

New Jersey Court of Errors.

IN THE MATTER OF THE GAS-
TON TRUST.

May 16, 1866, Wm. G. Steele was appointed Trustee for Wm. K. Gaston, the character of the Fund being fully set out on pages 1 and 2.

The Trustee being ordered to render an account, the same was referred to F. W. Stevens, Esq., who made his report appearing on pages 3-8, inclusive.

Accompanying the report is the evidence upon which it was based.

Then the order of confirmation.

John V. Veghte, one of the sureties of the Trustee, learning of the situation, petitioned the Court to intervene, claiming that the report was incorrect in two particulars:

1st. As to \$1,000 charged as a dividend for July, 1866, instead of \$575, the dividend actually declared and received.

2d. Failure of the Master to credit the Trustee with \$1,175, claimed to have been paid the *cestui que trust*.

An order to show cause being granted depositions were taken.

The Chancellor refused to refer the matter back to the Master and from that decree, pp. 63-4, an appeal is taken.

I.

As to the July dividend of 1866, of \$1,000. It should not have been charged to the Trustee. July 1st the stock had not been purchased.

The dividend was nearly due at time of the appointment. If the stock had then been purchased it would have exhausted the principal, p. 6. The proceeds of sale of farm and farm implements were principal, and were not received until June 2, 1866, p. 9.

The dividend would have been purchased and payment of dividend on 100 shares thus purchased would be in direct violation of the order of the Court.

Such dividend thus purchased and paid out would be a distribution of the principal fund, p. 35, lines 10-20.

Mr. Gaston says Mr. Steele agreed to pay it, and therefore he should account for it, p. 14.

Mr. Steele denies it and gives his reasons, p. 35.

Mr. Steele is corroborated by John V. Veghte, p. 27, and in reply Mr. Gaston says he does not recollect about it, pp. 45 and 52.

At this time Mr. Steele thought he was to have 2 1-2 per cent. commission, and that would consume the \$386 balance reported, p. . This shows his good faith, p. 37, line 25.

II.

The \$1,175 should have been allowed the Trustee.

The Trustee says he advanced \$3,300—\$3,400 to Mr. Gaston up to November, 1866, above the dividends, and in making up the balance he discovered he had overpaid him \$1,175, p. 32. He was then a man of

standing, just from Congress, broker in New York, and possessed of considerable property. He then paid the dividends up to 1869, and \$550 on the January dividend of 1869.

Mr. Gaston does not deny this, and from thence until 1872, John V. Veghte paid all the dividends.

During all these years Mr. Gaston is greatly in need of money; he is sued, confesses judgments, has a son at college, and needs large sums of money to pay his annual expenses. His income is insufficient. He borrows money, gives notes, pays discount in anticipation of his dividends from 1866-7, until 1872.

Would he do this if there was due him \$425 on the July dividend of 1866, and the 50 shares stock privilege of 1866, worth about \$1,100?

He says he knew of the balance of this dividend due him, also the stock privilege, pp. 49, 50, 53. What is his excuse for not demanding these sums of money from 1866 to 1881? He will wait until Trustee comes to an account, pp. 50, 53.

In 1868, the stock is hypothecated; he is alarmed, asks the Court for protection. The sureties, Veghte and N. V. Steele, are called in. Then it is discovered 57 shares of the stock have never been purchased; the sureties purchase it.

Mr. Gaston then tells Veghte that the income account between him and Mr. Steele is trifling, but that if the sureties will make good the principal sum, he will release the sureties from any claims as to income, p. 23.

Is this untrue? What more natural? The sureties then procure from Steele an indemnity, not to protect them as to income, but only as to the stock they are obliged to purchase.

Wm. G. Steele was still owner of considerable property and abundantly able to protect them, p. 26. And in November, 1868, or January, 1869, when Mr. Veghte wanted to retain the \$550 which Steele claimed to have advanced, why did not Mr. Gaston then claim Steele owed him these sums? p. 25.

The *cestui que trust* released his sureties. He prevented them from protecting themselves, as they could and would otherwise have done, if he had disclosed the information he possessed, if it were true that these moneys were due him from the Trustee.

The matter should be referred back to the Master to hear fully all that could be said.

After the parties have been fully heard by the evidence then the Court can see whether or not it would be right to oblige the sureties to pay these moneys.

ALVAH A. CLARK.

Counsel of John V. Veghte.

Court of Errors and Appeals.

*In the matter of the final
account of William G.
Steele, Trustee for Wm.
K. Gaston.* } *On Appeal.*

POINTS.

The petition of Veghte claims that the account as reported by the Master and confirmed by the Court is erroneous in two particulars.

1st. In charging the accