Vice President.

Exhibit B-8.

JOHN W. GRIGGS, president.
WM. BERDAN, vice pres. & treas.
ARTHUR RYLE, vice pres.
FRED LABAUGH, secretary.
JOHN L. CONNOLLY, asst.

THE PATERSON SAFE DEPOSIT & TRUST CO

PATERSON, NEW JERSEY

September 9, 1911.

Mrs. Carrie S. Beam,
Bogota, N J.

Dear Mrs. Beam:—

Your letter received. I cannot find in any of my communications any implication that the beneficiaries of the Sarah A. Cooke trust did not have the right to request the trustee to sell any of the securities in the trust and re-invest the proceeds.

I stated for your information that the trustee was not responsible for the fluctuation in the

values of any of the securities originally deposited.

According to the will of your mother you are the beneficiary of one fifth of the income derived from the trust investments. If it is your desire that the trustee sell one fifth of certain securities in the trust and the proceeds re-invested, please so inform us in writing, stating which of the securities you wish disposed of. Upon receipt of same, the matter will be presented to our Board of Directors for consideration and action.

Yours truly,

WM. BERDAN,
Vice President.

Exhibit M-9.

Cable Address
"Ryle" New York

WILLIAM RYLE & CO.
225 Fourth Avenue,
New York.

January 28, 1915.

Mr. William B. Beam,
Fort Lee Road,
Hackensack, N. J.

Dear Sir:

I beg to acknowledge receipt of your communication dated the 26th inst., and in reply to the first part would say that I do not consider it proper for me to write to Mr. John W. Griggs

and offer him advice as to his private actions. As to the latter and threatening part of your letter I have always felt that the officers of the Paterson Safe Deposit & Trust Co., who are in active control of its business have always acted in accordance with their best judgment and from proper motives, and your letter hardly convinces me that they have departed from this practice in the present instance.

Yours very truly,

ARTHUR RYLE.

AR:L

Exhibit M-10.

(Copy)

January 26, 1915.

ARTHUR RYLE, Esq.
225 Fourth Avenue,
New York.

Dear Sir:

Yesterday I called to see you in regard to an action taken by Mr. John W. Griggs in withholding Mrs. John R. Beam's dividend, due her from the Cooke trust, until the determination of the costs in her case against the Safe Deposit & Trust Co.

I am not writing to you now nor did I come to your office yesterday to enlist your sympathy in the merits of the case. I am simply concerned with this action of Mr. Griggs, which is entirely unwarranted under the circumstances and can be

Exhibit M-10.

construed or interpreted as nothing but an insult to Mrs. Beam.

This action I believe is legal, but that is the best that can be said of it.

To imply that Mrs. Beam is not a responsible person is an insult that I, her son, will not allow to pass unnoticed, and I write to you as an old friend of my father to request Mr. Griggs to not only pay over this dividend at once but to apologize for the affront offered.

The costs in the case are not yet entirely settled and in view of the new steps that we are about to take it is impossible to say when they will be, if ever.

In any event that money that is being kept from Mrs. Beam is hers and she and not the trust company is the only one entitled to its use until a bill is actually presented.

Yesterday, I called at the trust company and Mr. Griggs's office, and in no uncertain terms demanded the payment both of Mr. Berdan and of Mr. J. L. Griggs and Mr. John Harding. No one knew anything about it and they all attempted to put it off on me by saying I had no right to come in there in a "half shot", "half cocky" way and talk that way to them.

I have never been intoxicated in my life and do not drink in any way but I can stand just so much of that kind of talk and no more; and I told them it was an insult and an insult that I qualified in terms displeasing to Mr. Harding's saintly ears.

We were ordered from the office and told that we would never get anything by coming to them that way.

Mr. Ryle, that money belongs to my mother. You knew my father and you know he would never have tolerated such conduct were he alive to-day. I will not tolerate it either and I warn you as an officer of that company that unless this matter is satisfactorily settled within the next forty eight hours, the people of Paterson and the influential people who will and do listen to me will know what kind of a company it is and what kind of men are permitted to run it.

I do not refer to you, for I believe you are a gentleman, but I do feel that if you do not take an active interest in this question you will render yourself liable with the others.

Vice Chancellor Howell said to-day in open court that he wondered if the Court of Errors intended to let this matter go. He knows it is a travesty of justice but he does not know the all.

We do not intend to let it go and in time "the all" will be spread upon the court record for the edification of the people of Paterson.

I am,

Very truly yours,

WILLIAM B. BEAM.

Fort Lee Road,
Hackensack, N. J.

Exhibit B-9.

This Exhibit, being the Intervening Petition of Solomon H. Kohn in the suit of *Pennsylvania Steel Co. et al. vs. N. Y. City Ry. Co.* and *Met. St. Ry. Co.*, in U. S Circuit Court, S. D., N. Y., appears in Vol. I of the Chancery suit entitled *Edward Beam et al. vs. Paterson S. D. & T. Co.*, at pp. 402-409, Vol I and is not reprinted here.

Exhibit M-11.

This is the Petition of Griggs, Baldwin & Pierce to Governor Hughes for the removal of District Attorney Jerome, of New York County, from office for failure to prosecute the wreckers of the Metropolitan Street Railway system. It is printed in Vol II, pages 160-211 of the Edward Beam appeal papers mentioned above.

Exhibit M-12 for identification.

GRIGGS, BALDWIN & PIERCE
27 Pine Street, New York.

June 15th, 1908.

Hon. Charles E. Hughes,
Albany, New York.

Dear Sir:

I shall not be present tomorrow when Mr. Jerome files his answer to the three additional charges. I would like, however, a direction that he serve a copy of his answer upon me as early as possible.

I can attend, upon any day, a further hearing before Commissioner Hand.

Very sincerely yours,

(Signed) FRANKLIN PIERCE.

P-H

(Copy)

Exhibit M-13 for identification.

GRIGGS, BALDWIN & PIERCE
27 Pine Street, New York.

August 26th, 1908.

Mr. Robert H. Fuller,
Secretary to the Governor,
Albany, New York.

Dear Sir:

In the absence of Mr. Pierce, we beg to acknowledge receipt of your letter of August 25th, enclosing a printed copy of Mr. Hand's report in the Jerome matter.

Yours very truly,

(Signed) A. J. BALDWIN.

Exhibit M-14 for identification.

(Copy)

GRIGGS, BALDWIN & BALDWIN.
27 Pine Street, New York.

November 19, 1909.

Honorable Charles E. Hughes,
Albany, New York.

My dear Governor Hughes:

Inquiry has been made of us by the Bar Association for certain of the papers which we submitted as exhibits in connection with the testimony in the Jerome removal case. We would

greatly appreciate it if you would have your secretary look up these papers and return them to us, as we feel that it is proper under cases of this kind to have papers returned to counsel.

With kind personal regards, I am

Very truly yours,

(Signed) ARTHUR J. BALDWIN.

A-C

Exhibit B-12.

TRUST DEPARTMENT

THE PATERSON SAFE DEPOSIT & TRUST CO.

PATERSON, NEW JERSEY

January 6th, 1915.

Mrs. Carrie S. Beam,
Bogota, N. J.

Dear Madam:—

We enclose our check for $280.43, being settlement in full to date of income from the Cooke Trust as per following statement.

Oct.	5/14	Balance last remittance		$153.47
"	15	Div. Brooklyn City R. R. Co.		40.00
Nov.	4	Cps. Paterson Lighting Company		183.00
"	24	Rebate of commissions paid in excess		35.37
Dec.	1	Cps. Lehigh Valley R. R.		240.
			540.00	
"	10	" Paterson Rly. Co.	70.00	470.
			125.00	
"	10	" Consolidated Traction Co.	8.50	116.00
"	10	" Consumers L. H. & P. Co.		12.50

Exhibit B-12

" 30	Int. on Brown Mtg. December 31, 1914			32.50
Jan. 2/15	" " Lockwood Mtg. December 31, 1914			30.00
" 4	" " Kuyper Mtg. December 31, 1914			62.50
			90.00	
" 5	Cps. Mobile & Ohio R. R.		35.00	
			55.00	
	less 1% — 4/5		72.	54.28
			175.00	
" 6	" Passaic Water Company		12.50	162.00
			.....	
				$1,592.62

PAYMENTS

Oct. 20/14	To 1% Income Tax deducted on Pat. & Passaic G. &. E. Co.	1.00	
Jan. 6/15	To John S. Cooke	279.39	
	" Fred W. Cooke	279.39	
	" Charles D. Cooke	279.39	
	" Est. L. Fayerweather	279.39	
	" Carrie S. Beam	280.43	1,398.99
	Reserved for next accounting		$ 193.63

Please sign voucher herewith and return by mail.

Exhibit B-13.

TRUST DEPARTMENT

THE PATERSON SAFE DEPOSIT & TRUST CO.

PATERSON, NEW JERSEY

July 7th, 1914.

Mrs. Carrie S. Beam,
Bogota, N. J.

Dear Madam:—

We enclose our check for $280.00, being settlement in full to date of income from the Cooke Trust as per following statement.

Apr.	1/14	Balance last accounting		516.58
"	15	Dividend Brooklyn City R. R. Co.		40.00
May	5	Cps. Passaic Lighting Co.	200.	
		" "	17.	183.00
"	22	Rebate of Commission paid in excess to P. S. D. Tr. Co.		137.85
June	1	Cps. Paterson Railway Co.	540.	
			70.	470.00
"	"	Cps. Consolidated Traction Co.	125.	
"	"	" " "	8.50	116.50
"	"	Interest on Registered Lehigh Valley Bonds		240.00
"	"	" " "		.....
"	"	Interest on Brown Mtg. to June 30, 1914		32.50
July	1	Cps. Mobile & Ohio	90.	
		" "	35.	55.00
"	2	Interest on Lockwood Mtg. June 30, 1914		30.00

Exhibit B-13.

" 6	Cps. Passaic Water Co.	175.	
		12.50	162.50
" "	Interest on Kuyper Mtg. to June 30, 1914		62.50
			$2,046.43

PAYMENTS

May 15/14	Commission to April 15th, 1914	446.08
" "	Jno. L. Griggs, Counsel Fee	50.00
" "	Surrogate Fee	30.14
June 23	Income Tax, 1913	19.00
" 30	Interest on Consolidated Light, Heat & Power Bond Bought	7.02
July 7	Jno. S. Cooke	280.00
" "	Fred W. Cooke	280.00
" "	Chas. D. Cooke	280.00
" "	Carrie S. Beam	280.00
" "	Estate Lavinia Fayerweather,	280.00
		$1,952.24
	Reserved for next accounting	$94.19

Please sign voucher herewith and return by mail.

Opinion of Griffin V. O.

(Filed July 2, 1924.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, upon appeal of WILLIAM B. BEAM from the Decree of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT and TRUST COMPANY.

MR. EUGENE BLANKENHORN (with whom was MR. HAROLD R. MEDINA of the New York Bar) for the appellant.

MR. JOHN W. HARDING (of Griggs & Harding) for the Respondent.

Decided June 30, 1924.

Griffin, V. O.:

This is an appeal from a decree of the Orphans' Court of the County of Passaic, made on the 24th day of February, 1921, allowing the account of the Paterson Safe Deposit and Trust Company, trustee, and overruling the exceptions thereto; and also from the allowance in said decree to the said trustee of four hundred dollars for commissions, and a counsel fee of two hundred and fifty dollars to Griggs & Harding, proctors for the accountant; and further commissions of eighty-one dollars and eighty-six

cents on income received during the period of said account. Two sets of exceptions were filed, one by William B. Beam and John C. Beam, and the other by Edward Beam, John C. Beam and William B. Beam. Both sets are alike, and are as follows:

"1. The accountant does not state the actual or market value of the securities set forth in schedule C of the final account.

"2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in schedule C of said final account.

"3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C of said final account has been acquired by it as trustee as aforesaid.

"4. The accountant does not set forth the number of the bonds and stocks held by it as trustee and mentioned in schedule C of said final account.

"5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

"6. The accountant has not set forth the correct value of the stock in the Central Park North & East R. R. Co., mentioned in schedule C of said final account."

The first point made is addressed to the First Exception, namely, that it does not conform to Rule 19 of the Orphans' Court in that the petition annexed to the account does not state the actual or market value of the securities set forth in schedule C of the account. I find, on an ex-

amination of the petition annexed to the account, that it strictly conforms to Rule 19. The rule which governs is No. 21, under the caption "Statement of Assets to be annexed to the Account", and is as follows:

> "21. In the settlement of the accounts of executors, administrators, guardians or trustees, the accountant shall annex to the account a full statement or list of the securities, investments and assets of which the balance of the estate in his hands consists, and a statement of all changes made in the securities since the filing of the inventory or since the last settlement."

The accountant has annexed to its account a full statement or list of the securities, investments and assets of which the balance of the estate in its hands consists, and is not bound to state the actual or market value. This leads to the conclusion that the Orphans' Court, in overruling exceptions 1, 2 and 6, was right.

As to the third exception, there is nothing in the rule which requires the accountant to set forth the method by which the bond and mortgage of Max Gold had been acquired. As to the fourth exception, the accountant is not bound to set forth the number of bonds and stocks held by it. It does set forth, as against each item of bonds or stocks, the par value on one side, and the book value on the other, thus fully apprising all persons in interest of the total amount of the several bonds and stocks. The Orphans' Court was therefore, right when it overruled exceptions 3 and 4.

The fifth exception contains two separate objections. The first is as follows: "The account-

ant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hand consists". This, I find, as above stated, is not the fact; and as to this objection the decree of the Orphans' Court should be affirmed.

The next objection stated in the fifth exception is as follows: "This accountant has not annexed to the said account * * * * * * * * a statement of all changes made in the securities since the settlement of the last intermediate account". Comparing the account from the 15th of April, 1917 to the 15th of April, 1919, with this final account (which runs from the 15th of April, 1919, to the 5th of January, 1921) I find that certain changes were made in the securities since the filing of the last account, and no statement of these changes are set out in the account. The changes are as follows:

Securities appearing in the account last settled which do not appear in the final account:

Bond and Mortgage, Mary J. Perdan,	$500.
" " " Joseph Sharpe	2000.
" " " Catherine Warren, appearing in the account last settled at $1200, and in the final account at $800.	

Securities purchased since the last settlement:

Victory Loan Bonds ($200 par), book value	$191.84
" " " ($200 par), " "	195.00
" " " ($550 par), " "	550.00
Bond and Mortgage, Max Gold, book and par value	2000.00

In a letter written by Mr. Connolly, secretary of the accountant, to Mrs. Carrie S. Beam, on April 13th, 1920 (Exhibit B 2), among other things he said he enclosed a list of the securities held in her trust at that writing and the

amount at which the securities were carried on its books, and also a list showing the changes in her trust for the past year. Turning to the list of securities of the date April 13, 1920 (which was marked Exhibit B 3) there is shown the Max Gold bond and mortgage for $2,000, which does not appear in the last account down to April 15, 1919; and also the Catherine Warren mortgage is listed at a book value of $1,000 in Exhibit B-3, whereas the account filed in 1919 shows it as listed at $1,200, and in the final account it is listed at $800. In the statement of changes in the trust from April, 1919 to April, 1920 (marked Exhibit B-4) it is shown that on November 11, 1919, the trustees bought the Max Gold mortgage for $2,000, and that, on account of the principal of the Warren mortgage $200 was paid between February 2, 1919 and April 3, 1920. Touching the Sharpe mortgage, this Exhibit B-4, of the changes in the trust, shows that on November 11, 1919, the Joseph Sharpe mortgage was sold for $2,000. Turning to the final account, it appears in the Income Account (Schedule A) that the accountant charges itself as follows: "Aug. 18, 1919, interest on Sharpe mortgage to June 30, 1919, $60". The accountant does not charge itself with interest on the Sharpe mortgage from June 30, 1919, until November 11, 1919, when the mortgage was sold according to Exhibit B-4.

Referring to the Victory Loan Bonds aggregating $950 par there is nothing in the final account which shows when these were acquired, or the price paid for the same. By reference to Exhibit B-4 it appears that the block of $550 par of these bonds was purchased on July 14, 1919.

The accountant should have stated when the bonds were acquired, and, perhaps, from what source the fund with which to purchase them was derived, and the price paid. (See 2 Kocher N. J. Prob. Law, p. 1206.)

There also appears in Exhibit B-4, "June 18, 1919, Zax mortgage paid in full, $500". There is nothing in the account to show when this mortgage was acquired. Turning to schedule A of the final income account we find the following entry: "June 1, 1919. Interest on Zax mortgage to date, $13.89". This security does not appear either in the account of 1919 or the final account; and how the interest could be $13.89 on a $500 mortgage, unless it was purchased prior to the account of 1919, is to me inconceivable. The interest on this mortgage, if at 6%, amounted to thirty dollars a year, or two and a half dollars a month, and for $13.89 of interest to accrue thereon the mortgage must have been in the hands of the accountant for upwards of four and a half months, and going back four and a half months from June 18th, it would seem as if this mortgage was acquired some time in January of 1919, some two or three months prior to the filing of the account of April 15, 1919. At least, this and the Sharpe mortgage required some explanation, which if the rule was followed, would have enabled the beneficiaries to intelligently except to the account.

As to the other investments, they were carried forward from the account of 1919 which was allowed by the Orphans' Court.

It was the duty of the trustee, as above stated, to annex to the account a statement of these changes.

In Rule 6 of the Orphans' Court, revised May 16, 1893, it is provided, among other things, "that in the settlement of the accounts of trustees * * * * * the accountant shall be required to annex to the account a full statement or list of securities, investments and assets of which the balance of the estate * * * * * consists, or a statement of all changes made in the securities since the filing of the inventory or since the last settlement". In the Rules of that court, revised February 11, 1902, Rule 6 was changed to Rule 8 without further change therein. In the Rules of the Orphans' Court promulgated December 1, 1915, to take effect April 1, 1916, Rule 8 above referred to was changed to Rule 21 and amended so as to require a trustee, on the settlement of his account, to annex a full statement or list of the securities, investments and assets of which the balance in his hands consists, "*and* a statement of all changes made in the securities since the filing of the inventory or since the last settlement". In the former rules (6 and 8) it will be perceived that the accountant had the option either to annex a list of the securities, etc., of which the balance of the estate in his hands consisted, or, in the alternative, a statement of all changes made in the securities since the filing of the inventory or since the last settlement. In Rule 21, the rule is peremptory, that the trustee must annex the list of securities as well as a statement of the changes in the securities.

The purpose of this amendment, as I see it, was to give the fullest information to the beneficiaries of the dealings of the trustee in carrying out its trust. The trustee can probably explain the apparent discrepancies in the Sharpe and Zax mortgages; and if the Orphans' Court had directed the trustee to comply with the rule, and the beneficiaries on such compliance, were dissatisfied, they might then address their exceptions to any irregularity that might then appear. But, in the absence of such compliance, the exception was proper and sufficient; and the decree of the Orphans' Court in dismissing this exception was erroneous.

The result is that the decree of the Orphans' Court on this one exception will be reversed; and, as to the others, affirmed.

On this appeal further testimony was taken in this court, and the greatest latitude was given to the exceptants to sustain their case, and there was offered evidence dealing with subject-matter that was entirely outside of the exceptions. This testimony I have decided not to consider.

Luce vs. Rarick, Ex'r., 34 N. J. Eq., 212; *Trimmer's Ex'r. vs. Adams*, 18 N. J. Eq., 505; 1 Kocher's N. J. Prob. Law, 674.

The decree will be that all exceptions, excepting the one which is sustained, be affirmed; and, as to the remaining exception, the decree will provide that the accountant file a statement of all changes made in the securities since the settlement of the last account. This statement may be filed in this court, to which the beneficiaries

may except; and if exceptions be filed, the hearing on the same may be had here. *Hill's Case,* 55 N. J. Eq., 764-768; *Trimmer's Ex'r vs. Adams, supra;* 1 Kocher N. J. Prob. Law, p. 95.

In addition to filing exceptions, the appellant also appealed from the decree of the Orphans' Court allowing commissions, counsel fees, etc. This question cannot be decided until after the accountant has filed the statement above mentioned, and the court has passed upon any exceptions which may be filed thereto, which decision may have a bearing on the right of the accountant and counsel to such allowances. *Frey's Case,* 73, N. J. Eq., 346; 1 Kocher N. J. Prob. Law, p. 410; idem, p. 691.

Decree of the Prerogative Court.

(Filed Oct. 14, 1924.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from the decree of the Orphans' Court of the County of Passaic allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY.	ON Appeal from a Final Decree of the Orphans' Court of Passaic County.

William B. Beam having taken an appeal and presented his petition of appeal from a final decree of the Orphans Court of the County of Passaic, made and entered on the 24th day of February 1921 allowing the final account of the above named Paterson Safe Deposit and Trust Company, Trustee, and overruling the exceptions thereto, and allowing commissions and counsel fee to the proctors for the accountant; and the said cause on said appeal coming on to be heard in the presence of the respective counsel of the respective parties, and proofs having been submitted and considered and the argument of counsel and the questions brought up by said appeal as well as the record and proceedings having been duly heard and considered:

It is thereupon on this 14th day of October,

1924, ordered, adjudged and decreed that that portion of said final decree of said Ohphans' Court which is appealed from by said appellant as aforesaid, which overruled the first, second, third, fourth and sixth exceptions and the first objection to the fifth exception filed to said account, be and the same is hereby in all things affirmed, and that portion of said final decree as to the objection stated in the said fifth exception which is as follows. "This accountant has not annexed to the said account * * * a statement of all changes made in the securities since the settlement of the last intermediate account", be reversed and:

It is hereby ordered, adjudged and decreed, that the said accountant the Paterson Safe Deposit and Trust Company, shall file a statement of all changes made in the said securities since the said settlement of said last account, which said statement may be filed in this Court.

And it is further ordered that all questions touching the allowance of costs and counsel fees be reserved until after the filing of such statement.

Respectfully Advised:

JOHN GRIFFIN,
V. O.

E. R. WALKER,
Ordinary.

Statement of Trustee.

(Filed December 3, 1924.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from the decree of the Orphans' Court of the County of Passaic allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY.

Whereas, by a certain decree of this Court in the above entitled matter, dated the 14th day of October, 1924, it was, amoung other things, ordered, adjudged and decreed, "that the said accountant, The Paterson Safe Deposit and Trust Company, shall file a statement of all changes made in the said securities since the said settlement of said last account, which said statement may be filed in this Court."

The Paterson National Bank as successor to The Paterson Safe Deposit and Trust Company does file herewith a statement of all changes made in the securities of the Trust for Carrie S. Beam under the Will of Sarah A. Cooke since the settlement of the last intermediate account in the Passaic County Ohphans' Court, which said statement shows all changes in the securities of the said Trust Estate made from April 15, 1919,

which was the date of the said intermediate account next preceding the last or final account, to and including the last or final account; said last or final account being dated January 5, 1921, and allowed by an order of the Orphans' Court of the County of Passaic on February 24, 1921.

Securities appearing in the said intermediate account last settled which do not appear in the said final account:

Bond and Mortgage, Mary J. Berdan, $500.

Bond and Mortgage, Joseph Sharpe, $2000.

Bond and Mortgage, Catherine Warren, appearing in the intermediate account last settled at $1200 and in the final account at $800.

The said Mary J. Berdan Mortgage was changed in name to the Zax Mortgage and was paid in full June 18, 1919, with all accrued interest.

The said Joseph Sharpe Mortgage was sold for $2000. and accrued interest November 11, 1919.

The said Catherine Warren Mortgage was reduced to $800 by payment on account of principal of $400, last payment being made August 16, 1920.

Securities purchased since the last intermediate settlement as appearing in the final account:

Victory Loan Bonds ($200 par) book value $191.84.

Liberty Loan Bonds ($200 par) book value $195.00.

Victory Loan Bonds ($550 par) book value $550.00.

Bond and Mortgage, Max Gold, book and par value $2,000.00.

On November 11, 1919, the Trustee bought the Max Gold mortgage for $2,000 and accrued in-

terest, having on that day sold the Sharpe Mortgage for $2,000 and accrued interest. The Max Gold mortgage was bought and substituted for the Sharpe mortgage, because the interest on the Sharpe mortgage had not been paid promptly and the interest on the Max Gold mortgage was always paid promptly.

On August 18, 1919, the Trustee charged itself with interest on the Sharpe Mortgage to June 30, 1919, $60. This was six month interest due on Sharpe mortgage as of June 30, 1919, which was not paid until August 18, 1919. The accountant does not charge itself with interest on the Sharpe Mortgage from June 30, 1919, until November 11, 1919, when the said mortgage was sold, because it received and credited itself by the 26th item of Schedule A in the final account of 1921 with $60 interest on the Gold mortgage, being six months interest thereon from June 30, 1919 to December 30, 1919, being the same amount that would have been received on the Sharpe mortgage if it had been continued and if the interest had been paid on time.

Referring to the Victory Loan Bonds purchased since the last settlement of 1919, the first item as set out above was purchased on July 16, 1920, from F. A. Peters, a bond broker of the City of Paterson, for the sum of $191.84.

Referring to the Liberty Loan Bonds purchased since the last settlement of 1919, the second item as set out above was purchased on April 12, 1920, from F. A. Peters, a bond broker of the City of Paterson, for the sum of $195.00.

Referring to the Victory Loan Bonds purchased since the last settlement of 1919, the third item as set out above was purchased on July 24, 1919,

from F. A. Peters, a bond broker of the City of Paterson, for the sum of $550.00.

The source of the funds from which these bonds were purchased was derived as follows:

As to the first item of $191.84, these bonds were purchased from the proceeds of three payments made on account of the principal of the Catherine Warren mortgage as follows:

$50 paid on account May 3, 1920.

$50 paid on account July 6, 1920, and

$50 paid on account July 15, 1920, together with the sum of $41.84 taken from principal cash uninvested.

As to the second item of $195, these bonds were purchased by payments on account of the principal of the Catherine Warren mortgage made as follows:

$50 paid on account February 2, 1920.

$100 paid on account March 3, 1920, and

$45 of a payment of $50 paid on April 3, 1920.

As to the third item of $550, these bonds were purchased from a payment of $500, being the principal of the Zax mortgage (formerly Mary J. Berdan mortgage) and $50 of capital cash uninvested.

The entry appearing in "Exhibit B-4, June 18, 1924, Zax mortgage paid in full $500", is the payment of the mortgage formerly known as the Mary J. Berdan mortgage. The said Mary J. Berdan having sold her property to Zax, Zax assumed and paid the mortgage. Notification having been given to the Bank of the transfer in ownership of the property, on January 1, 1919, the mortgage was changed in name from the Mary J. Berdan mortgage to the name of the new oner, Zax. This mortgage which was formerly

the Mary J. Berdan mortgage was originally acquired by the Trustee on April 30, 1915, in the name of Mary J. Berdan and was up and until the time of her transferring the title to the premises secured by the mortgage, a 5% mortgage, but was upon the assumption of the mortgage by Zax immediately increased to 6% and Zax subsequently thereafter paid interest at the increased rate of 6%.

As to the entry in Schedule A of the final account "June 1, 1919, interest on Zax mortgage to date $13.89", the date of this entry was inaccurately transferred from the ledger of the Trustee to the final account as June 1, 1919, when it should have been June 18, 1919, and on the said June 18, 1919, the Trustee received $13.89 from Zax, which was interest on the Zax mortgage (formerly the Mary J. Berdan mortgage) from January 1, 1919, to June 18, 1919, or 169 days at the rate of 6% per anum, so, therefore, it is to be seen that as long as the Mary J. Berdan mortgage was carried in her name interest in full was paid thereon at the rate of 5%, and that upon her transfer of the property to Zax, interest in full was paid upon said mortgage by him from January 1, 1919, to the day of the payment of the principal, or June 18, 1919, at the rate of 6%.

Therefore, a statement of all changes made in the said securities since the settlement of the account of April 15, 1919, to and including the final account of January 5, 1921, is as follows:

Victory Loan Bonds ($200 par) book value $191.84.

Liberty Loan Bonds ($200 par) book value $195.00.

Statement of Trustee.

Victory Loan Bonds ($550 par) book value $550.00.

Bond and Mortgage, Max Gold, book and par value $2,000.00.

Bond and Mortgage, Catherine Warren, reduced by payment of principal to $800.00.

The Paterson National Bank,
John L. Griggs,
Trust Officer.

ENDORSED:
"Filed Dec. 3, 1924,
Thomas F. Martin,
Register."

Record of Motion of October 14, 1925.

NEW JERSEY PREROGATIVE COURT.

In the Matter of the two appeals of WILLIAM B. BEAM and others, in which the Paterson National Bank is concerned, from decree allowing final account.
For the Appellants,

MESSRS. BLANKENHORN and WILLIAM B. BEAM.
For the Respondent,

MESSRS. GRIGGS and HARDING.

Before:

HON. JOHN GRIFFIN,
Vice-Ordinary.

Chancery Chambers, Jersey City, N. J.,
October 14, 1925.

* * * * * * *

MR. BLANKENHORN: (After reading from the decree): So that, if your Honor please, the statement having been filed, and no exceptions having been taken thereto, it now remains for that account to be finally approved and allowances made; and the question of whether or not the accountant is entitled to an allowance has to be decided. Your Honor will recall that, as shown by

the testimony in this case, after the allowance of the account of the Safe Deposit and Trust Company by the Orphans' Court, and after it had been appealed from, the accountants paid to themselves the commissions allowed by the Orphans' Court Judge, and, in order to do that, they sold one of the investments, one of the mortgages, and that deduction is shown in their account. Now, our position is (and it was taken at the hearing and is supported by the authorities—there is no question of that—and I think your Honor will recall having so stated at the time of the hearing) that an appeal from a judgment of the Orphans' Court removes to this court the whole case *de novo*. The trustee cannot deduct from the trust funds the commissions allowed, because the law is that, the appeal having been regularly filed, no commissions are allowed, and the whole cause is heard again in the Prerogative Court. I now move, therefore, that no commissions be allowed to the accountant; that no counsel fee be allowed to the accountant; that the accountant be required to restore that to the trust fund, together with interest from the date of deduction; and also that the accountant be required to pay interest on funds which the accountant permitted to be uninvested between the time that the accountant retired as trustee and the time that the trust funds and investments were eventually delivered to the substituted trustee. That position is supported by law and the decisions in this State—that where an accountant retires he must forthwith account

for the moneys in his hands, and must account for the interest if he fails to keep the funds invested. I think those decisions are familiar to your Honor. They are freely cited in *Kocher's Chancery Practice.* I do not recall the particular decisions, but I can refer your Honor to them before we close this argument. Now, as your Honor knows, the court had a great deal of difficulty itself in carving out the various items of this account. Your Honor spent a great deal of time, and, I think, requested counsel to come before you a great many times, in order that you might get this account straightened out. There are many persons involved—there are a great many persons interested in this estate; and the appellants felt that it was necessarily obligatory on them to see that the substituted trustees would not be placed in the position of, some day, having to answer for these funds—having to answer for the fact that they were not vigilant in securing possession of, and securing the investment of these funds; and I think that your Honor's decision that the accountant had not annexed to the account a statement showing the changes in the investments of these trust funds is justification for the appeal taken by the appellants in this case, and justifies the course of action of the appellants in insisting that this full knowledge be laid before them. And it having been shown by the testimony to have been necessary, and having been shown by your Honor's decision to have been necessary (if for nothing else than for the information of your Honor) it justifies, as I say,

their course, and entitles them to their costs of these proceedings. And I move that the appellants have their costs, to be taxed, and that they have a counsel fee. The practice of the court, as I have always understood it, is to hold a trustee to strict accountability for his failure to perform any of the duties of a trustee; and it seems to me that where a trustee has not only—I was going to use the word "obstructed", I do not think that is the word I want to use— but has resisted the efforts of the substituted trustees to secure information, as shown by the letters in evidence—your Honor will recall the letter to Mrs. Beam stating that "your funds are now invested in these securities—

THE VICE ORDINARY: That I do not care about; the question now is whether they should be charged with the duty to restore the amount allowed in the Orphans' Court, and whether they should give up their commissions, and whether counsel fees should be allowed against them in this court?

MR. BLANKENHORN: Yes, sir.

THE VICE ORDINARY: Why are you making the motion to-day?

MR. BLANKENHORN: Because the statement has been filed with the court, sir; and there is nothing further to be done but settle the form of decree.

THE VICE ORDINARY: Well, there are four or five of these cases where I do not know that I have signed the decrees yet.

MR. BLANKENHORN: I think this is the only one.

THE VICE ORDINARY: I understood there

was some reason for making this motion to-day.

MR. BLANKENHORN: Yes, sir; the year ends to-day in which the appeal can be taken in this case. Your Honor will recall that there were certain decisions made to this effect—that the accountant was not required to state actual values, but, if they stated the money that they paid, and then turned over the—

THE VICE ORDINARY: I know, but why didn't you take your appeal then?

MR. BLANKENHORN: Well, we wanted, in the event of the signing of this decree to-day, to appeal the whole thing, if necessary.

THE VICE ORDINARY: I know; but do you expect the court now to spend all day here, and, before midnight, sign the decree?

MR. BLANKENHORN: The only question to be settled is the question of allowances.

THE VICE ORDINARY: Doesn't that require some consideration?

MR. BLANKENHORN: Yes, sir; I assume that it does.

THE VICE ORDINARY: Well, then, how did you expect me to decide this matter off-hand, to-day?

MR. BEAM: If the court please—

MR. BLANKENHORN: I think Mr. Beam has a right to speak. I represent his brothers.

MR. BEAM: Mr. Blankenhorn is employed as of counsel. If the court please, so long a time has passed since we last talked in this case that I think the facts have escaped your Honor's attention. On September 29th, 1924, the respondents in this case—the case of the appeal of William B. Beam from the allow-

ance of the final account of the bank—they appeared before your Honor and sought to enter what they termed a final decree. Objection was made at that time by myself and Mr. Blankenhorn to a splitting up of this case on the decree. We contended that if two decrees be made it would require the taking of two appeals. Your Honor reserved decision; and on October 14th, 1924, entered a decree as to every feature covered by this opinion filed June 30th, 1924, with the exception of this re-statement. We sat down and waited for that re-statement, and it did not come; it was never filed until December 3rd, 1924, and it was then filed with the Clerk in Trenton. No copy was ever sent to us that we received. Now, we discovered this statement only in August of this year; and as soon as it was discovered I immediately wrote your Honor. I had some difficulty in getting in touch with Mr. Blankenhorn and bringing it on. Now the situation is this—that an appeal has been taken to the Court of Errors in the main Chancery suit, and, at the same time, we wish to bring this case before the court, and we were unable to do that unless we took two appeals. This matter was open and undetermined. The case had been split up. Therefore, we sought to enter this final decree to-day. It does not seem to my mind that there are any further questions involved but simply the ratification of your Honor's own opinion. Now, there are one or two points in connection with this statement that has been filed which I would like to call the court's attention to.

It shows several remarkable things: It shows, for example, that no interest has been paid on income uninvested, notwithstanding the statement made by Mr. John L. Griggs on the stand that it was the custom of the bank to pay interest on all of those investments—

THE VICE ORDINARY: Is the new statement filed?

MR. BEAM: Yes, sir, here is the statement. Have you seen it?

THE VICE ORDINARY: I have never seen it.

MR. BEAM: Well, I thought it was always customary, as long as the case was in the court's hands, that these papers would be filed with the court.

THE VICE ORDINARY: Oh, no, they are not filed with the court, unless you ask the clerk to send them on.

MR. BEAM: Now, sir, if it was their custom to pay interest, why haven't they paid interest here?

THE VICE ORDINARY: Have you any exception to it?

MR. BEAM: No, sir; we haven't formally excepted to it in that way; but we have given the other side notice that we will ask for the entry of a decree which sets forth the fact that they have not paid any interest to us (Reading from the notice referred to). We thought that was a sufficient exception. They had five days' notice of that. It was our intention to ask for that in this court; and we did not care to complicate matters any further. The statement also shows that they were in the habit of allowing one mort-

gagor to pay off the principal of her mortgage, which was past due, in amounts of fifty dollars each—

THE VICE ORDINARY: How can I consider those things without an exception to the account?

MR. BEAM: Well, sir, there is an exception here to the effect that we gave them notice that we are about to—

THE VICE ORDINARY: That is not an exception. Do you consider that an exception, Mr. Blankenhorn?

MR. BLANKENHORN: No, sir; I do not consider that an exception.

THE VICE CHANCELLOR: How can I listen to it, then. It is the regular order of practice to file exceptions, and then a day is fixed when the matter is heard.

MR. BLANKENHORN: I do not think we want to file an exception to this account, or to this statement, but we will accept it at its face value. It is a statement of the accountant and it will show that they held funds uninvested on which they paid no interest. I don't know that an exception to that account is going to get us anywhere; but I do think that we have a right to rely on that statement in the application to have the trustee restore counsel fees and commissions that they have unjustly deducted.

THE VICE ORDINARY: You say your time to appeal expires to-day?

MR. BLANKENHORN: Yes, sir—on the order made October 14th, as a result of which we are here to-day.

THE VICE ORDINARY: If your time to appeal expires in a year, it expired yesterday.

MR. BLANKENHORN: No, sir, it is the day after that.

THE VICE ORDINARY: It terminated on the 13th. It may be you have all of to-day.

MR. BLANKENHORN: Well, sir, if we had one day, it would terminate on the 15th of October, 1924.

THE VICE ORDINARY: Well, I will not argue that matter. You will have to argue that with the Court of Errors and Appeals; but what I want to know is why this matter has not been presented before?

MR. BEAM: Well, I have explained that very clearly.

THE VICE ORDINARY: But a year has gone by, up to the 15th of October, and you ask me to sit down and go all over this account and sign a decree to-night?

MR. HARDING: The statement was filed a year ago, your Honor.

MR. BLANKENHORN: No copy of it was sent to me, or Mr. Beam.

MR. HARDING: It was filed in December, 1924.

MR. BLANKENHORN: We were ignorant of that until we discovered it one day down at Trenton.

MR. BEAM: I made frequent inquiries the winter of 1924-5 for that statement.

THE VICE ORDINARY: I know but is not counsel charged with notice of what is on file in the courts?

MR. BEAM: Well, if counsel was not going to tell us what they are going to do, I thought there was a certain ethical relation between counsel and the court that required

counsel to give us notice of these things. Your Honor has decided, in handling this case, that the Court was to be governed by the principles that were laid down in *Hill vs. Hill,* 79 N. J. Eq., 521, and also in the case of *Woolsey vs. Woolsey* 68 N. J. Eq., 763. Those two cases set out that the Orphans' Court is a court which must be conducted according to equitable principles. Now, I think these people are not surprised to day. They had notice of what we are going to ask. They have been put on notice that we are going to come in here and object to this statement. And the Court is not going to proceed according to a mere form. It so states. It says "It goes without saying that the accounts of a trustee under a will must be stated and settled on equitable principles, according to the truth and substance of the matter in controversy and without regard to matters of form." Now, this statement speaks for itself, and we have given them notice that we intend to except in equity.

THE VICE ORDINARY: Let me see your papers. What is the matter before me? Where is your notice of motion?

(Paper handed the Court by counsel.)

MR. HARDING: This is a most extraordinary motion, your Honor. I think you will see it if I bring back to your mind just a few facts in reference to the matter: This notice of this motion, and the motion, involve exactly the subject-matter that is now before the Court of Errors and Appeals at the next term; and the exact argument was made before your Honor that was made in

the brief that was served upon me by Mr. Blankenhorn. Now, to go back to it, your Honor will remember there was an order of the Orphans' Court allowing the final account of the trustees after they were discharged, on February 24th, 1921. After that decree was made in the Orphans' Court allowing the final account and allowing the counsel fees, in April, shortly following, it appeared in the case tried before your Honor, that the trustee had allowed itself these commissions out of the proceeds of the Gold Mortgage; and after they had allowed themselves these commissions, in pursuance of the order of this Court, on the 23rd of May following this, an appeal was taken to the Prerogative Court on the final decree. That appeal was from the decree which overruled various exceptions filed by the exceptants in the Orphans' Court, and, at the end of it, they also appealed from the allowance of commissions and counsel fees. While that appeal, as I say, was taken in May, 1923, nothing was done by this trustee to get a substituted trustee appointed, as the evidence will show before your Honor, until the following year. About the 1st of April they applied to Judge Minturn, who was sitting as a Judge of the Supreme Court, ex officio Judge of the Orphans' Court, for a rule to show cause First he appointed them substituted trustees, and we appeared and consented to it; and immediately after that appointment of these three young gentlemen as substituted trustees they made a demand upon the Trust Company—a day or two after

they were appointed—to have paid over to them these various assets. The decree, or the order appointing them by Judge Minturn simply provided that they had the right to the possession of the property. We paid them over everything except the allowance, or the deduction of the fee and commission which was allowed, and they gave their receipts for it in full with the statement that it had been deducted. Then, immediately after receiving that money, they applied to Judge Minturn again, a few days after they were appointed, for an order to show cause why the trustee should not pay over to them all the moneys—they claiming on their moving papers, their petition, that we were bound to pay over to them immediately, in the first instance, the very counsel fees and commissions that had been allowed; and that came before Judge Minturn and was argued, and Judge Minturn said that inasmuch as the question of the regularity of the counsel fees and the commissions then had been the subject of an appeal taken nearly a year before that, and pending in the Prerogative Court, he would discharge the rule to show cause.

THE VICE ORDINARY: He said it all could be raised here?

MR. HARDING: Yes, it all could be raised here. They took an appeal from that order, also, contemporaneous with this other appeal from the final account, and those two appeals came on before your Honor. I made substantially the same statement to your Honor then, on that appeal, as I am making

now. Your Honor considered those two appeals together and decided them about the same time that you decided the main case in the Court of Chancery. You affirmed the decision of Judge Minturn for the reasons expressed by Judge Minturn; and then, at the same time, or practically the same time, you filed your opinion in this case that we are now speaking of in the Prerogative Court on the appeal from the final account which was taken in February, 1921. Now, you overruled every exception that they took, except one, and that was the one where the Orphans' Court ruled that in filing the final account they were to give a statement of the changes in the securities, and your Honor, in looking over the accounts, in framing your opinion, referred to several things that were not explanatory that you said should be explained by this statement. You took the ground that it was a substantial right that the exceptants had to have such a statement made; and then, at the end of it, you stated that inasmuch as certain things required explanation after this statement was filed (following the opinions in the Hill and Fry cases) that you would simply defer the question of the counsel fees and commissions to their filing, pursuant to the rules laid down in this Court (that is, the Prerogative Court) exceptions that they wished to raise as to any question as to that. In other words, I assume what your Honor had in mind was that in those cases it appeared that the executors had grossly violated their trust—I think one had mingled trust money

with his own—I may be wrong about that—but, at least, they were not properly invested, and they had used their office in such a way as to fail to perform their duties, and under those circumstances, it was held that their commissions would not be allowed. Now, with those things in view, your Honor, having at that time, a year or so ago, provided that this statement should be filed, and, if from the statement filed it appeared that they should be entitled to an exception, which would deprive us of our counsel fee and commission, then your Honor said you would postpone it until it could be heard. Now, instead of doing that thing, they have given notice of a motion here which is absolutely, as I read it, to ask your Honor to do the very same thing now that they say, on their appeal to the Court of Appeals from your decision affirming Judge Minturn's decision, ought to be done. Their state of the case that they are now going before the Court of Appeals on the 20th of this month with, sets up exactly the argument that they are making here.

Now, as far as counsel fees and commissions are concerned, and particularly as to the so-called failure of us to pay them interest on this small balance of this Gold mortgage that was sold after the decree of the Orphans' Court affirming the final account, you see, that so far as that claim is concerned, with reference to our not paying them interest on the money, it could not be the subject of this appeal, under any circumstences, because it was only for money that

had been transferred after this decree in the Orphans' Court was made. In other words, the decree of the Orphans' Court was on the 24th of February, 1921. That is the appeal that was taken to the Prerogative Court; and they are asking you in this appeal to consider the propriety and legality of our not paying to the substituted trustees interest on the Gold mortgage. Now, the Gold mortgage was not sold until long after this decree.

THE VICE ORDINARY: (To opposing counsel): What have you to say as to that?

MR. BEAM: I have to say that it was impossible for us to except or object, on the prior hearings before your Honor, on any of these items that were not disclosed.

THE VICE ORDINARY: True, but is not the Court only to deal with the matters and facts appealed from, that were before the Court at the time it was filed?

MR. BEAM: Yes, sir; but the Court has to look upon everything that the trustee has done *ab initio.*

MR. HARDING: You see that could not be in this case. But they attempted to put it in the other case before Judge Minturn, and when that came up they argued it. The printed case shows that whole thing. And now they argue, on the Judge Minturn appeal, that comes up next week, that very question of the allowance of counsel fees and commissions—absolutely the same thing that they are asking the Court here.

THE VICE ORDINARY: I know. This is not the appeal of the case before Judge Minturn; this is raised in the other case.

MR. HARDING: But they raised it in the Judge Minturn appeal. The whole thing was raised on the Judge Minturn appeal. Here it is (referring to the printed book).

THE VICE ORDINARY: Suppose they do raise it there, and suppose they are mistaken (as I think they are) in putting it into that case, why should I not decide that question in this case; and if the Court of Errors and Appeals should attempt to allow commissions in both cases, or decide one way in both cases, then this Court could control the judgment and see that only one thing is allowed.

MR. HARDING: Well, I am saying that this question is now before the Court of Errors and Appeals in that case. They come here before you now and ask you to say (without any exceptions filed, as your Honor provided for in your decision on the affirmance, so far as it went) that we are not entitled to any commissions; and also ask that you allow——

THE VICE ORDINARY: Well, taking the situation that existed at the time the decree was signed, that the trustee had failed to comply with the statute and annex a copy of the changes made in the assets since the last accounting, doesn't this case stand in the position now, with your account showing the changes in assets since the last account, no exception being filed thereto, as if there had been no exception and you having filed that statement, should it not be decided on the same basis that it would have been decidel when the decree was signed?

MR. HARDING: Now we have filed our statement, in pursuance of your Honor's decree, and we have explained everything, I think without doubt satisfactorily to your Honor. In fact, they do not take exception to it, and that shows it. Now, there were a few things like this, your Honor will remember—there was a mortgage—not the Sharp Mortgage, but another mortgage, and it appeared, when you looked over the last account that you found an item of some dollars with reference to interest where the defendants charged themselves up to the 30th of June——

THE VICE ORDINARY: Well, it was impossible to collect that amount of interest in that time.

MR. HARDING: Well, it was all explained satisfactorily in this statement. Now, with reference to the one mortgage where the Bank charges itself up on the 30th of June with a mortgage that was sold and transferred and another mortgage for exactly the same amount—

THE VICE ORDINARY: I do not think, at the present time, without consideration, that I have any right to consider the subsequent statement filed, because there was no exception filed with it.

MR. HARDING: Well, I think everything was explained satisfactorily to everybody. that these people were not out a cent. Now, it comes down to the simple question of fact of failing to file this statement. Now, I understand your Honor's opinion says this, that if it should apear, when that statement

was filed, that the trustee had done anything that was not warranted—had failed to charge itself with interest, the proper amount of principal, or anything of that kind, that would be the basis of exception, and would be the ground, indircetly, perhaps, for your Honor to say that as we did not properly perform our trust in the exercise of our duty as trustee, you would not allow us a commission—now, I say no exceptions were taken; the whole thing is that we simply did not file this statement that the rule of the Court said should be filed for the benefit of the trust. Now, they have not been heard to object to it in any particluar whatsoever. And, of course, there is nothing in the practice which will show that the amount of these comissions that have been allowed by the Orphans' Court should not be allowed. The whole amount of the commisions was $400 for about twenty years' trust. That trust was from 1905 to June, 1924, nineteen years— and they allowed them two and a half per cent., which is surely light in cases of that kind. It seems to me this is a most extraordinary motion.

THE VICE ORDINARY: My view (it is subject to change upon reffection of it) is that, as to the costs and counsel fees in the Orphans' Court, the right to those things must be determined in the same fashion as if the account was really passed upon and the decree entered.

MR. BLANKENHORN: In other words, the Prerogative Court, after the appeal, fixes the counsel fees and commissions?

THE VICE ORDINARY: No; you have taken an appeal; now, the question is whether the court will not consider the decree in the Orphans' Court, that the counsel fees and commissions will stand unless reversed.

MR. BLANKENHORN: No, sir; the rule is, in an appeal from a decree of the Orphans' Court, that that wipes out all of the decree and the allowance, and brings the whole matter here.

THE VICE ORDINARY: Where is your authority for that?

MR. BLANKENHORN: *In Re Steelman.*

MR. HARDING: They cite a case which I happened to be in, *In Re Wandell* and it is just the opposite. It is held (the Chancellor citing many of the cases) that an appeal from the Orphans' Court to the Prerogative Court removes what is called the "physical record," and it removes the substance; but it allows the Orphans' Court to do all of those matters that relate to counsel fees below, and things of that kind. Even in that very case, after the appeal had been taken, an application was made to the Orphans' Court for the allowance of counsel fees in that Court; and the Chancellor held that that rule removes the record does not deprive the Court below of its power to allow counsel fees.

THE VICE ORDINARY: You want to appeal this case to-day, don't you? How do you expect I am going to sign a decree to-day?

MR. BLANKENHORN: I do not see how it is possible, if your Honor please.

THE VICE ORDINARY: It is not possible.

MR. BLANKENHORN: I would ask permission, then, to submit a memorandum on the point that Mr. Harding has raised. My recollection of the law is exactly opposite to that; and I am sure I can cite that authority to your Honor. I want to say that, in the period during which this trust has been in existence, there has been paid $4973.00 in commissions——

THE VICE ORDINARY: Well, that is outside of the case before me. I will hear you when it comes back to the time of settling the decree, on that question; but I do not see how I can sign a decree to-day.

MR. BLANKENHORN: I state that the total amount of commissions paid since the commencement of this trust is $4973.00.

THE VICE ORDINARY: I say I am not con- in that. I am only concerned with what has happened in this case, and what is affected by the decree. I say I will hear you on that thing when you come to submit your decree, and after I have had your briefs on the subject of this new situation raised by the filing of this statement without exception to the statement. Now, this statement is added to the account in the same fashion as it should have been when it was first filed; and the only question is that a different situation is created by not filing it before the decree of this Court ordering it filed than if it had been filed before.

MR. BEAM: Do I understand, that in order to bring up any of the matters that we have attempted to bring up today through the statement of these things in the decree,

we must bring them up on the filing of formal exceptions?

THE VICE ORDINARY: Why, yes.

MR. BLANKENHORN: Well, if your Honor please, here is a situation with reference to that: This statement now explains one of the questions that your Honor raised—that is, what had become of the Gold Mortgage (I think it was) and where did the bonds come from which were afterwards invested in the Zax Mortgage. Now, those questions are answered by the filing of this statement. But we were at sea (as your Honor was at sea); and now we say that there is not anything in this statement to which we care to except, because it accounts for the apparent discrepancies in the account; but we say, because we were obliged to come here and appeal in order to get that explanation we are entitled to an allowance.

THE VICE ORDINARY: That is just the thing that I said—in view of the fact that no exception has been filed to this statement, the question now is, what are the relative rights of the parties as to counsel fees and commissions based upon a time when this decree was signed, but considering that this statement is filed after instead of before the date the decree was signed and before the exceptions were filed. Now, then, with no exceptions to this, and if the statement had been filed before the decree had been signed, the decree of the Orphans' Court would have been affirmed; but not having been filed before the decree was signed, but being filed afterwards, the question is,

how does that change the situation? That is what I want to know.

MR. BEAM: Exception was reserved.

MR. BLANKENHORN: An exception was taken to the allowance of counsel fees, and that was reserved by your Honor, and is before you.

MR. HARDING: Exception was not taken to the allowance of counsel fees; that could not be; you mean your petition of appeal made it a ground of appeal; you did not take any exception to it.

MR. BLANKENHORN: There was an exception taken to the decree of the Orphans' Court.

MR. HARDING: In the petition of appeal you raised the point, but you did not take an exception. The appeal from the allowance of the counsel fees stated it as one of the grounds for the appeal, but no exception was taken.

THE VICE ORDINARY: Now, Mr. Blankenhorn, your side being the moving party, you can serve your memorandum stating what you want within a week.

MR. HARDING: Serve that on me?

THE VICE ORDINARY: Yes.

MR. GRIGGS: This motion is denied?

THE VICE ORDINARY: Oh, I won't make any decision denying any motion; I will take that into consideration when I hear the whole thing. You had better write to the Secretary of State to send me the papers in this case, because I have returned all of them and got them out of the office. The other decrees have not been signed, have they?

MR. BLANKENHORN: I think they have.

MR. BEAM: No; the Court has not signed one—the decree in the Fifty dollar case. We offered one decree and the Court refused to sign it. We have been waiting for this statement to be filed.

THE VICE ORDINARY: That has nothing to do with the other three cases.

Matter held for briefs.

Notice of Appeal.

(Filed October 14, 1925.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from the decree of the Orphans' Court of the County of Passaic allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY.

William B. Beam, the above-named petitioner in the above-stated cause, hereby appeals from the order and decree of the New Jersey Prerogative

Court filed in this cause and dated October 14, 1924, and from the following parts thereof:

(1). From that part of the said order of the New Jersey Prerogative Court which affirmed the order of the Passaic County Orphans' Court overruling the first exception filed by appellant to the account of the Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

> "1. The accountant does not state the actual or market value of the securities set forth in schedule C. of the final account."

(2). From that part of the said order of the New Jersey Prerogative Court which affirmed the order of the Passaic County Orphans' Court overruling the second exception filed by appellant to the account of The Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

> "2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in schedule C of said final account."

(3). From that part of the said order of the New Jersey Prerogative Court which affirmed the order of te Passaic County Orphans' Court overruling the third exception filed by appellant to the account of The Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

> "3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C. of said final account has been acquired by it as trustee as aforesaid."

(4). From that part of the said order of the New Jersey Prerogative Court which affirmed the order of the Passaic County Orphans' Court

overruling the sixth exception filed by appellant to the account of The Paterson Safe Deposit and Trust Company, Trustee, whic exception stated:

> "6. The accountant has not set forth the correct value of the stock in the Central Park North & East R. R. Co., mentioned in schedule C. of said final account."

And said appellant William B. Beam, hereby appeals from the aforesaid parts of the said order and decree of the New Jersey Prerogative Court to the New Jersey Court of Errors and Appeals of the last resort in all causes.

EUGENE BLANKENHORN,
Proctor for and of Counsel
with Appellant.

I conceive that there is good cause for said appeal.

EUGENE BLANKENHORN,
Proctor for and of Counsel
with Appellant.

Dated, Newark, New Jersey,
October 14, 1925.

Petition of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.
(Filed Nov. 4, 1925.)

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from the decree of the Orphans' Court of the County of Passaic allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY.	On Petition.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petition of William B. Beam, petitioner in the above stated cause, respectfully shows that:

1. Petitioner appeals from a final decree and order of the New Jersey Prerogative Court filed herein and dated October 14, 1924, wherein among other things it is ordered, adjudged and decreed, that that portion of the final decree of the Passaic County Orphans' Court which was appealed from to the New Jersey Prerogative Court by said appellant which overruled the 1st, 2nd, 3rd and 6th exceptions of said appellant to the account of the Paterson Safe Deposit and Trust Company, Trustees, be and were affrmed, and from each and every part of said portion of said order to the New Jersey Court of Errors and Appeals of the last resort in all causes, for the following reasons:

1. (a). The Court erred in affirming the order of the Passaic County Orphans' Court overruling the first exception filed by appellant to the account of the Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

> "1. The accountant does not state the actual or market value of the securities set forth in schedule C. of the final account."

for the reason that the accountant is required by law and the rules of the court to state in its account the actual or market value of the securities set forth in schedule C. of the said final account.

(b). The Court erred in affirming the order of the Passaic County Orphans' Court overruling the second exception filed by the appellant to the account of The Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

> "2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in schedule C. of said final account."

for the reason that the accountant is required by law and the rules of the Court to state in its account the actual or market value of the said stock of the said Brooklyn City Railway Company, mentioned in schedule C. of said final account.

(c). The Court erred in affirming the order of the Passaic County Orphans' Court overruling the third exception filed by appellant to the account of The Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

> "3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C. of said

final account has been acquired by it as trustee as aforesaid."

for the reason that the accountant is required by law and the rules of the Court to set forth the method by which said bond and mortgage mentioned in said schedule of said account has been acquired by it as Trustee as aforesaid.

(d). The Court erred in affirming the order of the Passaic County Orphans' Court overruling the sixth exception filed by appellant to the account of The Paterson Safe Deposit and Trust Company, Trustee, which exception stated:

"6. The accountant has not set forth the correct value of the stock in the Central Park North & East R. R. Co., mentioned in schedule C. of said final account."

for the reason that the accountant is required by law and the rules of the Court to set forth the correct value of said stock in said railroad company mentioned by it in said schedule C. of said account.

II. The Court erred in refusing to grant the motion of the appellant to reopen the intermediate accounts, filed in this trust estate, by the accountant, for fraud and bad faith of the accountant committed by said accountant in the following particulars:

a. Stating falsely the amount of balance remaining in accountant's hands at each account.

b. Continuing the investment of the trust fund in securities in which loss subsequently occurred, not in the exercise of good faith and reasonable discretion.

c. Falsely stating the value of the 225 shares of stock of the C P N & E R R R Co. as $46,800.00

at those times when said stock was in fact not of that value or was of no value.

d. Failing to state crorectly the time when depreciation or loss occurred in said C P N & E R R R Co. stock.

e. Falsely stating the value of the $3000.00 bonds of the 28th and 29th Streets Crosstown RR. Co., due 1996, as $3,465.00 when said bonds were in fact not of that value or were of no value.

f. Failing to state correctly the time when depreciation or loss occurred in said 28th and 29th Sts. Crosstown R. R. bonds.

g. Falsely stating the value of the $2000.00 bonds of the Second Avenue R. R. Co. due 1948, at $2270. when said bonds were in fact not of that value or were of no value.

h. Failing to state correctly the time when depreciation or loss occurred in said bonds of said Second R R Company.

i. Falsely stating the value of the 200 shares of stock of the Brooklyn City Railroad Company at $4800.00 at those times when said stock was in fact not of that value.

j. Failing to state correctly the time when depreciation or loss occurred in said Brooklyn City Railroad Company stock.

k. Filing in the Passaic County Orphans' Court in the years 1908, 1910, 1912, 1914, 1915, 1917, 1919 and 1921 so-called "accounts" contrary to the rules and practices of said court and contrary to the principles of equity and good conscience.

III. The accountant should have charged itself with $46.800.00 which it stated to be the value of the 225 shares of the stock of the C P N & E R R R Co. in April, 1914, and should be compelled

so to do and to pay over to petitioner the proportionate sum thereof due him.

IV. The accountant should have charged itself with $3,465.00 which it stated to be the value of the $3,000.00 bonds of the 28th and 29th Sts. Crosstown R. R. Co. in April, 1914, and should be compelled so to do and to pay over to petitioner the proportionate sum thereof due him.

V. The accountant should have charged itself with $2,270.00 which it stated to be the value of the $2,000.00 bonds of the Second Avenue R R. Co., in April, 1914, and should be compelled so to do and to pay over to petitioner the proportionate sum thereof due him.

VI. The accountant should have charged itself with $4,800.00 which is stated to be the value of the 200 shares of the stock of the Brooklyn City R. R. Co. in April, 1914, and should be compelled so to do and to pay over to petitioner the proportionate sum thereof due him.

VII. If this petition is dismissed, petitioner will be deprived of property without due process of law.

VIII. The intermediate accounts of the accountant should be re-opened down to the date at which time the accountant last showed the trust fund to be intact.

2. Your petitioner therefore prays that said portion of said final decree hereinabove set forth may be reversed and set aside and that your petitioner may have such further relief in the premises as shall be equitable and just.

EUGENE BLANKENHORN,
Proctor for and of Counsel
with Appellant.

Answer to Petition of Appeal.

(Filed Nov. 25, 1925.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from the decree of the Orphans' Court of the County of Passaic allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY.	On Appeal

The answer of the Paterson Safe Deposit and Trust Company, Respondent to the petition of appeal of William B. Beam, appellant.

This Respondent not acknowledging all or any of the matters in said petition of appeal contained are true, for answer thereto, nevertheless says and admits that a final decree was on the fourteenth day of October, 1924, made and entered in the New Jersey Prerogative Court wherein, among other things, it ordered, adjudged and decreed that that portion of the final decree of the Passaic Orphans' Court which was appealed from to the New Jersey Prerogative Court by said appellant which overruled the first, second, third, fourth and sixth exceptions and the first objection to the fifth exception filed to said account be and were in all things affirmed, but as to the substance and form thereof, this respondent prays to refer thereto when the same shall be produced.

And this rspondent is advised and believes that said portion of said decree of the New Jersey Prerogative Court which ordered, adjudged and decreed that that portion of the said final decree of the Passaic Orphans' Court which overruled said first, second, third, fourth and sixth exceptions and the first objection to the fifth exception filed to said account be and were in all things affirmed, is agreeable to law, is justified and lawful, and this respondent denies that the said portion of said aforesaid decree of said New Jersey Prerogative Court, which ordered, adjudged and decreed as aforesaid, or any portion of said portion is erroneous, improper or illegal, and alleges that said portion of said recree of said New Jersey Prerogative Coudt which ordered, adjudged and decreed as aforesaid, and all the portions of said portion thereof which ordered, adjudged and decreed as aforesaid, are legal, proper and correct, and it prays that said portion of said last named decree which ordered, adjudged and decreed as aforesaid may be affirmed with costs to be adjudged to this respondent.

Dated November 24th, 1925.

JOHN W. HARDING,
Proctor for and of Counsel
with Respondent.

Index

VOLUME I.

	PAGE
Complaint	1
Copy of Will of Sarah A. Cooke	358
Answer	15
Testimony	53
Fred P. Hemphill:	
Direct	63
Frederic Beggs:	
Direct	70
William B. Beam:	
Direct	73
Cross	74
Re-direct	75
Re-called:	
Direct	155
John L. Griggs:	
Direct	79
Cross	101
Re-direct	117
George S. Coe:	
Direct	117
Cross	122
Re-direct	129
Carrie S. Beam:	
Direct	133
Cross	137

John W. Griggs:
Direct ---------- 138

Harold R. Medina:
Direct ---------- 162

Opinion ---------- 171
Motion of June 19, 1924---------- 187
Order Denying Motion---------- 219
Motion of June 30, 1924---------- 201
Order Denying Motion---------- 221
Final Decree ---------- 223
Notice of Appeal---------- 225
Petition of Appeal---------- 226
Answer to Petition---------- 230

EXHIBITS.

Prerogative Court Appeal Papers Admitted page ---------- 65

Printed Page

Petition of Trustee for Discharge---------- 232
Notice of Account---------- 235
Petition on Account---------- 237
Account ---------- 241
Exceptions to Account---------- 248
Amended Exceptions ---------- 250
Order Discharging Trustee---------- 252
Decree on Account---------- 253

Statement of Case, Carrie S. Beam v. The Paterson Safe Deposit & Trust Company, admitted page 68; printed page-- 255

Complaint ---------- 256
Copy of Will, Sarah A. Cooke ---------- 263
Answer ---------- 267
Stipulation ---------- 279
Testimony ---------- 281

Carrie S. Beam:
Direct ---------- 282

J. C. Traphagen:
Direct ---------- 283
Cross ---------- 285
Re-called:
Direct ---------- 319

John W. Griggs:
Direct ---------- 285
Cross ---------- 294
Re-direct ---------- 300

George S. Coe:
Direct ---------- 301
Cross ---------- 309
Further Direct ---------- 309
Cross ---------- 310
Re-called:
Direct ---------- 320
Cross ---------- 337

Opinion ---------- 348
Final Decree ---------- 351
Notice of Appeal ---------- 353
Petition of Appeal ---------- 354
Answer to Petition ---------- 357

EXHIBIT.

C-1—Will of Sarah A. Cooke, admitted at page 281; printed at page ---------- 358
C-3—Letter, Carrie S. Beam to Wm. Berdan, September 7, 1911, admitted at page 283; printed at page ---------- 362
C-4—Letter, P. F. Cook to Paterson Safe Deposit and Trust Co., November 28, 1911, admitted at page 283; printed at page ---------- 363
C-5—Letter, P. F. Cook to Paterson Safe Deposit and Trust Co., Jan. 5, 1912 admitted at page 285; printed at page---- 364
C-6—List of quotations collated by Standard Statistics Bureau, admitted at page 285; printed at page ---------- 365
D-1—Record of Sales of Central Pk., N. & E. R. R. Co. Stock collated by A. M. Kidder & Co., admitted at page 316; printed at page ---------- 386
D-2—Record of quotations of 28th & 29th St. Crst. Ry. Co. 5% Bonds, collated by A. M. Kidder & Co., admitted at page 316; printed at page ---------- 387
D-3—Record of quotations of Second Ave. R. R. Consol. 5% Bonds, collated by A. M. Kidder & Co., admitted at page 316; printed at page ---------- 388
D-4—Letter, Paterson Safe Deposit & Trust Co. to P. F. Cook, admitted at page 316; printed at page ---------- 389
C-2—Remittitur, admitted at page 69; printed at page ---------- 391
C-3—Decree of Reversal, admitted at page 69; printed at page ---------- 393
C-4—Opinion of Justice Swayze, admitted at page 70; printed at page ---------- 395

Balance of Exhibits in Volume II.

Exhibit C-1—State of Case First Beam Chancery Suit.

(Filed August 1, 1921). —— Amended Bill (Filed October 22, 1921.)

In Chancery of New Jersey

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

The complainants, Edward Beam, John C. Beam, Carrie S. Beam and William B. Beam, of the City of Paterson, County of Passaic and State of New Jersey, respectfully show, that,

1. On May 1, 1905, Sarah A. Cooke departed this life at Paterson, in the County of Passaic and State of New Jersey, having first made, published and declared her last will and testament, in writing, which was duly admitted to probate by the Surrogate of the County of Passaic on May 15, 1905, and letters testamentary thereon were duly issued to John S. Cooke, Frederick W. Cooke, Charles D. Cooke, Lavinia Fayerweather and Carrie S. Beam, executors and executrices respectively, who thereupon took upon themselves the burden of its execution.

2. Complainants are sons of Carrie S. Beam, who is the daughter of the testatrix, Sarah A. Cooke, and are ~~two~~ three of the beneficiaries and remaindermen under said last will and testament, subject to the life estate of their mother, Carrie S. Beam, created as hereinafter set forth.

3. In said last will and testament, after sundry gifts and bequests thereinbefore made, are the following provisions:

"Eleventh: I direct that all the rest, residue and remainder of the estate which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son, John S. Cooke, another of which parts I give to my son, Frederick W. Cooke, another of which parts I give to my son, Charles D. Cooke, another of which parts I give to my daughter, Lavinia Fayerweather, and another of which parts I give to my daughter, Carrie S. Beam."

"Twelfth: The other five parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows; one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarterly yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

"Thirteenth: If at the time of my death any of my said children shall be dead, I direct that then the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate."

As by certified copy of said will and probate thereof now in the custody of the complainants and ready to be produced and proved when and where this honorable court may direct or the record thereof now remaining in the Surrogate's

Office of the County of Passaic, reference being thereunto had may fully appear, a copy of which last will and testament is hereto annexed, forming a part hereof, and marked Exhibit A. (See pages 359-362).

4. Complainants further show that Paterson Safe Deposit and Trust Company, Trustee named in said will, a corporation of the State of New Jersey, doing business at Paterson, in this State, upon the probate thereof, accepted the trusts therein and thereby imposed and entered upon the execution thereof, and continued to so act as Trustees from thence until February 10, 1921, when by an order made by Passaic County Orphans' Court it was relieved and discharged from all further duties of its said office of trustee, except accounting for and paying over the moneys and assets received by it by virtue of its said office.

5. Testatrix had made in her lifetime investments of money in three 28th and 29th Street Crosstown Railroad (City of New York) First Mortgage 5% bonds due 1996, of the par value of $1,000.00 each; 2 Second Avenue (City of New York) Railroad Company Consolidated 5% Mortgage Bonds due 1948, of the par value of $1,000.00 each; 225 shares of the capital stock of Central Park North and East River Railway Company of the City of New York, of the par value of $100.00 each; 200 shares of Brooklyn City Railroad Company stock, par value $10.00 per share, all of which among other securities and investments

were among the assets of her estate at the time of her decease.

6. In and by the final account of said Executors duly filed in the office of the Surrogate in and for the County of Passaic, and allowed by the Orphans' Court in and for said county on April 17, 1919, said securities and investments were set forth as having been delivered to and accepted by Paterson Safe Deposit and Trust Company as part of the corpus of the trust created by said last will and testament as stated in the third paragraph hereof, as of Decmeber 1, 1905, and the respective values thereof were in said account stated to be as follows:

$3,000 28th and 29th Sts. Crosstown Ry. Bonds	$ 3,390.00
$2,000 Second Avenue R. R. Bonds	2,300.00
225 Shares Central Park N. & E. R. Ry. Co.	46,800.00
200 shares Brooklyn City Ry. Co.	4,800.00

And the total value of the assets of said trust was alleged to be the sum of $150,650.00 all of which assets were delivered to and accepted by said trustee as the equivalent of cash to that amount.

7. Said Trustee filed its intermediate account of said trust in the Orphans' Court in and for Passaic County covering the period from Dec. 31, 1905, to February 1, 1908, showing the corpus of said trust to be of the value of $150,650 as afore-

said, and so charging itself as trustee, and showing only two items of depreciation in the investments hereinbefore mentioned, namely:

28th and 29th Sts. Crosstown R. R. Bonds--$10.00
Second Avenue R. R. Bonds---------- 30.00

And included in its statement of investments all the securities mentioned in the 6th paragraph hereof, and has since and hitherto retained as a part of the corpus of said trust each and every of said investments.

8. Said Trustee continued to retain said investments as will appear from the intermediate and final accounts filed by it at the amounts or values set opposite each respectively:

	1910	1912	1914	1915
3,000 28th and 29th Crosstown Ry Bonds	3465	3465	3465	None
2,000 Second Ave. R. R. Bonds ----------	2270	2270	2270	None
225 shares Central Park N. E. Ry. Co.-------	46800	46800	46800	5.00
200 shares Brooklyn City Ry. Co.--------	4800	4800	4800	4800

Making a total depreciation in the value of said investments during a period of ten years of $53,330, or 93 per centum in a total investment in the securities aforesaid of $57,335 and a total shrinkage of about .35 4/10 per centum of the whole corpus of $150,650.

9. Although said last will and testament creating said trust directed said trustee to set apart one-fifth (or one of five parts of said trust fund for each of the children of testatrix, of whom the mother of complainants is one, this was not done by said trustee until in or about the year 1915, when, in the intermediate account filed by it, it for the first time prayed allowance for depreciation, of various investments of the corpus of said trust amounting to a total of $56,969.50 as will appear from the excerpt from said account as follows:

"COOKE TRUST
PRINCIPAL FUND DEPRECIATION.
April 30th, 1915.

Inventory valuation accounting April 15, 1914		$150,500.00
200 shs, Brooklyn City R. R. Co.	$ 800.00	
225 shs. Central Park N. & E.	46,795.00	
$5,000 Consol, Traction Bonds	147.50	
$8,000 Lehigh Valley Annuity Bonds	1,040.00	
$10,000 Long Dock Bonds	320.00	
$6,000 Mobile & Ohio Bonds	45.00	
$8,000 Passaic Lighting Bonds	271.00	
$7,000 Passaic Water 5s Bonds	462.00	
$4,000 Passaic Water 4s Bonds	220.00	
$5,000 Paterson & Passaic G. & E. Bonds	114.00	
$18,000 Paterson Railway 6% Bonds	1,440.00	
$5,000 United N. J. Rly. & Canal Bonds	120.00	
$2,000 Second Ave. R. R. Bonds	2,030.00	
$3,000 Twenty-eighth and Twenty-ninth St. Bonds	3,165.00	
		56,969.50
		$ 93,530.50

(SCHEDULE C.)

COOKE TRUST.

This accountant further reports that the principal fund of said Trust is invested as follows:

$5,000 Consolidated Traction Company Bonds due 1933	$ 5,150.00
$10,000 Long Dock Company bonds due 1935	12,000.00
$5,000 Lehigh Valley Annuity Bonds	6,650.00
$5,000 Mobile & Ohio Bonds due 1927	5,550.00
$5,000 Passaic Water Company 5s due 1957	5,000.00
$5,000 Passaic Lighting Company Bonds due 1925	5,050.00
$5,000 Paterson & Passaic G. & E. Co. Bonds due 1949	5,050.00
$15,000 Paterson Railway Co. Bonds due 1931	16,500.00
$5,000 United N. J. Ry. & Canal Co. Bonds, due 1925	5,000.00
200 shs. Brooklyn City Rly. Co. 8%	4,000.00
225 shs. Central Park N. & E.	5.00
Cash uninvested	23,575.50
	$ 93,530.50

(SCHEDULE D.)

This estate for the benefit of the five beneficiaries herein named, has for the purposes of economy, been kept and reported to the Orphans' Court as one account. The Trustee as of May 1st,

1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day and has divided the said estate into five parts according to the figures as hereafter shown and entitled "Distribution Sarah A. Cooke Trust as of May 1st, 1915," and said depreciation showing a total shrinkage of corpus of said trust of .378 per centum of the entire original corpus of $150,650.00.

10. In the month of January, 1921, said Trustee filed its final account in the Passaic County Orphans' Court wherein among other things it reported in "Schedule C" of said account that the Book Value of 40 shares of said Brooklyn City Railway Co. stock which was assigned to one-fifth share of the said Carrie S. Beam and these complainants Edward Beam, John C. Beam and William B. Beam as remaindermen, was $800.00, whereas, in fact, it is of little or no value and could not then and cannot now be disposed of, for any such sum or for more than a merely nominal sum, and said Trustee expects to deliver said stock to any new trustee appointed in its stead at said arbitrary valuation of $800.

11. The investments mentioned in the 5th paragraph hereof are not, nor are any of them, such investments as were permitted by the laws of this State to be made by Trustees at the time of the assumption of said trust by said Trustee, and said Trustee did not avail itself of the right to petition the Orphans' Court of Passaic County for leave to retain the same according to the statute in such case made and provided, and did not at any time

during the continance of its trust pray the advice of said Court or any Court or of any of the beneficiaries of said trusts, but on the contrary thereof wilfully, continually and repeatedly and in the exercise of bad faith, neglected and refused to give to the persons interested therein any information whatsoever, or more than meagre information concerning said investments or their retention or disposition. And, furthermore, said trustee not only failed and neglected to re-invest said assets so received as the equivalent of cash in such investments as were then or now allowed by the statutes of New Jersey to be made by trustees, but also wilfully and falsely treated and accounted for said depreciated securities as of full value in each and every of the accounts filed by it in the Passaic County Orphans' Court until the year 1915, as aforesaid, to each and every of which accounts, intermediate and final, some one or more of the beneficiaries of said trust have caused exceptions to be filed.

12. The investments mentioned in the fifth paragraph hereof have steadily depreciated in value and in the market from the date of the death of the testatrix to the present time, until they are, and have been for some time past, entirely valueless and this under the presumed and actual management of Paterson Safe Deposit and Trust Company, as trustee until the original corpus of said estate constituting the one-fifth part in which complainants are interested has been reduced from the value of $30,130.00 to the alleged value of $18,706.10, as set forth in the final

account of said Trustee thereof, the latter amount including the erroneouse valuation of Brooklyn City Railway Company stock at $800.00; and said Trustee has continued such investments of testatrix in said bonds and stock not only without applying to the proper tribunal for authority to retain and continue the same as provided, allowed and permitted by the statute in such case made and provided, as in the exercise of good faith, sound discretion, and a desire to serve the best interests of these complainants it should have done, but has wilfully, designedly and purposely refrained from doing so, and has also wilfully, designedly and purposely neglected, refused and refrained from giving information to the beneficiaries of said trust in which these complainants are interested, and has neglected, refused and refrained from endeavoring to recoup or prevent by sale of said securities or any of them at the proper time or times, losses occasioned by the holding of said bonds and stock, contrary to the requests and demands and information furnished to it by these complainants, or their representatives, and has continued such investments not only negligently and not in the excerise of good faith and reasonable discretion but in the exercise of positive bad faith, so that great loss has been occasioned to complainants, for which said Trustee should be held accountable.

13. Complainants have frequently and in a friendly manner applied to Paterson Safe Deposit and Trust Company for reimbursement to said trust fund for the losses occasioned by the continu-

ance of said investments and said Trustee has refused and still does refuse to comply with such reasonable requests of complainants.

14. Since the making of the order discharging said Trustee from the further performance of the duties of its office as such, such proceedings have been had that the name of said corporation has been changed to The National Trust Bank of Paterson, but without prejudice to this action as said trustee is by law continued as a corporation for three years.

15. Since the discharge of said Trustee, no one has been appointed or authorized in its place and stead as a new trustee to receive and hold in custody the securities held in said trust or any of them, and some interest and dividends have accumulated in the hands of said discharged trustee, and some fit person or corporation should be appointed as temporary receiver or trustee to receive said securities from said trustee, without prejudice, and receive and collect the interest and dividends accrued and accruing thereon from time to time and to pay the same to the life beneficiary under said trust or all of said securities should be impounded with this honorable court or the Clerk of this court, or some officer thereof with power as aforesaid, until the final termination of this cause.

Complainants are without adequate remedy in the Courts of Law, and therefore, pray:

1. That Paterson Safe Deposit and Trust Company, which is the defendant to this suit, may answer this bill of complaint, without oath, and each statement therein made.

2. That an account may be taken of the property and moneys that have been received by Paterson Safe Deposit and Trust Company and defendant as its successor in name, as trustee as aforesaid, and of any and all charges it may have against the said property and moneys and what investments of such receipts or portion thereof it has made and the balance thereof, and to whom the same is due may be ascertained and declared and any balance found due to complainants and to said trust fund so held for the benefit of these complainants, may upon such accounting, be ordered paid to said trust fund so held for their benefit.

3. That a receiver of said trust fund so held for complainants' benefit be appointed with the usual powers and duties of receivers in like cases during the pendency of this suit, with all power to accept and receive from defendant each and every of the securities held in said trust, without prejudice to the rights of these complainants, and to collect and receive the interest and dividends already accrued or that may accrue from time to time hereafter during the pendency of this suit.

4. That defendant may be required to make good and pay into said trust fund and into the hands of such receiver the amount of any losses

sustained to said trust fund by said defendant, or its predecessor in name, together with interest thereon from the time each and every of such losses was sustained and that complainants may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

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

HUTCHINSON & HUTCHINSON,

Solicitors for and of Counsel with Complainants.

Exhibit A omitted.

A true copy,
JESSE R. SALMON, Clerk.

(Filed, Nov. 15, 1921).

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM and WILLIAM B. BEAM, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, Defendants.	On Bill. Answer to Amended Bill of Complaint.

The answer of the defendant, The Paterson Safe Deposit and Trust Company, a corporation doing business at Paterson, New Jersey.

This defendant answering the amended bill of complaint, says that:

1. Paragraphs 1 to 5 inclusive and paragraphs 14 and 15 are admitted.

2. As to the statements in paragraph 6 relating to the statements contained in the final account of the Executors of Sarah A. Cooke, deceased, this defendant has no knowledge sufficient to form a belief. This defendant admits and avers that there were delivered by said Executors to and accepted by the defendant as part of the corpus of the trust created by the twelfth para-

graph of the will of said decedent certain securities as of December 1, 1905, and that the said securities and the inventoried and appraised value thereof were respectively as follows:

10 $3,000 28th and 29th Sts. Crosstown Ry.

Bonds	$ 3,390.00
$2,000 Second Avenue R. R. Bonds	2,300.00
225 shares Central Park N. & E. Ry. Co.	46,800.00
200 shares Brooklyn City Ry. Co.	4,800.00

Defendant admits and avers that the total value of the assets of said trust was inventoried and appraised prior to the said delivery and ac-
20 ceptance thereof, at the sum of $150,650. Defendant denies that said assets were delivered to and accepted by the defendant as the equivalent of cash to the amount of $150,650, but defendant avers that each portion of said assets was delivered to and accepted by said trustee as of no particular equivalent in cash whatever, but was delivered and accepted by the defendant for whatever the true value thereof actually was, although they had been inventoried and appraised at such
30 values as are hereinbefore stated, and that this defendant has never been bound or responsible in any respect for any value of said securities at any time other than their actual value as the same has varied or existed from time to time during the term of said trust.

3. As to the statements in paragraph 7, defendant admits that it filed its intermediate ac-
40 count of said trust in the Orphans' Court in and

for the County of Passaic covering the period from December 31, 1905, to February 1, 1908, showing the corpus of said trust to be of the said inventoried and appraised value of $150,650 as aforesaid, and showed two items of reduction in said securities, by charging off premiums at interest periods namely:

28th and 29th Street Crosstown R. R. Bonds $10.00
Second Avenue R. R. Bonds---------- 30.00

And included in its statement of investments all the securities mentioned in said 6th paragraph of the bill of complaint and that defendant has retained as part of the corpus of said trust each and every of said investments since the acceptance thereof. Defendant denies that portion of paragraph 7 which alleges that said account was a final account and denies that portion of paragraph 7 which alleges that said account shows the corpus of said trust to be of the value of $150,650, and that this defendant so charged itself as trustee, if any other than said inventoried value is meant by said allegation in paragraph 7, and this defendant avers that it did not in said account charge itself other than for the actual value of said securities inventoried and appraised at said values as aforesaid.

4. As to the statements contained in paragraph 8, defendant admits that it continued to retain said securities and that in the intermediate accounts filled by it in the years hereinafter next stated, *the said appraised and inventoried values* no italics

of each of the following securities were set opposite each respectively, as follows:

	1910	1912	1914	1915
3,000 28th and 29th Crosstown Ry. Bonds	3465	3465	3465	None
2,000 Second Ave. R. R. Bonds	2270	2270	2270	None
225 Shares Central Park N. E. R. Ry. Co.	46800	46800	46800	5.00
200 Shares Brooklyn City Ry. Co.	4800	4800	4800	4800

Making a total depreciation in the said inventoried and appraised value of said securities during a period of ten years of $53,330 or 93 per centum in a total investment in the securities aforesaid of $57,335 and a total shrinkage of about .35 4/10 per centum of the whole corpus of said securities inventoried and appraised at $150,650 as aforesaid.

All statements and allegations in paragraph 8 other than those herein admitted are denied.

5. As to the allegations in paragraph 9, it is admitted that this defendant did not set apart one-fifth of said trust fund for each of the children of the textatrix until about the year 1915 when in the intermediate account filed by it, for the first time showed said depreciation of investment of the corpus of said trust amounting to a total sum of $56,969.50, and the excerpt from said account is correctly set forth in paragraph 9. All other

allegations of paragraph 9 than such as are hereby admitted are denied. Defendant avers that said trust estate for the benefit of the five beneficiaries therein named prior to the filing of the intermediate account referred to in paragraph 9, for the purpose of economy and according to the consent and agreement of said five beneficiaries had, in fact, been kept and reported to the said Orphans' Court as one account, but owing to the fact that the said complainant, Carrie S. Beam, had prior to the time of said filing of said last named account expressed dissatisfaction with the said keeping and reporting of said estate as one account, the defendant divided the said estate into five parts as stated in said account.

6. Defendant denies the allegations contained in paragraph 10, except that it admits that in the defendant's final account therein referred to, the book value of said 40 shares of said Brooklyn City Railway Company stock therein referred to, was included as part of $18,906.10 which was stated in said account to be *the "balance of the corpus at book values as per last accounting"* for the said share of said trust for Carrie S. Beam, which is the trust in which the complainants are interested.

no italics

7. Defendant denies each and every allegation of paragraph 11, except that it admits that this defendant did not petition the Orphans' Court of Passaic County for leave to retain said securities or pray the advice of said court or any court with respect to retaining the same, and this defendant

avers that all of said investments were made by the textatrix, Sarah A. Cooke, in her lifetime, who continued to retain the same until her death; that the same were delivered to and accepted by this defendant as investments made by the said testatrix in her lifetime; that the retention and disposition of said investments, which were in fact made by the defendant in the performance of its trust, was permitted by the laws of this state, and that it was not the duty of this defendant under said trust to petition the said Orphans' Court or any court for leave to retain said investments or pray the advice of said Orphans' Court or any court with respect thereto, or any of them, but that it was the right and duty of this defendant to use reasonable care, good faith and sound judgment and discretion as to the retention or disposition thereof, all of which this defendant avers it used in the retention thereof as hereinafter set forth.

8. Defendant denies each and every allegation of paragraphs 12 and 13, except such allegations as are hereinafter next admitted in the 9th paragraph hereof as follows:

9. For answer to the allegations of said paragraphs 12 and 13 this defendant, as to the alleged liability of this defendant for the depreciation of the value of the said 3 28th and 29th Street Crosstown Railroad bonds, said 2 Second Avenue Railroad bonds and said 225 shares of the capital stock of Central Park North and East River Railway Company of the City of New York, says:

The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad, of the City of New York, the Second Avenue Railroad Company, of the City of New York, and the Central Park, North and East River Railroad Company, of the City of New York, were each separate corporations owning surface railways in the City of New York which a long time prior to the death of said Sarah A. Cooke in said will mentioned had been leased practically in perpetuity to the Metropolitan Street Railway Company, of New York City, which last named corporation prior to the death of the said testatrix had acquired by purchase, lease, and in other ways the control and right to operate practically all of the surface railways in the limits of the City of New York as one great metropolitan system.

On or about the 14th day of February, 1902, the Metropolitan Company leased its system, which included the three companies hereinbefore mentioned, to the Interurban Street Railway Company, the name of which was subsequently changed to the New York City Railway Company, by which last named company the same were operated continuously until on or about the 24th day of December, 1907, said leases and each of them obligated the lessee or operating company to pay the interest on all the outstanding bonds of said leased corporations and an annual divident of nine per cent per annum on the capital stock of the Central Park, North and East River Railroad Company.

The stocks and bonds of said three corporations and, in fact, the stocks and bonds of all the constituent companies making up the great system controlled and operated in the first instance by the Metropolitan and afterwards by the New York City Railway Company, during the period of such operation were known and regarded in the financial world as gilt-edge securities, and were placed with and held by investors who desired permanent and safe investment with a fixed income.

It is not true, as stated in paragraph 12 of said bill of complaint, that the value of the said bonds and of the stock in said bill mentioned steadily depreciated in the market from the date of the death of the said testatrix to the time of the filing of the said bill of complaint. The fact is that said bonds and stocks were not actively dealt in, and only occasionally sold or purchased, in most instances not from motives of speculation, but from economic considerations personal to the holders thereof. At the time of the death of the said testatrix and at the time the said securities came into possession of this defendant and for a considerable period afterwards, these stocks and bonds were considered by bankers, financiers, and investors as among the most desirable securities to be had for permanent investment.

Nothing occurred outside of the ordinary trifling changes in market value of all securities, to effect the estimate of the public as to the desirability of any of these securities until on or

about the 24th day of September, 1907, when a creditor's bill of complaint was filed in the United States Circuit Court for the Southern District of New York against the New York City Railway Company, alleging its insolvency and asking for the appointment of Receivers to operate the railway system which it controlled. The filing of this bill and the appointment of the Receivers was a great suprise to the public, but it was not at the time regarded as affecting *the substantial value or impairing the income of the underlying securities.*

no italics

In the bill of complaint upon which Receivers were appointed it was specifically alleged that a Receiver was needed with power to operate the whole system, in order to preserve the property and the unity of the system as it had been maintained and operated. The order appointing the said Receivers contained provisions for the continued operation of the system, to the end that operation of the said system should be continued in the same manner as at that time and the public duties obligatory upon the lessee be in all respects discharged.

Subsequently, on or about the 1st day of October, 1907, Metropolitan Street Railway Company filed its petition asking that it be made a party defendant to the suit against the New York City Railway Company, and that the receivership be extended to its property, and on the same day the same persons who were appointed Receivers of the City Company's property were appointed tem-

porary Receivers of the property of the Metropolitan Company. In granting the application for the appointment of Receivers, the Judge of the United States Circuit Court declared:

> "The Receivers are now in possession of the earning power of the petitioner, and under the terms of the lease petitioner can avail of no default in payment of the amount stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay interest on some underlying mortgage or some rental due the constituent road. It is of vital interest that the property be kept intact."

On or about the 9th day of October, 1907, the said Circuit Court of the United States for the Southern District of New York, in the suits relating to said receivership, directed the Receivers by said Court appointed to pay during their operation the interest on the various mortgage bonds of the underlying roads and the dividends on the stock of such roads as the Metropolitan and the New York City Railway Company had by said various leases undertaken to pay.

From the time said three properties were first leased to the Metropolitan Company, all of the interest on said bonds and the dividends due to the stockholders was promptly paid by the lessee or by the said Receivers, until certain dates in the year 1908.

It was generally believed in financial and business circles that the operation of said lines would be continued by said Receivers, that the Metropolitan system would be preserved intact, and that when a reorganization of the Metropolitan and the New York City Railway Company was made, the leased lines would be continued under the original leases the same as before. There was no reason to think that the said Receivers would permit the said system to be disintegrated by dropping any of said leased lines.

It turned out, however, contrary to general belief and expectation, that the Receivers concluded to abandon the lease of the Central Park, North and East River Railroad Company, and did abandon it on or about the 1st day of July, 1908. They also abandoned the lease of the Second Avenue on or about the 1st day of September, 1908, and abandoned the lease of the Twenty-eighth and Twenty-ninth Streets Crosstown line on or about the 1st days of July, 1908.

Up to the time of the abandonment of these various lines by the Receivers there was no fact known to the public or available as information to this defendant which could lead it to believe or expect that the interest on said bonds and dividends on said stock would not be paid as theretofore, and there was nothing available as knowledge for the guidance of this defendant to indicate that it was either wise or prudent to sell the said bonds or the said stock.

After it became known to the public that the Receivers had determined to discontinue the operation of the said three several lines respectively, the securities of each of said companies became immediately very much depreciated in market price, and not only depreciated in price, but became practically unsalable, *for the reason that the essential value of the property of said companies was not known and could not be determined,* nor could it be determined with any accuracy whether said companies could be successfully operated by themselves as detached from the Metropolitan system.

no italics

The general effect of the announcement of the abandonment of these three leases by the Receivers was practically to put an end to all transactions in said stock and bonds; so that from August 6, 1908, when five shares of the stock of the Central Park, North and East River Railroad Company were sold at one hundred dollars a share, there was no record of any other sale until March 4, 1910, when there was a sale of fifty shares at Forty-one dollars a share. Similarly, the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad after July, 1908, dropped from a previous figure of from eighty to ninety to forty, and subsequently to Thirty dollars on the hundred. The bonds of the Second Avenue Railroad Company, from a price of from eighty-seven to ninety-eight in the early part of the year 1908, dropped to eighty, and subsequently to as low as Forty dollars on the hundred.

But these prices were nominal and not *practical* prices, inasmuch as it was impossible to sell said bonds or said stock, or any of them, except at what at the time was considered a ruinous sacrifice. Almost all the transactions in said stock and bonds from July, 1908, to the time of the last sales thereof have been what are known as "forced sales," where the owners have been compelled to submit to the sale of their securities being unable to retain them or to wait to see what the issue of the reorganization proceedings might be.

This defendant, further answering, denies that it has continued said investments in said bonds and stock negligently, and it denies that it has not exercised good faith and reasonable discretion in the discharge of its trust. It denies that the continuance of said investments was either negligent or unreasonable. On the contrary, it affirms that under the facts and circumstances and from the standpoint of facts and information available to this defendant at the time, the continuance of said investments was wise and prudent.

In continuing said investments, this defendant consulted reputable bankers of great experience and of special knowledge of the value of these particular securities, ascertained from them such facts as could be ascertained, and not only were advised by said bankers not to sell said securities or any of them at the ruinous prices at which they might be disposed of, but exercised and used its own discretion, which was to the same effect.

This defendant caused its president, John W. Griggs, to be made a director and counsel of the Second Avenue Railroad Company about the time the Receivers gave notice of their intention to abandon its operation, and John S. Cooke, now deceased, one of the beneficiaries of said trust, also *of his own volition,* became a member of said board of directors of said Second Avenue Railroad, largely for the purpose of obtaining information and keeping informed as to the prospects of a successful reorganization not only of the Second Avenue but of both of the other of said companies.

no italics

The said John W. Griggs, president of this defendant was in frequent communication with bankers, attorneys and others interested in the said Metropolitan system or various parts thereof, and in the said three companies in said bill of complaint mentioned, and in that way obtained all possible information as to the prospects of the successful operation of said railroads by the companies themselves or of their successful reorganization.

Since the said securities came to the hands of this defendant, there never has been a day on which from facts then known or capable of being ascertained it has been either wise or prudent to sell the said securities, or any of them, and in continuing to hold said securities this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain.

The Second Avenue Railroad Company in about the year 1913 was under process of reorganization through proceedings in foreclosure, and there was a bondholders' committee for the consolidated bonds of said company, with which this defendant has deposited the bonds of that company. There was also a bondholders' committee for the bonds of the Crosstown road, and this defendant has deposited its bonds with said committee, thus securing the right to participate in any benefits of reorganization that might accrue when said roads should be finally reorganized.

About the year 1913 the mortgage on the property of the Central Park North and East River Railroad Company was foreclosed and the property sold to an independent purchaser, and it was not possible to know until said sale was actually made whether any reorganization thereof could be effected under which the stockholders would realize some interest in the assets of the company.

The reorganization of the said Metropolitan system and of the various parts thereof which have been from time to time cast off by the Receivers has been one of the most intricate and most difficult financial matters ever engaging the attention of the financial world, and great uncertainty has prevailed among business and financial men as to what might have been done and what could have been done. But the general view and opinion of all capitalists, investors, and bankers

has been that those who held stock and bonds in said companies or any of them would do better, if they were able to do so, to hold onto their securities, as it was believed that inherently the properties were of sufficient value and so necessary to the public use in New York City as to be certain to result in a better return to the security holders after reorganization than by sale while reorganization was in progress but undefined.

This defendant, further answering, says that from time to time since its qualification as Trustee under the Will of the said Sarah A. Cooke, deceased, it has filed its intermediate accounts in the Orphans' Court of the County of Passaic, in which it has set forth the holding by it of the said securities, the last of said accounts filed prior to the filing of the Answer in the suit in Chancery, hereinafter referred to, was filed on or about April 15, 1912, and the said complainants, on or prior to April 15, 1912, notwithstanding said accounts showed the retention by this defendant of said securities have not and either of them has not objected thereto, and said accounts have been by the Orphans' Court in every way approved and confirmed.

John S. Cooke, now deceased, a beneficiary of said trust, was a director and member of the finance committee of this defendant, and has been such during all the time that this defendant, has held said securities until the time of his death which occurred on November 15th, 1915. In con-

tinuing to hold said securities this defendant has had the benefit of the opinion and advice of the said John S. Cooke, and has to a great extent relied thereon and on the information obtained through him as to the status of the affairs of the said companies.

This defendant, among other trusts in its possession, has held during the same period stock in the Second Avenue Railroad Company and other securities of leased lines of the New York City Railway system, and has used and applied the same policy to the retention of those securities that it has with reference to the securities involved in this trust. The said securities have been the object of frequent conferences between the officers of this defendant, have been considered and discussed by its finance committee, and have been retained by the *unanimous* judgment of all the officers and members of the finance committee who have conferred upon the question.

no italics

This defendant denies that it is liable to account to the said complainants or any or either of them for any loss occasioned by its continuance of the investments aforesaid, or any part thereof and it denies that the complainants are entitled to any relief or to any affirmative decree whatever in this cause against this defendant.

10. For further answer and defense to the allegations of said bill of complaint as to the alleged liability of this defendant for the depreciation of the value of said 5 bonds and said 225 shares

of stock, this defendant says, that on or about February 7, 1912, the complainant, Carrie S. Beam, exhibited and filed her bill of complaint in this honorable court against this defendant, and John S. Cooke, deceased, (who died after the filing of said bill of complaint,) Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, deceased, (who died after the filing of said bill of complaint,) and therein alleged among other things, the following matters and facts, viz: the death of said Sarah A. Cooke; the making, publishing and proving of her said Will; the letters testamentary thereof issued to the executors therein named; the recital of the eleventh, twelfth and thirteenth clauses of said will; that this defendant, the trustee named in said will, accepted the trusts therein imposed and entered on the execution thereof and continued to act as trustee thereunder until the time of the filing of said bill of complaint; that said testatrix had made in her lifetime investments of money in said 5 bonds and said 225 shares of said stock referred to in the 9th paragraph of this answer; *that each of said bonds and shares of stock came into the hands of the defendant, the trustee under said will* and were at the time of the filing of said bill of complaint in the hands of the defendant forming part of the trust fund; that said trustee had continued to hold such investments from thence until the time of filing said bill of complaint; that said 5 bonds and said 225 shares of stock had steadily depreciated in value in the market from the date of the death of said testatrix to the time of the filing of said bill of complaint and had with some little fluctua-

no italics

tion steadily run down in market price during that period in the amounts therein stated; that for a long time prior to the filing of said bill of complaint no income whatever had been realized from said last named bonds and stock; that the defendant as Trustee under said Will had continued such investments of said testatrix negligently and not in the exercise of good faith and reasonable discretion, and that great loss had been occasioned to said complainant in said bill of complaint by reason of such alleged negligent continuance of said investments, for which loss the defendant, trustee as aforesaid, was, as alleged in said bill of complaint accountable; that said complainant in said bill of complaint had frequently applied to the said defendant for reimbursement to said trust fund for said losses occasioned by its said continuance of said investments as aforesaid, and that this defendant, trustee aforesaid, had refused and still refused at the time of the filing of said bill of complaint to comply with said request of said complainant.

Said complainant in said bill of complaint after alleging the matters aforesaid, therein prayed that the defendants therein should appear and answer the matters therein alleged as aforesaid, and that an account should be taken of the property and moneys that had been received by this defendant as trustee as aforesaid and the charge it had against the said property and moneys; also what investments of such receipts or any portion thereof it had made, and that the balance thereof,

and to whom the same was due, might be ascertained and declared and that any balance found due to said complainant in said bill of complaint, Carrie S. Beam, and to said trust fund so held for her benefit, upon such an accounting should be ordered to be paid to her and to said trust fund so held for her benefit, and that a Receiver of said trust fund so held for her benefit should be appointed with the usual powers and duties of Receivers in like cases; to which said bill of complaint this defendant put in its answer setting forth the same facts and matters as are stated in the 9th paragraph of this answer, which this defendant here repeats, and further alleging that this defendant in continuing to hold said securities had been guided by its best judgment and in so doing had exercised good faith and reasonable discretion and therein denying that it had in so doing acted negligently or had not exercised good faith and reasonable discretion in the discharge of its said trust, and the said cause afterwards, on or about the 12th day of November, 1913, duly came on to be heard, and after hearing the evidence submitted on said issue in said pleadings and argument thereon, this Court made a final decree in said cause upon the merits, on the *3 day of February, 1914,* wherein and whereby it was ordered, adjudged and decreed that the defendant, The Paterson Safe Deposit and Trust Company charge itself as Trustee for the complainant in said suit with the sum of Seven thousand one hundred and fifty-six dollars, being the

value on September 24, 1907, of a one-fifth part of the securities held by it, consisting of three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds, due nineteen hundred and ninety-six, of the par value of one thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds, due nineteen hundred and forty-eight, of the par value of one thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each, which came to the hands of the said defendant, The Paterson Safe Deposit and Trust Company as Trustee, and that said defendant, The Paterson Safe Deposit and Trust Company charge itself with and pay to the said complainant the sum of Two thousand six hundred and six dollars and twenty-nine cents, being the amount of unpaid income from said trust fund, which should have been paid to said complainant to the time of making said decree.

And it was therein further ordered, adjudged and decreed that the costs of the said complainant in said suit be taxed, including a counsel fee of Six hundred dollars for her counsel, and that the same be paid by the said defendant, The Paterson Safe Deposit and Trust Company.

After the making of said final decree of this

Court, on or about February 7, 1914, this defendant duly appealed by its notice and petition of appeal duly made and filed from said decree to the New Jersey Court of Errors and Appeals in the last resort in all causes, to which petition of appeal the respondent, Carrie S. Beam, therein duly filed her answer and thereupon on or about the 16th day of November, 1914, after the said cause had been duly heard and argued on said appeal in said Court of Errors and Appeals, the said Court of Errors and Appeals decided that this defendant should not charge itself with said sum or any other sum as in said decree provided, and should not pay said costs and counsel fee as therein provided, and that this defendant was in no respect liable to said complainant in said bill of complaint, as appears by the opinion and decision of said Court of Errors and Appeals filed in said last named court on or about the day and year last aforesaid. And in and by the final decree of said Court of Errors and Appeals made on the 16th day of November, 1914, the said Court of Errors and Appeals ordered, adjudged and decreed that the said decree of said Court of Chancery be and was in all things reversed, set aside and for nothing holden, with costs of said Court of Errors and Appeals to be taxed, and that the said appellant therein do and should recover its costs in said Court of Chancery to be taxed, and that a decree be entered in the said Court of Chancery dismissing the said bill of complaint of said Carrie S. Beam, with costs to be taxed as aforesaid, and that the record and proceedings be remitted to said Court of Chan-

cery to be therein proceeded on according to law and the practice of said court. Pursuant to said last named decree of said Court of Errors and Appeals, the said record and proceedings were duly remitted to said Court of Chancery and therein proceeded on according to law and the practice of said court and under said decree of said Court of Errors and Appeals said bill of complaint of said Carrie S. Beam by the decree of this Court has been dismissed with costs taxed, as aforesaid, which said decree of the said Court of Errors and Appeals and said last named decree of said Court of Chancery are final decrees on the merits and remain in full force and effect.

This defendant further says that at no time since the filing of said bill of complaint by said Carrie S. Beam or since the said first named decree of said Court of Chancery or since the decree of said Court of Errors and Appeals until the present time could said 5 bonds and 225 shares of stock *or any part thereof have been sold or disposed of to any advantage* to the said trust; that during said last named time there has been no market therefor and the retention thereof by the defendant during that time has been necessary and in the exercise of good faith, sound judgment and reasonable discretion.

As to so much of the allegations of the bill of complaint of the complainants filed herein as relates to the said 5 bonds and 225 shares of stock as aforesaid and the losses sustained with reference thereto and as to that part of the prayer

thereof which prays that this defendant account for or be charged with, make good or pay any losses for, on account or respecting said last named securities, this defendant avers that such part of said bill of complaint and prayer is and constitutes the same and identical issue and matter that was involved in said suit in Chancery wherein said Carrie S. Beam was complainant and this defendant was a defendant, and that the said decrees of the Court of Chancery and Court of Errors and Appeals determined the same and identical question as aforesaid, and that the said last named decrees are *res adjudicata* and are an estoppel and bar against said Carrie S. Beam, complainant herein, with reference to said identical questions involved in each of said suits, and that said complainants, Edward Beam, John C. Beam and William B. Beam, who are the children of said Carrie S. Beam, and have their interest in remainder in said property of said trust after the estate or interest of said Carrie S. Beam therein during her life shall terminate, were privies and were represented by said Carrie S. Beam in said suit in Chancery wherein she was complainant as aforesaid, so that said decrees in said last named suit in Chancery and said decree of said Court of Errors and Appeals likewise binds said Edward Beam, John C. Beam and William B. Beam as *res adjudicata* estoppel and bar with respect to said identical question so decided as aforesaid. To which said suit, proceedings and decrees in the Court of Chancery and said Court of Errors and Appeals this defendant refers as

showing more fully and at large the matters hereinbefore alleged; which suit, proceedings and decrees or copies duly certified this defendant will produce on the hearing herein if necessary so to do.

11. For answer and defense to the allegations of the bill of complaint filed herein as to the alleged liability of this defendant for the depreciation of the value of said 200 shares of the stock of the Brooklyn City Railway Company, this defendant says, that the investment of said 200 shares of stock were made by the testatrix and said stock was delivered to and accepted by the defendant as part of said trust fund; that said stock was known and regarded in the financial world as a gilt edged security and was placed with and held by investors who desired permanent and safe investments. It is not true as stated in paragraph 12 of said bill of complaint filed herein, that the value of said last named stock steadily depreciated in the market from the date of the death of the testatrix to the time of the filing of the said bill of complaint, but the fact is that said stock was not actively dealt in and only occasionally sold or purchased in most instances not for purposes of speculation, but from economic considerations personal to the holders thereof, and at the time of the death of said testatrix and at the time the said last named stock came into the possession of this defendant and for a considerable time afterwards, the same was considered by bankers, financiers and investors as among the most desirable securities to be had

for permanent investment. The said last named stock underwent some changes in market value at different times since it came into the possession of this defendant in sympathy with the changes in the general market for securities and in later years it has decreased in market value due somewhat to general market conditions and more particularly due to the fact that street railways of the character of said Brooklyn City Railroad Company have been regarded as unfavorably conditioned, with respect to their earning capacity, on account of the limitations imposed upon them with respect to the price of fares and the comparatively high cost of labor and other operating expenses which have prevailed for several years past. Quarterly dividends amounting to $1 per year per share have been paid regularly and constantly on said stock from the time it came into the possession of this defendant until October 1, 1919.

The statement of the said Brooklyn City Railroad Company as of July 15, 1919, showed a surplus of Five Hundred Forty-one Thousand Four Hundred Forty-six Dollars and Thirty-six Cents, ($541,446.36). The stock had declined somewhat in value between the years 1915 and 1919, but as the dividends seemed to be assured, after discussion among certain members of the Board of Directors of this defendant, it was deemed advisable by this defendant not to sacrifice the stock by selling it.

The Company was under the lease to the Brook-

lyn Heights Railroad Company for 999 years and the rental paid by it was more than sufficient to pay the regular dividends. Nothing occurred to effect the estimate of the public as to the desirability of said stock or to affect this defendant's sense of security in the investment of said stock until the Brooklyn Heights Railroad Company went into bankruptcy in 1919 and made default in the payment of the income tax due for the Brooklyn City Railroad Campany, in consequence of which the said Brooklyn City Railroad Company was obliged to pay this installment which amounted to over Forty-six Thousand Dollars ($46,000). On September 15, 1919, the Brooklyn Heights Company repudiated the said lease and the Brooklyn City Railway Company was obliged to operate its own lines. At that time the stock depreciated in value from about $10.50 to $4 per share. Mr. John L. Griggs, Vice-President of this defendant, then conferred with Mr. Job Hedges and Mr. James R. Sheffield, who were Receivers of said companies, and both of these gentlemen told said Griggs that if an increase in trolley fares should be granted, it looked as if the street railways would do well and that there was probability of an increased fare being granted. While the increase was not immediately granted, nevertheless, the stock depreciated very little *on that account*. Said Griggs also took the matter up with Mr. Porter, the Vice-President of the Brooklyn City Railroad Company, and he gave said Griggs practically the same answer and advice. Officers of The Chase National Bank were also of the same opinion. The said stock gained

about a point after that time and the matter was on different occasions brought to the attention of the Committee of this defendant and it was decided by this defendant that it would not be wise to sell the Brooklyn City stock at the prices then pevailing.

From reliable information which this defendant has obtained this defendant is satisfied that the financial condition of said Brooklyn City Railroad Company is as described by said Porter, and that it is reasonable to expect that said Company will earn a fair dividend within a reasonable time after the present high cost of operating ceases and reasonable increase of fare shall be allowed, and that said stock is liable to increase in market value.

This defendant denies that it has continued said investment in said last named stock negligently, and it denies that it has not exercised good faith and reasonable discretion in the discharge of its trust with respect to said stock. It denies that the continuance of the investment of said last named stock was either negligent, unreasonable, not in good faith or without reasonable discretion or judgment. On the contrary, it affirms that under the facts and circumstances and from the standpoint of facts and information available to and appearing to this defendant during the continuance of said trust, there has been no time when it appeared to this defendant acting with care and reasonable discretion and judgment that it was wise or prudent or to the advantage

of said trust to sell said last named stock, and this defendant avers that the continuance of the investment of said stock was wise and prudent according to the facts and information available to and appearing to this defendant, and since said last named stock came to the hands of this defendant there never has been a day on which, from facts then known or capable of being ascertained, it has been either wise or prudent to sell said last named stock or any of it, and in continuing to hold the same this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain.

12. For further answer and defense to the allegations of said bill of complaint filed herein, this defendant says, that from time to time since its qualification as Trustee under the said Will of Sarah A. Cooke, deceased, it has filed its intermediate account and its final account in the Orphans' Court of the County of Passaic; that said intermediate and final accounts covering the periods hereinafter stated respectively have been in every way approved and confirmed by said Orphans' Court and are as follows:

1. An intermediate account, from December 31, 1905, to February 1, 1908, inclusive, approved and cconfirmed by order dated, ~~July 13th, 1915.~~ April 23, 1908.

2. An intermediate account from February 1, 1908, to April 15, 1910, inclusive, approved and confirmed by order dated June 30th, 1910.

3. An intermediate account from April 15, 1910, to April 15, 1912, inclusive, approved and confirmed by order dated May 23rd, 1912.

4. An intermediate account from April, 15, 1912, to April 15, 1914, inclusive, approved and confirmed by order dated, May 14th, 1914.

5. An intermediate account from April 15, 1914, to April 30, 1915, inclusive, approved and confirmed by order dated, July 13th, 1915.

6. An intermediate account from January 7, 1915, to April 15, 1917, inclusive, approved and confirmed by order dated, May 24, 1917.

7. An intermediate account from April 15, 1917, to April 15, 1919, inclusive, approved and confirmed by order dated, June 5, 1919.

8. The final account from April 15, 1919, to January 5, 1921, inclusive, approved and confirmed by order dated, February 24, 1921.

In each of said intermediate accounts and in said final account this defendant set forth the holding by it of all said securities set forth in paragraph 5 of said bill of complaint filed herein. None of said complainants prior to the time of filing said account, approved July 13, 1915, as aforesaid, and notwithstanding said accounts so filed, approved and confirmed as aforesaid prior thereto, showed this retention by this defendant of all of said last named securities, has excepted or in any wise objected thereto.

On or about June 16, 1915, the complainant, Carrie S. Beam, filed exceptions to said account approved by said order, dated, July 13, 1915, as aforesaid, and in and by said exceptions stated as a reason for disallowing said account that said account set forth said depreciation of $56,969.50, which comprised and included the depreciation mentioned in said bill of complaint filed herein of the securities mentioned in paragraph 5 of said bill of complaint, and said exceptant therein prayed that said account be disallowed and that this defendant be required to account to the beneficiaries of said estate for the full amount of said depreciated securities at their full value as inventoried and appraised as aforesaid, and thereby charge this defendant with the loss of said depreciation. Notwithstanding the filing of said exceptions the said Orphans' Court considered and overruled the same and approved and confirmed said account as aforesaid.

On or about May 24, 1917, the complainants, Carries S. Beam, William B. Beam and John Beam, filed exceptions to said account approved by said order dated, May 24, 1917, and in and by said exceptions stated as a reason for disallowing said account that said share of said trust fund in which said exceptants were interested amounted to about $30,000, which was the said appraised and inventoried value thereof and that the defendant should be charged with said amount notwithstanding said depreciation of said securities, and said exceptant therein prayed that the account of this defendant in which this defendant was not charged with said depreciation

be disallowed and that this defendant be required to account to said beneficiaries of said trust for said depreciation in the value of said shares in which said exceptants were interested subsequent to the said decree of April 8, 1914.

Notwithstanding the filing of said exceptions the said Orphans' Court considered and overruled the same and approved and confirmed said last named account as aforesaid.

On or about May 29, 1919, the complainants, Carrie S. Beam, John C. Beam and William B. Beam filed exceptions to said account approved by said order dated June 5, 1919, and in and by said exceptions stated, among other reasons, as reasons for disallowing said account the following:

> "(1) That in the years 1908, 1910 and 1912 the trustee filed in this court accountings wherein it was shown under oath that the entire trust estate as then held amounted to some thirty to fifty thousand dollars more than was actually in the trustee's hands at those times, by virtue of which sworn statements of the trustee this court did at those times then decree that there was such an erroneous amount in its hands 'to be disposed of according to law', and by reason whereof this beneficiary was for several years kept in ignorance of the true condition of the affairs in regard to the trust, which afterwards made it practi-

cally impossible for her to compel the restitution of sums lost by the said trustee during this period.

(2) That in the year 1915 this trustee did file a fifth account wherein is was attempted to charge off this gross depreciation of Fifty-six thousand nine hundred and sixty-nine dollars and fifty cents without any explanation concerning how and when the said deprceiation had occurred notwithstanding that in the interim since this court had last previously decreed the trust estate to be practically intact there had been no material depreciation in the assets of the estate and none of the accounts had disclosed any depreciation.

(3) That in this attempt they were sustained by the then judge of this court who under the laws of this state was not qualified to sit upon this bench and who in discharging them of liability did inquire 'How can I punish them for something that they have already done?' That thereafter it was attempted to secure from the court stenographer, one Sidney Turner, the record of these proceedings in order that an appeal might be taken therefrom to the prerogative court but that the said attempts were futile and for that reason no appeal could be taken.

(4) That in the year 1917 this trustee did file a sixth account to which these exceptants filed exceptions which were by this court overruled, on the ground that the matter was *res adjudicata* inasmuch as the court had passed upon it in 1915 as hereinbefore set forth."

The said Orphans' Court in and by said order dated, June 5, 1919, after reciting that notice had been given to apply for an order to remove and strike from the records of the court said exceptions on the ground that the same were vague, uncertain and scandalous and not proper exceptions, overruled said exceptions and ordered the same to be disallowed and removed and stricken from the records of the court, and allowed and confirmed said account, as aforesaid.

On or about February 10, 1921, the complainants, William B. Beam and John C. Beam, filed exceptions to said final account approved by said order dated, February 24, 1921, and in and by said exceptions stated as reasons for disallowing said account, as follows:

"1. The accountant does not state the actual or market value of the securities set forth in schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in schedule C of said final account.

3. The accountant does not set forth the

method by which the bond and mortgage of Max Gold mentioned in schedule C of said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the number of the bonds and stocks held by it as trustee and mentioned in schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co., mentioned in schedule C of said final account."

The said Orphans' Court in and by said order dated, February 24, 1921, *overruled said exceptions,* and allowed and confirmed said account as aforesaid. Shortly after the date of said last named order the said complainant, William B. Beam, appealed from said last named order, which overruled said exceptions, to the New Jersey Prerogative Court and said appeal is now pending.

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All of said several orders of said Orphans' Court allowing and confirming said several accounts finally disposed of the matter involved therein on the merits and each of said orders continues to be and now is in full force and effect.

To all of which said several accounts and exceptions thereto and several orders and proceedings thereon hereinbefore mentioned, this defendant refers, all of which several accounts, exceptions and several orders and proceedings thereunder or duly certified copies thereof this defendant will produce on the hearing herein, if necessary so to do.

This defendant in further answer and defense to the said bill of complaint filed herein avers that all of said accounts of this defendant showed the retention by this defendant of all of said securities mentioned in paragraph 5 of said bill of complaint filed herein, as aforesaid, wherein the *inventoried and appraised values* thereof were stated in said accounts until the said account of 1915, wherein the said depreciation of said securities was set forth and the values of said securities set forth in said last named account and the said account thereafter filed were the depreciated values as aforesaid; that due and regular notice of the filing of said accounts was given to said complainants *and every requirement of law fulfilled for or respecting the* allowance and confirmation of said accounts, as aforesaid; that the subject matter of the bill of complaint filed

no italics

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herein that relates to all of the said securities mentioned in said paragraph 5 thereof and the losses sustained with reference thereto, and that part of the prayer of said last named bill of complaint which prays that the defendant should account for or be charged with, make good or pay any losses for, on account of or respecting said last named securities, were matters and questions involved in said accounts, proceedings and orders relating to said accounts, and were proper subject for exeception, objection and litigation in said proceedings, and that said complainants were in law required to so except, object or litigate therein, or otherwise to be estopped and barred from so excepting, objecting or litigating with reference to said subjects, in this suit; that by reason thereof, the said orders, approving and confirming said accounts to which no exceptions were filed and the said orders approving and confirming said accounts to which said exceptions were filed and wherein the same were either overruled or ordered stricken from the records of the court as aforesaid, are *res adjudicata* and an estoppel and bar against each of said complainants herein as to the said subject matter of the said bill of complaint filed herein that relates to all of said securities mentioned in said paragraph 5 thereof and the losses sustained with reference thereto and that part of the prayer of said last mentioned bill of complaint which prays that the defendant should account for, or be charged with, make good, or pay any losses for, on account of, or respecting said last named securities.

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This defendant denies that it is liable to account to the complainants or any or either of them for any loss occasioned by its continuance of the investments mentioned in said 5th paragraph of the bill of complaint filed herein, aforesaid, or any of them, and it denies that the complainants *of* any or either of them are entitled to any affirmative relief whatever in this cause against this defendant.

This defendant prays to be hence dismissed with costs.

JOHN W. HARDING,
Solr and of Counsel with Defendant.

IN THE CHANCERY OF NEW JERSEY.

Testimony.

Between EDWARD BEAM, *et al.*, Complainants, and THE PATTERSON SAFE DEPOSIT AND TRUST COMPANY, Defendant.	On Bill, etc. Minutes of Final Hearing.

APPEARANCES.

MESSRS. HUTCHINSON & HUTCHINSON, for Edward Beam and John C. Beam.

WILLIAM B. BEAM, ESQ., solicitor *pro se.*

JOHN W. HARDING, ESQ., for defendant.

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Paterson, N. J., December 7, 1922.

The Vice Chancellor: I have read the pleading, gentlemen; I think you may proceed.

Mr. Hutchinson: Your Honor does not need any opening, then?

The Vice Chancellor: Oh, I think not, unless there is something additional to what there is in the pleadings.

Mr. Hutchinson: Very well, sir; we will call our first witness.

The Vice Chancellor: Are the complainants in this case all the children of Carrie S. Beam?

Mr. Hutchinson: May I state to your Honor that the bill in this cause was originally filed for Edward Beam and John C. Beam, two of the remaindermen, there are three children, Mr. William B. Beam is on the record as solicitor *pro se;* those three children are all of the children of Mrs. Beam.

The Vice Chancellor: Of Carrie S. Beam?

Mr. Hutchinson: Yes, sir.

The Vice Chancellor: Then Edward Beam, John C. Beam and William B. Beam are all the children of Carrie S. Beam?

Mr. Hutchinson: Yes.

The Vice Chancellor: And she is the lady who prosecuted the first suit in 1912, which went to the Court of Errors and Appeals?

Mr. Hutchinson: Yes, sir.

The Vice Chancellor: None of the other children are *cestui-que-trustent,* or parties to this suit?

Mr. Hutchinson: Well, there are not any; at least, I am not advised of any who could possibly be; there might be a child of Edward Beam who might come in later.

The Vice Chancellor: No; but I take it that this trust was divided into five parts—

Mr. Hutchinson: Five parts.

The Vice Chancellor: —and that the property in question, held in trust, was payable not only to Carrie S. Beam, but to other brothers and sisters?

Mr. Hutchinson: No.

Mr. Harding: It was divided into ten parts, of which one of the five went directly to the five; then the other half went into trust, to have a special trust on the part of each one; and during the life estate the interest of that went to Carrie Beam, and after that, to her children.

The Vice Chancellor: This whole property involved in this litigation, was that left in trust for Carrie S. Beam, alone?

Mr. Harding: Yes, it was left in trust for Carrie Beam during her life, for the income; and, after that, for her children, who would take in remainder.

The Vice Chancellor: I gained the impression (of course the bill and answer are long) that this trust was for the benefit of Carrie S. Beam and other children.

Mr. Harding: The income was payable to Carrie Beam during her life; then to the children. I will just read the clause in the will that is set out in the bill of complaint.

"Eleventh: I direct that all the rest, residue and remainder of the estate of which I may die seized and possessed be divided into ten equal parts, one of which

parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give to my son, Charles D. Cooke, another of which parts I give to my daughter, Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam."

"Twelfth: The other five parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarterly yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

"Thirteenth: If at the time of my death any of my said children shall be dead, I direct that then the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate."

Now, inasmuch as Carrie Beam survived the testatrix, of course she took this estate for life, and upon her death it goes to her children, all of whom survive.

The Vice Chancellor: But she took only a fifth, there were four other children, weren't there?

Mr. Harding: Yes, and half of the whole residue was divided into five parts, and her interest is one-fifth of one-half of that residue.

The Vice Chancellor: That leaves the other children four-fifths?

Mr. Harding: Well, her children took that one-fifth of one-half of the residue, after her death.

Mr. Hutchinson: I think the Vice-Chancellor has, probably, in his mind, the children of Carrie S. Beam, when, in fact, it went to the children of Sarah A. Cooke.

The Vice Chancellor: Well, that is what I understood.

Mr. Hutchinson: Now, the one-fifth share of Sarah A. Cooke, about which we are contending, the income of that share, as Mr. Harding says, goes to Mrs. Beam during her lifetime, she being entitled to one-fifth of that total fund. That has now been separated. In 1912 it was divided actually into five parts; one part is now held for the purpose of paying Carrie S. Beam, during her life, the income, and after that, to go to her three children, John C., Edward and William B. Beam.

The Vice Chancellor: Perhaps I have not made myself clear: As I understand it, this trust estate was to be divided into five parts, one part to go to Carrie S. Beam, and one other part each to the other remaining children; and, therefore, as I see it, the other four children have suffered to the same extent by this depreciation that Carrie S. Beam and her children have suffered—is that it?

Mr. Harding: Your Honor, it is this way: The will takes first one-half of the residuary fund and gives it outright to the five children—that is out of it—

The Vice Chancellor: That I understand.

Mr. Harding: —the other half is to be divided into five parts, equal parts, one to go in trust for each one. Now, Carrie Beam is one of them, and she takes a life estate in that one-fifth of the one-half of the residuum estate during her life, and her three children, after her death, are interested in the corpus that goes to her. You see, that is a trust entirely separate from all the other children of Sarah Cooke, the testatrix. All the parties are here. The parties in interest in this trust which is now involved, are Carrie S. Beam during her life, and her three children in remainder.

The Vice Chancellor: That is, as to one-fifth?

Mr. Harding: That is, as to one-fifth.

The Vice Chancellor: Well, what became of the other four-fifths, do they suffer alike?

Mr. Harding: Well, that has been divided up and given to the rest of them.

The Vice Chancellor: They have taken possession of theirs, have they?

Mr. Harding: They have taken possession, and there is no complaint about their loss, as far as that is concerned.

Mr. Hutchinson: That is not in issue here; no, sir.

Mr. Harding: It is accepted by everybody else.

The Vice Chancellor: As I understand, then, if Carrie S. Beam was living, she would be the complainant in this case, and all the present complainants claim under Carrie S. Beam?

Mr. Harding: Claim under Carrie S. Beam, as to one-fifth of this trust; but, of course, Carrie S. Beam is living, your Honor, now, and she is a party to the suit.

The Vice Chancellor: Oh, she is a party to this suit?

Mr. Harding: Yes, sir—to make it a little clearer, Carrie S. Beam originally was the one who solely filed a bill involving the same questions, practically, that are involved in this case. She filed the bill to hold the executors responsible for the failure to sell 5 bonds and 225 shares of stock, and that was all litigated, and was before the Court of Appeals, and decided; now, the only new question in this case, as far as she is concerned, is with reference to 200 shares of Brooklyn City Railroad stock that was not involved in that case.

The Vice Chancellor: I see.

Mr. Harding: That is the only distinction, as I take it, between the two suits.

The Vice Chancellor (To Mr. Hutchinson): Is that the situation?

Mr. Hutchinson: That is it.

The Vice Chancellor: That is, the only question in this suit is the 200 shares of the Brooklyn City Railroad stock?

Mr. Harding: Well, I don't know if counsel agrees to that. I say that is the only difference between the two suits. In this last suit the bill is brought almost in the same language as the original bill, asking for an accounting, and charging the trustee with having failed to sell these securities, in the same language, only, added to it, are the 200 shares of the Brooklyn Railroad Company, which had depreciated from a value of $4,800 down to some lower sum. I see no difference.

The Vice Chancellor: All the property that was in litigation in the former suit is in this suit, plus 200 shares, additional, of the Brooklyn City Railroad Company, is that right?

Mr. Hutchinson: Yes, sir. May I just state my position for a moment so I may make it clear: All the proceedings in the former suit were brought and conducted in the name of Carrie S. Beam, alone, and related to certain securities other than the Brooklyn City Railway stock, four securities, I think. There was no effort made at that time to bring in the remaindermen as parties to that suit, on either side; consequently, when the decree went, after appeal from the Court of Chancery, we claim

that it bound only Carrie S. Beam, and bound her only as to the securities that were in question in that suit. This bill is filed upon the theory that since that suit was decided the shrinkage in the Brooklyn City Railway stock has occurred which introduces a new element in the trust. Also that the remaindermen, not having been made parties at the instance of either complainant or defendant in the former suit, they are not precluded from bringing in not only the Brooklyn City Railway stock, but they are not precluded from investigating with regard to the securities in the former suit, on the further theory that what happened in the future throws light on the past; and what happened in the past throws light on the future; so that we claim that these five securities now, including the Brooklyn City securities, and the circumstances which surrounded them, constituted one continuous chain of circumstances which these new complainants are entitled to inquire into; and, as to the Brooklyn City Railroad stock, Mrs. Beam is entitled to be heard. That is our position.

The Vice Chancellor: Well, is not Carrie Beam bound by everything that transpired in the former suit?

Mr. Hutchinson: As to the securities that were involved in the former suit.

The Vice Chancellor: Couldn't she have brought into the former suit the Brooklyn City stock?

Mr. Hutchinson: No, sir; the loss had not occurred, as I understand it, at that time.

The Vice Chancellor: Was there any notice given to the Trust Company to sell these securities by the *cestui-que-trustent,* pending or since the former suit?

Mr. Hutchinson: I do not know that there was, except orally. I am not advised in regard to that matter. Our position is that it really does not make any difference, that it does not discharge the trustee from the faithful performance of its duty, because here is a woman unfamiliar with stock transactions and operations—

The Vice Chancellor: I am only discussing it so as to get a grasp of the case, as fully as I can.

Mr. Harding: If your Honor please, in reply to what counsel says, our claim is set up in our answer, that, while Carrie S. Beam was the only party to that original suit, yet she represented, in law, the remaindermen; so they were bound; and it is *res judicata* not only against her, but against them, as well. And we also set up the same defense, under the same facts, against them all, whether it is *res judicata,* or not.

The Vice Chancellor: Oh, that is another proposition.

Mr. Harding: And we have also set up that, by reason of some six or seven

decrees of the Orphans' Court, all these questions were subject to be litigated in the Orphans' Court; and different ones of the children of Mrs. Beam have, during the last three or four years, taken exceptions to the accounts of the executors, involving exactly these same questions.

The Vice Chancellor: That I take from the bill. But the children do not take from Carrie S. Beam, they take under the will.

Mr. Harding: They take under the will.

THE CASE FOR THE COMPLAINANTS.

FRED P. HEMPHILL, sworn.

Direct examination:

By Mr. Hutchinson:

Q. You are a Clerk in the office of the Prerogative Court? A. Yes.

Q. Have you produced here, at our request, a package of papers filed on the appeal by William B. Beam from a decree of the Orphans' Court of the County of Passaic? A. I have.

Q. You may hand them to the stenographer, if you please.

Mr. Harding: What is the purpose of this evidence? I do not see the materiality.

Mr. Hutchinson: Well, it is a little out of order, Mr. Harding, I may say, because Mr. Hemphill is an attache of the Secre-

tary of State's Office. I could have reserved it until later; but the point of it is this: You set forth that we are precluded by the final decree and the intermediate and final accounts in the Orphans' Court, and we offer these now to show that that is not correct, that the decree on the final account is not final, but that there is an appeal pending from that decree.

The Vice Chancellor: I suppose that might be addressed to the discretion of the Court. The final decree remains a decree —oh, that would be as to a final judgment not reversed.

Mr. Harding: I fail to see the materiality of it, for this reason, I assume that it is set up as an answer to our claim of *res judicata*—

Mr. Hutchinson: Pardon me, Mr. Harding—you are claiming an estoppel.

Mr. Harding: Well, that is what I mean—an estoppel—if we are right in that contention, it does not make any difference whether those exceptions in the Orphans' Court have been appealed, or not; and it does not make any difference what the result of the decision on the appeal would be. If they should succeed on it, why, they would succeed in an issue in the Orphans' Court; and my point is that if they are precluded by the decision of the Orphans' Court, or by the Prerogative Court, it is their remedy to litigate it in

the Court of Errors and Appeals, and they cannot raise that quesiton collaterally in this suit and have the two courts decide the same question. I fail to see the materiality of it.

The Vice Chancellor: I think I will let it in. It is safer to admit it, than to exclude it. A decree of the Orphans' Court is opened up, or, at least, it has no force and effect, when an appeal is taken, is not that the law? It is different as to a foreign judgment; but I think, as to our own courts, that the taking of an appeal from a decree of the Orphans' Court operates to remove the judgment, and there is no judgment there. It is different from a foreign judgment. I think I will admit it.

Mr. Harding: Of course your Honor will understand that this is only just one appeal from one of these orders?

The Vice Chancellor: Oh, it is just the last appeal. The exceptions on the others were overruled, and no appeal taken from them. These records need not be marked as exhibits, but they are admitted in evidence.

Mr. Hutchinson: Mr. Harding, what we are now offering in evidence are the papers in all three cases where appeals have been taken; there were appeals taken from intermediate accounts as well as from the final account.

Mr. J. L. Griggs: In the Prerogative Court?

Mr. Hutchinson: Yes; weren't there?

Mr. J. L. Griggs: No, sir.

Mr. Beam. We attacked all the other decrees on the ground of fraud, by one appeal.

Mr. Harding: My understanding is that there was only one appeal from the decree of the Orphans' Court. That is my understanding.

Mr. Hutchinson: That I do not know, because I had nothing to do with that. We will offer these papers.

Mr. Harding: What is it you are offering, Mr. Hutchinson?

Mr. Hutchinson: We are offering Certified Copy of the Petition of Trustee for discharge; Final Account; Exceptions to Account; Order discharging Trustee, and Amended Exceptions to Account, in the Matter of the Estate of Sarah A. Cooke, deceased.

Mr. Harding: Who is the appellant?

Mr. Hutchinson: William B. Beam is the appellant in this case.

Mr. Beam: But I do not see either the Petition of Appeal, nor Notice of Appeal.

Mr. Harding: Well, there must have been an appeal, or the record would not go up without it.

Mr. Beam: I don't know what became of it. It was filed. I have my own copies.

Mr. Hutchinson: Well, that is up to the solicitor; Mr. Beam is representing himself, as solicitor *pro se* in this case.

The Vice Chancellor: I will let you offer them later.

Mr. Hutchinson: Well, at recess we will have a chance to look them up.

The Vice Chancellor: Yes.

Q. Now, have you the record, also, of the former suit—that is, the testimony produced in the former suit?

(The witness thereupon produced a printed book, being Volume 592, of Records of Appeals in the Court of Errors and Appeals, containing, among others, the record on appeal in the case of Carrie S. Beam, Complainant-Respondent, and The Paterson Safe Deposit and Trust Company, *et als.*, Defendants-Appellants.).

Mr. Harding: Now, let me see it. I think we can facilitate matters. (Examining the volume produced by the witness). Mr. Hutchinson suggests that we admit the whole record of the former suit, as it appears in the printed book which the witness has in his hands—that includes everything?

Mr. Hutchinson: Yes, sir.

Mr. Harding: The testimony, and everything that is in it?

Mr. Hutchinson: Everything; I cannot offer part of it.

Mr. Harding: Well, I agree to that. I think it will facilitate matters.

The Vice Chancellor: Doesn't it include all reference to these former accounts in the Orphans' Court?

Mr. Harding: The answer sets up, in that case, that the former accounts had been filed, but there was no testimony given in that case with reference to it, at all it was decided upon other grounds.

Mr. Hutchinson: Well, they were not litigated at that time.

Mr. Harding: Not litigated at that time.

The Vice Chancellor: Then the testimony taken here will just supplement what was taken in the former suit?

Mr. Harding: Yes. The other testimony will be regarded as of the same effect as if it were produced here.

Mr. Hutchinson: Yes, sir. I thought that would save time. The Exhibits, and everything that are in there (referring to the printed book) are admitted.

(The record and proceedings in the former suit, being offered and admitted by consent, the Volume containing the same, produced by the witness, is marked Exhibit C, 1).

Mr. Harding: I suggest, in connection with that, Mr. Hutchinson, that I have now a Certified Copy of the remittitur reversing the decree of the Court of Chancery,

and I have a Certified Copy of the decree of the Court of Chancery dismissing the bill, in pursuance of the order of the Court of Errors and Appeals; perhaps you might offer them?

Mr. Hutchinson: I am entirely content. I think I have the original papers in the original suit here, Mr. Harding, so I think we had better offer those.

Mr. Harding: Yes. I suppose your Honor will probably inspect these, anyway; but there is no objection to offering them in evidence.

Mr. Hutchinson: Suppose we offer all of these papers?

The Vice Chancellor: Well, you have it all in the printed book.

Mr. Hutchinson: Well, I am willing to stipulate on the record that the remittitur was a reversal of the Court of Chancery.

(The two copies produced by Mr. Harding were then marked, by consent, Exhibit C, 2 and Exhibit C, 3, respectively).

Mr. Harding: I suppose your Honor will take notice of the opinion of the Court of Errors and Appeals?

The Vice Chancellor: Undoubtedly.

Mr. Harding: It is in 8th Buchanan, I think. There is a certified copy, for convenience, if your Honor wants it.

The Vice Chancellor: I think I read the case more than a year ago.

Mr. Harding: The opinion is in 83

Equity. Here is a certified copy of the opinion, if your Honor wishes it.

The Vice Chancellor: Well, you may let it be marked. (And the paper was thereupon marked Exhibit C, 4).

Mr. Beam: I have no questions.

No cross examination.

FREDERIC BEGGS, sworn.

Direct examination:

By Mr. Hutchinson:

Q. Mr. Surrogate, have you produced here, in response to a *subpoena duces tecum*, all the papers in your office in relation to the Sarah A. Cooke Estate, including the final accounts and intermediate accounts and decrees thereon? A. I have.

Mr. Hutchinson: I do not know how far your Honor will permit me to limit my offer, but I would like to offer these for one purpose only, and that would be to show the declination in the value of the Brooklyn City Railway stock, if there is any dispute about that. Your answer practically admits the declination, Mr. Harding, in value of the Brooklyn City Railway stock. But that is the purpose of producing these accounts.

Mr. Harding: I would suggest this, for the purpose of saving time. We have set up ourselves all of these accounts, from the intermediate accounts down, for the purpose of *res adjudicata;* and I would suggest that all of these accounts be put in, reserving to each counsel the right to object to them.

Mr. Hutchinson: Oh, you want to put them in, anyhow?

Mr. Harding: Yes, I would put them in, anyhow; and, to save time, I would suggest that.

Mr. Hutchinson: Yes; I think that is a fair proposition.

The Vice Chancellor: I would be inclined to admit them, anyway, and if they were not material, after examining the case, I would reject them, and so state.

Mr. Harding: Well, now I have them in such form as to be convenient.

Mr. Hutchinson: Well, that is satisfactory.

Mr. Harding: Of course, with these accounts I am speaking of would be included, the notices that were given, and the final decrees on them.

Mr. Hutchinson: Well, we do not object to the whole record.

The Vice Chancellor: You must offer the whole record, and not a part of it.

Mr. Harding: Well, we wish to put in all of these accounts and notices upon

which the accounts were given, according to the statute, the decrees on the accounts, and the exceptions; and the decrees on the exceptions. You have them all, Mr. Beggs?

The Witness: I have them all.

Mr. Hutchinson: Well, I will then withdraw my offer, and leave your offer stand —is that all right?

Mr. Harding: Well, that is satisfactory. Now, will it be necessary to specify each of these accounts, your Honor?

Mr. Hutchinson: I do not think so.

The Vice Chancellor: Counsel can stipulate as to what the record shows.

Mr. Harding: The first one is from December 31, 1905 to February 1, 1908; the next one is from February 1, 1908, to April 15, 1910; the next one is from April 15, 1910 to April 15, 1912; the next one is from April 15, 1912 to April 15, 1914; the next one is from April 15, 1914, to April 30, 1915; the next one is from January, 1915, to April, 1917; the next one is from April 15, 1917 to April 15, 1919; the next one is the final account, from April 15, 1919 to January 5, 1921.

Mr. Hutchinson: That is the so-called final account?

Mr. Harding: That is the so-called final account. Now, in connection with that, without enumerating them, as has just been agreed upon, we offer all the

proceedings, including the notices that were given pursuant to the statute, on which these accounts were approved; the order or decree approving the accounts, and the exceptions connected with them; and the decree of the Court on the exceptions—all matters that pertain to those accounts.

The Vice Chancellor: In other words, the entire record in each account.

No cross examination.

WILLIAM B. BEAM, ESQ., sworn.

Direct examination:

By Mr. Hutchinson:

Q. Mr. Beam, you are one of the new trustees appointed in the place of the Paterson Safe Deposit and Trust Company, in the matter of the Estate of Sarah A. Cooke, in a share of which your Mother and yourself and your two brothers have an interest? A. I am.

Q. As such trustee, did you come into possession, by delivery from the Paterson Safe Deposit and Trust Company, of some shares of the Brooklyn City Railroad Company? A. That is correct.

Q. When did you receive them? A. On the 22nd day of March, 1922.

Q. What did you do, if anything, in pursuance of the performance of your trust, after the receipt of those shares? A. Well, we investigated the Company, to some extent.

Q. What? A. We investigated the affairs of the Brooklyn City Railroad Company to some extent, and we sought advice of our brokers as to their retention.

Q. Did you retain them? A. We did not.

Q. What did you do? A. We sold them.

Q. When did you sell them? A. Why, I think it was some time in April, 1922, the middle of the month.

Q. I show you a paper purporting to be an account with Goodbody & Company, of 115 Broadway, New York City, and ask you if any part of that relates to the sale of the Brooklyn City Railroad Company stock? A. It does.

Q. Will you please state, from that, what was realized on that sale? A. We realized from the sale a total of $310.40.

Q. (By Mr. Harding) How much is that, per share? A. Seven and seven-eighths per share.

Q. (By Mr. Hutchinson) Seven dollars and seven-eighths per share? A. That is right.

Cross-examination:

By Mr. Harding:

Q. That was in April, 1922, when you sold this stock, was it? A. Yes.

Q. Had the stock been considerably lower than that before April, 1922? A. It might have been.

Q. Are you aware of anything about the price of the stock before you sold it? A. If my recollection were refreshed I might be able to state—if I were presented with some market reports.

Q. After you sold the stock it rose in value

considerably, didn't it? A. No—what was the latter part of that question?

Q. After you sold the stock did it not rise in value? A. I think it rose about one point, perhaps a point and a half; then it subsided again.

Q. Wasn't it about 10 in the summer of this year? A. No, I am quite certain it was not; I think the highest it ever got was about 9.

Q. Do you know what it is now? A. I think it is in the neighborhood of 8, somewhere around 8, 8½, 8¼.

Q. It is higher now than what you sold it for? A. About half a point, or a fraction of a point.

Re-direct examination:

By Mr. Hutchinson:

Q. Had you any knowledge of the values of the stock prior to your receipt of it from the Paterson Safe Deposit and Trust Company? A. I have only knowledge that was taken from the market reports, and reading the newspapers; I would not care to state, off-hand, without being shown something.

Q. Are you able to state, from your own knowledge, whether or not the stock declined or increased in value from the period of the filing by the Trustee of its account in the Surrogate's Office—

Mr. J. L. Griggs: February, 1921—that is the last account.

Mr. Hutchinson: Well, I would like to have the account, Mr. Griggs, in which the

valuation was reduced to $800—can you give us that date? Or can you give us that date, Mr. Beam?

The Witness: What is the date you want?

Mr. Harding: Wait until I get it for you; I think I can get it for you.

Mr. Hutchinson: There was a depreciation of from $4,800 to $400, and then from $4,000 down to $800.

Mr. Harding: I think I have it here. In the account (if this is what you mean) from April 15, 1914 to April 30, 1915, there is a depreciation of funds mentioned here, in which 200 shares of Brooklyn City R. R. stock is written down at $800—well, it is not written down at $800, the depreciation was $800.

Mr. Hutchinson: Well, that is where it broke from $4,800 to $4,000, but there was another point where it dropped to $800; that is what I am after.

Mr. Harding: It only appears in this account as that much written off for depreciation. Then it was carried, after that, on down.

Q. Are you able to state, from your own knowledge, whether or not the stock declined or increased in value from the period when the stock began to be carried at $800 down to the time when you made the sale? A. I believe it did.

Q. Did what? A. Declined.

Q. Well, you *believe* it did—do you know, as a

fact? A. I know as a fact; but I do not know the amounts.

Q. I am not asking you the amounts, I am asking you whether it declined, or not? A. Well, it did.

Q. Did it ever increase during that period? A. I do not think it did, up until about the year Nineteen hundred and—well, it was sometime after, I think it was about the year 1921, beginning, perhaps, a little later.

By Mr. Harding:

Q. This stock that you are now referring to, the Brooklyn City Railroad stock, is $10 par, is it not? A. It is.

Q. $10 a share? A. It is.

The Vice Chancellor: You mean the stock is $10, par, and sold for 7⅞?

Mr. Hutchinson: Yes, but from a valuation of the Trustee, in the first instance, of $4,800.

Mr. J. L. Griggs: $4,800 is for the whole five shares.

Mr. Hutchinson: Oh, I realize that. It would be really about—

Mr. Harding: In other words, it was selling at the rate of 24.

Mr. Hutchinson: When it was taken over it was 24. Now, it was sold at 7 and a fraction, I believe. If your Honor please, with the exception of two or three preliminaries that I overlooked, I believe we are through. One of them is this—I would like to have the privilege of amend-

ing the bill of complaint by substituting the real name of the defendant company.

Mr. Harding: I was about to suggest that.

Mr. Hutchinson: Yes, sir; I understand it has changed or merged into a name different from that which is used in my notice to counsel.

Mr. Harding: The successor of the Paterson Safe Deposit and Trust Company, which is the defendant named in this suit, is the National Trust Bank.

Mr. J. W. Griggs: If you will allow me to suggest—under the Law, the Trust Company is still suable in its own name; it doesn't make any difference whether they change the name, or not. I suppose there is no objection to his doing that, to amending his bill by stating that the Paterson Safe Deposit and Trust Company is merged in the National Trust Bank; but it is not necessary to do it.

Mr. Hutchinson: Well, I do not think there is any question about it, but for form's sake, I was going to make the motion to add to the name as set forth in the bill of complaint just the words "National Trust Bank."

The Vice Chancellor: Well, yes; and in that amendment, you will find it in the description of the Paterson Safe Deposit and Trust Company, as indicated, in the appropriate parts of the bill.

Mr. Hutchinson: Yes, sir. It is only technical, I imagine. And there are some clerical errors in the bill, which, I suppose, are not vital—for instance, calling an intermediate account a "final account" or *vice versa;* I am not very particular about it, but I think it would be well to have the record as straight as possible; so I would like to make the correction wherever those errors occur.

The Vice Crancellor: Yes.

Mr. Hutchinson: I offer in evidence the memorandum of Goodbody & Co., dated, April 17, 1922.

(And the same is admitted, without objection, and marked Exhibit C, 5).

The Complainants rest.

THE CASE FOR THE DEFENDANT.

JOHN L. GRIGGS, ESQ., sworn.
Direct examination:

By Mr. Harding:

Q. Are you an officer of the Paterson National Bank? A. Yes, sir.

Q. Which was formerly the Paterson Safe Deposit and Trust Company? A. Yes, sir.

Q. What is your office? A. Vice President and Trust Officer.

Q. How long have you been connected with the defendant? A. I was in that capacity since February, 1917, but a director of the institution for four or five years preceding that time.

Q. Is it part of your duty to specially look after the status of securities that you hold in trust? A. Yes, sir.

Q. And has that been your duty for these years that you have spoken of? A. Yes, sir—in conjunction with the assistance that is given by a specially appointed committee, which is known as a Trust Committee, and consists of three other directors of the institution and myself.

Q. And what are the duties, specially, of that committee? A. The duties of that committee are to meet and examine the securities held by various trusts, to consider the advisability of the retention or the selling of them, and the reinvestment of the proceeds, or the investment of uninvested principal or *corpus* (if it susceptible of being invested); and a general supervision over all the trust department of the bank.

Q. You are familiar with this so-called Cooke Trust? A. Yes, sir.

Q. In which Carrie S. Beam and the other complainants in this suit are beneficiaries? A. Yes.

Q. In that trust were there 200 shares of the Brooklyn City Railroad Company? A. Originally, in the trust, for the one-half of the residuum of the Sarah A. Cooke Estate, there were 200 shares.

Q. And were those some of the securities that were obtained and invested by the testatrix in her lifetime? A. All of them.

Q. They all were? A. Yes, sir.

Q. You mean by that, all of the 200 shares? A. Yes; and all of the securities that were received by us.

Q. They came to your Company in trust, then, as investments made by the testatrix herself? A. Yes.

Q. Just the same as the 225 shares of the Central Park Road and the 3 bonds of the Second Avenue, and the 2 bonds of the Twenty-eighth and Twenty-ninth Streets Cross-town? A. Yes.

Q. What do you, personally, know about the value of this stock of the Brooklyn City Railroad Company, while you had to do with the office of Vice-President? A. Well, it was one of my duties to keep continually in touch with the values of this stock, as well as other securities; and it has been my custom to examine the market quotations as set forth in the "Financial Chronical," regarding this stock; but, in addition to the quotations in the "Financial Chronicle," I have sought quotations from various brokers and bond people, that is, J. G. White & Co., and McClure, Jones & Reed, and I have weekly, perhaps, during February, 1917, down to this week, examined the values of this stock as reported in the financial papers.

Q. What is the character of this stock with reference to investment security? A. At the present time?

Q. Oh, what has it been? A. Primarily it was understood to be an investment stock of a very high character. I have understood that it was

probably held more by estates in the vicinity of New York than any other—

Mr. Hutchinson: You will pardon me, but Mr. Griggs, being one of the officials of the Company, is not on the stand in the position of an expert. I think he ought to state from his own knowledge, as far as possible, and not his opinion or understanding.

Mr. Harding: If your Honor please, in this case the real question is as to the good judgment and discretion of the defendant in keeping this stock; and, manifestly, in a case of that kind, what the witness himself knows is the general understanding among financial persons as to the character and status of this stock, and the change in it, directly bears on this very question as to his judgment and justification in holding the stock. That class of testimony was given in the other case, without a question, all the way through. Of course this witness cannot, perhaps, give quotations from day to day; but he has a perfect right, on this issue, in order to determine the justification of the Company in selling or holding this stock, to state to your Honor what the general knowledge was that he obtained in the financial world as to the character of the stock and the changes in it.

Mr. Hutchinson: Provided he states now that he obtained it. But a mere under-

standing, or opinion, or vague notion about things is not evidence.

The Vice Chancellor: Of course, that is one thing; but how does any man, in investment matters, learn whether an investment is good, or not? You have charged the Company with fraud—now, the question is, had they exercised that good faith and care in making the investments that the ordinary trustee is bound to exercise under the law? Now, he may state that he made inquiries of various persons, and, from his inquiries, he considered that it was a safe investment. Now, is it not proper, after making such inquires (remembering that there is nothing certain in life excepting death) for him to state that he made them in good faith and relied upon them? Why is he not justified in testifying to making the inquiries, and the view he gained from making the inquiries?

Mr. Hutchinson: Well, I have not the slightest desire to keep anything out, not the slightest; the broadest kind of investigation is what is wanted; but the point is this: Mr. Griggs has occupied a rather unusual position in regard to this trust; he has been the Trust Officer and had charge of it since 1917, and was a director four or five years before that, and he has had an opportunity to have definite knowledge about how this stock was going.

Now, I think it perfectly competent for him to tell us what he gleaned from any financial journal, or anything of authority, and tell us *that one thing;* but when he goes into the realm of theory or deduction from what he might get from the air, for instance, as to the general status of this stock and how people generally considered this stock, why, he gets into a very broad field which we cannot meet him upon at all.

The Vice Chancellor: Of course his views are not binding, except in so far as his views were based upon careful inquiry such as the law required. Now, he says, "I made all these inquiries, and it was my understanding, relying upon those inquiries, that it was safe, and I considered it safe to continue that investment"—is not that what he is practically saying?

Mr. Hutchinson: Well, I thought he went further than that.

The Vice Chancellor: Well, mere language does not convey completely the idea. That is what I understood him to say, and I took it that way.

Mr. Harding: It was my purpose to ask this witness what inquiries he made to get information with reference to this stock, and then to give his conclusions as to the advisability of selling it; and I will now just ask that question.

A. When I said that I "understood" (which I believe is what counsel objects to) that this stock was held largely by estates, I might say now that my information was obtained along those lines by personal interview with Mr. Hobart Porter, who was the Vice President and General Manager of the Brooklyn City Railroad Company. I asked him whether he knew if these estates were holding or selling their securities. He told me that in but a very few instances it was considered the best policy to hold the holdings, as the value of the Company was there; that at that time they had a surplus, and there was no reason why, with the continuation of their usual form of business, they should not maintain dividends indefinitely.

Q. Did you learn the previous history of this security, did you inquire as to the previous history of it, how it was secured? Tell us the nature of the stock, and the history of its dividends? A. This interview with Mr. Porter was before there had been any stopping of the dividends. It was after the accounting of 1915, when the valuation was written down—

Q. (Interrupting) Oh, what I want from you, Mr. Griggs, is to state what information you received as to the history of this stock from the beginning, how it was secured, what underlying securities there were; and state to the Court the history of the dividends as they have been paid, up to the time you held them? A. Well, I will have to begin at the beginning; so I am beginning with after the filing of the account in 1915. Then the question was considered in the bank as

to whether it would be advisable to continue this stock, and that question was considered with Mr. Fred W. Cooke, who was an owner of this stock individually, and is a *cestui-que-trust* under his mother's will; and, after due investigation with Mr. Porter, we decided that it was not advantageous to sell it; that it was still paying these dividends. The stock did not recede in value, for two or three years, a half a point, perhaps. The Brooklyn City Railroad Company, in July, 1919, declared its regular dividend, payable in October. At the time it declared this dividend I sent for a statement of the Company, and I found, by an examination, that it had at that time undistributed surplus on its books of over a half a million dollars. I called this fact to the attention of the Trust Committee, and we decided that the situation was better than it had been since we last investigated. Later on, in that year, about September 19th, without any previous notice or warning, it came out in the newspapers that the Brooklyn Heights Railroad Company, which was the lessee of the Brooklyn City Company, repudiated its lease and refused to pay the Brooklyn City Company its annual rental, (and also refused to pay the income tax), which, for that period, amounted to a payment of forty-six thousand dollars.

Q. The Brooklyn City Heights Company was then obligated to pay that income tax? A. That was for the rental. So that the Brooklyn City Company had to go down into their surplus and pay out forty-six thousand dollars in cash at that

particular time. Then the Brooklyn City Heights Company (the Company who ran the Brooklyn City) repudiated their lease and threw the road back on the Brooklyn City management; and they decided, and they so notified their stockholders, that, having to pay this tax and having to assume the liability of running the road, they would have to default in their dividend on their stock, although they would not default on the interest on their bonds. The stock of course, depreciated when this announcement came out.

Q. About how much? A. (Referring to a memorandum now produced by the witness). Well, it was selling for about 5, and it went down as low as 3¾.

Q. What was it selling for just before this insolvency happened? A. 10½.

Q. And then, after that insolvency happened, it got down as low as how much? A. The lowest bid price was 3½, which was in January, 1921.

Q. Now, at the time, did you make inquiries and seek the advice of others who were familiar with the conditions, as to the advisability of retaining or selling this stock? A. The minute that I got word from the Brooklyn City of the repudiation of the lease by the Brooklyn Heights I made immediate investigations and sought advice. I saw Mr. Job E. Hedges, who was the Receiver, as I remember, of the New York Railway Company in New York, and I saw James R. Sheffield, who was the Receiver of the Interurban, and I asked those gentlemen (stating that we were holding this stock in trust funds for four or five different

estates) what, in their opinion, we should do. Both Mr. Hedges and Mr. Sheffield said that they thought that while the trolley situation at that time was not particularly blooming in New York, there was a movement under way whereby it was beginning to be realized that the trolley companies should, at least, be allowed to charge a fare that would entitle them to pay their running expenses and their fixed obligations; and that, in their opinion, having that in view, they did not think that they would sacrifice the stock if they were in my position, particularly so because it was so small an amount, and if I did, I could not reinvest it to make a return that would in any way make up in the increase if the stock even went up a point or two.

Q. Go ahead. Are you through? A. No, sir; then I also wrote to the Chase National Bank of New York City, and asked their opinion on the subject; and they replied to me under date of December 29, 1919, that the "Traction situation in Brooklyn and New York is satisfactory—

Mr. Hutchinson: If you have the letter there, Mr. Griggs, you had better put the letter in, rather than read extracts from it.

The Witness: Well, I have a letter here.

Mr. Harding: We will offer the letter.

(Admitted and marked Exhibit D, 3).

A. (Resuming) I also saw Mr. Hobart Porter again (who was the Vice President of the Brooklyn City Railroad Company) and sought his ad-

vice as to what to do, and for a history of the Company, which he gave me, and told me that they had a good surplus, and he thought I should not sell at the present time. He wrote me a letter repeating his advice, which I have, and it is dated September 22, 1920 (Producing a letter).

Mr. Harding: I offer that in evidence.

Mr. Hutchinson: Of course I do not know what is in the letter, and I except to the statement of the witness as to its contents, so I think I had better look at it before they offer it.

The Witness: Of course the latter part of the letter has nothing to do with this particular case, Mr. Hutchinson.

Mr. Hutchinson (After examining the letter) That is all right.

(The letter was thereupon admitted in evidence and marked Exhibit D, 4).

Q. Had you completed your answer to the question? Have you any other letters that you wish to refer to, or papers? A. No, sir; I have no others.

Q. Now, will you state the market value of that stock, as near as you can, or the market price or quotations, if you have them, from the time just before this insolvency down to the time when you gave over the stock to the beneficiaries? A. The market price, just before the insolvency, was 10½ bid, 11½ asked. When I speak of "insolvency" I mean the insolvency of the Brooklyn Heights Company.

Q. The Brooklyn Heights Railroad Company, the lessee? A. Yes. Well, when it was found that the Brooklyn City Company had to do their own railroading, or just before it was found out that they had to do their own railroading, the stock was 10½ bid, 11½ asked; then, as soon as the news came out that they would not pay their dividend, and had to operate their own line, the stock dropped to 4 and 4½.

Q. About when did it do that? A. It did that about September 19, 1919.

Q. And how long was that after the default? A. That was almost immediately.

Q. Then, what was the course of the quotations after that? A. Then the stock held around that figure until about May, or June of 1920, and then it went down to 3¾ and 3⅞; then, in October and November it went up again to 4 and 4¼, and in December it touched its low mark of 2¾, there was a small block of about 30 shares sold at 2¾. Then, in January, 1921, it went up again to 4⅜; so that when it was delivered to the substituted trustees for Carrie S. Beam under the will of Sarah A. Cooke, in March, it was quoted at 4¾. It immediately went up and sold as high as 10 on October 13th.

Q. Of this year? A. Of this year.

Q. Has it been above 10? A. It has not been above 10; no, sir.

Q. And do you know what it is now? A. At the present time it is 8½ bid, 8¾ asked.

The Vice Chancellor: The new trustee sold at 7⅝ didn't he?

Mr. Hutchinson: 7⅞.

Q. Now, I wish to take you back: From all that you learned, and all the facts that you have referred to, what was your best judgment and discretion as to the advisability of selling or holding on to this stock?

Mr. Hutchinson: I object to that, if your Honor please, because it is going too far. Here is a gentleman who is the trust officer, and has direct charge of these transactions; now, he is asked his opinion upon his own judgment, he is asked to give judgment upon himself. He ought not to go on the record in that form.

The Vice Chancellor: Where does it make any difference? He has told what efforts he took to ascertain the value of the stock, in the protection of his trust, suppose his judgment was faulty, and he was honest in his judgment, would he be liable? I do not see that his stating that his mere best judgment was exercised would increase the force of what he says very much. The only thing is that it negatives the idea that he deliberately did what was wrong. I think the Court will presume that a trustee is faithful until his unfaithfulness is shown.

Mr. Hutchinson: Well, if your Honor

please, that is not in accordance with the decision in the original Beam case.

Mr. Harding: Your Honor, it seems to me that it is exactly in accordance with it. This action of the trustee was based upon the statute of 1899, which says that where a trust, which was an investment made by the testator himself, comes into the hands of a trustee, the trustee is not bound to sell so long as it acts *bona fide* and with good judgment. Now, the question of whether or not the trustee acted in good faith, of course, is a matter of fact; and it is proper for this witness to state whether he exercised good judgment, as he understood it, and in good faith, from all the circumstances. It was a perfectly proper question asked in the other case, and was answered.

Mr. Hutchinson: I am not charging anything against the Trust Company, or Mr. Griggs' conduct, that was not warranted by any facts. But when you put Mr. Griggs on the stand and he says "Oh, I am all right," that is not, to my mind, evidential at all.

The Vice Chancellor: Of course you object to his stating that his conclusion was that he exercised his best judgment in what he did?

Mr. Hutchinson: That is the point; and, of course, I was going to say, in answer to Mr. Harding—

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

Mr. Harding: I do not wish to be persistent, your Honor, but one of the issues in this case is whether he did act in good faith. Now, we make the offer, from this witness, from all the circumstances in this case, to show that he exercised the best judgment that he could, and acted in good faith; and we think he has a right to answer it.

The Vice Chancellor: Well, they object to it, of course, and if the testimony proves that fact it will be assumed that it is so.

Mr. Hutchinson: I think your Honor said, or intimated that the burden of proof is on us; the decision in the original Beam case is quite to the contrary, that the burden was upon the trustee to show good faith and reasonable discretion.

Mr. Harding: That is another reason why this witness ought to have the opportunity of expressing it to your Honor.

The Vice Chancellor: If you take that position, I will let him testify to it. It is not going to affect me very much; it is the testimony of what he did that will determine me.

Mr. Harding: I do not think it is very important, but I think it is proper that he should state what he did, under all of the circumstances.

(Question repeated).

The Vice Chancellor: I will allow the question. In view of your statement, Mr. Hutchinson, I think the question ought to be permitted.

Mr. Hutchinson: May I appear upon the record as objecting?

The Vice Chancellor: All right.

A. When I found out these facts I called a meeting of the Trust Committee, and conferred with the President of the institution, and laid my findings before them; and we considered the advisability of holding it. On the Committee was Mr. Fred W. Cooke, who as I said before, was the brother of the life tenant in this estate, he also was a holder of this stock, and the bank, also, was a holder of this stock in three other trusts; so that we were interested in more than one particular instance; and at the first meeting the policy was not definitely decided, because they thought I ought to investigate it further, which I did, when I got the letters from the Chase National Bank. And then, at the next meeting, it was decided that the only thing to do was to hold the stock, hoping that they would be able to work out their own salvation, and that the price would increase, so that if it should become necessary to sell it, or if any of these *cestui-que-trust* had asked that it be sold, why, we could give them more money than we would have in case we had sold it at that time. Then, in addition to that, I was weekly in consultation with the president of the institution, discussing this matter, together with others.

By Mr. Hutchinson:

Q. With what institution, may I ask? A. We call it "The Paterson National Bank," now.

By Mr. Harding:

Q. And what conclusion did you come to? A. And the conclusion, in every instance, was that we should hold it, not only in this trust, but in all the rest; that that was what was being done in other parts of the country; and that we, in our opinion, would lose more if we sold it than if we kept it.

Q. Well, after that accounting and discharge, what was done with this 200 shares of Brooklyn City Company stock?

The Vice Chancellor: Before going into that, that last answer is entirely irresponsive. In answer to a question as to his opinion, he goes on to relate the things that they did upon which the opinion was based.

The Witness: I thought I said it was the opinion of the Trust Committee and the president, and mine, also, that the only policy to pursue was to hold this stock, and that our policy has proved to be correct, considering the present market value.

Q. What ultimately became of those 200 shares? A. Why, the bank, as trustee for two other *cestui-que-trustent,* have the stock still.

Q. Has not a portion of it been paid over to Mrs. Beam? A. All of it, under Mrs. Beam's share, has been paid to her, and was paid to her in March. When we gave over the estate we gave

over this stock, and we had not sold it because we did not think it was the best time.

Q. You gave over her portion of it? A. Her portion of it.

Q. Now, I want to go back and ask you if you can tell me, from all the information that you had about this company, the Brooklyn City Railroad Company, what you learned with reference to it as an investment stock; and I mean by that, did you learn how it was secured, and did you learn the history of the stock from the time this trust came to you, or before that, down to the time you let it go?

Mr. Hutchinson: Now, if your Honor please, I consider that a little too much. In the first place, the question leads, but the witness is a lawyer, and I suppose that would not make so very much difference; and, in the second place he has asked the witness to absolutely close the transaction by saying that he did everything that it was possible to do, as the result of which, in his best judgment, he retained the securities. Now, it seems to me that is the very question that should not be allowed.

The Vice Chancellor: I do not think the question calls for that kind of an answer. He is asking what inquiry he made, and what knowledge was acquired of the stock, relating, perhaps, back beyond the time it was bought by the testatrix; and he is

going to show that the company familiarized itself with the history of this stock, as perhaps they should, in order to determine whether it was a safe thing.

Mr. Harding: The purpose of it was to show, from the history of it, whether it was a good investment to hold, and its probabilities of coming back, all bearing upon the judiciousness of their holding the stock.

Mr. Hutchinson: I would like the stenographer to read the question.

(The question was thereupon repeated by the stenographer).

The Vice Chancellor: I do not think counsel got the whole question.

Mr. Hutchinson: I had not got it, your Honor.

A. I only began investigating the stock in 1915. The investments had been made by the testatrix in her lifetime; so that when I commenced, in 1915, I found that this stock was was very largely held by estates and trusts; that it had a reputation, at the time the investments were originally made by the testatrix, as being a very high-grade investment stock.

Q. Did you find out how these securities were underlaid, or anything of that kind? A. I found that it had an authorized issue of six millions of bonds, and they only had out a little over a million and a quarter; and my recollection is that the stock came immediately after those bonds.

My investigation showed that they had more than earned their dividend of eight per cent on their stock for years, and did earn it up until 1919, in September, when their lease was repudiated.

Q. Now, let me ask you this: Did you learn the reasons why the stock gradually decreased in value from the time the trustee took it down to this time when the default was made? A. Yes.

Q. What was the reasons? The trolley situation in New York and Brooklyn became involved; Public Service Commissions were instituted, and acted in such a manner that the traction companies were of the opinion that they were about to be throttled. The opinion, and the *modus operandi* of the commissions were to reduce fares and to increase wages, so that the traction companies could not and did not make the amount of money that they had been accustomed to make in the past, could not make what they had made in the past; the thing obtained publicity and got notoriety, and that class of investment declined very rapidly in the minds of the average investors, and institutions that had bought traction bonds did not buy them any more.

Q. But the dividends on this stock did continue, from the time the company took it down to the time of this default that you have mentioned, at the same amount? A. Yes, sir.

Q. How much? A. 8%.

Q. 8%? A. 8%.

Q. Was there anything, except the occasional fluctuations in the market, due to general conditions of the market, that would affect the value

of this stock (except the things you have spoken of) from the time the trust came to the Trust Company down to the time of this default? A. No, sir, just except that the stock and that kind of investments, in the vernacular of the street, became "sour."

Q. Well, did you inquire several times during this period as to whether or not the facts warranted the probability that such a condition would grow better? A. Oh, that was the result of my immediate investigation; and in every instance, from everybody that I went to, I was advised against selling the stock, and told that the trolley situation must be better, *must be better,* and, in all probability, would be better.

Q. Was it the expectation that operating costs would become less rather than increase? A. More in the expectation that a higher rate of fare would be allowed by the Public Commissions.

Mr. Hutchinson: I would ask that you do not lead your witness, Mr. Harding; it is a very leading question.

Mr. Harding: Well, I will plead guilty of that, if you are going to stand upon it.

Q. You have spoken, by the way, Mr. Griggs, of certain other officers that were consulted—I will ask you who was your predecessor as Vice President of the Company? A. Mr. E. M. Berdan.

Q. Is he dead? A. He is dead.

Q. When did he die? A. He died in February, 1917.

Q. And another one was Mr. Francis McCully?

A. Mr. Francis K. McCully.

Q. What Committee was he on? A. He was on the Finance Committee; he was a broker and specialist in traction and other non-listed securities.

Q. And when did he die? A. About April, 1919.

By the Vice Chancellor:

Q. Was he Mr. McCully of the Telephone Company? A. No, sir.

Mr. Harding: He was a broker, here in Paterson.

The Vice Chancellor: There was a Mc Cully in the Telephone Company who died about the same time.

Q. And Mr. John Cooke? A. Mr. John S. Cooke was a member of the Board, and Vice President of the Paterson National Bank, and one of the children of Sarah A. Cooke, and for whose account the Bank held in trust one-fifth of all the shares of this Brooklyn City stock. He is dead.

Q. When did he die? A. He has been dead three or four years.

Q. And Frederick Cooke? A. Mr. Frederick W. Cooke was a brother of Mr. John S. Cooke, he also was a holder of shares of this stock; he was on the Board and he was a member of the Trust Committee, and he was in the Bank himself, daily, and I conferred with him almost daily.

Q. In reference to this stock? A. In reference to this stock.

Q. And did you confer with John S. Cooke during his life, with reference to it? A. Yes, sir.

Q. And Mr. Berdan, and Mr. McCully—at different times were they consulted? A. With Mr. McCully; but Mr. Berdan was always present when the Directors went over the matter.

Q. Well, what was the opinion of these various gentlemen with reference to holding this stock? A. Their opinion was unanimous that we should not sell it.

Q. Mr. John S. Cooke and Frederick Cooke were brothers of Mrs. Carrie S. Beam, the complainant in this cause? A. Yes, sir.

Q. And were beneficiaries equal with her with reference to this very stock? A. Yes, sir.

Cross-examination:

By Mr. Hutchinson:

Q. Mr. Griggs, what was your position with the defendant company when this trust was first created? A. I had none, sir.

Q. When did you first become connected with the defendant company? A. I would say off-hand, about 1914.

Q. About 1914? A. Yes, sir.

Q. And what was your first position? A. A Director.

Q. As a Director, were you a member of any committee upon the securities such as you have mentioned here? A. Not any officer that was recognized by the company. I had charge, by direction, of the Board of Directors, of the supervision, subject to Mr. Berdan's opinions and advice, of trust matters.

Q. Mr. William Berdan was your predecessor in office as Vice President of this Company, and Trust Officer? A. He did not bear the name of "Trust Officer"—Vice President.

Q. As Vice President, in that capacity he did what you have done since as Trust Officer, did he not? A. He did; yes sir.

Q. Then, as I understand it, you were a committee of one, of the Board of Directors to look after the investments of these various trust estates—is that right? A. No, sir.

Q. Well, I misunderstood you; did you not say that the supervision was turned over to you? A. No, sir; if I did—

Q. (Interrupting) Now, will you please just tell me; I just want to find out, that is all? A. Mr. Berdan was the Vice President; and when I became a Director he appointed me, subject to the Board of Directors, as his assistant in—I will use the words—having general supervision over the trust business.

Q. Well, now, that is what I understood you to say? A. Yes; but—

Q. Now, your knowledge began— A. May I not finish my answer?

Q. Finish your answer? A.—but that "general supervision" did not pertain to anything in regard to the making or the retention of investments; that was not final; all of these matters, after they were investigated by Mr. Berden and myself, were brought to the attention either of the entire Board of Directors, or of the Finance Committee of the Board of Directors, which had

almost concurrent power with the Board of Directors in making investments.

Q. Whose duty was it to bring any matter or matters in particular to the attention of the Board of Directors for its action? A. During what time, sir?

Q. I am speaking now of the time you came in there—from the time you became a Director? A. From the time I became a Director to February, 1917, it was Mr. Berdan's duty; from that time on it was my duty.

Q. Then you presented to the Board of Directors, from time to time, the questions as to not all the securities, but only some of them, as the questions arose—is that so? A. Yes; but there was an intermediate step—there was a presentation—you are talking about *me,* now?

Q. I am talking about you, yes. A. I made investigations daily, as I do now, and presented my findings, or my recommendations, to the Trust Committee, and they, in turn, if it was a matter that they could attend to without referring it to the Board of Directors, decided it; if not, my recommendations and their recommendations were presented to the Board of Directors, and it was decided upon as a Board.

Q. Yes; but as a matter of fact, were you not the first one who passed upon what should go before the Board of Directors? A. No, sir.

Q. In other words, suppose your suspicions were not aroused by a certain security, you would not present it to the Board of Directors, would you? A. Why, naturally, no, sir.

Q. No, of course you would not; therefore, only those securities concerning which you had knowledge, or suspicion, as to their desirability were presented by you to the Board—that is right, is it not? A. No, sir.

Q. That is the converse of what you said? A. No, I beg your pardon.

Q. Well, now, will you please state; I would like to know what your duties were there? A. As I said before, the Trust Committee met at stated meetings and examined, on their own initiative, the entire trust holdings of the Bank; and they, on their initiative, without my recommendations (if they did not care to have them,) decided certain matters, or referred them to the Board.

Q. Weren't you consulted? A. Why, yes; I attended the meetings.

Q. How often were those matters brought before the Board of Directors? A. Before the Board of Directors?

Q. Yes. A. It very seldom happened that it was necessary to bring them before the entire Board.

Q. In other words, then, the Trust Committee passed upon them, and it stopped there, in most cases—is that right. A. They generally functioned, yes.

Q. Did it ever stop with you? A. No, sir; not in this matter; no, sir.

Q. How many composed the Finance Committee? A. Three, besides myself, and the Chairman of the Board, ex officio.

Q. Who were they—members of the Board? A. Yes, sir.

Q. Now, just what was the first time that you had any knowledge about this Brooklyn City Railroad Company? You went in there in 1914—when did you first get on to this Brooklyn City Railroad stock? A. When Mrs. Beam brought her first suit.

Q. That was the first you heard of it? A. Oh, I wouldn't say that; you asked me when I "first got on to it"—that is when I "first got on to it."

Q. Well, let us make it clear: The first time your attention was called to the Brooklyn City Railroad stock was when Mrs. Beam brought her first suit—is that right? A. Yes, that is—

Q. (Interrupting) You had never given it any consideration, up to that time? A. No; I was not on the Board then—I wasn't even on the Board then, I was merely associate counsel.

Q. Well, this suit was brought in 1912, wasn't it? A. Yes.

Q. And you were elected in 1914? A. Yes, sir.

Q. But, then, you say it was when Mrs. Beam brought her first suit—I am speaking to you now as an officer of the Company, charged with the duty of examining the investments, and I ask you now when, as such officer, was your attention first called to this security? A. When I first went on the Board.

Q. Do you recall the amount at which that stock was carried at that time, in this trust, the value of it? A. I think, sir, the whole 225 shares were carried at $4,800.00.

Q. $4,800.00? A. I think so; that is my recollection.

Q. That is correct. Now, then, when you went on the Board in 1914, and after that time, the value fell, in your account in 1915, to $4,000, for all the stock for all five shares, is that so? A. My remembrance is that it depreciated before that account, but it was not written off until that account. You see, the five accounts, the share of Mrs. Sarah A. Cooke and all of her five children, was always carried in one account, and the income divided into fifths, obviously, because it saved Surrogates fees, counsel fees, and in fact, it made one accounting instead of five. Up until that year they had always been one account. Mrs. Beam objected to it being carried on in that way, and wanted the estate divided. So we communicated with Mrs. Beam and asked her what she wanted to do, did she want us to sell one-fifth of all these things and give her the money, and put it in her trust; and, in the alternative, we made a division of these five holdings, and got the opinion of all of the other heirs to give Mrs. Beam her first choice of the entire estate, which she took; and her first choice is the list of investments that were separated from the whole account, in the 1915 account, and carried on down to the time that we were discharged, with the exception of such re-investing as might have been necessary to do during the period.

Q. Are you sure that she selected the securities that she wanted? A. I think she selected them through her counsel here, Mr. J. H. Reynolds of this city.

Q. Don't you know that the securities were all

divided equally, so far as possible, that is, the stock securities and bond securities were divided equally among the five shares? A. I don't think so; I know we wrote Mrs. Beam, and know that to have been the consent of all the four children, to give Mrs. Beam the first choice; and I know we wrote to her counsel and told him that; and it was my impression (I was not an active officer there then) but it was my impression that what she chose we took.

Q. Then this first trouble only arose shortly after you took office? A. I do not understand what you mean by "trouble."

Q. I say this Brooklyn with the Brooklyn City Railroad Company arose shortly after you took office? A. No, I would say that there had been a depreciation of the stock, somewhat, from the inventory price of the executors.

Q. Before that? A. Before I took office.

Q. Well, now, was it ever brought to your attention by Mrs. Beam, or her sons, that the condition of this stock was not satisfactory? A. Yes.

Q. Didn't they complain to you that the stock was declining, and that something ought to be done about it? A. No, sir.

Q. What? A. No, sir.

Q. Didn't ever write you letters about it? A. No, sir.

Q. Are you sure about that? A. I have never seen any letters.

Q. Did they write to the officers of the Company? A. I mean the Company; I am not quibbling over words. She wrote the Company, complaining about the securities, and we wrote her

and told her that if there were any she did not like to please advise us, and we would sell them; and I have no record of her ever asking us to sell any of them.

Q. Well, I understood that she had demanded of you to make some disposition of them? A. Well, I am open to correction. You are asking me my understanding, and I am giving it to you.

Q. All of the investigations that you have made with regard to this security were made, as I understand it, of people who were interested on the inside of the Company, were they not? A. No, sir—not the Chase National Bank, or Mr. Job E. Hedges, or Mr. James R. Sheffield.

Q. Mr. Hedges was the Receiver, wasn't he? A. Not of that company. This Company never went into bankruptcy.

Q. This Company never did? A. No, sir; it is making 15% now.

By the Vice Chancellor:

Q. What—the Brooklyn City? A. The Brooklyn City.

Q. The Company is making 15% and paying 8% dividends? A. They are not paying any dividend; their stock has gone up the equivalent of 100 points inside of three months.

Q. What is the par value? A. $10.

Q. Then, when you held it for $4,800 it must have been up to 24? A. Yes, sir.

Q. Around 24? A. Yes, sir—225 shares, it was.

The Vice Chancellor: Yes, it would make it around that.

By Mr. Hutchinson:

Q. Did you, when the dividends on this stock ceased, communicate with Mrs. Beam on the subject, at all? A. Not immediately; no, sir.

Q. Did you, sometime afterwards? A. Yes, sir.

Q. And to what purpose? A. I gave her a history, as I remember it, of the Company before and after the repudiation of the lease to the Brooklyn Heights Company. I told her, as I remember it—of course she must have the letter—have you got the letter?

Q. I haven't anything here. A. I told her they had a surplus of over $535,000; that we had asked certain people about it, and that it was the best opinion of the officials and proper officers of the Bank, that it should not be sold.

Q. You refer to the letter of April 15, 1920, do you not? A. I cannot tell you which it was, without seeing it.

Q. (Exhibiting a paper to the witness) I show you a letter—that is the letter you refer to, is it not? A. Yes, sir.

The Vice Chancellor: Do you desire to have it marked?

Mr. Hutchinson: I have no objection; I do not want to omit anything, though it does not bear very much on it, from our point of view; but I have no objection.

(The letter was thereupon offered by Mr. Hutchinson, and marked Exhibit C, 5.)

Q. From your experience now, looking backward at this situation, and if you were now placed

in a similar position, would you have continued that investment? A. Yes, sir.

Q. What are your reasons? A. I would have doubled my money.

Q. What are your reasons for saying so? A. I would have doubled my money if I had held my stock until now, if I had not sold it in those days.

Q. You observe that the stock fell from $4,800 (that is, the whole block) to $4,000, and then to $800, and then to $310—now, upon what theory would you say you would have doubled your money? A. That was not the question, Mr. Hutchinson, that you asked me. I am not going back to the executor's figures. If you wish to qualify your question I can answer it, perhaps.

Q. Well, in 1915, certainly, the Bank had the trust—they had it in 1915, and it was $4,000 then, and went from that to $800 in a jump; now, when it went to the $800 mark, do you think now it would have been the part of wisdom to have sold that stock out? A. Looking at it from the mechanical standpoint, in the view of figures, and not considering, perhaps, the future of this thing, I would say "Yes, sir." You can always look back and say what you should have done.

Q. Oh, I understand, but now the question is this: Was the information that you received, and the knowledge that you had regarding this security, in the light of the present situation, sufficient to warrant you holding on to that security? A. I could not answer the question that way.

Q. Well, I will ask you another question— A. (Interrupting) You are asking me to answer some-

thing for you which now, in the face of past performance, I can say, from a financial standpoint, is not the thing to do.

Q. I can agree with you when you say that "hindsight is a great deal better than foresight;" but I am going to ask you this question: Do you not know that there was an ulterior reason, an ulterior purpose, in holding on to this stock by the various banks and trust companies that held it for various estates, so that it should not be thrown upon the market and thereby disturb further the trolley situation in the City of New York? A. No, sir.

Q. Did you not know that? A. No, sir.

Q. Never heard it rumored? A. No, sir.

Q. You never heard it said that this class of securities were being held by banks and trust companies in order to protect the trolley situation in New York? A. No. I know that the Chase National Bank, in whose opinion I gave the greatest weight, did not hold any.

Q. Did not hold any? A. No, sir.

Q. And that is one of the banks from which you received your information and advice, wasn't it? A. Yes, sir.

Q. Was your decision to hold on to this in any wise influenced by the fact that you were receiving the income, in the way of dividends, from this stock, even with the decline in its value on the market? A. No, sir.

Q. Did you not say, in your direct examination, that as long as the income was coming you thought it was not advisable to dispose of it? A. Yes, sir.

Q. That, of course, was without regard to the interests of the organization, wasn't it, as to capital? A. No, sir.

Q. Why do you say that? A. I say it because, in my own opinion, it is elementary that it is advantageous to hold a stock that is paying a dividend, rather than to sell it and get such a small corpus that you could not reinvest it in anything, and have to carry it in a bank balance for a two-and-a-half per cent income.

Q. Then, upon that theory, you could almost exhaust the whole of the capital, and get the income, and you would be doing your duty as a trustee—is that right? A. I cannot understand whether your statement is a conclusion or a question.

Q. I am asking you—I raised my voice at the end (Question repeated). A. No, sir.

Q. Where do you draw the line, as a trustee, now, between the exhaustion of the capital and the receipt of the dividend—how far would you go? A. I could not tell you, unless you give me a specific case. No two cases are alike.

Q. Well, you never did reach the point of division with regard to the Brooklyn City Railroad, did you? A. Yes, sir.

Q. Well, you never disposed of the stock that was in your hands? A. No, sir; because we thought it the better course to pursue not to dispose of it.

Q. And you were receiving dividends, were you? How long did you receive dividends on the stock? A. Up until July, 1919.

The Vice Chancellor: There was a dividend declared in July, payable in October.

Q. Do you think that you came within the statute with regard to good faith and reasonable discretion in holding on to that stock? A. Yes, sir.

Q. Did you not think, Mr. Griggs, as has been set forth in your answer, not only in this but in the former suit, that inasmuch as you had received these securities from the testatrix, who had made the investment in her lifetime, you were amply protected by the Act of 1899, and that you had no duty to perform? A. Do you ask me for my legal opinion on that?

Q. Why, no, I ask you as a trust officer? A. I will say, "Yes."

Q. Eh? A. Yes, sir.

Q. You thought that was ample protection? A. Oh, no, not "ample protection"; we did not consider it in that manner.

Q. Well, what do you mean? A. The idea is to consider the interests of the *cestui-que-trust* first. We do not consider our legal position in those capacities, except to the extent that we want to try to do, and generally do do, the best that reasonable people can do in the care and management of their affairs and money and securities. Now, the fact that a stock should be paying 8%, and we would get, as we did in this case, probably 2½% commission on the income—the fact that it is paying 8% would not enter into our minds that we should continue it for that reason. The allowance of commissions—the amount of money that the trustee makes—is purely incidental. There is as much

of an ethical situation between the Bank and the *cestui-que-trust* as there is between a lawyer and his client.

Q. Well, I am not discussing the question of commissions. A. But you opened it.

Q. No, I did not; I am not claiming, at all, that anything you did was with the idea of making money out of it by way of commissions, or otherwise—I did not say that—but is it not a fact, as shown by the pleadings in this case, and in the former case, and your general attitude toward the security, that you have sheltered yourself behind the Act of 1899? A. No, sir. That question was brought up because Mrs. Beam threatened suit. She employed counsel, Mr. Pierre Cook, of Jersey City, who wrote us, setting forth his side of the case, and intimating that if we did not care to make an amicable settlement he would be forced to bring suit. We wrote him, as I remember it, and said that we could not make any settlement because we had used our best judgment, and, in any event, we could not confer with him on the subject; and we called his attention to the Act of 1899, which said, among other things, or which authorized, among other things, the retention of investments made by a testator in his lifetime. That is where that Act first dropped into this matter.

Q. You are a member of the Bar? A. Yes.

Q. And, in the performance of your trust duties in connection with this estate, did you ever have brought to your attention, or know of the case of Flynn vs. Brooklyn City Railroad Company? A. I cannot say that I had.

Q. You never examined into the status of the Brooklyn City Railroad Company, as reflected in the opinion in that case? A. No, sir, I do not remember it.

Q. Was it any part of your duty to do that, as trust officer? A. Why, I presume—no, it was not part of my duty to examine the statutes or reports in other states; no, sir, it was not.

Q. You say it was not your duty to be informed upon any question that might arise in a case of that character wherein the status of the Brooklyn City Railroad might be discussed as adjudicated? A. No, sir; I do not say that at all.

Q. Well, what did you say, please? A. Well, in answer to what question?

Q. Well, the last question? (Last question repeated at the request of examining counsel, as follows: "Q. You say it was not your duty to be informed upon any question that might arise in a case of that character wherein the status of the Brooklyn City Railroad Company might be discussed as adjudicated?").

Mr. Hutchinson: There appears to be a deadlock.

Q. Was there any person connected with your company whose duty it was to do that very thing —I mean, to examine the status of the securities held by you in respect to any of the decisions on litigations that might have been made? A. Why, Mr. Hutchinson, it was my duty, and it was also the duty of the officers, and it was the duty of the Trust Committee, to use and obtain all information, good, bad or indifferent, that they could ob-

tain with their usual care. They could not go and examine statutes in other states. If I, as a lawyer, in the course of my examination of cases in other states, came across anything that was germane or important, I made a note of it. If Gov. Griggs, in his practice, came across such cases, or such references, he referred them to me, and would say, "Perhaps this will be of interest to you." I think that condition does not usually exist in other institutions. I think that, in my opinion (and you have asked it) is more care than the usual trust officer gives. The usual trust officer reads the newspapers and the quotations; he does not know anything about receiverships or court reports.

Q. Then, in connection with that, you referred in your direct examination to the "Financial Chronicle"? A. As one of the many, yes.

Q. That is a New York security publication, is it not? A. Yes, sir.

Q. And is acknowledged throughout the business world as an authority? A. Yes, sir; in the financial world.

Q. And did you not see anything in the "Financial Chronicle", during the period of the difficulties of this Brooklyn City Railroad Company, to indicate the necessity for a closer supervision or a quicker action on the part of the Trust Company? A. No, sir.

Q. You did not? A. No, sir.

Q. What did you mean, Mr. Griggs, when you said that the amount that you would have realized would have been so small that it was hardly worth while to sell the security? A. I meant that

if I sold 20 shares of stock at $4.00 a share, I would only have $80, and I would have to invest that to get any return from it.

Q. And that, you think, warranted you in holding on to it indefinitely? A. I think the general market shows that it did warrant me. I would have had $80.00, plus, say 2½% on it, if I had sold it. If I had not sold it I could sell it now for $180.

Re-direct examination:

By Mr. Harding:

Q. Just one question, Mr. Griggs: Since your connection with the defendant has there been any time, in the light of the knowledge that you then had, and was obtainable, when it was advisable to sell this Brooklyn City Railroad stock? A. No, sir.

Recess until 2 o'clock p. m.

AFTERNOON SESSION.

Hearing of the cause resumed at 2 o'clock p. m.

GEORGE S. COE, sworn.

Direct examination:

By Mr. J. W. Griggs:

Q. Your residence? A. Engelwood, N. J.

Q. Your business? A. Banker and broker.

Q. What is the name of your firm? A. A. M. Kidder & Co.

Q. Where is their place of business? A. 5 Nassau Street and 11 Pine Street, New York.

Q. How long have you been connected with that firm? A. Since 1890.

Q. Are you familiar, as a banker and broker and dealer in stocks, with the Brooklyn City Railroad Company? A. More or less, yes.

Q. Have you bought and sold the stock of that company? A. Many thousand shares, yes.

Q. Have you had occasion, as a broker, to inquire into its situation, its circumstances, etc.? A. Yes, sir.

Q. Tell us, just briefly, what the lines of that Company are? A. The Brooklyn City Railroad is the main trunk—surface trunk—of the B. R. T. system, over which all the collateral lines must pass to get to the Terminal; and is, what you might call an underlying, *the* underlying property of the B. R. T. surface lines.

Q. By "B. R. T." you mean the Brooklyn Rapid Transit Company? A. Yes.

Q. And that is the company that comprehends all the east end of Long Island? A. The parent company.

Q. Well, the Brooklyn Rapid Transit, as has been said, was leased to the Brooklyn Heights Company? A. No; the Brooklyn City was leased by the Brooklyn Heights, which was a satellite of the B. R. T.

Q. Do you know the terms on which it was leased? A. The original lease was a ten per cent guaranty, I think, in perpetuity; and securing that lease, in addition to its rate, there were deposited with the Peoples' Trust Company, as trustee, a

very considerable number of securities; I am harking back now twenty odd years; they had some very high-grade securities, which, pledged with the guaranty, it was unique in that respect. Some of these high-grade securities were, at the instigation of the parent company, and with the consent of both the Brooklyn City and the Brooklyn Heights, sold, and others substituted; but when the default occurred there were a good many hundred thousand dollars of securities which were surrendered by the Brooklyn Heights by their lapse in the payment of the dividends and went back to the Brooklyn City, and are now their property, under the default.

Q. Well, what happened to the Brooklyn Heights Company, the lessee, that made it give up the lease? A. My recollection is that the Brooklyn Heights was not much of a company in itself, except as a lessor. The child was bigger than the parent, as a matter of fact. The Brooklyn City was more of a property than the Brooklyn Heights, which had no revenues, could not make good the guaranty, and when the situation occurred which called for default the property, therefore, came back to the original holder.

Q. About when was the default made, do you remember—1917?

Mr. Harding: 1919.

A. In that respect I would have to refer to the evidence that has been produced; I would not trust my memory.

Q. Well, a few years ago? A. A few years ago.

Q. You have been familiar with the situation, financial, operating, etc., of the Brooklyn City Road, from that time on to this time? A. Yes.

Q. And you know about the fluctuations of the stock? A. More or less, as traders.

Q. Mention any very large stockholders that you have sold to? A. Well, since the default trading now has been mostly street trading rather than investment trading. Prior to that, we sold that stock in reams; I recollect one trade with the Mutual Life Insurance Company of 100,000 shares.

Q. That was sold by your house? A. By our house; I think we bought it from the Peoples' Trust Company of Brooklyn; whether as trustees they held it, or what, I do not know; and I turned it over to the Mutual. We were then trading per cent—240% or equivalent to $24 a share. I sold to the Equitable Life, that same year, it must have been twenty-five or fifty thousand shares in the aggregate, and they gave me *carte blanch.*

Q. Do you know whether they still hold that stock? A. I am confident they do; I am sure they do, because in conversation only the other day with one of the officers he informed me that they had not been able to market it since.

Q. Well, from what you know of the condition of the market and the value of this property, its prospects of prosperity in the future, what have you to say as to the advisability of having sold the stock at the market after the default and the fall in price which occurred in 1919—what have you to say as to that? A. Well, my judgment is this, and I have acted upon it as trustee (I am the trus-

tee of a considerable estate, and have, among other things, about two or three thousand shares of this stock); I have held it, and at times I have been disposed to average, but I am still long, I still have it, and intend to keep it until it is demonstrated that its opportunity is exhausted.

Q. What elements of unusual or extraordinary value are there in this property, this Brooklyn City Railroad property? A. Several. One underlying fact is that, on the Brooklyn City property is built a power house of the B. R. T., which supplies most of the electric juice for the system. That is No. 1. I should say the fact that it is the principal artery of the whole surface system over which all these collateral lines have to go into the Terminal is No. 2. Perhaps the fact that these securities which were taken in, might some day appreciate to a point where they would represent a very considerable value—No. 3. And the improving outlook of the B. R. T. system—I think it will be reorganized before the I. R. T., because the situation on that side of the river is much better than with us in New York—No. 4. The fact that it is earning its own way now, even though bereft of a good deal of equipment when the system was thrown back, I think, and having to face a great many financial and physical vicissitudes—the obstruction of Mr. Hylan, and everything else, would be a contributing feature—and my conviction that they are very soon going to start on dividends.

By the Vice Chancellor:

Q. You spoke at one time about the fact that you were considering whether you would produce

an "average"—what did you mean by that? A. By buying low, to average my high stock. It is a technical term.

The Vice Chancellor: I understood it, but I wanted to make it clear on the record.

Cross-examination:

By Mr. Hutchinson:

Q. Mr. Coe, you have had a good many years of experience, not only in the banking or brokerage business, but also in handling trust estates and in the management of trust estates? A. 47 years.

Q. Under the conditions that existed in this case, assuming that in 1905 a security like the Brooklyn City Railroad—and, in fact, the Brooklyn City Railroad stock—came into your hands as a trustee, and depreciated from that time until about 1915—a block of 200 shares—at the rate of $800, would you, as the trustee, have felt that you were justified in retaining that security? A. My position was exactly that.

Q. Did you have a like experience? A. Exactly, with this very same stock; and many of my clients had exactly similar experiences—the Pratt Estate, and I could mention a list as long as your arm.

Q. Upon what do you base that conclusion, in your own mind, as to the advisability of holding this stock? A. Because the property, in my judgment, *per se*, was a payer, independent of parentage; in fact, it would have been very much better

had it been divorced from its parent at any phase of the game; that was always my judgment.

Q. But, as a trustee, having taken securities supposedly worth $4,800, when there was a drop of $800, wouldn't you have looked about a bit to see whether it was advisable to sell; and would you not, ordinarily, have disposed of the security and taken one of higher and better prospects? A. There was no condition prevailing during that period where very great promise did not exist in that property. The Brooklyn City, of all the traction guarantees, in my opinion, was unique in its strength. It was inconceivable, to my mind, as a trustee, that the Brooklyn Heights would ever default on that ten per cent guarantee for the reason that they would have to surrender from a half to a million dollars, face value, of securities, and I knew they had them because my senior partner was Vice President of the company and was custodian of the securities, and I kept my ear very close to the ground, besides being acquainted with the physical side of the operation of the property.

Q. Well, now, surviving that slight shock, suppose the stock had gone on steadily depreciating until that same block, worth $4,800 in the first instance, had reduced itself to $800,—now, I ask you if, in the interval between the reduction from the $4,000 basis and that of $800 there was not a time when it was advisable to get out of the Brooklyn City Railroad stock, so far as the trust was concerned? A. Not in my judgment.

Q. You are both a banker and broker, are you not? A. Yes, sir.

Q. Is your opinion as an expert, and also as a trustee, colored by the fact that you are not only a trustee but you are also a banker and a broker? A. My judgment was only colored by actual facts and existing trading conditions.

Q. You do not think, then, that you might be influenced as a trader or dealer in stocks, in your conception of what was right and proper—or I will take out the word "right"—what was proper to do in a case where you were also involved as trustee? A Well, that is a nice question. I never allow myself, if you will permit me to use the expression, to undertake to "lead a double life"; I divorce my trading judgment from my trustee judgment.

Q. I have no doubt you desire to do so, but I am trying now to get at the possible coloring of your mind by the occupancy of two relations, one as a trustee and the other as a dealer in the stock? And it is no reflection upon you if you say that that is so. A. As a trader, you must appreciate that I would not go long (to use the technical term,) I would not buy a thing I thought was worthless—I would not carry in stock a thing I could not borrow on, or at some time or at some price, sell. I would not buy, to sell again, anything that I thought was, in itself, a bad investment. As traders in investment securities we specialize in guaranteed and underlying stocks, and only carry in the box, ourselves, as dealers, what we would feel warranted in selling to trustees, or take in myself as a trustee. That has been our policy always.

Q. You mean to say that you do not deal in anything but legal securities? A. In our investment end—not "legal," they are not legal, you know, guaranteed stocks are not "legal investments" but they do go to trusts that have latitude in regard to their investments.

Q. In other words, you do not confine yourselves, even in the investment department, to securities that are made legal for trustees in your state? A. No. High-grade, but not necessarily legal.

Q. Do you recognize the "Financial Chronicle" as an authoritative publication in your line of business? A. Not infallible. It is accepted as the best evidence that you can obtain. The "Financial Chronicle" does not know markets, they obtain their markets from specialists; and every week, or at least, every month, I suppose I quote as many as one hundred and fifty items for the "Financial Chronicle", as many other specialists do; and they obtain from the specialists as nearly accurate quotations, as nearly the market, as possible; that is the way they make up their tabulation.

Q. Do you recognize the "Wall Street Journal" as being of equal authority? A. Not on quotations; but, on opinions, very good.

Q. As to the inner working and development of companies? A. They give news; but they do not pretend to be a quotation sheet.

Q. Mr. Coe, you were a witness in the former suit, weren't you? A. I believe I was.

Q. In that suit you testified only as to the securities involved therein; of course this Brooklyn

City fiasco had not occurred. In that suit, at page 59 of the testimony in the printed book, you testified concerning credit properties, using the term "credit properties"—I want to ask you if this was one of those properties that you called "credit properties", and just what you meant by that? A. By "credit properties" I mean properties in themselves, irrespective of their parentage, that would earn their fixed charges and dividends, the guaranteed dividends.

Q. You testified in that suit, at page 59 of the book, concerning the New York City Railway, that that was a holding company, was showing credit, so it was fair to presume that all of those underlying properties, so completly submerged as they were, and such prices being paid by Mr. Whitney and others before their original acquisition, were credit properties" do you recall that? A. That was presumption. That is balance sheet.

Q. Now, has this New York Railway, or the Metropolitan, anything to do with the Brooklyn City Railroad? A. Nothing whatever.

Q. No connection? A. No.

Q. Were you advised of the suit of Flynn vs. Brooklyn City Railroad Company? A. No; I don't know that suit. I know Mr. Flynn, and his earlier relationship with the construction of many of the collateral lines, the Nassau Electric, and others; but I do not know that suit, or its text.

Q. That case was decided in 1899, wasn't it? A. What suit?

Q. Flynn vs. Brooklyn City Railroad Co. A. I have no knowledge.

Q. Your attention was never called to that suit? A. No.

Q. Never knew anything about it? A. Nothing, except that Mr. Flynn, on some contract (construction work, I believe) had a suit against some one of the companies.

Q. But I mean as to the underlying conditions of the Brooklyn City Railroad Company? A. I never knew of the suit. If you will permit me, did the Flynn suit bear against the Brooklyn City?

Q. It is against the Brooklyn City Railroad Company? A. That must have been a suit that was brought against the Brooklyn City at the time the dividend was broken from 10% to practically 8%. Can I state my knowledge and belief on this thing?

The Vice Chancellor: Of course you can tell all you know on it, whether it is upon information and belief, or not.

A. Well, there was a suit brought against the Brooklyn City, and if you will excuse me, I think I can recall what that suit was.

Q. All right. A. The guarantee of 10% was absolute. When the agreement, as I recall, was made between the Brooklyn Heights and the Brooklyn City to take over this property, there was a period intervening before that contract was finally signed. Brooklyn Heights claimed that the construction work, which immediately preceded on the Brooklyn City, (I believe the transmission from horse to electric power, or something) should be Brooklyn City's responsibility—maybe that is

where Flynn came in—and a decision was rendered against the Brooklyn City after a long period of suits and appeals; and it amounted to several hundred thousand dollars. Brooklyn City, therefore, had to pay for that suit, and they did it by deducting from us, the Brooklyn City holders, a proportion of the dividend each year until that dividend I think was finally restored to 10%, if my memory is correct—or did it default as an 8% stock, which? It eventually came back. That may be the Flynn suit.

Q. I must compliment you on your familiarity with the case; that is what I wanted to find out about the case. You are more familiar with the case than I am. A. Is that the Flynn suit?

Q. That is the Flynn suit. A. Yes.

Mr. Medina: In view of the statement of the witness, would it not be well to read the opinion of Mr. Justice Vann in the Court of Appeals in the Flynn suit into the record here? It seems to differ very materially from the statement made by Mr. Coe?

The Vice Chancellor: Oh, no; you can call the attention of the Court to the opinion, and, perhaps, offer it in evidence.

Mr. Hutchinson: I want to introduce Mr. Medina, of the New York Bar, representing Mr. William B. Beam, and ask that he may be permitted to be heard. He was unable to be here this morning on account of another engagement.

The Vice Chancellor: He may participate. (To Mr. Medina) I do not want the

opinion read on the record; it takes up a lot of time. Of course it can be offered in evidence if it is not objected to.

By Mr. Hutchinson:

Q. I want to ask you, if you knew there was any suit of Flynn vs. Brooklyn City Railroad Company in 1899, why weren't you put upon your guard with regard to the instability of this security? A. In my opinion, and that of my senior partner (who was at one time Receiver of the B. R. T.) we did not think that suit was going to hold.

Q. But it did hold, didn't it? A. After five years of appeals, I believe.

Q. And in that suit, Mr. Coe, there were allegations which were not denied concerning the unsoundness of the Brooklyn City Railroad, weren't there? A. No, I don't think so; I cannot recall it. I am ignorant of the case, except the bare facts that were recited to me by my senior partner.

Re-direct examination:

By Mr. J. W. Griggs:

Q. When did you say this Flynn suit was? A. 1899.

Q. I would just like to ask you what the stock sold for after that—after 1899? A. Well, in 1903, when I received my trust, it was selling at 240%, or $24 a share.

Q. So the Flynn suit did not hurt it very much? A. It went right on selling at full price while the suit obtained.

By Mr. Hutchinson:

Q. But that was by reason of the connection with the Brooklyn Heights, wasn't it? A. I don't think so. Intrinsically, that property was always good, and it would have been much better without the guaranty.

Mr. Hutchinson: Your Honor has ruled that this opinion would be evidential?

The Vice Chancellor No, I have not ruled upon it; it has not been offered. I said I would not allow it to be read into the record.

Mr. Medina: Well, I wanted to offer it in evidence. I do not make any special point of having it read.

The Vice Chancellor: What is the date of the opinion?

Mr. Medina: The date of the opinion is 1899; it is an opinion of the Court of Appeals of the State of New York.

Mr. Hutchinson: For the convenience of the Court, we have a certified copy of that opinion.

The Vice Chancellor: It is not necessary. Give me the book and page.

Mr. Harding: It seems to me it is irrelevant and immaterial, anyway, from my viewpoint; and especially in view of the fact that the whole thing has been brought out on cross-examination of the witness. It is not a substantive part of their case.

The Vice Chancellor: Well, the testatrix did not die until six years afterwards; she had the stock when she died.

Mr. Harding: Where is the opinion you are speaking of?

(The copy of the opinion was handed to Mr. Harding for his inspection).

The Vice Chancellor: You say the Court of Appeals decided finally in 1899?

Mr. Medina: In 1899; and the purpose of offering that opinion was that the witness took upon himself to explain to the Court and having written down upon the record what his view of what that opinion was, and as that is upon the stenographer's minutes, it seemed only proper to have the real facts appear; and we have a certified copy here of the opinion which has just been offered merely for that purpose.

Mr. Harding: My statement now is this: On cross-examination, when they asked the witness a question that was merely for the purpose of cross-examination, to test his credibility, they were bound by the answer, and it is not possible for them to contradict anything that he said that was brought out on cross-examination for the mere purpose of contradicting him.

The Vice Chancellor I do not quite see the force of the testimony, anyway, so far. Of course, I have not slept with the case, as you gentlemen have. You are attempting to hold this trustee on the ground that

it has negligently performed its duty, by means whereof the *cestui-que-trustent* lost money—now, what difference does it make what this witness testified as to this Flynn case? Is it not a question as to whether a trustee, in the use of ordinary judgment and common sense, honestly performed his duty, and, by mischance or misfortune, a loss occurred? Is not that all there is to it?

Mr. Medina: Well, I think the answer to that, if your Honor please, is that we did not, in any sense, solicit that particular testimony of the witness; he volunteered it himself, as your Honor will recall.

The Vice Chancellor: I will allow you to offer the opinion in evidence. I do not see how even that is material, or the testimony of the last witness as to what his view of that case was. Strictly speaking, your offer should be excluded, because you brought out the story yourself, and you can hardly be heard to contradict your own witness; and he became your own witness when you brought it out as new matter. I will admit it, though. I do not see how the testimony bears on the case—either that, or the opinion. Just dictate the title of the case and the page, on the record.

Mr. Medina: We have a certified copy.

Mr. J. W. Griggs: We do not make any point about that.

The Vice Chancellor: Put in the book and page of the report, and the title of the case.

Mr. Medina: The citation is Flynn vs. Brooklyn City Railroad Company, 158 N. Y., 493.

MRS. CARRIE S. BEAM, sworn.

Direct examination:

By Mr. Hutchinson:

Q. Mrs. Beam, you are one of the complainants in this cause? A. I am.

Q. And you are the Mrs. Beam that brought the former suit against the Paterson Safe Deposit & Trust Company? A. I am.

Q. And you are the mother of the three remaindermen in this suit? A. I am.

Q. Did you ever have any conversation with any of the officers or directors of the Paterson Safe Deposit and Trust Company about the Brooklyn City Railroad Company? A. None, whatever.

Q. Did you ever write any letters to them concerning the Brooklyn City Railroad Company? A. Only when the dividends grew less. I wrote and asked why, and no answer was sent to me, no reply.

Mr. Hutchinson: Have you any letters, Mr. Harding?

Mr. Harding: What letters do you refer to?

Q. Letters written to the company, were they, Mrs. Beam? A. I wrote to Mr. Griggs; I wrote to John L. Griggs, and I received no reply.

Q. Did you write to Mr. Connolly, also? A. Yes, I did write to Mr. Connolly.

Mr. Hutchinson: Letters to Mr. Connolly, Mr. Harding, or to John L. Griggs? Have you any such letters, or may I use copies?

Mr. Harding: I don't know; let me see them; I am not familiar with them, at all.

(Mr. Hutchinson thereupon handed to Mr. Harding for his inspection a number of letters).

Mr. Harding: Mr. John L. Griggs says that the copy which has been shown here, dated April 14, 1920, addressed to John L. Connolly, in his memory, is substantially the letter which the bank, or which Mr. Connolly received, and that Mr. Griggs responded to that by the letter which you have offered in evidence this morning; is that right—does that purport to be the answer?

Mr. Hutchinson: Yes; I think that is up on the table.

Mr. Harding: This letter says "Replying to your letter of the 14th inst" (referring to the letter of the 15th).

Mr. Hutchinson: That is the one. Now, what does Mr. Griggs say about this other letter of April 16th; and there is one, also,

of April 24th (showing the latter to Mr. Harding).

Mr. Harding: We have not these original letters, not having been called upon for them; but we have no doubt that these are substantial copies.

Q. Mrs. Beam, I show you a copy of a letter dated April 14, 1920, addressed to "Mr. John L. Connolly, The Paterson Safe Deposit & Trust Company," and ask you if you wrote a letter like that copy? A. Yes, I did.

Q. And also a letter of April 16th, 1920, addressed to the same person and The Paterson Safe Deposit & Trust Company (showing the witness another paper), and ask you if you wrote such a letter? A. Yes, I wrote them, both those letters.

Q. And also a letter of April 24th, 1920, addressed the same way, and ask you if you wrote such a letter (showing the witness another paper)? A. I did, Mr. Hutchinson.

Q. Did you receive any replies? A. I received a reply from Mr. Connolly; and then I wrote him again, and I received no reply. I called him up on the 'phone, and asked him why I had not. He informed me that he had laid my letter to him on his desk, and that Mr. John L. Griggs had come in, in his absence, and found it there, and had read it, and had taken him to task for writing to me replying to my letter; and he furthermore told him that he could mind his own business, that he need not write to me. And Mr. Connolly said

"Don't write to me again, but if you want to know anything call me up on the telephone, and I will try to answer you."

Q. You have answered my question. Did you, in response to any letter, or inquiry, made of the Paterson Safe Deposit & Trust Company, receive any information regarding any of the securities that you were interested in as your portion of this estate? A. None, whatever.

Q. Nor any officer connected with it? A. No, none.

Q. No letters? A. None that I can remember.

Q. There was a letter here this morning, offered in evidence, that I will show you in a moment— A. Well, if you let me see it, perhaps I will remember it.

Mr. Harding: You mean the letter of Mr. John L. Griggs, of April 15, 1920?

Mr. Hutchinson: Yes.

Q. That was in response to your letter of April 14th, wasn't it, (showing the witness the letter referred to, Exhibit C, 5)? You did receive that letter, didn't you? A. I suppose I did; I have had so much to think of that I might have forgotten it; yes.

Q. And no others? A. Never had any others.

Q. None that you can recall? A. None that I can recall.

The Vice Chancellor: Was that in answer to a letter written to the defendant (Referring to Exhibit C, 5)?

Mr. Hutchinson: Yes, sir; well it was in answer to the letter of April 14th, 1920. It says (reading the letter of April 14th, 1920 to the Court).

The Witness: I remember that, Mr. Hutchinson.

Q. That was answered April 15th, 1920? A. Yes.

Mr. J. W. Griggs: Now, has the answer to that been read?

Mr. Hutchinson: No; shall I read it?

Mr. J. W. Griggs: If you would?

(Mr. Hutchinson thereupon read the letter referred to, Exhibit C, 5).

(The three copies of letters identified by the witness, are offered in evidence by Mr. Hutchinson, admitted without objection, and are marked, respectively, Exhibit C, 6, Exhibit C, 7 and Exhibit C, 8).

Cross-examination:

By Mr. Harding:

Q. Who composed this last letter? A. I wrote them: I am quite capable of doing it.

Q. Did you have any assistance, at all, in composing them? A. No, sir.

Q. Absolutely your own composing? A. Yes, sir; I know how to do it.

JOHN W. GRIGGS, ESQ., sworn.

Direct examination:

By Mr. Medina:

Q. Gov. Griggs, in 1908, what position, if any, did you hold in the Paterson Safe Deposit and Trust Company? A. I was president.

Q. When did you become President, and during what period of time did you continue to be President of that company, do you recall? A. I cannot remember the year I became President. I continued to be President from the time I was appointed until it was merged into the National Trust Bank, in 1921.

Q. In connection with your duties as President, did you frequently confer with the trust officers of the Company with reference to the investment of trust funds? A. There were not any particular trust officers nominated as such. The affairs of the company were managed by the finance committee, the vice president, Mr. Berdan, and myself, as president, taking a general and particular oversight of the affairs. We had no distinctive trust officer.

Q. But you did confer, from time to time, with the gentlemen whose official positions and names you have stated? A. Yes.

Q. And those conferences related to the investment of trust funds, did they not, as occasion arose? A. Yes.

Q. Now, you know it to be a fact, do you not, that these proceedings involve not only the loss in

the Brooklyn City Railroad Company stock, but also the bonds of the Twenty-eighth and Twenty-ninth Streets Cross-town Railway Company, the Second Avenue Railway Company bonds, and also shares of stock of the Central Park, North and East Rivers Railway Company, as well as the shares of the Brooklyn City Railroad Company, is not that so? A. I understand so, from reading the bill of complaint.

Q. It is also the fact, is it not, that the Twenty-eighth and Twenty-ninth Streets Cross-town Railway Company, the Second Avenue, and the Central Park, North and East Rivers were parts of the so-called "Metropolitan System"? A. That is right.

Q. Now, when did you first learn of the default in the Metropolitan bonds, and by "Metropolitan bonds" I have reference to these very bonds of the Twenty-eighth and Twenty-ninth Streets Cross-town Railway Company, and the Second Avenue? A. In 1908.

Q. Do you recall about what time of the year 1908? A. Well, the default did not occur until the 1st of June or afterwards; so it must have been after the first of June, 1908.

Q. So that it was about some time in the summer of 1908 that the default occurred? A. Probably; the default occurred—

Q. (Interrupting) You so stated in your testimony, on page 36, in the former suit, and that is your present recollection, is it not? A. Yes.

Q. Now, prior to that default, did you have any knowledge of the probability of such default? A.

Well, I had considered the probability of such a default, and I did not think there was any.

Q. By the way, parenthetically, I am asking you whether you are not the senior member of the firm of Griggs, Baldwin & Baldwin? A. Yes.

Q. And that firm was, in 1908, Griggs, Baldwin & Pierce, was it not? A. Probably; I cannot get the dates back.

Q. Do you recall that, some time in the early part of February, 1908, your firm submitted, on behalf of a committee of the Metropolitan stockholders, a petition to the Governor of the State of New York for the removal from office of the District Attorney of New York County? A. No, I do not recall that; I know there was, at some time, such a proceeding conducted by Mr. Pierce, but I had nothing to do with it, and had no definite knowledge of it.

Q. You, however, knew it to be a fact that your firm did file such a petition? A. No, I did not.

Mr. Harding: I fail to see the materiality or relevancy of this line of examination.

The Vice Chancellor: I don't know; I did not try the other case.

Mr. Harding: Well, I object to it, unless counsel says what it is for.

The Witness: No; he can go on; I will tell him all I know.

Mr. Medina: I have no objection to stating on the record the relevancy of this testimony, it is to bring home direct and unequivocal notice to the president of the

defendant company that there was a very good probability that these bonds would default.

The Witness: Now, when I know what you want I can answer your question, so you won't have to ask me any more.

Mr. Medina: Well, I assume I may have the privilege of asking my own questions.

The Witness: You may—what is your question?

Q. Now, Mr. Griggs, did you, or did you not know, that Paragraph 8 of this petition, filed by your firm in February, 1908, provided therein as follows:— A. (Interrupting) Now, let me answer that before you go any further: I never knew there was such a petition; I never saw it; I did not know what was contained in it; and, in so far as my firm might have been represented in it, it was all done by Mr. Pierce, and I had no knowledge, at all, except what I got in the newspapers.

Mr. Medina: I move that that answer be stricken out, as not responsive to any question.

The Vice Chancellor: I will strike it out.

Q. Continuing my question—did you, or did you not, know that the petition filed by your firm in February, 1908, contained the statement, in Paragraph 8, "By February, 1902, the affairs of the Metropolitan Street Railway Company had

become so bad that dividends could no longer be paid out of the earnings, and some means must be devised whereby dividends could be paid without danger of violating the criminal law"? A. I do not know that; I never knew it.

Q. Did you know that the said petition contained the statement: "Mr. William C. Whitney and Mr. Thomas F. Ryan and others owned large blocks of the stock of the Metropolitan Street Railway and if the true condition of affairs became known the stock would become of little value"? A. I did not; I never saw the document you refer to, nor heard of it.

Q. Never heard of the document, did I understand you to say? A. Not that particular document, no.

Q. But you did hear of the petition? A. No; I knew there was a proceeding against the District Attorney.

Q. Of course you knew that. A. I did not know on what it was based; I did not know what papers were filed; I did not know what evidence was given; I did not know anything about it.

Q. You, I suppose, know perfectly well that no one in your firm would file a document with the Governor of the State of New York, of such public importance as a petition for the removal of the District Attorney of New York County, without consulting you as the senior member of the firm? A. On the contrary, I know they might.

Q. Now, did they, or did they not, as a matter of fact, consult you with reference to any phase of the petition that was filed? A. Never.

Q. Did you know that, in November, 1907, an article appeared in "Everybody's Magazine," written by Charles Edward Russell, charging you and others with being implicated in the Metropolitan Street Railway Company and the various manipulations of stock that took place therein? A. Charging me?

Q. That was my question. A. No, I never knew it, and I don't know it now.

Q. Did you ever read, or were you advised, of the portion of such article which, in stating the names of the persons implicated, gave the following list: John W. Griggs, then Attorney-General of the United States; Thomas F. Ryan; William C. Whitney; P. A. B. Widoner; R. A. C. Smith and Anthony M. Brady? A. My answer is the same —I never knew of it, or heard of it until now.

Q. Did you have any occasion to read a book written by Mr. Amory, Col. Wm. N. Amory, entitled "The Truth about Metropolitan"? A. No.

Q. Did you ever hear that book discussed by any members of your firm, or people in your office? A. Not that I remember.

Q. I ask whether this portion of the petition, filed with Governor Hughes, refreshes your recollection in that particular (reading from the Eighth Paragraph, page 25): "The New York City Railway Company was incorporated, its stock being held by the Metropolitan Securities Company, and leased the Metropolitan Street Railway Company, the Metropolitan stockholders receiving in lieu of dividends interest upon the stock which they held at 7%. The insolvency of the

Metropolitan Street Railway Company; the object of the Metropolitan Securities Company; the whole transaction, as we know it to-day , was fully disclosed by Mr. Amory to Mr. Jerome in 1903''—does that refresh your memory, at all, as to the Amory book? A. Not at all; I never heard that, or saw it before.

Q. Did you know it to be a fact that proceedings were initated in your office to remove Mr. Jerome as District Attorney? A. No; all I knew about it was that Mr. Pierce was specially and personally employed in a proceeding to remove Mr. Jerome.

Q. Then you did not know that proceedings were being initiated in your office to remove Mr. Jerome? A. I did not know that they were being initiated in our office.

Q. Do you state to the Court that Mr. Pierce never talked to you about that proceeding? A. No, I do not state that.

Q. Well, then, in the course of your conversations with him about it, what did he say? A. I do not remember.

Q. You do remember however, that he had conversations with you on the subject, do you not? A. I remember the matter was probably spoken of incidentally; I cannot tell you what was said; but as to furnishing me any details, or detailed information about it, or I having any interest in it; professionally or financially, I had none.

Q. Didn't you even know the ground upon which the removal of Mr. Jerome was being sought by your office? A. Possibly I did, but I could not tell you now what it was.

Q. Well, now, let me see if this will refresh your recollection (reading from page 26 of the petition): "The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the Railroad Company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money"—didn't you know that that was the ground upon which, in February, 1908, Mr. Jerome's removal was being sought by your office? A. I don't know whether I did, or not, but if I did know it, it was a mere matter of general information, more derived from the newspapers than from anything in my office.

Q. You would not call Mr. Amory's book a "newspaper"? A. What?

(Question repeated). I never saw Mr. Amory's book; I don't know whether it is a newspaper, or what it is.

Q. Further referring to the said petition and your conversations with your partner, Mr. Pierce, does this portion of the petition refresh your recollection at all, as to what Mr. Pierce told you at that time—I am reading from the Tenth Paragraph, page 29: "In the years 1902 and 1903 Thomas P. Fowler, Paul D. Cravath, Edward J.

Berwind, George C. Haven, Herbert H. Vreeland, Edward W. Sayre, Mortimer L. Schiff, Thomas F. Ryan, Peter A. B. Widener, Thomas Dolan, John D. Crimmins entered into a combination and conspiracy to appropriate to the use of the Metropolitan Securities Company millions of dollars out of the capital of the New York City Railway Company without the Metropolitan Securities Company giving any consideration therefor, in which conspiracy all of the above named defendants either at these times or subsequently, joined and participated with full knowledge of the nature and purposes of said conspiracy. Pursuant to said conspiracy and with the purpose and intent to rob the New York City Railway Company of its property, these defendants concocted and consummated the wrongful, illegal and criminal scheme hereinafter set forth to get from said New York City Railway Company, of which many of them were directors, the sum of $2,997,200''—does that refresh your recollection at all as to what Mr. Pierce told you? A. No.

Q. Didn't you know it to be a fact that the removal of Mr. Jerome from office as District Attorney of New York County was sought by your firm on the ground that Mr. Jerome had shut his eyes to the scheme of financiers and bankers in New York City to permit innocent investors to put their funds into the Metropolitan securities and permit the financiers and bankers to unload their own holdings, and thus let the public suffer—didn't you know that to be a fact? A. No.

Q. Do you know it now to be a fact that your

firm filed a petition with the Governor of the State of New York petitioning that he take action on such accusations? A. No.

Q. You do not, however deny that your firm filed such a petition, Mr. Griggs?

The Vice Chancellor: He says he knows nothing about it—how could he deny it?

Mr. Medina: I understood the witness to say that he did have a recollection of such a petition being filed.

The Vice Chancellor: I do not understand the witness said anything of the kind.

Mr. Medina: Am I to understand that I am precluded from further questioning on that?

The Vice Chancellor: No, you are not; but I think you are wasting a lot of time.

The Witness: I will repeat what I told you I did know about it—you do not seem to have recollected or noticed what I said.

Q. Referring to the former suit, and the answer of the Paterson Safe Deposit and Trust Company therein—did you have anything to do with drawing that answer? A. I don't remember.

Q. Have you any knowledge of the bill of complaint in an action entitled Adrian H. Joline and Douglass Robinson, as Receivers of the New York City Railway Company, Complainants, against the persons whose names I read a moment ago? A. No.

Q. That was a suit in the United States Circuit Court for the Southern District of New York,

but you have no recollection of that suit? A. Well, I don't know definitely what that suit was; I have a recollection of some suits, but I could not define it from that description.

Q. To assist your recollection in that, I may state (paraphrasing it somewhat) that that suit charged those persons with a criminal conspiracy to take all the substance out of the Metropolitan securities and render them valueless. A. Well, it was not a criminal action, was it?

Q. No, but it set forth what was alleged to be a criminal conspiracy, and damages were demanded. A. Well, I will tell you all I do know: I knew there was some suit by somebody (whether it was Joline and Robinson, as Receivers, or not, I don't know) against Ryan and Whitney and Cravath and others, in which the Court adjudged that they should pay back to somebody a certain amount of money—over a million dollars. I know that from newspaper accounts of it at the time, and from other parties; but I had no connection with it.

Q. Do you remember testifying about that bill of complaint in your testimony in the former proceedings? A. No, not about that bill of complaint.

Q. Referring to page 29 of the testimony in the former case, you say "And in the bill of complaint that was filed against the New York City Railroad Company it was alleged that it was most important that the system should be preserved intact and not broken up"? A. That is not the same suit.

Q. That is not the same suit? A. That bill of

complaint is the bill of complaint that was filed by creditors against the New York City Railway for the appointment of a receiver, in which suit Joline and Robinson were appointed Receivers. That bill of complaint I was familiar with.

Q. I do not suppose you remember the date of that particular proceeding against the New York City Railroad Company, do you? A. I think I do; I think it was the 7th of September, 1907.

Q. And it might have been the 24th of September? A. Well, it might have been the 24th, but it was September, 1907.

Q. Now, does your recollection of that proceeding in any way refresh your recollection as to your conversations with Mr. Pierce about the filing of the petition with the Governor? A. Not at all.

Q. You did, however, have some conversations with your partner, Mr. Pierce, about that, didn't you? A. I can only answer you as I did before, that possibly (and I think probably) that, incidentally in the office it was mentioned that he was prosecuting this complaint against Jerome, as, for instance, he might have said "I am going on with that Jerome case to-day"; but as to conversing with him about it, or any understanding with him about it or consulting with him about it, or anything more than incidental reference to it, I never had any conversation with him.

Q. And your present recollection is, as I understand it, that you did not even know the basis of the accusation against Jerome at that time by your office? A. Well, it is probable I did know

the basis of the complaint, because it was a matter of public publication in the newspapers—I probably knew it, but I do not remember it now.

Q. Well, now, that is just what I am trying to get at—it is probable, and one naturally thinks it is so, and what we want to get here is any bit or scintilla of recollection that you may now have of what your knowledge then was; now, can't you remember any of those conversations with your partner, Mr. Pierce? A. No.

Q. Does the statement that the petition related generally to the Metropolitan Street Railway affairs in any way refresh your recollection that that was the main basis of the accusation against Mr. Jerome? A. No, no.

Q. Do you recall whether or not Eugene G. Kremer was acting together with your partner, Mr. Pierce in that matter? A. I do not; I do not know even who he is, or was.

Q. Perhaps this paragraph, appearing on page 32 of the petition, will refresh your recollection as to these conversations with your partner, Mr. Pierce "This robbery of the New York City Railway Company by the directors of the Metropolitan Securities Company, and of the New York City Railroad Company by collusion and conspiracy between them has been called to the attention of Mr. Jerome. The newspapers of New York have given great publicity to this action and the facts have been laid before him and he takes no action for the punishment of these conspirators" —does that paragraph refresh your recollection to any degree? A. Not as to anything occurring between Mr. Pierce and me; or—

Q. Well,— A. Let me finish.

Q. Excuse me. A.—or as to the basis of the complaint against Mr. Jerome; but I remember perfectly well the accusations against that group of gentlemen that you have named, on that subject—that was in the newspapers; I remember that.

Q. And were those accusations, so aired in the newspapers, accusations to the effect that these bankers and financiers whose names have been used, had deliberately conspired to remove all value from the securities of the Metropolitan Street Railway Company? A. Well, I won't say that was just the basis of the accusation.

Q. Well, tell us what your recollection of those accusations, as they appeared in the newspapers at that time, and were thus brought to your notice, was? A. The accusations or charges were that this group of bankers had, by the process of putting together the various surface lines of the City of New York, greatly enriched themselves by the manipulation of the various securities of the various underlying lines, and improperly done it by piling one kind of system on another kind of a system, etc.—pyramiding combinations.

Q. Well, was the substance of the accusation the mere pyramiding of one company upon another, or was it, rather, that these bankers had floated these securities and were spreading them about among the public until they, themselves, could unload all their own holdings before the crash came? A. No, I cannot tell you precisely what the charges were. What is the date of that petition that you are referring to?

Q. The date of this petition is February 25, 1908, and it bears the stamp of the State Executive Chamber, February 28, 1908? A. That is fourteen years ago, and there has much water gone by since then.

Q. Do you suppose that if you read a few of the paragraphs of this petition, filed by your firm with the Governor of the State of New York, it might refresh your recollection further?

The Vice Chancellor: Haven't you read the whole thing through?

Mr. Medina: No, I have only read about, all together, two pages of it.

The Vice Chancellor: Well, I think you have read enough; it is now twenty minutes of four, and I do not think you have gotten very far with this thing, so far.

Mr. Medina: Well, at your Honor's suggestion, then, I have no further questions.

The Vice Chancellor: If he was President of the Company, and had knowledge that this stock was going to depreciate in value, and the Company was charged with his knowledge, then, of course, there would be a breach of trust; but I do not see it so far.

Mr. Medina: Well, of course, I thought it was too obvious for argument that if the firm, of which this distinguished gentleman was the chief member, filed a petition with the Governor, it would not

be unusual for the Court to attribute some knowledge of that fact to him.

The Vice Chancellor: Well, firms are not run in that way. The question is, What did he know?

Mr. Medina: Well, I now might inquire whether an offer of a photographic copy of this petition, as made in the Executive Offices at Albany, would be accepted as genuine by the other side, or whether we will be required to prove the fact, or call someone from Gov. Grigg's office to indentify it as a genuine copy. I will submit it to the inspection of the other side (handing the photographic copy to Mr. Harding).

Mr. Harding: Having inspected it, I object to it, on the ground, first of all, that it is irrelevant and immaterial to the issues in this cause; that it is not rebuttal, and should have been offered originally, on their original case, or their direct case, if it were material; and I shall object to it, too, on the ground that it is not an official document that can be offered. I object to it on all of those grounds.

The Vice Chancellor: Well, it is in no sense evidential. It is no transaction of this witness, and he says he knows nothing about it.

Mr. Medina: Well, the purpose with which I had intended to make the offer was to indicate that the original of this docu-

ment was filed, by the firm of which Gov. Griggs was the senior member, with the Governor of the State of New York, in February, 1908, for the purpose of having the Court draw such inferences therefrom as the filing of such a paper, together with such evidence as we are able to adduce, might justify; and my only inquiry was whether the paper would be objected to on the ground that it was not proper proof of the filing of the original; if so, naturally we must produce such proof.

The Vice Chancellor: I will rule it out, on the ground that the witness says he knows nothing about the paper; I do not care whether it was prepared in his office, or not.

Mr. Medina: So that it may appear on the record that your Honor does not exclude the paper on the ground that we have failed to prove that the original was properly filed—

The Vice Chancellor: Well, it would be excluded on that ground, anyway. It is not a paper exemplified according to the Act of Congress, or according to the statute. I will say now that I will also exclude it on the ground that it appears presently that the witness interrogated in regard to it knew nothing about the document, even if he was the senior member of the firm which conducted the proceeding.

Mr. Harding: In order that the record

might not be burdened by this immaterial testimony, I ask that that portion of it which has been read into the record purporting to come from some petition, and magazines, and things of that kind, be striken from the record. I do not think the record should be burdened with that.

The Vice Chancellor: Oh, I will overrule that motion. I deny the motion.

By Mr. Harding:

Q. Gov. Griggs, is there any explanation, or addition, you wish to state to any question? You were interrupted once or twice. A. I do not remember anything.

WILLIAM B. BEAM, ESQ., recalled.

Direct examination:

By Mr. Hutchinson:

Q. You are one of the complainants in this suit? A. I am.

Q. You are one of the sons of Mrs. Carrie S. Beam? A. I am.

Q. And one of the remaindermen in this trust? A. I am.

Q. Did you have a copy made of a certain petition filed in the office of the Governor of the State of New York for the removal of Wm. T. Jerome?

Mr. Harding: I object to that, on the same grounds that have been mentioned.

The Vice Chancellor: I know, but your objection is premature; he is not offering anything yet.

A. I did.

Q. Did you make a copy? A. I had a copy made.

Q. How was it made? A. It was made in the New York Public Library by the photostat process, from a copy filed there.

Q. Did you, at any time, compare the photostatic copy with the original on file in the Office of the Governor of New York? A. I did.

Q. What comparison was made, how did you make it? A. I compared it twice, on the 18th of November I compared it myself by running through each page. I went back on, what was last Saturday, the 2d of December, and I compared it again by reading it to a Mr. Alfred E. Kelly, who went with me to the Executive Chamber.

Q. And did you read it back and forth? A. I believe we did.

Q. Have you that copy? A. I believe it is here in Court.

Q. (Showing the witness a document) Is this the copy? A. Yes, that is the copy.

Mr. Hutchinson: Cross-examine.

Mr. Harding: Is the paper offered?

Mr. Hutchinson: No, sir; I am asking you to cross-examine; I suppose I cannot

offer it until you have an opportunity to cross-examine.

Mr. Harding: I do not care about cross-examining him.

Mr. Hutchinson: I offer it.

Mr. Harding: I object to it, on the ground that it is immaterial; it is not an exemplified copy, and it is not strictly a proven copy.

The Vice Chancellor: I will sustain the objection. Is there any law authorizing an examined copy of a paper to be offered where a certified or exemplified copy can be produced?

Mr. Hutchinson: Why, yes; we could have it under the seal of the Governor of New York State.

The Vice Chancellor: If there is a law of exemplification under the Act of Congress, this is not evidential. He has no right to use an examined copy of an instrument, except, I think, in cases where, under the law, he cannot get certified copies, or cannot produce the original. In some cases an examined copy may be offered in place of the original, but that is not the case.

Mr. Hutchinson: Well, I understood the rule to be that a copy verified by reading back and forth would be evidential of the original; but if it is important (and we rather think it is important for our case) we would like to have an opportunity to put

in an exemplified copy, and we make the offer now of an exemplified copy.

The Vice Chancellor: I can only rule when the evidence is offered. If it is a case where an exemplified copy can be procured, it is forbidden to use an examined copy, as I understand the law.

Mr. Hutchinson: I might say that we find that the Governor of the State of New York, in his Executive Office, where this is filed, has no official seal under which this can be certified as an executive document; that is the information that I have received.

Q. Did you make any inquiry as to that, Mr. Beam? A. I did.

Q. What did you find? A. On the 18th of November I attempted to secure a certification of this copy under the Great Seal.

Mr. Harding: I object to it; I do not think this witness is competent to testify as an expert on that subject. That should be done by the proper official.

Mr. Hutchinson: Well, I am only trying to show what effort he made.

The Vice Chancellor: Well, I suppose the statutes of the State of New York will show what can be exemplified.

Q. Did you make any further inquiry about that? A. I did; I wrote the Governor of New York a letter, and he replied, that his office not being an office of record—

Mr. Harding: I object to that as being hearsay and incompetent.

The Vice Chancellor: It is all hearsay.

Mr. Hutchinson: I have done all I can.

Mr. Harding: You know what Mark Twain says, "Angels can do no more"?

Mr. Hutchinson: I do not want to be persistent, but it seems to me—

The Vice Chancllor: If it is material I am going to allow you to prove the fact, for the purpose of getting a legal offer of that document; because, in the view I now entertain, I would exclude it in any event, because it has no evidential force, from the fact that the witness, Gov. Griggs testified that he did not know anything about it, and never heard of it. Now, in view of that, how you can charge him with knowledge of something done in his office is beyond me; especially in an independent transaction, outside of his office.

Mr. Hutchinson: Then, if your Honor please, I accept the generous offer of counsel that we be given that opportunity if, upon an examination of the case, we shall find it important.

The Vice Chancellor: I will give you that. I want a full hearing.

Mr. Harding: I don't know just what counsel meant by just speaking about some "generous offer" on my part; I am not generous about this thing, at all; I do not want him to make a false assumption. I

think it is immaterial and irrelevant all the way through.

The Vice Chancellor: The Court will be generous with him, and give him every opportunity to present his case fully.

Mr. Hutchinson: Yes, sir; I quite realize that. I am sorry to have acknowledged generosity when it was not intended.

Mr. Harding: Well, I did not want you to misunderstand me.

The Vice Chancellor: If you can produce evidence justifying this as a legal offer, of the paper being legally acceptable as proof, I will permit your offer to stand; and then I will deny your motion on the ground that the witness who was confronted with it said he knew nothing about it; so that will clear up the case, in case any question arises in the Court of Errors and Appeals.

Mr. Hutchinson: Perhaps I ought not to bother your Honor any more about this, but we have here a letter from the office of the Governor of the State of New York, in which he says (reading the same, the Court instructing the stenographer not to report the reading).

The Vice Chancellor: That does not answer the question; the simple question is, How are matters of this kind, before a Governor, authenticated? I presume, if there is no method of authentication prescribed, under the old method an examined

copy of the instrument, with the oath of the witness who examined it, is acceptable, where the original cannot be produced. I do not know that there has been any change in the method, but this does not show that there is no prescribed method of authentication.

Mr. Hutchinson: Well, your Honor, I suppose I will appear upon the record as having objected to your Honor's later ruling?

The Vice Chancellor: Yes, you may offer it in evidence and have it marked for identification, so the Court of Errors and Appeals, if it is necessary, shall see it. You may offer the letter for identification, too, if you want to offer that in evidence.

Mr. Hutchinson (To Mr. Harding): Do you object to the letter?

Mr. Harding: Yes; I have already objected to it.

The Vice Chancellor: If it is objected to, I will overrule the offer and sustain the objection.

(The photostatic copy of the petition is marked for identification, B, H, 1).

(Mr. Hutchinson, thereupon offered in evidence the letter last referred to, the offer is objected to by Mr. Harding; the Court overruled the offer, and the paper was marked for identification, B, H, 2).

No cross-examination.

HAROLD R. MEDINA, ESQ., sworn:

Direct examination:

By Mr. Hutchinson:

Q. Are you a member of the Bar of New York City? A. Yes.

Q. How long have you been a practitioner of that Bar? A. Since 1912.

Q. Are you familiar with the laws of the State of New York regarding the certification of executive documents? A. I am.

Q. Have you had experience in that regard? A. Well, my office, and offices with which I have been connected, have had many occasions to have certified copies of various papers, also authenticated copies, and we have also struck instances in which neither certified nor authenticated copies could be obtained.

Q. What is the state of the law in New York State with regard to the official certification of documents from the Executive Department? A. Documents filed with the Governor of the State of New York are considered just as papers filed with any public official in a merely administrative or individual capacity, and not the same as papers filed with a County Clerk, or with a Court, or with some other public official having records and facilities for certification and authentication of documents. It has never been the custom to obtain certifications or authentications of papers on file with the executive.

Q. Well, are they obtainable, at all? A. I

should say not; and, in my practice, I have never been able to obtain them.

Cross-examination:

By Mr. Harding:

Q. Have you any statute on the subject in New York? A. We have statutes bearing generally on the certification and authentication of documents, yes.

Q. No, but with reference to an executive document, have you any statutes, have you looked up to see if there is any statute? A. I have not looked them up for this occasion, but I have, for a great many years talked on the subject of evidence to students in New York, and have had many occasions to read these statutes.

Q. Do not answer any more than the question requires, with reference to the subject of this particular petition have you looked up the statutes of New York, down to date, to find what the statutory law is today with reference to that subject? A. With reference to this particular petition I have not made any investigation whatsoever.

Q. Have you looked up, with reference to this particular subject, any of the common law decisions of the State of New York? A. Not for this case, but I have for other cases.

Q. You have not prepared yourself for this suit, at all? A. I have not; I did not anticipate that the subject would arise.

Q. You have answered it; you did not anticipate

it; so, when you are called upon now to qualify as an expert on the subject you are simply giving us what you think is the custom, as you have stated it, in the State of New York? A. That is not correct.

Q. Well, didn't you say you thought that was the custom, not to have an authentication or certification of a document of this kind? A. I do not like to quibble over a word, but the only part I object to is the word "custom." I did testify that you cannot, as far as my experience has gone, obtain such certification, and I stated the reason for that opinion.

Q. And when you state that you are merely giving your thought on the subject, without reference to looking up any statute, or statutory law, or decision of the State of New York with reference to this particular subject? A. No; I have repeatedly and on many occasions examined those statutes but not for this case.

Q. Well, I ask you again—have you examined the statutory law of New York, down to date, to find out whether or not there is any statutory provision with reference to certification of a document of this kind? A. I haven't examined it particularly for this case, but I follow the advance sheets of our decisions and our recent statutes with a great deal of care, and I know that there is no recent statute affecting the subject whatever, the last statute being the Civil Practice Act, which took effect October 21, 1921, which has not been amended since that date.

Q. And your whole testimony today is given, so

to speak, without reference to this particular subject; you never have looked it up? A. That is right; but, as I have said, I have taught this subject for many years at the Columbia Law School—

Q. You have answered the question. A. Yes.

Mr. Harding: Your Honor, I object to the testimony of the witness, and ask that it be stricken out, on the ground that he has not shown himself qualified to give us the law upon the subject down to date.

By the Vice Chancellor:

Q. Do you know of any statute in New York providing for the exemplification of documents? A. Yes, your Honor—the Civil Practice Act.

Q. Is there an act in New York for the exemplification of court records? A. The same statute provides for the certification and exemplification of all documents on the files of public officials.

Q. Can you give the language of the statute? A. I could not remember it verbatim; but no doubt there is, in the Library of the Court, a copy of our Civil Practice Act, to which I could readily turn.

Q. Well, do you know of any decisions, off-hand, that construed this statute as to what is admissible without certification in your own state? A. Why, I do not think the statute requires any construction in that regard.

Q. I am not asking you that. A. I know of no decisions.

Q. You know of no decisions? A. No.

The Vice Chancellor: I think, on that subject, I will permit counsel to submit authorities on that point before I admit it, in view of this testimony.

The Witness: May I submit my qualifications on the subject, further, with the permission of the Court?

The Vice Chancellor: Well, yes, you may.

The Witness: In the year 1914 I first became a member of the faculty of the Law School of Columbia University, and continuously, since that time, have taught the subject of New York pleading, practice and procedure. I have also, continuously, for the past nine years, conducted classes in preparation for the New York Bar examinations, in preparation for the giving of which lectures I have felt it necessary to keep myself advised as to all the recent developments as to the statute and decisions in the state. Since the passage of the Civil Practice Act of the State of New York, which took effect October 1st, 1921, I have been very active in giving a number or series of lectures to practicing lawyers in the State of New York as to the provisions of the new Civil Practice Act, in the aggregate lecturing to upwards of a thousand members of the Bar of the State of New York on that particular subject, upon which subject I wrote a book, published by Baker-Vorhis & Co., entitled "Medina on

Pleading and Practice," which was published in June of this year. Since that time, and prior thereto, I have collaborated with the various committees of the New York City Bar Association and with Mr. Justice Page of the Appellate Division, First Department, in the submission of various suggestions looking toward the amendment of that particular statute.

Q. Well, now, is there any other statute providing for exemplification? A. Section 45 of the Decedent Estate Act also covers the same subject, but relates only to the various proceedings in the various Surrogates' Courts.

Q. You do not know of any ruling of *nisi prius* practice? A. I have experienced three instances in my own recollection in which papers from the Executive Office in Albany have been offered in evidence before trial courts, and in all three of those instances, which took place while I was associated with the firm of Davies, Auerbach & Cornell in New York (where I did a great deal of trial work) the papers were proved by calling the witnesses who examined the paper to testify as to what their examination showed; and the paper was then offered in evidence and received without objection; so that those cases may not be regarded as direct rulings on the subject. There was no objection raised and no ruling made by the Court, but it is commonly understood, among New York practitioners, that that is the method of proving papers where certified or exemplified copies cannot be obtained.

The Vice Chancellor: How much more evidence will you have in this case?

Mr. Harding: We are through.

The Vice Chancellor: Are you through, Mr. Hutchinson?

Mr. Hutchinson: If your Honor please, there is one other matter, that is the Amory Book, examined upon by Mr. Medina.

Mr. Medina: My testimony, of course, does not relate to that book.

The Vice Chancellor: Well, that book Governor Griggs says he never saw and never heard of.

Mr. Hutchinson: I know he says so.

The Vice Chancellor: Well, what do you want it for?

Mr. Hutchinson: Well, Mr. Medina was the one who examined upon that.

The Vice Chancellor: True; but how is it admissible to prove anything that the witness never saw or heard of.

Mr. Hutchinson (To Mr. Medina): Well Mr. Medina, this is your child.

Mr. Medina: Oh, the Amory book is not my child. We ask that this book here be marked for identification, also, as part of the other Exhibit, as Mr. William Beam tells me that it was compared by him.

Mr. Hutchinson: Well, of course I have only one-half of this case; I do not want to butt in; but the position taken by

Mr. Beam on this book is that that is referred to and linked up with the Exhibit of the petition which was filed in Gov. Hughes' office, and that being so, if that is admitted, this is also germane.

Mr. Harding: How is it linked up?

Mr. Hutchinson: Well, it is referred to in there.

The Vice Chancellor: I do not, for the life of me, see anything in either document; or that what was shown to Gov. Griggs was evidence that he knew all about these affairs, or knew of the condition, or knew enough to be put on inquiry.

Mr. Hutchinson: We ask the privilege of producing the man who made the photoscopic copy, and swearing him; and ask that this be marked for identification.

Mr. Harding: We shall object to that, on the ground that it is immaterial and irrelevant, and simply encumbering this record; we object to it on all of those grounds.

The Vice Chancellor: I will sustain the objection. It is clearly irrelevant, apart from the fact that it is not the method of proving the document. Now, this other document, filed with the Governor of the State of New York, I have excluded, on the ground that it is not evidential, because the witness who was confronted with it says he knew nothing about it. If I should decide against you, and the case

should go to the Court of Errors and Appeals, I do not want you to be confronted with the fact that I have excluded it upon that ground that is purely technical, or that it was not proven; I want to give you the benefit of every objection you may make in the case, so that, if you do go there, and I am wrong in excluding it, I am excluding it because it is not evidential in any case. I do not want you to lose on the ground that you have not proved the document in the proper manner.

Mr. Hutchinson: Now, if your Honor please, I want to make this rather definite offer. I want to offer the witness who made the protostat copy—Iwant to make the same offer as to this as made to the other. This is the Amory Book, "The Truth about Metropolitan." What I want to do is to put this in under exactly the same procedeure, if I can do so. We have the expert here, the man who made it.

Mr. Harding: To save the time of your Honor, we will not object to that being a copy, as they say, of the book.

Mr. Hutchinson: Well, now, that is all right. Then your Honor, as I understand it, overrules this (referring to the offer of the Amory Book) as it has no evidential force?

The Vice Chancellor: Yes.

(The Amory Book was thereupon marked for identification, B. H, 3).

Testimony closed. Case set for oral argument at Jersey City Chancery Chambers, on Friday, December 8th, at 10:30 a. m.

Chancery Chambers, Jersey City, Dec. 8, 1922. (Case argued orally, and held for decision).

(Filed July 1, 1924.

Opinion.

IN THE CHANCERY OF NEW JERSEY.

Between
EDWARD BEAM, *et al.*,
Complainants,
and
THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,
Defendant.

MESSRS. HUTCHINSON & HUTCHINSON (and MR. HAROLD R. MEDINA of the New York Bar) for Edward Beam, John C. Beam and Carrie S. Beam.

MR. WILLIAM B. BEAM, solicitor *pro se.*

MR. JOHN W. HARDING, for the Defendant.

GRIFFIN, V. C.:

The subject matter of this litigation (with the exception of the shares of stock of the Brooklyn City Railroad Company, which will be hereinafter refererd to), was passed upon in this Court in the case of *Carrie S. Beam, sole complainant, vs. the Paterson Safe Deposit and Trust Company,* the present defendant, by Vice Chancellor Stevenson, whose opinion is reported in 81 *N. J. Eq., p.* 38; and by the Court of Errors and Appeals, on appeal from the decree advised by him, *idem. p.* 195; and by Vice Chancellor Howell, on final hearing, whose opinion is reported in 82 *N. J. Eq., p.* 518, where he decided in favor of the complainant and against the defendant; and in the Court of Appeals where the latter decree was reversed and the bill dismissed. (*See* 83 *N. J., Eq., p.* 628).

The facts touching the litigation in the former case are fully set forth in the foregoing opinions, and need not be here repeated.

The property and interest of Mrs. Beam covered by said litigation are derived from the Twelfth Paragraph of the will of her mother, Sarah A. Cooke, which reads as follows:

> "Twelfth. The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company, of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part

is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

Passing under this paragraph (and dealing only with the securities covered by said litigation), Mrs. Carrie S. Beam was entitled to receive from the defendant, as trustee, one-fifth of the income from the following securities:

1. Three Twenty-eighth and Twenty-ninth Streets Crosstown R. R., New York City, First Mortgage Five per cent. Bonds of $1,000 each;

2. Two Five per cent Mortgage Bonds of the Second Avenue, New York City, R. R. Co., of $1,000 each;

3. 225 shares of the Central Park, North and East River Railway stock.

The three foregoing securities were dealt with in the cases above referred to.

In addition thereto, there also passed to her a one-fifth interest in 200 shares of the Brooklyn City R. R. Co., which shares, together with the securities above mentioned, in 1915 were divided into five parts, and thereafter one part was carried in a separate account in trust for Mrs. Beam under said Twelfth Paragraph.

The position taken by the complainants on opening the case is that the decree in the former suit bound only Mrs. Beam as to the securities there litigated; and the remaindermen, not having been parties thereto, are not precluded from investigating with rgeard to the securities in the former suit; and that neither Mrs. Beam nor her children are bound in any respect by the former decree as to the Brooklyn City securities.

The position taken by the defendant, as far as the five bonds and the 225 shares of stock are concerned (which were the basis of the former litigation) is that "although William B. Beam, Edward Beam and John C. Beam were not parties in the former suit, nevertheless they had an interest in remainder, and were represented in that litigation by Carrie S. Beam, who was their predecessor in the estate," citing *Woolsey vs. Woolsey,* 8 *Buch.,* 517*; Davison vs. Rake,* 18 *Stew.,* 767; *Dunham vs. Doremus,* 10 *Dick.,* 511.

In *Woolsey vs. Woolsey, supra,* at page 525, Pitney, Ordinary, after dealing with the rule as to proper parties, said, "It results that such contingent interests are held to be bound if the interest be represented in the litigation by a trustee, or (in some cases) by the predecessor in estate."

In *Davison vs. Rake, supra,* several legatees instituted suit in the Orphans' Court for their legacies, and the question presented was whether they were entitled to interest on their legacies from one year after the death of the testator or from

the admission of the will to probate. A residuary legatee, who was not a party to the suit in the Orphans' Court, appealed to the Prerogative Court and was the appellant in the Court of Errors and Appeals. It was assigned as one of the grounds of appeal that he was not a party. Mr. Justice Depuy, speaking for the Court of Errors and Appeals, on page 771, said, "On a bill filed by a general legatee for the recovery of a legacy the residuary legatee is not a necessary party," and on page 772, he said, "In suits by creditors or legatees, not involving the construction or effect of the residuary clause of the will, residuary legatees are interested consequentially only from the circumstance that the recovery of the debt or legacy will reduce the residue, and, under such circumstances, the executor is regarded as representative of all persons interested."

In *Dunham vs. Doremus, supra,* Mr. Justice Dixon, in the Court of Errors and Apeals, said (p. 513), "The established rule of equity practice is that estates limited over to persons not *in esse* are represented by the living owner of the first estate of inheritance."

It seems perfectly plain that these decisions do not apply here. Under the clause above cited Mrs. Beam took a life estate, and her children took a vested remainder subject to be opened to let in after-born children.

In the case of *Meirs vs. Person,* 92 *N. J., Eq.,* 17, Chancellor Walker said, "When the contin-

gency is not in the person but in the event or time of enjoyment, the interest is vested." And in *Clark vs. Morehous*, 74 *N. J. Eq.*, 658, where the language of the will was not as plain as the will in question, Vice Chancellor Howell, after stating that it is a well-known rule that courts will make every intendment in favor of vesting the estate, held that the children constituted a class and took a vested remainder on the death of the testator, subject to be opened to admit after-born children of the life-tenant. (See also *Aitken vs. Sharp*, 93 *N. J. Eq.*, 336).

The conclusion I have reached on these authorities is that under the will of Mrs. Cooke there was a life estate given to Mrs. Beam with a vested remainder to her children, subject to be opened to admit after-born children. Upon this conclusion, the children of Mrs. Beam living at the time the prior suit was brought were necessary parties thereto. Their mother did not represent them in that suit, and they are not estopped by the decree therein.

The next question propounded is this: The defendant claims that by reason of the various accounts filed by it in the Orphans' Court of the County of Passaic and passed and allowed by that Court, the decrees entered therein involved the same subject matter as this suit and are *res judicata* on all of the defendants.

There were three accounts filed from December 31, 1905, down to April 15, 1912, in which the trus-

tee, in one column, gave the par value of the securities, and in another, gave what is termed the "present value" of the securities. The bill in the former suit was filed February 7th, 1912, being prior to the filing of the last of the three accounts just referred to. No exceptions were filed to these accounts, although it plainly appeared in the bill that Mrs. Beam had knowledge of the fact that the securities mentioned in that suit had greatly depreciated in value and were not of the value given in the account.

In the fourth account, covering a period from April 15, 1912, to April 15, 1914, on one side the accountant gave the par value of the securities, and, on the other, the inventory value—thus substituting for the words "present value" as appeared in the three prior accounts, the words "inventory value." No exceptions were filed to this account, and it was regularly passed by the Orphans' Court.

In the fifth account, covering a period from April 15, 1914, to April 15, 1915, under the head of "Principal Fund Depreciation," it showed the inventory value, amounting, on April 15, 1914, to $150,500.00, and a depreciation in the various securities amounting to $56,969.50, leaving a balance of $93,530.50. The accountant then sets out, in another clause, the securities and their values which make up the total of $93,530.50. It then states as follows:

> "This estate, for the benefit of the five beneficiaries therein, has for the purpose of

economy, been kept and reported to the Orphans' Court as one account. The trustee, as of May 1st, 1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day, and has divided the said estate into five parts according to the figures hereafter shown and entitled 'Distribution Sarah A. Cooke Trust as of May 1st, 1915;"

and in the table annexed a division is shown ratably among the five children of the testatrix, of whom Mrs. Beam is one. Exceptions were filed to this account by Mrs. Beam; and the Court being of the opinion that the exceptions were not well taken, on July 30, 1915 ordered that "said account be in all things allowed as reported and that there is a balance of corpus amounting to the sum of $93,530.50 remaining in the hands of said accountant to be disposed of according to law."

The exceptions were filed by Mrs. Beam, and are as follows:

1. The account sets forth in Schedule C a depreciation of $56,969.50 in certain securities, without any explanation concerning how and when said depreciation occurred. The accountant filed an intermediate account in February, 1908, one in April, 1910, and another in April, 1912, besides the present one, to which exception is herein made. Each of said account, except the present one, show the corpus of the estate to be

worth about $151,056.58, and the decree of the Court in each case so declared. None of the said accounts disclosed any depreciation, and since the accounting of 1914 there has been no material depreciation in the assets of the estate.

2. In the formation of the trust in question the trustee violated the express provisions of said will of said testatrix in creating but one trust fund in place of five, as in said will ordered."

The prayer of the exception is that the account be disallowed as filed, and that the trustee be required to account to the beneficiaries of the estate for the full amount shown to be in the hands of said trustee by the decree dated May 14, 1914; and that the exceptant may have other relief.

While the first exception is inartistically drawn, it pointed to the question of the good faith and reasonable discretion of the trustee in continuing the investments; thus calling on the trustee to bear the burden cast by law upon it to explain its action in holding the securities which were so declining as stated in *Beam vs. Paterson Safe Deposit and Trust Co.*, 81 *N. J. Eq.*, 195. Prior to this last accounting Mrs. Beam, having insisted that the accounts be kept separate according to the terms of the will, the subsequent accounts separated the fund into five parts, and the trustee thereafter accounted for the fund of Mrs. Beam separately. The first of these accounts is from January 7, 1915, to the 15th of April, 1917. This

account overlaps the last account, as that accounting was down to April 30, 1915. However, the accountant charges itself with the amount of assets "as per appraisal on division on accounting, April 30, 1915, $18,706.10" (which is one-fifth of the $93,530.50 which was the total fund held in trust for the five children). This account added the income from January 7, 1915, and deducted the disbursements from February 23, 1915, all of which was regular. In this account the par value of the various securities is set forth on one side, and the appraised value on the other. To this account Mrs. Beam and her two sons, William and John, excepted, which exceptions were overruled, and an order entered, on May 24, 1917, that the account be in all things allowed as reported.

The first exception is as follows:

> "The account does not explain depreciation in value of the corpus."

The second exception was substantially the same as the first exception to the last account.

The prayer is "that the account be disallowed, and that the trustees be acquired to account to the said beneficiaries of said estate for the depreciation in the value of the share of Carrie S. Beam subsequent to the decree of April, 1914."

These latter exceptions substantially put in issue the question of the exercise of good faith and reasonable discretion.

The next account was from April 15, 1917, to April 15, 1919. This account, under Schedule C, sets forth how the principal fund of the trust is invested, and places the par value on one side (without stating that it is par); and, on the other side a column of figures without any caption as to value. To this account exceptions were filed by Mrs. Beam, William B. Beam and John C. Beam, and a motion being made to strike from the records said exceptions on the ground that the same were vague, uncertain and scandalous and not proper exceptions in accordance with the statute in such case made and provided, the Court ordered "that said exceptions be disallowed and removed and stricken from the records of this court;" and also ordered "that the account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of $18,706.10 remaining in the hands of said accountant to be disposed of according to law."

On January 15, 1921, the trustee presented his petition to the Orphans' Court for discharge; and on the 10th of February, 1921, the Court ordered "that it be relieved and discharged from all further duties," etc., "except accounting for and paying over the money or assets received by it by virtue of its said office." Thereafter the Trust Company filed its final account from the 15th day of April, 1919, to the 5th day of January, 1921; and, in Schedule C set forth the principal fund of said trust and how invested. On one side the figures set forth the par value, and, on the other, the "book value." To this accounting exceptions

were filed by William B. Beam and John C. Beam, which were overruled in their entirety, and it was ordered "that the account be in all things allowed as reported, and that there is a balance remaining in the hands of the accountant amounting to $18,706.10 to be disposed of according to law, which balance is corpus at accountant's book value."

From the decree on this last accounting an appeal has been taken by William B. Beam to the Prerogative Court, and since which decree the defendant has turned over the securities to the new trustees.

The defendant also makes the point that all of the accounts approved showing the retention of the securities involved in the first suit, and the approval of each of these accounts upon due notice, was *res adjudicata* as to the propriety of the trustee's action in retaining the securities; citing *Re Slater's Estate,* 88 *N. J., Eq.,* 296; *Exton vs. Yule* 1, *McCart.,* 501; *Search's Adm'r. vs. Search's Adm'r.* 12 *C. E. Gr.,* 137.

In *Re Slater's Estate, supra,* Vice Chancellor Leaming had before him a case involving two accounts, one intermediate and the other a final account. To the intermediate account no exceptions had been filed, and the account was allowed by the Court as reported, and the Court's decree to that effect was signed and entered. On the final account being reported for settlement, exceptions were filed which included objections to both the intermediate and final accounts. At the hearing the Orphans' Court entertained the exceptions which

were directed to the intermediate account as well as to the final account, and decreed that the intermediate account be vacated, set aside and for nothing holden and that the intermediate and final accounts be re-stated in conformity with the specific adjudications touching the several matters of charge and credits. The Vice Chancellor dealt with Sections 124 to 127 of the Orphans' Court Act of 1898 (*P. L.* 1898, *p.* 760,) as amended by the *Laws of* 1905, *p.* 299, and held that, as a result of the amendment, intermediate accounts of an executor were placed upon the same plane as final accounts, and contemplated a like decree touching their allowance in lieu of the mere authorization that they be entered of record. In the Act of 1905, administrators and trustees were treated the same as executors. In the case before him, as above stated, no exceptions were filed to the intermediate account, and the Court decided the case under Section 125. Exceptions to the intermediate accounts in the present case having been filed the case is within Section 126, where, in general language, it deals with the settlement of the accounts of "executors, administrators, guardians and trustees." This means accounts which are to be settled, and includes the intermediate and final accounts of executors, administrators and trustees, but includes only the *final* account of a guardian, because that is the only account of a guardian which may be settled. Thus, when the Orphans' Court overruled the exceptions filed to the intermediate accounts and allowed the accounts as reported, under Section 127 the decree

of allowance "is conclusive upon all parties," and operates to exonorate and forever discharge an executor "from all demands of creditors, legatees or others, beyond the amount of such settlement.....excepting also in cases where a party applying for a resettlement shall prove some fraud or mistake therein, to the satisfaction of the said Orphans' Court;" and the application for resettlement, as held by Vice Chancellor Leaming, is by petition and rule to show cause.

The notice of the settlement of the various accounts was given in accordance with the provisions of the statute. This notice operates as constructive notice to all parties interested in the estate. In contemplation of the law they are all before the court, and all entitled to except to the account and be heard before the court. The decree of the court upon final settlement and allowance of the account is conclusive upon all parties, except in special cases enumerated in the statute. *Exton vs. Zule,* 1, *McC. p.* 501.

In the present case regular decrees allowing the account were entered while the trusts for the five beneficiaries were kept in one account. On the division of the account into five parts, in 1915, all of the securities referred to in the former chancery litigation were set out, and their depreciation was shown under the title "Cooke Trust, Principal Fund Depreciation, April 30, 1915." Under this head was also shown the 200 shares of Brooklyn City R. R. Co., which for the first time, has been brought into this litigation. The total amount of

the depreciation was deducted from the inventory value, showing a balance of $93,530.50, following which is a statement showing how the principal fund was invested.

In the case of *Hill vs. Hill,* 79 *N. J. Eq., pp* 521, 539, Pitney, Ordinary, said "It is established that the jurisdiction of that Court" (the Orphans' Court) "over the subjects committed by the statute to its cognizance has a general jurdisdiction similar to that of the Chancery and Prerogative Courts, and that its authority over accounts of trustees under wills is as ample as that of the Court of Chancery." (Citing cases). And on page 540, referring to the *Woolsey Case* (which originated in the Orphans' Court and passed through the Prerogative Court to the Court of Errors and Appeals, in a matter of accounting,) he says "....and that court required the account of the executors to be restated in a manner to give effect to an equitable estoppel arising out of the transaction between the executors and the beneficiaries. Afterwards, an attempt being made by bill in equity to open the account as thus re-stated, it was held by the Court of Chancery and affirmed by the Court of Errors and Appeals (*Woolsey vs. Woolsey,* 71 *N. J., Eq.* 1 *Buch* 609; 72 *N. J., Eq.,* 2 *Buch.,* 898) that the matter was *res judicata* because of the former decision; that the Orphans' Court had as ample jurisdiction to examine into the account and deal with it on equitable principles as was possessed by the Court of Chancery, and that the executors might have availed themselves in the Orphans' Court of the matters they

set up in the subsequent equity suit as ground for relief." See also *Pyatt vs. Pyatt,* 46 *N. J., Eq.* 285, *Woolsey vs Woolsey, supra; Re Slater's Estate, supra.*

Here the complainants could have obtained full relief in the Orphans' Court on exceptions to the account of the trustee with respect to the securities mentioned in the former suit as well as to the Brooklyn City R. R. Co., shares; and, in fact, exceptions were filed in some instances by Mrs. Beam, and, in others, by her sons, the remaindermen, which exceptions were overruled and no appeals were taken.

In view of the foregoing authorities, I am of opinion that the decrees of the Orphans' Court on the settlement of all of the accounts down to the final account are *res judicata,* and that the same subject-matter cannot be re-litigated in this Court.

The final account was passed February 24, 1921, and the bill in this case was filed August 1, 1921. To that account exceptions were filed, which were overruled and the account allowed as reported. From the decree there entered an appeal has been taken to the Prerogative Court, which court has full jurisdiction over the parties and subject matter; therefore, the questions arising on that account cannot be considered in this case.

In view of the fact that I have found that the decrees of the Orphans' Court are *res judicata,* I have not deemed it necessary to consider the other evidence in this cause.

I will advise a decree that the bill be dismissed.

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, *et al.*, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, Defendants.	On Bill, etc. MOTION.

APPEARANCES:

MR. WILLIAM B. BEAM, solicitor *pro se,* for the motion.

MR. B. B. HUTCHINSON, of counsel with complainants.

MR. CHARLES C. STALTER, of counsel with Defendant.

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J., June 19, 1924.

Mr. Beam: This is a motion in Chancery in a cause between Edward Beam, John C. Beam, Carrie S. Beam and William Beam, complainants and the Paterson Safe Deposit & Trust Company, the National Trust Bank of Paterson and the Paterson National Bank, defendants. It is on proper notice; and there is a proposed order (handing to the Court a paper).

Mr. Stalter: If your Honor please, I object to this on the grounds that it is immaterial and irrelevant, and especially, in two of these appeals. As your Honor remembers, this cause was heard before your Honor in Paterson in November,

1922. It was argued at great length, and closed. Now my adversary is seeking to introduce into the testimony of that cause an appeal from an order allowing a final account from the Orphans' Court to the Prerogative Court. There are four cases in which my adversary seeks to admit that testimony. To two of those cases neither the Paterson National Bank nor the National Trust Bank of Paterson were parties; and I submit that it would be obviously unfair to introduce that testimony in a case which has already been argued and closed some time ago. We have not had an opportunity of cross-examination, of objection to testimony, or of offering rebutting testimony; and, under those circumstances, sir, I object. The other two causes were appeals from the Orphans' Court to the Prerogative Court, and none of the testimony on our part was introduced with the view or with the object with which this case was started. In this case the complainants are seeking to hold the Paterson Safe Deposit & Trust Company responsible for certain depreciation in stocks and bonds; and so, in this appellate trial in which they are trying to offer the testimony in this case, I do not think it is relevant, and I therefore object to it.

Mr. Beam: If Your Honor please, I think that some of those matters could be explained: In their answer, that is, in the bank's answer to the Chancery suit, they set up one-fifth of the entire answer and devoted it to these accounts, and they pleaded these accounts as *res adjudicata*. Now,

sir, those accounts, if they were examined into, as they have been examined into before this Court in the Prerogative Court cases, would disclose that they were not filed in good faith, and it would lay the trustee open to the charge of having come into this Court of equity with unclean hands. Furthermore, it is not true that the defendants have not had an opportunity of cross-examination. They have in all cases, been represented by the same counsel—.

Mr. Stalter: No, sir; that is not so; Mr. Harding represented the bank, and Mr. Griggs represented two separate and individual cases in which an entirely different trust was involved.

Mr. Beam: Originally these matters were referred to this Court by the Chancellor, that is to say, the Edward Beam appeal was referred to this Court by the Chancellor in this letter (producing a copy of a letter), and I think it was the Chancellor's idea that they comprised the same subject-matter, arose out of the same estate, and that the issues were so inextricably bound up, one with another, that they could not be separated; and I think that it would be his desire and intention that this Court should make a complete decree, and should inquire into every fact and circumstance connected with the administration of this trust.

The Vice Chancellor: I do not see how it can be offered, because the testimony taken in the Prerogative Court was taken in an other matter, and

if that testimony was used at all the case would have to be re-opened and the new testimony taken.

Mr. Beam: Well, I do not think that was your Honor's intention on holding off this Chancery suit; and I do not see that anyone is going to be harmed by it. They have all had an opportunity to cross-examine; the witnesses have been before the same court, the same physical entity; and the defendants, in their answer to the bill, go to great length in setting these things up. They say, at page 30 of the answer "that the subject matter of "the bill of complaint filed herein that relates to "all of the said securities mentioned in said para- "graph 5 thereof and the losses sustained with "reference thereto, and that part of the prayer "of said last named bill of complaint which prays "that the defendant should account for or be "charged with, make good or pay any losses for, "on account of or respecting said last named "securities, were matters and questions involved "in said accounts, proceedings and orders relat- "ing to said accounts and were proper subjects "for exception, objection and litigation in said "proceedings, and that said complainants were in "law required to so except, object or litigate "therein, or otherwise to be estopped and barred "from so excepting, objecting or litigating with "reference to said subjects in this suit." Now, as a matter of fact, in the Orphans' Court we were not permitted to properly litigate these matters, and there is no record of any one of these cases that shows this more clearly than the record of the Courtney case.

Mr. Stalter: And which, I submit, has nothing to do with the case at bar.

Mr. Hutchinson: If your Honor please, representing two of the complainants in this suit, I would like to be heard, at your Honor's convenience, with regard to the same matter. I join in the application made by Mr. Beam, which I think has been fully argued to the Court; but there are one or two things I desire to say with regard to the main suit in Chancery. That was the only suit in which I appeared. The other suits, that is, the Prerogative matters, have been dealt with by other attorneys, and by Mr. Beam on his own behalf. But the burden of the main Chancery suit is willful negligence and fraudulent conduct on the part of the defendant bank. In answer to that, the bank, itself set up the accounts filed in the Orphans' Court, in bar and by way of estopple to our action. Your Honor will remember that the records in the Orphans' Court were produced in evidence at Paterson (I think your Honor was sitting there, that is my recollection): Now, the accounts, as I understand it, have been attacked and re-opened in the appeals in these various cases, I cannot speak by the card regarding them, because I have not any knowledge of those appeal cases, except very incidental knowledge. Now, it would seem to me if your Honor please, that it is perfectly competent for your Honor to allow the introduction in evidence of the papers in these various appeal cases, the record and the testimony taken in those appeal cases.

The Vice Chancellor: As far as the record is concerned, that is admissible, and was admitted; but how can you introduce the testimony in one case in another, without consent?

Mr. Hutchinson: Well, I think your Honor has the right to adopt the testimony in another suit.

The Vice Chancellor: How can I? This case was tried first, and after the case was tried the testimony in the Prerogative Court was taken. How can the testimony taken in the Prerogative Court be offered in the Chancery suit without consent?

Mr. Beam: Well, your Honor has control of the cause at all times.

The Vice Chancellor: Well, I have to proceed according to law.

Mr. Hutchinson: Your Honor makes a distinction between legal record and the evidence that was taken.

The Vice Chancellor: Why, yes. The record was offered in evidence. That may be offered in evidence which is offered by consent of all the parties.

Mr. Hutchinson: That is, the record in the appeal cases?

The Vice Chancellor: Well, the accounts and records, from the first papers filed on down.

Mr. Hutchinson: Then, in all the appeal cases the records have been offered in evidence?

The Vice Chancellor: Yes.

Mr. Hutchinson: In the Chancery suit?

The Vice Chancellor: Yes.

Mr. Hutchinson: Well, I was not present at the time, so I do not know.

The Vice Chancellor: Here is what the record shows (reading from p. 19 of the minutes of the testimony in the Chancery suit, which the Court instructed the stenographer he need not report). And later on, I find that Mr. Harding said that he desired to offer the record as well; then you said "Well, I will then withdraw my offer, and leave your offer stand," and that is what was done.

Mr. Hutchinson: I recall the circumstance; yes, sir. Now, do I understand your Honor that that would carry with it all the appeals in the same matters?

The Vice Chancellor: In all of the cases; it takes in everything but the testimony taken in the Prerogative Court. As to that, that is clearly inadmissible in this case.

Mr. Beam: Will your Honor please glance at that letter of the Chancellor's? (handing to the Court a paper, which the Court examined). We desired at that time, the adjudication of this one case and could not get it. So the Chancellor believed, (and I imagine that he still believes) that it still has a great deal to do with the main case. It is impossible for us to secure a complete decree on the record as it now stands in the Court of Chancery, for the reason that this final account is undetermined. If your Honor renders a decree in the Court of Chancery, that question which was really before the Court at the time and had not been tried, is unsettled and is left out of it; and, as I say, it brings in all of this fraudulent conduct of the trustee and throws a strong and clear flood of light on the question of their good or bad faith. And perhaps you will recall, when I argued this case on December 8th, 1922, I stated that the only difference between this Chancery suit and the Chancery suit instituted by Mrs. Beam in 1912 was that, in that first suit, Mrs. Beam did not charge bad faith, and that the Court of Errors, in rendering its decree in 1914, based that decree solely on the question of reasonable discretion; that in this litigation, we had come in and charged positive bad faith, and we were prepared to prove it. I think the accounts themselves show bad faith.

The Vice Chancellor: Well, they are in evidence.

Mr. Beam: Yes, sir. Even so, I cannot see how anyone is going to be harmed by this. Both Mr. Griggs and Mr. Harding were present in the Prerogative Court proceeding; and this Court is not bound by the strict rules of law, it is bound to make equitable disposal of these questions.

The Vice Chancellor: I have got to follow the rules of evidence; and the testimony taken in one suit is not admissible in the other.

Mr. Beam: As I said before, the Trustee does not come into court with clean hands. They bring in these eight accounts, and have them tied up in nice little bundles, and they say "For Heaven's sake don't open them; if you do, we are damned by the contents, because we have acted in positive bad faith from the very day that we took this trust over, and those accounts show it." And they plead that they are not required to show the true value of these securities, and yet, in the first three of these accounts they did show that, they covered up depreciation in securities of from thirty to fifty thousand dollars—is this Court going to ignore all of that? The Governor of New York, at great trouble, sent his original records to the Prerogative Court; they could not be obtained in the Chancery suit. I fail to see what principle of equity there is which requires the Court of Chancery to close its eyes to the bad faith of trustees simply because our courts have grown up out of a procedure that was started back in the time of Blackstone. We might as well expect to look out of the window and see the "Half Moon" sail up the Hudson, for instance?

Mr. Stalter: It is obviously unfair to us to have this testimony introduced in another case in a court of original jurisdiction. Obviously it is unfair to us under these circumstances. If my adversary wants the case reopened, and has new evidence, or other evidence to be introduced, that is quite another matter; but I think it is very unfair to introduce evidence that was taken in an entirely different matter of a different nature.

Mr. Beam: If the Court please, in conclusion, I would like to call the Court's attention to the fact that there is no final account in this trust; and that I, as trustee, have nothing back of me on which to base my trusteeship. I think the bad faith of this trustee goes to the root of every charge of that bill.

The Vice Chancellor: Is not that in your appeal to the Prerogative Court?

Mr. Beam: Yes, sir; but I understand this Chancery suit is to be disposed of independently and in advance of the Prerogative Court suit. Now, how can the Court sit down and render a complete decree. The Court waited and wrote several letters to counsel on both sides, and stated that it was the Court's desire that this thing be done, and I cannot understand why the Court's mind has changed on it.

The Vice Chancellor: The Court's mind has not changed on the subject.

Mr. Beam: It was the Chancellor's intention (And I think your Honor's intention) to make a complete disposition of all of these matters; and if the motion is denied somone will be harmed.

The Vice Chancellor: Well, I cannot admit in evidence testimony taken in another case in this case; it is not legal.

Mr. Beam: Then may I ask that your Honor will dispose of the Appeal Cases first?

The Vice Chancellor: They probably both will be disposed of together.

Mr. Beam: Well, by "together" what do you mean, simultaneously, at the same moment, or one have precedence over the other?

The Vice Chancellor: I don't know.

Mr. Beam: Well, I wish it to be clearly stated on the record that this question of the good faith of the trustee cannot be determined until these Orphans' Court accounts are inquired into, until their actual state and condition is determined; and that any decree of the Court of Chancery that is rendered on a lack of that evidence is absolutely futile, in my humble opinion. That is all, sir.

Mr. Hutchinson: Your Honor will pardon me: With regard to the New York evidence, your Honor will remember that an offer was made in the main case in the Court of Chancery, of the

New York evidence (I speak of it in that general way, that is, the records) and your Honor then said that the papers were not in form to be admitted as evidence and that they might be put in form and then offered, and the offer passed upon as to whether they were admissible, or not, and as to their materiality; I think, as my recollection bears me out, that that is so. Now, as I understand it, that record has been perfected and has been used in the appeal cases. Now, either upon notice to the other side (this gentleman, Mr. Stalter, says he does not know anything about it), but in some way I would like to get that offer made in the main suit before the Chancery case is finally disposed of.

The Vice Chancellor (To Mr. Stalter): What do you say to that?

Mr. Stalter: If your Honor please, I am quite sure that either Mr. Harding or Mr. Griggs would like to be heard on that point. We have not been noticed, and that is a detail with which I am not familiar.

Mr. Hutchinson: I think it is in the notice of Mr. Beam, who represented himself in the Chancery suit.

The Vice Chancellor: I suppose it does not make much difference to you, because it has been offered in one case.

Mr. Stalter: Well, sir; I am not prepared to pass on that, whether or not it is proper. (To opposing counsel) Have you them here?

Mr. Beam: It was all offered in the presence of Mr. Griggs and Mr. Harding, and they made objection to it. This order provides that none of this evidence should be admitted except under the conditions that it was admitted in that proceeding; so I thought that would take care of that. If they had any objections to make, those objections will go in in the Chancery suit.

Mr. Hutchinson: It was perfectly well understood at the time, I think, that this New York evidence when perfected should be offered in evidence, and your Honor would then pass upon it. That is all we are asking for of course; I do not think that can hurt anybody.

The Vice Chancellor (To Mr. Hutchinson) Suppose you communicate with Mr. Harding?

Mr. Hutchinson: I have already done so, at your Honor's suggestion, on another occasion, and I came here specially to make a motion in this same matter and to the same effect; I wrote to Mr. Harding, and I have never had the courtesy of a reply. I asked him if he would consent. I have had no reply; and I have given no notice, because I felt that it would be sufficiently in time if I had this evidence introduced, or offered, at least, before your Honor reached a decision in the main case.

Mr. Stalter: I should certainly not like to consent for Mr. Harding, sir, under the circumstances. He is actively engaged in another court, in litigation, this morning, and it was impossible for him to get here; and as that matter is not specfically set out, I suggest to your Honor that my adversary get in touch with Mr. Harding and talk it over with him.

Mr. Hutchinson: If I must get in touch with him, I would, but I don't know how to do it.

Mr. Stalter: He is in Paterson, at 152 Market street.

Mr. Hutchinson: And I am in Trenton; and I wrote to him and got no response.

The Vice Chancellor: (To Mr. Hutchinson), Well, suppose you talk to Mr. Harding about admitting that.

Mr. Hutchinson: That I think would be proper.

Mr. Stalter: I have no desire to be unfair about it: I just do not like to consent to something for Mr. Harding about which I know nothing.

The Vice Chancellor: Well, then, ask Mr. Harding if he objects to having this record of these photostatic copies admitted in evidence the same as in the Prerogative Court, and if he does not, he can just stipulate that it may be done; and if it is not done you can give notice for the next motion day.

Mr. Beam: Do I understand, then, that this motion is denied?

The Vice Chancellor: The motion to offer the testimony in evidence is denied, because it is illegal.

Mr. Beam: May I have an objection on the record?

The Vice Chancellor: Oh, yes.

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, *et al.*, Complainants, and PATERSON SAFE DEPOSIT AND TRUST COMPANY, Defendants.	On Bill, etc. MOTION.

APPEARANCES:

MR. WILLIAM B. BEAM and MR. BARTON B. HUTCHINSON, for the motion.

MR. CHARLES C. STALTER, for GRIGGS & HARDING, *contra.*

Before HON. JOHN GRIFFIN, Vice Chancellor.

Chancery Chambers, Jersey City, N. J.,
June 30, 1924.

Mr. Hutchinson: May it please your Honor, I have given notice of a motion this morning that I want to introduce some evidence in the case of Beam vs. Paterson Safe Deposit & Trust Company—what is, generally speaking, known as "the New York evidence". Your Honor will remember that in the final hearing of the Chancery suit a record was offered in evidence, and your Honor said it was not in probative form; since then the record has been offered in the appeal suits, and we desire now to offer it, and have your Honor pass upon it, in the Chancery suit.

Mr. Stalter: We object to it, may it please your Honor, on the ground that the case has been closed and argued fully, at great length.

Mr. Hutchinson: That was reserved.

The Vice Chancellor: I suppose the Court can open the case, if it wants to.

Mr. Hutchinson: In that case your Honor said it could be offered at some future time if it was in probative form.

The Vice Chancellor: No, my impression is that I thought it did not have any probative force; I think I ruled that it did not have any probative force as evidence.

Mr. Hutchinson: No, what I meant was this—it was not in a shape to be offered in its then present form; your Honor said you did not think

it should be admitted in the Chancery suit, but that it was not in proper shape for us even to offer it at that time; now, what we desire is to offer it, and whatever disposition your Honor makes of it, why, your Honor will make.

Mr. Stalter: I wonder why counsel waited a year and a half before it was offered.

Mr. Hutchinson: Well, it has not been perfected.

Mr. Stalter: Did it take all that time to perfect it?

The Vice Chancellor: Well, it was as offered in the Orphans' Court proceeding, I believe, wasn't it, Mr. Beam?

Mr. Beam: Why, I believe that delay has been caused by the attempt to try these Prerogative Court appeals.

The Vice Chancellor: Was not the offer overruled in the Prerogative Court case?

Mr. Beam: I think it was overruled, but not on those grounds; in fact, I believe the entire Chancery record was offered in evidence and was admitted in evidence in the Prerogative Court; the record shows that.

The Vice Chancellor: In order to give you the benefit of any exception you might have to it, in

the Chancery case I said if the original were produced and offered I would still overrule it.

Mr. Hutchinson: Yes, I recall that distinctly, sir.

The Vice Chancellor: If this case is taken up by either side. I think it ought to be put in such fashion that the fullest effect shall be given to it; I want to open it up to permit that to be offered, and then overrule the offer; so that, whichever side goes to the Court of Errors and Appeals on it will have the benefit of an exception.

Mr. Stalter: Very well, sir; then you will permit the photoscopic copy to be offered in evidence —is that it?

The Vice Chancellor: Well, the original was offered—there was no question about it—in the Prerogative case; it was produced from the Governor's office; and the photoscopic copy was offered as a substitute for it. Now, what I desire to do is to open up the case so as to permit the original to be offered, and then let the photoscopic copy go in as a substitute—

Mr. Hutchinson: And opened merely for that purpose?

The Vice Chancellor: Yes—and then the offer will be overruled.

Mr. Hutchinson: Shall I draw an order in accordance with that?

The Vice Chancellor: Yes; I want to get this thing in shape. I do not know that that is quite the regular form, but I do not want to hold up the case any longer just to bring back this original record. (To Mr. Stalter): Do you object to the fact that they have not got here at the present time the original record from the Governor's office?

Mr. Stalter: Well, on that ground; and I also object that it be offered in evidence on the ground that the case has been closed; and I do not think it has any bearing on the case at all, sir. That is just my reason.

The Vice Chancellor: Well, I think otherwise, but, of course, that is not the point; the point is this—do you object to the fact that the original record is not here in this case? It was here in the Prerogative Court case and offered.

Mr. Stalter: Yes, I do object on that ground, also.

Mr. Hutchinson: Well, that matter is in the hands of the Court, is it not?

The Vice Chancellor: Well, it (referring to the original record) was produced in the Prerogative Court, offered, and it was taken back and a photoscopic copy of it is substituted for the original—am I right on that, Mr. Beam?

Mr. Beam: Yes, sir; and I believe the photoscopic copy was consented to by Mr. Harding.

The Vice Chancellor: Yes, I believe it was.

Mr. Beam: Yes, because we had the original there.

The Vice Chancellor: Oh, the original was there, yes. How can I admit it in the Chancery suit now, when it is not brought into the Chancery suit?

Mr. Hutchinson: Do you mean the original?

The Vice Chancellor: Yes.

Mr. Hutchinson: Well, I take it for granted that the photoscopic copy was accepted as evidential—I did not know anything about this original being brought down, and I only have one angle of this litigation, only in the main suit; I have not represented anybody in the appeals, so I do not know exactly what had transpired there; but I take it that the photoscopic copy was evidential; I did not prepare myself on that point because I took it for granted that, having been offered in that form in the other suit, that it could be offered as evidential here in the Chancery suit.

The Vice Chancellor: They object to the fact that you have not got it here in this suit to offer it. They have the right to make that objection, I suppose; but it is more or less captious, I should say.

Mr. Hutchinson: Well, all I can say is that if the defendant company wants to rest upon it, I have nothing to say.

The Vice Chancellor: I think you have the benefit of it in the Chancery suit, because I said then that I overruled the offer even though the original were produced.

Mr. Hutchinson: Yes, I remember that distinctly, sir.

The Vice Chancellor: I want to give you the fullest opportunity for exception.

Mr. Hutchinson: Yes, sir; the only difficulty about that is that, possibly, when the record came to be printed, it would appear that there was no distinct offer, just as it now appears, from your Honor's statement, that there was no distinct offer of the original in evidential form. However, I cannot say anything more on the subject.

Mr. Beam: If the Court please, on the motion on June 19th, to admit the Prerogative Court record in evidence in the Chancery proceeding in this matter, I believe the Court stated that it was not legal and the Court would not admit it for that reason. Now, it is the fact that the Chancery record has been admitted in evidence in the Prerogative Court appeal. It seems to me, if that can be done one way, it can be done the other. I do not think your Honor recalls all that occurred

in Paterson in May, 1923, on that motion. Did you read that record in the Prerogative Court case?

The Vice Chancellor: I have read it.

Mr. Beam: Therefore I desire to renew my motion of last week, if I may do so, on the ground that it is legal.

Mr. Stalter: If your Honor please, I have notice of an entirely different matter from this motion that was argued last week and decided by your Honor.

Mr. Beam: That is not a matter that is contained in this notice that I have here, that Mr. Stalter speaks of.

Mr. Stalter: Do I understand that you are renewing your motion of last week?

Mr. Beam: Yes, sir; I think we are all here; we are trying to get rid of this thing, and do not want to waste the time of the Court, or anyone else; it is a perfectly simple proposition, as far as that is concerned.

The Vice Chancellor: I want to let this offer in, if there is any way I can do it; I do not think that the case should be decided on technicalities; I think the fullest opportunity should be given to both parties to prove their case. The offer in the Chancery suit was of all the records and accounts in the Prerogative Court—all the accounts in connection with it.

Mr. Beam: All the accounts, testimony and evidence and documents—not merely the accounts of the trustees, but all the testimony taken and documents submitted and offered in evidence. We simply are in a situation that we have part of the proof in one court and part in another; and this other motion that Mr. Stalter has referred to is to stay the proceeding in the Chancery suit—if you would like me to bring that on, I will do it, and discuss the whole thing at once.

The Vice Chancellor: I suppose Mr. Stalter is not in a position where he can consent to anything; he was not in the case.

Mr. Beam: Well, I think Mr. Stalter is in a position where he is sent down here without really knowing what Mr. Harding wants done.

Mr. Stalter: I know what Mr. Harding wants done, if the Court please.

Mr. Beam: That was not the case in the last motion.

Mr. Stalter: The point is that Mr. Beam desires to offer in evidence the testimony in the two cases in which the Paterson Safe Deposit & Trust Company, the defendants here, were not even parties, and which Mr. Wayne Dumont was counsel for.

The Vice Chancellor: The first proposition is this: there was offered in evidence in the Chan-

cery suit a photoscopic copy of a petition to remove Jerome, and that, of course, was inadmissible, as I saw it. They said the original could not be produced, and they undertook to substitute an examined copy. Well, it could be produced, and was produced in the Prerogative Court; and I stated at that time that I overruled the offer, even though the original was produced. It was produced in the Prerogative Court in the case in which the Paterson Safe Deposit and Trust Company was the respondent, and I there overruled the offer of the original. Now, I do not, for the life of me, see what objection there is to it—it would save time just to admit the offer of the original in the Chancery suit and let the matter take the same course, and then the case will go to the Court of Errors and Appeals, and that court will have before it what was decided and can determine whether it should be admitted in evidence and whether it would change the result.

Mr. Stalter: Well, I object, if the Court please, of course, and submit it to your Honor.

Mr. Hutchinson: Well, the record will show the objection.

The Vice Chancellor: Well, of course, that would mean a laying over of the case, if I concluded to do it, until some later date, so that could be offered, and I do not see what you are going to gain by it. I will take it on myself now —well, I cannot do it—I will consider whether or

not the thing is in such shape as to be treated as regarded as in evidence.

Mr. Beam: If your Honor please, I desire to move the Court, in the same cause, that the Chancery suit be stayed until the determination of the four appeals.

The Vice Chancellor: I do not think you need an order of that kind in the cause. The whole thing is submitted to the Court, and the Court then decides, in its discretion, which case it will decide first—is not that right, Mr. Hutchinson?

Mr. Hutchinson: Beg your pardon, sir.

The Vice Chancellor: I say, it is not necessary to take an order of this Court instructing the Vice Chancellor as to in what order he shall decide the cases?

Mr. Hutchinson: Well, I am not in this particular application.

The Vice Chancellor: He is asking me to stay your suit until the other cases are decided.

Mr. Hutchinson: All I say is that, as far as I am concerned, I have no objection, if it will serve any purpose in bringing about the administration of justice in all phases of this issue. I have no objection to that; but I am in no wise interested in moving toward this matter—naturally so—because I represent two complainants in the Chan-

cery suit; it is rather against the interest of my two clients, and I would not be justified in standing here before your Honor and saying that I consent or agree to anything; I simply stand mute.

The Vice Chancellor: Well, they want you to understand that they want your suit stayed.

Mr. Hutchinson: Well, Mr. John C. Beam says he consents to it; he is one of my clients.

Mr. John C. Beam: Mr. Edward Beam also would agree to that, if he were here.

Mr. Hutchinson: I might say to your Honor that, perhaps, there would be a distinct advantage regardless of this application, in disposing of the appeal cases first. They seem to be sort of collateral to this suit; and the Chancery suit is largely founded upon the actions and conduct of the defendant company in filing the accounts, or not filing their accounts, and various other tranactions that went on in the Orphans' Court in which these appeals were taken. But the application for a formal stay is something that is addressed to your Honor's discretion.

Mr. Stalter: If your Honor please, I understand that your Honor has them all before you, and it is within your own province as to which one you shall decide first—that is, there is no necessity for an order guiding your own action.

The Vice Chancellor: The only thing I had in my mind is whether any kind of a stay shall be made for the defendant to get into this record proper objection to the offer of the petition for the removal of Jerome. You do not consent that the offer of the original may be regarded, and that is the only thing that would justify me—

Mr. Stalter: Well, when Mr. Harding returns from Pennsylvania he may agree to that going in.

The Vice Chancellor: When do you expect him to return?

Mr. Stalter: Well, I do not expect him much before the 4th of July.

Mr. Beam: I think the question of the offer of the evidence is minor compared to the question presented by these accounts in the Prerogative Court. Now, it is a fact, that these Prerogative Court accounts are not according to the practice of the Court; and, furthermore they are not only not according to the practice of the Court, but they are not according to the practice that Griggs & Harding have employed for twenty-five years in another estate in the same Court. Since 1899 they have been acting as Proctors of the Estate of Garret A. Hobart, and have offered upwards of twenty-four or twenty-five correct accounts of that estate; and yet they go into this estate and they make simply a mess of it; they make such a mess of it that I, as trustee, cannot find about two

thousand dollars; and they follow it up by not filing any final account at all, leaving it utterly at sea. And all of that issue is in the Prerogative Court; and in the same Prerogative Court case the Chancery Court record has been admitted. A decision of the William B. Beam Appeal would settle the whole thing—together with the Edward Beam Appeal, which brings the conduct of the trustee down to date, and shows there is absolutely no final account at all. This trustee is here, pleading good faith on such a showing—

The Vice Chancellor: Well, there is an appeal of William B. Beam in the main case, touching the final account.

Mr. Beam: Yes, sir; I was made a party by the Paterson National Bank.

The Vice Chancellor: Then there is the Courtney Estate?

Mr. Beam: Yes, sir.

The Vice Chancellor: I have been unable to see how that has any application.

Mr. Beam: Well, when your Honor receives the brief that Mr. Blankenhorn expects to give you, you will see there is a marked coincidence in some of the things that occurred in the Courtney trust and some of the things that occurred in this other case; and I want your Honor to have the benefit of it.

The Vice Chancellor: You mean in the Courtney case they put in a list of the securities under that Rule 21—

Mr. Beam: I mean that there are a great many pieces of evidence in the Courtney case and a great many dates that coincide exactly with those in the other case; and your Honor will see that those two matters bear on each other. In the last case, the Courtney case, I am willing to leave it to your Honor's discretion (as matter of fact, they are all left to your Honor's discretion), but I simply want an objection to the ruling, I want to get this record straight; and, as far as that is concerned, I think Mr. Harding can come to this hearing; he is duly noticed; I might as well run away and send some clerk down here to tell your Honor that I want to be heard on this matter.

The Vice Chancellor: It is not a question of Mr. Harding being here, it is a question whether he is willing to consent to the offer of this piece of evidence in the record, that is, admit the paper itself, but object to its relevancy.

Mr. Beam: Pardon me; I thought we had passed over that, and were on this last motion.

The Vice Chancellor: Well, any other motion you have to make, now make it. If Mr. Harding is not here, that is his proposition. You can make your motion.

Mr. Beam: I made the motion, your Honor.

The Vice Chancellor: I understand what you want is to have the Fifty-odd dollar appeal case, the Courtney Estate case and the main case in the Prerogative Court construed and considered with the case in Chancery?

Mr. Beam: No, sir; I want them finally determined before the case in Chancery is even approached by your Honor.

The Vice Chancellor: I have approached them so far that I am ready to decide them all, and I do not propose to hold them up much longer. I have put in three or four weeks now on these cases, and they are in a most confused shape; it is difficult to find out what is in them.

Mr. Beam: That is all very true, sir; but the confusion is caused by these people; they say they do not have to comply with that Rule 21; and yet I say, for twenty-five years, in another case, they did comply with it, and have charged off depreciation where they lost money in securities, everyone of them, Griggs & Harding, Griggs, Dill & Harding, and John L. Griggs, acting as Proctors; and they come in here with an absolutely indefensible plea. Why, some of these accounts are absolutely rotten; they should have landed in jail long ago—

Mr. Stalter Well, I object to that.

The Vice Chancellor: You need not put that down, Mr. Black.

Mr. Beam: May I have an objection to that?

The Vice Chancellor: You may have an objection.

Mr. Beam: They did not state the correct value; they do not state it; and yet they marked in their titles that it was the correct value. They said "This is the present value," and yet, not in any one trust they had, that I can find (except in the Ryle Trust, where they did lose some money as they lost it in this) did they do any such thing. Now, if they can properly account in a million dollar estate, they can properly account in a one hundred and fifty thousand dollar estate; and the pleas are idle. They are not here in court with clean hands; they are not here to do equity; and if all of that is left out, if the Court approaches the Chancery suit and just closes its eyes to this condition, it is a disgrace, simply scandalous. I think that we might better never have come into this court at all. Here is Mrs. Beam, we want to pay her the $1,125.10 in income that was wrongfully taken from her by wrongful amortization, and which the accounts do not show that they had ever returned, and we cannot find it; here they have deducted fees, fees that were on appeal, and your Honor has held that such decree is void; those decrees are absolutely voided by the appeal; and yet we cannot get back that money. We cannot even make them account. They did not file any account at all, and the Legislature prescribes strict penalties for the failure to account, there is a fine in double the amount taken. I think Mrs.

Beam has suffered enough in this case. She has suffered for thirteen years at the hands of these people, who do not come in here, but send somebody in here, and run off to Pennsylvania because they are afraid to face the thing.

The Vice Chancellor: Well, this order, Mr. Beam, I will deny, because it is wholly a matter within the discretion of the Court, and it is an attempt to have the Court direct its own discretion.

Mr. Beam: Do I understand that your Honor is cognizant of the fact that the Chancery record is admitted in the Prerogative Court appeal of William Beam, and that the disposition of this matter is made with that knowlege?

The Vice Chancellor: Yes, sir.

Mr. Beam: May I have an objection on the record?

The Vice Chancellor: You may put anything on the record you please. I will call the next unlitigated motion.

(Filed July 2, 1924.)

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM and WILLIAM B. BEAM, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, Defendants.	On Bill, etc. ORDER.

IT IS on this 2d day of July, 1924, ORDERED that the motion made herein by William B. Beam, Solicitor, *Pro se,* on June 19, 1924, and by him repeated on June 30, 1924, to re-open the hearing in the case and to introduce herein in evidence the testimony taken and the exhibits offered in the following causes, that is to say, the testimony taken and the exhibits offered in the New Jersey Prerogative Court "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of William B. Beam from an order of the Orphans' Court of the County of Passaic allowing the final account of Paterson Safe Deposit and Trust Company, Trustee." "In the matter of the appeal of Edward Beam, *et al.* Substituted Trustees, from an order of the Orphans' Court of the County of Passaic dimissing an Order to Show Cause directed to The Paterson Safe Deposit & Trust Co., Retiring Trustees for Carrie S. Beam under

the will of Sarah A. Cooke, deceased, "In the matter of the Estate of Sarah A. Cooke, deceased upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic allowing the Paying Into Court of Distributive Share of Moneys theretofore held by Frederick W. Cooke and Charles D. Cooke, executors or their proctor therein, Wayne Dumont," and "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic and from certain other proceedings had therein relating to the accounts of the trustees, Frederick W. Cooke and Charles D. Cooke for Elizabeth C. Courtney," be and the same is hereby denied.

Respectfully advised,

JOHN GRIFFIN, V. C.

(Filed July 2, 1924.)

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM and WILLIAM B. BEAM, Complainants, and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON and THE PATERSON NATIONAL BANK, Defendants.	On Bill, etc. ORDER.

IT IS on this 2d day of July, 1924, ORDERED that the motion made herein by William B. Beam, solicitor *pro se,* on June 30, 1924, to stay the above entitled cause until the determination of the four appeal cases now pending in The New Jersey Prerogative Court under the following titles, that is to say, "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of William B. Beam from an order of the Orphans' Court of the County of Passaic allowing the final account of Paterson Safe Deposit and Trust Company, Trustee." "In the matter of the appeal of Edward Beam, *et al,* Substituted Trustees from an order of the Orphans' Court of the County of Passaic dismissing an Order to Show Cause directed to The Paterson Safe Deposit & Trust Co., Retiring Trustees for Carrie S. Beam under the will of Sarah A. Cooke, deceased, "In the matter

of the Estate of Sarah A. Coke, deceased, upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic allowing the paying into Court of Distributive Share of Moneys theretofore held by Frederick W. Cooke and Charles D. Cooke, Executors or their Proctor therein, Wayne Dumont,") and "In the matter of the Estate of Sarah A. Cooke, deceased, upon the appeal of Carrie S. Beam from an order of the Orphans' Court of the County of Passaic and from certain other proceedings had therein relating to the accounts of the trustees, Frederick W. Cooke and Charles D. Cooke, for Elizabeth C. Courtney," be and the same is hereby denied.

Respectfully advised,

JOHN GRIFFIN, V. C.

(Filed October 14, 1924.)

IN THE CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM, *Complainants,* and PATERSON SAFE DEPOSIT AND TRUST COMPANY, *et al.*, *Defendant.*	Final Decree. On Bill, &c.

This cause coming on to be heard in the presence of Messrs. Hutchinson & Hutchinson, of counsel with complainants Edward Beam, John C. Beam and Carrie S. Beam and in the presence of complainant William B. Beam, solicitor *pro se,* and of John W. Harding, of counsel with the defendant, Paterson Safe Deposit and Trust Company, and the pleadings and proofs having been read and the arguments of the respective counsel having been heard and considered, and the Court having duly considered the said pleadings, proofs and arguments, and it appearing to the Court that the complainants are not and neither of them is entitled to the relief sought and prayed for by them in their bill of complaint.

It is on this 14th day of October, 1924, by Edwin Robert Walker, Chancellor of the State of New Jersey, ordered, adjudged and decreed, that the complainant's said bill of complaint filed herein be and the same is hereby dismissed against them and each of them with costs.

And it is further ordered and decreed that the said complainants pay to the said defendant the costs of this suit to be taxed, and that a counsel fee of $350 shall be paid by the said complainants to the said defendant, which shall be included in said taxed costs, and that execution issue therefor according to the practice of this Court.

Respectfully Advised,

JOHN GRIFFIN,
V. C.

E. R. WALKER,
C.

(Filed, November 12, 1924.)

IN CHANCERY OF NEW JERSEY.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM, *Complainants,* and THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON AND THE PATERSON NATIONAL BANK, *Defendants.*	On Bill, etc Notice of Appeal

William B. Beam, one of the above-named complainants in the above-stated cause hereby appeals from a final order and decree in this cause filed and dated the 14th day of October, 1924, and from each and every part thereof, to the New Jersey Court of Errors and Appeals of the last resort in all causes.

And said complainant, William B. Beam, further appeals hereby from that part of said final order or decree which decreed and ordered that said complainants pay the costs of this suit to be taxed and that a counsel fee of Three Hundred and Fifty Dollars ($350.00) be paid by the said complainants to the said defendant to be included in said taxed costs, to the New Jersey Court of

Errors and Appeals of the last resort in all causes.

And said complainant as solicitor and counsel *pro se* conceives that there is good cause for said appeal.

WILLIAM B. BEAM,
Complainant and Solicitor *Pro se.*

Dated, Bogota, New Jersey, November 12, 1924.

(Filed December 5, 1924.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM, *Complainants-Appellants,* and THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON AND THE PATERSON NATIONAL BANK, *Defendants-Respondents.*	On Appeal. Petition of Appeal.

To the Honorable, the Court of Errors and Appeals in the last resort in all causes:

The petititon of William B. Beam, one of the appellants in the above-stated cause, respectfully shows that,

1. Petitioner appeals from a final decree and order filed herein and dated October 14, 1924, wherein it is ordered, adjudged and decreed, that the complainants' said bill of complaint, filed herein be and the same is hereby dismissed against them and each of them, with costs and wherein it is ordered and decreed that the said complainants pay to the said defendants the costs of this suit to be taxed, and that a counsel fee of Three Hundred and Fifty Dollars ($350.00) shall be paid by the said complainants to the said defendant, which shall be included in said taxed costs, and that execution issue therefor according to the practice of the Court of Chancery; and from each and every part thereof to the New Jersey Court of Errors and Appeals, for the following reasons:

I. The Court erred in dismissing the bill of complaint and should have granted the relief prayed by the complainants.

II. The defendant was guilty of fraud in,

a. Falsely stating the balances remaining in its hands in all of its accounts.

b. Continuing the investments in which a loss subsequently occurred, *not* in the exercise of good faith and reasonable discretion.

III. The defendant-accountant should have charged itself with $46,800.00, which it stated to be the value of the 225 shares of the stock of the Central Park N. & E. R. R. and should be compelled so to do and to pay over said sum to the complainants.

IV. The defendant-accountant should have charged itself with $3,465.00, which it stated to be the value of the $3,000.00 bonds of the 28th and 29th Streets Crosstown R. R. Co. 1st Mortgage Gold Bonds due 1996, and should be compelled so to do and to pay over said sum to the complainants.

V. The defendant-accountant should have charged itself with $2,270.00, which it stated to be the value of the $2,000.00 bonds of the Second Avenue R. R. Co. due 1948, and should be compelled so to do and to pay over said sum to the complainants.

VI. The defendant-accountant should have charged itself with $4,800.00, which it stated to be the value of the 200 shares of the stock of the Brooklyn City R. R. Co., and should be compelled so to do and to pay over said sum to the complainants.

VII. The accountants were guilty of bad faith in the continuing of investments not in the exercise of good faith and reasonable discretion and should be compelled to pay to the complainants the amounts lost.

VIII. If the bill of complaint is dismissed, petitioner will be deprived of property without due process of law.

IX. If the bill of complaint is dismissed, defendant will be absolved from the charge of bad faith set out in the bill of complaint and answered in the answer, before being required to account in this cause, contrary to the principles of equity and good conscience.

X. The allowance of counsel fee and costs was improper and excessive and none should be allowed.

XI. The intermediate accounts of the accountant should be re-opened down to the date at which time the accountants last showed the trust fund to be intact.

2. Your petitioner therefore prays that the said final decree and order may be wholly reversed and set aside in the particulars complained of, and that your petitioner may have such further relief in the premises as shall be equitable and just.

WILLIAM B. BEAM,

Solicitor, Counsel and Appellant, *pro se.*

Dated, Bogota, New Jersey, December 2, 1924.

Endorsed:

"Filed Dec. 2, 1924,
Thomas F. Martin, Clerk."

(Filed January 13, 1925.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
EDWARD BEAM, JOHN C. BEAM, CARRIE S. BEAM AND WILLIAM B. BEAM,
Complainants-Appellants,
and
THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, THE NATIONAL TRUST BANK OF PATERSON AND PATERSON NATIONAL BANK,
Defendants-Respondents.

ON APPEAL.

ANSWER TO PETITION OF APPEAL.

The answer of the above named defendants-respondents to the petition of appeal of William B. Beam, one of the appellants;

These defendants-respondents, not acknowledging all or any of the matters which in said petition of appeal are contained are true, for answer thereto, nevertheless say and admit that a final decree was on the 14th day of October, 1924, 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, these defendants-respondents pray

to refer thereto when the same shall be produced.

And these defendants-respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed with costs to be adjudged to these defendants-respondents.

Dated, December 15, 1924.

JOHN W. HARDING,
Solicitor and of counsel with
Defendants-Respondents.

Endorsed:
"Filed Jan. 13, 1925,
THOMAS F. MARTIN,
Clerk.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter
of
The Estate of SARAH A. COOKE,
deceased.

On Petition of Trustee for Discharge.

PETITION.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:—

The petition of The Paterson Safe Deposit and Trust Company of the City of Paterson, County of Passaic, and State of New Jersey, respectfully shows:—

1. That your petitioner is the Trustee for Carrie S. Beam named in the last Will and Testament of Sarah A. Cooke, deceased ,which said Will was duly proved before and letters testamentary thereon duly issued by the Surrogate of the County of Passaic on the Fifteenth day of May, 1905, petitioner has entered on the duties of its office but has not fully performed the same.

2. Your petitioner desires to be discharged from the further performance of the duties of its said office and is informed that such discharge is consented to by the beneficiaries.

3. The persons interested in this application are as follows:

Carrie S. Beam who resides at No. 552 Fifteenth Avenue, Paterson, N. J.

Edward Beam who resides at No. 188 River Street, Paterson, N. J.

William Beam who resides at No. 552 Fifteenth Avenue, Paterson, N. J., and

John C. Beam who resides at No. 552 Fifteenth Avenue, Paterson, N. J.

The said Carrie S. Beam being the person entitled to the income from said trust during her life and the said Edward Beam, William B. Beam and John C. Beam, being the remaindermen under said Trust created by the said last Will and Testament of Sarah A. Cooke, deceased; all of the aforesaid parties in interest are of full age.

Your petitioner therefore prays that it may be discharged from the further performance of the duties of its said office of Trustee of the aforesaid Estate.

THE PATERSON SAFE DEPOSIT
AND TRUST COMPANY,
By,
FRED LABAUGH, Treasurer.

Dated, Paterson, N. J., January 5th, 1921.

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

Fred Lagaugh, being duly sworn according to law on his oath deposes and says that he is the Treasurer of the petitioner in the foregoing petition named, and the matters and things contained therein are true to the best of his knowledge and belief.

FRED LABAUGH,

Subscribed and sworn to before me this
5th day of January, 1921.
at Paterson, New Jersey.
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the Tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5th, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By,
FRED LABAUGH, Treasurer.

Exhibit—Pre. Ct. Appeal Papers.
On Petition of Trustee for Discharge.

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

T. W. Hendershot, of full age, being duly sworn, on his oath saith that he is the Bookeeper of The Call Printing and Publishing Company, and that the annexed notice was published on January 6, 13, 20, 27, 1921, February 3, 1921, in The Morning Call, a newspaper printed and published at Paterson, in this State.

T. W. HENDERSHOT.

Sworn and subscribed before me this
third day of February, 1921.
GARRETT H. STURR,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5th, 1921.

THE PATERSON SAFE DEPOSIT
& TRUST CO.
By,
FRED LABAUGH, Treasurer.

Exhibit—Pre. Ct. Appeal Papers.
On Petition of Trustee for Discharge.

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

Louis Kievit, being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: At the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office and on the corner of East Main St., and North Main St., all in the City of Paterson, N. J., on the 7th day of January, A. D., 1921.

LOUIS KIEVIT.

Sworn and subscribed this
7th day of January, A. D., 1921.
at Paterson, before me.
GEORGE L. KING,
A Commissioner of Deeds of New Jersey.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of SARAH A. COOKE, deceased.	On Accounting. PETITION.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:

The petition of The Paterson Safe Deposit and Trust Company, of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the last Will and Testament of Sarah A. Cooke, deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The name and adresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

John C. Beam, of full age, a grandson of testa-

tor, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account.

AS TO CORPUS.

Accountant charges itself as follows:		
Balance as per book and appraisal value in the hands of Trustee as shown by its last previous accounting.	$	18,706.10
Amount received during period covered by this account		None
Total charges	$	18,706.10
Accountant prays allowance as follows:		
Amount of disbursements		None
Balance of corpus in hands of Trustee	$	18,706.10

AS TO INCOME.

Accountant charges itself as follows:		
Balance in hands of Trustee as shown by its last previous accounting	$	145.00
Amount received during period covered by this account	$	1,637.18
Total charges	$	1,782.18
Accountant prays allowance as follows:		
Amount of disbursements as shown by said account	$	1,652.48
Balance of Income in hands of Trustee	$	129.70

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commissions and counsel fees.

Dated, Paterson, N. J., Jan. 5, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treasurer.

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

Fred Labaugh, being duly sworn upon his oath deposes and says that he is the Treasurer of the Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me this
10th day of January, 1921.
ELVA M. BENSON,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the 10th

day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated, January 5, 1921.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By,
FRED LABAUGH, Treasurer.

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

Elva M. Bensen, being duly sworn upon her oath according to law, deposes and says that on the fifth day of January, Nineteen Hundred and Twenty-one, she deposited in the United States mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice, addressed to:

Carrie S. Beam, 552 Fifteenth Ave., Paterson, N. J.

Edward Beam, 188 River St., Paterson, N. J.

William B. Beam, 552 Fifteenth Ave., Paterson, N. J.

John C. Beam, 552 Fifteenth Ave., Paterson N. J.

ELVA M. BENSON.

Subscribed and sworn to this
5th day of January, before me.

CHAS. C. STALTER,
An Att'y at Law of New Jersey.

THE FINAL ACCOUNT OF THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the Fifteenth day of April, 1919, to the Fifth day of January, 1921, both of the money and property received by the said Trustees on account of the Trust Estate and its disbursements out of the same.

This Accountant charges itself:

DEBTOR.

Balance of Corpus at Book Value as per last accounting		$ 18,706.10
Balance as per last accounting	$ 145.00	
Income received (Schedule A)	1,637.18	
	$ 1,782.18	
Disbursements from Income (Schedule B)	1,652.48	129.70
Total Trust January 5, 1921		$ 18,835.80

INCOME ACCOUNT.

(Schedule A.)

To Income received as follows:

1919.	
Apr. 15, Balance as per last accounting	$ 145.00
May 1, Cps. Passaic Lighting Company	25.00
June 1, Reg. Int. Lehigh Valley R. R.	30.00
June 1, Cps. Baltimore & Ohio R. R.	25.00
June 1, Cps. Consolidated Traction Co. 25 1 —	24.00

	June 1, Cps. Paterson Railway Co.____90	
	10	
	—	80.00
	June 1, Cps. First Liberty Loan_____	1.75
	June 1, Int. on Tax Mortgage to date____	13.89
	June 23, Int. on Warren Mtg. to June 30, 1919 _____	30.00
	July 1, Cps. Mobile & Ohio R. R. Co.__15	
	5	
	—	10.00
	July 1, Cps. Passaic Water Company__	25.00
	July 15, Div. Brooklyn City R. R. Co.__	10.00
	Aug. 1, Reg. Int. United New Jersey R. R. Co._____	20.00
	Aug. 18, Int. on Sharpe Mtge. to June 30, 1919 _____	60.00
	Sept. 1, Cps. Paterson & Passaic Gas & Electric Co. _____	25.00
	Sept. 15, Cps. Third Liberty Loan_____	2.13
	Oct. 1, Cps. Long Dock Co._____60	
	10	
	—	50.00
	Oct. 1, Cps. Mobile & Ohio R. R._____15	
	5	
	—	10.00
	Nov. 1, Cps. Passaic Lighting Co._____	24.00
	Dec. 1, Int. Lehigh Valley R. R._____	30.00
	Dec. 1, Cps. Baltimore & Ohio R. R.____	25.00
	Dec. 1, Cps. Consolidated Traction Co._25	
	1	
	—	24.00
	Dec. 1, Cpt. Paterson Railway Co.____90	
	10	
	—	80.00

Dec. 15, Cps. Victory Liberty Loan_____	14.91	
Dec. 15, Cps. First Liberty Loan_____	1.75	
Dec. 26, Int. on Max Gold Mtg. to Dec. 31, 1919 _____	60.00	10
1920.		
Jan. 2, Cps. Mobile & Ohio R. R. Co.__15		
5		
—	10.00	

INCOME ACCOUNT.
(Schedule A.)

1920.		
Jan. 2, Cps. Passaic Water Co._____$	25.00	
Jan. 2, Int. on Catherine Warren Mtgs. to 12/31/19 _____	30.00	20
Feby. 2, Div. United New Jersey R. R. Co.	20.00	
Mch. 1, Cps. Paterson Passaic Gas & Elec. Co. _____	25.00	
Mch. 16, Cps. Third Liberty Loan_____	2.12	
Apr. 1, Cps. Long Dock Co._____60		
Prem. 10		
—	50.00	
Apr. 1, Cps. Mobile & Ohio R. R. Co.__15		
Prem. 5		30
—	10.00	
May 1, Cps. Passaic Lighting Co._____25		
Prem. 1		
—	24.00	
June 1, Cps. Baltimore & Ohio R. R._____	25.00	
June 1, Cps. Consolidated Traction Co._25		
Prem. 1		
—	24.00	
June 1, Cps. Paterson Railway Co._____90		40
Prem. 10		
—	80.00	

	June 1, Reg. Interest Lehigh Valley Annuity Bonds	30.00
	June 15, Cps. First Liberty Loan	1.75
	June 15, Cps. Victory Liberty Loan	17.77
10	June 28, Int. on Catherine Warren Mtge. 6/30/20	26.60
	June 30, Int. on Max Gold Mtge. to 6/30/20	60.00
	July 1, Cps. Mobile & Ohio R. R. Co. 15	
	5	
	—	10.00
	July 1, Cps. Passaic Water Company	25.00
	Aug. 4, Div. United New Jersey R. R. Co.	20.00
20	Sept. 1, Cps. Paterson Passaic Gas & Electric Co.	25.00
	Sept. 15, Cps. Liberty Loan (Third)	2.13
	Oct. 1, Cps. Long Dock Co. 60	
	Prem 10	
	—	50.00
	Oct. 1, Cps. Mobile & Ohio R. R. Co. 15	
	Prem. 5	
	—	10.00
30	Nov. 1, Cps. Passaic Lighting Company 25	
	Prem. 1	
	—	
		24.00
	Dec. 1, Cps. Baltimore & Ohio R. R. Co.	25.00
	Dec. 1, Cps. Consolidated Traction Co. 25	
	Prem. 1	
	—	24.00
	Dec. 1, Cps. Paterson Railway Co. 90	
	Prem. 10	
40	—	80.00

Dec. 1, Reg. Interest Lehigh Valley Annuity Bonds ---------- 30.00
Dec. 15, Cps. First Liberty Loan------- 1.75
Dec. 15, Cps. Victory Liberty Loan----- 22.61

INCOME ACCOUNT.
(Schedule A)

1920.
Dec. 30, Int. on Catherine Warren Mortg. to Dec. 31, 1920 ----------$ 25.02
Dec. 31, Int. on Max Gold Mtge. to Dec. 31, 1920 ---------- 60.00
1921.
Jan. 1, Cps. Mobile & Ohio R. R.-------- 15.00
Jan. 1, Cps. Passaic Water Company---- 25.00

$1,782.18

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1919.
June 5, To Paterson Safe Deposit & Trust Co. Commission ----------1 $ 87.96
June 9, To Frederic Beggs, Surrogate Commission ----------2 31.91
July 3, To Carrie S. Beam----------3 280.00
July 15, To Interest on Victory Bonds Purchased ----------4 3.52
Oct. 2, To Carrie S. Beam----------5 160.00
1920.
Jan. 2, To Carrie S. Beam----------6 300.00
Apr. 1, To Carrie S. Beam----------7 105.00
Apr. 12, To interest paid on Victory bonds purchased ----------8 3.09
July 3, To Carrie S. Beam----------9 350.00
July 15, To interest paid on Victory

	Bonds purchased	10	1.00
	Oct. 4, To Carrie S. Beam	11	100.00
	1921.		
10	Jan. 5, To Carrie S. Beam	12	230.00
			$1,652.48

(Schedule C)

This accountant further reports that the principal fund of said Trust is invested as follows:

Par Value		Book Value
$1,000	Baltimore & Ohio R. R. Co. bonds	$1,000.00
400	Brooklyn City Railway Co. Stock	800.00
4,500	Central Park North & East River R. R. Co. Stock	1.00
1,000	Consolidated Traction Co. Bonds	1,021.00
1,000	Lehigh Valley Annuity Bonds	1,330.00
100	Liberty Loan of 1917, Bonds	98.00
2,000	Long Dock Company Bonds	2,290.00
100	Third Liberty Loan Bond	100.00
200	Victory Liberty Loan Bonds	191.84
200	Victory Liberty Loan Bonds	195.00
550	Victory Liberty Loan Bonds	550.00
1,000	Mobile & Ohio R. R. Co. Bonds	1,000.00
1,000	Passaic Lighting Co. Bonds	1,002.00
1,000	Passaic Water Company, Bonds	1,000.00
1,000	Paterson & Passaic Gas & Electric Co. Bonds	1,010.00
3,000	Paterson Railway Co. Consolidated Mtge. Bonds	3,180.00
1,000	United New Jersey R. R. & Canal Co. Bonds	1,000.00
2,000	Bond and Mortgage Max Gold	2,000.00

800 Bond and Mortgage Catherine Warren ---------- 800.00
Uninvested cash ---------- 137.26

$18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treas.

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

Fred Labaugh, being duly sworn, on his oath says that he the Treasurer of the Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant and as to the credits claimed thereto, according to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to
before me this 10th day
of January, 1921.
ELVA M. BENSON,
Notary Public of N. J.

To the judges of the Orphans' Court of the County of Passaic:

The above account having been placed on the files of my office on the twentieth day of January, 1921, and being by me audited and stated, is now reported for settlement.

Dated, Paterson, N. J., February 10th, 1921.

FREDERIC BEGGS,
Surrogate.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.		On Trustee's Final Account.

EXCEPTIONS TO THE ACCOUNT.

William B. Beam and John C. Beam, two of the *cestius que* trust under the last Will and Testament of Sarah A. Cooke, deceased, hereby except to the final account of The Paterson Safe Deposit and Trust Company, trustee under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, for the following reasons:

1. The accountant does not state the actual or market value of the securities set forth in Schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in Schedule C of said final account.

3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in Schedule C of said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the number of the bonds and stocks held by it as trustee

and mentioned in Schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co. mentioned in Schedule C of said final accountant.

Dated, February 9th, 1921.

WILLIAM B. BEAM,
JOHN C. BEAM.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.	}	On Trustee's Final Account.

EXCEPTIONS TO THE ACCOUNT.
AMENDED EXCEPTIONS.

Edward Beam, John C. Beam and William B. Beam, the three remaindermen of a trust created under the last Will and Testament of Sarah A. Cooke, deceased, hereby except to the final account of The Paterson Safe Deposit and Trust Company, trustee under the said Will, for Carrie S. Beam, for the following reasons:

1. The accountant does not state the actual or market value of the securities set forth in Schedule C of the final account.

2. The accountant does not set forth the correct value of the stock in the Brooklyn City Railway Company, mentioned in Schedule C of said final account.

3. The accountant does not set forth the method by which the bond and mortgage of Max Gold mentioned in schedule C or said final account has been acquired by it as trustee as aforesaid.

4. The accountant does not set forth the num-

ber of the bonds and stocks held by it as trustee and mentioned in Schedule C of said final account.

5. The accountant has not annexed to the said account a full statement or list of the securities, investments and assets of which the balance of the estate of the said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in the securities since the settlement of the last intermediate account.

6. The accountant has not set forth the correct value of the stock in the Central Park North & East River R. R. Co., mentioned in Schedule C of said final account.

Dated, Paterson, N. J., February 16th, 1921.

WILLIAM B. BEAM,
JOHN C. BEAM,
EDWARD BEAM.

Sworn and subscribed to
before me this 16th day
of February, A. D. 1921.
BEULAH LOCKWOOD, (L. S.)
A Notary Public of New Jersey.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of The Estate of Sarah A. Cooke, Deceased.	On Petition of Trustee of Carrie S. Beam for discharge.

ORDER DISCHARGING TRUSTEE.

It appearing from the petition of The Paterson Safe Deposit and Trust Company filed herein that the said The Paterson Safe Deposit and Trust Company is the Trustee of Carrie S. Beam under the Last Will and Testament of Sarah A. Cooke, deceased and that the said Trustee has entered upon the duties of its office, but has not fully performed the same, and that the said petitioner prays that it may be discharged from the further performance of its duties as such Trustee; and it appearing that due notice of this application has been given to all parties interested in the said Trust for Carrie S. Beam under the last will and Testament of Sarah A. Cooke, deceased, and the Court having examined into the matter and it appearing that there is sufficient reason for such discharge;

It is thereupon, on this tenth day of February, 1921, Ordered, that the said The Paterson Safe Deposit and Trust Company, be and it is hereby relieved and discharged from all further duties of its said office, except accounting for and paying over the moneys or assets received by it by virtue of its said office.

WILLIAM W. WATSON,
Judge.

Exhibit—Pre. Ct. Appeal Papers.

PASSAIC COUNTY ORPHANS' COURT.
TERM A. D., 19

In the Matter of The final account of the Paterson Safe Deposit and Trust Company, Trustee for CARRIE S. BEAM, under the last Will and Testament of SARAH A. COOKE, Deceased.	Decree on Final Account.

The Surrogate having audited and state the final account of The Paterson Safe Deposit and Trust Company, Trustee for Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the tenth day of February, A. D., 1921 and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said tenth day of February, A. D., 1921 in this Court was given by said accountant according to law.

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and no exceptions being made thereto by William B. Beam and John C. Beam and proofs and allegations of the parties having been heard and con-

sidered by the Court and said exceptions overruled in their entirety.

It is, on this twenty-fourth day of February A. D., nineteen hundred and twenty-one ordered, adjudged and decreed that the said exceptions be and the same are hereby overruled account be in all things allowed as reported and that there is a balance remaining in the hands of said accountant amounting to the sum of Eighteen Thousand Seven Hundred and Six Dollars and Ten Cents ($18,706.10) to be disposed of according to law which balance is corpus at accountant's book value.

It is further ordered that from the aforesaid balance the said accountant be allowed the sum of Four Hundred dollars as and for its commissions, and that a counsel fee of Two Hundred and Fifty dollars be allowed to Griggs & Harding, proctors of said accountant, and that a further commission of $81.86 on income received during the period of said accountant be also allowed to said accountant; and that the Surrogate be allowed the sum of thirty-seven and 39/100 dollars for fees, advertising and posting notices, two and 99/100 dollars for citations and six and 12/100 dollars for Sheriff's fees.

WILLIAM M. WATSON,
Judge.

Exhibit C-1.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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Between

CARRIE S. BEAM
Complainant-Respondent,

and

THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.,*
Defendants-Appellants.

STATEMENT OF THE CASE

On Appeal from Court of Chancery.

PIERRE F. COOK,
Solicitors of Defendants-Appellants.

GRIGGS & HARDING,
Solicitors of Defendants-Appellants.

(Filed February 7, 1912.)

IN CHANCERY OF NEW JERSEY.

To his Honor Mahlon Pitney, Chancellor of the State of New Jersey:

Complaining, showeth unto your Honor your oratrix Carrie S. Beam, of Bogota, in the County of Bergen and State of New Jersey, widow of John R. Beam, deceased.

1. That on the first day of May, nineteen hundred and five, Sarah A. Cooke, the mother of your oratrix, departed this life at Paterson, in the County of Passaic and State of New Jersey, first having duly made and published her last Will and Testament in writing, which said last Will and Testament was thereafter and on or about the fifteenth day of May, nineteen hundred and five, duly proved before the Surrogate of the County of Passaic, and letters testamentary thereon were duly issued to John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather and your oratrix, who thereupon took upon themselves the burthen of the administration thereof.

2. That said testatrix in and by said last Will and Testament, after sundry gifts and bequests thereinbefore made, made the following provisions:

"Eleventh: I direct that all the rest, residue and remainder of the estate of

which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give to my son Charles D. Cooke, another of which parts I give to my daughter Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam."

"Twelfth: The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child."

"Thirteenth: If at the time of my death any of my said children shall be dead, I direct that then the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate,"

as by a certified copy of said will and probate thereof now in the custody of your oratrix and ready to be produced when and where this honorable Court may direct, or the record thereof now

remaining in the said Surrogate's office of the County of Passaic, reference being thereunto had, may more fully appear, a copy of which said last Will and Testament is hereto annexed and forms a part thereof, and reference to which is hereby made.

3. And your oratrix further shows that the defendant The Paterson Safe Deposit and Trust Company, the Trustee named in said will, a corporation of the State of New Jersey, doing business at Paterson in this State, upon the probate thereof, accepted the trusts therein and thereby imposed, and entered into the execution thereof, and has continued to act as Trustee thereunder from thence hitherto.

4. That said testatrix had made in her lifetime investments of money in three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds due nineteen hundred and ninety-six, of the par value of One thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds due nineteen hundred and forty-eight of the par value of One thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each; that said bonds and the stock shares came into the hands of said defendant The Paterson Safe Deposit and Trust Company, the Trustee under the

will of said testatrix, and are still in the hands of said Trustee, forming part of such trust fund, said Trustee having continued such investments from thence hitherto.

5. And your oratrix further shows that said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad bonds have steadily depreciated in the market from the date of the death of said testatrix to the present time, and have with some little fluctuation steadily run down in market price during that period from one hundred and thirteen to ten; that said Second Avenue Railroad Company bonds have steadily depreciated in the market from the date of the death of said testatrix to the present time, and have with some little fluctuations steadily run down in market price during that period from one hundred and eighteen to forty-three; that said shares of the capital stock of the Central Park, North and East River Railway Company have steadily depreciated in the market from the date of the death of said testatrix to the present time, and have with some little fluctuations steadily run down in the market price during that period from two hundred and ten to ten.

6. And your oratrix further shows that for a long time no income whatever has been realized from said Twenty-eighth and Twenty-ninth Streets Crosstown Railroad bonds, said Second Avenue Railroad Company bonds or said shares of the capital stock of the Central Park, North and East River Railway Company.

Exhibit C-1—State of Case First Beam Chancery Suit. Complaint.

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7. And *your oratrix further shows that said defendant* The Paterson Safe Deposit and Trust Company, as Trustee under said will, *has continued such investments* of said testatrix in said bonds and stock *negligently and not in the exercise of good faith* and reasonable discretion, and that great loss has been occasioned to your oratrix by reason of such negligent continuance of said investments, for which loss said The Paterson Safe Deposit and Trust Company, Trustee as aforesaid, should be accountable.

8. And your oratrix further shows that she has frequently and in a friendly manner applied to said defendant The Paterson Safe Deposit and Trust Company, for reimbursement to said trust fund for the losses occasioned by its continuance of said investments as aforesaid, and that said Trustee has refused and still does refuse to comply with such reasonable request of your oratrix.

All which actings, doings and pretenses of the said defendant The Paterson Safe Deposit and Trust Company are contrary to equity and good conscience, and tend to the manifest wrong, injury and oppression of your oratrix in the premises.

In consideration whereof and for as much as your oratrix is without adequate remedy in the premises at and by the strict rules of the common law, and can only obtain relief in this honorable Court where matters of this nature are properly cognizable and relievable, to the end therefore that the said The Paterson Safe Deposit and Trust Company may appear according to law and the

course of this Court, and answer make to all and singular the matters aforesaid, and that the said John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather may, to the best of their respective knowledge, remembrance, information and belief, full, true and perfect answer make to all and singular the matters aforesaid, your oratrix hereby waiving, pursuant to the statute, the necessity of the answer of said defendants being put in under the oaths of the said defendants or the oaths of any of them, and that as fully and particularly as if the same were here repeated, and they and every of them distinctly interrogated paragraph by paragraph, and that an account may be taken of the property and moneys that have been received by said The Paterson Safe Deposit and Trust Company as Trustee as aforesaid, and the charge it has against the said property and moneys; also what investments of such receipts or any portion thereof it has made and the balance thereof, and to whom the same is due, may be ascertained and declared, and that any balance found due to your oratrix and to said trust fund so held for her benefit upon such an accounting may be ordered paid to her and to said trust fund so held for her benefit, and that a Receiver of said trust fund so held for her benefit be appointed with the usual powers and duties of Receivers in like cases, and that your oratrix may have such further and other relief in the premises as the nature of the cause may require and as shall be agreeable to equity and good conscience.

Exhibit C-1—State of Case First Beam Chancery Suit. Complaint.

May it please your Honor, the premises considered, to grant unto your oratrix the State's writ or writs of subpoena issuing out of and under the seal of this honorable Court, to be directed to the said The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, commanding them and each of them, by a certain day and under a certain penalty therein to be expressed, to be and appear before your Honor in this honorable Court, then and there to answer all and singular the said premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

And your oratrix in duty bound will ever pray, etc.

PIERRE F. COOK,
Solicitor for and of Counsel with
Complainant.

Exhibit C-1—State of Case First Beam Chancery Suit.
(Copy of will.)

I, Sarah A. Cooke, of the City of Paterson, in the County of Passaic and State of New Jersey, widow of John Cooke, deceased, do make publish and declare this to be my last will and testament hereby revoking all former wills and codicils by me made.

First: I direct that all my just debts and funeral expenses be paid as soon after my death as possible.

Second: I give and bequeath the mortgage which I now hold on the property of Charles B. Donele in the City of Providence, Rhode Island, to the said Charles B. Donele.

Third: I give and bequeath all the shares of stock of the Paterson Savings Institution, of which I may die possessed to my three sons, John S. Cooke, Frederick W. Cooke and Charles D. Cooke, to be equally divided among them, share and share alike.

Fourth: I give and bequeath all books of which I may die possessed to my five children, or to those of them surviving at the time of my death, to be divided among them as they shall agree; but if they shall not be able to agree upon the division of any or all of said books, then I direct that such latter books be sold to such of my said children as will pay the highest price therefor.

Fifth: I give and bequeath my piano to my granddaughter Helen Cooke.

Exhibit C-1—State of Case First Beam
Chancery Suit.
Will.

SIXTH: I give and bequeath to each of my children such articles of my household furniture not otherwise disposed of as may be in their respective residences at the time of my death.

SEVENTH: I give and bequeath all of my clothing and jewelry to my two daughters, Lavinia Fayerweather and Carrie S. Beam, or to the one of them surviving at the time of my death, to dispose of and distribute as I may by letter to them direct; and if I do not so by letter direct, then to keep the same for themselves or otherwise dispose of them as they or she may think best.

EIGHTH: I give and bequeath to my executors hereinafter named the sum of Twenty-five thousand dollars ($25,000) in trust to invest the same and to pay the income therefrom, in equal monthly installments, to my sister Caroline A. Swineburne, so long as she shall live; and upon the death of my sister Caroline A. Swineburne to divide the said sum of Twenty-five thousand dollars ($25,000) equally among my five children.

NINTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars ($10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments to my niece Lavinia Courtney so long as she shall live and remain unmarried; and, upon the marriage or death of the said Lavinia Courtney, to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

Exhibit C-1—State of Case First Beam
Chancery Suit.
Will.

TENTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars ($10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments, to my niece Elizabeth Courtney so long as she shall live and remain unmarried; and upon the marriage or death of the said Elizabeth Courtney to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

ELEVENTH: I direct that all the rest, residue and remainder of the estate of which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give to my son Charles D. Cooke, another of which parts I give to my daughter Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam.

TWELFTH: The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to be equally divided among the children of such child.

THIRTEENTH: If at the time of my death any of my said children shall be dead, I direct that

the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate.

FOURTEENTH: I hereby appoint my said five children, John S. Cooke, Frederick W. Cooke, Charles D. Cooke, Lavinia Fayerweather and Carrie S. Beam, executors of this my last will and testament, hereby giving and granting unto them or the survivor of them full power and authority to grant, bargain, sell and convey any or all of my real estate, at public or private sale at such times and upon such terms as to them shall seem meet.

In witness whereof I have hereunto set my hand and seal this Twenty-fifth day of October, in the year of our Lord, one thousand nine hundred and two.

SARAH A. COOKE (L. S.)

Signed, sealed, published and declared by the above named testatrix, Sarah A. Cooke, as and for her last will and testament in the presence of us, both of us being present at the same time, and thereupon we, at her request, in her presence and in the presence of each other have at the same time subscribed our names hereto as witness.

Anna M. Wolf, Athenia, N. J.
Ralph Shaw, Little Falls, N. J.

A true copy.

SAMUEL C. ROBBINS,
Clerk.

Exhibit C-1—State of Case First Beam Chancery Suit.

(Filed March 19, 1913.)

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Plaintiff*, THE PATERSON SAFE DEPOSIT and & TRUST COMPANY, *et al.*, Defendants.	On Bill, etc. Answer.

The answer of The Paterson Safe Deposit & Trust Company to the bill of complaint of Carrie S. Beam, complainant.

This defendant, for answer to said bill of complaint, admits the allegations contained in paragraphs 1, 2, 3, 4 and 6 of said bill of complaint.

And for answer to the allegations of said bill of complaint contained in Paragraphs 5, 7 and 8 thereof, this defendant, further answering, says:

The Twenty-eighth and Twenty-ninth Streets Crosstown Railroad, of the City of New York, the Second Avenue Rilroad Company, of the City of New York, and the Central Park, North and East River Railroad Company, of the City of New York were each separate corporations owning surface railways in the City of New York which a long time prior to the death of the said Sarah A. Cooke

in said will mentioned had been leased practically in perpetuity to the Metropolitan Street Railway Company, of New York City, which last-named corporation prior to the death of the said testatrix had acquired by purchase, lease, and in other ways the control and right to operate practically all of the surface railways in the limits of the City of New York as one great metropolitan system.

On or about the 14th day of February, 1902, the Metropolitan Company leased its system, which included the three companies hereinbefore mentioned, to the Interurban Street Railway Company, the name of which was subsequently changed to the New York City Railway Company, by which last-named company the same were operated continuously until on or about the 24th day of December, 1907. Said leases and each of them obligated the lessee or operating company to pay the interest on all the outstanding bonds of said leased corporations and an annual dividend of nine per cent. per annum on the capital stock of the Central Park, North and East River Railroad Company.

The stocks and bonds of said three corporations, and, in fact, the stocks and bonds of all the constituent companies making up the great system controlled and operated in the first instance by the Metropolitan and afterwards by the New York City Railway Company, during the period of such operation were known and regarded in the financial world as gilt-edged securities, and were

placed with and held by investors who desired permanent and safe investment with a fixed income.

It is not true, as stated in Paragraph 5 of said bill of complaint, that the value of the said bonds and of the stock in said bill mentioned steadily depreciated in the market from the date of the death of the said testatrix to the time of the filing of the said bill of complaint. The fact is that said bonds and stocks were not actively dealt in, and only occasionally sold or purchased, in most instances not from motives of speculation, but from economic considerations personal to the holders thereof. At the time of the death of the said testatrix and at the time the said securities came into the possession of this defendant and for a considerable period afterwards, these stocks and bonds were considered by bankers, financiers, and investors as among the most desirable securities to be had for permanent investment.

Nothing occurred, outside of the ordinary trifling changes in market value of all securities, to effect the estimate of the public as to the desirability of these securities until on or about the 24th day of September, 1907, when a creditor's bill of complaint was filed in the United States Circuit Court for the Southern District of New York against the New York City Railway Company, alleging its insolvency and asking for the appointment of Receivers to operate the railway system which it controlled. The filing of this bill

and the appointment of the Receivers was a great surprise to the public, but it was not at the time regarded as affecting the substantial value or impairing the income of the underlying securities.

In the bill of complaint upon which Receivers were appointed it was specifically alleged that a Receiver was needed with power to operate the whole system, in order to preserve the property and the unity of the system as it had been maintained and operated. The order appointing the said Receivers contained provisions for the continued operation of the system, to the end that operation of the said system should be continued in the same manner as at that time and the public duties obligatory upon the lessee be in all respects discharged.

Subsequently, on or about the 1st day of October, 1907, Metropolitan Street Railway Company filed its petition asking that it be made a party defendant to the suit against the New York City Railway Company, and that the receivership be extended to its property, and on the same day the same persons who were appointed Receivers of the City Company's property were appointed temporary Receivers of the property of the Metropolitan Company. In granting the application for the appointment of Receivers, the Judge of the United States Circuit Court declared:

> "The Receivers are now in possession of the earning power of the petitioner, and under the terms of the lease petitioner can

avail of no default in payment of the amount stipulated within a year from such default. The property is an intricate combination of various roads, one or more of which might be cut out of the system by failure to pay interest on some underlying mortgage or some rental due the constituent road. It is of vital interest that the property be kept intact."

On or about the 9th day of October, 1907, the said Circuit Court of the United States for the Southern District of New York, in the suits relating to said receivership, directed the Receivers by said Court appointed to pay during their operation the interest on the various mortgage bonds of the underlying roads and the dividends on the stock of such roads as the Metropolitan and the New York City Railway Company had by said various leases undertaken to pay.

From the time said three properties were first leased to the Metropolitan Company, all of the interest on said bonds and the dividends due to the stockholders was promptly paid by the lessee or by the said Receivers, until certain dates in the year 1908.

It was generally believed in financial and business circles that the operation of said lines would be continued by said Receivers, that the Metropolitan system would be preserved intact, and that when a reorganization of the Metropolitan and

the New York City Railway Company was made, the leased lines would be continued under the original leases the same as before. There was no reason to think that the said Receivers would permit the said system to be disintegrated by dropping any of said leased lines.

It turned out, however, contrary to general belief and expectation, that the Receivers concluded to abandon the lease of the Central Park, North and East River Railroad Company, and did abandon it on or about the 1st day of July, 1908. They also abandoned the lease of the Second Avenue on or about the 1st day of September, 1908, and abandoned the lease of the Twenty-Eighth and Twenty-ninth Streets Crosstown line on or about the 1st day of July, 1908.

Up to the time of the abandonment of these various lines by the Receivers there was no fact known to the public or available as information to this defendant which could lead it to believe or expect that the interest on said bonds and dividends on said stock would not be paid as theretofore, and there was nothing available as knowledge for the guidance of this defendant to indicate that it was either wise or prudent to sell the said bonds or the said stock.

After it became known to the public that the Receivers had determined to discontinue the operation of the said three several lines respectively, the securities of each of said companies became

immediately very much depreciated in market price, and not only depreciated in price, but became practically unsalable, for the reason that the essential value of the property of said companies was not known and could not be determined, nor could it be determined with any accuracy whether said companies could be successfully operated by themselves as detached from the Metropolitan system.

The general effect of the announcement of the abandoment of these three leases by the Receivers was practically to put an end to all transactions in said stock and bonds; so that from August 6, 1908, when five shares of the stock of the Central Park, North and East River Railroad Company were sold at One hundred dollars a share, there was no record of any other sale until March 4, 1910, when there was a sale of fifty shares at Forty-one dollars a share. Similarly, the bonds of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad after July, 1908, dropped from a previous figure of from eighty to ninety to forty, and subsequently to Thirty dollars on the hundred. The bonds of the Second Avenue Railroad Company, from a price of from eighty-seven to ninety-eight in the early part of the year 1908, dropped to eighty, and subsequently to as low as Forty dollars on the hundred.

But these prices were nominal and not practical prices, inasmuch as it was impossible to sell said bonds or said stock, or any of them, except at what

at the time was considered a ruinous sacrifice. Almost all the transactions in said stock and bonds from July, 1908, to the present time have been what are known as "forced sales," where the owners have been compelled to submit to the sale of their securities, being unable to retain them or to wait to see what the issue of the reorganiztion proceedings might be.

This defendant, further answering, denies that it has continued said investments in said bonds and stock negligently, and it denies that it has not exercised good faith and reasonable discretion in the discharge of its trust. It denies that the continuance of said investments was either negligent or unreasonable. On the contrary, it affirms that under the facts and circumstances and from the standpoint of facts and information available to this defendant at the time, the continuance of said investments was wise and prudent.

In continuing said investments, this defendant consulted reputable bankers of great experience and of special knowledge of the value of these particular securities, ascertained from them such facts as could be ascertained, and not only were advised by said bankers not to sell said securities or any of them at the ruinous prices at which they might be disposed of, but exercised and used its own discretion, which was to the same effect.

This defendant caused its president, John W. Griggs, to be made a director and counsel of the

Second Avenue Railroad Company about the time the Receivers gave notice of their intention to abandon its operation, and John S. Cooke, one of the defendants and one of the beneficiaries of said trust, also of his own volition, became a member of said board of directors of said Second Avenue Railroad, largely for the purpose of obtaining information and keeping informed as to the prospects of a successful reorganization not only of the Second Avenue but of both of the other of said companies.

The said John W. Griggs, president of this defendant was in frequent communication with bankers, attorneys, and others interested in the said Metropolitan system or various parts thereof, and in the said three companies in said bill of complaint mentioned, and in that way obtained all possible information as to the prospects of the successful operation of said railroads by the companies themselves or of their successful reorganization.

Since the said securities came to the hands of this defendant, there never has been a day on which from facts then known or capable of being ascertained it has been either wise or prudent to sell the said securities, or any of them, and in continuing to hold said securities this defendant has been guided by the best judgment it has been able to give on all the information it has been able to obtain.

Exhibit C-1—State of Case First Beam Chancery Suit.
Answer.

The Second Avenue Railroad Company is under process of reorganization through proceedings in foreclosure, and there is a bondholders' committee for the consolidated bonds of said company, with which this defendant has deposited the bonds of that company. There is also a bondholders' committee for the bonds of the Crosstown road, and this defendant has deposited its bonds with said committee, thus securing the right to participate in any benefits of reorganization that may accrue when said roads are finally reorganized.

Only recently the mortgage on the property of the Central Park North and East River Railroad Company was foreclosed and the property sold to an independent purchaser, and it was not possible to know until said sale was actually made whether any reorganization thereof could be effected under which the stockholders would realize some interest in the assets of the company.

The reorganization of the said Metropolitan system and of the various parts thereof which have been from time to time cast off by the Receivers has been one of the most intricate and most difficult financial matters ever engaging the attention of the financial world, and great uncertainty has prevailed among business and financial men as to what might be done and what could be done. But the general view and opinion of all capitalists, investors, and bankers has been that those who held stock and bonds in said com-

panies or any of them would do better, if they were able to do so, to hold onto their securities, as it was believed that inherently the properties were of sufficient value and so necessary to the public use in New York City as to be certain to result in a better return to the security holders after reorganization than by sale while reorganization was in progress but undefined.

This defendant, further answering, says that from time to time since its qualification as Trustee under the will of the said Sarah A. Cooke, deceased, it has filed its intermediate accounts in the Orphans' Court of the County of Passaic, in which it has set forth the holding by it of the said securities, the last of said accounts having been filed on or about April 15, 1912, and that the said complainant, notwithstanding said accounts showed the retention by this defendant of said securities, has not objected thereto, and said accounts have been by the Orphans' Court in every way approved and confirmed.

John S. Cooke, one of the defendants, and a beneficiary of said trust, is a director and member of the finance committee of this defendant, and has been such during all the time that this defendant has held said securities. In continuing to hold said securities this defendant has had the benefit of the opinion and advice of the said John S. Cooke, and has to a great extent relied thereon and on the information obtained through him as to the status of the affairs of the said companies.

Exhibit C-1—State of Case First Beam Chancery Suit.
Answer.

This defendant, among other trusts in its possession, has held during this period stock in the Second Avenue Railroad Company and other securities of leased lines of the New York City Railway system, and has used and applied the same policy to the retention of those securities that it has with reference to the securities involved in this trust. The said securities have been the object of frequent conferences between the officers of this defendant, have been considered and discussed by its finance committee, and have been retained by the unanimous judgment of all the officers and members of the finance committee who have conferred upon the question.

This defendant denies that it is liable to account to the said complainant for any loss occasioned by its continuance of the investments aforesaid, and it denies that the complainant is entitled to any relief or to any affirmative decree whatever in this cause but submits that the said bill of complaint should be dismissed.

GRIGGS & HARDING,

Solicitors and of Counsel with Defendant, the Paterson Safe Deposit & Trust Company.

(Replication filed in the usual form.)

Exhibit C-1—State of Case First Beam Chancery Suit.

IN THE CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Complainant,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et al.*, Defendants.	On Bill, &c. Stipulation.

It is hereby stipulated by and between the solicitors of the respective parties that at the hearing of the above-entitled cause either party may offer in evidence on said hearing any facts material or relevant to the issues herein which are contained in the printed record of the suits of the Pennsylvania Steel Company, *et al.*, complainants, against New York City Railway Company, *et al.*, defendants; Morton Trust Company, complainant, against Metropolitan Street Railway Company, *et al.*, defendants; Guaranty Trust Company of New York, complainant, against Metropolitan Street Railway Company, *et al.*, defendants, and the appeal and suits and proceedings connected with said suits.

Also that either party may prove the periodical values of the Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds due nineteen hundred and ninety-six of the par value of One thousand dollars each; the Second Avenue (City of New York) Railroad Company consolidated five

per cent. mortgage bonds due nineteen hundred and forty-eight of the par value of One thousand dollars each; and the shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each; being the securities in question in said above-entitled cause, by the records and quotations of bid and asked prices furnished by the Standard Statistics Bureau, Inc., of 47 West Street, New York City.

Dated, October 7, 1913.

PIERRE F. COOK,
Solicitor of Complainant.

GRIGGS & HARDING,
Solicitors of Defendants.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

November 12, 1913.

Between
CARRIE S. BEAM,
Complainant,
and
THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et al.*,
Defendants.

Transcript of shorthand notes of testimony taken in the above-entitled cause at Chancery Chambers, Newark, New Jersey, on Wednesday, November 12, 1913, before HON. JAMES E. HOWELL, Vice-Chancellor.

APPEARANCES:

MR. PIERRE F. COOK, for the Complainant.
MR. JOHN W. GRIGGS and MR. JOHN W. HARDING for the Defendants.

Mr. Cook: I offer in evidence certified copy of the last will and testament of Sarah A. Cook of Paterson, dated October 25, 1902, duly proven before the Surrogate of Passaic County, with letters testamentary.

Mr. Griggs: No objection to it, but it is not necessary, for it is admitted in the answer.

Marked Exhibit C-1 and Exhibit C-2.

CARRIE S. BEAM, sworn.

Direct examination:
By Mr. Cook:

Q. You are the complainant in this case? A. I am.

Q. You live in Paterson? A. No, I live in Bogota.

Q. And you are the daughter of Sarah A. Cook? A. I am.

Q. Who was the widow of John Cook, of Paterson, deceased? A. Yes.

Q. And you are one of the beneficiaries under the will of Sarah A. Cook? A. I am.

Q. Are you familiar with the securities forming a part of the trust fund under that will, namely, the 28th and 29th Street Crosstown bonds, and the Central Park, North and East stock, and the Second Avenue bonds? A. I am.

Q. Forming the basis of this suit? A. Yes.

Q. Do you recollect about up to what time you received income from those securities? A. Well, I think about three years after my mother died.

Q. And since that time have you received any income from them or either of them? A. Not from those; no.

Mr. Cook: I call for a letter from Mrs. Beam to Mr. Berdan.

Mr. Harding: The whole correspondence is here if you would like to put it in.

Mr. Cook: I will first offer a letter from

Mrs. Beam to William Berdan, vice-president of the Paterson Safe Deposit & Trust Company, dated September 11, 1911, suggesting an explanation for the shrinkage in value.

Q. Is that letter in your hand handwriting? A. Yes.

Q. Mailed by you to Mr. Berdan? A. Yes, sir.

Q. On or about the day of its date? A. Yes.

The Court: Who is Mr. Berdan?

Mr. Cook: He is treasurer of the defendant.

Letter marked Exhibit C-3.

Mr. Cook: I call also for letter from me to the Paterson Safe Deposit & Trust Company, dated November 28, 1911, and also for one from me under date of January 5, 1912.

Letters produced and offered in evidence and marked Exhibit C-4 and Exhibit C-5.

CONSELYEA TRAPHAGEN, sworn.

Direct examination:

By Mr. Cook:

Q. Where do you live? A. At South Nyack, New York.

Q. And what is your business? A. I am the

New Jersey State Library

manager of the statistical department of the Standard Statistics Bureau.

Q. And what is the nature of that bureau? A. It is a bureau which was founded to file financial statistics.

Q. And where is your office? A. At 47 West Street.

Q. New York City? A. Yes.

Q. How long have you been in charge of that office? A. For about three years.

Q. And as such you are familiar with its records? A. I am.

Q. Have you investigated the records of that office as to the quotations of bid and asked prices of 28th and 29th Street Crosstown first mortgage five per cent. bonds, Second Avenue Railroad consolidated five per cent bonds, and Central Park, North and East Railroad stock, from May 1, 1905, to date? A. I have.

Q. At my request? A. Yes.

Q. And have you the result of that record? Have you that record with you? A. I have, yes.

Mr. Cook: It is stipulated either party may prove the periodical values of these securities by the records and quotations of bid and asked prices furnished by The Standard Statistics Bureau, and I ask that that stipulation be filed.

Q. Will you please produce your record? This was made up by you? A. It was, made up under my supervision.

Exhibit C-1—State of Case First Beam
Chancery Suit.
Conselyea Traphagen—Cross.
John W. Griggs—Direct.

Mr. Cook: I offer it in evidence.
Marked Exhibit C-6.

Cross-examination:

By Mr. Griggs:

Q. This was compiled from the printed stock and bond quotations that are furnished to Stock Exchange houses, brokers, bankers, etc., was it? A. Not necessarily, no.

Q. Not necessarily, but as a matter of fact was it? A. No, it was not.

Q. Well, what was it compiled from? A. It was compiled from quotations which were recorded in the Commercial and Financial Chronicle; they are accessible to bankers and brokers, however.

Q. That was included in my previous question. A. I thought you meant the Stock Exchange sheets, the official sheets.

Q. That is a publication that comes out every day? A. Every week.

Q. Every week? A. Yes.

Q. And you compiled it from that? A. Yes.

Mr. Cook: I think that is the complainant's case, sir.

John W. Griggs, sworn.

Direct examination:

By Mr. Harding:

Q. You are the president of the Paterson Safe Deposit & Trust Company, the defendant in this suit? A. I am.

Q. And how long have you been president of it? A. Over twenty years.

Q. You were of course then president at the time when Mrs. Cook died? A. Yes.

Q. And the Paterson Safe Deposit & Trust Company became Trustee under her will? A. Yes.

Q. Are you personally familiar with the action of the Paterson Safe Deposit & Trust Company in the performance of its duties in the execution of this trust of Mr. Cook's widow? A. Yes.

Q. Just state what you had to do with it personally and what knowledge you personally had in relation to the trust? A. The Trust Company as Trustee for Mrs. Cook had these particular securities, and in some other trusts it was Trustee for other securities, either stocks or bonds, of interlying surface railroads in New York City which were leased originally, about 1902, to the Metropolitan Street Railway Company and combined into one system. There was considerable amount of these securities in charge of the trust company; they were regarded among investors and the officers of the trust company as gilt-edged securities, because the leases to the Metropolitan Company which was regarded as a strong company, back of which financiers such as ex-Secretary Whitney and Mr. Ryan were, guaranteed the payment of the interest on the bonds and a dividend on the stock in some cases of eight per cent., I think, and in this particular stock involved here, the Central Park, North and East River, of nine per cent. per annum. Previously to the panic of 1907 those

stocks commanded a very high price, so that I think the net income on the stock of the Second Avenue, according to the investment price, was certainly under four per cent. Nothing occurred to disturb anybody's sense of security about them until about September, 1907. Right in the midst of the panic of 1907 a creditors' bill was filed in the Circuit Court of the United States in New York alleging the insolvency of the New York City Railroad Company and asking for the appointment of the Receivers. I may say that previously to that time these stocks had, in common with all stocks, fallen very much in market price, on account of the stock depression of 1907. The appointment of these Receivers was not regarded as in any way jeopardizing the essential values of security, that is to say, the certainty of the payment of the dividends and the interest on the bonds, because the general belief was that the system was so consistently knit together and bound by the system of transfers from one to another that it could not be disintegrated, and that it would be not only very difficult to do it, but it would be a great public calamity to disintegrate the system and break it up. And in the bill of complaint that was filed against the New York City Railroad Company it was alleged that it was most important that the system should be preserved intact and not be broken up. Of course, if that was done the leases remained good, and the rent would be paid, that is, the rent was reserved in the form of payment of dividends on the stock and interest on the bonds. The Receivers ap-

pointed by Judge Lacombe were directed to operate the whole system; as to these three particular companies they were directed and authorized to borrow funds on Receivers' certificates in order to pay the rent for these particular leases; and down to the summer of 1908 there was not, so far as we could find at the time, or found since, there was not the slightest idea but what these would be retained; in fact, Judge Lacombe had directed the Receivers to retain the properties and pay the rent. Along sometime after the first—I think it was on the first of July that they defaulted—the Receivers did not pay the interest.

By Mr. Cook:

Q. What year? A. 1908, did not pay the interest on some bonds or the dividends on some stock of one of the companies, and then gradually, as the interest dates or the dividend dates came due they let go of all three of these companies. Then it was that there was, after it became known that they were likely not to retain the leases, the market quotations on these stocks did take a drop. The trust company, the defendant, was largely interested, more largely interested in Second Avenue stock and bonds than in any other one, and in order to keep an eye and a hand on the operations of the company and on the situation, I became a director of the Second Avenue Railroad Company and also became its general counsel, and in that way I had access to all the very voluminous records connected with the receivership of the Metropolitan and the New York City Railway Company, and became acquainted with the opera-

tions of the various reorganization committees that were formed and the various proceedings in foreclosure in the different lines, including the three that are mentioned in this case.

By the Court:

Q. When was it that you became a director of the company? A. I should say it was in the summer of 1908; it was after the Receivers had notified—

Q. After the default? A. After the default, yes, sir. I might say in explanation that these companies had been officered and the boards of directors filled up by the appointees of the lessee. The New York City Railway, when they defaulted they turned the management over to the stockholders, and the stockholders elected independent boards, not interlocking any longer. As to these roads, when they were turned over the question immediately arose, could they as independent companies maintain themselves on a profit-earning basis; secondly, would they be reorganized beneficially to the stockholders or the bondholders. The first question could only be answered after a period of experience, but the general opinion, as ascertained from inquiries and conversation with those interested, was that they could maintain themselves and be profitable; and the second question, as to whether a reorganization could be effected advantageously to those interests, was that it could be; and reorganization committees were formed in all the three cases, as to all the three companies. I continued in conference with the members of the firm of A. M. Kidder & Com-

pany, who were old, conservative, established bankers of New York, from whom I think all the securities held by the trust company had originally been bought. As soon as these leases were made by these individual companies to the Metropolitan Company, the stocks of the interlying companies became gilt-edged securities, and they were largely sold by A. M. Kidder & Company, and I believe that these particular stocks of the Cook estate were bought directly from them. Now, consulting with the members of that firm, both of whom, Mr. Marvin and Mr. Coe, both of whom were active in connection with the boards of these various companies, I formed the opinion, which was concurred in by the finance committee of the trust company, as the matter was laid before them from time to time, that it was not prudent or desirable to sell these securities at the sacrifice price at which they could then be disposed of. While there were nominal quotations of the stock they were unsalable, and in no instance, I think, on that list where a stock was quoted as 50 bid, if you had offered ten shares you couldn't have got fifty per cent. of the nominal quotation price. The dilemma was presented as to whether the Trustees should take the chances that would come from a reorganization, from a separate successful operation of these companies, or submit to a very gross loss at any particular time. The mortgage, the consolidated mortgage on the Second Avenue, as to which we had some bonds, was proceeding with foreclosure, and there was a separate Receiver appointed for that in the

Supreme Court of the State of New York, who is still in possession, and the reorganization committee have not yet thought it fit to force the matter to a sale; but there is a design and purpose on their part when it is sold to make a reorganization that is equitable to all interests, stockhilders and bonds, according to their different rank. The Central Park, North and East River has turned out the worst of any of them. The property was sold under foreclosure of the mortgage; we had no bond; we only had stock—and was bought at a price and by a purchaser which does not let in any reorganization scheme at all. The only asset that is available now to the stockholders of that company is the claim of something like a million dollars which has been allowed by Judge Lacombe against the Receivers of the Metropolitan Street Railway, and is a claim against the assets of that company.

Q. The debt of the Receivers and not the indebtedness— A. It is not a debt of the Receiver; it is a claim against the assets of the corporation.

Q. Not preferred? A. Not preferred; but there are funds in the hands of the Receivers of the Metropolitan out of which creditors will receive a dividend, how much I cannot say, but you remember a suit in which several millions of dollars were recovered against Mr. Cravath and some of the other former directors. Now, during all this time the advice and opinion which we received from others who were interested in this matter was that it was not advisable to sell, but to hold on to these securities. I may mention the firm of Davies,

Stone & Auerbach, who were acting as counsel not only in the Second Avenue, but in several of these other matters; and I frequently was in conference with Mr. Tolls, a member of that firm, and being anxious about the course of the trust company, conferred with him about it, and he always believed that these companies would be able to get on their feet eventually, and it would be better for the stockholders to hold on than to sell when nobody wanted to buy. Now, that generally represents the attitude and course of the trust company in the matter. It was not a matter as to which the company was negligent or indifferent; it was a question in which I think the company used every means of acquiring knowledge and forming judgment that was available to them, and, whether their judgment was sound or not, it was honest judgment; and I may say personally, I believe under all the circumstances it was sound, and, knowing the same facts, I should do it again exactly as I did do it.

Q. What consultations, if any, were had about the matter in the board of directors of the trust company? A. Oh, it was frequently talked about in the finance committee. The board of directors meets only once a month; the finance committee meets every week; it was frequently spoken of there. One of the members is Mr. Francis K. McCully; he is an active broker, and has been for thirty years, in Paterson, familiar with all these stocks. Another member of the finance committee is Mr. John S. Cook, who is brother of the complainant in this case; and the matter was discussed

in the finance committee, and I frequently reported to them what I had ascertained, what I knew about the progress of the earnings of the Second Avenue, for instance, under Mr. Linch, the Receiver, and the various situations; and there never was any opinion expressed by any of them except it was better not to make the sacrifice. The trust company held some securities of its own, some of these stocks, and they treated their own exactly as they treated those held in trust.

Q. You mean by the trust company of course the defendant here? A. Yes.

Q. And did John S. Cook, whom you have mentioned, also become a director of the Second Avenue? A. He did; when the old directors resigned and the new board was formed Mr. John S. Cook became a director.

Q. His purpose in doing that, I suppose, was like your own? A. The same as mine, to be on the job.

Q. And had you specially conferred with Mr. John S. Cook with reference to the advisability as to what disposition should be made of the stock and securities? A. I don't remember conferring with him specially on that subject apart from the other members of the finance committee, but I know that he was present as a member of the finance committee when the matter was discussed.

Q. He concurred in the general decision? A. He did.

By the Court:

Q. Is he living? A. Oh, yes.

Exhibit C-1—State of Case First Beam Chancery Suit.
John W. Griggs—Cross.

Cross-examination:
By Mr. Cook:

Q. Generally you have stated that some time in 1908 you became general counsel for the Second Avenue and a member of its board. Did you have any official connection with either of these other corporations, the 28th and 29th Street, or the Central Park, North and East? A. No.

Q. Then your knowledge as to the affairs of those companies was acquired from your conferences with the banking authorities you have mentioned, and in other directions? A. Yes, and because their cases were inextricably mixed up in the court records and proceedings, which were very voluminous, and which I had to investigate; I filed some proceedings for the Second Avenue in the suit, and had various motions and applications, in which it was necessary to give notice to the representatives of all these companies, so I had to know their situation and status.

Q. Now, who constitute the finance committee of your board in the Paterson Safe Deposit & Trust Company? A. Now?

Q. Yes. A. I am ex-officio member, Mr. Berdan.

Q. Mr. William Berdan? A. Mr. William Berdan.

Q. Vice-president of the company? A. Yes; Mr. John S. Cook, Mr. Charles Agnew, Mr. Francis J. McCully, and Mr. Henry C. Knox, formerly cashier of the Paterson National Bank.

Q. And that board consists of as many members now as it did when this trust fund came into the

hands of the institution, or about the same? A. Yes, the same number. Almost identically the same persons.

Q. Now, what official action, if any, was taken by the finance committee upon the death of Sarah A. Cooke as to the retention of these securities as a part of this trust fund? A. If by official action you mean formal action of the board or the committee, I don't think any was taken.

Q. Then what informal action was taken, if any? A. Well, I can tell you what was done. The securities were received—

Q. I realize what was done; the record shows that; but please tell me if within your knowledge any action, official or unofficial, was taken, if the question was discussed in the board, to your knowledge?

The Court: You mean the question of the retention of these bonds as part of the securities of this trust?

Mr. Cook: Yes.

A. At the time it was originally taken?

Q. Yes. A. I don't think it was.

Q. When did it first come up for discussion in the board? A. Well, I shouldn't think that the matter became a subject of definite discussion until after the default by the New York City Railway Company.

Q. And approximately when was that? A. That would have been in the summer of 1908.

Q. Three years after the death of Mrs. Cook? A. Yes.

By the Court:

Q. It is probable then that the default was in the payment of the July interest? A. I think it was July interest, yes.

The Court: 1908.

Q. At that time, so far as your knowledge goes, was the matter formally discussed by the board or the finance committee? A. Well, it was discussed just as the values and desirability of other securities are discussed; a suggestion would be made or a question asked of somebody, and then it would be discussed, but it was not on the basis of any formal motion.

Q. Do you recollect any particular discussion of these particular securities at the time of the default? A. I can't distinguish one date from another, one time from another; I know it was frequently.

Q. I am not seeking to pin you down to any time. Do you recollect any discussion on the subject subsequent or about the time of the default? A. I certainly do.

Q. And what was the burden of that discussion and its result? A. The point of it was that this system—that these securities would remain essentially good, irrespective of their market price, because of the fact that they were essential to the complete Metropolitan system, that the system of transfers had been established from one to the other, and that they could not get along if they began to drop off integral parts of it.

Q. That was the matter of these 28th Street transfers which formed the basis of considerable newspaper discussion, didn't they? A. Yes, newspaper discussion, and I think of action before the Public Service Commission, if I am not mistaken.

Q. People were up in arms over there because that discontinued the system, weren't they? A. Yes; there was a great discussion and great protest from the public after these roads were dropped loose, when they stopped the transfer system.

Q. Now, in the organization of your bank whose duty is it to watch quotations of investments or funds invested? A. Why, I should say that it is everybody's duty to do it, but especially the duty of the treasurer, Mr. Berdan.

Q. What is everybody's duty is sometimes characterized as nobody's; was it everybody's duty or was it Mr. Berdan's duty? A. It was both.

By the Court:

Q. By everybody you mean the board of directors, members of the board of directors? A. No; I mean the finance committee; the members of that committee are constantly, by constantly I mean, yes, continuously regarding the prices and values and status of the securities that they hold either as Trustee or as individual. The bank holds a great many securities of its own, and Mr. McCully is especially active in connection with that, because he is a broker and he is always watching the ticker; the rest of us are not; but we all keep track on that. I can illustrate if want me to, but I think you understand.

By Mr. Harding:

Q. As a matter of fact, Mr. McCully appears about every day, doesn't he, regularly? A. He is there every day.

Q. In his capacity of broker or director? A. I can't tell just which, but he uses either one that happens to be useful.

Q. Are they distinguishable, those different capacities? A. Oh, yes.

Q. Now, then, is there any one, any officer in the bank who is personally charged with watching the quotations of securities in which you have funds invested?

The Court: You mean charged by rule, or law, or order, or resolution?

Q. May I change the form of that? Is there any one whose duty it is under your custom to watch those quotations, any particular person, or is it a general observance of the board? A. Well, if by quotations you mean the fluctuating prices, values.

Q. The trust companies with which I have been associated, there is usually a trust officer, I think there is one downstairs; now, it is his duty to keep tab on quotations, and if things go wrong it is put up to him; now, is there such an official in your institution? A. As I said before, Mr. Berdan, the vice-president and treasurer, is the one who is peculiarly charged, not by any resolution, but by the custom and course of business of the company, with looking after our securities.

By the Court:

Q. And by the fact that he is treasurer? A. And by the fact that he is treasurer, and because he is fitted for that thing, that is what we got him for.

Q. Now, what did Mr. Berdan report to the board as to these securities? A. I don't think Mr. Berdan reported anything.

Q. Did you ever hear him discuss the matter? A. Mr. Berdan as a member of the finance committee has been present; I have discussed these securities with him when the committee wasn't there, and I have discussed it in his presence and heard him participate in the discussion when the committee was there.

Q. And from his participation in that discussion what did you gather as to his views as to the advisability of the continuance of these securities? A. I gathered that his view was that it was not wise or prudent to dispose of these securities, but to hold them.

Q. Did he give his reasons? A. I can't say now that I remember.

Q. Were his views based upon the reports which you as counsel for the Second Avenue, and as intimately acquainted with these other lines, brought to him, or from independent investigations? A. I think that the information and advice which the committee and Mr. Berdan got on this subject was derived mainly from the reports that I made, and from what Mr. McCully made.

Q. What effort, if any, was made to sell any of these securities forming this particular trust fund? A. None.

Q. What consultation was there, if any, with this Mrs. Beam, the complainant, as to the advisability of their continuance? A. I don't know of any; I never had any conference with her.

Q. Well, was any conference ever referred to in the board? A. I think not; I think the matter of her letters was referred to.

Q. Was there any conference, so far as you know, between the finance committee and Mrs. Beam on this subject? A. Not that I know of.

Q. And you think you would have known it had there been? A. I think I should have.

Q. Was there any application ever made to the court or to any court for leave to continue the securities? A. No, it was not necessary.

Mr. Cook: I ask that that portion of the answer be stricken out.

A. All right; that was improper; strike it out, as far as I am concerned. No.

Re-direct examination:
By Mr. Harding:

Q. The securities were securities that came to the trust company which had been owned by Mrs. Cook at the time of her death? A. Yes.

Q. Therefore it was not necessary to apply to the court? A. I am not going to express any opinion; that is what I thought.

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Direct.

GEORGE S. COE, sworn.
Direct examination:

By Mr. Griggs:

Q. Where do you live? A. Englewood, New Jersey.

Q. Are you a member of the firm of A. M. Kidder & Company? A. I am.

Q. They are bankers and brokers? A. Yes.

Q. How long has that firm been in existence in New York City? A. Since 1865.

Q. How long have you been a member of the firm? A. I should say about 1897.

Q. Charles D. Marvin is also a member of the firm? A. Not now.

Q. Was he a member? A. He was.

Q. Down to what time? A. About two years ago, June.

Q. Did your firm deal in the underlying securities of the Metropolitan system? A. Very largely.

Q. Just tell us briefly what the status of those securities was after the lease of surface railways in New York to the Meropolitan Company?

Mr. Cook: When was that, General?
Mr. Griggs: 1902, wasn't it?

A. I should say about that time, yes. Why, second to none in the regard of the most conservative investors in point of security, being followed by two tiers of corporations, both showing large equities, they were regarded as being the very best, and ranked in point of basis with the superlatives we will say.

Q. Did you sell these bonds of the Second Avenue and the 28th and 29th Crosstown Street Railway? A. I don't know.

Q. And the stock of the Central Park, North and East River, you dealt in all those? A. Dealt in all those, yes.

Q. Did you sell? A. I say I don't know as to these particular ones.

Q. Did you sell this particular stock? A. I don't know; I sold Cook Brothers stocks different times, but never, that I recall definitely, without refreshing my memory, to the estate of.

Q. You remember when the receivership of the New York City Railway was instituted in September, 1907, you remember the fact? A. I remember the fact, September, 1907, yes.

Q. Was that at the time of the financial panic, as they called it? A. About that time, I think they were in the doldrums during the summer and fall, yes.

Q. There was a very severe financial convulsion and depression of securities during the whole of the fall of 1907, was there not? A. Yes.

Q. Do you remember whether or not for a considerable period the Receivers of the Metropolitan system paid the interest on the bonds and the dividends on the stock of these underlying securities, rentals? A. My recollection is they did for a couple of payments after the receivership of the Metropolitan.

Q. And do you recollect about when it was that they made default on some of them? A. I can't without refreshing my memory or looking into history, but from quotations I judge it was one of

the payments of 1908, judging from prices here. The property of the Central Park was abandoned in June, 1908; the dividends were quarterly, January, April, July and October, and I fancy it must have been early that year or the latter part of 1907. This is conjecture; I would have to look up and confirm.

Q. Did you have personally, and as a member of the firm, any interest in the securities of the Central Park, North and East River? A. Yes, I am very sorry to say I had, both as the firm and as Trustee.

Q. What did you have, stock or bonds? A. I had stock of the Central Park, North and East, and some Second Avenue.

Q. Stock of the Second Avenue? A. Yes.

Q. Bonds of the Second Avenue? A. No bonds of the Second Avenue, didn't carry those.

Q. Did you also represent in the transactions of these companies, after the default in rentals, clients who had purchased largely from you? A. Yes; we had to rather carry the burden of the fight.

Q. Were you frequently consulted by holders of these particular stocks and bonds as to what was best to do with reference to them, whether to sell them or hold them? A. Yes.

Q. And what, in your judgment, according to the facts and circumstances then known, was the best advice that you could give, and that you did give? A. The cases differed. Central Park, North and East in some cases we advised them to hold; when the Second Avenue was abandoned there was no other thing to do.

Q. Why do you say there was no other thing to do? A. Because you couldn't do anything; the bottom fell out completely.

Q. Well, explain a little more? A. I mean to say they dropped from a nominal market for odd lots to practically no market, or speculative market at auction.

Q. Have you got the records from the published lists of the sales of these various securities covering that period after the default? A. I have the record of my own books, Governor, and the record of the auction sales; there were no public record of sales, they were all privately made, and usually chlorform used to expedite the trade. It was impossible simply for the person that was willing to speculate on an average basis, say, for instance, if they were long at 220, if you choose, why, they would take a chance on evening out their lines at a price speculating on the outcome, feeling that the value was there, and that it might work out some time somehow.

Q. What was the opinion and feeling in the financial community as to the essential values of these properties ultimately?

The Court: At what time?

Q. Well, from the time of the default onward? A. Why, the feeling, of course, if you recall, the Central Park, North and East had its suits, and the trick of forcing that mortgage of the Central Park, North and East, which was so carefully and subtly concealed by the Metropolitan people, nominally paid but kept alive, we felt that we had a

very excellent case in the Central Park, North and East of putting aside the validity of that mortgage and thereby establishing a stock as the absolute first and prior lien; and the assessed value of the car barns alone at that time—I am going back, I am ruminating just a little now, was in excess of the stock itself. We felt there was a very good living chance there, and our counsel though that there was every chance of setting aside that mortgage.

Q. The mortgage under which the property was subsequently sold? A. Yes; the validity was established, and subsequently sold, and the stock wiped out.

Q. What was your own judgment as to your own stock in connection with that Central Park? A. I am frank to say I held until—

Q. What is your judgment—

Mr. Cook: Let him finish.

A. I held it until it had practically no value, and for fear of an assessment I sold.

By Mr. Cook:

Q. When? A. I should say—I sold it at auction, put it up for sale.

Q. When? A. The year I don't know, but I can tell you about the price; somewhere around between 20 and 30; sad loss. I inherited it at about 220; I bought it at about the same price; I am speaking as Trustee now. I don't know whether we had any other stock as Kidder & Company at the time. I can't recall it but we were trading in it apparently.

Q. Have you got a list of the transactions in it which occurred through your office? A. Yes; not back of December, 1907.

Q. No; but from thence on? A. From December, 1907, to October 23, 1912.

Q. Just give us what the transactions were? A. Well, my books appear, it appears in my books December 20, 1907, traded in a lot of three shares, appears on the books 122; January 8, fifty shares at 120; April, 1908, fifty shares 125; then it seems to have dropped to almost no market, eight shares at 100, July, 1908.

Q. That was about the time of the default? A. Just about, yes; the time the road was abandoned, formally abandoned; then Mr. Linch did not take possession until, I think, August of that year.

Q. Linch was the Receiver of the Central Park as well as the Second Avenue, was he not? A. Yes; and then August, 1908, five shares at par; then 1909, no sales of record; the bottom fell out; then March, 1910, the speculative demand came and we sold twenty-four shares at 41.

Q. What was that speculative demand due to? A. I think averaging mainly, people willing to take a chance.

Q. Just gambling? A. Yes.

Q. Professional operators, you mean? A. Yes, and investors who were willing to take a chance in averaging with this suit pending; this is Central Park we are speaking of; they were willing to take a chance.

Q. You did not sell any of your own at that time? A. No, I am figuring as Trustee; I don't think we had any as Kidder & Company then. We

had a sad loss I know in selling what we did have. Then March, the same date, 1910, twenty-six shares at 41 and six shares at 40. May, 1910, thirty shares at 25; May, later the same year, sixty shares at 26, and later in the same month twenty shares at 25. Then nothing down until March, 1911, one hundred shares sold at 12½. After that it was impossible to sell except at auction, and various amounts appear in the auction and were bid in by I don't know who, by speculators or perhaps investors, and it dropped from that time—Oh, just a moment. I see some auction sales in the same years at radically different prices; for instance, when we traded in 1908, July, at par some stock was sold at about the same time at 82.

By the Court:

Q. Sold at auction? A. Sold at auction.

Q. You mean at Mullers? A. At Mullers auction; and December, 1908, some stock was knocked down; about the same time, just a few months prior, we sold a small lot at par, some stock was sold at 35½.

Q. As to those auction sales, is it possible to say whether that is bought by an outside person, or whether the person that offers it, for instance, were it put up as collateral, is buying it in? A. It is usually for whom it may concern; it is impossible to say; I was only going to bring out the disparity between the auction sales and sales of the stock that was obtainable without a knock-down; there seems to be broad disparity between the auction sales and the others.

Q. Have you a list of the auction sales from June 10, 1908, to October, 1912? A. Yes.

Q. Have you it there tabulated? A. Yes.

Q. And have you a record of the sales that you made from December, 1907, to March 30, 1911? A. Yes.

Q. Tabulated? A. Tabulated.

Mr. Griggs: I suggest that we offer the table.

Q. Have you also compiled a statement of the sales of the Second Avenue Railroad Company consolidated five per cent. bonds? A. Yes.

Q. Is that it? A. Yes.

Q. Is that correct? A. That is from the same record as the Statistic Bureau, Financial Chronicle.

Q. Now, I will ask you what you think about the prudence of having retained the consolidated bonds of that company during this period in view of the situation that has existed in the Second Avenue, the reorganization committee, the foreclosure, and the receivership, and so on? A. I would rather not say, because different conditions obtained at different times, but I do not see what else could have been done, that is my recollection, at no time I do not see that anything else could have been done, because the market was so extremely narrow.

Q. Could not have sold without cutting even the quoted prices? A. No.

Q. Have you a statement there of the prices of the 28th and 29th Street five per cent. bonds? A. Yes.

Mr. Cook: You say prices; you mean quotations, you mean actual sales?

Mr. Griggs: No, quotations.

A. Quotations, no sales.

Q. Is that it? A. Apparently it is, yes.

Q. Now, what do you say with reference to the possibility of any kind of an advantageous sale on those bonds during the period from 1907 down? A. I cannot say, but the condition of that company was particularly sad from the time it was knocked off, it was practically impossible to do anything on that.

Mr. Griggs: I offer these three tables in evidence.

Cross-examination:

By Mr. Cook:

Q. Did you make up these tables, Mr. Coe? Were these made up by you? A. Yes.

Q. From your record? A. Practically a transcript from my books.

Q. And they show actual sales which passed through your office? A. Yes.

Further Direct examination:

By Mr. Griggs:

Q. Do you recall the fact of my having conferred with your firm, yourself and Mr. Marvin, relative to these securities, from time to time, from 1908 on? A. Yes; I know we were companions in misery, on our Second Avenue more particularly.

Q. More particularly in Second Avenue? A. Yes.

Q. Do you recollect about having been asked by us about the other securities? A. Yes, at times, by Mr. Berdan and yourself.

Q. By Mr. Berdan as well as myself? A. Yes.

Q. Mr. John S. Cooke ever question you, that you remember? A. I don't recall perhaps but once an informal meeting, happened to meet at the Englewood Golf Club at one time, and we made some passing remarks on the gilt-edge securities which we were jointly interested in.

Cross-examination:

By Mr. Cook:

Q. These securities you held as trustee, what were the nature, generally speaking, of those trusts? A. They were securities inherited about 1904, and by a very astute buyer, from a very astute buyer.

Q. From your firm? A. No, he didn't buy them from us; he had them from way back.

Q. You had them as trustee? A. As trustee.

Q. And you subsequently sold them? A. I subsequently added to my holdings, and then, when the trouble came, sold.

Q. Why did you sell? A. I thought the best runner was the quickest, the best thing to do was to sell and save what I could, sir, for the trust.

Q. When did that impression force itself upon you? A. When pretty much all hope had ended.

Q. And when was that about in point of time? A. I should imagine it was the latter part of 1908.

Q. Referring now to the Second Avenue? A.

No, Central Park, North and East. Second Avenue I think I am still possessor of 225.

Q. And the other security, do you own any of that? A. No.

Q. This chloroforming process was interesting; please explain that to me? A. Perhaps that was an unnecessary insertion, but I might say that it was necessary to go into a full explanation of—

Q. I am serious. A. I say in making sales it was necessary to go into the full explanation of the status of the suits, and whether or not that party considered all evidence given, they first having approached us because we undertook to sell none of this to anybody after the trouble came, only did it as traders, not as dealers, why, gave them all the evidence in hand and asked them what their judgment was; in nearly every case these were purchasers from disgruntled holders to those who were willing to take a chance.

Q. But they were purchasers? A. No, purchasers as dealers, from us as dealers.

Q. They were actual, bona fide? A. Yes, they were actual trades, yes, but you notice the small amount.

Q. There was considerable dissatisfaction, was there not, in the financial world as to the operations of the Metropolitan and its allied lines over there? A. After they lopped off the roads, yes.

Q. Previous to that time were the public complacent? A. There was no occasion to be otherwise.

Q. I say the public, I mean the financial public, which you represent? A. Yes.

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Cross-examination.

Q. And they had no complaint until these lines were lopped off. A. Couldn't have.

Q. At the time of the receivership was there any dissatisfaction among investors over there? A. There was fear, I take it, but cannot recall, except review figures, just what the attitude of mind was.

Q. But from your experience as guardian of trust funds and investor, expert in these securities, receiverships are not favorable to continuation of high values, are they? A. Not usually.

Q. A. receivership is a sort of a danger signal, is it not? A. It depends upon the circumstances.

Q. And coming down to concrete cases, in the cases of these three securities was it such or not? A. Each was different.

Q. Take up the 28th and 29th Street, what was the effect of the receivership upon that as an investment security? A. That was disastrous.

Q. And the prognosis was not favorable? A. It is impossible to do anything after the receivership.

Q. And what was the effect of the receivership upon the Second Avenue? A. Also disastrous.

Q. And when they found out was the prognosis favorable or otherwise? A. It was extremely unfavorable. I might say in connection with that that they put barriers in the way of the appointment of a receiver. Mr. Linch was appointed in September, 1908, and was prevented from taking possession until November 12, of the same year.

Q. Who put those barriers in the way? A. The Metropolitan management skinned the car barns and took all the heavy motors off of the cars and left us sadly crippled.

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Cross-examination.

Q. And so far as the 28th and 29th Street Crosstown is concerned, what was the effect of the receivership upon that? A. As I said before.

Q. I am speaking of the third security; the Second Avenue and Central Park, North and East is the one I have in mind now. A. Central Park, North and East, the effect was apparently change of value.

Q. And it is that change of value, generally speaking, was there a slump? A. August 6, 1908, Mr. Linch qualified; early part of 1908 sales at 120, later part of 1908 sales 35½.

Q. I see considerable of a depression. Well, what was the prospect of a resumption of those values at the time of the receivership? A. It was wholly speculative, dependent upon the law suits.

Q. And the chances were how adjusted? A. Establishment of the validity of that mortgage gave the Metropolitan four per cent. bonds which formed part of the security of a lien on the property; it was sold out under lien.

Q. And the establishment of the validity of the mortgage destroyed the security? A. Yes.

Q. And was there was a pretty good chance that that mortgage would be established? A. There was every chance— Oh, that it would be established?

Q. Yes. A. Different views by the different counsels on either side.

Q. It eventually was established? A. Eventually, after two appeals, I believe.

Q. And destroyed the valuation of the securities practically? A. That was one reason.

Q. Now, at the time of this receivership were

you consulted as to the wisdom of investing in either of these securities? A. I don't quite catch it; by whom.

Q. There were sales; you have reported sales made subsequent to the receivership? A. We will call them transactions.

Q. We will call them bona fide sales, because you said that was what they were. A. Yes, bona fide transactions.

Q. These transactions that you have stated were bona fide sales subsequest to the receivership, were you consulted by those purchases as to the advisability of the purchases? A. Will you repeat that?

Q. Did any intended purchasers consult you after the receivership as to the wisdom of investing in either of these three securities? A. I wouldn't say they were investment purchasers; they were mere traders.

Q. Well, we will characterize them as such; did any of these traders consult you as to the wisdom of purchasing any of these three securities after the receivership? A. No, I can't say they did.

Q. And had they done so, what would have been your advice? A. I certainly would not have advised the purchase except on the speculative chance—the evidence that I spoke of being in my possession.

Q. And you would have advised the retention of the securities then held? A. At one phase I certainly would.

Q. And what phase is that? A. Well, when the arguments had been submitted to Judge Lacombe

by counsel, and every evidence was on the basis of precedent that the mortgage would be set aside.

Q. And depending upon that you would have advised a continuance? A. Of holding.

Q. You would have considered the chances of his setting aside the mortgage justified taking a chance at the loss of trust funds? A. Of continuing his holdings.

Q. It would result in a loss, did result in a loss in this case, you think that would have been good business? A. I certainly did; I acted on it.

Q. But the result showed otherwise, did it? A. To my loss.

By Mr. Griggs:

Q. Can you fix the time when that mortgage dispute with reference to the Central Park Company was finally settled adversely to the stockholders? I think you said the latter part of 1908, but I had an idea it was much later than that. A. Oh, the final appeal—my recollection is there were two appeals, and it came up before Judge Lacombe in each case.

Q. Let me get the date of that? A. About a year ago.

Q. 1912? A. Yes, I think so.

Q. You have mentioned the name of Mr. Berdan; how long have you known that gentleman? A. Some years, I should say ten or fifteen years, I should think, at least.

Q. During your acquaintance with him has he consulted you as to the values of these three securities? A. Not consulted, but asked questions on them, yes.

Q. And what was the effect of those questions, what was the burden of them? A. As to advice, and what you are doing yourself in the premises.

Q. Advice as to what? A. As to sale, and judgment of the future values.

Q. Did you gather from his conversation that he was the custodian of these securities as Trustee? A. I don't know that I gathered anything.

Q. Did he indicate to you the purpose of his inquiry? A. Well, I knew that the Cook family had some of these securities, and not so sure but what the trust company held some of them, but I knew that he was interested in some capacity.

Q. Did he tell you that the object of his inquiry was to determine whether or not is was good business to continue them as investments in trust funds? A. He did not.

Q. Nothing occurred between you on that subject? A. No.

Record of the sales of Central Park, North and East River Railroad Co. stock of A. M. Kidder & Co. offered in evidence and marked Exhibit D-1.

Record of 28th and 29th Street Railroad Co. five per cent. bonds, quotations, offered in evidence and marked Exhibit D-2.

Second Avenue Railroad Co. consolidated five per cent. bonds quotations, offered and marked Exhibit D-3.

Mr. Griggs: We offer in evidence letter

to Pierre F. Cook from William Berdan, vice-president, dated December 11, 1911, which answers Mr. Cook's letter of November 28.

Marked Exhibit D-4.

ALL REST.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

January 5, 1914.

Between

CARRIE S. BEAM,
Complainant,

and

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY.
Defendant.

Continuation of examination on January 5, 1914, at the place and in the presence of the Court and the parties as before.

The Court: I understand you desire to put in some testimony for the purpose of showing the condition of the New York companies?

Mr. Harding: Yes.

The Court: As to the secret mortgage?

Mr. Harding: Yes.

The Court: As to the decline in stocks?

Mr. Harding: Yes, sir.

The Court: And as to the action the other stockholders and bondholders took?

Mr. Harding: Yes, your Honor, and with reference to the assets of the companies, how they appeared at the time.

The Court: I think that is all admissible.

Mr. Cook: Weren't those points entirely covered before?

The Court: I don't think they were; they were very delicately touched.

Exhibit C-1—State of Case First Beam Chancery Suit.
Joseph C. Traphagen—Re-called—Direct.

JOSEPH C. TRAPHAGEN, recalled:
Direct examination:

By Mr. Cook:

Q. You have already been sworn in this case? A. Yes.

Q. And you are the manager of the statistical department of the Standard Statistical Bureau, Incorporated, in New York? A. Standard Statistical Bureau, yes, I am.

Q. And as such you made a statement of quotations as to the values of the Central Park, North and East stock, is that stock? A. Stock.

Q. Second Avenue bonds and 28th and 29th Street Crosstown bonds, which were offered in evidence? A. I did.

Q. Have you investigated your records as to the dates when the dividends and interest on these securities was discontinued? A. I have.

Q. Will you please state what was the last payment of dividend on the Central Park, North and East stock, the date? A. The last dividend paid?

Q. Yes. A. On that stock was on January 1, 1908.

Q. And on the Second Avenue First Consolidated 5's bonds what was the last interest paid? A. On February 1st, 1908.

Q. And on the 28th and 29th Street Crosstown bonds what was the last interest paid? A. April 1st, 1908.

Q. Do you know the rates of this interest, and dividends? A. Why, I do of the bonds, the Second Avenue first consolidated bonds were 5 per

cent. issue, 28th and 29th Street Crosstown were also 5's; I think the Central Park, North and East River stock was 9 per cent. stock.

Q. Nine per cent. on par? A. Yes.

Q. And have any dividends been paid since on those? A. Not to my knowledge, we have no record of that.

Mr. Harding: I presume the witness' testimony is correct, but I would like to reserve that point, as to whether it is correct.

Adjourned to Friday, January 16, 1914, at ten o'clock.

Continuation of examination on January 16, 1914, at the place and in the presence of the parties and Court as before.

GEOORGE S. COE, recalled:

Direct examination:

By Mr. Harding:

Q. Mr. Coe, at the time of the appointment of the Receivers of the Metropolitan system what was the understanding among the stockholders and the bankers who were acquainted with the situation as to the condition of the property of the Central Park and the Second Avenue and 28th and 29th Street Railroads? A. I am more

familiar with the Central Park and Second Avenue; 28th and 29th I think was a forelorn hope from the start. The Second Avenue was always supposed until the actual segregation of the property to be a credit property, as evidenced by the fact that just a few months prior to the segregation I sold two or three hundred shares of the Second Avenue stock to Mr. Vreeland for the gratuity fund of the Metropolitan Street Railway Company, which sale was concurred in by Mr. Warren, the treasurer of the Metropolitan Street Railway Company at 210 or 220, my memory fails me, but well over 200.

Q. Who was Mr. Vreeland? A. Mr. Vreeland was the then manager or president of the Metropolitan Street; he was head of the managerial department, anyway, I don't know but what he was acting president; and he evidently thought that that property was a credit property. There was no way of determining exactly what each property returned in point of revenue, because it was so permeated with other organizations on the top line which were showing credit. The Metropolitan Street was then paying 7 per cent. on its dividend, and the New York City Railway I think was the title then of the holding company, was showing credit, so it was fair to presume that all of those underlying properties, so completely submerged as they were, and such prices having been paid by Mr. Whitney and others before their original acquisition were credit properties.

By the Court:

Q. Just put on the record there what you mean

by the term "credit properties?" A. Earners in themselves of all of their interest and guarantee dividends and surplus besides.

Q. How long before the receivership was it that you sold this stock to Mr. Vreeland? A. I don't know, but I should say within a year prior.

Q. Now more particularly with reference to what was supposed to be the condition of the property of these companies, the equipment with reference to the rolling stock, and things of that kind? A. The presumption was natural on the part of the holders that what they were operating with they owned. As a matter of fact the parent company had erased the ownership and put their own stamp on a good many of the supposed cars of the original, which under the leases they were bound to keep up as their equipment; and in the Second Avenue case I distinctly remember they went so far as to cut off all the heavy motors just prior to the segregation and put on light motors, so when we received the equipment we received an inadequate equipment, we had to get in a storm three cars to haul one practically.

The Court: That has all been testified to.

Q. He merely referred to it as skinning the company. A. I don't know that that is relevant, but in the Central Park, North and East the case was similar, under the contract and lease, copy of which I have here, they were bound to replace horses and equipment and all, and when the Court was ordered to throw that property back on the

hands of the stockholders we received it minus equipment, or so far so that we could not,—we had to drop from one-half minute headway to substantially five minutes headway, or almost no service; and we had to go back to the parent and hire equipment from the Metropolitan, we had to hire electric juice from them because they cut us off on that; they fixed their own price, and it was not until we made partial arrangement with the Edison that they came down to something that was more nearly reasonable. That was one of the things that we had to battle with.

Q. Now, at the time of the receivership did you know, did the stockholders generally have means of knowing that the company had been deprived of its property in this way? A. No, but there was a considerable space of time, as I remember, you can confirm it by the records, between the time that the Metropolitan went into the hands of the Receiver and the time when we acutally had those properties thrown back on our hands and it gave some—I don't know but what it was fully six months for them to move. Meanwhile the Metropolitan in the hands of the Receiver, and everything was on the run, you couldn't sell them except at a sacrifice, and in the case of the Second, it dropped from, I don't know, my previous testimony will show, from a high grade guaranteed underlying of the first credit to nothing almost, not marketable except to a man who was willing to take a speculation or a chance on what he thought would be recovery by reason of the fact that the Metropolitan might take it back at some price

later on. There was no market except a speculative market. That was in the case of the Second. The case was a little different in the Central Park, North and East, in this respect, that we were all very sanguine in view of the fact that the City assessed the car barns on Tenth Avenue, I think it is, Ninth or Tenth Avenue, that can be confirmed, in excess of the bonded debt, and well towards a portion of the stock debt; there was a million two hundred thousand bonds, a million eight hundred thousand stock on that property; and those car barns and the 59th Street cars had been occupying such a strong strategic position they were considered physically well worth the bonded and the stock debt; so a good many people clung to that; and also I think they were influenced by the fact that the counsel Judge Dykeman, of Brooklyn, who in the most important phase of the case argued the foreclosure of the Central Park bonds, foreclosure of the mortgage, gave us every reason to believe that he was going to win out on that suit. He was extremely sanguine. The lease is loosely, carelessly drawn piece of work, but all of those of us who were long on the stock, who were holders, I may put it, felt extremely hopeful that we might eliminate that mortgage and have our stock as the first lien, you see. Now the conditions of the market were these. It matured in 1902, long prior to the receivership, and the Farmers' Loan & Trust Company where those coupons and the mortgage was due apparently paid those bonds, and all the stockholders thought that they had the first lien, that the bonds

had been paid, although in the mortgage it recites they have the privilege or refunding, but, mind you, they very carefully secreted those, said nothing about them, took them up to the Guaranty Trust Company, Trustee, successors of the Morton Trust, put them in the Metropolitan collateral trust 4's, never canceled them of record, and it was not until, well, it was not until really about the time of the receivership that we woke up to the fact that that mortgage was existing; and then the Farmers' Loan & Trust Company, at the instigation of the Metropolitan collateral trust 4½, instituted foreclosure proceedings. Then the defense came in. Well, we immediately formed—it was about the time it was segregated—formed this protective committee, represented by Mr. Kemble, now president of the Guaranty Trust, then vice-president, but as representing the Trustee of the Metropolitan 4's, three thousand shares, Dows, of the David Dows Estate, Mr. Brokaw, of Brokaw Brothers—

By Mr. Cook:

Q. Mr. Isaac B. Brokaw? A. His son, representing Isaac B., Isaac B. though was the owner; Mr. Smith, of Brooklyn, he was the largest holder, by the way, three thousand odd shares, and who had declined two hundred and fifty per share from Mr. Whitney just a year or two prior to the segregation, if he would sell his stock, and Mr. Smith said, "Yes, for three hundred, I will."

By Mr. Cook:

Q. Did you hear him say it? A. He was a cus-

tomer of mine; he said Mr. Whitney went to his own house and made him this proposition.

Mr. Cook: If the Court please—
The Court: I cannot regard that.

A. That is not germane; I only want to show you the condition.

By Mr. Cook:

Q. Do you know yourself? A. He being a director, he naturallly went on the protective committee, representing so large an amount; and others, Mr. Pratt, of Charles Pratt & Company, Standard Oil, representing the Pratt Estate, all being large stockholders, and all wishing to sell, if they could sell, but at no time did they sell.

Q. With these different people that you have spoken of who held the stock,—this is Central Park you are speaking of? A. Yes, I am speaking of Central Park more particularly now.

Q. Did you have conferences with them about the advisability of holding? A. Oh, yes; well, not as to the advisability of holding, it was not a question; it was a question whether you could or you could not; you had no choice in the matter, you had to hold; but there was more hope holding in those than there was of some recovery as the outcome of this suit than there was in the case of the Second Avenue, because that was an immediate case of receivership. Central Park, North and East did not go into the hands of a Receiver.

Q. What was the amount of the capital stock is-

sued to the Central Park, North and East? A. A million eight hundred thousand stock, a million two hundred thousand bonds.

Mr. Harding: Right in connection with this testimony, at this point, this testimony of Mr. Coe, I would like to have on the record the Federal Reporter decision; I find that it is all set forth, those decisions in the Federal Court. I will offer—

The Court: You give notice to the other side that you refer to them. I suppose you can hardly put them in evidence.

Mr. Harding: 193 Federal, case of Farmers' Loan & Trust Company v. Central Park, North and East Railroad Company, and others, 193 Federal, 963, which was decided in the Circuit Court of Appeals in the Second Circuit, on December 15, 1911; and the same case, decided below in 181 Federal, 595, in the Circuit Court the Southern District of New York, which was decided September 17, 1910. Then the same case, where an application was made for a certiorari to take it to the United States Supreme Court, reported in 225 United States Supreme Court Reports, 712, where the certiorari was refused.

Q. Now, in your previous testimony you gave us a schedule showing the auction sales of the stock of the Central Park, and bonds of it, I believe, I am not sure, bonds of the Second Avenue, and 28th

and 29th Street, and you also showed the sales that went through your office? A. Yes.

Q. Were these or not practically all the sales that took place? A. I couldn't state—

Mr. Cook: Just a moment. All the sales that were made on the market, or through his office?

A. He means on the market.

Mr. Cook: How can he testify to that?

The Court: What he knows he can testify.

A. I can only say, so far as I can say it is reasonable to assume that there were very few outside, because the market began and ended practically, so far as these specialties were concerned, with about three houses, and the other houses just quit when this thing came, and we had to go in and appoint the Receiver for the Second Avenue, or it was at our instigation, and the same Receiver that was appointed with Mr. Griggs, if you remember, I don't know, but Mr. Griggs can recall and verify this; and the Central Park, North and East, Mr. Linch, the Receiver of the Second Avenue, was made manager of it, a good hard headed operator.

The Court: Now you are running off.

A. I only say, I want to bring out the point, your Honor, that we were more identified with protecting our customers and the stockholders

than anybody else, and naturally the trading came to us on account of our activity.

Q. Did you have special means of knowing, generally speaking, what other brokers were doing with reference to the matter? A. You can confirm that.

Q. I ask you if you did? A. I won't say; that can be confirmed, your Honor, by reference.

The Court: Do you know Mr. Harding's question?

Q. I was asking you whether or not your firm as brokers particularly or specially dealt in these securities? A. Oh, yes.

Q. And on that account did you keep in touch with the market generally, and what was going on with reference to sales? A. Surely, everything naturally tended to our door.

Q. And from that knowledge of yours you have given practically all the sales that took place? A. Yes.

Mr. Cook: I want to give Mr. Coe the widest possible latitude. I think if he will direct his attention to Mr. Harding's questions it will not only save our time, but elucidate the record.

Q. At the time of this receivership, or shortly after, I think you refer in your previous testimony to the Third Avenue trying to make a deal? A. You are speaking of the Metropolitan receivership, sir?

Q. Yes. A. Yes.

Q. I wish you to explain a little more fully what was proposed by the Third Avenue, or what you had in mind with reference to any action of the Third Avenue? A. You are speaking now as to the Central Park, North and East?

Q. Yes. A. Well, the Central Park, North and East is known as the Belt Railroad, crossing 59th Street, going south to South Ferry on the west side, south to South Ferry on First Avenue, &c., on the east side, 59th Street crosstown was the strategical, one of the most important points of the crosstown operation in the traction system. The elimination of the privilege of crossing that point practically cut Mr. Whitridge's property in two; he went up on the east side.

By the Court:

Q. What is that? A. The Third Avenue system; he went up on the east side, and there he broke, and had no crosstown privileges without paying a second fare, no continuous route. He wanted it very particularly, and negotiated, tried to negotiate with the committee for its purchase.

By the Court:

Q. That is for the purchase of Central Park, North and East? A. Yes; but he wanted to give us nothing, and would not mention price, but tried to get us to name figure. Metropolitan Street also continued to want it because of their physical connection, crosstown connection was at 59th Street; but as soon as the Court threw these properties

back they immediately made their own connection at 54th, I think, just below, with Sixth Avenue, and that made their continuous route, so they didn't need it any more, so far as the Metropolitan —but Whitridge still wanted it; but he couldn't see his way clear to pay the price, because he was not in funds at the time.

Q. The main thing I want to get at is what, if anything, was the effect of these negotiations or propositions with reference to the Third Avenue upon the feeling of the stockholders with reference to holding on to the securities? A. Well, it only contributed another point of hope, I might say, because we were giving a continuous route to Mr. Whitridge, but on what he thought was an unequal distribution of the fare, 8 cents I think through, and he argued we got the biggest end of the stick, very short haul, and tried before the commission in every possible way to block us and kill us and acquire the thing, if he could.

Q. Now did the going through the Hudson Tube have an effect upon these railroads, these three roads, that was not expected at the time of this receivership, and for some time afterwarls? A. Eventually undoubtedly it had, because there was a great difference in earnings and the standing of this property between the first trouble and the final dissolution, because a great many things contributed against the property; the Hudson Tube killed a great deal of the ferry business; and then the fact that the bridges landed people at the center of the town killed north and south and east and west, and we found it profitable to operate

much longer headway, because we couldn't fill the cars, and it transformed travel very considerably.

Q. The main thing I want to get at is was the effect of the tube fully appreciated at the time or for some time afterwards? A. Well, I can't say, but for three or four years that made a great transition, I don't know just what period it occurred, but just as soon as the Hudson Tubes got in full swing it affected our earnings.

Q. In your talk with Governor Griggs, Mr. Cook and Mr. Berdan did you, generally speaking, talk about these things as affecting your judgment with reference to holdings? A. I did not about this particular point, but Mr. Berdan kept his ear very close to the ground.

Q. Did you generally speak about all these things that you have spoken of? A. I did as to the suit; I think they inquired as to the suit; as to the operating end I was thrown in contact with them as member of the committee, I don't think they ever said anything about that.

Q. You spoke of having sold your stock of the Central Park Road at 20; I think you did not give us the date when you did sell, about when you sold that stock? A. Well, I can't—

Q. I mean generally speaking? A. I wouldn't state date because—

Mr. Cook: He says he can't name the date.

A. If you had asked me that before, to verify it by my books, I could 'phone to my office and

give exact date; it isn't fair to ask me within the year. Let me say it was towards—when pretty much everything had become exhausted in my mind as to the possibilities of the suit going in our favor.

By the Court:

Q. Then it was during the foreclosure of the mortgage? A. Yes, it was, when we had been defeated once, and it was on appeal.

Q. December, 1911? A. 1910 or 1911, it must have been along there.

Q. The appeal was decided December 15, 1911. I think the price almost shows from the quotations it was about that time. The reason I speak of this, I don't know whether the stenographer got the records wrong or not, but on page 33 you speak about a time when all hope had ended? A. In my opinion.

Q. And he has it as if it was in the latter part of 1908? A. Oh, no, it could not have been.

Q. What would you say? A. It must have been two years later than that. When giving specific dates I think it is fair to give me a chance to verify by my books.

Q. Now at that time when you did sell at 20 what was the special consideration that induced you to sell that stock then? A. There were no considerations, if you wish to put it that way.

Mr. Cook: That is the answer.

A. What influences you might say?

Q. Yes.

Mr. Cook: Please confine yourself to the question.

A. It is a fair question?

By the Court:

Q. What was it that induced you to sell your stock at that time? A. Well, I felt that hope was gone, and I was a trader, and I don't carry dead things on my books, anything you can't borrow on, or in which there isn't some hope of recovery, are naturally junk, and I did it.

Q. Was it a custom in your business to do it in a case of that kind or not?

Mr. Cook: If the Court please—

The Court: I guess that is going pretty far.

A. My previous statement covers that, I think.

Q. Now, I wish you would state a little more particularly the condition of the market in general from 1905 down to this receivership of the Metropolitan Company, which was in September, 1907?

Mr. Cook: If that refers to quotations, I object; they are in evidence.

Q. I am not speaking of this; I am speaking of the market generally, of other things.

Mr. Cook: I would like to have the question a little more definite.

The Court: He is asking about the general state of the market.

Mr. Harding: I want to show that the general decline prior to the receivership was in common with all other stocks.

The Court: I will let you show that.

A. In reply to that I would not trust to my memory, but I would refer you to quotations.

Q. Well, you have them, have you? A. There is a book that gives, William B. Dana's book gives you all those quotations for a period, and make your own deductions. I won't trust to memory.

Q. Oh, I merely want to show generally as to a few stocks; perhaps he will consent to it, from the period when we got these securities in 1905 down to the time of the receivership.

Mr. Cook: When was that?

The Court: You want to know whether during that whole period there was a rising or falling market?

Mr. Harding: I want to show there was a falling market, everything went down.

The Court: Can't this witness answer that question?

A. We all recall that in 1907 we had our unfortunate panic, when values vanished.

Mr. Cook: That is not 1905.

A. No, 1905, things were practically strong, I think guaranteed stocks reached, 1904 and 1905, their maximum.

Exhibit C-1—State of Case First Beam Chancery Suit.
George S. Coe—Re-called—Direct.

By Mr. Cook:

Q. That continued up to about the time the Knickerbocker went under in 1907? A. Yes, pretty nearly; I think the statistics would confirm that.

Q. Take the panic of 1907, that panic began early in the year, didn't it? A. My recollection was in the spring, was it not?

Q. The statement offered by the complainant in evidence, Exhibit C-6 being the table of these prices, shows that on December 1st, 1906, the Central Park, North and East was quoted at from 195 to 200. Now this same table shows that on September 28, 1907, at the time of the receivership, it was quoted at from 140 to 165. Now I ask you whether or not that decline in this stock was any greater than the standard railroad stocks decline during that same period due to the panic of that year?

Mr. Cook: May I ask if he knows?

The Court: Of course he won't answer unless he knows.

A. You want a yes or no answer?

The Court: Yes, you can answer yes or no, and if there are explanations needed you can explain afterwards.

A. I can say that all of those guaranteed stocks held right with other things, on account of their exemption from tax, until the misfortune came, and I would not say that the drop was out of har-

mony with the general market or not, I don't think the drop was as keen as the general market, because they couldn't short them, couldn't sell what they didn't have and cover. As a matter of fact, Mr. Vreeland undertook to short Second Avenue and borrow from me.

Q. Have you a memorandum there that will show you, for instance, how some of the standard stocks fell in that period?

The Court: From 1905 down to the time of the Metropolitan receivership.

A. I can quote from my records from 1906 to 1909, which you can read.

Q. Take a low market in 1907 and compare it? A. Until when?

Q. Say compare it with 1905 or 1906? A. I haven't got 1905; I can give you 1906 and 1907 as compared with 1909.

Q. That wouldn't do any good if you haven't the others. I don't think I will go in it any further, if counsel objects to it. Now was there anything known by you that would have induced you to sell the stock of the Central Park or the bonds of the Second Avenue, and the bonds of the 28th and 29th Street roads prior to the time when these receiverships took place? A. Nothing at all.

Cross-examination:

By Mr. Cook:

Q. Mr. Coe, you have acted as broker for the Paterson Safe Deposit & Trust Company, or your

firm, for how many years? A. I cannot flatter myself that I am broker of the Paterson Trust Company.

The Court: Don't quibble over words.

A. I am not; I am not their broker.

Q. How long have you represented the Paterson Safe Deposit and Trust Company in New York City in financial matters? A. I have never boasted of that honor.

Q. I am not seeking to lay any honors upon you; I am merely asking for a fact; how long have you been dealing in stocks in which this company, this bank was interested, for them, representing them in any capacity? A. I never represented them; I simply as a dealer in these various underlying securities sold to the Paterson Safe Deposit & Trust Company, as I would to any other investor, you see.

Q. I haen't any doubt of that. How long has that condition existed? A. As to date I can't say.

Q. How many years? A. I guess since their—when were they organized, can you tell me?

Q. No, I don't know that. Five years, ten years? A. Easily five years, I think.

Q. Ten? A. Have they been living ten?

Q. I am asking you how long you have been selling to them? A. I have always known Governor Griggs, and my partner, C. D. Marvin, came from the same college, and they have always been more particularly intimate, and it was while he was in the firm, they always had happy relations.

Q. Generally speaking, how many years have

you sold securities to this institution? A. I guess ever since they have been buyers of this character of goods.

Q. That harlly answers my question? A. I couldn't tell you as to date.

Q. As many as ten? A. 1904 that would put it; I should say so.

Q. Now with reference to the Hudson Tubes, there wasn't any extraordinary effect upon the general transportation conditions consequent upon the opening of those tubes which could not have been and was not foreseen by careful investors generally, was there? A. I don't suppose so.

Q. It was generally known that they were being successfully financed by Mr. McAdoo and the Harvey-Fisk interests, was it not? A. No, sir, excuse me, at one time their situation was extremely grave, and it was a question whether or not they would complete their enterprise.

Q. But it became apparent that he was going to get away with it? A. No, I don't know as to whether or not people speculated on that—

Q. Weren't the people trading upon the possibility that he might not be able to finance it? A. I don't think that entered.

Q. Now, the Farmers' Loan & Trust Company has been mentioned here as having financed these matters for a time, and you have stated that it was a great surprise when you found that for some things had been carried on the books improperly, or informally, to say the least. Now could that condition have been discovered, without characterizing the condition at all, this condition to which you have testified, and which you say came

as a total surprise to everybody, could that condition have been discovered upon thorough investigation? A. That is a nice question.

Q. That is what I intended to make it? A. You give me the same privilege of answering at the same length?

The Court: Answer it; make your explanation as you go along.

A. The Farmers' Loan & Trust Company——

Q. Just a moment; I think my question was plain; I ask you if it could have been discovered upon investigation, if you know? A. If what could have been discovered?

Q. The conditions to which you testify? A. The condition to which I testified does not apply wholly to the Farmers' Loan & Trust Company; the Farmers' Loan & Trust Company were put in possession of funds to meet those bonds.

Q. I will confine my inquiry to the condition so far as it applies wholly to the Farmers' Loan & Trust Company. Your testimony was directed to that. A. No, excuse me.

The Court: Just hear the question.

Q. Strike out the question and let me frame it connectedly. I direct your attention to the condition to which you testified so far as the Farmers' Loan & Trust Company alone was concerned in it, and which you said came as a great surprise, and I now ask you if this condition so far as it related to the Farmers' Loan & Trust Company,

could have been discovered upon investigation? A. Now will you let me answer the same way? The Farmers' Loan & Trust Company where those bonds——

Q. I think my question is plain. A. Your question is not fair, inasmuch as it was not all Farmers' Loan——

The Court: You may answer yes or no, and I will permit you to make such explanation as is necessary to elucidate the fact.

A. I cannot answer yes or no to the question, your Honor. I can answer in two words if you will let me answer my way.

Q. And what are those two words? A. The Farmers' Loan & Trust Company were payees—

By the Court:

Q. Of what? A. Of that mortgage; they were put in possession of funds to meet that; their duty ended; the bonds were then taken up to another trust company, mark you, I refer to my former statement, which was the Guaranty Trust Company, as successor to the Morton Trust Company, who were Trustees under the Metropolitan 4's, they having merged, you see, meanwhile, and then there is the point in connection with that trust company, that the business was transacted by the Farmers' Loan & Trust Company, *per se,* they were absolutely clean, and they simply performed a perfunctory service.

Q. And what was the name of this other trust company? A. My recollection is that Morton

Trust Company was Trustee under the Metropolitan 4's, and the Guaranty succeeded them in their merger to all their trusteeships.

Q. This transaction occurred then between the Farmers' Loan & Trust Company and the Morton? A. And the Guaranty as successor to the Morton.

Q. And the Guaranty as successor, is that right? A. That is right.

Q. Then there were three trust companies concerned in this transaction which came as a surprise? A. Only two trust companies.

Q. And which were those two? A. The Guaranty as successors of the Morton.

Q. And? A. And Farmers' Loan, but eliminate the Farmers' Loan from it.

Q. Now we will direct our attention very briefly to these two companies, the Guaranty Trust Company, of which Mr. Hemphill is president? A. Yes.

Q. Now you have stated that this transaction came as a great surprise; could it have been discovered upon investigation of the methods of these two companies? A. Might say the surprise came later; I haven't the least doubt had any of us as holders known that those bonds were not actually paid and cancelled, they were apparently so far as we are concerned paid, and we got our money, they are supposed to have been canceled of record.

Q. Could it have been discovered they were not so canceled if investigation had been made? A. It could have, of course.

Q. And was such investigation made by you or by your direction? A. No, nobody——

The Court: You have answered the question.

A. Not that I know of, I might add that; whether anybody did or did not, I don't know.

Q. I don't know just where the answer did end; have you finished the answer? A. That is it.

Q. Now you have referred to Mr. Vreeland; I presume you have in mind Mr. Herbert H. Vreeland? A. Yes.

Q. And that gentleman's career was somewhat meteoric, was it not? A. I won't say that.

Q. He came up as a workman, didn't he? A. On the Northern of New York, not as a workman in the Metropolitan.

On the Northern? A. Yes.

Q. A protege of William C. Whitney? A. Yes.

Q. Received a present of a hundred thousand dollars— A. Don't ask me.

The Court: Is this cross-examination?

Mr. Cook: I want to show that Mr. Vreeland was discredited.

The Court: I don't think we can try that issue.

Q. He is no longer president of the company, is he? A. He is in the operating force still, not president of the company, very good operator.

The Court: The testimony taken this morning, and the argument had thereon, does not change my mind as to the final

result in this case at all. I still think that the burden of proof of the central proposition of this case is upon the trustee, and, as I said in my memorandum, I think the trustee has not met it, in accordance with the requirements of the rule established by the Court of Appeals, in this case. I therefore stand by my former memorandum.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

January 16, 1914.

BEAM
vs.
PATERSON SAFE DEPOSIT & TRUST COMPANY,

The Court: Mr. Cook says the defendant accounts for the capital of the fund as of the 27th day of September, 1907, but that since that time there has been no income paid, except certain items of income which are in evidence. Now, he wants not only the capital of the fund accounted for as of that date, but he wants income on that capital accounted for from the date of the default down to the present time.

Mr. Cook: As to the bonds, the interest payable.

The Court: There is no evidence touching the question of dividends on the stock, is there?

Mr. Cook: Yes, sir.

The Court: Except they paid nine per cent. down to the time of the default?

Mr. Cook: Yes, sir. I produced Mr. Traphagen at that time in order to clear up that point, and he testified they paid nine per cent. up to the time of the default, and no dividend has been paid since; and the stock he testified has paid five per cent. up to the time of the default, and no dividend since.

The Court: The stock?

Mr. Cook: The bonds, and those dates were fixed by his testimony.

The Court: What do you say to that, Mr. Harding, if they account for the capital of the fund as of September 24, 1907, what must be done with regard to the income? I think I will ask you to submit a memorandum on that point. It strikes me just now, in the present condition of the case, as being somewhat troublesome.

Mr. Cook: Could we make an appointment to meet your Honor and have the decree settled, or do you want a memorandum first?

The Court: I think I would like to have a memorandum first.

Mr. Cook: Could we make an appointment to settle the decree and then file a memorandum with your Honor long enough ahead of that time to give your Honor time?

The Court: That is what I mean to do.

Mr. Cook: I don't want to give Mr. Harding another notice on the decree.

Mr. Harding I don't see the necessity of me coming again, as far as that is concerned; if he is to submit memorandum let him send it to me and I can answer it, if necessary.

The Court: Very well; let it go that way then.

Exhibit C-1—State of Case First Beam Chancery Suit.

Opinion.

IN CHANCERY OF NEW JERSEY.

Between
CARRIE S. BEAM,
Complainant,
and
THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*,
Defendant.

On final hearing on bill, answer, replication and proofs.

MR. PIERRE F. COOK for the Complainant.
Messrs. GRIGGS & HARDING for the Defendants.
Submitted November 12, 1913.
Decided December 6, 1913.

MEMORANDUM.

HOWELL, V. C.

The claim of the complainant in this case, and the facts upon which she relies, are fully stated in the opinion of Vice-Chancellor Stevenson on the motion to strike out the bill of complain herein, Beam vs. Paterson Safe eDposit Company, 11 Buch., 38, and in the same matter on appeal, 11 Buch., 196. It was held by the Court of Errors and Appeals on the allegations of the bill that the fact that securities which had come to the hands of a Trustee, and which had steadily depreciated in value from the beginning of the trust until the

shrinkage amounted to nine-tenths of the value, made a *prima facie* case of lack of good faith, or a failure to exercise reasonable discretion on the part of the Trustees, and that such a dealing with the trust funds called for an explanation by the Trustees of their action in holding on to securities which were steadily declining until they had shrunk to one-tenth of the value which they had at the time they became part of the trust estate. The burden of proof of the "exercise of good faith and reasonable discretion," to use the words of the statute (L. 1899, p. 236), is thus thrown upon the Trustee, and the only question now before the Court is whether the Trustee has met that burden. I am constrained to reach the conclusion that it has not. It appears that the securities in question were investments made by the testatrix in her lifetime, and that when the time came for the executors to transfer the fund in question to the Trustee, the Trustee instead of insisting upon cash accepted the securities in question without objection. This was in 1905. The securities at that time were considered by investors generally to be of the first quality. The market values began to depreciate about a year after the beginning of the trust, and continued thereafter to depreciate until the present time. The Trustee watched the decline in value, consulted with investors in relation thereto, discused the matter at meetings of its finance committee, procured the appointment of its president and a member of its finance committee as directors of one of the companies which is-

sued some of the securities, and otherwise kept in view the declining values. It owned and held as an investment some of the same securities which it held in trust for the complainant, so that its treatment of the trust fund was the same as was accorded by it to its own property. It appears to have done everything that it could have done in the way of informing itself of the disasters which finally overtook and wrecked the securities, but failed to perceive the inevitable outcome which now appears to be so plain.

I therefore think that as a matter of fact there was no lack of good faith on the part of the Trustee, nor do I find any affirmative charge which can be construed into such a charge. That leaves open the question of the exercise by it of a reasonable discretion in holding on to the securities after they had begun to decline. On this question the judgment must be for the complainant. It must have sufficiently appeared to the Trustee from the early part of 1906 forward that the securities held by it were doubtful in character, else there would have been no need of the exercise of the great watchfulness and anxiety testified to on the part of the defendant. There are probably no securities in which people invest their money which can be said to be safe at all events and under all circumstances. Thereis always some element of chance which time may develop. When, however, a security comes within the region of doubt, in my opinion it would be the part of prudence and dis-

cretion to eliminate it from a trust fund at the earliest possible moment. This the Trustee neglected to do. It is upon this ground that I deem the defendant to be liable to the complainant.

For the purpose of ascertaining the amount with which the defendant should be charged, it will be necessary to fix the date at or about the time of which securities should have been sold. As nearly as I can get at it there was sufficient decline by August 1, 1906, to inform the Trustee that a doubt about their value existed. Without having heard argument on this point, this date seems to me to be approximately correct. However, the point will be left open, and may be discussed at the time of settling the decree.

Exhibit C-1—State of Case First Beam Chancery Suit.

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Complainant,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants.*	Final Decree. On Bill etc.,

This cause coming on to be heard upon bill, answer, replication and proofs in the presence of Pierre F. Cook, of counsel with the complainant, and of Griggs & Harding, of counsel with the defendants The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, and the Court having read the pleadings and heard the proofs and arguments of counsel for the several parties, and having considered the same, and being of the opinion that the complainant is entitled to relief,

It is on this third day of February, nineteen hundred and fourteen, by his Honor Edwin Robert Walker, Chancellor of the State of New Jersey, orderd, adjudged and decreed that the defendant The Paterson Safe Deposit and Trust Company charge itself as Trustee for the complainant with the sum of Seven thousand one hundred and fifty-six dollars, being the value on September 24, 1907, of a one-fifth part of the securities held by it, consisting of three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New

York) first mortgage five per cent. bonds due nineteen hundred and ninety-six, of the par value of One thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds due nineteen hundred and forty-eight, of the par value of One thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each, which came to the hands of the said defendant The Paterson Safe Deposit and Trust Company as Trustee, and that said defendant The Paterson Safe Deposit and Trust Company charge itself with and pay to the complainant the sum of Two thousand six hundred and six dollars and twenty-nine cents, being the amount of unpaid income from said trust fund, which should have been paid to said complainant to the present time.

And it is further ordered, adjudged and decreed that the costs of the complainant in this suit be taxed including a counsel fee of Six hundred dollars for her counsel, and that the same be paid by the said defendant The Paterson Safe Deposit and Trust Company.

E. R. WALKER,
C.

Respectfully advised,
J. E. HOWELL,
V. C.

Exhibit C-1—State of Case First Beam Chancery Suit.
(Filed February 11, 1914.)

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM, *Complainant,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants.*	On Bill, etc. Notice of Appeal.

The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke and Lavinia Fayerweather, all of the defendants in the above-entitled cause, hereby appeal from the order made in this Court by the Honorable James C. Howell, one of the Vice-Chancellors in the above stated cause on the third day of February, nineteen hundred and fourteen, and from the whole and every part thereof, to the Court of Errors and Appeals in the last resort in all causes.

Dated, February 7th, 1914.

GRIGGS & HARDING,
Solicitors of Appellants.

I conceive there is good cause for appeal in the above stated cause.

JOHN W. GRIGGS,
Of Counsel with Appellants.

Exhibit C-1—State of Case First Beam Chancery Suit.

(Filed February 11, 1914.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CARRIE S. BEAM, *Complainant-Respondent,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants-Appellants.*	On Appeal. Petition.

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The petition of The Paterson Safe Deposit and Trust Company, John S. Cooke, Frederick W. Cooke, Charles D. Cooke, and Lavinia Fayerweather, the appellants in the above stated cause, respectfully shows:

That your petitioners find themselves aggrieved by an order and decree made in the above cause by his Honor Edwin Robert Walker, Chancellor, bearing date the third day of February, nineteen hundred and fourteen, in this respect, to wit, that the said order and decree adjudges that the defendant The Paterson Safe Deposit and Trust Company charge itself as Trustee for the complainant with the sum of Seven thousand one hundred and fifty-six dollars, being the value on September twenty-fourth, nineteen hundred and seven, of a one-fifth part of the securities held by it

consisting of three (3) Twenty-eighth and Twenty-ninth Streets Crosstown Railroad (City of New York) first mortgage five per cent. bonds due nineteen hundred and ninety-six, of the par value of One thousand dollars each; two (2) Second Avenue (City of New York) Railroad Company consolidated five per cent. mortgage bonds due nineteen hundred and forty-eight, of the par value of One thousand dollars each, and two hundred and twenty-five (225) shares of the capital stock of the Central Park, North and East River Railway Company of the City of New York, of the par value of One hundred dollars each, which came to the hands of the said defendant The Paterson Safe Deposit and Trust Company as Trustee, and that the said defendant The Paterson Safe Deposit and Trust Company charge itself with and pay to the complainant the sum of Two thousand six hundred and six dollars and twenty-nine cents, being the amount of unpaid income from said trust fund, and that the costs of the complainant in the said suit be taxed, including a counsel fee of Six hundred dollars for her counsel, and that the same be paid by the said defendant The Paterson Safe Deposit and Trust Company, and your petitioners appeal from the whole of the said order and decree upon the grounds that The Paterson Safe Deposit and Trust Company is not liable to account to the said complainant for any loss occasioned by its continuance of the investments aforesaid, and that the complainant is not entitled

to any relief or to any affirmative decree whatever in this cause, and that the same is erroneous, for that the Court of Chancery should have by its order and decree dismissed the complainant's bill.

Your petitioners therefore pray that the said order and decree may be wholly reversed, set aside and for nothing holden, and that your petitioners may have such further relief in the premises as shall be equitable and just.

GRIGGS & HARDING,
Solicitors for and of Counsel with Appellants.

Exhibit C-1—State of Case First Beam Chancery Suit.

NEW JERSEY COURT OF ERRORS AND APPEALS.

Between CARRIE S. BEAM, *Complainant-Respondent,* and THE PATERSON SAFE DEPOSIT & TRUST COMPANY, *et als.*, *Defendants-Appellants.*	On Appeal. Answer to Petition of Appeal.

The answer of the above-named respondent to the petition of appeal of the above-named appellants:

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 third day of February, nineteen hundred and fourteen, 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 she prays that the same may be affirmed with costs to be adjudged to this respondent.

PIERRE F. COOK,
Solicitor for and of Counsel with Respondent.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-1.

(*Copy of Will*)

I, Sarah A. Cooke, of the City of Paterson, in the County of Passaic and State of New Jersey, widow of John Cooke, deceased, do make, publish and declare this to be my last Will and Testament hereby revoking all former wills and codicils by me made.

First: I direct that all my just debts and funeral expenses be paid as soon after my death as possible.

Second: I give and bequeath the mortgage which I now hold on the property of Charles B. Donele in the City of Providence, Rhode Island, to the said Charles B. Donele.

Third: I give and bequeath all the shares of stock of the Paterson Savings Institution, of which I may die possessed, to my three sons, John S. Cooke, Frederick W. Cooke and Charles D. Cooke to be equally divided among them, share and share alike.

Fourth: I give and bequeath all books of which I may die possessed to my five children, or to those of them surviving at the time of my death, to be divided among them as they shall agree; but if they shall not be able to agree upon the division of any or all of said books, then I direct that such latter books be sold to such of my said children as will pay the highest price therefor.

Exhibit C-1.
Exhibit C-1—State of Case First Beam Chancery Suit.

FIFTH: I give and bequeath my piano to my granddaughter Helen Cooke.

SIXTH: I give and bequeath to each of my children such articles of my household furniture, not otherwise disposed of, as may be in their respective residences at the time of my death.

SEVENTH: I give and bequeath all of my clothing and jewelry to my two daughters, Lavinia Fayerweather and Carrie S. Beam, or to the one of them surviving at the time of my death, to dispose of and distribute as I may by letter to them direct; and, if I do not so by letter direct, then to keep the same for themselves or otherwise dispose of them as they or she may think best.

EIGHTH: I give and bequeath to my executors hereinafter named the sum of Twenty-five thousand dollars ($25,000) in trust to invest the same and to pay the income therefrom, in equal monthly installments, to my sister Caroline A. Swinburne, so long as she shall live; and upon the death of my said sister Caroline A. Swinburne to divide the said sum of Twenty-five thousand dollars ($25,000) equally among my five children.

NINTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars $(10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments, to my niece Lavinia Courtney so long as she shall live and remain unmarried; and, upon the marriage or death of the said Lavinia Courtney, to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-1.

TENTH: I give and bequeath to my executors hereinafter named the sum of Ten thousand dollars ($10,000) in trust to invest the same and to pay the income therefrom, in equal quarter yearly installments, to my niece Elizabeth Courtney so long as she shall live and remain unmarried; and upon the marriage or death of the said Elizabeth Courtney to divide the said sum of Ten thousand dollars ($10,000) equally among my five children.

ELEVENTH: I direct that all the rest, residue and remainder of the estate of which I may die seized and possessed be divided into ten equal parts, one of which parts I give to my son John S. Cooke, another of which parts I give to my son Frederick W. Cooke, another of which parts I give give to my son Charles D. Cooke,, another of which parts I give to my daughter Lavinia Fayerweather, and another of which parts I give to my daughter Carrie S. Beam.

TWELFTH: The other five equal parts I give, devise and bequeath to the Paterson Safe Deposit and Trust Company of the City of Paterson, in trust as follows: one of such parts is to be set aside for each of my five children, the income from each part is to be paid to the child for whom it is set aside, in equal quarter yearly installments, so long as he or she shall live; and upon the death of any child the part set aside for such child is to equally divided among the children of such child.

THIRTEENTH: If at the time of my death any of my said children shall be dead, I direct that then

the share of my estate given to such child shall vest in the issue of such child in the same manner as if such child had survived me and had died intestate.

FOURTEENTH: I hereby appoint my said five children, John S. Cooke, Frederick W. Cooke, Charle D. Cooke, Lavinia Fayerweather and Carrie S. Beam, excutors of this my last Will and Testament, hereby giving and granting unto them or the survivor of them full power and authority to grant, bargain, sell and convey any or all of my real estate, at public or private sale at such times and upon such terms as to them shall seem meet.

IN WITNESS WHEREOF I have hereunto set my hand and seal this twenty-fifth day of October, in the year of our Lord, one thousand nine hundred and two.

SARAH A. COOKE (L. S.)

Signed, sealed, published and declared by the above-named testatrix, Sarah A. Cooke, as and for her last Will and Testament in the presence of us, both of us being present at the same time, and therupon we, at her rquest, in her presence and in the presence of each other have at the same time subscribed our names hereto as witnesses.

ANNA M. WOLF, Athenia, N. J.

RALPH SHAW, Little Falls, N. J.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-3.

Mr. William Berdan,

Vice President Safe Deposit & Trust Co.

Dear Mr. Berdan:

The list of securities that compose the trust fund which my mother, the late Sarah A. Cooke, desired to have formed for the benefit of her heirs, I received some weeks ago.

There seems to be a very big shrinkage in this trust fund which I think ought to be explained.

This shrinkage means a great deal to me and I do not think I ought to let it pass without a close inquiry as to the cause, and also as to where the responsibility rests.

The Central Park N. & E. River stock has ceased to pay dividends which fact reduces my income very materially.

In your account you put the market value at $46,800.00. Is that correct? If so, how do you fix the value? Have there been any sales upon which to base the price?

Yours very truly.

CARRIE S. BEAM.

Bogota, N. J.
Sept. 7, 1911.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-4.

PIERRE F. COOK,
Counsellor at Law,
No. 1 Exchange Place,
Jersey City, N. J.

November 28, 1911.

Paterson Safe Deposit & Trust Co.,
Paterson, N. J.

Gentlemen:

Mrs. Carrie S. Beam has recently consulted me in reference to the trust fund held by you under the will of Sarah A. Cooke for the benefit of beneficiaries of whom she is one. There appears to be a very serious depreciation of the two bonds of the Second Avenue Railroad of New York, the three bonds of the Twenty-eighth & Twenty-ninth Sts. Crosstown Railroad of New York, and of the 225 shares of Central Park North & East River Railroad, forming a portion the of trust fund. An extended examination of quotations during the period of the trust, and of the authorities bearing upon the questions involved, has satisfied me that the trustee has rendered itself liable to make good the deficiency, and I have so advised my client.

I am preparing to institute appropriate legal proceedings to that end, but before doing so, will be glad to talk over the situation with your counsel or other representative. Will you be good enough to let me hear from you at your convenience, and oblige,

Yours very truly,

PIERRE F. COOK.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-5.

PIERRE F. COOK,
Counsellor at Law,
No. 1 Exchange Place,
Jersey City, N. J.

January 5, 1912.

Paterson Safe Deposit & Trust Co.,
Paterson, N. J.

Gentlemen:

I have your letter of 11th ult. in reference to trust fund held by you under the will of Sarah A. Cooke for the benefit of Carrie S. Beam and other beneficiaries. Before advising Mrs. Beam that she had a good cause of action I had examined the authorities bearing upon the questions involved and especially the Act of 1889, page 236 as construed by the Courts.

In view of the confident attitude of the Trust Co. I presume there is no hope of an adjustment without suit, and will therefore be obliged to take that course.

Yours very truly,

P. F. COOK.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-6.

New York, Nov. 11, 1913.

Mr. Pierre F. Cook,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:—

We hand you herewith a list of quotations from April 1905 to September 1913, on the following securities:

28th & 29th St. Crosstown R. R. First 5s, 1996,
Second Ave. R. R. Cons. 5s, 1948,
Central Park, North & East River Ry. Stock.

These quotations have been prepared from the records in our office and are correct to the best of our knowledge and belief.

Very truly yours,

STANDARD STATISTICS BUREAU.
By LUTHER L. BLAKE,
Pres.
By J. C. TRAPHAGEN,
Mgr., Stat. Dept.

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit C-6.

CENTRAL PARK NORTH & EAST RIVER RY. STOCK.

Date	Bid	Asked
Apr. 29, 1905	205	210
May 6, 1905	205	210
May 13, 1905	205	210
May 20, 1905	206	---
May 27, 1905	200	210
June 3, 1905	205	210
June 10, 1905	205	210
June 17, 1905	205	210
June 24, 1905	205	210
July 1, 1905	205	210
July 8, 1905	205	210
July 15, 1905	205	210
July 22, 1905	205	210
July 29, 1905	205	210
Aug. 5, 1905	205	210
Aug. 12, 1905	205	210
Aug. 19, 1905	205	210
Aug. 26, 1905	205	210
Sept. 2, 1905	205	210
Sept. 9, 1905	205	210
Sept. 16, 1905	205	210
Sept. 23, 1905	205	209
Sept. 30, 1905	205	209
Oct. 7, 1905	205	209
Oct. 14, 1905	205	210
Oct. 21, 1905	205	210
Oct. 28, 1905	205	210
Nov. 4. 1905	205	210
Nov. 11, 1905	205	210
Nov. 18, 1905	205	210
Nov. 25, 1905	205	210
Dec. 2, 1905	202	208
Dec. 9, 1905	202	208

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Dec. 16, 1905	205	209
Dec. 23, 1905	205	209
Dec. 30, 1905	205	209
Jan. 6, 1906	205	209
Jan. 13, 1906	205	209
Jan. 20, 1906	205	209
Jan. 27, 1906	205	209
Feb. 3, 1906	205	209
Feb. 10, 1906	205	209
Feb. 17, 1906	205	209
Feb. 24, 1906	205	209
Mar. 3, 1906	205	209
Mar. 10, 1906	205	209
Mar. 17, 1906	205	209
Mar. 24, 1906	205	209
Mar. 31, 1906	205	209
Apr. 7, 1906	205	209
Apr. 14, 1906	205	209
Apr. 21, 1906	202	204
Apr. 28, 1906	200	205
May 5, 1906	197	200
May 12, 1906	198	202
May 19, 1906	198	202
May 26, 1906	198	202
June 2, 1906	198	202
June 9, 1906	198	202
June 16, 1906	202	202
June 23, 1906	198	202
June 30, 1906	198	202
July 7, 1906	198	202
July 14, 1906	198	202
July 21, 1906	198	202
July 28, 1906	195	200
Aug. 4, 1906	195	200

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Aug. 11, 1906	195	200
Aug. 18, 1906	195	200
Aug. 25, 1906	195	200
Sept. 1, 1906	195	200
Sept. 8, 1906	195	200
Sept. 15, 1906	195	200
Sept. 22, 1906	195	200
Sept. 29, 1906	195	200
Oct. 6, 1906	195	200
Oct. 15, 1906	195	200
Oct. 20, 1906	195	200
Oct. 27, 1906	195	200
Nov. 3, 1906	195	200
Nov. 10, 1906	195	200
Nov. 17, 1906	195	200
Nov. 24, 1906	195	200
Dec. 1, 1906	195	200
Dec. 8, 1906	195	200
Dec. 15, 1906	190	200
Dec. 22, 1906	190	200
Dec. 29, 1906	190	200
Jan. 5, 1907	190	200
Jan. 12, 1907	190	196
Jan. 19, 1907	190	195
Jan. 26, 1907	190	195
Feb. 2, 1907	190	195
Feb. 9, 1907	190	195
Feb. 16, 1907	185	195
Feb. 23, 1907	185	195
Mar. 2, 1907	175	195
Mar. 9, 1907	170	190
Mar. 16, 1907	160	190
Mar. 23, 1907	175	190
Mar. 30, 1907	175	190

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Apr. 6, 1907	175	190
Apr. 13, 1907	175	190
Apr. 20, 1907	175	190
Apr. 27, 1907	175	190
May 4, 1907	180	193
May 11, 1907	180	193
May 18, 1907	180	193
May 25, 1907	180	193
June 1, 1907	180	193
June 8, 1907	158	163
June 15, 1907	158	163
June 22, 1907	150	165
June 29, 1907	150	165
July 6, 1907	150	165
July 13, 1907	150	165
July 20, 1907	150	165
July 27, 1907	150	165
Aug 3, 1907	150	165
Aug. 10, 1907	145	165
Aug. 17, 1907	140	165
Aug. 24, 1907	130	160
Aug. 31, 1907	130	160
Sept. 7, 1907	140	165
Sept. 14, 1907	140	165
Sept. 21, 1907	140	165
Sept. 28, 1907	140	165
Oct. 5, 1907	140	160
Oct. 12, 1907	130	160
Oct. 19, 1907	130	160
Oct. 26, 1907	130	160
Nov. 2, 1907	125	150
Nov 9, 1907	125	150
Nov. 16, 1907	125	150
Nov. 23, 1907	125	150

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Nov. 30, 1907	125	150
Dec. 7, 1907	125	150
Dec. 14, 1907	125	150
Dec. 21, 1907	125	150
Dec. 28, 1907	125	150
Jan. 4, 1908	125	150
Jan. 11, 1908	100	150
Jan. 18, 1908	100	150
Jan. 25, 1908	120	150
Feb. 1, 1908	120	150
Feb. 8, 1908	100	150
Feb. 8, 1908	100	150
Feb. 15, 1908	100	150
Feb. 22, 1908	100	150
Feb. 29, 1908	100	130
Mar. 7, 1908	100	130
Mar. 14, 1908	100	130
Mar. 21, 1908	100	130
Mar. 28, 1908	100	130
Apr. 4, 1908	100	130
Apr. 11, 1908	100	130
Apr. 18, 1908	100	130
Apr. 25, 1908	100	130
May 2, 1908	100	140
May 9, 1908	110	140
May 16, 1908	100	130
May 23, 1908	100	130
May 30, 1908	100	130
June 6, 1908	100	130
June 13, 1908	80	100
June 20, 1908	80	100
June 27, 1908	75	100
July 4, 1908	75	100
July 11, 1908	75	100

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
July 18, 1908	--	100
July 25, 1908	--	110
Aug. 1, 1908	60	100
Aug. 8, 1908	50	90
Aug. 15, 1908	50	100
Aug. 22, 1908	50	100
Aug. 29, 1908	60	100
Sept. 5, 1908	64	100
Sept. 12, 1908	64	100
Sept. 19, 1908	64	100
Sept. 26, 1908	60	100
Oct. 3, 1908	50	100
Oct. 10, 1908	50	100
Oct. 17, 1908	50	100
Oct. 24, 1908	50	100
Oct. 31, 1908	50	100
Nov. 7, 1908	50	100
Nov. 14, 1908	50	100
Nov. 21 1908	50	80
Nov. 28, 1908	50	80
Dec. 5, 1908	50	80
Dec. 12, 1908	35½	70
Dec. 19, 1908	35½	70
Dec. 26, 1908	30	60
Jan. 2, 1909	30	60
Jan. 9, 1909	30	60
Jan. 16, 1909	30	60
Jan. 23, 1909	30	60
Jan. 30, 1909	30	60
Feb. 6, 1909	30	60
Feb. 13, 1909	30	60
Feb. 20, 1909	30	60
Feb. 27, 1909	30	60
Mar. 6, 1909	30	60

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Mar. 13, 1909	30	60
Mar. 20, 1909	30	60
Mar. 27, 1909	30	60
Apr. 3, 1909	30	60
Apr. 10, 1909	30	60
Apr. 17, 1909	30	60
Apr. 24, 1909	30	60
May 1, 1909	30	60
May 8, 1909	30	40
May 15, 1909	30	40
May 22, 1909	30	40
May 29, 1909	25	40
June 5, 1909	25	40
June 12, 1909	30	60
June 19, 1909	30	60
June 26, 1909	30	60
July 3, 1909	30	70
July 10, 1909	30	50
July 17, 1909	30	s36½
July 24, 1909	30	36½
July 31, 1909	30	36½
Aug. 7, 1909	30	36½
Aug. 14, 1909	30	36½
Aug. 21, 1909	28	34
Aug. 28, 1909	28	34
Sept. 4, 1909	30	35
Sept. 11, 1909	28	34
Sept. 18, 1909	30	40
Sept. 25, 1909	30	40
Oct. 2, 1909	28	34
Oct. 9, 1909	30	40
Oct. 16, 1909	30	40
Oct. 23, 1909	30	40
Oct. 30, 1909	30	50

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Nov. 6, 1909	30	50
Nov. 13, 1909	30	50
Nov. 20, 1909	30	50
Nov. 27, 1909	30	50
Dec. 4, 1909	30	50
Dec. 11, 1909	30	50
Dec. 18, 1909	30	50
Dec. 25, 1909	30	50
Jan. 1, 1910	30	50
Jan. 8, 1910	30	50
Jan. 15, 1910	30	50
Jan. 22, 1910	30	50
s—Sale price.		
Jan. 29, 1910	30	50
Feb. 5, 1910	30	50
Feb. 12, 1910	30	50
Feb. 19, 1910	30	50
Feb. 26, 1910	30	50
Mar. 5, 1910	30	50
Mar. 12, 1910	30	50
Mar. 19, 1910	30	50
Mar. 26, 1910	30	50
Apr. 2, 1910	30	50
Apr. 9, 1910	30	50
Apr. 16, 1910	30	50
Apr. 23, 1910	30	50
Apr. 30, 1910	30	50
May 7, 1910	30	50
May 14, 1910	30	50
May 21, 1910	30	50
May 28, 1910	24	40
June 4, 1910	24	40
June 11, 1910	20	25
June 18, 1910	20	34

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Date	Bid	Asked
	June 25, 1910	18	30
	July 2, 1910	18	30
	July 9, 1910	18	30
10	July 16, 1910	18	30
	July 23, 1910	15	25
	July 30, 1910	15	25
	Aug. 6, 1910	15	25
	Aug. 13, 1910	15	25
	Aug. 20, 1910	15	25
	Aug. 27, 1910	15	25
	Sept. 3, 1910	15	25
	Sept. 10, 1910	15	25
20	Sept. 17, 1910	15	25
	Sept. 24, 1910	15	25
	Oct. 1, 1910	15	25
	Oct. 8, 1910	18	27
	Oct. 15, 1910	15	30
	Oct. 22, 1910	15	s18⅛
	Oct. 29, 1910	18	24
	Nov. 5, 1910	12	20
	Nov. 12, 1910	12	19
30	Nov. 19, 1910	12	19
	Nov. 26, 1910	15	21
	Dec. 3, 1910	15	21
	Dec. 10, 1910	15	21
	Dec. 17, 1910	15	21
	Dec. 24, 1910	15	21
	Dec. 31, 1910	10	15
	Jan. 7, 1911	14	20
	Jan. 14, 1911	14	20
40	Jan. 21, 1911	14	20
	Jan. 28, 1911	15	20
	Feb. 4, 1911	15	20

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Feb. 11, 1911	15	20
Feb. 18, 1911	15	20
Feb. 25, 1911	15	20
Mar. 4, 1911	15	20
Mar. 11, 1911	12	20
Mar. 18, 1911	5	15
Mar. 25, 1911	5	15
Apr. 1, 1911	5	15
Apr. 8, 1911	5	15
Apr. 15, 1911	5	15
Apr. 22, 1911	5	15
Apr. 29, 1911	5	15
May 6, 1911	5	15
May 13, 1911	5	s15⅜
May 20, 1911	10	20
May 27, 1911	10	20
June 3, 1911	10	20
June 10, 1911	10	20
June 17, 1911	10	20
June 24, 1911	10	20
July 1, 1911	10	20
July 8, 1911	10	20
July 15, 1911	10	20
July 22, 1911	10	20
July 29, 1911	10	20
Aug. 5, 1911	10	20
Aug. 12, 1911	10	20
Aug. 19, 1911	10	20
Aug. 26, 1911	10	20
Sept. 2, 1911	10	20
Sept. 9, 1911	10	20
Sept. 16, 1911	10	20
Sept. 23, 1911	10	20

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Sept. 30, 1911	10	20
Oct. 7, 1911	10	20
Oct. 14, 1911	10	20
Oct. 21, 1911	10	20
Oct. 28, 1911	10	20
Nov. 4, 1911	10	20
Nov. 11, 1911	10	20
Nov. 18, 1911	10	20
Nov. 25, 1911	10	20
Dec. 2, 1911	10	20
Dec. 9, 1911	10	20
Dec. 16, 1911	10	20
Dec. 23, 1911	10	20
Dec. 30, 1911	10	20
Jan. 2, 1912	10	20
Jan. 13, 1912	10	20
Jan. 20, 1912	10	20
Jan. 27, 1912	10	20
Feb. 3, 1912	10	20
Feb. 10, 1912	7	20
Feb. 17, 1912	7	20
Feb. 24, 1912	7	20
Mar. 2, 1912	10	16
Mar. 9, 1912	10	16
Mar. 16, 1912	10	16
Mar. 23, 1912	10	16
Mar. 30, 1912	10	16
Apr. 6, 1912	10	16
Apr. 13, 1912	10	s14½
Apr. 20, 1912	10	--
Apr. 27, 1912	10	--
May. 4, 1912	10	15
May 11, 1912	10	15
May 18, 1912	10	15

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
May 25, 1912	10	15
June 1, 1912	10	15
June 8, 1912	10	15
June 15, 1912	10	15
June 22, 1912	10	15
June 29, 1912	10	15
July 6, 1912	10	15
July 13, 1912	10	15
July 20, 1910	10	15
July 27, 1910	--	14
Aug. 3, 1912	5	15
Aug. 10, 1912	--	13
Aug. 17, 1912	--	13
Aug. 24, 1912	--	13
Aug. 31, 1912	--	13
Sept. 7, 1912	--	13
Sept. 14, 1912	--	13
Sept. 21, 1912	--	13
Sept. 28, 1912	--	13
Oct. 5, 1912	--	13
Oct. 12, 1912	--	13
Oct. 19, 1912	--	10
Oct. 26, 1912	--	s10
Nov. 2, 1912	--	--
Nov. 9, 1912	3	8
Nov. 16, 1912	3	10
Nov. 23, 1912	3	10
Nov. 30, 1912	3	10
Dec. 7, 1912	3	10
Dec. 14, 1912	3	10
Dec. 21, 1912	3	10
Dec. 28, 1912	2	7
Jan. 4, 1913	2	7

s—Sale price.

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

Date	Bid	Asked
Jan. 11, 1913	2	7
Jan. 18, 1913	2	7
Jan. 25, 1913	2	7
Feb. 1, 1913	2	7
Feb. 8, 1913	2	4
Feb. 15, 1913	1	3
Feb. 22, 1913	1	3
Mar. 1, 1913	1	3
Mar. 8, 1913	1	3
Mar. 15, 1913	1	3
Mar. 22, 1913	1	3
Mar. 29, 1913	1	3
Apr. 5, 1913	1	3
Apr. 12, 1913	1	3
Apr. 19, 1913	1	3
Apr. 26, 1913	1	3
May 3, 1913	1	3
May 10, 1913	1	3
May 17, 1913	1	3
May 24, 1913	1	3
May 31, 1913	1	3
June 7, 1913	1	3
June 14, 1913	1	3
June 21, 1913	1	3
June 28, 1913	1	3
July 5, 1913	1	3
July 12, 1913	1	3
July 19, 1913	1	3
July 26, 1913	1	3
Aug. 9, 1913	1	3
Aug. 16, 1913	1	3
Aug. 23, 1913	1	3
Aug. 30, 1913	1	3
Sept. 6, 1913	1	3

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Sept 13, 1913	1	3
Sept. 20, 1913	1	3
Sept. 27, 1913	1	3
Oct. 4, 1913	1	3

MONTHLY QUOTATIONS APRIL 1905 TO DATE.
28th & 29th Sts. Crosst. R .R. 1st 5s due 1996.

	Bid	Asked
Apr. 1905	112	113½
May 1905	111	113
June 1905	111	112½
July 1905	111	112½
Aug. 1905	111	112½
Sept. 1905	111	112½
Oct. 1905	111	111½
Nov. 1905	111	113
Dec. 1905	110	112½
Jan. 1906	111	112
Feb. 1906	111	112
Mar. 1906	110	112
Apr. 1906	106	108
May 1906	106	108
June 1906	106½	109½
July 1906	105	106
Aug. 1906	102	105¼
Sept. 1906	105	106
Oct. 1906	105	106½
Nov. 1906	104	106
Dec. 1906	105	--
Jan. 1907	104	107
Feb. 1907	104	107
Mar. 1907	100	105
Apr. 1907	101	103

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
May 1907	101	103
June 1907	100	103
July 1907	100	103
Aug. 1907	90	95
Sept. 1907	85	93
Oct. 1907	80	85
Nov. 1907	80	90
Dec. 1907	75	85
Jan. 1908	75	80
Feb. 1908	65	75
Mar. 1908	65	70
Apr. 1908	75	90
May 1908	80	82½
June 1908	--	50
July 1908	25	40
Aug. 1908	15	40
Sept. 1908	10	50
Oct. 1908	15	30
Nov. 1908	15	25
Dec. 1908	25	35
Jan. 1909	25	40
Feb. 1909	25	35
Mar. 1909	25	35
Apr. 1909	25	35
May 1909	25	32
June 1909	25	29
July 1909	25	32
Aug. 1909	20	25
Sept. 1909	20	25
Oct. 1909	15	25
Nov. 1909	15	20
Dec. 1909	--	20
Jan. 1910	10	20
Feb. 1910	15	25

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Mar. 1910	15	25
Apr. 1910	15	30
May 1910	15	30
June 1910	15	30
July 1910	15	30
Aug. 1910	15	30
Sept. 1910	15	30
Oct. 1910	10	20
Nov. 1910	10	20
Dec. 1910	10	20
Jan. 1911	10	25
Feb. 1911	15	25
Mar. 1911	15	25
Apr. 1911	15	25
May 1911	15	22
June 1911	15	21
July 1911	18	25
Aug. 1911	18	25
Sept. 1911	15	25
Oct. 1911	17	20
Nov. 1911	19½	23
Dec. 1911	21¾	26
Jan. 1912	20	25
Feb. 1912	20	25
Mar. 1912	20	25
Apr. 1912	23	30
May 1912	23	30
June 1912	23	30
July 1912	20	28
Aug. 1912	20	28
Sept. 1912	20	28
Oct. 1912	20	28
Nov. 1912	20	28
Dec. 1912	20	28

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Jan. 1913	16	25
Feb. 1913	--	20
Mar. 1913	5	20
Apr. 1913	5	20
May 1913	5	20
June 1913	5	20
July 1913	5	20
Aug. 1913	5	15
Sept. 1913	7	15

Second Ave. R. R. Co. Cons. 5s, due 1948.

	Bid	Asked
Apr. 1905	115	117
May 1905	114½	116
June 1905	115	116
July 1905	115	116
Aug. 1905	115	116
Sept. 1905	114½	115½
Oct. 1905	114½	115½
Nov. 1905	114½	115½
Dec. 1905	113	114½
Jan. 1906	114½	116
Feb. 1906	113½	115
Mar. 1906	113	114½
Apr. 1906	112	113
May 1906	112½	115
	Bid	Asked
June 1906	110	113
July 1906	109	112
Aug. 1906	111	113
Sept. 1906	109	112
Oct. 1906	110½	112½
Nov. 1906	110	112

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Dec. 1906	110	112
Jan. 1907	110	112
Feb. 1907	108	111
Mar. 1907	107	110
May 1907	107	109
June 1907	105½	107
July 1907	102	107
Aug. 1907	104	108
Sept. 1907	95	98
Oct. 1907	94	98
Nov. 1907	94	98
Dec. 1907	93	98
Jan. 1908	86	95
Feb. 1908	83	90
Mar. 1908	83	87
Apr. 1908	85	90
May 1908	87	92
June 1908	87	92
July 1908	87	90
Aug. 1908	81	85
Sept. 1908	80	85
Oct. 1908	75	80
Nov. 1908	77	80
Dec. 1908	81	82
Jan. 1909	81	82
Feb. 1909	80	82
Mar. 1909	75	78
Apr. 1909	74	79
May 1909	78	82
June 1909	78	82
July 1909	74	77
Aug. 1909	74	77
Sept. 1909	74	77
Oct. 1909	70	75

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Nov. 1909	70	75
Dec. 1909	65	70
Jan. 1910	60	65
Feb. 1910	55	60
Mar. 1910	55	60
Apr. 1910	50	60
May 1910	50	60
June 1910	50	60
July 1910	--	57
Aug. 1910	50	60
Sept. 1910	50	60
Oct. 1910	55	58
Nov. 1910	56	59
Dec. 1910	56	60
Jan. 1911	55	58
Feb. 1911	50	56
Mar. 1911	45	55
Apr. 1911	45	52
May 1911	44	50
June 1911	44	50
July 1911	45	50
Aug. 1911	40	60
Sept. 1911	40	48
Oct. 1911	40	45
Nov. 1911	43	44
Dec. 1911	43	46
Jan. 1912	45	48
Feb. 1912	45	48
Mar. 1912	45	48
Apr. 1912	45	48
May 1912	40	46
June 1912	42	45
July 1912	40	45
Aug. 1912	40	45

Exhibit C-1—State of Case First Beam Chancery Suit.
Exhibit C-6.

	Bid	Asked
Sept. 1912	38	42
Oct. 1912	35	42
Nov. 1912	35	40
Dec. 1912	35	40
Jan. 1913	30	38½
Feb. 1913	25	36
Mar. 1913	25	35
Apr. 1913	20	32
May 1913	25	30
June 1913	22	28
July 1913	22	28
Aug. 1913	20	28
Sept. 1913	25	30

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit D-1.

Members New York Stock Exchange — 5 Nassau Street, 11 Pine Street

A. M. KIDDER & CO.

BANKERS

New York March 6, 1913.

RECORD OF SALES OF CENTRAL PARK, NORTH & EAST RIVER R. R. CO. STOCK.

Date.	Shares.	Price.
Dec. 20, 1907,	3	122
Jan. 25, 1908	50	120
Apr. 6, 1908,	50	125
July 2, 1908	8	100
Aug. 6, 1908,	5	100
1909 no sales of record.		
Mch. 4, 1910,	24	41
Mch. 4, 1910,	26	41
Mch. 8, 1910,	6	40
May 18, 1910,	30	25
May 25, 1910	50	26
May 27, 1910,	20	25
Mch. 30, 1911,	100	12½
AUCTION SALES.		
June 10, 1908,	1	82
Dec. 9, 1908	34	35½
July 14, 1909	8	36½
June 22, 1910,	65	22
Oct. 19, 1910,	369	18⅛
May 10, 1911,	40	15⅜
May 17, 1911,	20	19
Apr. 10, 1912,	70	14½
Oct. 23, 1912,	110	10

Exhibit D-2.

Members New York
Stock Exchange

5 Nassau Street
11 Pine Street

A. W. KIDDER & CO., BANKERS
New York, March 6, 1913.

TWENTY-EIGHTH & TWENTY-NINTH STREET RAILWAY CO. 5% BONDS.

	1908		1909		1910		1911		1912	
	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked
Jan.	75	85	25	35	--	20	--	20	21¾	26
Feb.	75	80	25	40	10	20	10	25	20	25
Mch.	65	75	25	35	15	25	15	25	20	25
Apr.	65	70	25	35	15	25	15	25	20	25
May	75	90	25	35	15	30	15	25	23	30
June	80	82½	25	32	15	30	15	22	23	30
July		50	25	29	15	30	15	21	23	30
Aug.	25	40	25	32	15	30	18	25	20	28
Sept.	15	40	20	25	15	30	18	25	20	28
Oct.	10	50	20	25	15	30	15	25	20	28
Nov.	15	30	15	25	10	20	17	20	20	28
Dec.	15	25	--	20	10	20	19½	23	20	28

40 30 20 10

Exhibit D-3.

Members New York Stock Exchange
A. W. KIDDER & CO., BANKERS
5 Nassau Street
11 Pine Street
New York, March 6, 1913.

40 30 20 10

SECOND AVENUE RAILROAD CO. CONSOLIDATED 5% BONDS

	1909		1909		1910		1911		1912	
	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked	Bid	Asked
Jan.	93	98	81	82 bonds	65	70 bonds	56	60 bonds	43	46 bonds
					63	70 c/d	56	60 c/d	43	46 c/d
Feb.	86	95	81	82 bonds	60	65 bonds	55	58 bonds	45	48 bonds
			79½	81 c/d	63	70 c/d	55	58 c/d	45	48 c/d
Mch.	83	90	80	82 bonds	55	60 bonds	50	56 bonds	45	48 bonds
			79½	81 c/d	55	60 c/d	50	56 c/d	45	48 c/d
Apr.	83	87	75	78 bonds	55	60 bonds	45	55 bonds	45	48 bonds
			75	78 c/d	55	60 c/d	45	55 c/d	45	48 c/d
May	85	90	74	79 bonds	50	60 bonds	45	52 bonds	45	48 bonds
			75	78 c/d	50	60 c/d	45	52 c/d	44¾	48 c/d
June	86¼	(sale)	78	82 bonds	50	60 bonds	44	50 bonds	40	46 bonds
			75	78 c/d	50	60 c/d	44	50 c/d	40	47 c/d
July	87	92	78	82 bonds	50	60 bonds	44	50 bonds	42	45 bonds
			75	78 c/d	50	60 c/d	44	50 c/d	42	45 c/d
Aug.	--	90	74	77 bonds	--	57 bonds	45	50 bonds	40	45 bonds
			75	78 c/d	--	57 c/d	45	50 c/d	40	45 c/d
Sept.	81	85	74	77 bonds	50	60 bonds	40	60 bonds	40	45 bonds
			--	-- c/d	50	60 c/d	40	60 c/d	40	45 c/d
Oct.	80	85	74	77 bonds	50	60 bonds	40	48 bonds	38	42 bonds
			--	-- c/d	50	60 c/d	40	48 c/d	38	42 c/d
Nov.	75	80	70	75 bonds	55	58 bonds	40	45 bonds	35	42 bonds
			--	-- c/d	55	60 c/d	40	45 c/d	35	42 c/d
Dec.	77	80	70	75 bonds	56	59 bonds	43	44 bonds	35	40 bonds
			68	72 c/d	56	59 c/d	43	44 c/d	35	40 c/d

Exhibit C-1—State of Case First Beam Chancery Suit.

Exhibit D-4.

December 11, 1911.

Pierre F. Cook, Esq.,
1 Exchange Place,
Jersey City, N. J.

Dear Sir:—

Referring to your letter of November 28th ultimo, relative to two bonds of the Second Avenue R. R. Co., three (3) bonds of the 28th and 29th St. Crosstown R. R. of New York and 225 shares of Central Park, North and East River Railroad, which form a part of the Trust Fund held by this Company as Trustee, under the will of Sarah A. Cooke, deceased, we beg to say that these securities were original investments of Mrs. Cooke, made in her life time, which came into the hands of her Executor, and by her Executor were transferred into this Company as Trustee as a part of the residuary Estate.

At the time this Company received these securities the street railway lines of the three corporations mentioned were leased to the Metropolitan Street Railway Company, and there was no reason to suppose that the leases, which were perpetual, would not be maintained and the interest on the bonds and the dividends of 9% on the stock, the payment of which was provided for by the lease, would not also be met.

The collapse of the Metropolitan Street Rail-

way was sudden and unexpected. Since that collapse there has never been a time in which, in the exercise of reasonable discretion, it seemed to be prudent to dispose of these securities. This Company claims that it exercised good faith and reasonable discreation in continuing these investments, and they are advised by their counsel that under the laws of New Jersey they are not accountable for any loss by reason of such continuance. See laws of 1899, page 236, section 1.

Yours very truly,

THE PATERSON SAFE DEPOSIT & TR. CO.,
Vice President.

Exhibit C-2.

(Filed Dec. 16, 1914.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

NOVEMBER TERM, 1914.

Between CARRIE S. BEAM Respondent, and PATERSON SAFE DEPOSIT & TRUST CO., Appellant.	On Appeal From Chancery.

DECREE OF REVERSAL.

This cause coming on to be heard at the March Term, one thousand nine hundred and fourteen, in the presence of the respective parties, and the case having been read, and the argument of counsel, as well as the record and proceedings duly considered upon the appeal set forth and specified in the petition of appeal, &c.

It is thereupon this sixteenth day of November, in the year of our Lord one thousand nine hundred and fourteen, ordered, adjudged and decreed that the decree of the Chancellor be in all things reversed, set aside and for nothing holden, with costs of this court to be taxed, and that the said Appellant do recover its costs in the Court of

Chancery to be taxed, and that a decree be entered in the Court of Chancery dismissing the bill of complaint of said Carrie S. Beam, with costs to be taxed, as aforesaid, and that the record and proceedings be remitted to the Court of Chancery, to be therein proceeded on according to law and the practice of said Court.

On motion of

GRIGGS & HARDING,
Solicitors and of Counsel with
Appellant.

Endorsed:
"Filed Dec. 16, 1914,
David S. Crater
~~THOMAS F. MARTIN,~~
Clerk."

Exhibit C-3.

(Filed Jan. 28, 1915.)

IN CHANCERY OF NEW JERSEY.

Between CARRIE S. BEAM Complainant, and THE PATERSON SAFE DEPOSIT AND TRUST COMPANY, *et als.*, Defendants.	On Bill, &c. Decree of Reversal.

Upon opening the matter this day to the Court by Griggs & Harding of counsel with the defendants (the appellants in the Court of Errors and Appeals) and it appearing that the said defendants filed an appeal from the decree made in this cause on the Third day of February, Nineteen Hundred and Fourteen, to the Court of Errors and Appeals in the last resort; and that the said appeal has been determined by the said Court of Appeals and the proceedings have been remitted to this Court to proceed further thereon according to law; and upon reading the remittitur from the said Court of Appeals whereby it appears that it was ordered and decreed by said Court that the said decree of the Chancellor be in all things reversed, set aside and for nothing holden, with costs of this Court to be taxed, and that the said appellant do recover its costs in the Court of Chancery to be taxed, and that a decree be entered in the Court of Chancery dismissing the bill of complaint of said Carris S. Beam with costs to be taxed as aforesaid.

Exhibit C-3.

It is thereupon on this 26th day of January, 1915, on motion as aforesaid, ORDERED, that the decree of said Court of Appeals be and the same is hereby made the decree of this Court; and that the bill of complaint of the said Carrie S. Beam be and is hereby dismissed.

And it is further ordered, adjudged and decreed that the costs of the defendants in this suit be taxed, including a counsel fee of three hundred and fifty Dollars, for their counsel and that the same be paid by the said complainant, Carrie S. Beam.

Respectfully Advised,

J. E. HOWELL,
V. C.

E. R. WALKER,
C.

Exhibit C-4.

(Filed Nov. 16, 1914.)

NEW JERSEY COURT OF ERRORS AND APPEALS.

March Term, 1914. No. 111.

Between

CARRIE S. BEAM

Respondent,

vs.

PATERSON SAFE DEPOSIT & TRUST CO.,

Appellant.

Argued March 18, 1914.

Decided November , 1914.

A trustee received as part of the trust fund stocks and bonds of corporations in which the testator had invested in his lifetime, which were supposed to be of the highest class; subsequently they depreciated at a time of financial depression; another corporation to which the properties had been leased became insolvent; the court directed the receiver to borrow money on receiver's certificates to pay the rent, and it was paid; later there was a default, but there was then no market for the securities; quotations were merely nominal and of a speculative character; the securities were unsalable: *Held,* that since the good faith of the trustee was conceded, it had under the special facts of the case exercised reasonable discretion and was not liable for the loss.

Appeal from decree advised by Vice-Chancellor Howell. Opinion 82, Eq. 518.

Pierre F. Cook for respondent.

John W. Harding (Griggs & Harding,) for appellant.

The opinion of the court was delivered by SWAYZE, J.

We agree with the learned Vice-Chancellor that the burden of proving that the trustee exercised good faith and reasonable discretion is upon the defendant, as we have already decided upon appeal from the order refusing to strike out the bill. 81 Eq., 195. We differ from his conclusion that the defendant has failed to establish the exercise of good faith and reasonable discretion, which is the duty imposed by the statue. C. S. 2271, pl. 34. Its good faith is not questioned. Our examination of the facts shows that the securities were supposed to be of the highest class; that on August 1, 1906, the date fixed by the Vice-Chancellor as the time when the trustee should have sold, they had fallen as follows: Central Park, North & East River Ry. stock from 206 bid and 210 asked to 195 bid and 200 asked; 28th and 29th Streets Crosstown R. R. first mortgage bonds from 112 bid and 113½ asked to 102 bid and 105¼ asked; Second Avenue R. R. Co. Consolidated 5's due 1948 from 115 bid and 117 asked to 111 bid and 113 asked. The prices at the date fixed by the Vice-Chancellor while lower than when the

trust company acquired the securities, were still prices commanded by high grade investments. To hold that so slight a variation in the market required the trustee to sell would in effect require a trustee to watch the "ticker" as any mere speculator might. This is not the duty of a trustee. He is to invest in safe productive securities and mere fluctuations in market price which may be due to variation in the current rate of interest or in the current demand for ready money in panic or in war, ought not to force him to sell. Were it otherwise, it would practically be impossible to invest a trust fund with any approach to permanence, and the loss of interest on the constant reinvestment might be a serious loss to the *cestui que* trust. These considerations suffice to show that the date fixed by the Vice-Chancellor cannot be justified. We cannot, however, leave the case at that since subsequently the securities became practically worthless, and a rapid fall began in the summer of 1907. This is shown to have been a time of financial depression when the best securities dropped in value. We think that even then the trustee was not required to sell, since great shrinkages take place at such times which are subsequently recovered; the trustee might be held liable for loss if he sold when the market was low, and there was a subsequent recovery. The testimony is uncontradicted that nothing occurred to disturb any one's sense of security until about September, 1907, when receivers were appointed for the New York City Railroad Company, the lessee of the

companies whose securities are now in question. This led to the trustee taking steps to protect the interests of its *cestuis que* trust as well as its own interests as holders of the same securities. We see no reaon to doubt, and there is no evidence to the contrary, that all was done that was possible. The Federal Court in New York directed the Receivers of the New York City Railroad Company to operate the whole system, and to borrow money on receivers' certificates to pay the rent on the leases of the three companies. There was no default until 1908. The dividend on the Central Park stock was paid on January 1, 1908, the interest on the Second Avenue bonds on February 1, 1908, and on the 28th and 29th Street Crosstown bonds on April 1, 1908. As long as the dividends and interest were regularly paid under an order of the Court, the trustees were certainly justified in disregarding the market fluctuations, unless there was something else to arouse their suspicions; there is no proof that there was. When the default in dividends and interest came later, the time had passed when it was possible to save the situation. There was no market for the securities; the quotations are shown to have been merely nominal and of a speculative character; as one witness said "you couldn't do anything; the bottom fell out completely" or as another witness put it, "they were unsalable; where a stock was quoted as 50 bid, if you had offered ten shares you couldn't have got fifty per cent of the nominal quotation price." In the face of this uncontradicted testimony, we are unable to see

what the trustee could have done; its good faith is unquestioned and is conceded; we think it exercised reasonable discretion. It is indeed suggested that the trustee should have sought the protection of an order of court under the act of 1889; but such an order would have done no more than give the authority which the statute of 1899 itself conferred. From whatever source the authority came, whether from the court or the legislature, the trustees would at least have been bound thereafter to exercise the good faith and reasonable discretion that the act of 1899 requires.

It is also suggested that perhaps an examination of the records would have disclosed that the old mortgage on the Central Park road was uncancelled. The difficulty is that it is impracticable to require trustees investing in bonds for a comparatively small amount, a portion of a large issue, to make such an examination. The expense would be prohibitory, and as business is done by careful investors, reliance must be had upon the opinions of bankers who have made or may properly be supposed to have made, the necessary examination and inquiry for their clients. This is one of the useful purposes served by bankers in our modern business organization.

We think the defendant in this case has proved that it exercised good faith and reasonable discretion and as the statute enacts is not accountable for any loss by reason of the continuance of the investments. If it is necessary to refer to

the adjudged cases, it is enough to cite Matter of Weston, 81 N. Y., 503; Matter of Mercantile Trust Co., 141 N. Y., Supp. 460; Bowker v. Pierce, 130 Mass., 262. The decree must be reversed and a decree entered dismissing the bill with costs.

Endorsed:

"Filed Nov. 16, 1914.
DAVID S. CRATER,
Clerk."

Exhibit—Printed Pursuant to Stipulation.

(See Vol. I, p. 279.)

United States of America,
Southern District of New York,
ss,:

I, ALEXANDER GILCHRIST, JR., Clerk of the District Court of the United States for the Southern District of New York, do hereby Certify that the Writings annexed to this Certificate have been compared by me with their originals on file and remaining of record in my office; that they are correct transcripts therefrom and of the whole of the said originals.

IN TESTIMONY WHEREOF I have herunto subscribed my name and affixed the seal of the said Court at the City of New York, in the Southern District of New York, this 9th day of May, in the year of our Lord One Thousand Nine Hundred and twenty three, and of the Independence of the said United States the One Hundred and Forty-seventh.

ALEXANDER GILCHRIST JR.
Clerk.

Intervening Petition of Solomon H. Kohn.

IN THE CIRCUIT COURT OF THE UNITED STATES
FOR THE SOUTHERN DISTRICT OF NEW YORK.

THE PENNSYLVANIA STEEL COMPANY and DEGNON CONTRACTING COMPANY, *Complainants,* *against* NEW YORK CITY RAILWAY COMPANY and METROPOLITAN STREET RAILWAY COMPANY, *Defendants.*	In Equity.

TO THE JUDGES OF THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

And now comes Solomon H. Kohn, who is now and for more than six years last past has been the owner of five-hundred (500) shares of the capital stock of the defendant Metropolitan Street Railway Company, and a resident, inhabitant and citizen of the City, County, and State of New York, on behalf of himself and all other owners of capital stock of the defendant Metropolitan Street Railway Company, who may elect to become parties to this petition and share the expense of the prosecution thereof, and states:

1. That the defendant, Metropolitan Street

Railway Company, is a consolidated corporation organized and existing under the laws of the State of New York.

II. That at the time your petitioner purchased his said stock in said Metropolitan Company as hereinafter set forth, said Company owned and operated and still owns and operates a most important and valuable system of street railroads in the City of New York, practically covering the entire surface street railroad system in the Boroughs of Manhattan and the Bronx in the City of New York. That at the time your petitioner bought his said stock Metropolitan Street Railway Company was capitalized for Fifty-two Million (52,000,000.00) Dollars, divided into five hundred and twenty thousand (520,000) shares of the par value of One Hundred ($100.00) Dollars each. That at said time and for many years before then and ever since then and now said Metropolitan Street Railway Company and its directors were and are actually controlled by Thomas F. Ryan and his associates, said Ryan, however, having been and being the dominant factor in the control of said corporation and its directors.

III. That by reason of reports published and sent forth by said Thomas F. Ryan, his agents and employees and by the directors of said Metropolitan Street Railway Company, all of whom were under the control of said Ryan, as to the enormous earnings of said Company, and as to its excellent financial condition, your petitioner in the year 1901 purchased five hundred (500) shares of said stock for about One Hundred and Seventy ($170.00) Dollars per share, which was the market price, aggregating more than Eighty-

five Thousand ($85,000.00) Dollars. That your petitioner bought said stock in the open market, but now believes that said stock so purchased by him was the stock of said Ryan and associates or of said Ryan alone. That your petitioner ever since then has been and now is the owner of said stock. That during certain periods, however, two hundred (200) shares of said stock were temporarily transferred from the name of your petitioner to that of brokers who held the same as collateral for loans made to your petitioner thereon. That the numbers of the present certificates owned and held by your petitioner and standing in his name are as follows:

Certificate No.	15244	dated Jan. 17, 1901,	100	shares
"	18020	" June 11, 1901,	100	"
"	20566	" Nov. 29, 1901,	100	"
"	25683	" Oct. 16, 1902,	100	"
"	31688	" Apr. 29, 1904,	100	"

IV. That after the purchase by your petitioner of said stock in said Metropolitan Street Railway Company said Ryan and associates organized a Street Railway Company in the City of New York under the name of Interurban Street Railway Company, and subsequently changed the name thereof to the New York City Street Railway Company, and said Interurban Street Railway Company will hereafter be referred to as the City Railway Company. That said City Railway Company and its directors ever since that time have been and now are controlled by said Ryan and his associates, said Ryan however having been and being the dominant factor in the control of said corporation and its directors.

V. That in the year 1902 said Ryan and associates, then in control of said Metropolitan Street Railway Company and said City Railway Com-

pany, for purposes of their own, conceived the scheme and plan of leasing said Metropolitan Street Railway system to said City Railway Company, then called the Interurban Street Railway Company. That a lease of extremely doubtful legality and validity dated February 14th, 1902, was pretended to be entered into between said City Railway Company, then called the Interurban Street Railway Company, and said Metropolitan Street Railway Company, in and by which said lease said City Railway Company agreed to pay to said Metropolitan Street Railway Company for the period of nine hundred and ninety-nine (999) years as an annual rental for said system a sum equal to seven per cent (7%) on the stock of said Metropolitan Street Railway Company, amounting to Fifty-two Million ($52,000,000.00) Dollars as aforesaid, and agreed in addition to pay all the interest on all of the mortgage indebtedness of said Metropolitan Street Railway Company and on all of the constituent companies of its system, and in addition agreed to keep said railway system in repair, and to pay all taxes, assessments, rentals payable under the leases of lines leased to the Metropolitan Street Railway Company, interest on the funded debt and fixed charges of said Metropolitan Street Railway Company. A copy of said lease is on file in this case, and by reference thereto is made a part hereof.

VI. That in and by said lease it was provided that said Metropolitan Street Railway Company should turn over to said City Railway Company, then called the Interurban Street Railway Company, a vast quantity of valuable securities which said Metropolitan Street Railway Company then

had, and that said City Railway Company should pay to the Metropolitan Street Railway Company Twenty--three Million ($23,000,000.00) Dollars. That said Metropolitan Street Railway Company complied with its part of these provisions of said lease, but upon information and belief your petitioner states that the full amount of said Twenty-three million ($23,000,000.00) Dollars) was not turned over by said City Railway Company, then called the Interurban Street Railway Company, to said Metropolitan Street Railway Company, and that the directors of said Metropolitan Street Railway Company and said Thomas F. Ryan have never properly accounted for such part of said Twenty-three Million ($23,000,000.00) Dollars as was turned over to them by said Interurban Street Railway Company. And your petitioner is further informed and believes that a suit ought to be brought on behalf of said Metropolitan Street Railway Company against said directors and said Ryan to obtain such an accounting, but that the present directors of said Metropolitan Street Railway Company being under the control of said Thomas F. Ryan have wrongfully failed to bring such suit. That a suit ought to have been brought long ago by said Metropolitan Street Railway Company against said New York City Railway Company to recover that part of said Twenty-three Million ($23,000,000.00) Dollars which has not been paid, but all of the directors of said Metropolitan Street Railway Company having been and being under the control of said Ryan and associates, have wrongfully failed to bring any suit or institute any proceedings or make any effort in that behalf.

VII. That simultaneously with the delivery of

said lease said Metropolitan Street Railway Company executed a mortgage dated March 21st, 1902, on all of its property, tangible and intangible, to the Morton Trust Company as Trustee. That at said time and ever since then and now said Thomas F. Ryan, controlled and now controls said Morton Trust Company in every way, and is now Vice-President thereof. That the avowed purpose of said mortgage was to substitute the bonds to be issued thereunder for the bonds then outstanding and secured on the property of said Metropolitan Street Railway Company and of its constituent lines. A copy of said mortgage is on file in this case, and by reference thereto is made a part hereof. That your petitioner has no knowledge or information sufficient to form a belief as to how many bonds were issued under said mortgage, or as to the validity of said bonds which were issued, or as to what if any consideration was given therefor.

VIII. Upon information and belief that at and prior to the time that your petitioner purchased his said stock relying on the statements of said Ryan and of his agents, and of the directors of said Metropolitan Street Railway Company as to the earnings and condition of said Company as aforesaid, said Thomas F. Ryan and his associates were large holders of stock in said Metropolitan Street Railway Company, and that they procured your petitioner and others to purchase said stock at enormous prices by making said statements and by declaring and paying dividends on the stock of said Metropolitan Street Railway Company in excess of the earnings thereof, and by paying said dividends out of capital and not out of earnings, and thus said Ryan and his associates sold and

unloaded nearly all of their said stock on the public at enormous prices, and have since become and are now largely interested in the bonds of said Metropolitan Street Railway Company secured by said mortgage to the Morton Trust Company.

IX. That in September, 1907, said Thomas F. Ryan and his associates, for the purpose of wiping out and freezing out the stock of the Metropolitan Street Railway Company held by your petitioner and others similarly situated, and of freezing your petitioner and others similarly situated out of all interest in said Metropolitan Street Railway property and system, instituted the following proceedings, with the intent of acquiring such interest themselves without paying your petitioners and others similarly situated anything therefor; and your petitioner states that unless his prayer hereinafter set forth is granted, said Ryan and his associates will succeed in accomplishing such design and purpose on their part.

X. Said Ryan and his associates procured the plaintiffs, the Degnon Construction Company and the Pennsylvania Steel Company, which it is alleged were creditors of the City Railway Company on open account, to file a creditors' bill in this Court in this case on September 24th, 1907, to put the property of said City Railway Company in the hands of a receiver. That said City Railway Company had ample funds, if said Ryan had desired that it should do so, to pay said claims of said plaintiff companies, which together did not exceed the sum of Fifty Thousand ($50,000) Dollars, and said plaintiffs could, if said claims had been past due, have collected the same on execution after obtaining judgment. It was alleged in

said bill that said plaintiffs were not citizens of the State of New York, and that the City Railway Company was a citizen of the State of New York.

XI. That said Ryan and his associates being in control of said New York City Railway Company, simultaneously with the institution of said proceedings by said plaintiffs had the solicitors for said City Railway Company join in said petition for a receivership and admit its insolvency and the claims of said creditors, and upon information and belief your petitioner states that in said proceeding (this suit) said Ryan and his associates procured the appointment of Adrian H. Joline and Douglas Robinson as receivers and said Joline and Robinson were duly appointed receivers in this case and duly qualified, and are now acting as such receivers. That said Adrian H. Joline is a member of the bar of the State of New York, and has frequently acted as counsel for said City Railway Company, and your petitioner upon information and belief states that at the time of his appointment said Joline was acting as counsel for said City Railway Company, and that during all said time said City Railway Company as aforesaid was controlled and in effect operated by said Thomas F. Ryan. That said Douglas Robinson so selected by said Thomas F. Ryan, as your petitioner is informed and believes, as receiver, was at the time of his appointment connected as real estate broker with the street railroads of the City of New York controlled by said Ryan, and that in that way he was in the employ of said Ryan; and that said Douglas Robinson for about two years has been and your petitioner believes still is the real estate appraiser

of the Equitable Life Insurance Company, controlled by said Thomas F. Ryan, and selected by said Ryan for that purpose.

XII. That although the City Railway Company merely had a lease of the properties of said Metropolitan Street Railway Company, said receivers immediately took charge of all the physical properties of said Metropolitan Street Railway Company.

XIII. That the directors of said Metropolitan Company in violation of their duties as such directors and instead of procuring counsel to assert the rights of said Company, assisted in the attempt to wreck said Metropolitan Street Railway Company, and acting under the orders and directions of said Ryan immediately had a petition filed in this case on behalf of the Metropolitan Street Railway Company, asking that said Joline and Robinson be ordered as receivers to take charge of the property of said Metropolitan Company, and thereupon an order was entered herein in conformity with said petition and said Joline and Robinson duly qualified and are now acting as receivers for the property of the Metropolitan Street Railway Company under said order. That a copy of said petition so filed by said Metropolitan Street Railway Company on October 1st, 1907, and of said order entered the same day, are on file in this cause and by reference thereto are made a part of this petition.

XIV. That said Joline and Robinson as receivers of the City Railway Company have defaulted in the payment of an installment of rent amounting to about Nine Hundred and Ten Thousand ($910,000.00) Dollars, which was due

to the Metropolitan Street Railway Company on October 15th, 1907, under said lease, but said Joline and Robinson as receivers of the Metropolitan Street Railway Company have not brought any suit against themselves as rceeivers of the City Railway Company to recover such installment of rent and have not in any way attempted to assert any right of any kind against themselves as receivers of the City Railway Company, on account of such default.

XV. That notwithstanding the fact that said Joline and Robinson as receivers of the City Railway Company are daily receiving enormous sums of money from the operation of the Metropolitan Street Railway system, they are not paying any rent therefor and are making no effort as receivers of the Metropolitan Street Railway Company to obtain any part of such money from themselves as receivers of the City Railway Company.

XVI. That if the receivers of said Metropolitan Street Railway Company were appointed who would have no interest to conserve except that of the stockholders and creditors of the Metropolitan Street Railway Company, such receivers would immediately institute proceedings for the purpose of recovering said rent and terminating said lease and obtaining possession of said property by reason of the defaults of said City Railway Company, and would also institute suits against the directors of said Metropolitan Street Railway Company and said Ryan and his associates for declaring illegal dividends.

XVII. That many questions of very great financial importance as to the construction of said lease, which is very complicated, are constantly

arising as between the City Railway Company and the Metropolitan Street Railway Company. That in the settlement of such questions it would become the duty of independent receivers of the Metropolitan Street Railway Company to advocate and support a construction in favor of that company, whereas the receivers of the New York Railway Company in the interest of the trusts taken over by them as receivers for the City Railway Company, would probably advocate and support an entirely different construction.

XVIII. Said Joline and Robinson as receivers of said City Railway Company contend that by reason of certain clauses in said lease, notwithstanding the fact that said City Railway has gone into the hands of a receiver and has defaulted in the payment of rent, and it is manifest from its own statments and from this fact that it cannot and will not be able at the end of a year to pay the amount due under the lease and that it will not be able to fulfill the terms of the lease, that they as receivers of the Metropolitan Street Railway Company must sit still and cannot take any action of any kind within said period of one year, and that it is not even their duty as receivers of the Metropolitan Street Railway Company to attempt, on behalf of the Metropolitan Street Railway Company, to assert any such claim. Said Joline and Robinson as such receivers of the Metropolitan Street Railway Company have shown by their conduct that notwithstanding the insolvency of the City Railway Company and its manifest inability to pay, and notwithstanding the terms of the lease and the common law and statutory rights which the Metropolitan Street Railway Company would have as lessor, that it is their

purpose to assert that as receivers of the Metropolitan Street Railway Company they are not required and ought not to be required to do anything to assert such rights, or even attempt to assert them. Your petitioner further states that the Directors of said Metropolitan Street Railway Company in violation of their duty as directors, have supported this destructive attitude so taken by the receivers of the City Railway Company. Your petitioner is informed by counsel and believes that all the circumstances considered the Metropolitan Street Railway Company is entitled to the immediate possession of its property and that if independent receivers were appointed such return could and would be enforced immediately.

XIX. That said Ryan and associates immediately after the appointment of said Joline and Robinson as receivers of said Metropolitan Street Railway Company and about October 9th, 1907, had said Ryan's Morton Trust Company as trustee file an independent suit in this court for the purpose of having said Joline and Robinson appointed Receivers of said Metropolitan Street Railway Company in said suit. That the general counsel of said Morton Trust Company is the personal counsel of said Ryan, and was during all the period aforesaid the counsel for all the railroads above mentioned, and is the general counsel of all the street railroads in the City of New York controlled by said Ryan, and your petitioner is informed and believes that all the suits and proceedings hereinbefore mentioned were instituted and defended as aforesaid under his direction.

XX. That the only ground on which it was alleged or could have been alleged that said Morton Trust Company, which is a corporation of

the State of New York, could have come into this court and brought an independent suit, was because of the fact that the property of the Metropolitan Street Railway Company was put in the hands of receivers in this case.

XXI. That immediately upon the filing of said suit by said Morton Trust Company the Metropolitan Street Railway Company acting under the order and direction of said Ryan and associates, and pursuant to the scheme aforesaid, consented to the appointment of said Joline and Robinson as such receivers, and they were so appointed and qualified and are now acting as such. That the Board of Directors of the Metropolitan Street Railway Company in violation of their duties as such directors failed to oppose said application and failed to in any way assert the rights of said company; in fact, to carry out the scheme aforesaid, but acting under the instructions of said Ryan, they consented thereto.

XXII. That thereafter and on or about November 9th, 1907, said Ryan and his associates through said Morton Trust Company filed a bill of foreclosure in this court to foreclose said mortgage from the Metropolitan Street Railway Company to said Morton Trust Company, trustee, making said receivers and all the parties hereto defendants.

XXIII. That it was a part of the scheme of said Ryan and his associates in order to bring about an exceedingly speedy foreclosure of said Metropolitan Street Railway Company mortgage, to have a default take place in the payment of the rental due on the Third Avenue Railway Company property, being one of the lines leased to the Metropolitan Street Railway Company

system. Said lease dated April 13, 1900, was covered by said mortgage, and it was provided in said Metropolitan Street Railway Company mortgage that in case of default by said Metropolitan Street Railway Company in payment of any rentals of any leased lines, that should constitute a ground for foreclosure, provided that the same should continue for the period of three months after written notice. That your petitioner is informed and believes that although no reason exists therefor except the desire to consummate the scheme aforesaid to bring about a default in the said mortgage to said Morton Trust Company, a default was made in the payment of the instalment of rent due from the Metropolitan Street Railway Company to the Third Avenue Railway Company falling due October 13th, 1907. That notwithstanding that the three months had not elapsed since the default of the payment of the Third Avenue rental, said Ryan procured the Morton Trust Company, controlled by him as aforesaid, to begin said foreclosure suit to foreclose said mortgage on or about November 9th, 1907. Your petitioner states, and he has been so advised by his counsel, that in said foreclosure suit no legal or proper ground is given for the foreclosure of said mortgage, but your petitioner upon information and belief states that unless independent receivers are appointed for the Metropolitan Street Railway Company having no other object than the conservation of the rights of the stockholders and creditors of said Metropolitan Street Railway Company, that a decree of foreclosure will be promptly entered and the rights of all the stockholders of said Metropolitan Street Railway Company, including

your petitioner, will be wiped out in said foreclosure.

XXIV. That said mortgage by its terms is subject to the said lease from the Metropolitan Street Railway Company to the New York City Railway Company (formerly the Interurban Company) and that therefore the New York City Railway Company and Messrs. Joline and Robinson, its receivers have nothing to lose by the foreclosure of said mortgage and are not in any way concerned whether the same be foreclosed or not.

XXV. Upon information and belief that at all the times since its incorporation, said Metropolitan Street Railway Company has earned and is now earning sufficient money to comply with the terms of said mortgage to said Morton Trust Company and to pay all its fixed charges and running expenses and to pay a dividend on its stock in addition thereto, despite the fact that it has been greatly mismanaged, and that had said company been properly managed it would have earned a greater amount. That the effect of said lease, dated February 14th, 1902, from the Metropolitan Street Railway Company to the New York City Railway Company (then the Interurban Street Railway Company) was to divert all the property, assets and earnings of said Metropolitan Street Railway Company so that, though it is solvent, it is, by reason of said lease, unable to pay the interest on its mortgage and its other obligations thereunder, and said mortgage will be foreclosed and the stock of said unless said New York City Railway Company Metropolitan Street Railway Company, including that of your petitioner, will be wiped out,

complies with its part of said lease or unless the property of said Metropolitan Street Railway Company be taken from said City Railway Company on account of its default and restored to the Metropolitan Street Railway Company.

XXVI. That it will be necessary for independent receivers who have no past or present relations with said Ryan and his associates to bring divers and sundry suits against Ryan and his associates for the purpose of obtaining an accounting from them with reference to the many transactions which they have had with the Metropolitan Street Railway Company and for the purpose of recovering from them large sums of money.

XXVII. That six of the nine directors of the Metropolitan Street Railway Company are also directors of the New York City Railway Company, which has only nine directors. That the directors of said Metropolitan Street Railway Company who are entirely under the control of said Ryan and his associates have proven themselves faithless to the trusts undertaken by them as such directors, and have not only not taken any steps to rescue said Metropolitan Street Railway and its property, but have done everything they could to aid the schemes, plans and purposes aforesaid, and it is necessary in the interests of the stockholders of said Metropolitan Street Railway Company that its property and interests should be taken out of their hands and placed in the hands of a receiver.

XXVIII. Your petitioner further states that it is necessary that receivers should be immediately appointed for the Metropolitan Street Railway Company and its property, who are entirely

independent of said Ryan and his associates, and who shall be in a position to protect the interests of said Metropolitan Street Railway Company in its dealings with said New York City Railway Company and who shall be in a position to bring suits against the said Joline and Robinson as receivers for the New York City Railway Company to compel them, among other things, to pay the rental due to the Third Avenue Railway Company, which, by the terms of the lease from the Metropolitan Street Railway Company to said New York City Railway Company said City Railway Company agreed to pay. That said receivers of said City Railway Company are now receiving all the earnings of said Third Avenue Railway, which are more than sufficient to pay said rental. That such independent receivers should also bring suits against said Ryan and his associates and others, and should defend said foreclosure suit, and any suits or proceedings which have been or may be brought against said Metropolitan Street Railway Company.

WHEREFORE your petitioner respectfully prays:

1st. That your petitioner may be made a party defendant herein for the protection of the interests of himself and such other stockholders as may join with him.

2nd. That receivers of the Metropolitan Street Railway Company and its property may be immediately appointed with the usual duties and powers of corporation receivers.

3rd. That the order of this court heretofore made appointing said Joline and Robinson receivers of the property of said Metropolitan Street Railway Company may be annulled and set aside.

Intervening Petition of Solomon H. Kohn.

4th. Your petitioner prays for such other and further relief as may be equitable, just and proper in the premises.

SOLOMON H. KOHN,
Petitioner.

WOLLMAN & WOLLMAN,
Solicitors for Petitioner,
Office and P. O. Address:
20 Broad Street,
Borough of Manhattan,
New York City.

HENRY WOLLMAN,
ACHILLES H. KOHN,
Of counsel.

State of New York,
County of New York, } ss.:

SOLOMON H. KOHN, being duly sworn, deposes and says that he is the petitioner above-named. That he has read the foregoing petition and knows the contents thereof and that the same is true to his own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters he believes it to be true.

SOLOMON H. KOHN.

Sworn to before me this
25th day of November, 1907.
N. J. MacPherson,
Notary Public,
New York City.
[Seal]

Exhibit—Pre. Ct. Appeal Papers.
Notice of Appeal.

Notice of Appeal.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter *of* The Estate of Sarah A. Cooke, Deceased.

William B. Beam, one of the next of kin of Sarah A. Cooke, deceased, and remainderman under her last will and testament, hereby appeals to the Prerogative Court from the decree entered herein, on the 24th day of February, 1921, allowing the final account of the Paterson Safe Deposit and Trust Company, trustees under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, and every part thereof.

William B. Beam,
Proctor Pro Se.

Dated, Paterson, N. J.,
May 23, 1921.

Exhibit—Pre. Ct. Appeal Papers.
Petition of Appeal.

Petition of Appeal.

(Filed June 21, 1921.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.

To the Ordinary of the State of New Jersey:

The petition of William B. Beam, of the City of Paterson, County of Passaic and State of New Jersey, respectfully shows that,

1. On January 21, 1921, Paterson Safe Deposit and Trust Company, trustee under the last will and testament of Sarah A. Cooke, deceased, presented its final account as such trustee to the Orphans' Court of the County of Passaic and exceptions having been filed thereto by your petitioner, the Orphans' Court on February 24, 1921, made its order overruling all of said exceptions "in their entirety" and ordering the said account to be allowed.

2. Your petitioner hereby appeals from the said order,

(a) From that part of the said order of the said Orphans' Court overruling the exceptions of appellant and John C. Beam, and Edward Beam "in their entirety".

(b) From that part of the said order of the Orphans' Court which overrules the first exception filed by appellant and John C. Beam and Edward Beam that the accountant did not state in said final account the actual or market value of the securities set forth in Schedule C of the final account.

(c) From that part of the order of the said Orphans' Court overruling the exception of the appellant and John C. Beam and Edward Beam, **that the accountant did not set forth in its account** the correct value of the stock in the Brooklyn City Company mentioned in Schedule C of said final account.

(d) From that part of the order of the said Orphans' Court which overruled the third exception filed by appellant and John C. Beam and Edward Beam, that the said accountant did not set forth in its final account the method by which the bond and mortgage of Max Gold mentioned in Schedule C of said final account was acquired by it as trustee as aforesaid.

(e) From that part of the order of the said Orphans' Court which overruled the fourth exception filed by appellant and John C. Beam and Edward Beam alleging that the accountant did not set forth in its final account the number of the bonds and stocks held by it as trustee and mentioned in Schedule C of said final account.

(f) From that part of the order of the said Orphans' Court which overruled the fifth exception filed by appellant and John C. Beam and Edward Beam alleging that the accountant had not annexed to its said final account, a full statement or list of securities, investments and assets of which the balance of the estate of the

said Sarah A. Cooke, deceased, in its hands consists, and a statement of all changes made in securities since the settlement of the last intermediate account.

(g) From that part of the said order of the Orphans' Court overruling the exception of appellants and John C. Beam and Edward Beam to the said final account alleging that the accountant had not set forth the correct value of the stock in the Central North and East River Railroad mentioned in said Schedule C of said final account.

(h) From that part of the said order of the Orphans' Court allowing to said trustee the sum of $400.00 as and for its commissions and a counsel fee of $250.00 to Griggs & Harding, proctors for said accountant, and a further commission of $81.86 on income received during the period of said account.

WILLIAM B. BEAM,
Proctor Pro Se.

Dated, Paterson, N. J.,
June 22, 1921.

Exhibit—Pre. Ct. Appeal Papers.
Answer to Petition of Appeal.

Answer to Petition of Appeal.

(Filed July 6, 1921.)

NEW JERSEY PREROGATIVE COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased, upon the appeal of WILLIAM B. BEAM from an order of the ORPHANS' COURT of the COUNTY OF PASSAIC allowing the final account of PATERSON SAFE DEPOSIT AND TRUST COMPANY, Trustee.

The answer of the National Trust Bank of Paterson incorporated under the Federal laws, formerly The Paterson Safe Deposit and Trust Company, a corporation of the State of New Jersey, respondent to the petition of appeal of William B. Beam, appellant:

1. This respondent answering admits the allegations contained in the first paragraph of appellant's petition of appeal filed herein.

2. This respondent is advised, believes and submits that the portions of said decree complained of by appellant are justified and lawful, and this respondent denies that the aforesaid portions of the said decree or any part thereof are erroneous, improper or illegal, and alleges that the said portions of said decree are legal, proper and correct.

And it, therefore, prays that the said petition of appeal may be demissed with costs.

JOHN L. GRIGGS,
Proctor for and of
Counsel with Respondent.

INDEX

VOL. II—BOOK OF EXHIBITS.

ORPHANS' COURT PROCEEDINGS IN RE WILL OF SARAH A. COOKE, DECS'D.
(Admitted in Ev. as Exhibit— Vol. 1 p. 72.)

PAGE

INTERMEDIATE ACCOUNTING OF 1908

Notice of Settlement of Account 1
Account 3
Decree on Accounting 13

INTERMEDIATE ACCOUNTING OF 1910

Notice of Settlement of Account 14
Account 17
Decree on Accounting 29

INTERMEDIATE ACCOUNT OF 1912

Notice of Settlement of Account 30
Account 32
Decree on Accounting 40

INTERMEDIATE ACCOUNT OF 1914

Notice of Settlement of Account 42
Account 43
Decree on Accounting 51

INTERMEDIATE ACCOUNT OF 1915

Notice of Settlement of Account 53
Account 53
Decree on Accounting 61
Exceptions to Accounting 64

PAGE

INTERMEDIATE ACCOUNT OF 1917

Notice of Settlement of Account 66
Petition of Paterson Safe Deposit & Trust Co. 68
Proof of Mailing Petition 70
Account 72
Notice of Settlement of Account 81
Decree on Accounting 77
Exceptions to Accounting 79

INTERMEDIATE ACCOUNT OF 1919

Petition of Paterson Safe Deposit & Trust Co. 83
Account 87
Decree on Accounting 92
Exceptions to Accounting 95

LAST ACCOUNT OF 1921

Notice of Settlement of Account 100
Petition of Paterson Safe Deposit & Trust Co. 102
Account 105
Decree 111

PROCEEDINGS OF WILLIAM B. BEAM FOR RELIEF

Affidavit of William B. Beam 113
Affidavit of William B. Beam 114
Petition of William B. Beam 115

	Admtd at page	Ptd at page
D-3 Letter of Chase National Bank of September 20, 1919	88	126
D-4 Letter of H. Hobart Porter of April 22, 1920	89	128
C-5 Letter of April 15, 1920, J. L. Griggs to Carrie S. Beam	79	123
C-5½ Memorandum to Goodbody & Co. regarding sale of Securities ..	109	125
——Opinion of N. Y. Court of Appeals in Flynn v. Brooklyn City R. R. Co.	132	129
C-6 Letter of April 14, 1920 of Carrie S. Beam to John L. Connolly, secretary trustee trust company	137	149
C-7 Letter of April 16, 1920 of Carrie S. Beam to John L. Connolly, secretary trustee trust company	137	150
C-8 Letter of April 24, 1920 of Carrie S. Beam to John L. Connolly, secretary trustee trust company	137	153
BH-1 ident. Petition to Governor Hughes filed by Griggs, Baldwin & Pierce for the removal of District Attorney Jerome of New York County	161	155
BH-2 ident. Letter of Governor Miller to William B. Beam, Nov. 29, 1922	161	211
BH-3 ident. "The Truth About Metropolitan" by Col. William N. Amory	170	212

EXHIBIT—

Orphans' Court Records.

Intermediate Account of 1908.

Notice of Settlement of Account.

Notice is hereby given that the accounts of the subscriber, Trustee, under the will of Sarah A. Cooke, deceased, late of the City of Paterson, will be audited and stated by the Surrogate and reported for intermediate settlement to the Orphans' Court of the County of Passaic, on Thursday, the twenty-third day of April, 1908.

Dated, March 17th, 1908.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By Wm. Berdan, V. P.

STATE OF NEW JERSEY, }
Passaic County. } ss.:

Robert J. Burke, of full age, being duly sworn on his oath, according to law deposes and says that he is the Advertising Agent of Press P. & P. Co., and that the annexed Notice was published in the Paterson Press, a newspaper printed and published at Paterson in said County and State, on March 19 & 26th & April 2nd, 9th, & 16th, 1908.

ROBERT J. BURKE,

Sworn and subscribed before me this }
21st day of April, A. D., 1908. }
HENRY A. SAUTTER,
Notary Public, N. J.

Filed March 23, 1908,
CHARLES M. KING,
Surrogate.

Notice of Settlement of Account.

Notice is hereby given that the accounts of the subscriber, Trustee under the Will of Sarah A. Cooke, deceased, late of the City of Paterson, will be audited and stated by the Surrogate and reported for intermediate settlement to the Orphans' Court of the County of Passaic on Thursday the twenty-third day of April, 1908.

Dated, Paterson, N. J., March 17th, 1908.

THE PATERSON SAFE DEPOSIT & TRUST CO.
By Wm. Berdan, V. P.

STATE OF NEW JERSEY,
County of Passaic } ss.:

George L. King, being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Post Office and Donahoes Saloon, all in the City of Paterson, on March 20th, 1908.

GEORGE L. KING.

Sworn and subscribed this 21st day of March, A. D. 1908, at Paterson before me

HENRY A. SAUTTER,
Notary Public of N. J.

(Filed, Mar. 23, 1908.)

CHAS M. KING,
Surrogate.

The intermediate account of the Paterson Safe Deposit & Trust Company, Trustees under the Will of Sarah A. Cooke, deceased, from the 31st day of December, 1905, to the 1st day of February 1908, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself:

DEBTOR.

To total amount of assets received		$150,650.00
Income received	$14,402.25	
Disbursements from Income	12,563.07	
Cash in hands of accountant		1,839.18
Total amount of Estate Feb. 1, 1908		$152,489.18
Trustee's Commission	$720.11	
Surrogate's Fees	38.18	
Counsel Fee (including search fees in foreclosure 87 50/100)	125.00	
Geo. L. King, Adv. &c.	6.02	

INCOME ACCOUNT.

To Income received as follows:

1905		
Dec. 31, Coupons Mobile & Ohio 6s (Premium $35.00		$ 90.00
1906		
Jan. 2, Dividend Centl. Park, N. & E. R. R. R.		$506.25
Coupons Passaic Water Co., 5s (Premium $12.50)		175.00
15 Dividend Brooklyn City R. R. CO.		50.00
31, Int. Second Ave. R. R. Co., (Premium $4.00)		50.00
Feb. 1, Dividend United N. J. R. R. & Canal Co. (Premium $10.00)		100.00
28, Coupons Paterson & Passaic G. & E. Co. (Premium $3.00)		125.00
Apr. 1, Dividend Centl. Park, N. & E. R. R. R.		506.25
Coupons Passaic Water Co, 4s		80.00
Coupons Long Dock Co. 6s (Premium $60.00)		300.00

	Coupons 28th & 29th St. Crosstown R. R. (Premium $2.50)	75.00
	Coupons Paterson Sewer Certf. 4%	1.26
	14, Dividend Brooklyn City R. R.	50.00
	30, Coupons Passaic Lighting Co. (Premium $17.00)	200.00
	May 31, Coupons Paterson Railway Co. 6s (Premium $70.00)	540.00
10	Coupons Consolidated Traction Co. (Premium $8.50)	125.00
	June 1, Interest Lehigh Valley R. R. Regstd, 6s	240.00
	30, Dividend Centl. Park, N. & E. R. R. R.	506.25
	Coupons Mobile & Ohio 6s (Premium $35.00)	90.00
	Coupons Passaic Water Co. 5s (Premium $12.50)	175.00
	Coupons Mobile & Ohio 6s due Apr. 1st.	90.00
	July 16, Dividend Brooklyn City R. R.	50.00
	31, Coupons Second Ave. R. R. 5% (premium $4.00)	50.00
20	Aug. 1, Dividend United N. J. R. R. & Canal Co. (premium $10.00)	100.00
	Sept. 1, Coupons Paterson & Passaic G. & E. Co. (premium $3.00)	125.00
	14, Int. on Graham Mtge. to 6/30/06	80.00
	Oct. 1, Interest Passaic Water Co. 4%	80.00
	Coupons Long Dock Co. 6% (Premium $60.00)	300.00
	Coupons 28th & 29th St. Crosstown R. R. (Premium $2.50)	75.00
	Coupons Paterson Sewer Certf.	1.26
	Coupons Mobile & Ohio	90.00
30	2. Dividend Centl. Park, N. & E. R. R. R.	506.25
	15, " Brooklyn City R. R.	50.00
	31, Coupons Passaic Lighting Co. (Premium $17.00)	200.00
	Nov. 30, Coupons Paterson Sewer Certfs. 4%	.24
	" Paterson Railway Co. (Premium $70.00)	540.00
	Coupons Consolidated Traction Co. (Premium $8.50)	125.00
	Dec. 1, Dividend Lehigh Valley R. R.	240.00
	31, Coupons Mobile & Ohio (Premium $35.00)	90.00
40	Coupons Passaic Water Co. (Premium $12.50)	175.00

1907			
Jan.	2, Dividend Centl. Park, N. & E. R. R. R. Co.	506.25	
	15, " Brooklyn City R. R. Co.	50.00	
	31, Coupon Second Ave. R. R. (Premium $4.00)	50.00	
Feb.	1, Dividend United N. J. R. R. & Canal Co. (Premium $10.00)	100.00	
	6, Int. on Grahm Mtg. to Dec. 31, 1906	60.00	
	Forward	$7,719.01	10
1907			
Feb.	28, Coupons Paterson Sewer Certf.	3.54	
	" Paterson & Passaic G. & E. Co.	125.00	
Mar.	29, " Paterson Sewer Certfs.	1.26	
	" Passaic Water Co.	80.00	
	" Long Dock Co. 6s (Premium $60.00)	300.00	
	" 28th & 29th Sts. Crosstown R. R.	75.00	
	" Mobile & Ohio	90.00	
Apr.	1, Dividend Centl. Park, N. & E. R. R. R. Co.	506.25	20
	15, " Brooklyn City R. R. Co.	50.00	
	30, Coupons Passaic Ltg. Co. (Premium $17.00)	200.00	
June	1, Dividend Lehigh Valley R. R.	240.00	
	5, Coupons Consolidated Traction Co. (Premium $9.00)	125.00	
	Coupons Paterson Sewer Certf.	.24	
	" Paterson Railway Co. (Premium $70.00)	540.00	
	10, Int. on Graham Mtge. to June 30, 1907	60.00	
	30, Coupons Passaic Water Co. (Premium $12.50)	175.00	
	Coupons Mobile & Ohio (Premium $35.00)	90.00	30
	" Paterson Sewer Ctf.	4.08	
July	1, Dividend Centl. Park, N. E. R. R. R. Co.	506.25	
	15, Dividend Brooklyn City R. R. Co.	50.00	
	31, Coupons Second Ave. R. R. Co. (Premium $8.00)	50.00	
	Coupons United N. J. R. R. & Canal Co. Premium $10.00)	100.00	
Sept.	3, Coupons Paterson Sewer Certf.	3.54	
	" Paterson Passaic G. & E. Co. (Premium $5.00)	125.00	
	30, Coupons Passaic Water Co.	80.00	
	Coupons 28th & 29th Sts. Crosstown R. R. (Premium $5.00)	75.00	40

		Coupons Mobile & Ohio	90.00
		" Long Dock Co. (Premium $60.00)	300.00
	Oct. 1,	" Paterson Sewer Certfs.	1.26
		Dividend Centl. Park, N. & E. R. R. R. Co.	506.25
	15,	" Brooklyn City R. R. Co.	50.00
	Nov. 1,	Coupons Passaic Ltg. Co. (Premium $17.00)	200.00
	30,	Paterson Rly. Consol. (Premium $70.00)	540.00
10		" Consolidated Traction Co. (Premium $9.00)	125.00
	Dec. 2,	Coupons Paterson Sewer Certfs.	.24
		Dividend Lehigh Valley R. R.	240.00
	1908		
	Jan. 2,	Coupons Passaic Water Co. (Premium $13.00)	175.00
		Coupons Mobile & Ohio (Premium $35.00)	90.00
		" Paterson Sewer Certf.	4.08
	15,	Dividend Brooklyn City R. R. Co.	50.00
	24,	" Central Park, N. & E. R. R. R. Co.	506.25
20	Feb. 1,	Coupons Second Ave. R. R. (Premium $10.00)	50.00
		Dividend United N. J. R. R. & Canal Co. (Premium $10.00)	100.00
			$14,402.25

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
	1906				
30	Mar. 6,	Paid Int. on Sewer Ctfs. Bot today		1	$ 1.07
	Apr. 2,	" John S. Cooke, Beneficiary		2	290.00
		" Fred W. Cooke	"	3	290.00
		" Chas. D. Cooke	"	4	290.00
		" Carrie S. Beam	"	5	290.00
		" Lavinia Fayerweather	"	6	290.00
	July 2,	" John S. Cooke	"	7	290.00
		" Fred W. Cooke	"	8	290.00
		" Chas. D. Cooke	"	9	290.00
		" Carrie S. Beam	"	10	290.00
		" Lavinia Fayerweather	"	11	290.00
	Oct. 1,	" John S. Cooke	"	12	29000
40		" Fred W. Cooke	"	13	290.00

	"	Chas. D. Cooke	"	14	290.00
	"	Carrie S. Beam	"	15	290.00
	"	Lavinia Fayerweather	"	16	290.00
1907					
Jan. 2,	"	John S. Cooke	"	17	290.00
	"	Fred W. Cooke	"	18	290.00
	"	Chas D. Cooke	"	19	290.00
	"	Carrie S. Beam	"	20	290.00
	"	Lavinia Fayerweather	"	21	290.00
Apr. 1,	"	John S. Cooke	"	22	290.00
	"	Chas. D. Cooke	"	23	290.00
	"	Fred W. Cooke	"	24	290.00
	"	Carrie S. Beam	"	25	290.00
	"	Lavinia Fayerweather	"	26	290.00
July 1,	"	John S. Cooke	"	27	290.00
	"	Fred W. Cooke	"	28	290.00
	"	Chas. D. Cooke	"	29	290.00
	"	Lavinia Fayerweather	"	30	290.00
	"	Carrie S. Beam	"	31	290.00
Oct. 1,	"	Chas. D. Cooke	"	32	290.00
	"	Fred W. Cooke	"	33	290.00
	"	John S. Cooke	"	34	290.00
	"	Carrie S. Beam	"	35	290.00
	"	Lavinia Fayerweather	"	36	290.00
1908					
Jan. 3,	"	Chas. D. Cooke	"	37	290.00
	"	Fred W. Cooke	"	38	290.00
	"	John S. Cooke	"	39	290.00
	"	Carrie S. Beam	"	40	290.00
	"	Lavinia Fayerweather	"	41	290.00
			Forward		$11,601.07

INCOME ACCOUNT.

		Forward		$11,601.07
	The premium on bonds reduced as follow:			
	Dec. 31, 1905	Mobile & Ohio 6s	$35.00	
	June 30, 1906	" " "	35.00	
	Dec. 31,	" " "	35.00	
	June 30, 1907	" " "	35.00	
10	Jan. 2, 1908	" " "	35.00	175.00
	Jan. 2, 1906	Passaic Water Co. 5s	12.50	
	June 30,	" " "	12.50	
	Dec. 31,	" " "	12.50	
	June 30, 1907	" " "	12.50	
	Jan. 2, 1908	" " "	13.00	63.00
	Jan. 31, 1906	Second Avenue R. R. Co.	4.00	
	July 31,	" " " " "	4.00	
	Jan. 31, 1907	" " " " "	4.00	
	July 31,	" " " " "	8.00	
20	Feb. 1, 1908	" " " " "	10.00	30.00
	Feb. 1, 1906	United N. J. R. R. & Canal Co.	10.00	
	Aug. 1,	" " " " " " " "	10.00	
	Feb. 1, 1907	" " " " " " " "	10.00	
	July 31,	" " " " " " " "	10.00	
	Feb. 1, 1908	" " " " " " " "	10.00	50.00
	Feb. 28, 1906	Paterson & Passaic G. & E. Co.	3.00	
	Sept. 1,	" " " "	3.00	
	Sept. 3, 1907	" " " "	5.00	11.00
30	Apr. 1, 1906	Long Dock Co. 6s	60.00	
	Oct. 1,	" " "	60.00	
	Mar. 29, 1907	" " "	60.00	
	Sept. 30	" " "	60.00	240.00
	Apr. 1, 1906	28th & 29th Sts. Crosstown	2.50	
	Oct. 1,	28th & 29th " "	2.50	
	Sept. 30, 1907	28th & 29th " "	5.00	10.00
	Apr. 30, 1906	Passaic Lighting Co.	17.00	
	Oct. 31,	" " "	17.00	
	Apr. 30, 1907	" " "	17.00	
40	Nov. 1,	" " "	17.00	68.00
	May 31, 1906	Paterson Railway Co. 6s	70.00	

Nov. 30,	"	"	"	70.00		
June 5, 1907	"	"	"	70.00		
Nov. 30,	"	"	"	70.00	280.00	
			Forward		$927.00	$11,601.07

INCOME ACCOUNT.

			Forward		$927.00	$11,601.07
May 31, 1906	Consolidated	Traction	Co.	8.50		
Nov. 30,	"	"	"	8.50		
June 5, 1907	"	"	"	9.00		
Nov. 30,	"	"	"	9.00	35:00	962.00
						$12,563.07

This accountant further reports that the principal fund of said estate is invested as follows:

				Present Value
2,000.00	200 Shs. Brooklyn City R. R. Co. 10% (Par value $10.)			4,800.000
22,500.00	225 Shs. Centl. Park, North & East R. R R. Co. 9%			46,800.00
7,000.00	Passaic Water Co. 5%		7,700.00	
	Reduced by charging off Prem. at following interest periods;			
	Jan. 2, 1906	12.50		
	June 30	12.50		
	Dec. 31,	12.50		
	June 30, 1907	12.50		
	Jan. 2,1908	13.00	63.00	7,637.00
6,000.00	Mobile & Ohio R. R. Co. 1st Mtge. Extens. 6%		7,440.00	
	Reduced by charging off Prem. at following interest periods;			
	Dec. 31, 1905	35.00		
	June 30, 1906	35.00		
	Dec. 31,	35.00		
	June 30, 1907	35.00		
	Jan. 2, 1908	35.00	175.00	7,265.00
2,000.00	Second Ave. R. R of. N. Y. City 1st Cons. 5%		2,300.00	

		Reduced by charging off Prem. at following interest periods;		
		Jan. 31, 1906	4.00	
		July 31, 1906	4.00	
		Jan. 31, 1907	4.00	
		July 31	8.00	
		Feb. 1, 1908	10.00	30.00	2,270.00
10	5,000.00	United New Jersey R. R. & Canal Co. Regstd. 4% Gold Gen. Mtge. Bond		5,300.00	
		Reduced by charging off Prem. at following interest periods;		
		Feb. 1, 1906	10.00	
		Aug. 1,	10.00	
		Feb. 1, 1907	10.00	
		July 31,	10.00	
		Feb. 1, 1908	10.00	50.00	5,250.00
	5,000.00	Paterson & Passaic Gas & Elect. 5%		5,250.00	
		Reduced by charging off Prem. at		
20		following interest periods;		
		Feb. 28, 1906	3.00	
		Sept. 1,	3.00	
		Sept. 3, 1907	5.00	11.00	5,239.00
	227.89	Acquackanonk Township Certificate due Sept. 11, 1908			227.89
		Forward			$79,488.89
	615.52	Paterson City Sewer Certificates 4%			615.52
	2,000.00	Bond and Mortgage Jos. R. Graham 6%			2,000.00
	4,000.00	Passaic Water Co. 4% Bonds			4,000.00
30	10,000.00	Long Dock Co. 6% Bonds		13,400.00	
		Reduced by charging off Prem. at following interest periods;		
		Apr. 1, 1906	60.00	
		Oct. 1,	60.00	
		Mar. 29, 1907	60.00	
		Sept. 30,	60.00	240.00	13,160.00
	3,000.00	Twenty-eighth & Twenty-ninth Sts. Crosstown R. R. Co. 1st Mtge. 5% Gold		3,390.00	
		Reduced by charging off Prem. at following interest periods;		
		Apr. 1,1906	2.50	
40		Oct. 1,	2.50	
		Sept. 30, 1907	5.00	10.00	3,380.00

8,000.00	Passaic Lighting Co. 1st Consol. Mtge. 5% Bonds		8,640.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 30, 1906	17.00		
	Oct. 31,	17.00		
	Apr. 30, 1907	17.00		
	Nov. 1,	17.00	68.00	8,572.00
5,000.00	Consolidated Traction Co. 5% 40 Year Gold Bond		5,450.00	
	Reduced by charging off Prem. at following interest periods;			
	May 31, 1906	8.50		
	Nov. 30,	8.50		
	June 5, 1907	9.00		
	Nov. 30,	9.00	35.00	5,415.00
18,000.00	Paterson Rly. Co. Consol. Mtge. 40 Year 6% Bonds		22,500.00	
	Reduced by charging off Prem. at following interest periods;			
	May 31, 1906	70.00		
	Nov. 30,	70.00		
	June 5, 1907	70.00		
	Nov. 30,	70.00	280.00	22,220.00
8,000.00	Lehigh Valley 6% Annuity Bond, Irredeemable Registd.			11,680.00
	Cash uninvested			118.59
				$150,650.00

THE PATERSON SAFE DEPOSIT & TRUST CO.
WM. BERDAN, V. P.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WILLIAM BERDAN.

Sworn to and subscribed before me }
this 12th day of March, A. D. 1908 }
S. S. LAMBERT,
Notary Public of New Jersey.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:

The above account being by me audited and stated, and placed on the files of my office March 17, 1908 for the inspection of any person interested, twenty days previous to this time, is now reported for settlement and allowance.

CHAS. M. KING,
Surrogate.

Decree on Accounting of 1908.

PASSAIC ORPHANS' COURT.

January Term, 1908.

The Paterson Safe Deposit and Trust Company, Trustees under the Will of Sarah A. Cooke, Deceased.

The surrogate having audited and stated the intermediate account of the The Paterson Safe Deposit and Trust Co. Trustees of the Estate of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Twenty third day of April, 1908, and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having said Trustee to settle its said account on the been proved that notice of the intention of the Twenty third day of April 1908, has been duly given and advertised according to law, and the court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all respects, and no exception having been made to the aforesaid report of the surrogate.

It is on this 20th day of April, 1908, ordered, adjudged and decreed that the said account be in all things allowed as stated.

F. Scott,
President Judge.

(Endorsed:)

Passaic Orphans' Court.

January Term, 1908.

The Paterson Safe Deposit Trust Company, Trustee under the will of Sarah A. Cooke, deceased.

INTERMEDIATE ACCOUNT.

Filed March 17th, A. D. 1908 and recorded in Book G of Gdns. Trus. and Assig. Accounts for Passaic County, page 428 & c.

CHARLES M. KING,
Surrogate.

Recorded in Book S of Court records, page 153.

Intermediate Account of 1910.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Thirtieth day of June, next.

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,
By WM. BERDAN, Treas.

Dated May 24, 1910.

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

Chas. R. Webster Bkkpr. being duly sworn upon

his oath says, that the annexed notice was published in The Paterson Press on the 24, 31 days of May, 1910 and the 7, 14, 21 days of June, 1910.

Signed CHAS R. WEBSTER

Sworn to and subscribed before me this Twenty second day of June, 1910
Jas. P. McNair,
Notary Public of N. J.

(Filed June 22, 1910,)
CHARLES M. KING,
Surrogate.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Thirtieth day of June next.

Dated May 24, 1910

THE PATERSON SAFE DEPOSIT AND TRUST COMPANY,
By WM. BERDAN, Treas.

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

George L. King being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Post Office and Donahoes Saloon on the 25th day of May, A. D., 1910.

GEORGE L. KING

Sworn and subscribed this 25th day of May, A. D. 1910. at Paterson before me
Henry A. Sautter,
Notary Public of N. J.

(Filed, May 25, 1910,)
CHARLES M. KING,
Surrogate.

Orphans' Court Records—Accounting of 1910.

The intermediate Account of The Paterson Safe Deposit & Trust Company, Trustees under the Will of Sarah A Cooke, deceased, from the first day of February, 1908 to the fifteenth day of April, 1910, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

To total amount of assets at last accounting			$150,650.00
Reduced as follows:			
Graham Mortgage merged into title to property by Quit Claim Deed			2,000.00
			$148,650.00
Sold the above property for		$2,000.00	
Less commission paid to E. H. Lambert for selling property	$50.00		
Paid Mary E. Redmond for dower rights in above property	100.00	150.00	1,850.00
			150,500.00
Income received	$11,774.38		
Disbursements from Income	10,855.97		
Cash in hands of Accountant			918.41
Total Amount of Estate April 15, 1910			$151,418.41
Trustee's Commission	$588.71		
Surrogate's Fees	46.32		

COOKE TRUST.

INCOME ACCOUNT.

To income received as follows:

1908			
Feb.	1,	Balance of income on hand, per last accounting	$ 1,839.18
	29,	Coupons Paterson & Passaic, G. & E. Co. (Premium $5.00)	125.00
Mar.	2,	Coupons Paterson Sewer Certf.	6.98
Apr.	1,	" Long Dock Co. (Prem. $60.00)	300.00
		" Mobile & Ohio (Prem. $35.00)	90.00
		" Passaic Water Co.	80.00
		" 28th & 29th Sts. R. R. (Prem. $5.00)	75.00
		" Paterson Sewer Certfs.	3.01
	15,	Dividend Brooklyn City R. R. Co.	50.00
	30,	Coupons Passaic Lighting Co. (Prem. $17.00)	200.00
May	4,	Brennan rent for May	9.00
		Webb rent for May	9.00
	29,	Coupons Consol. Tract. Co. (Prem $8.00)	125.00
		" Paterson Rly. Co. (Premium $70.00)	540.00
June	1,	Lehigh Valley R. R. Div.	240.00
		Coupons Paterson Sewers	1.02
	2,	Brennen rent for June	9.00
		Webb rent for June	9.00
July	1,	Coupons Mobile & Ohio (Prem. $35.00)	90.00
		" Passaic Water Co. (Premium $12.50)	175.00
		" Paterson Sewers	4.08
	9,	Brennen rent for July	9.00
	15,	Dividend Brooklyn City R. R. Co.	50.00
	16,	Webb rent for July	9.00
Aug.	1,	Dividend United N. J. R. R. & Canal (Premium $10.00)	100.00
	10,	Brennen rent for August	9.00
	24,	Webb rent for August	9.00
Sept.	5,	Brennen rent for Sept.	9.00
	10,	Coupons Paterson & Passaic G. & E. (Premium $5.00)	125.00
		Webb rent for Sept.	9.00
	11,	Coupons Paterson Sewers	6.98
		Interest Acquackanonk Twp. Ctf	11.39

Oct. 1,	Coupons Passaic Water Co.	80.00
	" Mobile & Ohio	90.00
	" Long Dock	300.00
	" Paterson Sewer	2.10
	Interest on Paterson Sewer	.56
2,	Brennen rent for Oct.	9.00
8,	Webb rent for Oct.	9.00
15,	Dividend Brooklyn City R. R.	50.00
Nov. 2,	Coupons Passaic Lighting Co. (Prem. $17.00)	200.00
9,	Webb rent for Nov.	9.00
2,	Brennen rent for Nov.	9.00
30,	Coupons Consol. Tr. Co. (Prem. $7.00)	125.00
	" Paterson Rly. Co. (Premium $70.00)	540.00
Dec. 1,	Dividend Lehigh Valley R. R.	240.00
	Coupons Paterson Sewer Certfs.	1.02
	Int. on Paterson Sewer Certfs.	.65
3,	Webb rent for Dec.	9.00
	Brennen rent for Dec.	9.00
1909		
Jan. 2,	Coupons Mobile & Ohio (Prem. $35.00)	90.00
	" Passaic Water Co. (Premium $12.50)	175.00
	" Paterson Sewers	4.08
7,	Brennen rent for January	9.00
11,	Webb rent for January	9.00
15,	Dividend Brooklyn City R. R.	50.00
	Forward	$6,348.05

COOKE TRUST.

INCOME ACCOUNT.

	Forward	$6,348.05
1909		
Jan. 30,	Brennen rent for February	9.00
	Coupons United N. J. R. R. & Canal Co. (Premium $10.00)	100.00
Feb. 11,	Interest from Joanna Graham	50.00
	Webb rent for February	9.00
25,	Webb rent for March	9.00
Mar. 1,	Coupons Paterson & Passaic G. & E. Co. (Premium $5.00)	125.00
	" Paterson Sewer Certfs.	6.98
	Brennen rent for March	9.00

Apr.	1,	Coupons Mobile & Ohio (Prem. $35.00)	90.00
		" Passaic Water Co. 4s	80.00
		" Long Dock (Premium $60.00)	300.00
	12,	Balance of int. due us from Joanna Graham	50.00
		Webb rent for April	9.00
	15,	Dividend Brooklyn City R. R. Co.	50.00
	27,	Brennen rent for April	9.00
May	3,	Coupons Passaic Lighting Co. (Prem. $17.00)	200.00
	10.	Webb rent for May	9.00
	13,	Balance of Brennen rent to the 13th	3.00
	14,	McDonald, new tenant, to June 1st	4.50
June	1,	Coupons Consol. Tr. Co. (Prem. $9.00)	125.00
		" Paterson Railway Co. (Prem. $70.00)	540.00
		Dividend Lehigh Valley R. R.	240.00
		McDonald rent for June	9.00
	17,	Webb rent for June	9.00
July	1,	Coupons Passaic Water Co. (Premium $12.50)	175.00
		" Mobile & Ohio (Prem. $35.00)	90.00
		McDonald rent for July	9.00
		Coupons Paterson Sewers	4.08
	15,	Dividend Brooklyn City R. R. Co.	50.00
Aug.	2,	Coupons United N. J. R. R. & Canal Co. (Premium $10.00)	100.00
	3,	McDonald rent for August	9.00
	24,	Webb rent for July	9.00
Sept.	1,	Coupons Paterson & Passaic G. & E. (Premium $5.00)	125.00
		" Paterson Sewers	6.98
		Interest on Paterson Sewers	6.31
		Webb rent for August	9.00
Oct.	1,	Coupons Mobile & Ohio	90.00
		" Passaic Water Co.	80.00
		" Long Dock Co. (Prem. $60.00)	300.00
	4,	Rebate on Insurance from F. Wilkinson	4.25
	11,	Interest on Paterson Sewer Cértfs.	2.05
	15,	Dividend Brooklyn City R. R. Co.	50.00
Nov.	1,	Passaic Lighting Co. Coups. (Premium $17.00)	200.00
		Interest to date on Paterson St. Imp. Scrip.	31.35
Dec.	1,	Coupons Consol. Tr. Co. (Prem. $9.00)	125.00
		" Paterson Railway Co. (Prem. $70.00)	540.00
		" Lehigh Valley R. R. Regd.	240.00

1910				
Jan.	3,	" Passaic Water Co. (Premium $12.50)	175.00	
		" Mobile & Ohio (Prem. $35.00)	90.00	
		" Paterson Sewers	4.08	
	4,	Interest on Paterson Sewer	6.12	
	15,	Dividend Brooklyn City R. R. Co.	50.00	
	20,	Interest on Paterson Sewer	1.44	
Feb.	1,	Coupons United N. J. R. R. & Canal Co.	100.00	10
Mar.	1,	" Paterson & Passaic G. & E. Co. (Premium $5.00)	125.00	
Apr.	1,	" Mobile & Ohio	90.00	
		" Passaic Water Co.	80.00	
		" Long Dock (Premium $60.00)	300.00	
		" Paterson Sewers	1.32	
		" Interest on Paterson Sewers	51.87	
	15,	Dividend Brooklyn City R. R. Co.	50.00	
			$11,774.38	

COOKE TRUST. 20

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

			Voucher No.	
1908				
Apr.	1,	Paid Chas. D. Cooke, Beneficiary	42	$ 290.00
		" Fred W. Cooke "	43	290.00
		" John S. Cooke "	44	290.00
		" Carrie S. Beam "	45	290.00
		" Lavinia Fayerweather "	46	290.00
	27,	" G. L. King, to advertising	47	6.02
		" C. M. King, Surrogate's fees	48	38.18
		" P. S. D. & Tr. Commission allowed by court Apr. 24, 1908	49	720.11
May	1,	" J. L. Griggs for services	50	125.00
June	22,	" Thos. Keys for lumber and carpenter work, Grand St. Property	51	14.13
July	7,	" Chas. D. Cooke, Beneficiary	52	275.00
		" Fred W. Cooke "	53	275.00
		" John S. Cooke "	54	275.00
		" Carrie S. Beam "	55	275.00
		" Lavinia Fayerweather "	56	275.00
	24,	" Richard Warren, ins., 433 Grand St.	57	7.50
Sept.	3,	" Passaic Water Co., a/c 433 Grand St.	58	2.99

30 40

Oct.	1,	" Chas. D. Cooke, Beneficiary	59	120.00
		" Fred W. Cooke "	60	120.00
		" John S. Cooke "	61	120.00
		" Carrie S. Beam "	62	120.00
		" Lavinia Fayerweather "	63	120.00
	3,	" Jas. Rankin, mason reprs. 433 Grand St.	64	91.85
	6,	" 1903-4 Taxes on 441 Grand St.	65	145.18
	13,	" A. H. Smith, masons supplies a/c 433 Grand St.	66	26.00
Nov.	25,	" Int. on Paterson City Imp. Scrip No. 1099	67	2.09
Dec.	21,	" Passaic Water Co. a/c 433 Grand St.	68	2.99
		" Taxes for 1905-6-7-8 on 441 Grand St.	69	252.26
1909				
Jan.	5,	" John S. Cooke, Beneficiary	70	150.00
		" Fred W. Cooke "	71	150.00
		" Charles D. Cooke "	72	150.00
		" Lavinia Fayerweather "	73	150.00
		" Carrie S. Beam "	74	150.00
Mar.	3,	" Passaic Water Co. a/c 433 Grand St.	75	2.85
Apr.	1,	" Jas. T. Cox, reprs. 433 Grand St.	76	3.52
		" John S. Cooke, Beneficiary	77	140.00
		" Charles D. Cooke "	78	140.00
		" Fred W. Cooke, "	79	140.00
		" Lavinia Fayerweather "	80	140.00
		" Carrie S. Beam "	81	140.00
	23,	" Recording Deed from M. E. Redmond to P. S. D. & Tr. Co.	82	1.18
June	2,	" for repairs to Grand St. property	83	3.20
	3,	" Passaic Water Co.	84	2.85
July	1,	" John S. Cooke, Beneficiary	85	250.00
		" Fred W. Cooke "	86	250.00
		" Chas. D. Cooke "	87	250.00
		" Lavinia Fayerweather "	88	250.00
		" Carrie S. Beam "	89	250.00
Aug.	18,	" J. R. Hurley, Ins. Prem. a/c Grand St.	90	7.05
		Forward		$7,579.95

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

		Forward		$7,579.95
			Voucher No.	
1909				
Sept. 2,	Paid J.. H. White repairs to property, 433 Grand St.		91	12.20
	" Receiver of Taxes, St. assessment paid on Grand St. Property		92	108.00
11,	" Passaic Water Co. Grand St. property		93	3.42
Oct. 1,	" John S. Cooke, Beneficiary		94	120.00
	" Fred W. Cooke	"	95	120.00
	" Charles D. Cooke	"	96	120.00
	" Carrie S. Beam	"	97	120.00
	" Lavinia Fayerweather	"	98	120.00
Nov. 3,	" J. L. Griggs for services in relation to transfer and sale of property on Grand St. and recording deed		99	11.40
1910				
Jan. 3,	" John S. Cooke, Beneficiary		100	200.00
	" Fred W. Cooke	"	101	200.00
	" Charles D. Cooke	"	102	200.00
	" Carrie S. Beam	"	103	200.00
	" Lavinia Fayerweather	"	104	200.00
Apr. 2,	" John S. Cooke	"	105	120.00
	" Fred W. Cooke	"	106	120.00
	" Lavinia Fayerweather	"	107	120.00
	" Carrie S. Beam	"	108	120.00
	" Charles D. Cooke	"	109	120.00
	Forward			$9,914.97

COOKE TRUST.

INCOME ACCOUNT.

		Forward		$9,914.97
	The premium on Bonds reduced as follows.			
	Apr. 1, 1908 Mobile & Ohio	$35.00		
	July 1, " " "	35.00		
10	Jan. 2, 1909 " " "	35.00		
	Apr. 1, " " "	35.00		
	July 1, " " "	35.00		
	Jan. 3, 1910 " " "	35.00	$210.00	
	July 1, 1908 Passaic Water Co.	12.50		
	Jan. 2, 1909 " " "	12.50		
	July 1, 1909 " " "	12.50		
	Jan. 3, 1910 " " "	12.50	50.00	
	Aug. 1, 1908 United N. J. R. R. & Canal Co.	10.00		
	Jan. 30, 1909 " " " " " " " "	10.00		
20	Aug. 2, 1909 " " " " " " " "	10.00	30.00	
	Feb. 29, 1908 Paterson & Passaic G. & E. Co.	5.00		
	Sept. 10, " " " "	5.00		
	Mar. 1, 1909 " " " "	5.00		
	Sept. 1, " " " "	5.00		
	Mar. 1, 1910 " " " "	5.00	25.00	
	Apr. 1, 1908 Long Dock Co.	60.00		
	Apr. 1, 1909 " " "	60.00		
	Oct. 1, " " "	60.00		
	Apr. 1, 1910 " " "	60.00	240.00	
	Apr. 1, 1908 28th & 29th Sts. Crosstown	5.00	5.00	
30				
	Apr. 30, 1908 Passaic Lighting Co.	17.00		
	Nov. 2, " " "	17.00		
	May 3, 1909 " " "	17.00		
	Nov. 1, " " "	17.00	68.00	
	May 29, 1908 Paterson Railway Co.	70.00		
	Nov. 30, " " "	70.00		
	June 1, 1909 " " "	70.00		
	Dec. 1, 1909 " " "	70.00	280.00	
	May 29, 1908 Consolidated Traction Co.	8.00		
40	Nov. 30, " " "	7.00		
	June 1, 1909 " " "	9.00		
	Dec. 1, 1909 " " "	9.00	33.00	941.00
				$10,855.97

COOKE TRUST.

This accountant further reports that the principal fund of said estate is invested as follows:

			Present Value	
$2,000.00	200 shs. Brooklyn City R. R. 10% (Par Value $10.)			$ 4,800.00
22,500.00	225 shs. Centl. Park, North & East R. R. R. 9%			46,800.00
7,000.00	Passaic Water Co. 5%		7,637.00	
	Reduced by charging off Prem. at following interest periods;			
	July 1, 1908	$12.50		
	Jan. 2, 1909	12.50		
	July 1, 1909	12.50		
	Jan. 3, 1910	12.50	50.00	7,587.00
6,000.00	Mobile & Ohio R. R. Co. 1st Mtge. Extens. 6%		7,265.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 1, 1908	35.00		
	July 1,	35.00		
	Jan. 2, 1909	35.00		
	Apr. 1,	35.00		
	July 1,	35.00		
	Jan. 3, 1910	35.00	210.00	7,055.00
5,000.00	United New Jersey R. R. & Canal Co. Regstd. 4% Gold Genl. Mtge. Bonds		5,250.00	
	Reduced by charging off Prem. at following interest periods;			
	Aug. 1, 1908	10.00		
	Jan. 30, 1909	10.00		
	Aug. 2, 1909	10.00	30.00	5,220.00
5,000.00	Paterson & Passaic, Gas & Elect. 5%		5,239.00	
	Reduced by charging off Prem. at following interest periods;			
	Feb. 29, 1908	5.00		
	Sept. 10,	5.00		
	Mar. 1, 1909	5.00		
	Sept. 1,	5.00		
	Mar. 1, 1910	5.00	25.00	5,214.00

10,000.00	Long Dock Co. 6% Bonds		13,160.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 1, 1908	60.00		
	Apr. 1, 1909	60.00		
	Oct. 1,	60.00		
	Apr. 1, 1910	60.00	240.00	12,920.00
3,000.00	Twenty-eighth & Twenty-ninth Sts., Crosstown R. R. Co. 1st Mtg. 5% Gold		3,380.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 1, 1908		5.00	
			3,375.00	
	Assessment paid Dec. 22, 1909		90.00	3,465.00
4,000.00	Passaic Water Co. 4% Bonds			4,000.00
8,000.00	Lehigh Valley 6% Annuity Bonds Irredeemable Regstd.			11,680.00
	Forward			$108,741.00

COOKE TRUST.

	Forward			$108,741.00
8,000.00	Passaic Lighting Co. 1st Consol. Mtge. 5% Bonds		$ 8,572.00	
	Reduced by charging off Prem. at following interest periods;			
	Apr. 30, 1908	$17.00		
	Nov. 2,	17.00		
	May 3, 1909	17.00		
	Nov. 1,	17.00	68.00	8,504.00
5,000.00	Consolidated Traction Co. 5% 40 year gold bond		$ 5,415.00	
	Reduced by charging off Prem. at following interest periods;			
	May 29, 1908	$ 8.00		
	Nov. 30,	7.00		
	June 1, 1909	9.00		
	Dec. 1, 1909	9.00	33.00	5,382.00

18,000.00	Paterson Rly. Co. Consol. Mtg. 40 year 6% Bonds ,		$22,220.00	
	Reduced by charging off Prem. at following interest periods;			
	May 29, 1908	$70.00		
	Nov. 30,	70.00		
	June 1, 1909	70.00		
	Dec. 1,	70.00	280.00	21,940.00
2,000.00	Second Ave. R. R. of N. Y. City 1st Consol. 5%		,	2,270.00
1,867.14	Paterson City Sewer certificates 5%			1,886.67
626.91	Paterson City Street Imp. Scrip 5% ,			626.91
	Cash uninvested			1,149.42
				$150,500.00

THE PATERSON SAFE DEPOSIT & TRUST CO.
By WM. BERDAN, Treas.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WM. BERDAN.

Sworn to and subscribed before me }
this 23rd day of May, A. D. 1910 }

John L. Griggs, M. C. C. of N. J.

TO THE JUDGES OF THE ORFHANS' COURT OF THE COUNTY OF PASSAIC.

The above account being by me audited and stated, and placed on the files of my office May 24, 1910 for the inspection of any person interested, twenty days previous to this time, is now reported for settlement and allowance.

CHAS M. KING,
Surrogate.

Decree on Accounting of 1910.

PASSAIC ORPHANS' COURT.
April Term, 1910.

The Paterson Safe Deposit and Trust Company, Trustee under Will of Sarah A. Cooke, Deceased.

INTERMEDIATE ACCOUNT.

The Surrogate having audited and stated the intermediate account of The Paterson Safe Dep. & Trust Co., Trustee under will of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Thirtieth day of June, 1910, and having on the day last aforesaid reported the same to this court for allowance and settlement, and it having been proved to the satisfaction of the court that notice of its intention to settle the said account on the Thirtieth day of June, 1910, in this court was duly given by said accountant according to law; and the said account having been examined by the court and being found to be properly and fairly stated, and the articles thereof to be supported and justified by the vouchers.

It is thereupon, on this 30 day of June, 1910, ordered, adjudged and decreed that the said account be entered of record.

F. SCOTT,
President Judge.

(Endorsed:)

Passaic Orphans' Court.

April Term, 1910.

SARAH A. COOKE, deceased.

Intermediate Account Filed May 24th A. D. 1910, and recorded in Book I of Guardians, Trustees & Assignees Accounts for Passaic County, page 128 &c.

CHARLES M. KING,
Surrogate.

Intermediate Account of 1912.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as trustee under the will of Sarah A. Cooke, deceased, will be audited and stated by the Surogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the twenty third day of May, next.

Dated, April 16, 1912.

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Sec'y.
JOHN L. GRIGGS, Proctor.

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

Chas. R. Webster, Bkkpr., being duly sworn, upon his oath says that the annexed notice was published in The Paterson Press on the 17, 24 days of April, 1912 and on the 1, 8, 15 days of May, 1912.

Signed CHAS R. WEBSTER.

Sworn to and subscribed before me }
this 15th day of May, 1912. }
Richard H. Stalling,
Notary Public of N. J.

Filed May 17, 1912,
FREDERIC BEGGS,
Surrogate.

ACCOUNT.

Notice is hereby given that accounts of the subscriber as Trustee under the Will of **Sarah A.** Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the twenty third day of May next.

THE PATERSON SAFE DEPOSIT & TR. CO.
FRED LABAUGH, Secy.

Dated April 16, 1912.
John L. Griggs, Proctor.

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

John Grimshaw Jr. being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Post Office and Colt Restaurant, all in the City of Paterson, N. J. on the 19th day of April, A. D., 1912.

Sworn and subscribed this 19th day of April, A. D., 1912 at Paterson, before me.

JOHN GRIMSHAW JR.

George L. King,
Deputy Surrogate.

Filed April 20, 1912,
FREDERIC BEGGS,
Surrogate.

The Intermediate Account of The Paterson Safe Deposit & Trust Company, Trustees under the will of Sarah A. Cooke, deceased, from the fifteenth day of April, 1910 to the fifteenth day of April, 1912, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

To total amount of assets at last accounting		$150,500.00
Income received	$9,040.93	
Disbursements from Income	8,333.84	

Cash in hands of Accountant		707.09
Total amount of Estate April 15, 1912		$151,207.09
Trustee's Commission	$	
Surrogate's Fees	$	

COOKE TRUST.

INCOME ACCOUNT.

To income received as follows:

1910				
Apr. 15,	Balance of Income on hand, per last accounting			$918.41
May 2,	Coups. Passaic Lighting Co.	Prem.	200. 17.	183.00
2,	Int. Sewer Crtf. paid			9.21
2,	Int. Sewer Crtf. paid			58.59
24,	Int. accrued on Sewer Crtf. sold to P. S. D. & T. Co.			1.19
June 1,	Coupons Consol. Tract Co.	Prem.	125. 8.	117.00
1,	" Lehigh Valley			240.00
1,	" Paterson Rly. Co.	Prem.	540. 70.	470.00
1,	" Int. Paterson Sewer Certf.			4.36
29,	Int. Mtge. Tunis Kuyper 6/30/10			16.78
July 1,	Coupons Passaic Water Co.	Prem.	175. 12.50	162.50
1,	" Paterson Sewers			.96
1,	" Mobile & Ohio	Prem.	90. 35.	55.00
18,	From Principal account to adjust to par Sewer Certf. bought today			1.98
15,	Div. Brooklyn City R. R.			40.00
Aug. 1,	Coups. Regt'd United N. J. R. R. & Canal Co.	Prem.	100. 10.	90.00
15,	From Principal account to adjust to par Sewer Crtf. bought today			1.89
Sept. 1,	Coups. Pat. & Pas. G. & E. Co.	Prem.	125. 5.	120.00
1,	Int. on Sewer Crtf. paid today			5.29
9,	From Pricipal account to adjust to par Sewer Crtf. bought today			.49

Oct.	1,	Coupons	Mobile & Ohio R. R.			90.00
	1,	"	Passaic Water Co.			80.00
	1,	"	Long Dock Co.	Prem.	300. 60.	240.00
	1,	"	Sewer Crtfs.		.48 .84	1.32
	15,	Div.	Brooklyn City R. R.			40.00
Nov.	1,	Coups.	Passaic Ligthing Co.			200.00
	1,	Int. on	Pat. St. Imp. Scrip. to date			31.35
Dec.	1,	Reg. Int. on	Lehigh Valley R. R. Bonds			240.00
	1,	Coups	Consol. Tract. Co.	Prem.	125.00 8.50	116.50
			Forward			$3,535.82

COOKE TRUST.

INCOME ACCOUNT.

			Forward			$3,535.82
1910						
Dec.	1,	Coupons	Paterson Rly. Co.	Prem.	540. 70.	470.00
1911						
Jan.	3,	"	Passaic Water Co.	Prem.	175.00 12.50	162.50
	3,	"	Mobile & Ohio R. R.	Prem.	90. 35.	55.00
	3,	Int. on	Mtge. T. Kuyper to 12/31/10			62.50
	3,	Coupons	Paterson Sewers			.96
	3,	"	Paterson Sewers			1.32
	4,	Int. on	Sewer Crtf.			4.65
	4,	Int. on	Sewer Crtf.			2.25
	16,	Div.	Brooklyn City R. R.			40.00
Feb.	1,	Coupons	Paterson Sewers		.33 1.26	1.59
	1,	"	United N. J. R. R. & Canal Co.	Prem.	100. 10.	90.00
Mar.	1,	"	Pat. & Pass. G. & E. Co.		125. 5.	120.00
Apr.	1,	"	Mobile & Ohio R. R.			90.00
	1,	"	Passaic Water Co.			80.00
	1,	"	Long Dock Co.			240.00
	1,	"	Paterson Sewers		.48 .84	1.32

	15, Div. Brooklyn City R. R. Co.			40.00	
May	1, Coups. Passaic Ligthing Co. Prem.	200.	17.	183.00	
	1, Int. on Sewer Crtf. paid today			9.21	
June	1, Coupons Consol. Tract Co. Prem.	125.00	8.50	116.50	
	1, " Pat. Rly. Co. Prem.	540.	70.	470.00	10
	1, " Lehigh Valley R. R. Co.			240.00	
	29, Int. on Kuyper Mtge. to 6/30/11			62.50	
July	1, Coupons Passaic Water Co. Prem.	175.00	12.50	162.50	
	1, " Mobile & Ohio R. R. Prem.	90.	35.	55.00	
	1, " Paterson Sewers	.96	1.32	2.28	
	15, Div. Brooklyn City R. R.			40.00	
Aug.	1, Coups. Paterson Sewers			1.59	
	1, Div. United N. J. R. R. & Canal Co.	100.	10.	90.00	20
Sept.	1, Coups. Pat. & Pass. G. & E. Co.			120.00	
	Forward			$6,550.49	

COOKE TRUST.

INCOME ACCOUNT.

	Forward			$6,550.49	
1911					
Oct.	2, Coupons Mobile & Ohio R. R.			90.00	
	2, " Passaic Water Co.			80.00	30
	2, " Long Dock Co.	300.	60.	240.00	
	2, " Paterson Sewers			1.32	
	2, Int. on Sewer Ctf. paid today			15.93	
	16, Div. Brooklyn City R. R. Co.			40.00	
Nov.	1, Coups. Passaic Lighting Co.	200.	17,	183.00	
	1, Int. on St. Imp. Scrip. paid			31.35	
Dec.	1, Coups. Consol. Tract. Co.	125.	8.50	116.50	
	1, Div. Lehigh Valley R. R. Co.			240.00	40
	1, Coups Paterson Rly. Co.	540.	70.	470.00	

	23,	Int. on Brown Mtge. to 12/31/11			32.50
1912					
Jan.	2,	Coupons Mobile & Ohio R. R.	35.		55.00
			175.00		
	2,	" Passaic Lighting Co.	12.50		162.50
			1.32		
	2,	" Paterson Sewers	.96		2.28
	2,	Int. on Kuyper Mtge. to 12/31/11			62.50
	2,	Int. on Pat. Sewer Crtf. paid			4.65
	15,	Div. Brooklyn City R. R.			40.00
			100.		
Feb.	1,	Coupons United N. J. R. R. & Canal	10.		90.00
			.3[illegible]		
	1,	" Paterson Sewers	1.26		1.59
			125.00		
Mar.	1,	" Pat. & Pass. Gas & E. Co.	5.00		120.00
			300.		
Apr.	1,	" Long Dock Co.	60.		240.00
	1,	" Mobile & Ohio R. R.			90.00
	1,	" Passaic Water Co.			80.00
	1,	" Paterson Sewers			1.32
					$9,040.93

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
1910					
May	10,	Int. on Sewer crtf. #1869-73 paid Apr. 1/10 should be $30.26 instead of $51.87. $21.61 being credited to Principal account as premium which is deducted from Int.		1	21.61
	10,	Int. on Sewer Crtf. #1882 should be $19.53 less than $58.59 which was credited on May 2, see above $19.53 is credited to Prin. Prem.		2	19.53
July	1,	To P. S. D. & T. Co. commission to last accounting		3	588.71
	6,	" John S. Cooke		4	275.00
	6,	" Chas. D. Cooke		5	275.00

	6,	"	Fred W. Cooke	6	275.00
	6,	"	Lavinia Fayerweather	7	275.00
	6,	"	Carrie S. Beam	8	275.00
	8,	"	Chas. M. King	9	46.32
	11,	"	J. L. Griggs services in relation to intermediate accounting	10	50.00
Oct.	4,	"	Fred W. Cooke	11	125.00
	4,	"	John S. Cooke	12	125.00
	4,	"	Chas. D. Cooke	13	125.00
	4,	"	Carrie S. Beam	14	125.00
	4,	"	Lavinia Fayerweather	15	125.00
1911					
Jan.	3,	"	Johns S. Cooke	16	250.00
	3,	"	Chas. D. Cooke	17	250.00
	3,	"	Fred W. Cooke	18	250.00
	3,	"	Carrie S. Beam	19	250.00
	3,	"	Lavinia Fayerweather	20	250.00
	18,	Int.	to date on Sewer Certificates bought		4.75
Mar.	13,	To	J. L. Griggs for taking affidavit on assignment		.50
Apr.	1,	"	Fred W. Cooke	21	120.00
	1,	"	Carrie S. Beam	22	120.00
			Forward		$4,221.42

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

			Forward		$4,221.42
1911					
				Voucher No.	
Apr.	1,	To	Lavinia Fayerweather	23	120.00
	1,	"	Chas. D. Cooke	24	120.00
	1,	"	John S. Cooke	25	120.00
July	1,	"	Carrie S. Beam	26	250.00
	1,	"	John S. Cooke	27	250.00
	1,	"	Lavinia Fayerweather	28	250.00
	1,	"	Fred W. Cooke	29	250.00
	1,	"	Chas. D. Cooke	30	250.00
Oct.	2,	"	Carrie S. Beam	31	125.00
	2,	"	John S. Cooke	32	125.00
	2,	"	Fred W. Cooke	33	125.00
	2,	"	Chas. D. Cooke	34	125.00
	2,	"	Lavinia Fayerweather	35	125.00
Dec.	1,	Int.	on Brown Mtge. bought from P. S. D. & T. Co.		27.42

1912					
Jan.	2,	To	John S. Cooke	36	250.00
	2,	"	Fred W. Cooke	37	250.00
	2,	"	Chas. D. Cooke	38	250.00
	2,	"	Lavinia Fayerweather	39	250.00
	2,	"	Carrie S. Beam	40	250.00
Apr.	1,	"	John S. Cooke	41	120.00
	1,	"	Fred W. Cooke	42	120.00
	1,	"	Chas. D. Cooke	43	120.00
	1,	"	Lavinia Fayerweather	44	120.00
	1,	"	Carrie S. Beam	45	120.00
					$8,333.84

COOKE TRUST.

This accountant further reports that the principal fund of said estate is invested as follows:

		Present Value
176.51	Acquackanonk Township Imp. Crtf.	176.51
2,000.00	Brooklyn City R. R. Co. Stock 200 shs.	4,800.00
22,500.00	225 shs. Cent. Park & E. R. R. R. Co.	46,800.00
5,000.00	Consol. Tract. Co. Bond due 7/1933	5,348.50
8,000.00	Lehigh Valley Annuity Bonds due	11,680.00
10.000.00	Long Dock Co. Bonds due 1935	12,680.00
6,000.00	Mobile & Ohio R. R. Co. Bonds due 1927	6.915.00
8,000.00	Passaic Lighting Co. Bonds due 5/1/1925	8,453.00
7,000.00	Passaic Water Co. Bonds due 7/1/1937	7,537.00
4,000.00	Passaic Water Co. Bonds due 4/1/1920	4,000.00
259.30	Paterson City Sewer Certificates	259.30
62.06	Paterson City St. Imp. Scrip.	62.06
5,000.00	Pat. & Pass. G. E. Co. Bonds due 3/1/1949	5,194.00
18,000.00	Paterson Rly. Co. Consol. Mtge. Bonds due 1931	21,660.00
2,000.00	Second Ave. R. R. Co. Bonds due 1948	2,270.00
3,000.00	Twenty-eighth & Twenty-ninth Sts. Crosstown R. R. due 1996	3,465.00
5,000.00	United N. J. R. R. & Canal Co. Bonds due 1923	5,180.00
1,300.00	Bond & Mtge. Fred Brown 5%	1,300.00
2,500.00	Bond & Mtge. Tunis Kuyper 5%	2,500.00
	Cash uninvested	219.63
		$150,500.00

THE PATERSON SAFE DEPOSIT & TRUST CO.,
Trustee.
By WILLIAM BERDAN, V. P.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WILLIAM BERDAN

Sworn to and subscribed before me }
this 17th day of April, A. D. 1912, }
John L. Griggs,
Master in Chancery of New Jersey.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC.

The above account having been placed on the files of my office on the Twenty second day of April, 1912, and being by me audited and stated, is now reported for settlement.

FREDERIC BEGGS,
Surrogate.

Dated, Paterson, N. J.
May 23rd, 1912.

Filed April 22, 1912,
FREDERIC BEGGS,
Surrogate.

Decree on Accounting of 1912.

PASSAIC COUNTY ORPHANS' COURT.

April Term A. D., 1912.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.		Decree on Intermediate Accounting.

The Surrogate having audited and stated the intermediate account of The Paterson Safe Deposit and Trust Company, Trustees under will of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Twenty third day of May A. D., 1912, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said Twenty third day of May A. D., 1912, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and no exceptions being made thereto,

It is, on this Twenty third day of May A. D., nineteen hundred and twelve ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of

corpus amounting to the sum of One hundred fifty thousand and five hundred dollars, and a balance of income amounting to the sum of Seven hundred seven and 09/100 dollars remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of Four Hundred and Fifty Two $^{05}/_{100}$ dollars as and for its commissions, on the sum of Nine thousand forty and $^{93}/_{100}$ dollars of income collected by it and that the Surrogate be allowed the sum of Thirty and $^{68}/_{100}$ dollars for fees, and advertising expenses.

LEWIS J. MARTIN,
Judge.

[Endorsed:]

Passaic County Orphans' Court.
April Term A. D. 1912.

In the matter of the intermediate account of the Trustee of Sarah A. Cooke, Deceased.

Intermediate Account and Decree Thereon.

Filed April 22nd, 1912.

Decree Recorded Book U of Orphans' Court Records, Page 372.

Account Recorded Book J of Accounts, Page 89.

FREDERIC BEGGS,
Surrogate.

New Jersey State Library

Intermediate Account of 1914.

ACCOUNT.

Notice is hereby given that accounts of the subscriber as Trustee under the will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Fourteenth day of May, next.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
FRED LABAUGH, Secretary.

Dated, April 11, 1914.
John L. Griggs, Proctor.

State of New Jersey, }
County of Passiac } ss.:

E. M. Greenhalgh, Cashier, being duly sworn, upon her oath says, that the annexed notice was published in The Paterson Press on the 11, 18, 25 days of April, 1914, and on the 2, 9 days of May, 1914.

Signed E. M. GREENHALGH.

Sworn to and subscribed before me }
this 11 day of May, 1914. }
Richard H. Stalling (L. S.)
Notary Public of N. J.

Filed May 11, 1914,
FREDERIC BEGGS,
Surrogate.

ACCOUNT.

Notice is hereby given that accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the fourteenth day of May next.

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Secy.

Dated April 11, 1914.
John L. Griggs, Proctor.

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

John Grimshaw Jr. being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Cor. DeGrasse & Hamilton Sts. & Cor. DeGrasse & Clarke Sts., all in the City of Paterson, N. J. on the 14th day of April A. D., 1914.

JOHN GRIMSHAW JR.

Sworn and subscribed this 14 day of April A. D. 1914, at Paterson, before me
George L. King,
Deputy Surrogate.

Filed April 14, 1914,
FREDERIC BEGGS,
Surrogate.

The Intermediate account of The Paterson Safe Deposit & Trust Company, Trustees under the will of Sarah A. Cooke, deceased, from the fifteenth day of April 1912 to the fifteenth day of April, 1914, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

To total amount of assets as last accounting			$150,500.00
Income received		$8,921.55	
Disbursements from Income		8,364.97	
Cash in hands of Accountant			556.58
Total Amount of Estate, April 15, 1914			$151,056.58

COOKE TRUST.

INCOME ACCOUNT.

To income received as follows:

1912				
Apr. 15,	Balance last accounting			$707.09
15,	Div. Brooklyn City R. R. Co.			40.
May 1,	Passaic Lighting Co.	200. 17.		183.
June 1,	Coupons Consol. Tr. Co.	125. 8.50		116.50
1,	" Paterson Railway Co.	540. 70.		470.
1,	Div. Lehigh Valley			240.
28,	Int. on Brown Mtge. to 6/30/12			32.50
July 1,	Int. on Kuyper Mtge. to 6/30/12			62.50
1,	Coupons Mobile & Ohio	90. 35.		55.
1,	" Passaic Water Co.	175. 12.50		162.50

	1,	"	Paterson Sewers		2.28
	1,	Int. on St. Imp. Scrip. paid			3.10
	18,	Int. on Acquackanonk Imp. Crtf. paid			8.83
	15,	Div. Brooklyn City R. R. Co.			40.
Aug.	1,	Coupons United N. J. & Canal	100. 10.		90.
	1,	"	Paterson Sewers	1.26 ,33	1.59
Sept.	3,	"	Pat. & Pas. G. & E. Co.	125. 5.	120.
Oct.	1,	"	Long Dock Co.	300. 60.	240.
	1,	"	Mobile & Ohio		90.
	1,	"	Passaic Water Company		80.
	1,	"	Paterson Sewers		1.32
	15,	Div. Brooklyn City R. R.			40.
Nov.	1,	Coupons Passaic Lighting Co.	200. 17.		183.
Dec.	1,	"	Consol. T[illegible] Co.	125. 8.50	116.50
	1,	"	Paterson Railway Company	540. 70.	470.
	1,	"	Lehigh Valley		240.
	28,	Int. on Brown Mtge. to 12/31/12			32.50
			Forward		$3,828.21

OOKE TRUST.

INCOME ACCOUNT.

			Forward		$3,828.21
1913					
Jan.	2,	Coupons Mobile & Ohio	90. 35.		55.
	2,	"	Passaic Water Company	175. 12.50	162.50
	2,	"	Paterson Sewers		.96
	2,	Int. on Kuyper Mtge. to 12/31/12			62.50
	2,	Coupons Paterson Sewers			1.32
	15,	Div. Brooklyn City R. R. Co.			40.
Feb.	1,	Coupons Paterson Sewers			2.49
	1,	"	United N. J. R. R. & Canal	100. 10.	90.

	Mar. 1,	"	Paterson & Passaic G. & E.	125. 5.	120.
	Apr. 1,	"	Long Dock Co.	300. 60.	240.
	1,	"	Mobile & Ohio		90.
	1,	"	Passaic Water Co.		80.
	15,	Div.	Brooklyn City R. R. Co.		40.
10	May 1,	Coupons	Passaic Lighting Co.	200. 17.	183.
	June 2,	"	Consol. Tr. Co.	125. 8.50	116.50
	2,	"	Lehigh Valley R. R.		240.
	2,	"	Paterson Railway Co.	540. 70.	470.
	30,	Int. on	Brown Mtge. to 6/30/13		32.50
	July 1,	Coupons	Mobile & Ohio	90. 35.	55.
	1,	"	Passaic Water Co.	175. 12.50	162.50
20	1,	"	Paterson Sewers		1.32
	1,	Int. on	St. Imp. Scrip. paid		3.10
	10,	Int. on	Kuyper Mtge. to 6/30/13		62.50
	15,	Div.	Brooklyn City R. R. Co.		40.
	Aug. 1,	Coupons	United N. J. R. R. & Canal	100. 10.	90.
	1,	"	Paterson Sewers		2.49
	5,	Int. on	Acquackanonk Twp. paid		27.66
	Sept. 2,	Coupons	Pat. & Pas. G. & E.	125. 5.	120.
	Oct. 1,	"	Long Dock Co.	300. 60.	240.
30			**Forward**		$6,659.55

40

COOKE TRUST.

INCOME ACCOUNT.

	Forward			$6,659.55
1913				
Oct. 1,	Coupons Mobile & Ohio			90.
1,	" Passaic Water Company			80.
15,	Div. Brooklyn City R. R. Co.			40.
			200.	
Nov. 11,	Coupons Passaic Lighting Co.		17.	183.
Dec. 1,	Int. on Lehigh Valley Bonds			240.
			540.	
6,	Coupons Paterson Rly. Co.		70.	470.
29,	Int. on Brown Mtge. to 12/31/13			32.50
31,	Int. on Kuyper Mtge. to 12/31/13			62.50
1914				
Jan. 2,	Int. on Lockwood Mtge. to 12/31/13			30.
			125.	
5,	Coupons Consol. Tr. Co.		8.50	116.50
			175.	
5,	" Passaic Water Company		12.50	162.50
			90.	
6,	" Mobile & Ohio		35.	55.
15,	Div. Brooklyn City R. R. Co.			40.
			100.	
Feb. 2,	Int. on United N. J. R. R. & Canal		10.	90.
			125.	
Mar. 2,	Coupons Pat. & Pas. G. & E. Co.		5.	120.
Apr. 1,	" Passaic Water Company			80.
			300.	
3,	" Long Dock Co.		60.	240.
3,	" Mobile & Ohio			90.
15,	Div. Brooklyn City R. R. Co.			40.
				$8,921.55

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
1912					
May	24,	To	J. L. Griggs in re-accounting	1	$50.
	24,	"	P. S. D. & T. Co. Commission allowed by Court	2	452.05
	24,	"	Surrogates fees etc. in re-accounting	3	30.68
July	1,	"	John S. Cooke	4	250.
	1,	"	Fred W. Cooke	5	250.
	1,	"	Charles D. Cooke	6	250.
	1,	"	Lavinia Fayerweather	7	250.
	1,	"	Carrie S. Beam	8	250
Aug.	14,	"	Int. on Acquackanonk Twp. Crtf. bought		.53
Oct.	1,	"	John S. Cooke	9	125.
	1,	"	Fred W. Cooke	10	125.
	1,	"	Charles D. Cooke	11	125.
	1,	"	Lavinia Fayerweather	12	125.
	1,	"	Carrie S. Beam	13	125.
Dec.	6,	"	Int. on Sewer Crtf. #2080 bought		.63
1913					
Jan.	2,	"	Charles D. Cooke	14	250.
	2,	"	John S. Cooke	15	250.
	2,	"	Fred W. Cooke	16	250.
	2,	"	Lavinia Fayerweather	17	250.
	2,	"	Carrie S. Beam	18	250.
Apr.	1,	"	Charles D. Cooke	19	120.
	1,	"	John S. Cooke	20	120.
	1,	"	Fred W. Cooke	21	120.
	1,	"	Lavinia Fayerweather	22	120.
	1,	"	Carrie S. Beam	23	120.
July	1,	"	John S. Cooke	24	250.
	1,	"	Fred W. Cooke	25	250.
	1,	"	Charles D. Cooke	26	250.
	1,	"	Lavinia Fayerweather	27	250.
	1,	"	Carrie S. Beam	28	250.
Aug.	6,	"	Int. on Lockwood Mtge. bought		6.08
			Forward		$5,394.97

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

		Forward		$5,394.97
			Voucher No.	
1913				
Oct.	1,	To John S. Cooke	29	175.
	1,	" Fred W. Cooke	30	175.
	1,	" Charles D. Cooke	31	175.
	1,	" Carrie S. Beam	32	175.
	1,	" Lavinia Fayerweather	33	175.
1914				
Jan.	7,	" John S. Cooke	34	275.
	7,	" Fred W. Cooke	35	275.
	7,	" Charles D. Cooke	36	275.
	7,	" Lavinia Fayerweather	37	275.
	7,	" Carrie S. Beam	38	275.
Apr.	3,	" John S. Cooke	39	120.
	3	" Fred W. Cooke	40	120.
	3	" Charles D. Cooke	41	120.
	3	" Lavinia Fayerweather	42	120.
	3,	" Carrie S. Beam	43	120.
				$8,364.97

COOKE TRUST.

This accountant further reports that the principal fund of said estate is invested as follows:

1914			
			Inventory Value.
$2,000.00	200 Shs. Brooklyn City R. R. Co Stock 8%		$ 4,800.00
22,500.00	225 shs. Central Park N. & East River R. R. Co. 9%		46,800.00
5,000.00	Consol. Tr. Co. Bonds due 1933		5,314.50
8,000.00	Lehigh Valley Annuity Bonds		11,680.00
10,000.00	Long Dock Co. Bonds due 1935		12,440.00
6,000.00	Mobile & Ohio R. R. Co. Bonds due 1927		6,775.00
8,000.00	Passaic Lighting Co. Bonds due 1925		8,385.00
7,000.00	Passaic Water Co. Bonds due 1937		7,487.00
4,000.00	Passaic Water Co. Bonds due 1920		4,000.00
5,000.00	Pat. & Pas. G. & E. Co. Bonds due 1949		5,174.00
18,000.00	Pat. Rly. Co. Consol. Mtge. Bonds 1931		21,380.00
2,000.00	Second Avenue R. R. Co. Bonds due 1948		2,270.00

3,000.00	Twenty-eighth & Twenty-ninth Sts. Crosstown R. R. Co. 1st Mtge. Gold Bonds 1996	3,465.00
5,000.00	United N. J. R. R. & Canal Co. Bonds due 1923	5,140.00
1,300.00	Bond & Mtge. Fred Brown 5%	1,300.00
2,500.00	Bond & Mtge. Tunis & Mary Kuyper 5%	2,500.00
1,200.00	Bond & Mtge. Stephen H. & Emma Lockwood 5%	1,200.00
	Cash uninvested	389.50
		$150,500.00

THE PATERSON SAFE DEPOSIT & TRUST CO.
WM. BERDAN, Vice Prest.

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

William Berdan, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the trustee named in the foregoing account; that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

WILLIAM BERDAN.

Sworn to and subscribed before me }
this 17th day of April, A. D., 1914 }
John L. Griggs,
M. C. C. of N. J.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC:

The above account having been placed on the files of my office on the Seventeenth day of April, 1914, and being by me audited and stated, is now reported for settlement.

FREDERIC BEGGS, Surrogate.

Dated, Paterson, N. J., May 14th, 1914.

Decree on Accounting of 1914.

PASSAIC COUNTY ORPHANS' COURT.

April Term A. D., 1914.

In the matter of the intermediate *account of the* *Trustee under the Will* *of* SARAH A. COOKE, *Deceased.*	Decree on Intermediate Accounting.

The Surogate having audited and stated the intermediate account of the Trustee under the will of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the Fourteenth day of May A. D., 1914, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said Fourteenth day of May, A. D., 1914, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and no exception being made thereto,

It is, on this Fourteenth day of May A. D., nine-

teen hundred and fourteen ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of corpus and income amounting to the sum of One hundred fifty one thousand fifty six and $^{58}/_{100}$ dollars, remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of Four Hundred and forty six $^{08}/_{100}$ dollars as and for its commissions, on the sum of Eight thousand nine hundred twenty one $^{55}/_{100}$ dollars of income collected by it, and that the Surrogate be allowed the sum of Thirty and $^{14}/_{100}$ dollars for fees, advertising and posting notices.

ABRAM KLENERT,
Judge.

(Endorsed:)

Passaic County Orphans' Court.
April Term A. D. 1914.

In the matter of the intermediate account of the Trustee under the Will of Sarah A. Cooke, Deceased.

Intermediate Account and Decree Thereon.

Filed April 17th, 1914.

Decree Recorded Book V of Orphans' Court Records, Page 399.

Account Recorded Book B-3 of Accounts, Page 315.

FREDERIC BEGGS,
Surrogate.

Intermediate Account of 1915.

THE INTERMEDIATE ACCOUNT OF
THE PATERSON SAFE DEPOSIT & TRUST CO.

Trustees under the will of Sarah A. Cooke, deceased, for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and final account as to Estate Lavinia Fayerweather, from the fifteenth day of April, 1914 to the thirtieth day of April 1915, inclusive, both of the money and property received by the said Trustee on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself;

DEBTOR.

Total amount of assets as last accounting		$150,500.00
Less depreciation (See Schedule C)		56,969.50
		$ 93,530.50
Income received (Schedule A)	$5,209.44	
Disbursements from Income (Schedule B)	5,209.44	
Total Amount of Trust Apr. 30th, 1915 (See Schedule D)		$ 93,530.50

COOKE TRUST.
INCOME ACCOUNT.

To income received as follows:

1914		
Apr. 15, Balance last accounting		$556.58
May 5, Coups. Passaic Lighting Co. Prem.	200.17.	183.00
May 22, Rebate of commission paid in excess to Paterson Safe Deposit & Trust Co.		173.22
June 1, Coupons Paterson Railway Co.	540.70.	470.00

	1, " Consol. Tr. Co.	125.	8.50	116.50
	1, Int. on Lehigh Valley Bonds			240.00
	26, Int. on Brown Mtge. to 6/30/14			32.50
July	1, Coups. Mobile & Ohio	90.	35.	55.00
	2, Int. on Lockwood Mtge. to 6/30/14			30.00
	6, Coups. Passaic Water Co.	175.	12.50	162.50
	6, Int. on Kuyper Mtge. to 6/30/14			62.50
	15, Div. Brooklyn City R. R. Co.			40.00
Aug.	1, Reg Int. United N. J. R. R. & Canal	100.	10.	90.00
Sept.	8, Cps. Pat. & Pas. G. & E. Co. Prem.	125.	5.	
	1% on 4/5 deducted Income Tax	120.	1.	119.00
Oct.	2, Coupons Passaic Water Co.			80.00
	2, " Mobile & Ohio 1% on 4/5 deducted	90.	.72	89.28
	3, " Long Dock Co. Prem.	300.	60.	240.00
	15, Div. Brooklyn City R. R. Co.			40.00
Nov.	4, Cps. Passaic Lighting Co.	200.	17.	183.00
Dec.	1, Reg. Int. on Lehigh Valley Bonds			240.00
	10, Coupons Paterson Railway Co.	540.	70.	470.00
	" Consol. Tr. Co.	125.	8.50	116.50
	" Consumers L. H. & P. Co.			12.50
	30, Int on Brown Mtge. to 12/31/14			32.50
1915 Jan.	2, Int. on Lockwood Mtge. to 12/31/14			30.00
	Forward			$3,864.58

(Schedule A)

COOKE TRUST.

INCOME ACCOUNT.

	Forward		$3,864.58	
1915				
Jan. 4,	Int. on Kuyper Mtge. to 12/31/14		62.50	10
5,	Cps. Mobile & Ohio Prem.	90.00 35.00		
	1% on 4/5 deducted Income Tax	55.00 .75	54.28	
	Cps. Passaic Water Co. Prem.	175.00 12.50	162.50	
15,	Div. Brooklyn City R. R. Co.		40.00	
27,	Int. on Bor. Garfield Crtf. sold		1.85	
Feb. 1,	Int. on United N. J. R. R. & Canal	100.00 10.00	90.00	20
Mar. 3,	Cps. Pat. Pas. G. & E. Co. Prem.	125.00 5.00		
	1% on 4/5 deducted Income Tax	120.00 1.00	119.00	
Apr. 5,	Cps. Passaic Water Co.		80.00	
6,	" Mobile & Ohio 1% on 4/5 deducted	90.00 .72	89.28	
	" Long Dock Co.	300.00 60.00	240.00	
15,	Div. Brooklyn City R. R. Co.		40.00	30
30,	Int. on Lehigh Valley Annuity, sold		75.00	
	" " Consumers L. H. & P. Co. "		10.42	
	" " Paterson Railway Co. "		75.00	
	" " Passaic Water 4s "		13.34	
	" " Passaic Water 5s "		33.34	
	" " Passaic Lighting Co. "		75.00	
	" " Mobile & Ohio "		5.00	
	" " Brown Mtge. "		16.68	
	" " Lockwood Mtge. "		20.00	
	" " Kuyper Mtge. "		41.67	
			$5,209.44	40

(Schedule A)

COOKE TRUST.

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

				Voucher No.	
1914					
May	14,	To	P. S. D. & T. Co. Comm. allowed by court	1	$446.08
	15,	"	Surrogate fees etc. in re-accounting	2	30.14
	20,	"	J. L. Griggs fees etc. in re-ac counting	3	50.00
June	23,	"	Income Tax for 1913	4	19.00
	30,	"	Int. etc. on Consol. L. H. & P. Co. to date	5	7.02
July	7,	"	John S. Cooke	6	280.00
		"	Fred W. Cooke	7	280.00
		"	Charles D. Cooke	8	280.00
		"	Carrie S. Beam	9	280.00
		"	Est. L. Fayerweather	10	280.00
Oct.	5,	"	John S. Cooke	11	120.00
		"	Fred W. Cooke	12	120.00
		"	Charles D. Cooke	13	120.00
		"	Est. L. Fayerweather	14	120.00
		"	Carrie S. Beam	15	120.00
1915					
Jan.	6,	"	John S. Cooke	16	279.39
		"	Fred W. Cooke	17	279.39
		"	Charles D. Cooke	18	279.39
		"	Est. L. Fayerweather	19	279.39
		"	Carrie S. Beam	20	280.43
Apr.	6,	"	John S. Cooke	21	119.57
		"	Fred W. Cooke	22	119.57
		"	Charles D. Cooke	23	119.57
		"	Est. L. Fayerweather	24	119.57
		"	Carrie S. Beam	25	120.00
	30,	"	John S. Cooke, Trust		132.19
		"	Fred W. Cooke, Trust		132.19
		"	Charles D. Cooke, Trust		132.18
		"	Est. L. Fayerweather, Trust		132.19
		"	Carrie S. Beam, Trust		132.18
					$5,209.44

(Schedule B)

COOKE TRUST.

PRINCIPAL FUND DEPRECIATION.

April 30th, 1915.

	Inventory valuation accounting April 15, 1914			$150,500.00
	200 shs. Brooklyn City R. R. Co.		800.00	
	225 Shs. Cent. Park N. & E.		46,795.00	
$5,000.	Consol. Tr.	Bonds	147.50	
8,000.	Lehigh Valley Annuity	"	1,040.00	
10,000.	Long Dock	"	320.00	
6,000.	Mobile & Ohio	"	45.00	
8,000.	Passaic Lighting	"	271.00	
7,000.	Passaic Water 5s	"	462.00	
4,000.	Passaic Water 4s	"	220.00	
5,000.	Pat. & Pas. G. & E.	"	114.00	
18,000.	Paterson Railway 6%	"	1,440.00	
5,000.	United N. J. Rly. & Canal	"	120.00	
2,000.	Second Ave. R. R.	"	2,030.00	
3,000.	28th & 29th St.	"	3,165.00	56,969.50
				$93,530.50

(Schedule C)

COOKE TRUST.

This accountant further reports that the principal fund of said Trust is invested as follows:

$5,000.	Consolidated Traction Company Bonds due 1923	$ 5,150.00
10,000.	Long Dock Company Bonds due 1935	12,000.00
5,000.	Lehigh Valley Annuity Bonds	6,650.00
5,000.	Mobile & Ohio Bonds due 1927	5,550.00
5,000.	Passaic Water Company 5s due 1937	5,000.00
5,000.	Passaic Lighting Co. Bonds due 1925	5,050.00
5,000.	Pat. & Pas. G. & E. Bonds due 1949	5,050.00
15,000.	Paterson Rly. Co. Bonds due 1931	16,500.00
5,000.	United N. J. Rly. & Canal Co. Bonds due 1923	5,000.00
	200 Shs. Brooklyn City Rly. Co. 8%	4,000.00
	225 Shs. Central Park N. & E.	5.00
	Cash uninvested	23,575.50
		$93,530.50

(Schedule D)

This estate for the benefit of the five beneficiaries herein named, has for the purposes of economy, been kept and reported to the Orphan's Court as one account. The Trustee as of May 1st, 1915, has caused a re-appraisement of the securities on hand to be made at the market value as of that day and has divided the said Estate into five parts according to the figures as hereafter shown and entitled "Distribution Sarah A. Cooke Trust as of May 1st. 1915."

DISTRIBUTION SARAH A. COOKE TRUST AS OF MAY 1st, 1915.

	SECURITIES				Fayerweather	C. S. B.	F. W. C.	C. D. C.	J. S. C.
$5,000.	Con. Tr. Co. J. & D. 5%	1933	103	5,150	1,030	1,030	1,030	1,030	1,030
10,000.	Long Dock Co. A. & O. 6%	1935	120	12,000	2,400	2,400	2,400	2,400	2,400
5,000.	Lehigh Valley Annuity J. &. D. 6%		133	6,650	1,330	1,330	1,330	1,330	1,330
			Irred						
5,000.	Mobile & Ohio J. A. J. O. 6%	1927	111	5,550	1,110	1,110	1,110	1,110	1,110
5,000.	Passaic Water Co. J. J. 5%	1937	100	5,000	1,000	1,000	1,000	1,000	1,000
5,000.	Passaic Light Co. M. & N. 5%	1925	101	5,050	1,010	1,010	1,010	1,010	1,010
5,000.	Pat. & Pass. G. & E. Co. M. & S. 5%	1949	101	5,050	1,010	1,010	1,010	1,010	1,010
15,000.	Pat. Rly Co. J. & D. 6%	1931	110	16,500	3,300	3,300	3,300	3,300	3,300
5,000.	United N. J. Ry. & C. Co. F. & A. 4%	1923	100	5,000	1,000	1,000	1,000	1,000	1,000
	200 Shs. Brooklyn City Rly. Co. 8% @		200	4,000	800	800	800	800	800
	225 Shs. Central Park N. & E.			5	1	1	1	1	1
	Cash			23,575.50	4,715.10	4,715.10	4,715.10	4,715.10	4,715.10
				93,530.50	18,706.10	18,706.10	18,706.10	18,706.10	18,706.10

		Int.					
C. S. B. Mtge.	M. J. Berdan	500	8.33	508.33			
	" J. Sharpe	3000	50.	3,050.			
	" D. Vigorita	1100	22.	1,122.			
	Cash uninvested			34.77			
				4,715.10			
F. W. C. Mtge.	G. W. Latus	3000	50.		3,050.		
	" Matt Love	1500	25.		1,525.		
	Cash uninvested				140.10		
					4,715.10		
C. D. C. Mtge.	D. Finamore	3000	50.			3,050.	
	" Fanny Perry	800	13.33			813.33	
	" G. Amantea	650	13.00			663.	
	Cash uninvested					188.77	
						4,715.10	
J. S. C. Mtge.	Fred Brown	1000	16.68				1,016.68
	" S. Lockwood	1200	20.				1,220.
	" Tunis Kuyper	2500	41.67				2,541.67
							4,778.35
	Over Invested						63.25
							4,715.10

PATERSON SAFE DEPOSIT & TRUST CO., Trustee.
WM. BERDAN, V. P.

Passaic County, ss.

William Berdan, Treasurer of The Paterson Safe Deposit & Trust Company the above named Accountant being by me duly sworn, according to law, on his oath says that the foregoing account is in all things just and correct, both as to the charge and discharge thereof, according to the best of his knowledge and belief.

WM. BERDAN.

Sworn and subscribed this 17th day of May A. D. 1915, before me

John L. Griggs,
Master in Chancery of New Jersey.

Decree on Accounting of 1915.

PASSAIC COUNTY ORPHANS' COURT.

In the matter of the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee of Sarah A. Cooke for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and final Account as to Estate of Lavina Fayerweather.	Decree on Intermediate and Final Accounting.

The Surrogate having audited and stated the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, deceased, for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and the final Account of the said Trustee as to the estate of Lavinia Fayerweather under the said Trust and placed the same on the files of his office twenty days previous to the Fifteenth day of June, A. D., 1915, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said the Fifteenth day of June, A. D., 1915, in this Court was given by said Accountant according to law, and exceptions being filed thereto, upon which a hearing was had this day and the Court having considered that the same were not well taken,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in particulars and the same having been continued to this day;

It is on this thirteenth day of July, A. D., Nineteen hundred and fifteen, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of Ninety-three thousand five hundred and thirty dollars and Fifty Cents remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of Two hundred thirty two and $^{64}/_{100}$ dollars as and for its commissions on the sum of Four Thousand Six Hundred and fifty-two dollars, and Eighty-six cents, collected by it, and that the said accountant be allowed the further sum of Nine hundred thirty-five and $^{30}/_{100}$ dollars, as and for its full commissions on the corpus of one-fifth of said Estate, namely, the sum of Eighteen thousand seven hundred and six dollars and Ten cents, being the share of the Estate of Lavinia Fayerweather, and that a counsel fee of Twenty five Dollars be allowed to John L. Griggs, Proctor for said Accountant out of the shares of John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, which shares are not at this time to be distributed, and that a counsel fee of Fifty Dollars be allowed to John L. Griggs, proctor for said accountant out of the share of the Estate of Lavinia Fayerweather, which is about to be distributed, and that the Surrogate be allowed the sum of Thirty and $^{48}/_{100}$ dollars for fees, advertising and posting notices.

ABRAM KLENERT,
Judge.

Orphans' Court Records—Accounting of 1915.

(Endorsed:)

Passaic County Orphans' Court.

Term A. D. 191 .

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee of Sarah A. Cooke for John S. Cooke, Fred W. Cooke, Charles D. Cooke and Carrie S. Beam, and Final Account as to Estate of Lavina Fayerweather.

Intermediate and Final Account and Decree Thereon.

Filed May 17th, 1915.

Decree Recorded Book W of Orphans' Court Records, Page 132.

Account Recorded Book C-3 of Accounts, Page 523.

FREDERIC BEGGS,
Surrogate.

Exceptions to accounting of 1915.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.	Exceptions to Account.

Carrie S. Beam, one of the beneficiaries under the last will and testament of Sarah A. Cooke, deceased, hereby excepts to the account of the Paterson Safe Deposit and Trust Company, Trustee under the last will and testament of said Sarah A. Cooke, deceased, for the following reasons:

1. The account sets forth in schedule "c" a depreciation of $56,969.50 in certain securities, without any explanation, concerning how and when said depreciation occurred. The accountant filed an intermediate acount in February, 1908, one in April 1910, and another in April, 1912, besides the present one, to which exception is herein made. Each of said accounts, except the present one, showed the corpus of the estate to be worth about $151,056.58 and the decree of the court, in each case, so declared. None of the said accounts discloses any depreciation and since the accounting of 1914, there has been no material depreciation in the assets of the estate.

2. In the formation of the Trust in question the trustee violated the express provisions of the said will of said testatrix in creating but one trust fund in place of five as in said will ordered.

Wherefore, exceptant prays that the account of said Paterson Safe Deposit and Trust Company, the trustee herein, be disallowed as filed; that said trustee be required to account to the beneficiaries of said estate for the full amount shown to be in the hands of said trustee by the decree of this court dated May 14th, 1914, and that exceptant may have such further and other relief as to this court may appear to be just and proper.

HENRY MARELLI.
Proctor of Carrie S. Beam.

Filed June 16, 1915,
FREDERICK BEGGS,
Surrogate.

Intermediate Account of 1917.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber, the trustee for Carrie S. Beam, under the will of Sarah A. Cooke, late of Paterson, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of the said County of Passaic, on Thursday, the Twenty-fourth day of May, Nineteen Hundred and Seventeen, at which time application will be made for allowance of commissions.

Dated, Paterson, N. J., April 20, 1917.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

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

W. A. Clarkson, Clerk, being duly sworn, upon his oath says, that the annexed notice was published in The Paterson Press-Guardian on the 21-28 days of April, 1917 and on the 5-12-19 days of May, 1917.

(Signed) W. A. CLARKSON.

Sworn to and subscribed before me this
21st day of May, 1917.

RICHARD H. STALLING,
(L.S.) Notary Public of N. J.

Notice is hereby given that the accounts of the subscriber, the Trustee, for Carrie S. Beam

under the Will of Sarah A. Cooke, late of Paterson, deceased, will be audited and stated by the Surrogate of the County of Passaic and reported for Intermediate settlement to the Orphans' Court of the said County of Passaic, on Thursday, the twenty-fourth day of May, Nineteen hundred and seventeen, at which time application will be made for allowance of commissions.

Dated Paterson, N. J.,
April 20, 1917.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LARAUGH,
Treasurer.

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

THOMAS F. VIGORITO, being duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, Engineer's Office and corner Hamilton and De Grasse Streets, all in the City of Paterson, N. J., on the 26th day of April A. D. 1917.

THOMAS F. VIGORITO.

Sworn and subscribed at Paterson, before me this 26th day of April A. D. 1917.

GEORGE L. KING,
A Commissioner of Deeds for New Jersey.

PASSAIC COUNTY ORPHANS' COURT.

In the matter of the Estate *of* SARAH A. COOKE, *Deceased.*	On Accounting Petition.

To the Orphans' Court of the County of Passaic:

The petition of the Paterson Safe Deposit & Trust Company, respectfully shows as follows:

1. Your petitioner is the Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, deceased, and herewith presents its Intermediate Account of its administration of the aforesaid estate.

2. The names and addresses of all persons interested said accounting are as follows:

Carrie S. Beam, of full age, a daughter of the said Testatrix, who resides at 396 Van Houten St., Paterson, N. J.

Edward B. Beam, of full age, a grand-son of the said Testatrix, who resides at 188 River St., Paterson, N. J.

John Beam, of full age, a grandson of the said Testatrix, who resides at 396 Van Houten St., Paterson, N. J.

William B. Beam, of full age, a grand-son of the said Testatrix, who resides at 396 Van Houten St., Paterson, N. J.

3. The following is a summary of this Accountant's aforesaid account:

Accountant charges itself as follows:

Balance in hand of Accountant as shown in last previous account....	$18,706.10	
Amount received during period covered by this account.....	2,068.09	
	$20,774.19	
Forward	$20,774.19	

Accountant prays allowance as follows:

Amount of disbursements as shown by said account	1,978.09	
Balance in hands of accountant.....	$18,796.10	

Your petitioner therefore prays that said account may be allowed and also for allowance of commissions.

Dated, Paterson, N. J.,
April 20, 1917.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

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

FRED LABAUGH, being duly sworn according to law on his oath deposes and says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the petitioner in the foregoing petition named; that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me }
this 23rd day of April, A. D. 1917. }

HELEN GRANGER,
Notary Public of N. J.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate
of
SARAH A. COOKE,
Deceased.

Proof of Mailing.

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

FRANK D. SAVASTANO, being duly swron on his oath, according to law, deposes and says that on the twentieth day of April, Nineteen hundred and seventeen, he deposited in the United States Mail in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice addressed to

Carrie S. Beam, No. 396 Van Houten St., Paterson, N. J.

Edward B. Beam, No. 188 River St., Paterson, N. J.

John Beam, No. 396 Van Houten St., Paterson, N. J.

William B. Beam, No. 396 Van Houten St., Paterson, N. J.

FRANK D. SALVASTANO.

Subscribed and sworn to before me }
this 20th day of April A. D., 1917. }
HELEN GRANGER,
Notary Public of N. J.

Orphans' Court Records—Accounting of 1917.

Notice is hereby given that the accounts of the subscriber, the Trustee for Carrie S. Beam, under the Will of Sarah A. Cooke, late of Paterson, deceased, will be audited and stated by the Surrogate of the County of Passaic and reported for Intermediate settlement to the Orphans' Court of the said County of Passaic, on Thursday, the twenty-fourth day of May, Nineteen hundred and seventeen, at which time application will be made for allowance of commissions.

Dated Paterson, N. J.
April 20, 1912.

THE PATERSON SAFE DEPOSIT & TRUST CO.,
By FRED LABAUGH,
Treasurer.

Filed April 24, 1917,
FREDERIC BEGGS,
Surrogate.

The Intermediate Account of
THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the seventh day of January, 1915, to the fifteenth day of April, 1917, both of the money and property received by the said Trustees on account of the Trust Estate and of its disbursements out of the same.

DEBTOR.

This Accountant charges itsef:			
Amount of assets as per appraisal on division on accounting of Apr. 30, 1915,	(Schedule C)		$18,706.10
Income received	(Schedule A)	$2,068.09	
Disbursements from Income,	(Schedule B)	1,978.09	90.00
Total April 15, 1917.			$18,796.10

INCOME ACCOUNT.

To Income received as follows:

1915			
Jan. 7,	From Sarah A. Cooke Trust		$280.43
Jan. 7,	" Sarah A. Cooke Trust		38.72
Apr. 30,	" Sarah A. Cooke Trust		93.46
May 29,	Cps. Pass. Ltg. Co. due May 1st		25.00
June 2,	Reg. Int. Lehigh Valley Bds.		30.00
June 11,	Cps. Paterson Railway Co.	$90.00 10.00	80.00
June 11,	" Consol. Tract. Co.		25.00
July 1,	Int. on Vigorita Mtge. 6/30/15		11.00
	Cps. Passaic Water Co.		25.00
	" Mobile & Ohio	15.00 5.00	10.00
6,	Int. on Sharp Mtge. 6/30/15		25.00
	" on Berdan Mtge. 6/30/15		4.17
15,	Div. Brooklyn City R. R. Co.		8.00
Aug. 4,	Reg. Int. United N. J. R. R. & Canal		20.00
Sept. 2,	Cps. Paterson & Passaic G. & E. Co.		25.00
Oct. 4,	" Long Dock Co.	60.00 10.00	50.00
5,	" Mobile & Ohio	15.00 5.00	10.00
15,	Div. Brooklyn City R. R.		8.00
Nov. 10,	Cps. Passaic Lighting Co.	25.00 1.00	24.00
Dec. 7,	Reg. Int. Lehigh Valley R. R.		30.00
	Cps. Consolidated Traction Co		25.00

	" Paterson Railway Co.	90.00 10.00	80.00	
1916				
Jan. 3,	Interest on Vigorito mortgage 12/31		33.00	
	" " Berdan " "		12.50	
	" " J. Sharpe " "		75.00	
4,	Cps. Passaic Water Co.		25.00	
	Forward		$1,073.28	10

(Schedule A.)

INCOME ACCOUNT.

	Forward		$1,073.28	
1916.				
Jan. 4,	Cps. Mobile & Ohio	15.00 5.00	10.00	
15,	Div. Brooklyn City R. R. Co.		8.00	
Feb. 1,	Reg. Interest United N. J. R. R. & Canal		20.00	20
Mar. 1,	Cps. Paterson & Passaic G. & E. Co.		25.00	
Apr. 1,	Cps. Long Dock Co.	60.00 10.00	50.00	
	" Mobile & Ohio	15.00 5.00	10.00	
15,	Div. Brooklyn City R. R. Co.		8.00	
May 2,	Cps. Passaic Lighting Co.	25.00 1.00	24.00	
June 2,	Reg. Int. Lehigh Valley Bds.		30.00	
14,	Cps. Consol. Traction Co.	25.00 1.00	24.00	30
	" Paterson Rly. Co.	90.00 10.00	80.00	
29,	Int. on Sharpe Mtge. 6/30/16		75.00	
July 1,	Cps. Passaic Water Co.		25.00	
	" Mobile & Ohio	15.00 5.00	10.00	
5,	Int. on Vigorita Mtge. 6/30/16		33.00	
7,	" on Berdan Mtge. 6/30/16		12.50	
15,	Div. Brooklyn City R. R.		8.00	
Aug. 8,	Reg. Int. United N. J. R. R. & Canal		20.00	40

Sept. 7,	Cps.	Paterson & Passaic G. & E.		25.00
Oct. 2,	"	Long Dock Co.	60.00 10.00	50.00
	"	Mobile & Ohio	15.00 5.00	10.00
	16, Div.	Brooklyn City R. R.		8.00
Nov. 9,	Cps.	Passaic Lighting Co.		25.00
Dec. 1,	Reg. Int.	Lehigh Valley Annuity		30.00
14,	Cps.	Baltimore & Ohio		25.00
	"	Consol. Tract. Co.	25.00 1.00	24.00
	"	Paterson Rly. Co.	90.00 10.00	80.00
1917				
Jan. 2,	"	Mobile & Ohio	15.00 5.00	10.00
		Forward		$1,832.78

(Schedule A)

INCOME ACCOUNT.

		Forward		$1,832.78
1917				
Jan. 2,		Passaic Water Co.		$ 25.00
3,		Int. on Sharpe Mortgage 12/31/16		50.00
8,	"	on Berdan Mortgage 12/31/16		12.50
10,	"	on Vigorita Mtge. 12/31/16		33.00
	"	to date on Vigorita Mtge. 6/31/16		1.81
15,	Div.	Brooklyn City R. R.		8.00
Feb. 1,	Reg. Int.	United N. J. R. R. Co.		20.00
Mar. 5,	Cps.	Paterson & Passaic G. & E.		25.00
Apr. 2,	"	Long Dock Co.	60.00 10.00	50.00
	"	Mobile & Ohio		10.00
				$2,068.09

(Schedule A.)

PAYMENTS FROM INCOME ACCOUNT.

This Accountant prays allowance as follows:

1915			Voucher No.	
Feb. 23,	To	Carrie S. Beam	1	$280.43
July 14,	"	1/5 Surrogate & Court fees, Cooke acct. 4/30/15	2	8.23

"	14, "	1/5 Counsel fee, Cooke Acct. 4/30/15	3	5.00
"	14, "	1/5 Commission	4	46.53
"	14, "	Carrie S. Beam	5	307.59
Oct.	6, "	Carrie S. Beam	6	98.00
1916				
Jan.	6, "	Carrie S. Beam	7	307.50
Apr.	1, "	Carrie S. Beam	8	100.00
July	6, "	Carrie S. Beam	9	302.00
July	7, "	Int. & Prem. on Baltimore & Ohio bond bought	10	17.93
Oct.	3, "	Carrie S. Beam	11	97.57
1917				
Jan.	4, "	" " "	12	267.00
Jan.	10, "	" "	13	45.50
	"	Int. on Warren Mtge. bought	14	1.64
Apr.	2, "	Carrie S. Beam	15	93.17
				$1,978.09

(Schedule B)

This Accountant further reports that the principal fund of said Trust is invested as follows:

		Appraised Value
$1,000	Baltimore & Ohio R. R. Co. 5% 1995	$1,000.00
400	40 shs. Brooklyn City R. R. Co. stock	800.00
4,500	45 shs. Central Park N. & E. R. R. R.	1.00
1,000	Consol. Tract. Co. 5% 1933	1,028.00
1,000	Lehigh Valley Annuity Bds. Reg. 6%	1,330.00
2,000	Long Dock Co. 6% 1935	2,360.00
1,000	Mobile & Ohio R. R. Co. 6% 1927	1,070.00
1,000	Passaic Lighting Co. 5% 1925	1,008.00
1,000	Passaic Water Co. 5% 1937	1,000.00
1,000	Pat. & Pasc. G. & E. Co. 5% 1949	1,010.00
3,000	Paterson Rly. Co. Consol. Mtge. 6% 1931	3,260.00
1,000	United N. J. R. R. & Canal Co. Reg. 4% 1923	1,000.00
500	Bd. & Mtge., Mary J. & W. L. Berdan 5%	500.00
2,000	Bond & Mtge., Joseph Sharpe 5%	2,000.00
1,200	Bond & Mtge., Catherine Warren 5%	1,200.00
	Cash uninvested	139.10
		$18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treas.

(Schedule C)

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

Fred Labaugh, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit & Trust Company, the Trustee named in the foregoing account, that the accounts are kept by the deponent and that the foregoing account is true, both as to the charges made against the said accountant and as to the credits claimed thereto.

FRED LABAUGH.

Sworn and subscribed to this 23rd day of April, A. D. 1917, before me
Helen Granger,
Notary Public of N. J.

Decree on Accounting of 1917.

PASSAIC COUNTY ORPHANS' COURT.

April Term A. D., 1917.

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee *of* Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, Deceased.	Decree on Intermediate Accounting and Dismissal of Exceptions. ing.

The Surrogate having audited and stated the Intermediate account of The Paterson Safe Deposit and Trust Company, Trustee of Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the twenty-fourth day of May, A. D., 1917, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said Twenty-fourth day of May, A. D. 1917, in this Court was given by said accountant according to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and exceptions being made thereto, by Carrie S.

Beam, William B. Beam and John Beam and the hearing having been had thereon in the presence of Henry Marelli, Esq., Proctor for the exceptants, and John L. Griggs, Esq., Proctor for the said Accountant and the Court being of the opinion that the exceptions were not well taken and should be overruled and the said account allowed; It is, on this twenty-fourth day of May A. D., nineteen hundred and seventeen, ordered, adjudged and decreed that the said exceptions be overruled and that the said account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of Eighteen thousand seven hundred six and $^{1}/_{100}$ dollars, and a balance of income amounting to the sum of Ninety dollars remaining in the hands of said accountant to be disposed of according to law.

It is further ordered that the said accountant be allowed the sum of One hundred three and $^{40}/_{100}$ dollars as and for its commissions, on the sum of Two thousand sixty-eight and $^{09}/_{100}$ dollars of income collected by it, and that a counsel fee of Twenty-five dollars be allowed to John L. Griggs proctor for said accountant, on the argument of the said excptions, together with the costs of same. And that the Surrogate be allowed the sum of Thirty $^{88}/_{100}$ dollars for fees, advertising and posting notices.

WILLIAM W. WATSON,
Judge.

(Endorsed:)

Passaic County Orphans' Court.
April Term, A. D. 1917.

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee of Carrie S. Beam under the last Will and Testament of Sarah A. Cooke, Deceased.

Intermediate Account and Decree Thereon, and dismissal of exceptions.

Filed April 24th, 1917.

Decree Recorded Book X of Orphans' Court Records, Page 184.

Account Recorded Book F-3 of Accounts, Page 514 and etc.

Exceptions to Accounting of 1917.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate *of* Sarah A. Cooke, deceased.	Exceptions to Account.

Carrie S. Beam, William B. Beam and John Beam, beneficiaries under the last will and testament of Sarah A. Cooke, deceased, hereby except to the account of Paterson Safe Deposit and Trust Company, Trustee under the last will and testament of said Sarah A. Cooke, deceased, for the following reason:

Exceptions to Accounting of 1917.

THE ACCOUNT DOES NOT EXPLAIN DEPRECIATION IN VALUE OF CORPUS.

The accountant filed an intermediate account in February 1908, one in April, 1910, one in April 1912, one in April, 1914, another in April 1915 and the present one to which exception is herein made. Each of said accounts except the one filed in April, 1915, and the present one showed the corpus of said Carrie S. Beam's share of the estate, in which said William B. Beam and John Beam also have an interest, to be about thirty thousand dollars, and the decree of the court, in each case, so declared. None of said accounts discloses any depreciation and since the accounting of 1914 there has been no material depreciation in the assets of the estate.

Wherefore, exceptants pray that the account of said Paterson Safe Deposit and Trust Company, the trustee herein, be disallowed as filed; that said trustee be required to account to the said beneficiaries of said estate for the depreciation in the value of said share of Carrie S. Beam subsequent to the decree of April, 1914.

HENRY MARELLI,
Proctor of Exceptants.

Filed May 24th, 1917,
FREDERIC BEGGS,
Surrogate.

Intermediate Account of 1919.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the will of Sarah A. Cooke, deceased, for Carrie S. Beam, will be audited and stated by the Surrogate of the County of Passaic, and reported for intermediate settlement to the Orphans' Court of said County, on the Twenty-ninth day of May, next, at which time application will be made for the allowance of commissions.

Dated, April 21, 1919.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

JOHN L. GRIGGS,
Vice-President.

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

T. W. HENDERHOT, of full age, being duly sworn, on his oath, saith that he is the Bookkeeper of The Call Printing and Publishing Company, and that the annexed notice was published on April 24, 1919, May 1, 8, 15, 22, 1919, in The Morning Call, a newspaper printed and published at Paterson, in this State.

T. W. HENDERHOT.

Sworn and subscribed before me
this 22nd day of May, 1919.

GARRET H. STURR,
Notary Public of New Jersey.

Orphans' Court Records—Accounting of 1919.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam, will be audited and stated by the Surrogate of the County of Passaic, and reported for Intermediate settlement to the Orphans' Court of said County, on the Twenty-ninth day of May next, at which time application will be made for the allowance of commissions.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

By JOHN L. GRIGGS,
Vice-President.

Dated, April 21st, 1919.

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

LOUIS KIEVIT, being by me duly sworn according to law, on his oath saith, that he put up a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office, and on the corner of East Main and North Main St., all in the City of Paterson, N. J., on the 25th day of April, A. D. 1919.

LOUIS KIEVIT.

Sworn and subscribed at Paterson before me this 25th of April A. D. 1919.

GEORGE L. KING,
A Commissioner of Deeds of New Jersey.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate of SARAH A. COOKE, *Deceased.*	On Accounting. Petition.

To the Orphans' Court of the County of Passaic:

The petition of The Paterson Safe Deposit and Trust Company of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the Last Will and Testament of Sarah A. Cooke, Deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

Edward B. Beam, of full age, a grandson of testator, who resides at No. 188 River Street, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552 15th Avenue in the City of Paterson, State of New Jersey, and

John C. Beam, of full age, a grandson of Testator, who resides at No. 552 15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account:

As to Corpus.

Accountant charges itself as follows:

Balance in the hands of Trustee as shown by its last previous accounting	$18,706,10
Amount received during period covered by this account	none
Total charges	$18,706.10

Accountant prays allowance as follows:

Amount of disbursements	none
Balance of corpus in the hands of Trustee	$18,706.10

As to Income.

Accountant charges itself as follows:

Balance in hands of Trustee as shown by its last previous accounting	90.00
Amount received during period covered by this account	1,759.11
Total charges	$1,849.11

Accountant prays allowance as follows:

Amount of disbursements as shown by said account	$1,704.11
Balance of income in the hands of Trustee	$145.00

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commisions.

Dated, Paterson, N. J.
April 21, 1919.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

JOHN L. GRIGGS,
Vice-President.

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

JOHN L. GRIGGS, being duly sworn upon his oath deposes and says that he is the Vice-President and Trust Officer of The Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

JOHN L. GRIGGS.

Subscribed and sworn to before me this 21st day of April, 1919.

ELVA M. BENSON,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, will be audited and stated by the Surrogate of the County of Passaic, and reported for Intermediate settlement to the Orphans' Court of said County, on the Twenty-ninth day of May, next, at which time application will be made for the allowance of commissions.

Dated, April 21st, 1919.

THE PATERSON SAFE DEPOSIT & TRUST CO.,

By JOHN L. GRIGGS,
Vice-President.

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

ELVA M. BENSON, being duly sworn upon her oath, according to law, deposes and says that on the Twenty-first day of April, Nineteen Hundred and Nineteen, she deposited in the United States Mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice addressed to

Carrie S. Beam, No. 552 15th Avenue, Paterson, N. J.

Edward B. Beam, No. 188 River Street, Paterson, N. J.

William B. Beam, No. 552 15th Avenue, Paterson, N. J.

John C. Beam, No. 552 15th Avenue, Paterson, N. J.

ELVA M. BENSEN.

Subscribed and sworn to at Paterson, N. J.
before me this 21st day of April, 1919.

CHARLES M. VAN BUREN,
M. C. C. of N. J.

Filed April 24, 1917,

FREDERIC BEGGS,
Surrogate.

The Intermediate Account of

THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the Will of Sharah A. Cooke, deceased, for Carrie S. Beam, from the fifteenth of April, 1917, to the fifteenth day of April 1919, both of the money and property received by the said Trustees on account of the Trust Estate and of its disbursements out of the same.

This accountant charges itself:

DEBTOR.

Balance of corpus as per last accounting and Amount of assets as per appraisal on division on accounting of Apr. 30, 1915, (Schedule C)		$18,706.10
Income received (Schedule A)	$1,849.11	
Disbursements from Income (Schedule B)	$1,704.11	145.00
Total Trust April 15, 1919.		$18,851.10

INCOME ACCOUNT.

(Schedule A)

To Income received as follows:

1917			
Apr. 15, Balance as per last accounting			90.00
16, Div. Brooklyn City R. R. Co.			8.00
May 4, Cps. Passaic Lighting Co.		25.00	
	Premium	1.00	24.00
June 1, Reg. Int. Lehigh Valley R. R. Co.			30.00
18, Cps. Baltimore & Ohio R. R. Co.			25.00
18, " Consolidated Traction Co.			25.00
18, " Paterson Ry. Co.		90.00	
	Premium	10.00	80.00
26, Int. on Warren Mtge. to 6/30/17			30.00

July	2, Cps. Mobile & Ohio R. R.	15.00		
		Premium 5.00		10.00
	2, " Passaic Water Co.			25.00
	2, Int. on Sharpe Mtge. 6/30/17			50.00
	2, " " Berdan " "			12.50
	16, Div. Brooklyn City R. R. Co.			10.00
Aug.	4, Reg. Int. United N. J. R. R. & Canal Co.			20.00
Sept.	1, Cps. Pat. & Pass. G. & E. Co.			25.00
Oct.	2, " Long Dock Co.	60.00		
		Premium 10.00		50.00
	4, " Mobile & Ohio R. R.	15.00		
		Premium 5.00		10.00
	16, Div. Brooklyn City R. R. Co.			10.00
Nov.	2, Cps. Passaic Lighting Co.			25.00
Dec.	1, Reg. Int. Lehigh Valley R. R. Co.			30.00
	5, Cps Baltimore & Ohio R. R.			25.00
	5, " Consol. Traction Co.	25.00		
		Premium 1.00		24.00
	5, " Paterson Ry. Co.	90.00		
		Premium 10.00		80.00
	31, Int. on Warren Mtge. to 12/31/17			30.00
1918				
Jan.	3, " on Sharpe Mtge. to 12/31/17			50.00
	3, Cps. Mobile & Ohio R. R.			10.00
	3, " Passaic Water Co.			25.00
	7, Int. on Berdan Mtge. to 12/31/17			12.50
	15, Div. Brooklyn City R. R. Co.			10.00
Feb.	4, Reg. Int. United N. J. R. R. & Canal Co.			20.00

(Schedule A. continued)

Mar.	1, Cps. Paterson Passaic G. & E. Co.			25.00
Apr.	1, " Long Dock Co.	60.00		
		Premium 10.00		50.00
	1, " Mobile & Ohio R. R.	15.00		
		Premium 5.00		10.00
	15, Div. Brooklyn City R. R.			10.00
May	1, Cps. Passaic Lighting Co.			24.00
June	1, " Baltimore & Ohio R. R.			25.00

	1, " Consol. Tract. Co.	25.00		
	Premium	1.00	24.00	
	1, " Paterson Railway Co.		80.00	
	18, Reg Int. Lehigh Valley R. R.		30.00	
	18, Cps. First Liberty Loan		1.75	
	29, Int. on Warren Mtge. to 6/30/18		30.00	
July	1, Cps. Mobile & Ohio R. R.	15.00		
	Premium	5.00	10.00	10
	1, " Passaic Water Co.		25.00	
	3, Int. on Sharpe Mtge. to 6/30/18		50.00	
	5, " " Berdan Mtge. to "		12.50	
	15, Div. Brooklyn City R. R. Co.		10.00	
Aug.	1, Reg. Int. United N. J. R. R. & Canal Co.		20.00	
Sept.	1, Cps. Paterson, Passaic G. & E. Co.		25.00	
	15, " Third Liberty Loan		1.49	
Oct.	1, " Long Dock Co.	60.00		
	Premium	10.00	50.00	
	1, " Mobile & Ohio R. R. Co.	15.00		
	Premium	5.00	10.00	20
	15, Div. Brooklyn City R. R. Co.		10.00	
Nov.	1, Cps. Passaic Lighting Co.	25.00		
	Premium	1.00	24.00	
Dec.	2, " Baltimore & Ohio R. R.		25.00	
	2, " Consol. Traction Co.	25.00		
	Premium	1.00	24.00	
	2, " Paterson Ry. Co.	90.00		
	Premium	10.00	80.00	
	2, Reg. Int. Lehigh Valley R. R.		30.00	
	16, Cps. First Liberty Loan		1.75	30
	30, Int. on Warren Mtge. to 12/31/18		30.00	
1919.				
Jan.	1, Cps. Passaic Water Co.		25.00	
	1, " Mobile & Ohio R. R. Co.	15.00		
	Premium	5.00	10.00	

40

(Schedule A., Continued)

1919				
Jan.	9,	Int. on Bergen Mtge. to 12/31/18		12.50
	21,	" " Sharpe " "		50.00
	15,	Div. Brooklyn City R. R. Co.		10.00
Feb.	1,	Reg. Int. United N. J. R. R. Co.		20.00
Mar.	1,	Cps. Pat. & Pass. G. & E. Co.		25.00
	15,	" Third Liberty Loan		2.12
Apr.	1,	" Long Dock Co.		50.00
	1,	" Mobile & Ohio	15.00	
		Premium	5.00	10.00
	15,	Div. Brooklyn City R. R. Co.		10.00
				$1,849.11

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1917				
June	1,	To J. L. Griggs, Counsel Fee	(1)	25.00
	18,	" Paterson Safe Deposit & Trust Co., Commission to April 15, 1917	(2)	103.40
	18,	" To Frederic Beggs, Surrogate	(3)	30.88
July	2,	" To Carrie S. Beam	(4)	240.22
Oct.	2,	" Carrie S. Beam	(5)	105.00
1918				
Jan.	5,	" Carrie S. Beam	(6)	299.00
Apr.	1,	" Carrie S. Beam	(7)	117.50
July	13,	" Carrie S. Beam	(8)	300.00
Oct.	3,	" Carrie S. Beam	(9)	118.74
1919				
Jan.	1,	" Carrie S. Beam	(10)	249.75
Apr.	1,	" Carrie S. Beam	(11)	114.62
				$1704.11

(Schedule C)

This accountant further reports that the principal fund of said Trust is invested as follows:

1000.	Baltimore & Ohio R. R. Co. bonds	$1000.00
400.	Brooklyn City R. R. Co., Stock	800.00

4500.	Central Park, N. & E. River R. R. Co. Stock	1.00
1000.	Consolidated Traction Co. Bonds	1025.00
1000.	Lehigh Valley Annuity Bonds	1330.00
100.	Liberty Loan of 1917	98.00
100.	Third Liberty Loan	100.00
2000.	Long Dock Co. Bonds	2320.00
1000.	Mobile & Ohio R. R. Co. Bonds	1030.00
1000.	Passaic Water Company Bonds	1000.00
1000.	Passaic Lighting Company	1005.00
1000.	Paterson & Passaic G. & E. Co. Bonds	1010.00
3000.	Paterson Ry. Co. Cons. Mtge.	3220.00
1000.	United N. J. R. R. & Canal Co. Bonds	1000.00
500.	Bond & Mortgage Mary J. Berdan	500.00
2000.	" " " Joseph Sharpe	2000.00
1200.	" " " Catherine Warren	1200.00
	Uninvested Cash	67.10
		$18706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
Trustee.

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

John L. Griggs, being duly sworn, on his oath says that he is the Vice-President of the Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant, and as to the credits claimed thereto, according to the best of his knowledge and belief.

JOHN L. GRIGGS.

Subscribed and sworn to before me }
this 21st day of April, 1919 }
Elva M. Benson,
Notary Public of N. J.

TO THE JUDGES OF THE ORPHANS' COURT OF THE COUNTY OF PASSAIC

The above account having been placed on the files of my office on the twenty-second day of April, 1919, and being by me audited and stated, is now reported for settlement.

FREDERIC BEGGS,
Surrogate.

Dated, Paterson, N. J.
May 29th, 1919.

Decree on Accounting of 1919.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam.	Decree on Intermediate Accounting.

The Surrogate having audited and stated the Intermediate Account of The Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam, and placed the same on the files of his office twenty days previous to the 29th day of May, 1919, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the sat-

isfaction of the court that notice of intention to settle the said account on said 29th day of May, 1919, in this Court was given by said accountant according to law, and the matter being then and there adjourned until the 5th day of June, 1919; and the said court on the day last aforesaid having examined the said account and vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars, and exception being made thereto by Carrie S. Beam, William B. Beam and John C. Beam, to which exceptions accountant gave notice of its intention, served upon Henry Marelli, Proctor of said exceptants, to apply to the said Court on Thursday, June 5th, 1919, for an order to remove and strike from the records of the said court said exceptions on the ground that the same were vague, uncertain and scandalous and not proper exceptions in accordance with the statute in such case made and provided, and the matter coming on to be heard on the 5th day of June, 1919, in the presence of Henry Marelli, Proctor of exceptants, and John L. Griggs, Proctor of accountant:

It is on this 5th day of June, 1919, ordered, adjudged and decreed that the said account be in all things allowed as reported, and that there is a balance of corpus amounting to the sum of $18,706.10 remaining in the hands of said accountant to be disposed of according to law.

It is further ordered, adjudged and decreed that the said exceptions be disallowed and removed and stricken from the records of this Court.

It is further ordered that the said accountant be allowed the sum of $87.96 as and for its commis-

sions on the sum of $1,759.11 of income collected by it and that a counsel fee of $25.00 be allowed to John L. Griggs, Proctor for said accountant, and that the Surrogate be allowed the sum of thirty-one and $^{59}/_{100}$ dollars for fees, advertising and posting notices and thirty-two cents for Notice to strike out exceptions.

WILLIAM W. WATSON,
President Judge.

(Endorsed:)

Passaic County Orphans' Court.

April Term A. D. 1919.

In the matter of the Intermediate account of the Paterson Safe Deposit and Trust Company, Trustee under the Will of Sarah A. Cooke, Deceased, for Carrie S. Beam.

Intermediate Account and Decree Thereon.

Filed April 22nd, 1919.

Decree Recorded Book Y of Orphans' Court Recorded, Page 381.

Account Recorded Book J-3 of Accounts, Page 324 &c.

FREDERIC BEGGS,
Surrogate.

Exceptions to Accounting of 1919.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate of SARAH A. COOKE, deceased.	On Accounting. On Exceptions to Account. Exceptions.

Carrie S. Beam, one of the beneficiaries of the trust created under the last Will of Sarah A. Cooke, deceased, and John C. Beam and William B. Beam, two of the remaindermen of said trust, hereby file the following exceptions to the account of the Paterson Safe Deposit & Trust Co., the trustee of said trust named in said Will.

They except to the account on the ground that the trustee has by its several acts as hereinafter set forth proved conclusively that it either has no conception of the functions of a trustee and the obligations it is under to the beneficiaries under the laws of this state or is of the opinion that it is beyond the pale of those laws and may and in fact shows that it does regard the property of the trust estate as its own to do with as it sees fit and to totally disregard the beneficiary in any or all of its relations with her wherein she does by law have a voice.

(1) That in the years 1908, 1910 and 1912, the trustee filed in this court accountings wherein it was shown under oath that the entire trust estate as then held amounted to some thirty to fifty thousand dollars more than was actually in the trustee's hands at those times, by virtue of which

sworn statements of the trustee this court did at those times then decree that there was such an erroneous amount in its hands "to be disposed of according to law", and by reason whereof this beneficiary was for several years kept in ignorance of the true condition of affairs in regard to the trust, which afterward made it practically impossible for her to compel the restitution of sums lost by the said trustee during this period.

(2) That in the year 1915 this trustee did file a fifth account wherein it was attempted to charge off this gross depreciation of Fifty Six Thousand Nine Hundred and Sixty Nine Dollars and fifty cents without any explanation concerning how and when the said depreciation had occurred notwithstanding that in the interim since this court had last previously decreed the trust estate to be practically intact there had been no material depreciation in the assets of the estate and none of the accounts had disclosed any depreciation.

(3) That in this attempt they were sustained by the then judge of this court who under the laws of this state was not qualified to sit upon this bench and who in discharging them of liability did inquire "How can I punish them for something they have already done?" That thereafter it was attempted to secure from the court stenographer one Sidney Turner, the record of these proceedings in order that an appeal might be taken therefrom to the prerogative court but that the said attempts were futile and for that reason no appeal could be taken.

Exceptions to Accounting of 1919.

(4) That in the year 1917 this trustee did file a sixth account to which these exceptants filed exceptions which were by this Court overruled, on the ground that the matter was res adjudicata inasmuch as the court had passed upon it in 1915 as hereinbefore set forth. An exact wording of the decree of the court at that time is as follows: "And the court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in particulars and the same having been continued to this day, It is, etc." The language of the decree defies interpretation for a careful and close reading thereof fails to disclose, any bill of particulars wherein the account was not found correct, in what manner the account was not correct or any explanation of the wording of the decree so as to leave the impression that the court had not passed upon the entire account or having passed upon it in its entirely what had been found and the disposition ordered made of the findings. On this decree this court in 1917 based its refusal to hear anything further of the matters which it so completely closes and yet leaves open.

(5) That at the time of the application to this court in 1917 one of the remaindermen herein now excepting to the allowance of this account was in the military service of the United States and unable to give to the matter the close attention to which he was entitled under An Act of Congress approved March eighth, 1918, 40 Stat. par 604 before being by this court forever foreclosed of his rights therein.

Exceptions to Accounting of 1919.

(6) That this trustee has for several years past been in the habit of paying to the beneficiary her dividends not when due on the quarter, but at various times thereafter at their convenience in one case amounting to some seven or more weeks, on one of several excuses each in itself beyond the law. That numerous complaints to the trustee regarding this dereliction have been consistently disregarded. That on complaint to the directors of the said trustee trust company personally, the complaint has been met with indifference, discourtesy and contempt, the action of the trustee having by them been severally described as one of "the private actions" of the president of the trust company, one John W. Griggs, in which they had no concern and the simple say-so of the said Griggs has been referred to as a "reason" for the withholding. That on the occasion of the last of the said acts of the withholding this beneficiary addressed to the Board of Directors of the trustee trust company a communication dated January 7, 1919, in which inquiry was made as to whether or not it was the policy of the trustee to so withhold the dividends then due and informing them that on complaint to the treasurer of the trust company, one Fred Labaugh, the latter had cut her off while still engaged in conversation on the telephone. That this letter was never asknowledged nor a second letter sent on February 7, 1919, enclosing a copy of the first, although a copy of the latter, sent to one Arthur Ryle, a director of the trust company, was by him acknowledged in the same vein as previous complaints had been by him.

(7) That by reason of the foregoing the relation of trustee and cestui que trust, if it ever did, now no longer exists and the continuance of the relation in its present state finds no warrant in law or in equity and can only operate to the continued oppression of the beneficiary and the further dissipation of the trust estate.

(8) That the trustee is asking for fees out of money collected at various times throughout the entire period since its last accounting to this court which sum of money has been in their hands during this period in ever increasing amount without the payment to this beneficiary of one cent of interest thereon.

(9) That on previous occasions this trustee has adopted the same form of collection of its commissions months in advance even to the extent of overdrawing its five percent on the total income collected by introducing in the amount collected the balance from the last account which said money was rebated at times different from these at which in its account it was so sworn to have been done.

That by reason of the foregoing this trustee has proved that it is not entitled to any commissions whatsoever and that it is utterly incapable of discharging the functions of a trustee as interpreted by the laws of this state.

Carrie S. Beam.
John C. Beam.
William B. Beam.

Filed May 28, 1919,
FREDERIC BEGGS,
Surrogate.

Last Account, 1921.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber, as trustee for Carrie S. Beam, under the will of Sarah A. Cooke deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for final settlement to the Orphans' Court of said County, on the Tenth day of February next, at which time application will be made for the allowance of commissions and counsel fees.

THE PATERSON SAFE DEPOSIT AND TRUST CO.,
By FRED LABAUGH, Treasurer.

Dated Jan. 5, 1921.

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

T. W. Hendershot of full age, being duly sworn, on his oath saith that he is the Bookkeeper of THE CALL PRINTING AND PUBLISHING COMPANY, and that the annexed notice was published on January 6-13-20-27, 1921, February 3, 1921, in THE MORNING CALL, a newspaper printed and published at Paterson, in this State.

T. W. HENDERSHOT.

Sworn and Subscribed before me }
this third day of February, 1921 }
Garret H. Sturr,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for Final settlement to the Orphans' Court of said County, on the Tenth day of February, next, at which time application will be made for the allowance of commissions and counsel fees.

Dated January 5th, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
By FRED LABAUGH,
Treasurer.

State of New Jersey }
County of Passaic } ss.:

Louis Kievit being by me duly sworn according to law, on his oath saith, that he put a copy of the annexed notice at each of the five following public places in said County, to wit: at the Surrogate's Office, Register's Office, Sheriff's Office, County Engineer's Office and on the corner of East Main St., and North Main St., all in the City of Paterson, N. J., on the 7th day of January A. D. 1921

LOUIS KIEVIT.

Sworn and subscribed this 7th day of January A. D. 1921 at Paterson, before me }
George L. King,
A Commissioner of Deeds of New Jersey.

PASSAIC COUNTY ORPHANS' COURT.

In the Matter of the Estate *of* SARAH A. COOKE, deceased.	On Account-Petition. ing.

TO THE ORPHANS' COURT OF THE COUNTY OF PASSAIC.

The petition of THE PATERSON SAFE DEPOSIT AND TRUST COMPANY of Paterson, Passaic County, New Jersey, respectfully shows as follows:

1. Your petitioner is the Trustee under the Last Will and Testament of Sarah A. Cooke, deceased, for Carrie S. Beam, and herewith presents its account of its administration of the aforesaid Estate.

2. The names and addresses of all persons interested in said accounting are as follows:

Carrie S. Beam, of full age, a daughter of testator who resides at No. 552-15th Avenue in the City of Paterson, State of New Jersey.

Edward Beam, of full age, a grandson of testator who resides at No. 188 River Street, in the City of Paterson, State of New Jersey.

William B. Beam, of full age, a grandson of testator, who resides at No. 552-15th Avenue in the City of Paterson, State of New Jersey.

John C. Beam, of full age, a grandson of testator, who resides at No. 552-15th Avenue, in the City of Paterson, State of New Jersey.

3. The following is a summary of its aforesaid account.

As to Corpus.

Accountant charges itself as follows:

Balance as per book and appraisal value in the hands of Trustee as shown by its last previous accounting,	$18,706.10
Amount received during period covered by this account,	None
Total Charges,	$18,706.10
Accountant prays allowance as follows:	
Amount of disbursements,	None
Balance of Corpus in hands of Trustee	$18,706.10

As to Income.

Accountant charges itself as follows:

Balance in hands of Trustee as shown by lts last previous accounting,	$ 145.00
Amount received during period covered by this account,	$ 1,637.18
Total Charges	$ 1,782.18
Accountant prays allowance as follows:	
Amount of disbursements as shown by said account,	$ 1,652.48
Balance of Income in the hands of Trustee	$ 129.70

Your petitioner therefore prays that the said account may be allowed and also for the allowance of commissions and counsel fees.

Dated, Paterson, N. J.
Jan. 5, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
FRED LABAUGH, Treasurer.

State of New Jersey }
County of Passaic } ss.:

Fred Labaugh, being duly sworn upon his oath deposes and says that he is the Treasurer of the Paterson Safe Deposit and Trust Company, the petitioner in the foregoing petition named and that the matters and things therein contained are true to the best of his knowledge and belief.

FRED LABAUGH.

Subscribed and sworn to before me }
this 10th day of January, 1921. }
Elva M. Benson,
Notary Public of New Jersey.

ACCOUNT.

Notice is hereby given that the accounts of the subscriber as Trustee for Carrie S. Beam under the Will of Sarah A. Cooke, deceased, will be audited and stated by the Surrogate of the County of Passaic, and reported for Final Settlement to the Orphans' Court of said County, on the Tenth day of February next, at which time application will be made for the allowance of commissions and counsel fees.

Dated January 5, 1921.

THE PATERSON SAFE DEPOSIT AND TRUST CO.
By FRED LABAUGH, Treasurer

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

Elva M. Benson, being duly sworn upon her oath, according to law, deposes and says that on the Fifth day of January, Nineteen Hundred and Twenty-One, she deposited in the United States mail, in the City of Paterson, in the County of Passaic, aforesaid, a copy of the foregoing notice, addressed to

Carrie S. Beam, 552 Fifteenth Ave., Paterson, N. J.

Edward Beam, 188 River St., Paterson, N. J.

William B. Beam, 552 Fifteenth Ave., Paterson, N. J.

John C. Beam, 552 Fifteenth Ave., Paterson, N. J.

ELVA M. BENSEN.

Subscribed and sworn to this 5th day of January, 1921, at Paterson, N. J., before me.

Chas. C. Stalter,

An Attorney at Law of New Jersey.

The Final Account of ,

THE PATERSON SAFE DEPOSIT & TRUST COMPANY.

Trustees under the Will of Sarah A. Cooke, deceased, for Carrie S. Beam, from the Fifteenth day of April, 1919 to the Fifth day of January, 1921, both of the money and property received by the said Trustees on account of the Trust Estate and its disbursements out of the same.

This accountant charges itself:

DEBTOR.

	Balance of Corpus at Book Value as per last accounting,		18,706.10
	Balance as per last accounting	145.00	
10	Income received (Schedule A)	1,637.18	
		1,782.18	
	Disbursements from Income (Schedule B)	1,652.48	129.70
	Total Trust January 5, 1921		18,835.80

INCOME ACCOUNT.

SCHEDULE A.

To Income received as follows:

20	1919		
	Apr. 15, Balance as per last accounting		$145.00
	May 1, Cps. Passaic Lighting Company		25.00
	June 1, Reg. Int. Lehigh Valley R. R.		30.00
	" " Cps. Baltimore & Ohio R. R.		25.00
	" " " Consolidated Traction Co.	25/1	24.00
	" " " Paterson Railway Co.	90/10	80.00
	" " " First Liberty Loan		1.75
	" " Int. on Zax Mortgage to date		13.89
	" 23, " on Warren Mtge. to June 30, 1919		30.00
30	July 1, Cps. Mobile & Ohio R. R. Co.	15/5	10.00
	" " " Passaic Water Company		25.00
	" 15, Div. Brooklyn City R. R. Co.		10.00
	Aug. 1, Reg. Int. United New Jersey R. R. Co.		20.00
	" 18, Int. on Sharpe Mtge. to June 30, 1919		60.00
	Sept. 1, Cps. Pat. & Pass. G. & E. Co.		25.00
	" 15, " Third Liberty Loan		2.13
	Oct. 1, " Long Dock Co.	60/10	50.00
	" " " Mobile & Ohio R. R.	15/5	10.00
40			

Nov.	1,	"	Passaic Lighting Co.		24.00	
Dec.	1,	Int.	Lehigh Valley R. R.		30.00	
"	"	Cps.	Baltimore & Ohio R. R.		25.00	
"	"	"	Consolidated Traction Co.	25 / 1	24.00	
"	"	"	Paterson Railway Co.	90 / 10	80.00	
"	15,	"	Victory Liberty Loan		14.91	
"	"	"	First Libery Loan		1.75	10
"	26,	Int.	on Max Gold Mtge. to Dec 31, 1919		60.00	
1920				15		
Jan.	2,	Cps.	Mobile & Ohio R. R. Co.	5	10.00	

INCOME ACCOUNT.

(Schedule A.)

1920						
Jan.	2,	Cps.	Passaic Water Co.		$25.00	20
"	"	Int.	on Catherine Warren Mtge. to 12/31/19		30.00	
Feb.	2,	Div.	United New Jersey R. R. Co.		20.00	
Mar.	1,	Cps.	Pat. & Pass. G. & E. Co.		25.00	
"	16,	"	Third Liberty Loan		2.12	
Apr.	1,	"	Long Dock Co. Prem.	60 / 10	50.00	
"	"	"	Mobile & Ohio R. R. Co. Prem.	15 / 5	10.00	
May	1,	"	Passaic Lighting Co. Prem.	25 / 1	24.00	
June	1,	"	Baltimore & Ohio R. R.		25.00	30
"	"	"	Consolidated Tract. Co. Prem.	25 / 1	24.00	
"	"	"	Paterson Railway Co. Prem.	90 / 10	80.00	
"	"	Reg. Int.	Lehigh Valley Annuity bonds		30.00	
"	15,	Cps.	First Liberty Loan		1.75	
"	"	"	Victory Liberty Loan		17.77	
"	28,	Int.	on Catherine Warren Mtge. 6/30/20		26.60	
"	30,	"	on Max Gold Mtge to 6/30/20		60.00	
July	1,	Cps.	Mobile & Ohio R. R. Co.	15 / 5	10.00	40

	" " "	Passaic Water Company		25.00
	Aug. 4,	Div. United New Jersey R. R. Co.		20.00
	Sept. 1,	Cps. Pat. & Pass. G. & E. Co.		25.00
	" 15,	" Third Liberty Loan		2.13
	Oct. 1,	" Long Dock Co. Prem.	60/10	50.00
	" " "	Mobile & Ohio R. R. Co. Prem.	15/5	10.00
	Nov. 1,	" Passaic Lighting Co. Prem.	25/1	24.00
	Dec. 1,	" Baltimore & Ohio R. R. Co.		25.00
	" " "	Consol. Tract. Co. Prem.	25/1	24.00
	" " "	Paterson Railway Co. Prem.	90/10	80.00
	" "	Reg. Int. Lehigh Valley Annuity bonds		30.00
	" 15,	" First Liberty Loan		1.75
	" " "	Victory Liberty Loan		22.61

INCOME ACCOUNT.
(Schedule A.)

1920			
Dec. 30,	Int. on Catherine Warren Mtge. to Dec. 31, 1920		$ 25.02
" 31,	Int. on Max Gold Mtge. to Dec. 31, 1920		60.00
1921			
Jan. 1,	Cps. Mobile & Ohio R. R.		15.00
" " "	Passaic Water Company		25.00
			$1,782.18

PAYMENTS FROM INCOME ACCOUNT.

This accountant prays allowance as follows:

1919				
June 5,	To Paterson Safe Deposit & Trust Co. Commission		1	87.96
" 9,	" Frederic Beggs, Surrogate		2	31.91
July 3,	" Carrie S. Beam		3	280.00
" 15,	" To Int. on Victory Bonds purchased		4	3.52
Oct. 2,	" Carrie S. Beam		5	160.00
1920				
Jan. 2,	" Carrie S. Beam		6	300.00

Apr. 1,	"	Carrie S. Beam	7	105.00
" 12,	"	Int. paid on Victory Bds. purchased	8	3.09
July 3,	"	Carrie S. Beam	9	350.00
" 15,	"	Int. paid on Victory Bds. purchased	10	1.00
Oct. 4,	"	Carrie S. Beam	11	100.00
1921				
Jan. 5,	"	Carrie S. Beam	12	230.00
				$1,652.48

(Schedule C.)

This accountant further reports that the principal fund of said Trust is invested as follows:

Par Value		Book Value.
$1000	Baltimore & Ohio R. R. Co. Bonds	$ 1000.00
400	Brooklyn City Railway Co. Stock	800.00
4500	Central Park N. & E. R. R. R. Co. Stock	1.00
1000	Consolidate Traction Co. Bonds	1021.00
1000	Lehigh Valley Annuity Bonds	1330.00
100	Liberty Loan of 1917, Bonds	98.00
2000	Long Dock Company Bonds	2290.00
100	Third Liberty Loan Bond	100.00
200	Victory Liberty Loan Bonds	191.84
200	Victory Liberty Loan Bonds	195.00
550	Victory Liberty Loan Bonds	550.00
1000	Mobile & Ohio R. R. Co. Bonds	1000.00
1000	Passaic Lighting Co. Bonds	1002.00
1000	Passaic Water Company, Bonds	1000.00
1000	Paterson & Passaic G. & E. Co. Bonds	1010.00
3000	Paterson Rly. Co. Consol. Mtge. Bonds	3180.00
1000	United New Jersey R. R. & Canal Co. Bonds	1000.00
2000	Bond and Mortgage Max Gold	2000.00
800	" " " Catherine Warren	800.00
	Uninvested Cash	137.26
		18,706.10

THE PATERSON SAFE DEPOSIT & TRUST CO.
FRED LABAUGH, Treas.

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

Fred Labaugh, being duly sworn, on his oath says that he is the Treasurer of The Paterson Safe Deposit and Trust Company, the Trustee named in the foregoing account; that the same is in all things just and true, both as to the charges made against the said accountant and as to the credits claims thereto, according to the best of his knowledge and belief.

FRED LAUBAUGH.

Subscribed and sworn to before me
this 10th day of January, 1921
Elva M. Benson,
Notary Public of N. J.

Decree in Accounting of 1921.

PASSAIC COUNTY ORPHANS' COURT.
Term A. D., 19

In the matter of the final account of the Paterson Safe Deposit and Trust Company, Trustee for Carrie S. Beam under the Last Will and Testament,

of

SARAH A. COOKE, deceased.

The Surrogate having audited and stated the final account of The Paterson Safe Deposit and Trust Company, Trustee for Carrie S. Beam under the Last Will and Testament of Sarah A. Cooke, deceased, and placed the same on the files of his office twenty days previous to the tenth day of February A. D., 1921, and having on the day last aforesaid reported the same to this Court for allowance and settlement, and it having been proved to the satisfaction of the Court that notice of intention to settle the said account on said tenth day of February A. D., 1921, in this Court was given by said accountant acording to law,

And the Court having examined the said account and the vouchers and receipts for payments and disbursements claimed therein, and having found the same to be correct in all particulars and exceptions being made thereto, by William B. Beam and John C. Beam and proofs and allega-

tions of the parties having been heard and considered by the Court and said exceptions overruled in their entirety.

It is, on this Twenty-fourth day of February A. D., nineteen hundred and Twenty-one ordered, adjudged and decreed that the said account be in all things allowed as reported and the said exceptions be and the same are hereby overruled and that there is a balance remaining in the hands of said accountant amounting to the sum of Eighteen Thousand Seven Hundred and Six Dollars and Ten cents ($18,706.10) to be disposed of according to law, which balance is corpus at accountant's book value.

It is further ordered that from the aforesaid balance the said accountant be allowed the sum of Four Hundred dollars as and for its commissions, and that a counsel fee of Two Hundred and Fifty dollars be allowed to Griggs & Harding, proctors for said accountant, and that a further commission of $81.86 on income received during the period of said account be also allowed to said accountant; and that the Surrogate be allowed the sum of thirty seven and $^{39}/_{100}$ dollars for fees, advertising and posting notices, two and $^{99}/_{100}$ dollars for citations and six and $^{12}/_{100}$ dollars for Sheriff's fees.

WILLIAM W. WATSON,
Judge.

Petition of William B. Beam for Relief.

PASSAIC COUNTY ORPHANS' COURT.

IN THE MATTER *of* The Estate of SARAH ANN COOKE, *Deceased.*	for Relief

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

William B. Beam, of the City of Paterson. in the County of Passaic and State of New Jersey, one of the remaindermen of a trust created for the benefit of Carrie S. Beam of the said City of Paterson by and under the last will and testament of Sarah Ann Cooke, deceased, being duly sworn according to law upon his oath, deposes and says that he is the petitioner in the petition hereafter and hereto annexed and that he, in the presence of John C. Beam, one of the other remaindermen of the said trust, in the court room of The New Jersey Court of Errors and Appeals, at the hour of 4 o'clock in the afternoon of the 15th day of February, 1921, instant, presented the said petition to The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, as The Ordinary of the State of New Jersey, and that the Honorable Edwin Robert Walker in the aforesaid capacity as The Ordinary of the State of New Jersey then and there accepted the same.

WILLIAM B. BEAM.

Subscribed and sworn to this
16th day of February, 1921, at
Paterson, N. J., before me.

(L. S.) BEULAH LOCKWOOD,
A Notary Public of New Jersey.

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

John C. Beam of the City of Paterson in the County of Passiac and State of New Jersey, one of the remaindermen of a trust created for the benefit of Carrie S. Beam of the said City of Paterson, by and under the last will and testament of Sarah Ann Cooke, deceased, being the same John C. Beam mentioned in the foregoing affidavit of William B. Beam heretofore annexed, being duly sworn according to law upon his oath, deposes and says that he saw the said William B. Beam in the court room of The New Jersey Court of Errors and Appeals, at the hour of 4 o'clock in the afternoon of the 15th day of February, instant, 1921, present the petition hereafter and hereto annexed to The Honorable Edwin Robert Walker, Chancellor of the State of New Jersey, as The Ordinary of the State of New Jersey and that he, the said John C. Beam, then and there both saw and heard The Honorable Edwin Robert Walker, accept the same.

JOHN C. BEAM.

Subscribed and sworn to this
16th day of February, 1921, at
Paterson, N. J., before me.

(L. S.) BEULAH LOCKWOOD,
A Notary Public of New Jersey.

NEW JERSEY PREROGATIVE COURT.

IN THE MATTER *of* Appeal from certain Extraordinary Proceedings in the Orphans' Court of the County of Passaic in the Matter of the Estate of SARAH ANN COOKE, *Deceased.*	On Petition for Relief.

TO THE ORDINARY OF THE STATE OF NEW JERSEY:

The petition of William B. Beam, of the City of Paterson, in the County of Passaic and State of New Jersey, respectfully shows that:

1. Petitioner is one of three remaindermen of a trust created under the will of Sarah Ann Cooke late of the County of Passaic, deceased, for the benefit of Carrie S. Beam of the City of Paterson in said County.

2. The Paterson Safe Deposit and Trust Company, a corporation organized under the laws of this state and having its place of business at number one hundred and fifty two Market Street in the said City of Paterson, was appointed by and under the said will, trustee of the said trust estate and thereafter accepted the said trust and entered upon its duties thereunder.

3. Sarah Ann Cooke departed this life in the month of May 1905, and shortly thereafter the

said trustee entered upon its duties as aforesaid.

4. In the year 1911, the said beneficiary, Carrie S. Beam discovering through the loss of income that a large portion of the said trust estate had been wasted and lost, thereupon commenced a suit in the New Jersey Court of Chancery against the said trustee for an accounting.

5. In the year 1914 the aforesaid action terminated in favor of the said trustee who was relieved from liability to account to the said beneficiary on the ground that as his good faith had not been questioned he was only to be held for a failure to exercise a reasonable discretion in the premises and that he had exercised such a discretion.

6. In the years succeeding the termination of above suit the trust estate continued to depreciate and the relation of trustee and cestui que trust in the above trust estate proceeded to the vanishing point.

7. Alarmed at this condition of affairs the three remaindermen of this trust, to wit, your petitioner herein and Edward Beam and John C. Beam of the said City of Paterson on the 7th day of December 1920 made a formal demand upon the said trustee trust company that it go into the Passaic County Orphans' Court, there restore the said fund, compel its president to restore certain sums of money that he had forced the said beneficiary to spend in attempts to save the said trust estate and then and there release the said trust estate to a new trustee to be appointed by the court.

8. On the 6th day of January, 1921, the said trustee served upon the said remaindermen

and the said beneficiary notice that upon the 10th day of February, instant, it would apply to the Orphans' Court of the County of Passaic for the settlement of its final account under the said trust and for an order discharging it and relieving it of all further duties under the said trust.

9. On the 21st day of January, 1921, the said trustee filed its final account in the office of the Surrogate of the County of Passaic.

10. From the date of service upon the said remaindermen of the aforesaid notice this petitioner has tried diligently to find counsel to represent him in the said matter and he is informed and believes that the other two remaindermen hereunder have likewise attempted to secure such services.

11. Notwithstanding all of these attempts, it was not until the evening of the 9th day of February, inst, that counsel was found for the purpose in the person of Carl Abruzzese, Esq., a counsellor at law of the City of Newark, in the County of Essex and State of New Jersey.

12. On the 9th day of February as aforesaid your petitioner and one of the other two remaindermen hereunder, to wit, John C. Beam, had a clear understanding with the said Carl Abruzzese, as to what was desired of him on the morrow and the said understanding was in substance as follows: Exceptions were to be drawn and filed excepting to the final account as then filed by the trustee in the Surrogate's Office of the County of Passaic, the said exceptions were to be argued on the hearing and the court was to be asked that in entering its decree thereon such decree should provide that it should not operate as a bar to any future application to the

court for the opening of the preceding intermediate accounts for fraud, filed in the said court by the said trustee in the said trust estate, in conformity with the concluding words in the opinion of Vice Ordinary Leaming in the *Slater* Case, 88 N. J. Eq. 296, (1917), to wit, "The decree should also provide that it shall not in any way be operative as a bar to any application to open the intermediate account for fraud or mistake."

13. On the 10th day of February, instant the said Carl Abruzzese did file at 9:38 A. M. in the Surrogate's Office of the County of Passaic exceptions drawn up by him in conformity with the understanding set out hereabove, which said exceptions were signed by the said John C. Beam, and William B. Beam as exceptants.

14. Thereafter the said Carl Abruzzese accompanied by your petitioner and the said John C. Beam entered the court room of the Passaic County Orphans' Court, the former going inside the rail and the latter remaining without.

15. Shortly thereafter John Leavitt Griggs, a counsellor at law of the said City of Paterson and counsel for the said trustee trust company, entered the said court room and approached the said Carl Abruzzese and handed him a certain piece of paper.

16. The said Carl Abruzzese appeared to read the said paper for a few moments when he arose and coming without the rail beckoned your petitioner and the said John C. Beam with him out into the hall without the court room where he stated that due to the existence of a certain letter written by your petitioner to the Justices of the Peace of Passaic County asking them to accept process against Judge William W. Wat-

son, who was then sitting on the bench of the said Orphans' Court to hear and settle the said account, he could not go on with the case but that he would return and make a motion for an adjournment, placing the entire matter over for a week.

17. Your petitioner and the said Carl Abruzzese thereupon returned inside the court room, the former resuming his seat and the latter going up to the bar with the said J. L. Griggs where for some five minutes or more they were engaged with the judge, the said William W. Watson, in a conversation that your petitioner could not hear.

18. At the same moment of re-entry of your petitioner into the court room, Edward Beam one of the other said remaindermen, entered the court room and seated himself without the rail.

19. Throughout this hearing that was taking place before the bar your petitioner did not see the Surrogate of Passaic County in the court room and he twice heard the said J. L. Griggs say prior thereto, "Where is the Surrogate?" at which inquiry a small young man who accompanied the said Grigss left the room and returned alone.

20. At the conclusion of this hearing your petitioner saw the said Carl Abruzzese leave the bar and with him your petitioner left the court room and proceeded to the street without the court house at which place an understanding was had with him as to just what had occurred. Your petitioner was then and there informed in the presence of the said Edward Beam that the entire matter had been adjourned for one week from that day and that your petitioner had lost

nothing by the dropping by counsel of the case before the bar.

21. On the 11th day of February, instant your petitioner accompanied by the said John C. Beam called at the Surrogate's Office of the County of Passaic and asked to be allowed to see all the papers in the record of the aforesaid proceedings of the previous day. They were then and there shown an order signed by the court on the said 10th day of February, relieving and discharging the said trustee, The Paterson Safe Deposit and Trust Company "from all further duties of its said office" in connection with the said trust estate. Your petitioner then and there asked the Deputy Surrogate where he had gotten the said papers and was told that the Surrogate had brought them down from the court room. Upon your petitioner informing the said deputy that the surrogate was not present throughout the said hearing the said deputy said: "They sent down for me twice and I got ready to go when the Surrogate came and went up."

22. Thereupon your petitioner accompanied by the said John C. Beam called upon the said Carl Abruzzese at his office in the said City of Newark and again asked him what his understanding of the adjournment of the previous day had been and if "All had been put over for a week." To which query the said Abruzzese replied "Yes". Upon further inquiry then and there the said Abruzzese said that the aforesaid order of discharge had been before the court and had been passed by the court at that time. Your petitioner and the other remaindermen were not so informed at the conclusion of the proceedings on the said 10th day of February.

23. By virtue of the foregoing order this trust estate is at this day and hour and may be for an indefinite period without a trustee, that it has so been without a trustee since the said tenth day of February on which day the said order without the knowledge of your petitioner or of any of the other remaindermen or the beneficiary was by Judge William W. Watson signed.

2 Lewin on Trusts. p. 838 *671.

"It is certain that the Court cannot divest him (the trustee) of the *estate* before some the office it is not unreasonable that if a man once engages to undertake it, he shall one can be found to take it, and even as to so leave the estate without a trustee."
not retire from it without any reason, and

Ardill v. Savage, 1 Ir. Eq. Rep. 79.
Forshaw v. Higginson, 20 Beav. 485.
Gardner v. Downes, 22 Beav. 397.

24. Your petitioner has heretofore unsuccessfully attempted to secure the trial of the said Judge Watson before the high court of impeachment of this state on charges of misfeasance and malfeasance in office in connection with the settlement of one of the Intermediate accounts of this same trustee and of the final account of the executors of the estate of the said Sarah Ann Cooke, deceased.

25. The said Judge William W. Watson on the said 10th day of February, instant sat upon the bench of the said court with full knowledge of the said charges and of other charges in connection therewith that your petitioner had attempted to bring against him.

26. Upon the settlement of the last intermediate account of this trustee as heretofore referred to the said Judge William W. Watson shut your

petitioner, an exceptant to said account, out without hearing counsel for the exceptants, entering an order and decree while said counsel was yet without the court room and before any hearing at all in the matter was had before the court for the exceptants.

27. Your petitioner is attempting to secure counsel to appear for him on the adjourned hearing of February 17, 1921, but up to this hour his attempts have not met with success.

28. Meanwhile the trust estate is without a trustee and the court which successfully entered its order depriving the trust estate thereof without your petitioner's knowledge is still in a position to do further damage to the interests of the remaindermen and the beneficiary.

Therefore your petitioner prays that the aforesaid order discharging the said trustee be revoked, that the entire matter be removed out of the hands of Judge William W. Watson of the Passaic County Orphans' Court forthwith and that all and singular the proceedings had before the said Judge in the said court be inquired into and for such other relief as to the court may seem just.

Dated, Paterson, N. J.,
February 13, 1921.

WILLIAM B. BEAM.
Proctor and Counsel for himself.

Exhibit C-5.

THE PATERSON SAFE DEPOSIT & TRUST COMPANY
JOHN W. GRIGGS, President
J. EDWARDS BARBOUR, 1st V. P. F. LABAUGH, Treas.
J. L. GRIGGS, 2nd V. P. & Trust Officer J. L. CONNOLLY, Sec.
152 Market Street
Paterson, New Jersey

April 15, 1920.

Mrs. Carrie S. Beam,
552—15th Avenue,
Paterson, N. J.

Madam:

Replying to your letter of the 14th instant addressed to the Secretary of our Company, we would advise you that the date of the last dividend received on the Brooklyn City Railway Company shares was July 3rd, 1919. No intimation was given by the Company that it would suspend its October dividends nor did it contemplate doing so until September 19th, 1919 when the Brooklyn Heights Railway Company as lessee of the property and lines of the Brooklyn City Railway Company made default in the payment of the third installment of its income tax amounting to $46,34.32 and thereupon the Brooklyn City Railway Company paid the sum in order to avoid the penalty prescribed by law. This exhausted the funds of the Company. The Brooklyn Heights Railway Company went into the hands of the receiver and repudiated its lease to the Brooklyn City Railway Company and defaulted in the payment of the

Exhibit C-5.

rent, which income the Brooklyn City Railway Company was accustomed to apply towards the payment of its dividends. The Brooklyn City was obliged therefore to undertake the operation of the road and the outcome of its operation depends to a large extent upon whether or not satisfactory increases in fares are granted by the state of New York.

An examination of the statements sent you during the past year, particularly of October 1st, 1919 showed that usual dividend had not been received upon this stock.

"Book Value" as applied to the securities in your Trust means the value thereof placed upon the same by the executors of the estate of Sarah A. Cooke at the time they were turned over by the executors to the trustees.

Very truly yours,
THE PATERSON SAFE DEPOSIT AND TRUST CO.
By JOHN L. GRIGGS.
Vice-President.

JLG/P

Form 4—5 M, 12-20-21

Members N. Y. Stock Exchange
Telephone 8120 Rector

GOODBODY & CO.
115 Broadway

New York, April 17, 1922.

630
742 "
Edward Beam Trustee Carrie S. Beam
John C. " Under Will Sarah A. Cook
Wm. B. "

Please note that in compliance with your instructions we have this day SOLD or your account and risk

QUANTITY	DESCRIPTION	PRICE	AMOUNT	INTEREST	COMM.	TAX	TOTAL	TO WHOM SOLD
10	B. & O. 5'95 J. D.	87¼	872.50	1903	2.00		889.53*	E. F. Hutton
40	Bklyn City R. R.	7⅞	315.00		3.00	1.60	310.40*	Wm. C. Ewen

(a) All orders for the purchase or sale of any securities or commodities are received and executed with the distinct understanding and agreement that an actual purchase or sale is contemplated, and also subject to the rules and customs of the New York Stock Exchange or of the Exchange or market where they are executed. (b) It is also agreed that all securities and commodities, from time to time, carried in your account or deposited to protect the same may be loaned or pledged by us either separately or together with other securities or commodities, all without further notice to you. (c) The purpose of this is that the customer hereby expressly gives to us the consent mentioned or provided for in Chapter 500 of the Laws of New York of 1913. It is also agreed that on default as to margin we may sell such securities without notice of the time and place of sale.

Interest is computed to date we expect to receive payment; if payment is delayed, interest to date of payment will be charged.

Yours respectfully,

GOODBODY & Co.

125

Exhibit C-5½.

Exhibit D-3.

THE CHASE NATIONAL BANK
New York

September 29, 1919.

CONFIDENTIAL

Mr. John L. Griggs, Vice President,
The Paterson Safe Deposit & Trust Co.,
Paterson, N. J.

Dear Sir:

Your letter of September 27th is received.

The Brooklyn City Railroad Company about which you inquire, is a subsidiary of the Brooklyn Rapid Transit Company. There has been some talk within the past week or so to the effect that the Brooklyn City Company would reassume the direction of its 26 lines, as the Brooklyn Rapid Transit Company has found it impossible to make its payments under the leasing agreement. Just how this will affect the shares of the Brooklyn City Company, it is impossible to say.

The traction situation in Brooklyn and New York is highly unsatisfactory, and the outcome with the companies engaged in the street railway work depends to a large extent upon whether or not satisfactory increases in fares are granted. If these increases are forthcoming, we feel that the situation will in time work out satisfactorily. In this case, we should not be inclined to advise a sale of stock of an underlying company. If the increases are not forth-

Exhibit D-3.

coming, we believe it will be the part of wisdom to dispose of your holdings, as the situation will probably become more involved. Just what will happen is anybody's guess and, under the circumstances, we do not feel competent to express a definite opinion as to whether to hold or sell stock of the Brooklyn City Railroad Company.

With respect to the Central Park North & East River Railroad Company, we have been unable to find this concern listed in any of the manuals here. In endeavoring to secure information, we have approached friends of ours and are advised that the Central Park North & East River Railroad Company was sold under foreclosure in 1913, and was succeeded by the Belt Line Railway Company. Our friend does not believe that the stock of the Central Park Company has any value at this time. In checking up this situation, we were advised from another source that there have been no sales of stock of the Central Park North & East River Raliroad Company since 1915, and that at that time a block was sold at auction at $1.50 a share.

We trust the above will prove of some use, and assure you of our pleasure in serving as always.

Yours very truly,

Signed: M. H. Howell,
Assistant Cashier.

Exhibit D-4.

THE BROOKLYN CITY RAILROAD COMPANY.

April 22, 1920.

The Paterson Safe Deposit & Trust Company,
152 Market St.
Paterson N. J.

Gentlemen:

In response to your letter of the 15th inst. we have to advise that, as you probably know, the property of The Brooklyn City Railroad Company was leased to The Brooklyn Heights Rail road Company for 999 years in 1893.

The Brooklyn Heights Railroad Company became insolvent and Lindley M. Garrison, as Receiver, under order of United States District Judge Julius M. Mayer, returned the property to The Brooklyn City Railroad Company as of October, 19, 1919, since which time the company has been operated independently. As a result of such operation, the cutting off of all transfers not required by law, and the most rigid economy, the company has been able to earn its operating expenses, provide for current taxes and the interest on the bonds, and in addition to lay aside some small reserves. There does not appear, however, to be any possibility of there being any distribution of dividends on the stock as long as the present high cost of labor and all materials continues unless the State or City Regulating authorities can be induced to fix a rate of fare which will enable the company to earn a reasonable return on the value of its property.

The company has outstanding $6,925,000. par value of bonds, of which $1,627,000. are in the Guarantee Fund provided by the Lessee and which, under the terms of the lease, was to be forfeited to The Brooklyn City Railroad Company in case the lease was breached. Action calling for the return of these bonds to the company is now pending, and in the meantime no interest thereon is being paid. The company has outstanding Capital Stock with total par value of $12,000,000. The value of the property of the company has been estimated at a figure largely in excess of $30,000,000. so you may note that the value of the property is largely in excess of the outstanding securities.

Trusting the above will give you the information which you may need, we remain

Yours very truly,

THE BROOKLYN CITY RAILROAD CO.

(Signed) By H. Hobart Porter

Vice President.

Exhibit—Opinion in *Flynn vs. Brooklyn City R. R. Co.* (158 N. Y. 493).

State of New York,
Court of Appeals,
State Reporter's Office, } ss.:

I, J. NEWTON FIERO, Reporter of the Court of Appeals of the State of New York, do hereby certify that I have compared the annexed copy of opinion in the case of PATRICK H. FLYNN, Appellant, v. THE BROOKLYN CITY RAILROAD COMPANY, and THE BROOKLYN HEIGHTS RAILROAD COMPANY, Respondents. decided by the Court of Appeals on the eighteenth day of

April, 1899, with the official opinion rendered in such case, and I further certify that the same is a true and correct copy of said opinion and of each and every part thereof.

IN WITNESS WHEREOF, I have hereunto affixed my signature as Reporter of the Court of Appeals, at the City of Albany, in the State of New York, this fifth day of December 1922.

J. NEWTON FIERO,
As Reporter of the Court of Appeals
of the State of New York.

Attest:

[Seal
State of New York.
Court of Appeals.]

(L. S.) R. M. BARBER,
Clerk of the Court of Appeals.

State of New York,
Court of Appeals.

I, FRANK H. HISCOCK, Chief Judge of the Court of Appeals of the State of New York, the highest Appellate Court and Court of Record in and for said State, do hereby certify that Richard M. Barber is the clerk of said court, having custody of the seal of said court and of the decisions, minutes and records thereof, and that J. Newton Fiero is the official reporter of said court, having custody of the official opinions, written and handed down by said court and the members thereof, and of the official publication and reports thereof; and I further certify that the attestation and authentication, by

said clerk and said reporter of the annexed copy of the official opinion rendered in the case of PATRICK H. FLYNN, *Appellant*, v. THE BROOKLYN CITY RAILROAD COMPANY, *and* THE BROOKLYN HEIGHTS RAILROAD COMPANY, *Respondents*. decided by the said Court of Appeals on the eighteenth day of April, 1899, is in due form and sufficient under the laws of the State of New York and the rules and practice of the said Court of Appeals; that the seal imprinted thereon is the true and genuine seal of the said Court of Appeals, and that the signature of Richard M. Barber, as clerk of said court, appended thereto is the true and genuine signature of said Richard M. Barber, and the signature of J. Newton Fiero, as reporter of said court, appended thereto is the true and genuine signature of said J. Newton Fiero.

IN WITNESS WHEREOF, I have hereunto subscribed my official signature at the Chambers of said court at the Court of Appeals Hall, in the City of Albany and State of New York, on the fifth day of December in the year one thousand nine hundred and twenty-two.

FRANK H. HISCOCK,
As Chief Judge of the Court of
Appeals of the State of New York.

PATRICK H. FLYNN, *Appellant,* v. THE BROOKLYN CITY RAILROAD COMPANY, *and* THE BROOKLYN HEIGHTS RAILROAD COMPANY, *Respondents.*

(Decided April 18, 1899.)
(Reported in 158 N. Y. 493)

APPEAL from a judgment of the Appellate Division of the Supreme Court in the second judicial department, entered December 10, 1896, affirming a judgment entered on an order of the Special Term which dismissed the complaint upon the opening.

This action was brought by the plaintiff as a stockholder of The Brooklyn City Railroad Company to set aside a lease made by it to The Brooklyn Heights Railroad Company, to compel the retransfer of all the property that passed under the lease and for an accounting by the lessee to the lessor.

The record shows that the counsel for the plaintiff opened the case "claiming that by means of the alleged fraudulent scheme set forth in the complaint, the votes of the holders of more than two-thirds of the stock of the defendant, The Brooklyn City Railroad Company, had been given in approval of the lease therein set forth, and admitting, only for the purposes of the argument to dismiss upon the opening, that such vote was given and that plaintiff is the only complaining stockholder, and that the gravamen of this action is that its said lease is a violation of the duties of its directors, and a fraud upon the said The Brooklyn City Railroad Company, the corporation for the benefit of whose stockholders the plaintiff claims to

bring this action in a representative capacity," whereupon the defendants respectively moved, "on the said admissions and statements in said opening and the complaint herein, for a dismissal of the complaint as not stating facts sufficient to constitute a cause of action." The court granted the motion and dismissed the complaint, no application having been made to amend. The Appellate Division affirmed the judgment entered accordingly, all of the justices uniting, but two of them placing their votes upon a ground not concurred in by the majority.

It is alleged in the complaint that the plaintiff owns five hundred shares of the capital stock of the Brooklyn City Railroad Company, which, for many years prior to the 15th of February, 1893, owned and operated a valuable and extensive street surface railroad in the city of Brooklyn and the adjoining towns in Kings and Queens counties. It had constructed tracks through more than one hundred miles of streets, possessed franchises authorizing extensions into many other streets, owned valuable depots, stables, car houses and other structures, besides cars and appliances sufficient for the successful operation of its railroad. The value of its property exceeded thirty millions of dollars, and it was in a position to procure all funds necessary to properly equip and operate its entire system by electricity. Its capital stock was $9,000,000, which was finally increased to $12,000,000, all having been paid in, and for many years its regular dividends were at the rate of 8 per cent. In January, 1892, it had obtained the proper consents for the use of electricity as a motive power, and prior to Feb-

ruary 15th, 1893, it was operating by that means. It owned many electric cars, and was engaged in building large power stations, upon its own lands, in order to generate electricity for the operation of its road. The use of electric power, as it was alleged, would result in a reduction of from thirty to forty per cent in the operating expenses, as well as in an increase in the number of passengers, owing to the improved facilities, and the company would thus be enabled to pay dividends of more than ten per cent, with the certainty of a further increase from the future growth of the city. Prior to the date last named, certain persons, composing a so-called syndicate, some of whom were directors of the company, "entered into a scheme to divest a portion of the earnings of said company from the stockholders, and, in pursuance of said scheme, it was planned and arranged that the railroad of the said company. and its property and franchises should be leased to another company for a consideration less than the actual rental value thereof, and that pany, a controlling interest in the stock of said other company should be owned by the "'syndicate" and not by the stockholders of The Brooklyn City Railroad Company, and that the difference between the actual rental value of the said railroad, property and franchises and the rental paid under the said proposed lease would thus ensue to the profits of the stockholders of the said other company, and not to the profits of the stockholders of The Brooklyn City Railroad Company." Pursuant to this scheme the syndicate acquired by purchase a controlling interest in the stock of the Brooklyn City Railroad Company, and on the 6th of Jan-

uary, 1893, caused it to issue to the stockholders a proposition, in the name of the directors, which was in substance that the syndicate should "procure the leasing of The Broklyn City Railroad Company by a street surface railroad company," with a guarantee of ten per cent dividends on the stock of the former and the deposit in a trust compnay of $4,000,000 as security for the performance of the lease. The lessee was "to pay and discharge all fixed charges of The Brooklyn City Railroad Company, including interest on bonded debt, and all taxes and assessments and license fees, and also pay the expenses of keeping up the organization of The Brooklyn City Railroad Company, furnishing it with suitable offices, etc." The syndicate "was to give the stockholders of The Brooklyn City Railroad Company the right to purchase three shares of a traction company's stock of the par value of $100 each, for every ten shares of the par value of $10 each held by the stockholders in the Brooklyn City Railroad Company at the date of the delivery of the lease, at $15 per share," with the option to dispose of said right to purchase. The capital stock of the traction company was to be fixed at $30,000,000, "and this arrangement." as the proposition stated, "Will place in the stockholders of the Brooklyn City Railroad Company nine-tenths of the capital of the traction company, the remaining one-tenth will be allotted to the present syndicate, but shall be paid for at the same rate as that purchased by the stockholders of the Brooklyn City Railroad Company." The syndicate, as the directors asserted in their cir-

cular, had deposited with the New York Guaranty & Indemnity Company, its representative, the sum of $500,000, "as an earnest of its good faith to carry out the proposition." It was further stated that the board of directors were unanimously of the opinion that the proposition was a most favorable one, and that they unhesitatingly recommended it to the stockholders, who were requested to forward their proxies, so that the lease might be approved by at least two thirds of the stock "present and voting in person or by proxy," as required by law. No information appears to have been furnished by the directors to the stockholders except such as was contained in the circular.

The complaint further alleged that the defendant, The Brooklyn Heights Railroad Company, is a domestic corporation engaged in operating a railroad upon Montague street, about half a mile long, and that it was controlled by said syndicate. Its bonded indebtedness was $250,000, and its capital stock $200,000, which was worth not more than fifty per cent of its face value. It was not a paying road, and its earnings were less than the operating expenses and fixed charges. Its only property was its franchise upon Montague street, the roadbed, a power house and a few cars, all worth not to exceed $350,000. In order to further carry out the scheme, it was intended to tansfer the stock of The Brooklyn Heights Railroad Company to a foreign corporation called a traction company, not authorized by law to own or operate a railroad. A part of the capital stock of the traction company was to be allotted to such stockholders of The Brooklyn City Railroad

Company as might subscribe and pay therefor, the remainder being reserved by the syndicate for its own use. It was charged that the effect of the scheme was "to lease the railroad and property of The Brooklyn City Railroad Company to said foreign corporation and divest a portion of the earnings of said railroad from the stockholders thereof to the "syndicate as the holder" of the said reserved stock of the said Traction Company." It was further alleged that said proposition thus submitted to the stockholders was intended to convey the impression that the proposed lease was to be made to a company with a capital stock of $30,000,000, "whereas, in fact, no street surface railroad corporation with a capital stock of $30,000,000 or any amount approaching that sum, had been incorporated or existed in the state of New York to which" said lease could lawfully be made, "but on the contrary it was in fact intended to lease said railroad and property to the Brooklyn Heights Railroad Company, which was incapable of paying a dividend of ten percent upon the stock of said Brooklyn City Railroad Company otherwise than from the proceeds of operating the railroad of said last named company under said lease." It was asserted that this scheme "was unlawful, the effect and intent thereof on the part of the shareholders of the Brooklyn City Railroad Company who designed, approved and carried the same into effect * * * being to injure and defraud the shareholders of said company." In pursuance of such scheme the proposed lease was executed by the directors of both railroad companies and approved on the 15th of February, 1893, by stockholders owning two-thirds of

the stock of the lessor, which on June 6th, 1893, delivered to the lessee all its property and franchises. Thereupon a foreign corporation known as the Long Island Traction Company was organized with a capital stock of $30,000,000, divided into three hundred thousand shares, which became the owner of the entire capital stock of the lessee, two hundred and seventy thousand of which shares were allotted to the stockholders of the lessor at $15 per share "in the proportion of three shares of the stock of said Traction Company for every ten shares of" the lessor. The remaining thirty thousand shares were reserved "by certain persons, shareholders of the Brooklyn City Railroad Company, who had approved" said lease, "for their own use and benefit." It was declared that the privelege given to the stockholders of the lessor to purchase stock of the traction company "was in no respect a compensation to" them "for the injury they would receive through said lease; that by the said plan of distributing the said thirty millions of stock of the said Traction Company among the stockholders of the said Brooklyn City Railroad Company, the said stockholders were prevented from receiving the whole amount of said stock and were unjustly and fraudulently deprived of $3,000,000 in par value thereof and of a corresponding portion of the earnings of said Traction Company; that said Traction Company's stock is of no value except as derived from the operation of the railroad of" the lessor unler said lease, and the stockholders of that company "are entitled to the full amount of the earnings derived from the operation of its

said railroad without any deduction therefrom fo the benefit of the intermediate operating concern or company;" that the lessor company "is able to pay a dividend largely in excess of ten per cent upon its present capital stock, that is to say, at least fifteen per cent thereon, and that by the leasing of this railroad, as aforesaid, its stockholders have been and are wrongfully deprived of said increase in said dividends, besides the benefit resulting therefrom and the advantage consequent upon the certain constant increase in the value of the franchises and property of the last-mentioned company through the extension of its road and increase in travel thereon due to the growth of the city from year to year; that this plaintiff at divers times since the execution of said lease, duly demanded of the Brooklyn City Railroad Company, its officers and directors, as a stockholder in said Brooklyn City Railroad Company, his share of the proceeds of the operation of the railroad of said company over and above the ten per cent paid to him under said lease, but that the said defendant, The Brooklyn City Railroad Company, has refused and neglected to pay the plaintiff his said portion of said proceeds to which he was legally and properly entitled; that the plaintiff herein has from time to time notified the directors and officers of said Brooklyn City Railroad Company that the leasing aforesaid of the Railroad and property of said company was unlawful and to the injury of the stockholders of said company and has demanded that there shall be distributed among the stockholders of said company all the profits and receipts arising from the operation of said railroad and of said property as the

same may accrue without regard to the said lease, and that such distribution necessarily involved such action on the part of said officers and directors as would effect the annulling of said lease, but that said directors and officers have failed and neglected to take any proceedings toward the annulling of said lease or agreement."

The relief demanded was that the lease be declared void and set aside, that the lessee be directed to transfer and deliver to the lessor all the property, real and personal, of the latter in the possession of the former, and that it be required to account for all moneys received from the operation of the railroad leased and to pay the same over to the lessor. There was also a prayer for general relief.

The Appellate Division, in affirming the judgment, held that the primary right of action was in the corporation and that it was essential to allege that it had been applied to and had refused to bring the action; that the demand alleged was insufficient, and that, although it did not appear that the lease was illegal, the complaint permitted proof of facts to sustain the allegation of fraud on the part of the majority stockholders.

AUGUSTUS VAN WYCK and JAMES C. CHURCH for appellant.

WILLIAM C. DEWITT and WILLIAM C. TRULL for the Brooklyn City Railroad Company, respondent.

JULIEN T. DAVIES, CHARLES FRANCIS STONE, WILLIAM F. SHEEHAN, CHARLES A. COLLIN AND HERBERT BARRY for the Brooklyn Heights Railroad Company, respondent.

VANN, J. For the purpose of this appeal such facts as could properly have been proved

under the allegations of the complaint, when supported by reasonable implication and fair intendment, must be accepted as true, and, in connection with the admissions made upon the opening, must be treated as the facts of the case upon which the rights of the parties depend. (*Marie* v. *Garrison,* 83 N. Y. 14; *Kley* v. *Healy,* 127 N. Y. 555; *Sage* v. *Culver,* 147 N. Y. 241, 245) The question of primary importance is whether those facts constitute a cause of action against the defendants upon the merits, although due regard must be paid to any technical deficiencies that may exist.

The case presented upon the merits is that of a stockholder in a successful, dividend-paying corporation, with large assets and good prospects, who was compelled by the vote of the directors and the other stockholders, induced by fraud, to surrender a part of his interest in the corporate assets represented by his stock, without any real consideration. The stock owned by the plaintiff made him the equitable owner of an undivided fractional part of the entire assets of the company. (*Burrall* v. *Bushwick R. R. Co.*, 75 N. Y. 211, 216; *Jermain* v. *Lake Shore & M. S. R. Co.,* 91 N Y. 483, 492).

By the lease he was forced to part with one-tenth of his interests without a corresponding advantage. The lessor company in which he was interested transferred all its rights and property to an irresponsible lessee, with inadequate security, for the privilege of buying back a part only of that property and paying a premium therefor. Leaving out of view for the present the security furnished, and we have the lessor parting with all it had for the right to buy back nine-tenths thereof and pay over

$4,000,000 for the bargain. The stockholders got nothing except a part of their own property and paid heavily for the privilege. They parted with property of immense value for stock in a traction company with no assets and without a dollar of paid-up capital, and in addittion were compelled to pay $15 for every share given them. The syndicate on the other hand paid nothing for their shares of the par value of $3,000,000, except $15 a share, which every stockholder of the lessor had to pay, in addition to parting with his interest in a paying corporation with $30,000,000 worth of property. The profits of the syndicate in the traction itself were over $2,000,000, and its prospective profits were nearly $500,000 a year. A solvent and powerful lessor gave everything it had to an insolvent and weak lessee, and received in payment a part of its own property, paying a premium even for that right. There was no substance to any of the three companies except what was furnished by the lessor, and the scheme, in effect, was to divide up its property and donate a part of it to the syndicate. There was no exchange of properties but simply a division of the substantial property owned by the lessor. The lessee contributed nothing and the syndicate contributed nothing, except as it paid $15 a share for the stock of the traction company, the same as the stockholders of the lessor were compelled to do. The scheme did not involve a consolidation of two valuable properties, which, by uniting, would be able to earn more at less expense, but it involved a surrender by the lessor of part of its own with nothing to speak of in return. The little railroad, with nominal assets, swallowed the big railroad

with assets exceeding $30,000,000, and the traction company, with no assets whatever, swallowed both, and it is claimed that this scheme is not fraudulent as to a protesting stockholder of the road making the sacrifice. None of the three corporations involved had anything to lose except the lessor. One of them had nothing whatever, and another had so little that it was not worth mentioning in comparison with the splendid property successfully managed and paying a great profit that belonged to the lessor. The sham traction company, with no assets whatever, and the dummy lessee, with but trifling assets, had no substance except what they sucked as parasities from the lessor. The traction company got its first assets in the $15 a share paid for its stock by the stockholders of the lessor, and the traction company's promoters got $3,000,000 for $450,000.

But, it is said, the stockholders of the lessor get ten per cent dividends guaranteed and secured for all time in place of the eight per cent they had before. What do they get it out of? Their own property, capable as we must assume of paying fifteen per cent instead of ten. Now we come to the only value furnished by the syndicate, and that is security for the payment of the ten per cent dividends by the deposit of $4,000,000. How long will that last under unsuccessful or dishonest management by trustees incompetent or willing to wreck in order to make money? Security is furnished for less than five years' rental on a lease for nine hundred and ninety-nine years. While the amount of the security seems large in one sense, in fact it is small when the magnitude of the risk is considered. The syndicate received over two

and one-half millions of dollars for furnishing a guaranty that a road capable of earning and paying dividends of fifteen per cent would pay dividends of ten per cent. Moreover, the syndicate did not furnish any security whatever except in form, for the substance came from the stockholders of the lessor through their subscriptions to the capital stock of the traction company. The guaranty fund was four millions of dollars, but the subscriptions of the stockholders to the stock of the traction company was more than four millions of dollars. The stockholders of the lessor, therefore, furnished a larger fund than was required for the deposit with the guaranty company, and that this fund was the source of that deposit might have been proved upon the trial under the facts alleged. The syndicate furnished nothing and risked nothing, and its enormous profits were simply contributed by the stockholders of the lessor, the contribution of the plaintiff having been extorted by a two-thirds vote. The scheme in its final analysis took something for nothing, and if not fraudulent upon its face as to a non-assenting stockholder, was fraudulent under the allegations of the complaint.

It is distinctly alleged that the scheme of leasing the road was unlawful, and that the intent and effect thereof on the part of the stockholders of the lessor, who designed, approved and carried the same into effect, was to injure and defraud the stockholders of that company. The motive and object of the stockholders who approved the lease by their votes are charged to have been furtive and evil, and the effect of their action injurious and fraudulent. The method of accomplishing the fraud was set

forth, and the complaint, which was amplified somewhat by the opening, asserted that the syndicate, composed in part of directors of the lessor, and in control of both lessor and lessee when the lease was made, devised and executed a plan to take away property of the stockholders and give it to third persons. While the complaint is not as definite as it might be, so far as appears, there was no motion made by the defendants to make it more definite or certain. No bill of particulars was called for, nor was further information sought by any of the methods authorized by the settled practice. When a party goes to trial upon a loose pleading without any effort to have it made more definite, he can make no lawful complaint if under the general allegations all facts fairly covered thereby are admitted in evidence against him. We think that under the allegations of the complaint before us every fact bearing upon the intention of the stockholders who approved the lease to defraud the minority stockholders could have properly been received.

As a general rule, courts have nothing to do with the internal management of business corporations. Whatever may lawfully be done by the directors or stockholders, acting through majorities prescribed by law, must of necessity be submitted to by the minority, for corporations can be conducted upon no other basis. All questions within the scope of the corporate powers which relate to the policy of administration, to the expediency of proposed measures, or to the consideration of contracts, provided it is not so grossly inadequate as to be evidence of fraud, are beyond the province of the courts.

The minority directors or stockholders cannot come into court upon allegations of a want of judgment or lack of efficiency on the part of the majority and change the course of administration. Corporate elections furnish the only remedy for internal dissensions, as the majority must rule so long as it keeps within the powers conferred by the charter.

To these general rules, however, there are some exceptions, and the most important is that founded on fraud. While courts cannot compel directors or stockholders, proceeding by the vote of a majority, to act wisely, they can compel them to act honestly, or undo their work if they act otherwise. Where a majority of the directors, or stockholders, or both, acting in bad faith, carry into effect a scheme which, even if lawful upon its face, is intended to circumvent the minority stockholders and defraud them out of their legal rights, the courts interfere and remedy the wrong. Action on the part of directors or stockholdes, pursuant to a faudulent scheme designed to injure the other stockholders, will sustain an action by the corporation, or, if it refuses to act, by a stockholder in its stead for the benefit of all the injured stockholders. (*Leslie* v. *Lorillard,* 110 N. Y. 519, 535; *Gamble* v. *Queens County Water Co.,* 123 N. Y. 91; *Sage* v. *Culver,* 147 N. Y. 245; *Farmers Loan & Trust Co.* v. *N. Y. & N. Ry. Co.,* 150 N. Y. 410; *Hawes* v. *Oakland,* 104 U. S. 450.) When a contract founded in fraud is executed by the directors with a third party upon the express approval of a required number of stockholders, with the intention on the part of all concerned to defraud the non-assenting stockholders, and the scheme will naturally result in

serious injury to them or to the corporation, a court of equity will set aside the fraudulent transaction and compel the delinquent parties to account. Such is the case before us as we interpret the complaint.

The right of action, however, belongs to the corporation and should be brought by it as plaintiff, but when it will not bring the suit itself, an aggrieved stockholder, after due demand and a refusal, or unreasonable neglect to proceed. may bring it in his own name upon making the corporation a party defendant. (*Greaves* v. *Gauge,* 69 N. Y. 154.) Such an action is not for the benefit of the plaintiff alone, but is representative in character and for the benefit of himself and all other stockholders similarly situated. In the case last cited it was held that, when a stockholder brings an action of the kind under consideration, the complaint should allege that the corporation, on being applied to, refused to prosecute, and that this averment constitutes an essential element of the cause of action. The complaint before us does not set forth a demand that the corporation should bring an action to annul the lease. The plaintiff alleges that, as a stockholder of the Brooklyn City Railroad Company, he demanded his share of the proceeds of operating the road over and above the ten per cent paid to him under the lease; that he notified the directors and officers that the lease was unlawful and injured the stockholders, and demanded a distribution among them of all the profits and receipts arising from the operation of the road without regard to the lease. He follows this with the further allegation that such distribution necessarily involved such action on the part of the officers and direc-

tors as would effect the annulling of the lease. This did not meet the requirements of the situation, because no demand was made that the corporation bring an action to annul the lease. The demand was either of a payment to the plaintiff of what he deemed he was entitled to, or of a distribution among the stockholders of what he deemed they were entitled to. These demands might have been complied with simply by the payment of money without the bringing of an action. They were not necessarily inconsistent with the continuance of the lease. He was not entitled to what he demanded, and he made no demand of what he was entitled to. *Non constat* if he had made a proper demand this action would have been unnecessary, as the corporation would have done its duty by suing to annul the lease, for it does not appear that it is still under such control as to make a demand useless, as held in *Sage* v. *Culver* (supra). The averments relating to the subject of demand are not aided by the allegation that the distribution demanded involved such action as would effect the annulling of the lease, for that was not a fact, but an argument or legal conclusion which does not warrant the introduction of evidence.

We agree with the learned judges of the Appellate Division that the demand was insufficient to meet the requirements of law and for that reason we affirm their judgment.

All concur (PARKER, CH. J., BARTLETT and HAIGHT, J J., on the ground that the demand to bring the action was insufficient to meet the requirement of the law), except GRAY J., not sitting.

Judgment affirmed, with costs.

Exhibit C-6.

Paterson, N. J.,
April, 14, 1920.

John L. Connolly, Sec'y.,
The Paterson Safe Deposit & Trust Co.,
#152 Market Street, Paterson, N. J.

My dear Mr. Connolly:-

I have your letter of the 13th inst enclosing me the requested list of securities composing my trust as of the same date and note therefrom that the forty shares of stock of the Broklyn City Railroad Company are not paying any dividends.

Please inform me

1. The date when the last dividend was received by the trust company for me on these Brooklyn City R R shares,
2. Why these dividends are no longer paid,
3. What the prospects are for a resumption of these dividend payments,
4. Why I have not been informed that these dividends were no longer being paid,
5. If there is anyone in the entire trust Company who knows anything more about these particular securities than you have told me in this list,
6. What do you mean by "Book Value" in your valuation of these particular shares,
7. What you mean by "Book Value" in your valuation of the other securities shown in this list,

and 8. Why you have used an eraser in the place where you have shown a valuation of $800 after the Brooklyn City R R shares?

CARRIE S. BEAM.

Exhibit C-7.

Paterson, N. J.,
April 16, 1920.

John L. Connolly, Sec'y.,
The Paterson Safe Deposit & Trust Co.,
No. 152 Market St., Paterson, N. J.

My dear Mr Connolly:-

I am this day in receipt of a letter from the Second Vice President and Trust Officer of your trust company, Mr. John L. Griggs, written me in reply to my letter to you of the 14th inst.

I am addressing this letter to you as I suppose that it is the custom of your other officers to answer only those letters not addressed to them but addressed to others and in order to follow out the procedure and be sure of a reply hereto I will stick to it faithfully and apply the rule as it seems to be laid down. There are several letters of mine written to the other officers of your trust company that have for many, many months been left unanswered, unacknowledged and ignored so that I fear that it is a little late in the game to begin to teach these old dogs new tricks of correspondence with much prospect of success.

I note all of the information contained in the letter of Mr John L. Griggs above referred to and I note also that all of my questions except question number eight have been answered. Why question number eight should be discriminated against I am at a loss to understand as I am also at a loss to understand a great many other pleasant possibilities opened up by the answers to my other questions.

The answer to question number two is partic-

ularly lucid and shows an extent of knowledge concerning the affairs of the Brooklyn City Railroad Co that I did not believe your trust company with all of its equipment for the conservation and protection of the funds of beneficiaries was possessed of. The degree of exhaustion to which the Brooklyn City has approached is attested to by your figures showing the amount of the income tax that was abstracted out of the dividend cash, to wit "$46,34.32".

The answer to question number three is very re-assuring and I look forward with a great deal of pleasure to the time when in your columns I shall see these shares listed at $1. side by side with the shares of The Central Park North & East River Railway Co. and shall once again have the pleasure of having my son send to Henry C. Knox, one of your directors and a one time friend of my late husband, another dollar for its purchase, to be retained by the said Mr Knox with dollar number One and make Two Dollars that he can lay away for the day when he is no longer a bank director and stands in need of an umbrella.

The answer to question number four is of even more than ordinary interest and confirms an impression that I have long held concerning your methods of informing your beneficiaries of the condition of the securities comprising your trusts. I will not say *their* trusts. You have had all of this knowledge that fills over a page and a half of your letter of the 15th inst, some of it since last September, and I was, through some occult form of reasoning best known to yourselves or to Guglielmo Marconi, expected to find it out by noting that my dividends no longer appeared on your quarterly statement. How did

Exhibit C-7.

I know when your one typewriter broke down and you had to send me this statement in long hand that you had not left that dividend out through sheer over exertion and weariness or perhaps have withheld it for purposes that it was not for me to know, much less to ask?

The answer to question number five leads me to ask you one more question which I will number, Number 9 of the series. Why, if your officials knew all of this concerning these shares was I not notified of it at the time?

The answer to question number six is very clear but if I take you at your word on that how am I to interpret your answer to question number seven? Do you mean to tell me that a value of $1. was placed on the shares of stock of the C P N & E Ry Co "by the executors of the estate of Sarah A. Cooke at the time they were turned over by the executors to the trustees" in 1906? Somewhere I seem to have seen something that does not quite agree with this statement so that I think that the answers to these two questions, numbers six and seven, are a little bit involved and throw rather a cloud on the question of values as expressed by your figures.

With the addition of one more question, number ten, to those already asked of you I will commit this to your considerate care and ask that you take it up with Mr. John L. Griggs and try and obtain for me a reply thereto. I would like to know what the Paterson Safe Deposit & Trust Company intends to do about this state of affairs in this one security. Exhaustion of funds, repudiation of leases, defaults in payments of fixed charges and other items make up an altogether comforting statement of affairs

concerning these shares, the present value of which you tell me nothing at all about. Perhaps your trust company does not know what it is going to do about it, perhaps it has not yet made up its mind, perhaps it has not any mind at all to make up. I recall an almost parallel case to this one that cost me a good cold Ten Thousand and more Dollars and proved to me that some persons did not possess a great amount more of brains than the law allows. I want to know what your trust company is going to do about this or if they are or are not going to do anything at all and I will expect your answer at your earliest convenience.

I am,

Very truly yours,
CARRIE S. BEAM.
(Mrs John R. Beam)

Exhibit C-8.

Paterson, N. J.,
April 24, 1920.

John L. Connolly. Sec'y.,
The Paterson Safe Deposit & Trust Co.,
#152 Market St., Paterson, N. J.

My dear Mr. Connolly:-

On April 16th last I wrote you a two page letter that to this writing I have not received any acknowledgment of from you nor any notice of its receipt from your trust officer, Mr. John L. Griggs.

As this matter is a matter of some importance I again ask you to present this request to your

Exhibit C-8.

trust officer and see if you can get for me a reply to my last letter. I want to know what the trust company is going to do about this Brooklyn City R R stock and also what your figures mean under the caption "Book Value". I can make nothing out of the statement sent me by you when it is taken in conjunction with John L. Griggs explanation of these figures. I also can make nothing, in fact somewhat less, out of the figures in your company's last account filed in the Orphans' Court for there I find no heading whatever. I don't know what any of the securities you hold are worth from the statements that are available to me for inspection. I want to know where I stand. I am entitled to this information and I am going to have it.

I also want to know something about this Max Gold mortgage that your statement shows was purchased on Nov 11, 1919. I want to know where the property is, in what book in the Register's Office the mortgage is recorded, what the property is worth, who this Max Gold is, why the Sharpe mortgage was sold and to whom it was sold and why I was not notified that the change was to be made or consulted about the making of it and asked for any preference that I might have as to the reinvestment of this money. I trust that if you are unable to answer this my second request since I last heard from your trust officer that I will be accorded the courtesy of a reply.

I am,

Very truly yours,

CARRIE S. BEAM.
(Mrs John R. Beam.)

Exhibit B. H. 1. for Iden.

State of New York,
County of Albany, } ss.:

William B. Beam of the City of Paterson in the County of Passaic and State of New Jersey, and Alfred D. Kelly, of City of Watervliet, County of Albany, State of N. Y., being duly sworn, depose and say, that:

1. On the 2nd day of December, 1922, at the Capitol in the City of Albany, New York, they examined the file there kept in the Executive Chamber in the matter of the "Petition for Removal from Office of the District Attorney of the County of New York", which said file they believe to be numbered 114-103.

2. Among said papers they found several printed copies of the petition in said matter of which the copy hereto annexed and made by the so-called "Photostat" process from a copy in the files of New York Public Library is a counterpart. They then and there compared the copy hereto annexed with said copies on file in the Governor's Office or Executive Chamber and found the subjoined copy to be identical with the same with the exception that the front and rear covers were lacking on the copy filed in said office and that upon one of said copies there filed there appeared numerous writings which they entered upon the subjoined copy and which now appear thereon in his (said William B. Beam's) handwriting. Another of said copies there filed was without said corrections and bore on the top of page 1 the stamp "Execu-

tive Chamber Rec'd Feb. 27, 1908, Ref'd Ans'd".

3. In addition to the copies of said petition there filed they found numerous letters on the letterhead of "Griggs, Baldwin, and Pierce, No. 27 Pine Street, New York" and signed "Franklin Pierce" addressed to Governor Hughes and pertaining to the said matter, bearing dates throughout the year 1908 and also a letter bearing date the 19th day of November, 1909 on the same letterhead and in regard to the same matter and addressed similarly but signed by Arthur J. Baldwin of said firm of Griggs, Baldwin and Pierce.

4. They also found among said papers another printed brief entitled,

"Before the Governor
In the Matter of the Charges
against
WILLIAM TRAVERS JEROME
District Attorney of the County of New York.

BRIEF FOR PETITIONERS

GRIGGS, BALDWIN & PIERCE,
Attorneys for Petitioners,
27 Pine Street,
New York City.

FRANKLIN PIERCE,
Of Counsel.

Printed by the
PRESS OF FREEMONT PAYNE
47 Broad Street
New York City"

page 1 of which said Brief was entitled:

Exhibit B. H. 1 for Iden.

"Before the Governor in the matter of the charges against William Travers Jerome, District Attorney of the County of New York.

"Argument of Petitioners before Hon. Richard L. Hand at Elizabethtown, N. Y., May 26, 1908."

5. They also found among said papers a typewritten brief backed with the back of the firm of "Griggs, Baldwin and Pierce, 27 Pine Street, New York", entitled in said matter, dated "June 29th, 1908" and concluding

"Respectfully submitted,
GRIGGS, BALDWIN & PIERCE,
Attorneys for Committe of Stockholders
of Metropolitan Street Railway Company.
(Signed) *Franklin Pierce*
Of Counsel."

6. They also found among said papers a printed letter addressed to the Metropolitan Stockholders and dated "Jan. 4, 1908", signed by the same persons whose signatures appear upon the copy hereto attached and by "Griggs, Baldwin & Pierce" as their counsel.

7. They also found among said papers a copy of a letter purporting to have been written by the same William F. King, whose name appears on the copy hereto attached to William Travers Jerome, dated "New York, Jan. 16th, 1908" and stating in part: "If you desire consultation in regard to this matter, I will be pleased to meet you, with Counsel, Mr. Baldwin and Mr. Kremer, and if they will consent will also be glad to have Mr. Wilcox and Mr. Ivins present."

Exhibit B. H. 1 for Iden.

8. They also found among said papers a copy of a letter addressed "To Editor Editorial Writers", dated Jan. 5th, 1907 and signed "Arthur S. Baldwin Griggs, Baldwin & Pierce" of similar purport to the circular letter mentioned in par. 6 *supra*.

9. They also found among said papers a brief marked "Original Exhibits Volume 1 A-Z and examination of which disclosed that Exhibits U, W and X thereof consisted of letters and reports prepared by Patterson, Teele & Dennis, Certified Public Accountants, of No. 30 Broad Street, New York; Kuchler & Teichman, Certified Public Accountants and Auditors, Baltimore, Md., March 23, 1903 and John C. Hertle of Hertle & Decker, Certified Public Accountants State of New York, No. 280 Broadway, New York, all relating to the matter of the said Metropolitan Street Railway and William Travers Jerome.

10. They also found among said papers a petition to the Governor of the State of New York, dated Sept. 22, 1907, bearing upwards of sixty signatures and relating to the said matters and which appeared to have been presented to the Governor by Bernard A. Rosenthal and a committee of citizens and among said papers was a letter from said Rosenthal written to the Governor of the State of New York in regard thereto some time thereafter.

11. They also found among said papers certain correspondence between the Bar Association of the City of New York and the Governor of New York relating to the return to them of exhibits loaned to Messrs. Griggs, Baldwin and Pierce in the said matter.

12. They also found certain correspondence

Exhibit B. H. 1 for Iden.

therein relating to the return to Messrs. Griggs, Baldwin & Pierce of upwards of 55 separate exhibits supplied by them in connection with said matter.

WILLIAM B. BEAM
ALFRED D. KELLY

Sworn and subscribed to before me this 2nd day of December, 1922, at Albany, N. Y.

JOSEPH E. MCNARY,
Notary Public,
Albany Co., N. Y.

State of New York,
County of Albany, Clerk's Office, } ss.:

I, IDA D. WARNER, Clerk of the said County, and also Clerk of the Supreme and County Courts, being Courts of Record held therein, do hereby certifiy, that Joseph E. McNary, whose name is subscribed to the jurat of the annexed affidavit, was on the day of the date thereof, a Notary Public, in and for the County of Albany dwelling in said County, duly authorized to administer oaths for general purposes; and that I am well acquainted with the handwriting of said Notary Public, and verily believe that the signature to said jurat is genuine.

I do further certify that the seal of Joseph E. McNary, by whom the foregoing affidavit was taken is not required by law to be filed in this office.

In testimony whereof, I have hereunto set my hand and affixed my official seal this 2 day of December, 1922.

IDA D. WARNER,
Clerk.

Petition For Removal From Office of the District Attorney of the County of New York

Before the Governor, Feb. 27, 1908.

Eugene G. Kremer

Griggs, Baldwin & Pierce

Attorneys for Petitioners

TO THE HONORABLE CHARLES E. HUGHES,

Governor of the State of New York:

The undersigned, a committee of Stockholders of the Metropolitan Street Railway Company, through our Chairman, William F. King, respectfully ask that William Travers Jerome, the District-Attorney of the County of New York, be removed from said office, because of the following facts:

FIRST:

Mr. Jerome, in a public speech delivered on October 26, 1901, when a candidate for the office of District-Attorney, said:

> "Let me tell you that if I am elected I "shall make it my business to follow the "trails of wrong-doing and corruption, not "only when they lead into tenement houses, "but I shall follow them even if they lead "into the office of the Metropolitan Street "Railway Company."

In the campaign for the re-election of Mr.

Jerome in 1905, he reiterated this promise, and said:

"Rest assured I will punish the enemies "of the people."

While he was reiterating these promises, and soon thereafter, the following facts existed:

In October, 1905, one William H. Tillinghast, who had been an employee of the Metropolitan Street Railway Company, confessed to Mr. Jerome or his assistant that he had been in the employ of said Railway Company, that he had for several years past sat as a juror in the trial of suits against said Railway Company, and had in each suit received from or through Stanley S. Bagg, an investigator during all the said times in the employ of said Metropolitan Street Railway Company and the New York City Railway Company, in each case sums of money which were paid to him at different places in the City of New York, and which were handed to him by the said Bagg, or someone in his behalf, in an envelope, as payment for his services as such juror. In November, 1905, said Stanley S. Bagg confessed to Mr. Jerome, or his assistant, that he, while in the employ of said Metropolitan Street Railway Company and said New York City Railway Company, and while assisting in the preparation and trial of damage suits, had on many different occasions paid money to the said Tillinghast while Tillinghast was acting as a juror on the trial of damage suits in which the Metropolitan Street Railway Company was the defendant. Bagg, in his confession to said Jerome, stated that some of said payments were approved by one Ambrose F. McCabe, one of the attorneys of

the Metropolitan Street Railway Company or the New York City Railway Company, who had tried several of said cases. These confessions were sworn to by Tillinghast and Bagg. *With this evidence in his possession, Mr. Jerome took no action during the months of November and December, 1905, and January, 1906.* In the latter part of January, 1906, A. Edward Woodruff, attorney at law, having heard that the District-Attorney was in the possession of such evidence and was taking no action thereon against Mr. McCabe and the New York City Railway Company, wrote a letter to Mr. Jerome asking whether it was true that the District-Attorney had the written confession of Tillinghast, and received a letter in response to his inquiry as follows:

"District Attorney's Office,
County of New York.
New York, February 6th, 1906.
A. Edward Woodruff, Esq.,
111 Broadway, New York City.

Dear Sir:—

Yours of the 23d ultimo has been referred to me by Mr. Jerome as I have had general supervision of this matter.

We have the written statement of Tillinghast, who served on numerous juries in Metropolitan Street Railroad Cases, although not a juror on the panel. His name appears as a juror in the clerk's minutes but not on the jury list of the Commissioners of Jurors.

These matters, however, began about

five years ago, and the last case, as I remember, that Tillinghast served on in this manner was in January, 1902. The corroborating evidence would have been amply sufficient to have found an indictment under subdivision 6, section, 168 of the Penal Code, but, of course, that offense being a misdemeanor, the statute of limitations had run long before our attention was called to the matter.

We also obtained a statement from an ex-employee of the Metropolitan Street Railroad that paid Tillinghast monthly. This man, however, was an accomplice, and it was impossible to obtain any corroboration of his statements implicating those higher up in the office who furnished him with this money.

It is only fair to state, as far as we have been able to ascertain, the present administration of the Metropolitan Street Railroad law department, under Mr. Quackenbush, has vastly improved in tone, and it is my opinion that he is endeavoring to correct all abuses to the best of his ability.

I am not aware that the records were ordered sealed, but they were taken into custody for preservation. They can, however, be inspected by you or by the committee of the State Bar Association if so desired.

Yours very truly,

Charles C. Nott, Jr.,
Acting District Attorney."

As a matter of fact, several of said cases in

the City Court, and especially the case of *Eichner* against *The Metropolitan Street Railway Company,* tried in the Supreme Court in May, 1904, wherein said Tillinghast had sat as a juror, had been tried within the period of two years, and the alleged offenses of Mr. McCabe, an attorney of the Company, were in fact felonies. Tillinghast had sat in the City Court as a juror in *twenty cases* wherein the New York City Railway Company and the Metropolitan Street Railway Company were defendants, within the five years preceding his confessions to the District Attorney, and in each of these cases he had been paid money by Bagg, according to his testimony. He had also sat as a juror in the Supreme Court in several of the Company's cases.

No action having been taken by the District Attorney on the 23rd day of February, 1906, Tillinghast was brought in the forenoon of that day before Mr. Justice Seabury, then a Judge of the City Court, and his statement as to these facts taken. On his return to his home he was met by an officer with a warrant to arrest him for a misdemeanor in recently personating one Henderson, another juror in the City Court, and Mr. Jerome, although he had confessed to him, caused him to be taken before the Court of Special Sessions as quickly as it could be accomplished, and as he, upon his own admission, had personated such juror at a recent date in the City Court before Judge O'Dwyer, he was at once sentenced to three months imprisonment.

At about this time Mr. Jerome communicated with Judge Seabury, arranged for a conference

at lunch, assured Judge Seabury that he would aid him in tracing this trail into the New York City Railway Company's office, and a proceeding, *"The People on the complaint of Louis E. Julian against Ambrose F. McCabe"* was instituted in the City Court before Judge Seabury sitting as a magistrate. Judge Seabury permitted Mr. Jerome to subpoena, through the District-Attorney's office, the witnesses to be brought before him. Among those witnesses, Stanley S. Bagg, who claimed to have received the money paid Tillinghast from Ambrose F. McCabe, an attorney of the Railway Company, was the most important witness. The District-Attorney held the sworn statement of Bagg that McCabe had paid this money to Bagg on different occasions for the juror Tillinghast. Stanley S. Bagg, at the request of the District-Attorney, came to his office on the morning of March 26 1906, the day set for the examination before Judge Seabury. He accompanied Mr. Jerome to the chambers of Judge Seabury in the City Hall. Mr. Jerome said to Judge Seabury, "I have brought Mr. Bagg," but gave him no intimation that Bagg's testimony would be different from what it had been when given before his assistant. Mr. Jerome conducted the examination on the part of the People. The first witness called was Louis E. Julian. Mr. Jerome, in behalf of the People, offered Julian's deposition taken before the magistrate on the 23d day of February, 1906, in evidence, and Julian then testified that the facts therein stated by him, namely, that he had heard a conversation between Stanley S. Bagg and Ambrose F. McCabe wherein McCabe had given

$40 to Bagg on a certain day, to be paid to a juryman, was true.

Thereupon, Mr. Jerome proceeded, as appears from the stenographer's minutes, as follows:

"Q. I now hand you three instruments
"in writing marked respectively Plaintiff
"Exhibits C, D and E, for identification,
"and ask you if you ever saw those papers
before?"

Exhibits C, D and E were checks which had been given by Julian and which had not been paid, and they were handed to him and afterwards offered in evidence by Mr. Jerome for the purpose of discrediting him as a witness for the People.

Objection having been taken by Mr. Stevenson, an attorney, who had appeared as counsel for Mr. Julian, Judge Seabury said: "Is it claimed that they bear any relation?"

Thereupon, after some discussion, Mr. Jerome said:

"Would it weigh in your Honor's mind
"at all, or would it not, if it appeared that
"this witness was a man of such character
"that his word could not be believed under
oath?"

"The Court: As I understand this pro-
"ceeding, this is not a trial of the com-
"plainant's witness. After the complainant
"has given his testimony, then I think it is
"quite proper that full latitude should be
"allowed the witness, to determine whether
"his testimony is credible; but I certainly
"do not think that we should commence
"proceedings by an attack upon the com-
"plainant.

Griggs's Petition for Jerome's Removal.

"Mr. Jerome: Your Honor is a judicial "officer sworn to determine on evidence. "One of the elements of evidence is its cred- "ibility. I am *quasi* judicial, and I am "sworn to see even-handed justice done to "the people of the State of New York, and "any defendant; that is simply my duty "here. I do not know whether this man "McCabe, at the Bar, is a guilty man or "not, but in my humble judgment it would "go largely in my mind to determine "whether he was a guilty man or not if it "should appear whether the person who "brought the charge against him was actu- "ated by sinister motives or not, and how "am I to be asked, if your Honor should "determine to hold this man charged with "this crime, to be asked to go before the "Grand Jury and seek his indictment, when "I have in my possession evidence which "bears on the credibility of that witness; "I would not be acting in good faith to "your Honor, or just, or doing right to allow "your Honor, an upright judge, trying to "do his full duty, to suppress facts within "my knowledge in regard to this case."

Then Mr. Jerome, having introduced Mr. Julian's deposition before Judge Seabury, and having done all in his power to discredit Mr. Julian before Judge Seabury, said that he had no further questions to ask; and the defendant's counsel, Ex. Judge Hatch, took up the cross-examination where it had been left by Mr. Jerome.

When the witness, Stanley S. Bagg, was called to the stand, Mr. Jerome said:

"It is testified to here in this affidavit of "Mr. Julian that this man was present at "certain conferences between McCabe, Ju- "lian and his brother, George Bagg. I "have not until this morning talked to this "man. I asked him one question—whether "what I read to him from this affidavit "was true, and he said it was not true *in* "*toto.* And I then asked him if he had not "made a contrary statement in our office, "and he said he had made a contrary state- "ment in the office. The first statement "he made, he said, was he knew nothing "about it, and later he made a contrary "statement, and he had freely told me "about it, and I suggested that he should "keep the story to himself in substance, "and said, 'You keep the story to yourself in "substance until you get before Judge Sea- "bury, as I do not care to know anything "about it.' He is now produced here as a "witness. I know nothing about what the "man knows or can tell."

"Judge Seabury: What statement is "that the one of November 27th?"

"Mr. Jerome: The one in which he said "his first statement was true."

During the cross-examination of Stanley S. Bagg by defendant's counsel, Judge Hatch, the question of the existence of a voucher for $40, claimed by Mr. Julian to have been paid by Mr. McCabe to Stanley S. Bagg for the juror Tillinghast, was discussed, and the following colloquy took place between Mr. Quackenbush, the attorney of the Railway Company, the Court, and Mr. Jerome:

"Mr. Quackenbush: You requested me "to furnish information, and I now offer "to furnish anything your Honor asks, and "I offered it long ago, and I supposed your "Honor believed in my offer in good faith, "and I repeat it, so that there will be no "misunderstanding that anything you re- "quire of me will be produced."

"The Court: If you will produce the "vouchers in the case of Eichner against "the Metropolitan and in the case of "Eichenbrod and in the cases of Lowen- "bein and Flannery, the individual vouch- "ers in those cases, it would facilitate the "efforts of the Court."

"Mr. Quackenbush: You make that state- "ment knowing, as I said to you, I cannot produce those vouchers."

"The Court: I say to you, you have not "produced those vouchers."

"Mr. Jerome: The District-Attorney now "withdraws from this proceeding. I have "heretofore tried to conduct myself with "propriety, but when your Honor was in- "formed by my assistant that he endeav- "ored to get those vouchers, and that they "were disposed of after a year—"

"The Court: Do you realize that there "is no proof presented at all that those "vouchers have been destroyed? That is a "mere statement, but there has been no "evidence presented to that effect."

"Mr. Jerome: But this is a public chal- "lenge to a gentleman, because Mr. Quack- "enbush is a gentleman, and his word may "always be taken."

"The Court: I don't care to be lectured "by you, and if you don't care to partici- "pate in the matter you may withdraw. "Have you any other questions to propound "to this witness Bagg?"

Mr. Jerome then withdrew from the case, after 194 pages of testimony had been taken. He did not institute any prosecution against Stanley S. Bagg for perjury, but the witness Louis E. Julian was soon arrested in connection with the checks referred to and was discharged.

342 pages of testimony were taken upon this examination, and we submit herewith * the stenographer's transcribed notes of all the evidence taken. The parts quoted from are found in Volume I, pages 2 to 6, pp. 116, 117, 193, 194 and 195.

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*Note—On the original, there appears in writing "not as part of the charge but for your examination."

SECOND:

In the latter part of the year 1900 the case of *Sparling against the Third Avenue Railway Company,* an action to recover damages because of the defendant's negligence, was being tried before Mr. Justice O'Gorman in one of the parts of the Supreme Court, in the County and City of New York. Upon the jury was one Charles Winters. Mr. Henry M. Ward, an attorney of high character, was defending the case in behalf of the Third Avenue Railway Company. In the midst of the trial, Captain Truman, at that time connected with the Third Avenue

Railway Company, communicated to Mr. Ward that a son of Mr. Winters had appeared at the Third Avenue Railway Company's offices and had communicated with some of its officials, saying that his father was upon this jury and could control the action of the jury, and would procure a disagreement of the jury or a verdict for the defendant, if he could be paid therefor. Mr. Ward at once called the plaintiff's counsel to the presence of the Presiding Judge and disclosed these facts and asked for his advice. Judge O'Gorman, deeming it of great importance to put a stop to such practices, advised the counsel to continue the case, to encourage the son in his efforts, and when the father appeared to receive his money, at the end of the case, to procure his arrest. A small compromise verdict was brought in by the jury. Immediately Mr. Winters, a man of considerable property, appeared at the office of the Third Avenue Railway Company, he asked for his money, and was told by the official in charge that he had not carried out his part of the agreement, that the jury had brought in a verdict, when the offer was to procure a disagreement or a verdict for the defendant. He protested that it was impossible to procure a verdict for the defendant, and that he got the verdict reduced, and that he had earned his money and ought to have it. Thereupon a compromise upon $50 for Mr. Winters was made; the money was handed to him in marked bills, he was arrested at the door of the office by a detective, the marked bills were taken from his pocket and preserved, and he was thereafter indicted, and upon the indictment in the Clerk's office are the following endorsements:

"The defendant Charles Winters is "charged with taking a fee to influence his "action as a juror. The evidence is that "said defendant refused to receive the "marked money offered him as a bribe. It "was then thrust in his pocket by complain- "ant, and later said defendant was ar- "rested. Complainant cannot testify to "facts which prove that said defendant "knew the money to be in his pocket. In "view of the insufficiency of the proof that "any crime was committed, the dismissal "of the indictment against Charles Winters "is recommended.

"Part I, April 30, 1902.

W. A. Smyth,
D. A. D.A.

"I concur,
Robert Townsend,
A. D. A.

"Approved:
William Travers Jerome,
District-Attorney.

"April 30, 1902."

"April 30, 1902.

"On motion of District-Attorney, indict- "ment against Charles Winters is dis- "missed.

"J. E. N."

THIRD:

One Jacob J. Hecht attended as a juror at a trial term held in Part III of the Supreme Court in the County of New York on the first Monday of December, 1902. He had been ac-

quainted, for some time before he was summoned, with one Harry Kaufmann, an investigator or a person who prepared cases for trial on the part of the Railroad Company. While Hecht was sitting in the Court room of Part III, in the early part of the term, Kaufmann passed him, and in the very presence of the Court said to him:

> "If you get on the Smith case, I want "you to stay on it. I have a special inter- "est in it."

At about 2 o'clock of that day the case of *Wright Smith against the Metropolitan Street Railway Company*—that being the case referred to by said Kaufmann—was called and a jury impanelled, and the said Hecht sat as a juror in the case.

Later in the term the case of *Green against the Metropolitan Street Railway Company* was tried. The case had been tried four times before the trial in question. In two of the prior trials the jury had disagreed. The trial commenced upon Thursday, in the latter part of December, continued on Friday, and was adjourned until Monday. On Monday the juryman, Jacob J. Hecht, who had been drawn as a juror in that case, and was at that time sitting upon the jury, communicated with the Hon. James J. O'Gorman, the presiding judge, saying to him that upon the intervening Saturday he had been approached by Harry J. Kaufmann on his way to lunch and asked to stand by the Metropolitan Street Railway Company in the *Green case;* that he reprimanded said Kaufmann therefor, and that he thought it his

duty to communicate this fact to Justice O'Gorman. The witnesses's testimony was taken in full at the intermission of the Court on Monday, and by consent of counsel on both sides, he returned to the jury, and a verdict of $10,000 damages for the plaintiff was returned by the jury.

Thereupon Mr. Justice O'Gorman made an order directing Harry Kaufmann to appear before him and show cause why he should not be punished for his contempt of Court.

The contempt in the Smith case, having been in the very presence of the Court, was urged with the greater vigor, and the Court, after hearing a large number of witnesses found Mr. Kaufmann guilty of contempt and fined him $250.

In February, 1903, the papers and affidavits used upon the motion, together with the testimony taken before Judge O'Gorman, were turned over to the District-Attorney's office, but no indictment was procured and Kaufmann was not punished for his offense, although he had been found guilty of the act in the contempt proceedings.

FOURTH:

In July, 1903, one L. B. Treadwell, an attorney-at-law, submitted to Mr. Jerome, as District Attorney, the written confession of one Louis Scharfman; that he and a certain Barney Apparto and others, in a suit brought by one Abraham Bortz against said Railroad Company, had testified falsely, and that they had been paid therefor by the employees of the Metro-

politan Street Railway Company. On two occasions thereafter the said Treadwell brought said Scharfman to the office of the District-Attorney and urged the prosecution of the employees, whose names had been given to the District-Attorney; but no action was taken, and soon thereafter said Scharfman and Apparto left the State of New York.

FIFTH:

In the year 1905 a committee, known as the Armstrong Committee, sent by the Legislature of the State of New York to investigate the condition of the Life Insurance Companies of New York City, through its counsel, developed hundreds of violations of the criminal law and disclosed beyond question that the insured in these companies had been defrauded out of millions of dollars. Great indignation existed in the community over these terrible wrongs, and with almost one acclaim the people demanded punishment of the officials of the companies, however high their position, however much wealth they possessed.

In the midst of this excitement Mr. Jerome was nominated by an independent body of citizens for the office of District-Attorney. The issue which he made was the sure punishment of these recreant officials in the Insurance Companies, especially those who had contributed money to campaign committees. On October 31, 1905, one week before election, he made a public statement of his intentions, as follows:

"I have felt all along in regard to these "insurance matters, that crimes have been

"committed and that the persons guilty of "these crimes must be prosecuted, and it is "my intention, as I have said on several "occasions, to prosecute to the bitter end "every person against whom it is possible "to obtain evidence showing the commission "of a criminal offense."

Again he said in that campaign:

"When Hughes is through with the in- "surance inquiry, justice must be done in "the land, and it must fall upon those who "are guilty, be their station what it may."

He assured the people that the attorneys in charge of the insurance investigation concurred in his delay until the investigation was completed. The investigation was completed in the latter part of December, 1905. Mr. Jerome, however, delayed taking any action against these officials until the March Grand Jury, and then, instead of presenting the facts to the Grand Jury in the usual manner and asking an indictment, he prepared a series of hypothetical questions, all of which, upon their face, must as a matter of law have been answered in favor of the men who had given over the trust funds of their several companies to the chairman of the national campaign committee, and he presented these hypothetical questions to the Judge in Part I of the Court of General Sessions, and asked him for an answer thereto. The learned Judge, sitting in that Part, declined to answer categorically those questions, but said to the jury:

"Was it an honest transaction, actuated

"by commendable motives, or did they act "under artifice, disguise and concealment? "From the facts you will get the character "of the intent. Did the parties concerned "sincerely believe that they were acting "for the best interest of the persons whose "property was intrusted to them? Was "their conduct in the proceeding that of "men actuated by commendable motives, or "did they proceed subtly, furtively, cor-"ruptly, craftily, with duplicity, artifice, "deceit and concealment? These are all "questions which you may consider in de-"termining the character of the intent."

The District-Attorney seemed to regard these words as equivalent to an instruction to indict, and he said to the Presiding Judge:

"Your Honor has in substance so charged "this jury that, if they take your advice "rather than mine, they will indict these "people, and I want to place this thing, be-"fore so serious a step is taken, where a "Court of final resort can pass on it."

The March Grand Jury did not indict, and the April Grand Jury, with Recorder Goff presiding, received a charge upon the same matter similar to that of Judge O'Sullivan's. Before this Grand Jury, (the April Grand Jury) Mr. Jerome commented upon the great injury which an indictment would do the defendant if he was innocent; stated to them that he had talked with a number of judges of the Supreme Court and with competent lawyers, and had given much careful reflection and study to the matter,

and that it was perfectly plain that the facts did not constitute larceny; assured the jury that in the last Grand Jury not a single vote out of the whole Grand Jury to indict could have been procured; told them that an indictment would practically involve the chief financial officials of every great financial institution in the country; and that he should move before Judge Dowling for a special Grand Jury to consider these matters, and thus delayed action on the part of the April Grand Jury.

On or about the 27th day of March, 1906, Mr. Jerome placed before Joseph F. Moss, a City Magistrate of the First Division of the City of New York, an affidavit of Darwin P. Kingsley, Vice-President of the New York Life Insurance Company; an affidavit of Edwin D. Randolph, Treasurer of the New York Life Insurance Company, *and a letter of that date, written by George W. Perkins,* the defendant, who had paid upwards of $148,000 of stockholders' money to Cornelius N. Bliss, the Chairman of the National Republican Committee in 1904; *and upon this evidence, and this only,* a warrant was issued for the arrest of Mr. Perkins; a writ of *habeas corpus* and a writ of certiorari were at once issued, and Mr. Perkins and the record were brought before Mr. Justice Greenbaum to determine the sufficiency of the papers on which the arrest had been made.

The statement on which the arrest was based, made by Mr. Perkins, was unverified, *and was in the nature of a simple letter,* to the District-Attorney, and the following quotation is made from that letter:

"On December 30, 1904, a check to the "order of J. P. Morgan & Co. (of which "firm I was a member) was drawn by the "treasurer and assistant-treasurer of the "New York Life Insurance Company, by "order of the President, as I have since "learned, and was delivered to J. P. Mor- "gan & Co., and credited to my account. "Until the hearings before the Armstrong "Investigating Committee in September, "1905, I knew nothing of the bookkeeping "entries which had been made in the books "of the New York Life Insurance Company "with respect to such payment.

"When I made the advances above men- "tioned, and when I was reimbursed there- "for, it never occurred to me that there "could be any question as to the propriety "of such expenditure, which I believed to "be for the benefit of the Company. It has "come to me as a total surprise that the "legality of such payments should be ques- "tioned. While so asserting, it is not my "intention to dispute or to deny civil liabil- "ity to account to the Company for these "moneys.

"You may make such use of this state- "ment as you see fit. It is my purpose to "frankly state my connection with the "transaction, and advisedly and deliber- "ately I waive any right, privilege or im- "munity in connection with or in conse- "quence of my giving this information.

"I derived no personal advantage of any "kind from the transaction; and certainly "I had no intent other than to serve the "interests of the Company."

Thus, Mr. Jerome made, as the very foundation of his right to arrest Mr. Perkins, the statements of Mr. Perkins, apparently carefully prepared by his counsel, declaring his innocence, declaring his innocent intent, declaring that the illegality of such payments was a surprise to him, and which, taken as true, destroyed the felonious intent, the gravamen of the crime.

In the Court of Appeals, there being three dissenting judges, the four prevailing judges believed that, admitting these facts in this letter of Mr. Perkins to be true, as they must be regarded, the crime of larceny did not exist. Mr. Justice Gray, one of those four judges, said:

> "Furthermore, the prosecution in making "use before the magistrate of the relator's "letter to the District-Attorney, as an ad- "mission of the facts of the transaction "complained of, not only made the fact "clear that the moneys were paid out to "satisfy the relator's claim, but, also, "caused it to appear affirmatively that the "relator had acted in the honest belief that "he was benefitting the company and had "derived no personal advantage."

Mr. Justice Hiscock, one of the other four judges, writing a concurring opinion, said of this letter of Mr. Perkins:

> "It affirmatively disproves the existence "of any criminal intent upon the part of "the relator."

Every fact which would relieve the defendant Perkins from the penalties of the law was thus

placed in his letter and voluntarily submitted to the magistrate by the District-Attorney as the foundation of the criminal proceedings against Mr. Perkins.

(We herewith submit * for your Honor's examination a certified copy of the hypothetical questions and the charge of Judge O'Sullivan to the March Grand Jury; the charge to the jury on their return from time to time for instructions; a certified copy of the charge of Recorder Goff to the April Grand Jury; *and a certified copy of the comments which Mr. Jerome made to the April Grand Jury upon the action of Judge O'Sullivan and of Recorder Goff*).

SIXTH

On June 25th, 1904, the New York Life Insurance Company sent to Kidder, Peabody & Co., of Boston, $930,000, and on June 27th, 1904, Kidder, Peabody & Co., acknowledged the receipt of this money and stated that they were sending by registered mail to the Insurance Company $1,000,000 Mexican Central Railway Company, Limited, five per cent. gold bonds due July 21st, 1929, purchased with this sum of money. These bonds were purchased by the New York Life Insurance Company and were disposed of by Kidder, Peabody & Co. in August of the same year at a profit of $40,000. This $40,000 was, together with interest on the bonds and amounting to $40,193.60 transmitted

*Note—On the original, there appears in writing "not as part of this charge but"

by Kidder, Peabody & Co. to the New York Life Insurance Company on the 17th day of September, 1904.

The transaction appeared on the books of the New York Life Insurance Company as a purchase and a sale by them of these Mexican bonds but the books do not show any profits therefrom. The profits of $40,000 were turned over to George W. Perkins, and the transaction did not appear upon the books of his firm, J. P. Morgan & Co., or upon any books of George W. Perkins individually or otherwise, and when Mr. Perkins was asked, before the Armstrong Committee, as to his right to receive said $40,000 profits he was unable to give any reason except that he held the money for a fund called the "Nylic Fund," of which he was trustee, a fund created by the salaries and bonus of two hundred and twenty agencies and directors.

The New York Life Insurance Company had made contributions to the fund but they had always been made by a vote of the Board of Directors or the Governing body of the New York Life Insurance Company. This $40,000 profit upon the Mexican bonds was turned over to Mr. Perkins by the President of the New York Life without any action of his Company, and apparently without any knowledge on the part of the Company, and it was received by Mr. Perkins and used by him as his own money and no entry was made of the receipt as belonging to the "Nylic Fund," and no reason was given for its alleged diversion to that purpose.

This transaction was called to the attention of Mr. Jerome at least two years ago and no action has been taken by him to indict and

convict Mr. Perkins for this apparent crime of grand larceny.

SEVENTH.

Officers connected with the Equitable Life Assurance Society and the Mutual Life Insurance Company contributed in behalf of each of their companies, $50,000 to the National Republican Compaign Fund of 1904. Other sums, at different times, were paid by the officers thereof to Mr. Platt for political purposes.

James H. Hyde and his associates received syndicate participation profits where the Equitable Life Assurance Society was the real party and devoted them to their own purposes in the Lackawanna Steel Company in the amount of $26,563.11 (see pages 2009-2025 of Insurance Investigation Committee's Minutes). They received $18,542 which belonged to the Equitable Life Assurance Society in the syndicate for the sale of the Chicago, Burlington & Quincy bonds (see testimony pp. 1107, 2948, 2945-2965, Vol. 1 of Exhibits, pp. 259, 261-264; Exhibits 169-175).

In the Japanese Bond purchase Hyde and his associates received upwards of $20,000 of profits which belonged to the Equitable Life Assurance Society (see testimony of H. R. Winthrop, pp. 1152-1154, Exhibit 187, Vol. 1, of Exhibits, pp. 179-180).

In the syndicate for the purchase of the Pennsylvania, Baltimore & Washington Railroad bonds and the Long Island Railroad 4% bonds, they received other large sums of money

which belonged to the Equitable Life Assurance Society, which had made all the outlay and taken all the risks of the syndicate. (See testimony of H. R. Winthrop, pp. 1071-1149, 1152-1154; J. H. Schiff, pp. 1345, 1346; Exhibit 186, Vol. I of Exhibits, p. 278).

In the Rio Grande & Western Railroad Company 4% bond syndicate, J. W. Alexander, George H. Squier and other officers of the Equitable Life Assurance Society received considerable profits belonging to their Company.

In the Chicago & Northwestern 3½% bond syndicate, in the Baltimore & Ohio, the Pittsburgh, Lake Erie & Western syndicate Alexander and Squier received profits of the syndicate which belonged to their Company.

In the Metropolitan Securities Company syndicate, the Oregon Short Line bond syndicate, the Pennsylvania Railroad share syndicate and many other syndicates, Hyde, Squier and McIntyre received large profits which belonged to their Company and for which their Company had taken the entire risk. (See testimony of Jacob H. Schiff, p. 1332, of Vol. II of Legislative Insurance Investigation Committee.)

Millions of dollars were actually taken from the Mutual Life Insurance Company and from the New York Life Insurance Company through Andrew Hamilton, Andy Fields and President McCurdy and his son and his son-in-law by means of artifice and fraud and wrong perpetrated upon their respective companies, which practically amounted to grand larceny.

As one after another of these crimes were brought to light all the world looked to Mr. Jerome, as the District-Attorney of New York

County, to punish them through the criminal law. He excused his delay before January 1st, 1906, by saying that the Committee did not want him to prosecute these wrong doers criminally until they had completed their labor. At last in March, 1906, he submitted his hypothetical questions to Justice O'Sullivan, but refused to produce evidence before the Grand Jury. He repeated this performance in April. He then demanded a special Grand Jury and got it. He then concluded not to avail himself of the Grand Jury but to make an investigation himself and reported that he found "moral obliquity," not criminal acts. He then changed his mind and demanded another Special Grand Jury and got it. He then announced that he was intending to obtain the help of eminent counsel, who promptly declined. He then demanded another Special Grand Jury and got it, but through it all he did nothing practical and has done nothing practical until the present day except to convict Dr. Gillette, not for his offenses in connection with the Mutual Life Insurance Company, but for perjury because of his testimony before the Grand Jury at one time being contrary to his testimony given before the same Grand Jury at an earlier time.

During all this time public spirited citizens, leading newspapers in New York and in other parts of the United States have been urging the District Attorney to punish these criminals in the three large insurance companies and he has still avoided bringing any of them to trial and conviction, with the exception of Dr. Gillette.

EIGHTH.

By February, 1902, the affairs of the Metropolitan Street Railway Company had become so bad that dividends could no longer be paid out of the earnings, and some means must be devised whereby dividends could be paid without danger of violating the criminal law. Mr. William C. Whitney and Mr. Thomas F. Ryan and others owned large blocks of the stock of the Metropolitan Street Railway and if the true condition of affairs became known the stock would become of little value. To continue and to enable them to unload their stock Mr. Whitney, Mr. Ryan, Mr. Dolan, Mr. Widener and others formed a criminal conspiracy to continue the credit of the Railway Company, to unload their stock and to strip the Metropolitan St. Railway Company of upwards of $20,000,000 of securities, which it then held, before its bankruptcy was known. These men conspired criminally together, made the public statement that to pay off the unfunded debt of the Metropolitan Street Railway Company and to make improvements of the plant, would require $23,000,000. The company at that very time had securities which could have been sold in the open market for that amount. Notwithstanding this, the Metropolitan Securities Company was formed as a holding company; the stockholders of the Metropolitan Street Railway Company were graciously allowed to purchase about $23,000,000 of its stock of $30,000,000 at par, when the market value of the stock was considerably above par and for securing them to purchase that stock at that price and for the sale of the

remaining $7,000,000 or thereabouts to themselves, Kuhn, Loeb & Co. received $1,500,000.

The New York City Railway Company was incorporated, its stock being held by the Metropolitan Securities Company, and leased the Metropolitan Street Railway Company, the Metropolitan stockholders receiving in lieu of dividends interest upon the stock which they held at 7%. The insolvency of the Metropolitan Street Railway Company; the object of the Metropolitan Securities Company; the whole transaction, as we know it to-day, was fully disclosed by Mr. Amory to Mr. Jerome in 1903. The reports of two experts showed the condition of the Metropolitan Street Railway Company and showed that it had been criminally plundered by alleging moneys to have been paid out which had not been paid. Mr. Jerome, however, would not believe this, and to confirm his disbelief procured a third expert to criticize the reports of the other two. The criminal conspiracy to divert the property of the Railroad Company into the hands of a few men was allowed by Mr. Jerome to go on, and hundreds of stockholders in New York and all parts of the country were robbed of their money. Finally the Company destroyed its books existing before 1902, to hide the stealing, and that offense is said to be outlawed.

We herewith submit * a copy of the statement of Col. Wm. N. Amory, submitted in 1903 to Mr. Jerome, showing the condition of the Metropolitan Street Railway Company and the condition of its affairs as described above.

*Note—On the original, there appears in writing "not as part of this charge but for your examination."

NINTH.

In August, 1898, Anthony N. Brady arranged with the Central Trust Company of New York to purchase from it the securities and franchises of the Fulton, Wall Street & Cortlandt Street Ferries Railroad Company. He paid for the stock, bonds and franchises $200,000. Together with Thomas F. Ryan, who apparently was interested in the franchises, Brady borrowed $200,000 from the Central Trust Company for the purpose of paying for the franchises. In May, 1902, he sold these franchises to the Metropolitan Securities Company for $250,000, and on May 21st the papers connected therewith were delivered to the attorneys of the purchaser.

On May 22nd, 1902, the attorneys of the parties delivered to Mr. Brady a check of the Metropolitan Securities Company *in the sum of $965,607.19*. The check was accompanied by a memorandum stating that the difference between the amount due Brady for the franchise and the amount of the check was to be disposed of as follows:

Moore & Schley, Brokers.....	$134,028.92
William C. Whitney	111,652.79
Thomas F. Ryan.....	111,652.78
Thomas Dolan	111,652,78
P. A. B. Widener	111,652,78
William L. Elkins	111,652,78

The check, when found in the recent investigation, was accompanied with the following statement:

"The annexed check and voucher for $965,607.19 represents the amount paid to

Anthony N. Brady on May 22d, 1902, for the securities ($1,000,000 of stock and $1,000,000 of bonds) of the Wall & Cortlandt Street Ferries Railway Company, which owned a franchise from Wall Street Ferry to Cortlandt Street Ferry. The purchase was made by the Metropolitan Securities Company, pursuant to the contract of February 14, 1902, which provided for the acquisition of the securities of the Interburban Street Railway Company, the Wall & Cortlandt Street Ferries Railway Company, and other companies mentioned in said contract. The purchase was reported to the Board June 10, 1902."

On May 6th, 1902, Mr. Ryan was elected a member of the Board of Directors of the Metropolitan Securities Company. On October 21st, 1902, a check to the order of *cash* in the amount of $540,000 was drawn on the Metropolitan Securities Company and was paid to the President of the Company, H. H. Vreeland. This amount was then fraudulently entered in the books of the Metropolitan Securities Company as payment of certain alleged claims against the Wall & Cortlandt Street Ferries Railway Company. (See Record of Public Service Commission, pp. 1601-1818, pp. 1718-1721).

Mr. Jerome was furnished with two copies of the testimony taken before the Public Service Commission. He was in complete possession of all the facts in the case as above detailed. Eleven days after the $540,000 check transaction was brought to the attention of Mr. Jerome, a transaction indicating larceny, the statute of limitation intervened as to some of the parties, and no

action has been taken by Mr. Jerome. Thomas F. Ryan is a resident of the State of Virginia, and probably the statute has not run against his offense in taking this sum of money belonging to his company for that reason. Or, if it be held that the statute did run against him, while he was a non-resident, his absence from the State for a period since the crime occurred, of eighteen months, might be invoked. Mr. Widener and Mr. Dolan are still living and are residents of the State of Pennsylvania.

The District-Attorney has been urged by your petitioners again and again to prosecute Mr. Ryan, Mr. Vreeland, Mr. Widener and Mr. Dolan, but he has as yet taken no steps and maintains that such prosecution would probably be unavailing.

TENTH.

In the years 1902 and 1903 Thomas P. Fowler, Paul D. Cravath, Edward J. Berwind, George G. Haven, Herbert H. Vreeland, Edward W. Sayre, Mortimer L. Schiff, Thomas F. Ryan, Peter A. B. Widener, Thomas Dolan, John D. Crimmins entered into a combination and conspiracy to appropriate to the use of the Metropolitan Securities Company millions of dollars out of the capital of the New York City Railway Company without the Metropolitan Securities Company giving any consideration therefor, in which conspiracy all of the above named defendants either at these times or subsequently, joined and participated with full knowledge of the nature and purposes of said conspiracy. Pursuant to said conspiracy and

with the purpose and intent to rob the New York City Railway Company of its property, these defendants concocted and consummated the wrongful, illegal and criminal scheme hereinafter set forth to get from said New York City Railway Company, of which many of them were directors, the sum of $2,797,200.

This criminal scheme to rob the New York City Railway Company was accomplished in the following manner: Mr. Fowler, Mr. Cravath, Mr. Haven and Mr. Berwind, mentioned above, all of whom were directors of the Metropolitan Securities Company, were, together with four dummy directors and one director who has since died, the directors of the New York City Railway Company. An agreement had been made between the New York City Railway Company and the Metropolitan Securities Company, that the New York City Railway Company would issue $15,000,000 face value of ten year 3% debenture notes of the New York City Railway Company and sell them at 70% of their face value to the Metropolitan Securities Company, *with the right to the City Railroad, however, although they were ten year notes, to redeem them at any time.*

These two boards of directors being practically the same and acting in collusion and conspiring criminally together to take over the property of the New York City Railway Company to themselves, issued on or about the 23rd day of April, 1902, $3,300,000 face value of said ten year debenture notes of the New York City Railway Company to the Metropolitan Securities Company for $2,310,000, or 70% of their face value, and on July 8th, 1902, the same persons,

as directors of the two railway companies, provided for the redemption of said notes by paying therefor out of the capital of the New York City Railway Company $3,300,000, being the full face value of such notes. The difference, amounting to $990,000, was taken over by the Metropolitan Securities Company for the value of its money from April 23rd, 1902, to July 8th, 1902; or, in other words, the New York City Railway Company paid the Metropolitan Securities Company, through this conspiracy of the directors of both roads, $990,000 for the use of $2,310,000 for a period of less than three months. The same process of taking the property of the City Company was repeated on the 5th day of June, 1902, when $3,300,000 face value of said ten year debenture notes of the New York City Railway Company were issued to the Metropolitan Securities Company and were taken over by the Metropolitan Securities Company for $2,310,000 or 70% of their face value. And on the 8th day of July, 1902, $1,800,000 of these notes were redeemed at their face value by the New York City Railway Company, and on the 29th day of December, 1902, the remaining $1,500,000 were redeemed, again taking from the company thereby the sum of $990,000. The said sum being practically for the use of the money advanced by the Metropolitan Securities Company for this short period of time.

That shortly thereafter and during a period of time between the 12th day of November, 1902, and while many of the directors of the Metropolitan Securities Company were acting as directors of the New York City Railway Company and were controlling both companies, another loan

of the face value of $2,724,000 through said ten year notes was issued by the New York City Railway Company to the Metropolitan Securities Company out of which, by redeeming the same in a short period of time, the sum of $817,200 was secured to the Metropolitan Securities Company, making all told the sum of $2,799,200 thus procured by the Metropolitan Securities Company through the collusion of its directors with the same directors sitting upon the New York City Railway Company board and its control over both said companies.

We herewith submit * the bill of complaint of *Adrian H. Joline and Douglas Robinson, as Receivers of the New York City Railway Company, complainants against the persons whose names are given above,* recently brought in the United States Circuit Court for the Southern District of New York, for a complete description of this criminal conspiracy, wherein it will appear that not only did the Metropolitan Securities Company rob the New York City Railway Company of these millions of dollars, but they paid for the very notes which were issued to them out of the property of the New York City Railway Company.

This robbery of the New York City Railway Company by the directors of the Metropolitan Securities Company and of the New York City Railroad Company by collusion and conspiracy between them has been called to the attention of Mr. Jerome. The newspapers of New York have given great publicity to this action and

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the facts have been laid before him and he takes no action for the punishment of these conspirators.

ELEVENTH.

The annual reports filed by the Interurban Street Railway Company for June 30th, 1903, and the New York City Railway Company for June 30th, 1904, 1905 and 1906, with the State Board of Railroad Commissioners, falsely include among the enumeration of assets in the general balance sheet contained in each of said reports under the heading of Construction and Equipment, the sum of $4,500,000. This sum was the discount or loss that was to be suffered by the New York City Railway Company through issuing ten-year three per cent. debenture notes at 70, as described in subdivision Tenth last above to the amount of $15,000,000, which were to be redeemed at par. The said notes were not issued for construction or equipment, nor was the total amount of $15,000,000 at any time or ever issued. The discount represents a loss to the company incurred in issuing its notes, and never was properly chargeable as an asset. Such inclusion of the said amount of $4,500,000 in the balance sheet was for the purpose of concealing the true condition of the company.

If this fictitious amount had not been included as an asset in the general balance sheet in the annual reports for June 30th, 1905, and June 30th, 1906, it would have been apparent on the face of such reports that there was an accumulated deficiency amounting to more than the capital stock of the company, and that the com-

pany was insolvent and could not earn or be expected to continue to pay the rental to the Metropolitan Street Railway Company upon which the stockholders of that company were compelled to rely for their dividends.

These facts are all evidenced by public records, to which the District-Attorney of New York County has had access and copies of which have been in his possession, and his attention has been expressly called to these matters on numerous occasions.

The annual reports in question are verified in each instance by two of the officers of the New York City Railway Company, and were sworn to before a notary public in New York County. All of such officers were guilty of the crime of perjury; and this fact has been called to the attention of the said District-Attorney, but no action has been taken by him with respect thereto.

TWELFTH.

Upon the books of these corporations several hundred thousand dollars is carried in what is known as "Suspense Account." Hundreds of thousands of dollars have been paid to Mr. Vreeland for which no voucher is found and no explanation given. There is much reason to believe that a considerable portion of these large sums of money have been used for improper purposes. At least upon the books of the company these sums of money have been taken from the different companies and no explanation is given.

Mr. Jerome's attention has been repeatedly

called to this condition and yet no investigation has been made followed by an indictment of Mr. Vreeland, or of the parties guilty of taking these sums from the City Railway Company.

The undersigned and his Committee personally and through their attorneys have urged the investigation of these matters upon Mr. Jerome and have urged the punishment of the men guilty of stripping these railway companies of all their property and defrauding the public, but Mr. Jerome has assumed the attitude of their protector and their advocate, has avoided investigation, and instead of investigating the matter through persons acquainted with the facts, has subpoenaed the members of their stockholders' committee and their chairman before him, well knowing that they had no personal knowledge and could give him no aid, and this has been done for the apparent purpose of discomfiting them and deterring them from contending that the criminal law should be enforced.

THIRTEENTH.

Mr. Jerome, in the few attempts which he has made to procure indictments against the directors of the Metropolitan Securities Company and the other street railway companies has been in the habit of calling the parties accused of wrong before the Grand Jury, taking their statements as to whether they were guilty or not. This practice has recently received a severe rebuke at the hands of one of the Justices of the Court of Sessions, and we call your Honor's attention, in that connection, to the remarks of Mr. Justice Rosalsky as they appear in the New York Law

Journal of January 30th, 1908, in which, speaking of Mr. Jerome's subpoenaeing Thomas F. Ryan, and examining him before the Grand Jury, he says:

> "The practice of calling a probable defendant under a subpoena, or otherwise, before a Grand Jury and interrogating him should be condemned, and the law itself condemns it since even if successful at the outset in securing an indictment, a prosecution thereafter will result in a defeat of its purpose."

FOURTEENTH.

On October 8th, 1907, it was disclosed at a hearing before the Public Service Commission that, on June 9th, 1903, Thomas F. Ryan took $24,000 from the treasury of the Metropolitan Securities Company, and again, on August 7th, 1903, that he took the further sum of $28,500 (pp. 1623-1633).

On October 10th, 1907, it was disclosed before the Public Service Commission that $299,800 had been taken from the treasury of the Metropolitan Securities Company and paid by the said Company to the firm of A. A. Ryan & Bro., sons of Thomas F. Ryan, brokers, in payment of 2700 shares of Metropolitan Street Railway Company stock at a price in excess of its actual value (pp. 1716-1717).

These matters have been called to the attention of the District-Attorney and the Grand Jury, but no action, so far as the undersigned know, has been taken.

FIFTEENTH.

Mr. Jerome's statements covering a period of many years with reference to the Judges have been not only improper but scandalous in their nature and have tended to destroy the confidence of the people in the integrity of their Courts.

He was reported in the press of November, 1905, as saying at the City Club dinner given him after his election:

> "I have no reverence, I have not even every day common respect for the Justices of the Supreme Court of the First Department."

and again—

> "I do not think that the position of Judge should be elective. Take the Federal Judiciary and think how free from scandal it is. Any lawyer with any considerable practice will tell you that in New York it is a common thing to hear a brother lawyer say 'it would not do to let such and such a case go on with such and such a Justice, for he is identified with such and such a corporate interest."

Speaking of the charge of Judge O'Sullivan to the Grand Jury in Part I of the Court of General Sessions, in March, 1906, he said to the Grand Jury of April, 1906:

> "The instructions of the Court were such that I am informed by the March Grand Jury that they could not comprehend them. They were, in substance, that to steal is to steal, a proposition tolerably elementary and one on which I think no intelligent human being cared to have any information or advice from the Court."

Asked by the representatives of the daily press what he was going to do after Judge Rosalsky had handed down his opinion in the Cravath case, he said again and again:

> "No opinion of Judge Rosalsky would be sufficient to make me do anything."

Testifying in his case against the New York Evening Journal Publishing Company, when asked about the proceeding of the People on the complaint of *Louis E. Julien against Ambrose F. McCabe, heard before Judge Seabury,* he used this language with reference to Judge Seabury:

> "It was the most indecent exhibition I have ever seen in a Court of law in my life, and I have seen some pretty tough ones."

An examination of the Minutes of the Stenographer herewith submitted to your Honor will show the propriety of conduct and the intelligence of the Presiding Justice in that proceeding.

Mr. Jerome in one sense is a judicial officer. He, of course, appreciates the importance of framing his indictment with accuracy and stating the exact facts yet in general language he has made the expressions first above set forth with reference to the Judges of the First Judicial Department of New York without specifying their several offenses; without pointing out their several misconduct; without mentioning particular names and leaving each and every one of the Judges, however honorable, subject to such public suspicion as these general defamatory allegations will naturally excite.

We submit that these words of Mr. Jerome present a grave offense and tend strongly to show that he is unworthy to hold the position

of the criminal law officer of the County of New York.

SIXTEENTH.

On January 9th, 1902, at 8.20 o'clock in the morning, a collision occurred between a passenger train of the New York, New Haven & Hartford Railway Company and a train of the New York Central Railway Company between 56th and 57th streets in the tunnel of said New York Central Railway Company, whereby seventeen persons were killed and thirty were seriously injured.

Before the coroner's jury called to examine into the cause of the death of one of the persons killed James H. Franklin, manager and division superintendent at the Grand Central Station, and who had charge of this tunnel, testified that three hundred twenty-three scheduled trains passed through the tunnel every day, that no supervision, whatever, was exercised over the speed of trains in the tunnel, except as to whether they were on time; *that for ten years last past engineers had frequently reported to him, as such manager, that the smoke, steam and fog in the tunnel obscured the colored signal lights by which the trains solely regulated their motion.* This evidence before the Coroner's Jury was uncontradicted, and the Coroner's Jury returned a verdict:

"We further find faulty management on the part of the New York Central & Hudson River Railroad Co. and we hold said officials responsible for the reason that, during the past ten years said officials were re-

peatedly warned by locomotive engineers and other employees of the dangerous conditions existing in said tunnel."

The railroad commissioners of the State of New York also examined into the cause of the accident, and determined that:

"The New York Central & Hudson River Railroad Co. was grossly negligent in putting a new engineer in charge of the train in rush hours, and further were negligent and derelict in failing to take measures to increase terminal facilities."

But, notwithstanding these facts, neither Mr. Franklin nor any of the other officials of the New York Central Railway Co. were indicted, but the engineer of the locomotive of the New York Central Railway Co. which collided with the rear end of the passenger train alone was indicted, although the evidence clearly showed that a condition existed such as would not allow his seeing the signals and that he did not see the signals, because of the smoke and steam, until at the very time of the collision. The condition of the tunnel was a criminal nuisance upon the undisputed evidence, and the failure of Mr. Jerome as District-Attorney to indict and seek to convict some one of the officials of the Railroad Company was clearly misconduct.

SEVENTEENTH.

On the 27th day of January, 1902, a terrible explosion occurred in Park Avenue, immediately in front of the Murray Hill Hotel in the City of New York, killing several people, wounding many more, and destroying property to the

value of hundreds of thousands of dollars. The destruction came from the explosion of several hundred pounds of dynamite kept in a small hand magazine within ten feet of the curb in front of the Murray Hill Hotel. This small magazine was built of wood and attached to the supports of a large platform overhead, on which a steam engine and boiler were being operated for the purpose of removing debris from the excavations in the tunnel. When the engine was in operation, the shock of the machinery would shake the platform above the powder house and the burning coals from the hearth of the fire place underneath the steam boiler would fall upon the powder-house. This condition of affairs had existed for months before the explosion. And any one of intelligence would have known at a glance that a powder house containing dynamite attached to the supports of a platform on which there was running a steam engine and boiler, doing work of the kind in question, was criminally dangerous. The contractor John B. McDonald, the inspector of explosives of the Fire Department and the public officials having charge of the construction of the subway at this point, all knew, or ought to have known, of the danger.

On the morning of the 27th of January, 1902, several hundred pounds of dynamite, at least ten times more than the regulations of the Fire Department allowed, were stored away in this powder house. The powder house was so situated that wagons passing along between it and the curb were liable to hit the corner of it. An ignorant young negro, unable to read or write, with no experience, was in charge of the powder

house, and, under such circumstances, the explosion took place. One or two of the men in charge were indicted, but a discontinuance was entered by the District-Attorney, and nobody was punished.

When civil suits arose, and the important papers, which were taken by the District-Attorney for criminal prosecution, were needed in those suits, Mr. Jerome had lost them.

The powder house itself was built at a place not allowed by the ordinances of the Fire Department; it was built in a manner not allowed by the ordinances of the Fire Department, and the structure and its use was a public nuisance and the men who permitted its continuance and the city officials from the fire department who had charge of it, were all guilty of continuing a nuisance dangerous to human life and of manslaughter.

EIGHTEENTH.

In the fall of 1905, when Mr. Jerome was speaking in his campaign for re-election to the office of District-Attorney, he said

"If re-elected, I will investigate the Ice Trust and other vast trusts. Rest assured, I will punish the enemies of the people."

Since that time, in an action brought in the United States Circuit Court for the Southern District of New York, entitled *Daniel W. Burrows, Complainant, against Interborough Metropolitan Company and others, Defendants,* Judge Holt of that Court held nearly a year ago that the complaint in that action, which alleged that the Interborough Metropolitan Company, Inter-

borough Rapid Transit Company, Metropolitan Street Railway Company, Metropolitan Securities Company and Manhattan Railway Company were a combination of corporations conspiring to commit acts injurious to trade or commerce and to prevent competition, and were contrary to the provisions of the Penal Code of said State, Section 168 thereof, set up a good cause of action. Notwithstanding this decision, Mr. Jerome has taken no proceedings in the Criminal Court to punish said combination of corporations, although they absolutely control the whole business of carriage of passengers in the City of New York.

It is true that the question of whether the American Ice Company is a monopoly in violation of law has been presented by Mr. Jerome to the Grand Jury; but we maintain that it has not been presented in good faith; that the cerificates of incorporation of the different companies, the contracts between them, the hundred or more contracts with independent dealers providing that they should not engage in the business, and the facts and circumstances which establish its existence as an unlawful combination, were not before the Grand Jury, and that the assistant presenting these facts was related to persons having, as we are informed, interests in the combination, and that no full and thorough examination was given.

We ask your Honor to procure, what we probably cannot procure, a certified copy of the minutes of the stenographer taken upon this examination.

NINETEENTH.

In the fall of 1903, through public hearings held for several weeks in the City of New York, it appeared that during the year 1902 the Mercantile Trust Company, together with the Commonwealth Company of New York, then called the Trust Company of the Republic, Louis W. Nixon, Daniel LeRoy Dresser, John W. Young, and divers other promoters, had entered into a criminal conspiracy for the flotation and sale to the public of certain illegal, worthless and fictitious securities of the corporation called the United States Ship-Building Company, and in pursuance of said scheme had issued a prospectus of the said company and caused the same to be widely advertised in the public press, which said prospectus contained numerous false and material statements with respect to said ship-building company, its securities and property, contrary to the Penal Code of the State of New York.

The value of said properties, the number of contracts for building ships which they had, the profit thereon, the amount of property to be purchased by said syndicate—each and all were misrepresented in said prospectus.

The bonds and stock of said company to the amount of many millions of dollars were sold to innocent purchasers on the faith of said fraudulent representations.

On February 17, 1904, an information and complaint of one John Young, a business man of small means, who had been swindled by the said conspiracy, was filed with Mr. Jerome, praying him to take action against the guilty

parties. At the same time evidence was placed before Mr. Jerome to the effect that the books of said Trust Company of the Republic had been falsified in connection with the carrying out of said conspiracy, and that large financial institutions had assisted in the said conspiracy by means of what is known as "wash-loans," and other fictitious and fraudulent methods; but Mr. Jerome refused to make any investigation into said facts and never instituted any prosecution against any of the persons guilty of said offenses.

TWENTIETH.

That in 1903 the New York Building Loan Banking Company, a corporation in which thousands of poor persons had invested their savings, failed as a result of the criminal mismanagement of its officials. Some of these officials were men of wealth and influential financial connections. In September, 1903, evidence of said offense was laid before Mr. Jerome, but he refused to take any proceedings, either by information or indictment, against the persons guilty of said offenses.

TWENTY-FIRST.

That for several years prior to May 23, 1905, the Merchant's Trust Company was a corporation engaged in the business of a trust company in the City of New York, and that its officers, directors and holding stockholders were men of wealth and financial connections in the City of New York; that said Trust Company failed and

closed its doors in May, 1905; that the total authorized capital stock of said Trust Company was $500,000, and that at no time during the years 1903 and 1904 did it exceed said sum. That during the year 1903 said Trust Company loaned out of moneys deposited in the sum of $1,200,000 to the Virginia Passenger and Power Company; that during 1903 and early in 1904 it invested in the securities of, and loaned to, the Hudson River Valley Railroad Company the sum of $850,000; and invested in the securities of, and loaned to, the Rutland Railroad Company and the Chippenden Development Company the sum of $400,000. That the whole of said loans and transactions exceeded three times the actual stock of said Merchant's Trust Company then paid in and possessed by said company, in violation of Section 595 of the Penal Code of the State of New York. That for several months prior to May, 1905, said Trust Company was insolvent, and said facts were known to the officers and directors thereof; but nevertheless said Trust Company continued to receive deposits until May 23, 1905, when it was closed by the order of the State Superintendent of Banking. That all of said facts were placed before Mr. Jerome, but he failed and refused to proceed against any of the parties guilty of said offenses, either by information or indictment.

TWENTY-SECOND.

That in Mr. Jerome's campaign in 1905, legitimate campaign disbursements were taken in by the Treasurer of the Committee on Nominations in the amount of $47,857.21. That in the

same office, but in another part thereof, Howard S. Gans, an Assistant District-Attorney, received contributions. That among the contributions received by the said Gans were many from men connected with large corporations seeking favors of the District-Attorney. That a sum, the amount of which is unknown, but considerably upwards of fifty thousand dollars, was paid to the said Gans. That among the contributors, either to Mr. Jerome directly or said Gans, was Samuel Untermeyer, the attorney for James H. Hyde, who contributed the sum of five thousand dollars. That said Hyde had been guilty of many misdemeanors and crimes in connection with the Equitable Assurance Company and was subject to prosecution, and the acceptance of a sum so large from Hyde's attorney was entirely improper and would naturally tend, if known, to reflect unfavorably upon the District-Attorney. That other large contributions were made, one being for $2,500 from a prominent banker, whose firm had been intimately connected with the Metropolitan Street Railway Company. That said Howard S. Gans has since left the office of the District-Attorney and has established himself in private law practice, and that unfortunately for the administration of the criminal law in New York County, however innocent Mr. Jerome may be of being subject to the influence of Mr. Gans, there is an impression quite popular at the bar and among the people acquainted with the situation, that Mr. Gans has undue influence in the District-Attorney's office. He is alleged to have been retained for the defendant in many celebrated cases, a few of which are as follows: Robert A. Grannis, under indictment

for offenses committed in the Mutual Life Association; Harry Thaw, George W. Perkins, President Montgomery of the Hamilton Bank, Mr. Heinze, Mr. Cravath and Magistrate Droege. Presumably the relations between Mr. Gans and Mr. Jerome are perfectly innocent, yet the existence of a belief to the contrary is detrimental to the due administration * of the criminal law in New York County, tends to impair the confidence of the people in its administration, and such relations ought to be a subject of inquiry to demonstrate their innocence, and to remove the District-Attorney's office from the breath of suspicion.

*Note—On the original, there appears in writing "and such relation ought to be the subject of inquiry." (These words stricken out with pen.)

TWENTY-THIRD.

By reason of the above facts which have been brought into marked prominence through the existing depressed condition of the country, Mr. Jerome has lost almost completely, we submit, the confidence of the people of the County of New York. His habit of becoming the advocate of the wealthy accused in many of the cases which have been detailed has tended very materially to impair the public confidence in him. A large proportion of the citizens of New York County, however unjust toward Mr. Jerome their feelings may be, have nevertheless, been led by these facts to believe that he is the friend and protector of the wealthy criminal and not the attorney and the protector of the

New Jersey State Library

whole people. With confidence in him thus impaired, his great abilities make him all the more distrusted. With the loss of public confidence he has seemed to lose even interest in the enforcement of the laws, and those of his former close friends who are insistent upon their enforcement are regarded by him as his enemies, and no longer his friends. The undersigned was the Chairman of the Nominators' Committee who proposed him to the people in the last campaign. The members of this committee were then supporters of Mr. Jerome. We feel toward him no ill will, but we respectfully submit to you as the Governor of the State of New York that, by reason of his neglect of duty as above set forth, the days of his usefulness have passed.

Dated, New York, February 25th, 1908.

WILLIAM F. KING, as
Chairman of the Committee of
Metropolitan Stockholders.

I. BLUM,
Secretary & Treasurer.
GEORGE L. DEGENER,
NATHAN H. HEYMAN,
JOHN H. PARSONS,
WM. MAAS,
Committee.

Note—At foot of this page on the original is written:
"Presented February 27, 1908, at Albany, N. Y.
"William F. King,
"Chairman.
"I. Blum,
"Sec. & Treas."

"Mem.
Franklin Pierce }
Eugene G. Kremer }
Of Counsel."

(Certification by Governor Hughes)

"State of New York,
"Executive Chamber
"Albany, Feb. 28, 1908.

"The foregoing is a copy of the charges mentioned in the notice and summons and filed with me on the 27th day of February 1908.

"CHARLES E. HUGHES,
"Governor of the
State of New York."

10

Exhibit B. H. 2. for Iden.

State of New York
EXECUTIVE CHAMBER
Albany
November Twenty-ninth 1922.

Nathan L. Miller
Governor

20

Mr. William B. Beam
552 15th Avenue
Paterson, N. J.
Dear Sir:

I am in receipt of your letter of the twenty-second of November asking for a certification by me of copies of papers in this office relating to charges for the removal of district attorney Jerome before Governor Hughes in 1908.

30

This department is not an office of record and does not, therefore, certify papers such as requested.

Very truly yours,
NATHAN L. MILLER.

40

Exhibit B. H. 3. for Iden.

Second Edition

The Truth About Metropolitan

By W. N. Amory

3 William St., New York

THE TRUTH ABOUT METROPOLITAN.

Preface to the Second Edition.

This narrative was originally prepared as a contribution to a leading magazine; but through necessity, as the subject is a large and complex one, it exceeded the limits of a single publication, and it was found that the article would have to extend over two monthly issues of the magazine. As it seemed to me the whole truth should be laid bare in one publication, I decided to print the facts in pamphlet form.

The first edition of this pamphlet was issued early in January, 1906, and has been widely distributed. Copies have gone to every newspaper in the City of New York, to every member of the New York legislature, to public officials, to prominent bankers, to lawyers, to Metropolitan stockholders, and to many other persons.

The New York press has frequently referred to the conditions described in the pamphlet, and copious extracts have been printed, which have created a demand for the pamphlet from as far East as Bangor and as far West as Seattle.

The accusations made, and now re-published,

contain statements which are grossly libelous if untrue. Why have not those who are accused by name of stealing more than $30,000,000 from their own stockholders, attempted to vindicate themselves and to punish me for criminal libel? They have not dared to do so, for they know full well that such steps would be fatal to themselves, because the result would be that the truth about their crimes would be proved in a court of law.

Their policy is to ignore these charges. Their salvation depends upon the charges being ignored. But can the public, and particularly can the Metropolitan stockholders, afford to longer ignore them? Are the charges and the proofs of a nature to be ignored when lawyers of standing and expertness in criminal law, such as Ex-District Attorney Philbin and Ex-Assistant District Attorney Osborne, have investigated and gone upon public record as to their truth?

It may be asked, How is it possible that District Attorney William Travers Jerome can continue to ignore these charges? Without attempting to answer this question, I have only to declare that he has for several years been fully aware of the turpitude of the Metropolitan management, and has been protecting criminals instead of punishing them.

When the day of retribution comes, as it inevitably must come, and the Metropolitan wrongdoers are brought to justice the motives of the District Attorney will be laid bare. It will then be disclosed that there are other bribes than money bribes. I believe Mr. Jerome is incapable of doing a corrupt act for money.

W. N. AMORY,
3 William St.

New York, March 18th, 1906.

Amory's Disclosures of Metropolitan's Mismanagement.

THE METROPOLITAN MANAGEMENT.

Before describing the crimes of the Metropolitan it seems appropriate to state what the Metropolitan Management is. Two or three men in New York and an equal number in Philadelphia have for years comprised what is known as the Metropolitan Management. Here are the names of these eminent financiers who have made for many years the robbing of their own stockholders their chief business: William C. Whitney, Thomas F. Ryan, Herbert H. Vreeland, W. L. Elkins, P. A. B Widener, Thomas Dolan.

This practically completes the number, but these men have had confederates and willing tools, numerous lawyers, some with reputations, some without, secretaries and other officials of the companies in the system, claim agents, detectives, professional perjurers, and, as will be shown, robbers of the United States mails. And besides all these, a retired contractor, now the vice-president of a trust company on Wall Street, who has been described by a lawyer of my acquaintance as "always hanging round the kitchen door when there were any Metropolitan feasts, gratefully picking out the scraps from the financial garbage barrel."

It was the genius of William C, Whitney that conceived the possibilities of the Metropolitan railways, and erected this monument of infamous graft. It is the skill and unscrupulousness of Thomas F. Ryan to which many of the completed deals owe their success.

Previous to 1900, the Metropolitan President, H. H. Vreeland, was but a tool in the hands of these men, ready at all times to obey the dictates

of his masters, and not a partner in the division of the spoils. His chief business was to promulgate false statements, so that the insiders might safely carry on their system of graft, and he received a ridiculously inadequate salary for these services, only $10,000 a year.

But Mr. Vreeland was taken in as a partner in 1900 because he suggested the wreck of the Third Avenue R. R., and played his part of deceit in the nefarious business to the satisfaction of his employers. It was Mr. Ryan who conducted that masterly campaign in Wall Street which ruined scores of Third Avenue stockholders and nearly ruined James R. Keene. Mr. Keene was bled to the extent of several millions when he was caught short of Third Avenue stock. My authority for this statement is unquestionable, although I may not dissclose it. Mr. Ryan insisted upon his complete ruin, which was in his power to effect, but Mr. Whitney urged moderation, and his merciful counsel wisely prevailed. I say wisely, advisedly, for Mr. Keene is not a man to die tamely. Doubtless in his complete ruin, he would have strained at the pillars, and have pulled down crushing disaster upon others as well as himself.

This is the same Mr. Ryan who recently purchased control of the Equitable Life Assurance Society. That former President Cleveland is unaware of Mr. Ryan's true character is plainly indicated by his letter accepting the voting trusteeship of the Equitable Life, while his admonitions stand without parallel as an example of unconscious irony.

"We can better afford to slacken our pace", wrote Mr. Cleveland to Thomas F. Ryan in June,

1905, *"than to abandon our own simple American standards of honesty, and we shall be safer if we regain our old habit of looking at the appropriation to personal uses of property and interests held in trust in the same light as any other form of stealing."*

It is to laugh! The appropriation to personal uses of property and interest held in trust has been Mr Ryan's regular line of business.

One of the subtle tricks of the Metropolitan Management when accomplishing a new deal is to arrange for the association of men of the highest character, who are in ignorance of the moral turpitude of this band of financiers. This plan was sucessfully worked when the Interurban lease was put through in 1902. More recently still, Mr. Ryan has artfully made use of the scheme in connection with his purchase of the control of the Equitable Life. In addition to Ex-secretary of the Navy Morton, he induced Mr. Cleveland, Judge O'Brien and Mr. Westinghouse to lend him their names and reputations.

Mr. Ryan is the dominant factor in the Metropolitan Railway. He has been trying for 18 months to sand-bag the Interborough interests to buy out the Metropolitan by threats of competition in the Subway field of transit. This was a clever scheme and worthy of Mr. Ryan's best efforts, if successful.

He and his piratical crew, having for many years sailed the stormy seas of finance, looting and destroying all those they have come up with, are now preparing to desert the sinking ship and to turn over the command of the rotten hulk to others. They have, as they imagine, safely sequestered their spoils, and desire now to en-

joy them in peace. Time alone can show whether this last desperate effort of this truly wonderful man will result in complete success or dire failure.

Mr. Ryan is the Jonathan Wild of finance. He is a great man, a man of genius in his own calling.

As I review his list of achievements and consider his qualities amiable or detestable, worthy of admiration or abhorrence—I am convinced that Fielding with admirable prescience was drawing a true picture of Mr. Ryan, when he portrayed Jonathan Wild.

Lest I may be misunderstood, I hasten to declare that my feelings towards Mr. Ryan are impersonal. In 1899 before the Third Avenue Railroad was wrecked I sold Mr. Ryan some property and made nearly $40,000 profit in the transaction. One can't help having a sneaking kindness for even a horse or a jockey which has made him money.

My admiration for his genius in finance is surpassed only by my detestation of his criminal methods. But after all, Mr. Ryan is only the logical result of prevailing conditions. He is the chief representative of a corrupt system and a state of moral degeneracy that are a menace to the public.

Mr. Ryan may successfully sell his gold brick to Mr. Belmont; very likely he will, but is that any reason why he should be allowed to escape with his millions of stolen money and go unpunished of his crime?

I hear men speak of Mr. Ryan's successes as if they were certain of being continuous. But I am reminded that even Jonathan Wild was

pinched at last and ended his career ignominiously, and that Napoleon met his Waterloo.

THE METROPOLITAN RAILWAY SYSTEM.

No complete proofs of Metropolitan crimes can be arrived at without some knowledge of the intricate relations existing between the companies constituting the system, and of the physical conditions of the railways themselves.

The Metropolitan System comprises all the surface roads in the Boroughs of Manhattan and The Bronx, excepting two single track horse roads in The Bronx, each about a mile and a half in length.

On February 14th, 1902, the Metropolitan Street Railway Co. and its leased lines were leased to the Interurban Street Railway Co., which was organized November 25th, 1901, for the single purpose of leasing the Metropolitan Railways.

On February 10th, 1904, the Interurban Co. changed its name to the New York City Railway Co. This company owns and operates about two miles of single track road in Mount Vernon, and leases the Peoples Traction Co. which owns no railways, but does own a valueless franchise in The Bronx. Outside of these possessions the New York City Railway Co. has the right to operate the Metropolitan lines under lease and guarantee of dividends, but this right can hardly be considered a valuable asset, because the earnings of the Metropolitan railways fall far short of the dividends which are guaranteed. The company has no earning capacity of its own, and is entirely dependent upon the earnings of Metropolitan lines to fulfil its guarantees.

The New York City Railway Co. guarantees 7% dividends on the $52,000,000 of Metropolitan

Co. stock. It also guarantees dividends at various rates on all the leased companies of the system, and is obligated to pay the principal and interest on all the bonds of the companies in the system whether leased or controlled.

The New York City Railway Co. includes in its reports to the Railroad Commissioners the physical statistics and results of operations of the Metropolitan Street Railway Co. and all the leased lines. The leased lines are required by law to report separately their financial condition, and costs incurred for construction or changes of motive power, but some of them have ignored the law. Controlled lines, that is to say, companies in the system which are controlled through ownership of stock, but which are not leased, report not only their financial conditions and construction costs, but separately report the results of operation. Such results whether profits or losses, are included in the statements of the New York City Railway Co. in that company's annual reports.

THE METROPOLITAN SECURITIES CO.

The New York City Railway Co. is in absolute control of the Metropolitan Securities Co. The same day in 1902 that the Metropolitan lines were leased to the Interurban Co., now the New York City Railway Co., the Securities Co. entered into a contract by the terms of which, the New York City Railway Co. turned over to it all of its outstanding stock and bonds and agreed to turn over any future issues of stock or other obligations. The control of the New York City Railway Co. and through it of Metropolitan

lines by the Securities Co., is therefore complete. The Securities Co. has no possession of value other than such control. The whole Metropolitan structure is rotten, founded upon fraud, and when once it begins to fall, as it inevitably must, it will go down like a house of cards. Leases must be revoked and guarantees withdrawn, and then it will be found that both the New York City Railway Co. and the Metropolitan Securities Co. are without assets of any value.

OVERCAPITALIZATION.

The Metropolitan Company has an enormous passenger business, the largest in the world. The railways in the system annually transport over 600,000,000 passengers. With a business such as this, it is hard to understand how the New York City Railway Co., the operating Company of the System, can be losing instead of making money.

Now the Companies constituting the Metropolitan Street Railway System have a total capitalization outstanding of $260,838,000 of which total $144,365,000 is stock and $116,473,000 Bonded indebtedness. A portion of the Securities are owned by Companies in the System, but most of these are pledged, under the different mortgages, and cannot be sold. The capitalization outstanding in the hands of the public is about $236,000,000. This is a larger capitalization than many of the great steam railway Systems, for instance The Chicago, Milwaukee & St. Paul R. R., or the Chicago &

Northwestern R. R., each operating more than 7,000 miles of railway, or even the New York Central R. R, omitting the Lake Shore collateral bonds. Water has been injected in such unlimited quantities that the railway system has fairly reached the bursting point.

The System is burdened with enormous fixed charges. Guaranteed rentals and interest on bonds which have to be paid amount to $11,-452,950 per annum. About $11,000,000. have to be paid out annually for interest on bonds and guaranteed dividends on stocks owned by the public. The annual gross passenger receipts of all the Companies in the system in 1905 were $20,888,124.46. It is seen, therefore, that over 52 per cent. of gross receipts have to be paid out on guaranteed interest and dividends alone, to say nothing of taxes. The Company's business at the present time is falling off, but the guarantees must be maintained.

A LARGE PERCENTAGE OF METROPOLITAN LINES OPERATED BY HORSE POWER.

The Metropolitan management has time and again obtained the necessary funds through sales of stock and bonds to electrically equip all the railways in the system. Millions of dollars specifically provided by the Stockholders for such purpose have gone to swell the bank accounts of the insiders. As a result about 33 per cent. of all the surface railways on Manhattan Island are still operated by horse power.

The mileage is 100.44 miles of double track

electric railway and 48.20 miles of double track horse car lines. For confirmation of these figures see pages 168 to 172, Vol. 1, Report of the Railroad Commissioners for 1905.

More than 90 per cent. of all the horse railroads in the State are on Manhattan Island, and are a part of the Metropolitan System. East of the Bowery the city is a net work of horse car lines, while not less than a dozen horse car tracks cross Broadway. The largest city in America is almost the only large city in which horse cars are now operated.

NO ATTEMPT MADE TO GIVE A FULL LIST OF THEFTS.

All of the matters herein are related as samples of the methods which have been pursued in robbing Metropolitan stockholders. I have not attempted to give a full list of grafts, or to detail all the proofs in my possession, for it is obvious that such a course would extend this article to unreasonable lengths.

But that there may be no misunderstanding I declare that Mr. James W. Osborne was within the mark when he charged in open court in 1903 that the insiders have stolen $30,000,000. Mr. Osborne's accusations will be quoted further on in this article. Moreover, this is not all, for by methods perhaps not wholly outside the law, similar in some respects to those adopted by certain Life Insurance officials, and constituting a violation of trust. I estimate that the insiders have got away with not less than $60,000,000 additional.

Amory's Disclosures of Metropolitan's Mismanagement.

It may be claimed that some of the charges herein detailed are not new. There are two answers to this suggestion. The first is, that none of the charges has ever been disproved or successfully disputed. The second is, that half of the charges herein detailed are new, while also there are several new charges of considerable importance. Among these may be mentioned the theft of $7,000,000 preceding the Interurban Lease in 1902; the $6,000,000 graft when The Traction Co. went out of business in 1897; and the $6,000,000 deal in connection with the Houston St. Ry. bonds preliminary to the incorporation of the Metropolitan Street Railway Co. in 1893. These three steals alone sum up $19,000,000.

I have purposely avoided matters with which technicalities of accounting are concerned. The facts are so plain that no one can fail to understand them.

THE LAST DEGREE OF CORPORATE CORRUPTNESS.

Much has been heard recently of great corporations and of the fortunes accumulated by those who control them. Mr. Lawson writes entertainingly of the crimes of Amalgamated and of the millions won from the public through manipulations, stock deals and other sharp practices. But he makes no direct charge of *stealing*.

He does not disclose how immense sums of money were fraudulently obtained from Amalgamated stockholders for certain definite purposes, which the president of the Company swore

was to be used for those purposes, and then present proof that the money was deliberately stolen by a few insiders.

He does not tell of these things because they never hapened in Amalgamated. The system of the Amalgamated crowd is in all probability ruthless enough, but I have never heard it included a conspiracy the aim of which was to induce the stockholders to invest their money for improvements that the insiders might steal it.

The story of Life Insurance is bad enough. But no accusations have yet appeared of deliberate *stealing.* Greed has been displayed in its nakedness, and it has been developed that the contol of great coroporations has been selfishly used for the personal enrichment of a few individuals, yet the vulgar crime of direct theft is not included in the indictments.

The difference between these others and the Metropolitan crowd is this. It would appear that Insurance officials have become accustomed to believe they might do as they pleased with trust funds as long as they did not actually steal the money. Some have even boasted on the witness stand of their moderation in this regard.

But the Metropolitan Managers have engaged in a deliberate scheme of stealing trust funds, their own stockholders money. The thefts have amounted to scores of millions of dollars. The limits of financial depravity have been reached.

Their crimes comprise conspiracy, intimidation, bribery, corrupt court practices, tampering with the mails, perjury, subornation of perjury, false reporting, the payment of unearned div

idends year after year, the persistent thefts of stockholders money, carried on over a long period by a System constituting the basest kind of robbery, that is to say, the betrayal of associates, and finally, as a result, the wreck and ruin of a great corporation. All these offences have been commited that a few men might become multi-millionaires easily and quickly, and be able to hold on to their graft.

The proof of the crimes is indelibly written in records which can never be suppressed or destroyed, and is ready to be submitted to calm judgment.

THE PROOFS OF METROPOLITAN THEFTS CONTAINED IN THE COMPANY'S SWORN REPORTS.

The Metropolitan management has been publicly charged with monstrous crimes. It may be asked: How is it possible to ascertain the extent of the criminal practices and to prove them, having only the information contained in the company's reports and other public documents?

The answer is, that as no bookkeeper has ever been able to devise a scheme of falsifying books with safety, so likewise no plan of falsifying annual reports required by the New York laws can be indulged in without possible detection. The form of reports has been devised by skillful accountants to discourage fraud and to facilitate its detection when perpetrated.

I am well aware from my personal knowledge of the machinery of the office of the Railroad Commissioners that the falsification of Metropol-

itan reports neither could have nor has escaped the knowledge of the Commissioners.

Some of the methods pursued to conceal the thefts of millions of dollars of stockholders' money will be described. No facts will be stated that cannot be confirmed by anyone who will take the trouble to confirm them. Reference will be made to annual reports and other official documents containing full proofs.

THE FALSIFICATION OF REPORTS TO CONCEAL CRIMES.

For a period of years the Metropolitan Railway Company was permitted by the Railroad Commissioners to file annual reports in which no detail was given (although the form of reports called for such detail), of the expenditure of many millions of dollars for new construction. By June 30th, 1902, the sum of money which had been specifically unaccounted for reached a grand total of $30,650,159,61.

The method adopted was to carry forward in the reports from year to year the purported expenditures under the general head of "New Constuction on lines owned and leased, to be distributed." No details were given.

On this date, however, when the first annual report following the Interurban lease had to be filed by the Metropolitan Company, the company found itself obliged to distribute these many millions under the numerous heads provided by the Commissioners' form of reports. The task that confronted the management was to divide this enormous sum under the different heads so that

all the expenditures would, on critical examination, be found to be properly accounted for.

Now had these $30,000,000 been honestly expended no embarrassment would have ensued. But the graft had been so reckless that when the distribution of expenditures was made, the fraud could not possibly be concealed from anyone who should take the trouble to investigate.

Attention will first of all be briefly directed to one or two items in the detailed statements in the Metropolitan Report for 1902 (page 1109), as indicative of the straits the Metropolitan management was put to.

The sum of $1,284,309.72 was charged that year against leased lines for engineering and superintendence expenses in changing motive power, on less than 43 miles of double-track road. The charge under this head was at the rate of $30,000 a mile—enough to build and equip ordinary trolley roads.

The sum of $4,395,687.38 was charged in 1902 for track and Roadway Construction on leased lines, that is, for laying new rails. The costs reported under this head were at the rate of over $103,000 a mile, but the true cost could not have exceeded $22,000 a mile. The excess charged amounted to almost $3,500,000.

The sum of $19,584,780.52 is reported in 1902 as the total expenditures on Leased Lines for Additions and Betterments. An enormous discrepancy is found, for on examination of the sworn reports of Leased and Controlled Companies it appears that these companies report such expenditures as but $8,569,849.82, a difference of $11,014,930.70. The reports of both lessor and lessee companies are made under oath, and they ought to agree.

Amory's Disclosures of Metropolitan's Mismanagement.

THE SUM OF $3,000,000 WHOLLY UNACCOUNTED FOR.

In the Metropolitan Street Railway Company's Report for 1901 (see R. R. Com. Report 1901, Vol. 2, page 1071), there is an item reading as follows: "Amount due from Lessor Companies, June 30th, 1901, $2,245,598.78."

In the following year (1902, Vol. 2, p. 1109) appears the following language: "Balance due from Lessor Companies June 30, 1901, $5,245,-598.78."

By thus carrying forward a false balance of $3,000,000 as an examination of the Company's statement for 1902 will show, the Company has entirely avoided accounting in detail for exactly $3,000,000 of cash reported as expended on leased lines.

The Railroad Commissioners' form of report provides for the explicit detail of expenditures of leased lines with the intention of requiring the leasing Company to account for and explain all its expenditures.

It is plain that through the process of carrying forward a false balance of $3,000,000, this sum of money has been wholly unaccounted for. The task of accounting with plausibility for the expenditure of the full $30,650,159.61 was thus partially avoided by means of a perjurious statement, which doubtless it was hoped would be overlooked.

THE RAILROAD COMMISSIONERS' FORM OF REPORTS.

The form of annual reports adopted by the Railroad Commissioners, on which railway companies are obliged to report under oath, provides for the detailing of expenditures for construction and equipment on each company's own lines and leased lines under 15 different heads.

Here is the list as arranged in the Commissioners' printed forms in which must be distributed all expenditures for construction:

A.—Organization.
B.—Engineering and Superintendence.
C.—Right of way.
D.—Track and Roadway Construction.
E.—Electric Line Construction.
F.—Real Estate used in operation of Road.
G.—Buildings and Fixtures used in operation of Road.
H.—Investments Real Estate.
I.—Power Plant Equipment.
J.—Shop Tools, and Machinery.
K.—Cars.
L.—Electric Equipment of Cars.
M.—Miscellaneous Equipment.
N.—Interest and Discount.
O.—Miscellaneous.

The Railroad Commissioners have adopted and approvided a standard system of street railway accounting covering the classification of construction and equipment accounts.

This Standard System is separately published as a pamphlet, and is supplied to all street

railway companies by the Commissioners, and, as well as the volumes of Annual Reports, will be sent free of cost on application to anyone by the Commissioners.

The Standard System defines exactly what charges may be reported under the fifteen different heads. For example: "Account A.—*Organization.* Charge to this account all expenses incurred in effecting organization, including legal expenses."

"Account B.—*Engineering and Superintendence.* Charge to this account all expenditures for services of engineers, draftsmen, and superintendents employed on preliminary and construction work, and all expenses incident to the work."

So with all the different accounts, the charges, which are to be made against each, are carefully defined.

With respect to Account D, *Track and Roadway Construction,* the instructions are explicit and determine with exactness that the charges under this head comprise only the cost of rails, the cost of laying the rails, including labor, materials, tools, freight, hauling, distribution of material, and all other expenses incident to the work of laying rails, with the cost, if any, of removing old rails, *and nothing else.*

This Account D does not include any charges for Electric Line Construction or for cars or for power house equipment or other items incident to changes of motive power, all of which are charged for separately under other heads.

It has seemed necessary to set out all of the above that a clear understanding may be had of what follows.

Amory's Disclosures of Metropolitan's Mismanagement.

Attention will now be directed to false reporting done by Leased and Controlled Companies in the effort to account for millions never truly expended on construction work. These companies have the same officers and directors as the Metropolitan Street Railway Company.

THE THIRTY-FOURTH STREET CROSS-TOWN RAILWAY COMPANY.

The Thirty-fourth Street Railway in 1902 reports expenditures of $245,435.63 for laying new rails on 34th Street between Lexington Avenue and Broadway, on less than half a mile of street, to be exact, .48 of a mile (see R. R. Commissioners' Report for 1902, Vol. II, page 1329). This charge included nothing but the cost of the rails and other material incident to track laying, and the expense of removing the old rails and the labor incident to laying the new rails. The charge did not even include the track-crossing at Sixth Avenue and Broadway, which was not installed until the fiscal year 1904. The rails weighed 113 pounds to the yard. Their market value was about $36 a ton.

Yet in 1903 (page 1307) and 1904 (page 1242 of Reports), the 34th St. Railway Company reports additional expenditures of $51,347.61 for laying these same rails, making total reported cost for rails and laying them on less than half a mile of street, $296,783.27. It is accordingly found, after making ample allowance for labor, spikes, other material, etc., that the final cost of the rails must have been over $1,700 a ton.

But taking another view of the matter, it is

found that 170½ tons of rails, 113 pounds to the yard, were sufficient to complete the double-track road in 34th St. At $36 per ton, the market price, the cost of the rails would be $6,138. Now, if the market price was paid for the rails then according to the sworn report it must have cost the Company over $290,000 for labor and other incidentals in laying the rails on half a mile of street.

The true cost of taking up the old rails and purchasing and laying the new rails, instead of being over $296,000, was about $11,000. This is proved by the sworn annual report of the Central Crosstown R. R. Co. for 1902. That company, which in 1902 was not leased by the Metropolitan, but had its own board of directors, reported expenditures for Track and Roadway Construction of $10,881.29 as follows: "Track and Roadway Construction", described specifically in its report: "Taking up four tracks in 14th Street, between University Place and 7th Avenue, and laying two tracks with heavier rails in their place." (See Railroad Commissioners' Report for 1902, Vol. II, pages 1399 and 1400.)

The rails on 14th Street weighed 110 lbs. to the yard; on 34th Street, 113 lbs. (See Reports of the two companies, for confirmation.) The distance on 14th Street where 110-lb. rails were laid was 23 feet less than on 34th Street, where 113-lb. rails were laid. The distances have been measured on a city real estate map.

The Metropolitan's Chief Engineer, M. G. Starrett, on March 11th, 1902, estimated under oath that the full cost of changing the motive power to underground electricity on 34th Street, com-

plete in every detail, including power house equipment, generating apparatus, etc., would amount to $150,000. (See Application of March 11th, 1902, of the Metropolitan Street Railway Co. for the consent of the Railroad Commissioners to a mortgage to secure an issue of $65,000,000 of refunding bonds.)

Nevertheless, a few months later on, June 30, 1902, the 34th St. Railway Company reported costs of $831,224.04; and on June 30th, 1903, additional expenditures of $7,789.25; and on June 30th, 1904, the further sum of $228,970.91, making a grand total of $1,067,984.20, for changing motive power that the Chief Engineer declared under oath would cost but $150,000.

It cannot be claimed that a part of the expense reported in 1902 was for storage battery cars, for it appears from the report of the 34th Street Railway Company in 1901 that the 50 storage battery cars were owned by the Metropolitan Company and were charged to and included in the report of that company. (See Vol. II, Report of the R.R. Com. for 1901, page 1282.) There were other false items reported, of which two or three will be mentioned. In 1902 (page 1329) $5,844.30 was charged for Organization Expenses, although the report shows the 34th Street Railway Company was organized in 1896.

In the same report $82,080.64 is charged for Interest and Discount. This was more than half what Mr Starett swore the whole road could be reconstructed for.

In 1904 (page 1242) a total of $21,735.45 was reported for Engineering and Superintendence expenses in constructing a road a half a mile long.

Amory's Disclosures of Metropolitan's Mismanagement.

So much space has been given to the 34th Street Railway case, not because it is one of the most important, for indeed it is one of the least important, so far as amounts are concerned, but because it is a particularly simple object lesson of Metropolitan methods.

The full cost of the 34th Street Railway Company for road and equipment has been at the rate of over six million dollars per mile. Doubtless this is the most costly railroad in the world. For confirmation of cost see report of the 34th St. Ry. Co., Vol. II, Report of the Railroad Commissioners for 1904, page 1242.

THE CENTRAL PARK, NORTH & EAST RIVER RAILROAD COMPANY.

This company was twice charged for the cost of changing the motive power where no change of motive power had ever been made; which was also charged against the 42nd Street and Grand Street Ferry R. R. Co. (See Report for 1901, page 1418); that is, on 10th Avenue between 34th Street and 42nd Street. (See Report for 1900, page 1426, and for 1902, page 1455.)

The company was also charged three separate times, viz., in 1900 (page 1426), 1901 (page 1404), and 1902 (page 1455), for the cost of changing the motive power on First Avenue from 34th Street to 42nd Street, and, moreover, in 1901 was charged with the cost on 10th Avenue from 42nd Street to 59th Street; all of which had been built and paid for long before by another Railroad Company, and which cost

had already been charged against such other Railroad Company, namely, the 42nd Street, Manhattanville and St. Nicholas Railway Company. More than a million and a half of dollars was thus wrongfully reported as having been expended.

In the year 1902, this company was charged for Engineering and Superintendence expenses, $322,340.45. For the four years, 1899 to 1902, it is found upon an examination of the company's reports that the company was charged a total for Engineering and Superintendence of $341,731.39.

As the company actually changed its motive power upon but a mile and a half of streets, that is to say, on 59th Street from 1st Avenue to 10th Avenue, it is found that, according to the Chief Engineer's estimate, the sum charged for Engineering and Superintendence alone was nearly sufficient to have paid for the full expense of construction of the underground trolley electrical road, complete in every detail, including cars, power house and generating apparatus. It is probable that the true cost for Engineering and Superintendence did not exceed $1,500.

When this particular item of expenditure was questioned in 1903, the Metropolitan management sought a way out by declaring a mistake had been made, and in the Report of June 30th, 1903 (page 1416), attempted to correct it as follows: "Correction of error in 1902 in charging Track and Roadway and Electric Line Construction to Engineering and Superintendence, $262,787.90."

This merely transferred the amount from one item to two others. Taking the new figures as revised and the company's own reports, we then find that Track and Roadway Construction and

Amory's Disclosures of Metropolitan's Mismanagement.

Electric Line Construction (that is to say, laying new steel rails on a mile and a half of street, and installing the electric conduit between the rails—nothing else), must have cost the company $1,482,598.83. (See Company's Reports 1899 to 1903.) This sum was almost sufficient, according to the Chief Engineer's affidavit, to have constructed and equipped an electric underground trolley road with 10 miles of single trackage, complete in every detail, including cars and power house electric equipment.

It is found that this company was charged in the four years for changes of motive power, a grand total of $2,005,616.57; but according to the Chief Engineer's sworn estimate the full cost ought not to have exceeded a total of $462.-000.

Chief Engineer Starrett declared in his affidavit of March 11th, 1902, that to change the motive power, complete in every particular, including equipment, line construction, generating apparatus, etc., on the 12.3 miles (single trackage), of the Central Park, North and East River R. R. still operated on that date by horses, would cost $1,845,000, or at the rate of $150,000 per mile.

The company has changed its motive power upon only a mile and a half of road (3.08 miles of single trackage) on 59th Street, and yet the full cost with which the company stands charged is over $2,000.000. This is at the rate of $650,-000 per mile of single track road, or more than four times more than the Metropolitan Engineer swears the cost ought to be.

Amory's Disclosures of Metropolitan's Mismanagement.

THE 23RD STREET RAILWAY COMPANY.

This company was charged four times for the same construction work on 23rd Street, in each of four successive years. (See Company's Reports to the Railroad Commissioners, Vols. 2, 1899 to 1902.)

In 1899 (page 1436 of R. R. Reports), this company reported costs for changing motive power in 23rd Street from East River to the North River with equipment at a grand total of $1,110,932.52.

In 1902 (page 1472), the company reports further expenditures of $362,424.38 for the same work.

In the year 1901 (page 1443), the company once more reports expenditures of $373,401.64 for the same change of motive power.

In the year 1902 (page 1493) the company reports additional expenditures amounting to $225,-470.74 for the same work on 23rd Street.

The mileage for which these costs are reported was less than two miles of double track road, to be exact, 3.87 miles of single track road. (For confirmation see report of the Metropolitan St. R. R. Co. for the year 1901, Vol. 2, page 1076.)

The total cost charged in these four years is found to be $1,973,329.28. This is at the rate of $509,900 per mile of single track road.

On analyzing this company's reports we find among other things that the company is charged during these four years with a total of $618,-594.35 for Track and Roadway Construction, that is, for laying new rails on less than two miles of street. The true cost was about $47,000. The company is charged $243,926.73 for "Interest and

Discount charged to Construction", or nearly half as much for interest alone as the Chief Engineer of the Metropolitan system swears the road could be built for with complete electric equipment, including cars and power house generating apparatus.

2ND AVENUE RAILROAD COMPANY.

In 1898, the 2nd Avenue Railroad Company issued a new Consolidated Mortgage of $7,000,000 of which $1,960,000 were to retire outstanding obligations as they became due, leaving $5,040,000 for the express purpose of changing the motive power and to electrically equip the whole mileage of the company. The total length of road was 27.83 miles of single trackage, including turnouts and switches. The amount of money provided for changing motive power was at the rate of $194,000 per mile of single track road, much more than was ample for the purpose. (See Company's Report for the nine months ending March 31st, 1898, page 1358, Vol. 2, Report of Railroad Commissioners for 1898.)

It appears from the report above referred to (page 1357) that the change of motive power from horse to underground electricity, was put into complete operation April 3rd, 1898, upon a portion of the company's road, viz., from the northern terminus, at 1st Avenue and Harlem River, to Astor Place and Broadway.

The cost of this reconstruction and the amount paid for the same was $1,933,171.47, as appears from the report made for the period ending

March 31st, 1898 (page 1359), and from the report made for the period ending June 30th. (Railroad Commissioners' Report for 1898, page 1433.)

It further appears, that the number of miles of single track road reconstructed to electrical traction by April 3rd, 1898, was 12.70 miles (see page 1360).

It will appear from the company's own statistics of mileage furnished the Railroad Commissioners, that between 1898 and 1904 no additional portion of the 2nd Avenue Railroad Company was changed to the electric system. It will further appear that one-half of all the track mileage owned by this company is still operated by horse power.

Although the company reported under oath in 1898 the completion of the change of motive power from Harlem River to Astor Place, at the full cost of $1,933,171.47, yet between 1898 and 1900 $2,579,000 more of the bonds were issued and then on June 30th, 1900, the company reports under oath that it *expended the sum of $4,329,390.02 for this same work during the year 1900.* (See Report for 1900, Vol. 2, page 1463.) It is clear that some one made the difference between these two sums, or $2,396,218.55.

There were $5,040,000 of bonds authorized for the purpose of changing motive power on the whole railroad, and all of these bonds excepting $590,000 had by June 30th, 1904, been issued, with the railroad still only half completed. (See Report for 1904, Vol. 2, page 1360.)

The cost reported is found to be at the rate of more than $340,000 a mile of single track road, yet the Chief Engineer, M. G. Starrett, in his

affidavit of March 11th, 1902, already referred to, swore that the full cost of changing the motive power upon the 2nd Avenue Railroad, yet unchanged, twelve miles single trackage in length, would amount to $1,800,000 or at the rate of $150,000 per mile.

THE THIRD AVENUE COMPANY ROBBED OF MILLIONS.

In 1900, when the Third Avenue was leased by the Metropolitan, there were $35,000,000 of Third Avenue Bonds issued to pay the floating debt of the Company and its controlled lines. This required about $22,000,000. There remained about $13,000,000 to complete the construction of Third Avenue lines, and particularly to change the motive power on the Dry Dock Railroad and on the Forty-second Street, Manhattanville and St. Nicholas Avenue Railway.

These millions have disappeared, and only a mile and a quarter of the Dry Dock has been reconstructed, while the Forty-second street railway still has a horse car mileage nearly as great as its electric road.

The Third Avenue has been looted and mismanaged with amazing recklessness. That Company and its controlled lines have had their floating indebtedness increased by over seven and a half millions since 1900. The Third Avenue Company has besides been obliged to issue $1,943,000 of new bonds. Since the Metropolitan leased the Third Avenue, it has run that Com-

pany and its controlled lines into debt to the extent of nearly $10,000,000.

The condition of the Third Avenue system is more deplorable and hopeless to-day than when acquired by the Metropolitan in 1900.

KNOWLEDGE POSSESSED BY THE RAILROAD COMMISSIONERS OF METROPOLITAN WRONGDOING.

The numerous acts of wrongdoing which the Metropolitan reports disclose could not possibly have escaped the notice of the R. R. Commissioners. The Commissioners have even been furnished with specific proof of false reports and have been requested to act thereon, but have refused to do so.

Among other things, it was discovered that four of the Metropolitan Leased lines had never made a report of the costs of changing motive power, although required by law to do so. The Companies are the 6th Avenue R. R., 8th Avenue R. R., 9th Avenue R. R. and the New York & Harlem River R. R. (City line.)

Now one interesting fact is to be noted, viz.: that these are the only leased lines which are not governed by Metropolitan directors. These four Leased Companies alone have retained their individualities by having their own Board of Directors. Such directors, of course, could not be cognizant of the expenditures made by the Metropolitan Management for changing motive power on their roads, which are entirely in the control of the Metropolitan, and would naturally look to the Metropolitan to be furnished with a statement of the expenditures upon which the direc-

tors might then make their Annual Reports as required by law.

During a period of four months in 1903, the Railroad Commissioners' attention was repeatedly called to the violation of the law upon the part of these four Companies. They were shown that the neglect to file correct reports constituted an offense against the criminal as well as the civil law, and references were made to the sections of law which apply, particularly to sections 57 and 158 of the Railroad law. The Commissioners were respectfully requested to take steps to have correct reports made and filed but they neglected to do so.

Finally, as the Commissioners did not act, the facts were laid before the respective presidents of these four companies, and their attention was called to the personal liabilities involved under Section 31 of the Stock Corporation Law and the penalties to which they were liable under the Criminal Code, Sections 416, 611 and 614. The four presidents then wrote to the Railroad Commissioners repudiating any responsibility, and placed the whole blame for the situation upon the Metropolitan Management. The Secretary of the Commissioners furnished the writer with copies of these four letters and wound up his letter of transmittal with this statement "I am instructed by the Board to inform you that it will not proceed further in this matter."

Yet the law requires the Railroad Commissioners, when their attention shall be called to errors in reports, to oblige delinquent corporations to file new and correct reports.

Now the reason why the Metropolitan Manage-

ment did not furnish the directors of these four Companies with a detailed statement of expenditures for changes of motive power so that accurate reports might be filed is not far to seek. They did not dare to do so for fear that the figures would be examined by the directors and their accuracy disputed and the fraud discovered. The safer way was to see that no reports were filed at all. The Railroad Commissioners permitted this to be done.

It is clear that the directors of the New York & Harlem River Railroad Company, for instance, would not have certified to the expenditures of $541,000 for engineering and Superintendence expenses on a mile and a half of railroad, nor would they have certified that the cost of laying new steel rails on a half mile of street amounted to over $296,000, or that over a million and a half dollars had been expended in changing motive power on a street where none had been made, and in payment for construction work actually paid for by another railway Company, or that over a million dollars charged against four leased Companies for Engineering and Superintendence was a correct charge.

The officers and directors of these four leased lines would not have been regardless of the fact, as the Metropolitan officers and directors have been, that the annual reports made to the Railroad Commissioners are made under oath, and that the making of false reports is a crime.

Amory's Disclosures of Metropolitan's Mismanagement.

FALSE STATEMENTS FURNISHED THE STOCK EXCHANGE.

On May 10th, 1904, the Metropolitan Company applied to the Stock Exchange for permission to list new bonds. In accordance with the rules of the Exchange, the Company was required to file a sworn statement of its financial condition. Such statement was perjurous and fraudulent, for it included among assets and the balance of surplus earnings, from which dividends are payable, a wholly fictitious sum of about $2,700,000.

In setting out the list of assets of the Company there were blocked together 14,000 shares of Broadway & 7th Av. R. R. Stock, and an item designated as "National Cable Construction Company license right and privileges." The total value of the two blocked items is then carried out at $5,522,015.32. Now these pretended license rights and privileges are the rights to operate cable roads, which have been forever abandoned. They are of no greater value than the right to operate cars with horse power, which has also been abandoned on Broadway and other streets. The Company in none of its other published statements has ever claimed any value for these rights, and they have none. Yet by the blocking process referred to, it has been sought to deceptively increase the assets and dividend paying capacity of the Company to the extent mentioned, that is by over $2,700,000.

The only value in these two items blocked together is that of the 14,000 shares of Broadway & 7th Av. R. R. stock which is guaranteed 10 per cent. dividend.

Amory's Disclosures of Metropolitan's Mismanagement.

The attention of the Stock Exchange was called on December 15th, 1904, to this attempt by the Metropolitan Company to make a fraudulent showing of assets in its formal application which was sworn to. But no action followed, and it is supposed that the influence of the Metropolitan has been exercised to prevent any action. Copies of the printed application can be held by applying to the Secretary of the Stock Exchange.

$7,0000.000 STOLEN AS A PRELIMINARY TO THE INTERURBAN LEASE.

During the quarter ending Sept. 30th. 1901, the Metropolitan Co. borrowed $1,000,000 and reported expenditures of $1,159,467.88 for new Construction.

In the course of the next three months the Co. borrowed $6,243.263.33, and reported expenditures of $5,740,996.38 for new construction. (See quarterly reports filed with the R. R. Commissioners, Sept. 30th, and Dec. 31st, 1901.)

The total amount of money borrowed in these two quarters was $7.240,263.33. The total reported expended on New Construction was $6,-900,464.26.

The only new construction was changing motive power on a small portion of leased lines. The change of motive power on the Company's own lines, with cars, power house and equipment had been fully paid for with the proceeds of $15,000,000 of new stock issued in 1898, and $7,000,000 issued in 1900. (See applications of

Amory's Disclosures of Metropolitan's Mismanagement.

Aug. 10th, 1898, and June 28th, 1900 to the R. R. Commissioners for permission to increase capital stock.)

On February 14th, 1902, the Metropolitan Company was leased by the Interurban Company.

The lease was not fully completed till near the end of March. The millions of dollars made available under this lease were not turned over to the Metropolitan management until the last quarter of the fiscal year, ending June 30th, 1902. This fact is disclosed by the Company's quarterly reports and Balance Sheets.

In this quarter ending June 30th, 1902, the Company's loans, which President Vreeland declared, in February, amounted to $11,000,000, including the $7,000,000 borrowed in the last two quarters of 1901, were fully paid off with funds provided by Metropolitan Stockholders through their subscriptions to Metropolitan Securities Co. Stock.

Expenditures of $2,107,056.13 were reported for New Construction in the last quarter of the fiscal year 1902. This sum was more than sufficient to pay for all the New Construction done during the whole year, as will now be proved.

In the year 1902 on the Broadway & 7th Ave. R. R. 3.55 miles of single track road were changed from horse power to Electricity at a cost reported by that Company of .....$	667,337.10
(See page 1441, Report for 1902.) There were 1.25 Miles changed on the Central Crosstown R. R. reported at a cost of	237,858.00

Amory's Disclosures of Metropolitan's Mismanagement.

(See page 1400, Report for 1902.)
In addition there were 8 miles of single track road changed on the 9th Ave. R. R. during the year, unreported by that Company, (See Report for 1902, page 1479) but, according to the Chief Engineer's sworn estimate of March 11th, 1902, costing 1,200,000.00

The total is $2,105,195.10

This covers all the New Construction or changes of motive power during the year except a small amount of work done on 3rd Ave. lines and separately paid for with proceeds of 3rd Ave. Bonds. The Mileage for the year was exactly 12.80 miles of single track road. (For confirmation of these facts see Annual Reports of the Companies for 1902. See also interview with the Metropolitan President published in the Herald Nov. 23rd, 1902, wherein is shown all the changes of motive power during the year.)

Yet the Metropolitan management reports under oath expenditures of $8,543,736.39 for New Construction during the year of which it is pretended nearly $6,000,000 was expended in the three months ending December 31st, 1901. This expenditure would represent the change of motive power upon 57 miles of railway, according to the detailed estimate of the Metropolitan Co.'s Chief Engineer. (See affidavit of M. G. Starritt of March 11th, already referred to, in which he declares that the full cost of changing motive power on Metropolitan lines is $150,000 per mile

of single track road, including equipment, generating apparatus, etc.)

EXPENDITURES OF OVER $6,000,000 IN EXCESS OF SWORN ESTIMATES.

In 1902 the Metropolitan Company reported Cash expenditures of $13,310,977.87 for additions and betterments on its own lines, (See Report for 1902, page 1108) which the Company's Chief Engineer, M. G. Starritt, estimated under oath in two carefully detailed statements, which will be quoted, would cost but $7,243,380, a difference of over $6,000,000.

On August 10th, 1898, the Metropolitan Company made Application to the R. R. Commissioners to increase its Capital Stock by $15,000,000. Consent was granted and the Stock was issued and sold for Cash in 1898.

President Vreeland in the Application stated under oath that the $15,000,000 was to be used for the following purposes:

1. To redeem $6,000,000 of Debenture Bonds held by The Met. Traction Co. ..... $	6,000,000
2. To pay for power house construction and for Cars already ordered	4,000,000
3. The balance of the money ($5,000,000) to be held in the treasury and to be used when needed for completing change of motive power "upon the various railroads owned and operated by the Co."	5,000,000
Total ..... $	15,000,000

Amory's Disclosures of Metropolitan's Mismanagement.

In the same Application, Chief Engineer Starritt makes a careful detailed estimate in an affidavit showing that the following sums of money were needed for specific purposes:

1. For the Power House and Plant at 96th St., full cost, when completed, the sum of ..... $	2,975,580
2. Charges at the 50th St. Power House	600,000
3. 320 Cars already ordered at $2,500 each	800,000
Total, (estimated in great detail)	$4,375,580

Mr. Starritt at this time makes no estimate for change of motive power, but it is clear that after paying for the $6,000,000 Debentures and the other necessary expenses as just above detailed, there would remain, according to Mr. Starritt's figures, from the $15,000,000 a balance of $4,624,420 or, according to Mr. Vreeland's figures, about $5,000,000 available for changes of motive power "when needed."

On June 28th, 1900, another application was made and subsequently granted to further increase the Company's Capital Stock by $7,000,000. This Stock was sold in December, 1900, at a premium, realizing over $10,500,000. (See Report for 1901, page 1073.) Copies of both Applications may be had by applying to the Railroad Commissioners.

According to Mr. Vreeland's estimate at the time of the previous issue of New Capital, in August, 1898, there should remain $5,000,000 available for change of motive power, and ac-

cording to Starritt's estimate the sum of $4,624,420, after paying for Power House Completion and for the Debentures.

In the application of June 28, 1900, Mr. Vreeland declares that $3,000,000 would be required to pay for changing the Cable road to Electric power on the Company's own lines, as distinguished from leased lines.

In this application of 1900, Mr. Starritt has an affidavit in which he estimates in careful detail that the cost of changing from Cable to Electric power on the Company's own lines would amount to $2,867,800.

To recapitulate, Mr. Starritt in 1898 estimates the full cost of completing the Power House and Plant at 96th St. and 50th St. and the purchase of 320 cars at $4,375,580, and in 1900 the full expense on the Company's own lines of changing from Cable to Electricity $2,867,806, a total of $7,243,386.

Yet in 1902 the Metropolitan Company in its sworn report to the R. R. Commissioners sets out expenditures of $13,310,977.87 for the same purposes, a difference of over $6,000,000.

Mr. Starritt's estimates, made under oath, and the reported expenditures, also made under oath, are set out below so that they can be compared.

Amory's Disclosures of Metropolitan's Mismanagement.

CHIEF ENGINEER STARRITT'S SWORN ESTIMATES.

Affidavit of August 10th, 1898.

"Estimated cost of 96th St. Power house station and requirements for Engines and Boilers .....$	2,269,980
In addition to the above, putting up five engines, generators and boilers, making a total complement in said building of 11 Engines and 88 Boilers, the cost of such additional work being $705,600, *"Making the total estimated cost of the said Power house and plant, when completed* .....$	2,975,580"
Cost of reconstruction of Car house at 50th St. and 7th Avenue .....$	600,000
320 Electric Cars .....$	800,000
Total	$4,375,580

Affidavit of June 25, 1900.

Estimated cost of changing over the Metropolitan Cable railroad and Equipping the same to permit the operation of the cars by an underground current of Electricity:	
For the change on Broadway .....$	854,134
" " " " Columbus Av. ..	529,341
" " " " Lexington Av. .	652,331

Amory's Disclosures of Metropolitan's Mismanagement.

For installing high tension feeders necessary for the operation of said roads		407,000
For a change and re-equipment of Substations as follows:		
At Houston St.		275,000
One-third the total cost of 50th St. Station		120,000
One-third the total cost of 25th St. Station		30,000
Total	$	2,867,806
Grand Total, estimates of Aug. 10th, 1898, and June 25th, 1900	$	7,243,386

Expenses Reported by Metropolitan Co., June 30th, 1902.

(*Page 1108, Vol. II, Reports for 1902.*)

Details of Additions or Betterments During the Year.

Changing from Cable to Electricity as motive power on Broadway, Lexington, Columbus and Ninth Avenues, including reconstruction of road and superstructure; erection of 96th Street power house and equipment of Electric Stations and sub-stations at 26th, 146th, 50th and Front Streets; also additions and improvements to car houses	$	11,064,216.89
Cost of change of Cable Cars to Electric		1,481,789.17
New Electric Cars and Equipment		764,971.81
Total	$	13,310,977.87

Amory's Disclosures of Metropolitan's Mismanagement.

THE PROCEEDS OF $6,000,000 OF BONDS UNACCOUNTED FOR.

The Houston, West St. & Pavonia Ferry R. R. Co. issued $6,000,000 of Second Mortgage of June 17th, 1893, to Railroad Commissioners in which appears as far as is known the first official statement of the existence of these Bonds.)

The Company, then owned and controlled by the men now known as the Metropolitan Management, never reported these Bonds in any of its sworn reports, although required by law to do so. (See annual Reports for 1891, 1892, 1893.) This constituted perjury, because the reports were made under oath and purported to correctly state all outstanding obligations.

On June 17th, 1893, the Company made application to the Railroad Commissioners to increase its Capital Stock by $6,000,000, for which, it was stated, the Bonds were to be exchanged. (See Application.)

No record of the Application or of the approval granted August 1st, 1893, was ever published in the Railroad Commissioners' reports, where they should have been published. Suppression of official records seems to have been carefully attended to throughout this transaction.

On Nov. 29th, 1903, the Company was consolidated into the Metropolitan Street Railway Co. The $6,000,000 of New Stock authorized was not issued and exchanged for the Bonds at the time of the consolidation. (See articles of consolidation for proof of this fact.)

The $6,000,000 of Bonds were actually exchanged for Metropolitan Stock, and not for

Houston, West St. & Pavonia Ferry R. R. Stock. This was an unauthorized and illegal transaction.

In the application of June 17th, 1893, it is stated under oath by President Vreeland that the Bonds "had been issued and disposed of for sums of money necessary for completing, furnishing or operating the railroads of your petitioner."

This statement is found on examination not to be true. The Company had no railroads upon which the sums of money represented by the $6,000,00 of Bonds could possibly have been so expended, as will be proved.

The railroads of the Houston, West St. & Pavonia Ferry R. R. Co. in 1893 were the following:

Its own lines, still operated by horse power, and the Broadway & 7th Ave. R. R., leased June 30th, 1890, including also the Broadway Surface R. R. Co. and the South Ferry R. R. Co., of which the Broadway & 7th Ave. R. R. was lessee. The Chambers St. & Grand St. F. R. R. merged January 27th, 1891. The 6th Avenue R. R. leased February 1st, 1892. The 9th Avenue R. R. leased April 20th, 1892. The 23rd Street Ry. (and Bleecker St. R. R. sub-leased) leased April 5th, 1893.

Reference to the report of the Broadway & 7th Avenue R. R. Co. on June 30th, 1894, shows that this Company in 1894 reported cash expenditures of $7,925,270.97, (proceeds from the sale of Bonds) for constructing and equipping the Broadway cable road to 59th Street, including real estate, power houses and equipment. On none of the other railroads was any new work done. The change of motive power on the leased lines was not made till several years later.

Amory's Disclosures of Metropolitan's Mismanagement.

On referring to the Metropolitan Street Railway Company's report for 1894, page 878, we find the following Statement: "Ten miles of the above lines on Broadway & 7th Avenue from 59th Street Central Park is at present operated by cable power, *and the other routes by horse power.*"

The Cable road on Lexington Avenue was constructed with the $10,000,000 of Stock and Bonds of the Lexington Avenue & Pavonia F. R. R. which were issued for "construction," and began to operate in 1895, and the Columbus Avenue Cable road was constructed with the $6,000,000 of Stock and Bonds of the Columbus & 9th Ave. R. R., also issued for "construction." The cable road on Columbus Avenue was opened Dec. 6th, 1894, and put in complete operation May 26th, 1895. This completes the list. (See Metropolitan Ry. Co. report for 1895, and Columbus & 9th Ave. R. R. report for 1896 for confirmation.)

It is accordingly seen that the proceeds of the $6,000,000 second mortgage Bonds could not possibly have been expended "for completing and furnishing the railroads of your petitioner."

Nor could the proceeds of the Bonds have been used for "operating the railroads of your petitioner."—To have paid operating expenses with the proceeds of bonds would have been illegal, and had the illegal practice been indulged in, it must necessarily have shown in the Company's sworn annual reports.

On June 21st, 1904, the Wall Street Journal published an article regarding these $6,000,000 of Second Mortgage Bonds, the title of which was, *Where Did the Money Go To?* But the Wall Street Journal did not attempt a complete an-

alysis, as has been done above, to prove that the $6,000,000 was never honestly expended, but was a piece of monumental graft.

THE INTERURBAN LEASE A FRAUDULENT ACTION.

On February 14th, 1902, the Metropolitan Railway Company was leased to The Interurban Street Railway Company.

This lease was arrogantly put through in the face of the protests of minority stockholders (see stenographic report of proceedings of stockholders of March 20th, 1902), to accomplish three distinct purposes.

FIRST: To enable the insiders to get safely away with the $7,000,000 which had been borrowed for the purpose of being stolen just before the lease was made.

SECOND: To conceal the bankruptcy and wretched financial condition of the Metropolitan Railway Co. by inaugurating a new leasing arrangement of Metropolitan lines with a guarantee of 7 per cent. dividends on Metropolitan stock.

THIRD: And finally, to hide the thefts and cheats which had taken place, by starting a new deal with a fresh pack of cards.

To accomplish these ends perjury and the grossest misstatements were indulged in. Among

other things President Vreeland declared that the indebtedness of the Metropolitan Co. amounting to $11,000,000 had "been incurred in the purchase of Third Avenue Stock." It was pretended that the lease was necessary, among other things, to provide for the payment of this indebtedness. He sent this false statement in a printed circular to Metropolitan Stockholders Feb. 14th, 1902.

Now this particular statement, among the rest, was false. The indebtedness for purchases of Third Avenue Stock, acquired in the spring of 1900, never exceeded $6,400,000 and had been wholly paid off in 1901 out of the proceeds of $7,000,000 of Metropolitan Stock which had been issued near the end of 1900 (see application of June 28th, 1900), and which stock had been sold at a premium, realizing over $10,500,000 in cash. (See Report for 1901, page 1073.)

The Company's own Balance Sheets filed quarterly with the Railroad Commissioners between 1900 and 1902 establish the fact that no indebtedness existed on Feb. 14th, 1902, which, as Mr. Vreeland falsely stated had "been incurred in the purchase of Third Avenue Stock."

The indebtedness had all been paid off. Mr. Vreeland was trying to conceal the $7,000,000 theft of borrowed money.

The proofs of Mr. Vreeland's false statement in this matter were so readily demonstrable from the Balance Sheets of the Metropolitan Company, filed with the Railroad Commsisioners, that I took pains in 1903 to see that the proofs were brought to Mr. Jacob Schiff's notice through a third party. I knew the Metropolitan Company's fiscal agents, Messrs. Kuhn, Loeb &

Co. had been deceived as well as Metropolitan Stockholders.

I was aware that both Mr. Whitney and Mr. Vreeland had told Mr. Schiff that the Metropolitan Company owed $11,000,000 for purchases of Third Avenue Stock. I had seen Mr. Schiff's testimony when he was examined in 1903 in the case of Emma W. F. Page against the Metropolitan Street Railway Co. This case was brought in the U. S. Courts, and all the papers ought to be on file in the Post Office Building. But this particular testimony has been withheld from public record; it cannot be found among the papers on file. Nevertheless, I have seen the testimony, and I was sure of my facts.

When there was brought to Mr. Schiff's notice the proof that he had been grossly deceived he obliged Thomas F. Ryan to forthwith relieve his firm of the holdings of the Metropolitan Securities Co. Stock, amounting to about $6,000,000. If Mr. Ryan had not been a very rich man indeed his embarrassment in satisfying Mr. Schiff's peremptory demands would have been extreme.

I do not include here the proofs from Balance Sheets which were thus brought to Mr. Schiff's notice because of the space they would occupy in this article, but the Balance Sheets themselves cannot be suppressed and the proofs are available at all times.

METROPOLITAN DIVIDENDS PAID WITH THE PROCEEDS OF METROPOLITAN BONDS.

As a part of the Interurban deal the Railroad Commissioners were persuaded to permit the issuance of $11,000,000 of Metropolitan bonds for the express purpose of changing motive power.

Amory's Disclosures of Metropolitan's Mismanagement.

(See application of March 11, 1902, for the consent of the Railroad Commissioners to a mortgage to secure an issue of $65,000,000 of Metropolitan refunding bonds.)

Both President Vreeland and Secretary Warren made affidavit, attached to said application, that the proceeds of the $11,000,000 were to be used solely for changing motive power on exactly 75.9 miles of single track road, still operated by horse power, as particularly detailed by Chief Engineer M. G. Starritt in his affidavit, also attached to the application.

But it was never really intended to use the money for the purposes declared by the two officials. Both Mr. Osborne and Mr. Philbin publicly charged in 1903 that the bonds were issued for the purpose of paying unearned dividends,—an illegal transaction.

The records now prove their charge to have been correct. The bonds were sold in July, 1902, at 90, realizing $9,900,000. (See Metropolitan report for 1903, page 1436.) The 75.9 miles of horse railway have not been changed to electric traction, but only a small portion thereof, while the proceeds of the bonds have wholly disappeared. (See report of the New York City Ry. Co. of June 30th, 1905, for confirmation.)

Metropolitan Railways have lost many millions of dollars through operation since 1902, nevertheless, Metropolitan dividends have continued to be paid. It is clear that the greater part of the proceeds of the $11,000,000 of Metropolitan bonds has been used in paying Metropolitan dividends to Metropolitan stockholders.

The stockholders were deceitfully induced to incur obigations of $11,000,000 that the Interur-

ban Co. (now the New York City Railway Co.) might fulfill its guarantee respecting the payment of 7 per cent. dividends,—a very pretty bunco game indeed.

THE METROPOLITAN TRACTION COMPANY AS A MEDIUM FOR GRAFT.

The Metropolitan Traction Co. was a New Jersey Corporation which was used by the Metropolitan management between 1893 and 1897, and till the Company was wound up in the latter year, to carry out numerous deals of graft. This Company's Capital Stock was always maintained at the same amount as that of the Metropolitan Street Railway Co. Whenever the Railway Company's capital was increased, the Traction Company's was increased accordingly.

As the Traction Co. was not obliged to publicly report its financial statistics and operations, not being a New York Corporation, it offered a convenient means by which the insiders were able to fleece Metropolitan Stockholders.

The Metropolitan insiders bought for control, large quantities of the Securities of railway Companies which became a part of the System. These securities were then sold to the Traction Co. at a profit of millions of dollars realized by the insiders. The Traction Co. then turned around and sold them to the Metropolitan Street Railway Company, and by this indirect process, the Metropolitan Railway stockholders were cheated of millions of dollars by the Metropolitan Management. In one deal like this in 1896, the insiders made about $4,000,000.

Amory's Disclosures of Metropolitan's Mismanagement.

In some instances, notably in the case of the Fulton St. R. R. and of the 28th St. and 29th St. Crosstown R. R., the Metropolitan Co. was burdened with railway properties at such excessive costs that they do not pay their fixed charges and occasion the Metropolitan Stockholders heavy annual losses. The Fulton St. R. R. lost $23,-104.32 last year, and the 28th and 29th St. R. R. $58,862.47. (See Report of the N. Y. City Ry Co. of June 30th, 1905.) I estimate that the Metropolitan management made for themselves not less than $1,000,000 by the sale of these two companies through the Metropolitan Traction Co. to the Metropolitan Railway Co. There were other similar transactions.

Another successful plan of graft was to have the Metropolitan Railway Co. pay the Metropolitan Traction Co. millions of dollars which it was pretended the Traction Co. had expended for the Metropolitan Railway Co. for property and for construction purposes. Two of these deals will be briefly described below.

The Traction Co. was dissolved in 1897 after it had served its usefulness. The Metropolitan management made strenuous efforts to buy in every single share of the Stock outstanding, for reasons that may be guessed, and finally accomplished it. I have heard Mr. John D. Crimmins describe with glee his success in buying up the last certificate outstanding.

TWO METROPOLITAN TRACTION STEALS.

In 1898 the Metropolitan Street Railway Co. issued $15,0000,000 of new stock, of which $6,-000,000 was used to redeem $6,000,000 of deben-

tures certificates, which the president of the Metropolitan Railway Co. declared under oath in an application to the Railroad Commissioners "had been issued in October, 1897, in payment for property purchased from the Metropolitan Traction Co. upon the dissolution of the latter Company."

Yet in September, 1896, only 13 months before, the Metropolitan Railway Company issued and turned over to the Metropolitan Traction Company $13,500,000 of Metropolitan Street Railway Co. Stock for property and Securities purchased from the Traction Company. The $6,000,000 was the final big clean up by the insiders on the winding up of the Traction Co., just as there was another clean up in 1902 of $7,000,000 when the Interurban became the leasing and operating company of the system. These two transactions with the Traction Company were carried through to enable the insiders to cheat the Metropolitan Stockholders of millions of dollars and to get safely away with the plunder.

The law was evaded, and no detailed statements were ever made in the Metropolitan Railway Company's annual reports, showing the expenditures of the proceeds of the $6,000,000 Houston St. Railway Bonds, or of the $6,000,000 used to redeem debentures, or of the $13,500,000turned over to the Traction Company.

Had detailed statements been required by the Railroad Commissioners the expenditures might have been traced, and possibly the full extent of the frauds long ago exposed. But suppression of facts has been a very necessary part of the dishonest deals of the Metropolitan management.

MILLIONS STOLEN FROM LEASED COMPANIES.

Whenever the Metropolitan Co. has issued its own stock or bonds for the declared purpose of new construction or changes of motive power, it will be found that a large portion of the proceeds went to enrich the insiders.

The proceeds of bonds of leased Companies issued to change motive power have also been stolen. One case, in which the proofs are particularly clear, has already been described, viz: The Second Avenue Railroad.

This Second Avenue R. R. case was one of the matters submitted to the District Attorney with 11 or 12 pages of statements containing all the proofs of the dishonest transaction, and it was one of the matters which was dodged by Mr. Jerome's expert accountant when he reported on my charges in 1903.

INVESTMENTS REPORTED AT FALSE VALUATIONS.

In the item of Investments alone the Balance Sheets of the Company have been falsified to the extent of millions of dollars. This has even been done in the face of the dictum of the Company's own chartered accountants, who declared that *"As a matter of correct accounting, these investments should be held on your books at cost irrespective of their par or market value. No corporation of this character would undertake to write up or down the value of its investments*

to agree with the fluctuations of the market." See report of Stephen Little, Farquhar J. Mac Rae and Haskins & Sells, certified public accountants, to President Vreeland, April 25th, 1903.

Mr. Vreeland declared in a public statement in 1900 that Third Avenue Stock had cost the Metropolitan Co. about $80. a share, yet in schedule A of the Interurban Lease it is put in at $125 a share and carried at such valuation in Balance Sheets.

The Metropolitan management has not only done what the accountants say could not be done, but has sworn to false values, and has used perjury in these cases as a convenient way of concealing thefts and of showing profits for paying dividends which were fictitious.

METROPOLITAN RAILWAYS BANKRUPT.

The reports do not correctly describe the true financial condition of the Companies. They are false and designedly misleading. Many millions of Liabilities are omitted, while Assets are overvalued to the extent of other millions. Losses have been concealed, and fictitious profits claimed.

On June 30th, 1905, the New York City Railway Co. reported a deficit of $4,688,984.78. On Sept. 30th a deficit of more than $5,000,000 was reported. But the actual deficit of Metropolitan lines at the present time probably exceeds $20,000,000.

Among other things, the Company has failed

to include five years arrears of franchise taxes, estimated for all the companies in the system to amount to over $6,000,000. The Company is also liable to the City for heavy interest charges on taxes long over due, besides about $2,000,000 for paving between tracks.

These are legal Liabilities and ought to be included in Balance Sheets to make a true showing of the Company's financial condition.

Assets have been reported in excess of true values. One example has already been referred to in the case of the Statement of the Metropolitan Co. to the Stock Exchange, wherein a fraudulent claim of about $2,800,000 was reported.

The Metropolitan Railways on June 30th, 1905, had a total floating indebtedness of about $48,000,000. (See Annual reports for confirmation.)

The Companies, as their own reports will demonstrate, have no present or prospective means of paying their indebtedness for taxes, or to liquidate their floating indebtedness.

Losses are accumulating, floating indebtedness is increasing, and the condition of the Companies is growing worse day by day.

Equipment is deteriorating and will soon demand renewal. The Companies are already so overloaded with stock and bond issues that a limit seems to have been reached in that direction.

Of all the railways in the Metropolitan system, only two operate at a profit, and only one has a surplus, the Union Railway. Even this company has a deficit when the losses of the con-

trolled companies which it operates under guarantee are included. A surplus to be sure is reported for the Metropolitan Street Railway Company, but such surplus is fictitious.

Year after year, this Company has been reporting earnings which were never made and declaring dividends which were never earned. It has concealed its losses and grossly exaggerated the value of its securities. By these means a surplus of over $3,000,000 is shown in the Company's reports, while a deficit far in excess of this sum undoubtedly exists.

The condition of bankruptcy which prevails has three distinct causes. First, the unconscionable looting, to which attention has been directed; Second, the unlawful practice of paying dividends from Capital; Third, over-capitalization.

MILLIONS OF UNEARNED DIVIDENDS PAID.

The Metropolitan management has long pursued the ruinous policy of paying unearned dividends. The process of showing profits not actually earned is a simple one, although incidentally involving falsification of accounts and perjury, and ultimate ruin. It is to transfer from Operating Expense Account to Construction Account sums of money actually expended in operation. The practice if persisted in is as hopelessly fatal to a corporation as it would be for an individual to attempt to sustain life by feeding on his own blood.

Amory's Disclosures of Metropolitan's Mismanagement.

An ex-official of the Metropolitan Street Railway recently told me that in 1898 he was informed by one of the management that it had been decided to increase Metropolitan dividends from 5 per cent. per annum to 7 per cent., whereupon he protested on the grounds that the Company had not been earning even the 5 per cent. which had been declared by the directors, and that to increase dividends to 7 per cent. meant ultimate ruin to the Company and exposure. Nevertheless, my informant added, the policy determined on was carried into effect.

A few months later (in March, 1899), the insiders put up the price on the Stock Exchange to $269. a share. The public was induced to purchase at fraudulent prices, while the insiders no doubt unloaded their stock and cleaned up profits amounting to millions of dollars.

My study of the Metropolitan reports leads me to believe that the Metropolitan Management for a number of years has authorized and paid not less than an average of two million dollars a year of unearned dividends.

I have recently filed with the District Attorney an affidavit charging four of the Metropolitan officials with perjury in swearing falsely in the annual reports for 1902 and 1903 to the number of persons killed and injured by the cars and the amounts disbursed for damage claims. I demonstrated that under this head alone the accounts were falsified in the two years mentioned to the extent of more than a million dollars. I have asked Mr. Jerome to state what he is going to do about it, to which he has as yet made no response.

The Metropolitan railways have never ex-

pended a single penny of net income for additions and betterments. The wisdom, the very necessity, of devoting a portion of earnings to betterments is recognized by all railroad managers. Even the Brooklyn Rapid Transit Co. reports substantial payments from net income for additions and betterments. But not so with the Metropolitan managers. They have brought the railway companies to ruin by a financial policy which included among other things the criminal practice of charging off to additions and betterments millions of dollars which had really been expended on operating the roads.

ANNUAL LOSSES FROM OPERATION.

The Metropolitan railways have been steadily losing money since 1902. For the year ending June 30th, 1904, the New York City Railway Co. reported losses from operation on the railways in the Metropolitan System of $1,411,411.26 (See R. R. Reports for 1904, pages 1049 & 1050.) For the year ending December 31st, 1904, losses were $1,879,329. (See quarterly reports.) Losses are increasing all the time.

In the year ending June 30th, 1905, losses amounted to $3,751,091.80. In other words, expenses were $10,000 a day greater than receipts. (See Annual Report of the New York City Railway Company for the year ending June 30th, 1905, recently published in pamphlet form.)

The Report shows that only two of the Companies in the system made money; the others lost money.

Amory's Disclosures of Metropolitan's Mismanagement.

The railways of the Third Avenue System have lost an average of over a thousand dollars every day since they were leased by the Metropolitan in 1900. The Third Avenue Co. does not earn the interest on its own bonds. (See Annual Reports since 1900 for confirmation.) Dividends are being paid on Third Avenue Stock which that Company is wholly unable to earn. These dividends amount to $800,000 a year at present, and under the lease and guarantee are to be gradually increased to $1,120,000. Losses incurred through the operation under guarantee of Third Avenue lines were more than $1,000,000 in 1905.

LONG CONTINUED LOSSES IN PROSPECT.

Statistics show that when the Elevated roads were first built the business on north and south surface lines fell off to such an extent that some of the companies were near ruin. It took the surface roads 8 years to regain the traffic they had lost.

Every year between 1893 and 1899 the Elevated roads in turn lost enormously by reason of the competition of surface roads, which during this period had been equipped with electric power. It took the Elevated roads 6 years to recover their traffic. Metropolitan lines are now confronted with similar conditions.

It is quite certain that the Metropolitan railways are face to face with a period of long continued annual losses. It is extremely probable that with their present burden of fixed charges they will never be able to show a profit from

operation, provided honest reports are required in future and the fraudulent practice of charging construction account with expenditures actually incurred in operation be checked.

It must be remembered that, owing to the transfer system, the average receipts per passenger on Metropolitan lines is less than 3½ cents. There is undoubtedly a profit at these figures on a fair capitalization, but not on a capitalization which has been watered to the limits. Moreover, the difference between 5 cents and 3½ cents average fare may mark a difference as well defined as that between wealth and poverty. One may represent enormous profits and the other ruinous losses. On their traffic business last year Metropolitan lines lost nearly $4,000,000. Had 5 cent fares been received from each passenger, there would have been a profit of more than $5,000,000.

The only hope of the system is in reorganization with honest management, and the forced return to the treasury of the millions stolen by the insiders as well as the other millions paid out for unearned dividends. By these means only can the Metropolitan railways be established upon a profitable basis. I cannot see otherwise how even the propsed merger with the Interborough Company can save the Metropolitan.

THE TILLINGHAST CASE.

The recent developments in this case have aroused widespread public alarm. Evidence has been elicited to prove that a conspiracy has long

existed in the legal and claim department of the Metropolitan Railway to defraud plaintiffs in damage suits. Two of the conspirators, William H. Tillinghast and Stanley S. Bagg, have made written confessions that Tillinghast has been employed for several years to sit on juries and render verdicts favorable to the railway companies. At the present writing this scandalous piece of business is under investigation by a judge of the City Court, who felt impelled by a sense of public duty to take the matter up after the District Attorney confessed himself unable to find "legal corroboration." The existence of corrupt Court practices by Metropolitan attorneys is well known to the legal profession, and has for years constituted a public disgrace.

THE AFFAIR WITH JEROME.

In 1902, in response to an invitation from District Attorney William Travers Jerome, I furnished him with proofs of crimes committed by the officials of the Metropolitan Street Railway Company.

The matter came about in this way. Mr. Jerome and I had been upon very friendly terms for several years. He knew that I was familiar with street railway business in New York. He knew that the conduct of Metropolitan Railway affairs was corrupt. We had on numerous occasions discussed that point.

In the campaign of 1901, when he first ran for the office of District Attorney, Mr. Jerome made the following statements in a speech published in the "Herald" of October 27th, 1901:

Amory's Disclosures of Metropolitan's Mismanagement.

"When corporate interests use their great wealth to debauch this community, to buy the authorities in every direction and to buy the Legislature of the State of New York it is quite time that plain people said something on the subject.

"I wage no war with corporate interests. But ask any lawyer in large practice in the City of New York, whether there are not judges on the Supreme Court of the State of New York, in the County of New York, that they would rather not be before if the interests of the Metropolitan Street Railway Company were involved. I do not desire to name any of these Judges, but if I am pressed too hard, I will name them."

"Let me tell you that if I am elected I shall make it my business to follow the trails of wrong-doing and corruption, not only when they lead into tenement houses, but I shall follow them even if they lead into the office of the Metropolitan Street Railway Company."

"No one knows better than I do that when I am attacking the Metropolitan Street Railway Company, I am arraying against myself the most dangerous, the most vindictive and the most powerful influences at work in this community."

I saw Mr. Jerome the next day. He requested me to bring him proofs of Metropolitan wrongdoing when he became District Attorney, if he should be elected. This invitation was several times repeated during the campaign. Accordingly after Mr. Jerome became District Attorney in 1902 I brought him the desired information. This occurred on November 23rd, 1902.

Amory's Disclosures of Metropolitan's Mismanagement.

The charges were voluminous. Mr. Jerome first examined a part of them and expressed himself satisfied as to their truth. He assurred Mr. J. Coleman Drayton and myself that he would do his duty without fear or favor. He declared it was "the most important matter ever in the District Attorney's office; a bigger thing than St. Louis, etc., etc."

He then turned the matter over to one of his assistants for a thorough investigation. This Assistant District Attorney devoted six weeks to the investigation, to the exclusion of all other business. He subsequently informed me, as well as ex-District Attorney Philbin, that I "had made good on every one of the charges."

In February, 1903, Metropolitan officials learned there were charges on file, and, without informing me, the District Attorney furnished them with a partial list of the charges.

Mr. Jerome had previously told Mr. James W. Osborne, as well as myself, that he was satisfied as to the truth of the charges. Nevertheless, about this time he seemed anxious to drop the matter. When asked for an explanation, his response was "that he feared he would be able to punish only the little Metropolitan thieves and not the big ones, if he should proceed in the matter." He made this statement to Mr. Osborne, as well as to me.

In March and April, 1903, the Vreeland libel case was heard, wherein I had summoned the president of the Metropolitan to court on a charge of criminal libel.

As a defense to my charges of wrong-doing, he unjustly published me in the newspapers as a blackmailer and stockjobber, whereas my real

offense was that I had presumed to furnish the District Attorney with proofs of Metropolitan corruption.

In the course of the trial, the Metropolitan management was publicly accused of monstrous crimes by two experts in criminal law; one, Mr. James W. Osborne, who had been Mr. Jerome's own assistant, the other, Mr. Eugene A. Philbin, who had been Mr. Jerome's predecessor in office.

The nature and publicity of these charges will be demonstrated by quotations from newspapers, which follow:

NEW YORK TIMES, April 16th, 1903.

Osborne says he will prove $30,000,000 Steal.

NEW YORK WORLD, April 16th, 1903.

$30,000,000 Stolen from Metropolitan.

James W. Osborne declares this Charge will be proved.

NEW YORK TRIBUNE, April 16th, 1903.

Theft of Millions. Osborne after M. S. R.

No expert can explain away the theft of millions which is so palpable from these figures.

NEW YORK PRESS, April 16th, 1903.

Thirty Millions stolen by Metropolitan, Osborne tells Nicoll.

NEW YORK TRIBUNE, April 17th, 1903.

Bond issue to pay dividends.

One of Philbin's many startling charges against M. S. R. Osborne says millions were reported as paying Third Avenue debt already paid.

NEW YORK HERALD, April 23, 1903.

Osborne leads new attack on Vreeland's management, alleging huge misappropriations.

Amory's Disclosures of Metropolitan's Mismanagement.

NEW YORK PRESS, April 26th, 1903.

Mr. Osborne's statement:

"We have produced evidence before Magistrate Barlow which shows a crime has been committed, and now it is up to the District Attorney to say whether he will avail himself of that evidence and proceed against those who have committed the crime.

"We have charged in open court that $30,000.00 has been stolen, and that never has been disproved by the Metropolitan Co. or its counsel. I told Mr. Nicoll, counsel for Mr. Vreeland, openly, he would not be able to disprove my charges."

Yet the District Attorney took no notice and made no move.

During the course of the Vreeland trial two lawyers, one Mr. Jerome's own ex-law partner, and the other confessedly a Metropolitan attorney, were called as witnesses, and testified to such facts as convinced every unbiased hearer in the court room that they had collusively attempted to bribe me with a large sum of money to withdraw the charges. (See daily papers of April 29th and 30th, 1903, for confirmation of this allegation.)

That Mr. Jerome was convinced of his ex-partner's guilt is proved by his action, for, after examining the evidence, he summarily required his ex-law partner to remove his (Jerome's) name off his office door.

Subsequently Mr. Jerome's ex-law partner, on charges preferred, was convicted of the attempt at bribery by the Grievance Committee of the Bar Association, a crime specifically described

in Sec. 113 of the Penal Code. He got word of his conviction and escaped punishment by resigning from the Association before the conviction could be formally put in writing. (See Report of the Grievance Committee, in the Annual Report of the Association of the Bar, January, 1904, page 105.)

The last paragraph of the Committee's Report is proof that the District Attorney was advised of all the facts, but he took no action.

THE DISTRICT ATTORNEY PERMITS THE METROPOLITAN OFFICIALS TO ESCAPE.

In April, 1903, Mr. Jerome employed an accountant to report on my charges. He did not take the trouble to speak to me about it, although it is obvious that my knowledge of the matter would have been of value to the accountant, had the investigation been undertaken in good faith.

But it was not undertaken in good faith. It was a deliberate whitewash. I have documentary evidence to prove it.

Early in May, 1903 (see daily papers of May 5th, 1903), Mr. Jerome gave the Report of his expert to the press. The "Tribune" referred to the Report as "An incomplete, inconclusive, superficial document." Accompanying it was a carefully prepared statement of the District Attorney, which contained willful misstatements.

Among other things he refers to *"verbal charges"* against the Company, implying that my charges were not in writing, when as a matter of fact they were all in writing, covering about 80 pages of typewriting.

Amory's Disclosures of Metropolitan's Mismanagement.

He says that his accountant's report "is very clear and full and takes up each charge". He says that "the specific charges so far as they involve criminal wrong-doing are entirely without foundation."

As a matter of fact, Mr. Jerome's accountant *did not* take up and report on each charge. His report *was not* "clear and full." The specific charges *did* involve criminal wrongdoing.

There were 27 distinct written charges against the Metropolitan management filed by me with Mr. Jerome. Of these his accountant reported on but 7, and these of minor importance, involving chiefly technicalities of accounts and not serious crimes: *while 20 of the charges were not reported on or even referred to by Mr. Jerome's accountant.* These 20 charges were the all important charges. They involved the proofs of the commission of great crimes.

It is clear from the record that the District Attorney furnished his accountant with only a few of the minor charges and wholly suppressed the 20 others.

THE REVENGE OF THE METROPOLITAN.

At the end of the Vreeland case, in which I was defeated by influences, which Mr. Jerome has so eloquently described as "the most dangerous, the most vindictive and the most powerful influences at work in this community", I challenged the Metropolitan president to arrest me for criminal libel for charges which I caused to be widely published, in which I accused him and

his associates of specific crimes, including the theft of $30,000,000. (See daily papers of May 3rd, 1903.)

But the Metropolitan officials were aware that I had proofs in my possession of their guilt, so they avoided the issue.

Their only response was a despatch from Philadelphia, published in Wall Street, two days later, May 5th, 1903. Here is a copy of the despatch:

"AMORY TO BE PROSECUTED.

"(Special Despatch to the New York News Bureau.)

"PHILADELPHIA.—W. N. Amory, who made the charges against the Metropolitan Street Railway, is to be prosecuted. The Metropolitan management will spare no expense in the case. 'Amory', said a prominent interest in the company, 'will be prosecuted to the bitter end, if it costs us a million dollars.'"

The same day the New York MAIL and EXPRESS published a copy of this despatch.

When I read this, I appreciated it was notice that I was to be punished by every means known to my antagonists because I had dared to furnish evidence of their guilt to the criminal authorities.

I have made a study of street railway affairs in this city for twenty years. Moreover, I learned something of Metropolitan methods between 1895 and 1900, when I was connected in an official capacity with the Third Avenue R. R. Co. I knew well what to expect.

Now I was being dogged by Metropolitan de-

tectives the whole time I was engaged in arranging the proofs respecting Metropolitan crimes for the District Attorney's information, and I was perfectly well aware of it.

The Metropolitan detectives bribed shopkeepers in the neighborhood of my house, and made their stores convenient places for spying. They occupied a house near my residence as headquarters.

They bribed one of my servants. They shadowed me constantly. They followed members of my family to their great annoyance. For a considerable period they followed everyone who called and left my house.

Before the Vreeland libel case was tried, they had begun to rob my mail. My telegrams were opened and read before delivery. They had my telephone wire tapped. I had to stand these things, because I was powerless to stop them. There was nothing to do but to grin and bear it, and wait.

THE MAILS ROBBED.

I have evidence that my mail for a period of more than two years was opened and examined by Metropolitan agents in the Post Office, before it was delivered to me. They even broke the seals and opened registered letters. They stopped at nothing.

But I intend to relate here in detail only one incident of mail-robbing. In this case the Metropolitan agents furnished me with written evidence of their criminal practices.

Amory's Disclosures of Metropolitan's Mismanagement.

On the morning of December 4th, 1903, my attorney, Mr. Wm. R. Brinkerhoff, of 68 William Street, received a letter addressed to me in his care. The letter was post-marked "Washington, D. C., Dec. 3rd." Mr. Brinkerhoff put the Washington letter into a plain square envelope of his own, securely closed the envelope, and addressed it to me at my residence. Mr. Brinkerhoff then personally posted the letter at about 11.30 A. M., December 4th.

About 5 o'clock that afternoon Mr. Brinkerhoff's letter was received at my house. When I opened it, I found it contained nothing but a blank sheet of paper.

Several hours later that evening there was delivered by a postman another letter in a plain square envelope, which was addressed to my wife. On opening the envelope, she discovered the Washington letter which Mr. Brinkerhoff had forwarded. The original envelope of the Washington letter had been opened and the letter extracted. The letter had then not been replaced in its envelope, but placed alongside of it, and in this shape had been enclosed in the envelope addressed to my wife. The purpose of this was doubtless to make certain that the Washington letter would be read by my wife.

Now, this Washington letter was signed in an assumed name by a young woman typewriter employed in one of the Government Departments, whose services as a typewriter had been engaged by me in a legal matter in Washington in the preceding month of October. The letter was written on Department paper. Possibly the fact that it was signed in an assumed name attracted the suspicions of the Metropolitan agents, when

they opened it in the mail and read it, and doubtless with the intention of intimidating me, they sent the letter to my wife.

Beginning the very next day, it was noticed that the detective service became more thorough than ever. They began to follow my wife persistently. Two or three detectives were her constant shadows. The explanation was presently supplied.

On the afternoon of January 27th, 1904, my wife received an anonymous letter by mail signed with the initials M. R. These are the initials on the stock ticker, which designate the Metropolitan Street Railway Company. A copy of the letter follows:

"MRS. AMORY,

"A letter from 'Peggy' from Washington to your husband was sent to you in December early. We know you received it.—You have taken no steps yet. We have copy; also every evidence for you and will bring it forward and produce the girl at the smallest sign from you.

M. R."

Here was the confession of the theft of a letter while in the U. S. Mails. The reason for the increased activity of the detectives became apparent. They were watching to see what my wife was going to do about that Washington letter. They were going to bring "every evidence" if, as doubtless they hoped, she should go and see a lawyer about the matter. Can anyone suppose that criminals who had robbed the mails would hesitate at perjury and false evidence?

This anonymous letter was in handwriting, plainly disguised, on typewriting paper which was torn to a size to exactly fit the envelope. It is noticeable that the letter was punctuated with extreme exactness. The envelope is postmarked N. Y. Station O, Jan. 27, 1904, 2.30 P. M. Station O is situated at 122 Fifth Avenue.

On May 10th, 1904, the Metropolitan agents evidently became impatient, for another letter was received from M. R. This letter was also posted at Station O.

It would appear that the self-confessed criminals feared lest the letter of December had not been received by my wife, for *an exact duplicate* of the Washington letter was enclosed. The copy which was traced was so exact that it was at first mistakenly believed to be an original duplicate. There was also enclosed an exact copy of the original Washington envelope, showing the post-mark. The envelope had been skilfully copied, even to the waving lines of cancellation. It was the work of an artist in India ink.

A copy of the second anonymous letter follows:

"MRS. AMORY,

"Why don't you go to investigate for yourself at Washington from persons with evidence connected with Room 239 occupied during first trip important—See Sunday breakfast waiter.

M. R."

The handwriting was the same as in the first letter.

It thus appears that the threat of May 5th, 1903, which had been telegraphed from Philadelphia, in which the Metropolitan Management announced its intention to spend a million dollars to get even with me, had taken this shape.

I have been asked why I have not attempted to punish these criminals by laying the facts before the Post Office authorities. I did consult a Post Office Inspector, who informed me that the fact that the Metropolitan detectives were posting yellow envelopes on top of such letters as I mailed (a practice which I observed was being indulged in) indicated collusion with Post Office employees, and an understanding with higher Post Office officials. He said the yellow envelope scheme was one adopted by Government detectives who were attempting to obtain evidence against important criminals, counterfeiters, for instance. When this was explained, I recognized the hopelessness of seeking redress in that direction, for I appreciated that if the influence of the Metropolitan management was so great that it extended into the Post Office Department, as it undoubtedly did, it was also powerful enough to balk any successful inquiry and the detection and punishment of the guilty.

That there must have been complete Post Office collusion is indicated by the fact that similar tampering with mail matter occurred when I was served through the branch Post Office at Third Avenue and 68th Street, as well as when later my mail was distributed through the branch Post Office at Eighth Avenue and 123rd Street.

Amory's Disclosures of Metropolitan's Mismanagement.

It has seemed necessary to set out the foregoing at such considerable lengths, in order that the Metropolitan matter and my connection with it may be understood.

CONCLUSION.

If these things are not true, then I ought to be punished for criminal libel or locked up in a lunatic asylum. But if I can "make good", to use a favorite expression of Jerome's, then some eminent financiers ought to be sent to State's prison.

What my motives are is of no importance. It is a matter of grave consequence whether my charges are true, and, if true, whether the proper action be taken on the facts. Yet I should like to make my position plain.

First of all, I again assert that it never occurred to me to expose Metropolitan wrongdoing until Mr. Jerome invited me to do so. I then undertook the matter in good faith. But Jerome deserted me at the critical moment in the contest which he had induced me to engage in, thereby acquiescing in the ruin of a man who had been his friend and ally. My motives were questioned and my reputation injured. I then resolved never to abandon the undertaking.

Doubtless many have believed that the Metropolitan President had some justification when he accused me of having "undertaken a bear raid upon Metropolitan Stock, of using the District Attorney's office for stock-jobbing purposes, and of making malicious and unscrupulous attacks

for the purposes of extorting money." Not only were these accusations false, but the Metropolitan President made them with a consciousness of their falsehood, and Jerome knew they were false.

These were grossly libelous charges, the imputation of which I will not forever rest under. Calumny once circulated is more or less forever current. I understand fully that to cope with the calumny I must prove the truth about the Metropolitan.

All the accusations of the Metropolitan President were unfounded. I never made a dollar out of Metropolitan Stock, nor ever attempted to profit by the information which was entrusted to the District Attorney. Even if I had, it would have constituted no crime described in the Penal code. It is enough to say that I refrained.

Two months before the Metropolitan's accusations against me were published, I was offered the profits on thousands of shares of Metropolitan Stock if I would disclose the information which I had placed in the District Attorney's hands. I declined this as well as other offers. But I declare I have now no scruples against profiting by the knowledge I possess of Metropolitan affairs and of the real value of the Metropolitan Securities.

At the very time I was unjustly published to the world as a stockjobber and a blackmailer, I had written evidence in my possession proving that Metropolitan attorneys had unsuccessfully attempted to bribe me with $200,000 in cash, the consideration being the withdrawal of the charges

filed with the District Attorney, and the abandonment of my efforts to expose the wrong-doing which I had unearthed. Several other attempts to buy me off have since been made.

But, failing in these efforts, and not satisfied with a campaign of slander in order to discredit me, these monumental grafters have first publicly threatened and then subjected me to a persecution so revolting, against which as a single individual I have been powerless, that my own self respect demands my best efforts to effect their punishment. They have not stopped short even at attempting to destroy the peace and happiness of my household. Others may submit to such intolerable tyranny, but I am resolved never to submit. It is my privilege to vindicate myself. It is a duty to expose crimes and cause the guilty to be punished. Privilege and duty therefore go hand in hand.

I may be asked—Why have I delayed so long? I have been waiting as patiently as possible for the psychological moment. I believe it has arrived.

The time has come to apprize the public fully of the criminal methods of this dangerous organization of Capitalists.

If the Managers of great public corporations can betray their trusts with impunity and rob their own stockholders of millions of dollars, and, through the exercise of their pernicious influence, get safely away with the spoils and escape the penalties for their guilty acts, then such a state of affairs becomes a peril to the community. If these things be allowed to exist, and if the guilty be permitted to go unpunished of their crimes, what security has any person

who may invest in the stocks and bonds of corporations controlled by men such as these? It is clear there is no security.

There is another consideration, too. Have things come to such a pass in New York that no man may dare to lay before the District Attorney evidence of wrong-doing by the directors of a corporation without the certainty of subjecting himself and his family to intolerable persecution on the part of the accused?

I cannot do better than quote here Charles Francis Adams Jr.'s closing paragraph in his preface to "A Chapter of Erie."

He wrote, "I can only add as a reason of this republication, my own belief that neither the American nor any other people can afford to glance in the columns of the daily press at such transactions in their history as those here narrated, and then dismiss them forever from memory. They contain matter for a great deal of reflection, since at many points they touch very nearly the National Life."

THE REMEDY.

The whole remedy is in the hands of the Metropolitan Stockholders themselves, who, certain of the endorsement of the public, shall with uncompromising spirit organize and institute proceedings to force restitution of the stolen millions and the return to the Metropolitan treasury of other millions paid out for unearned dividends, and incidentally effect the punishment of the guilty.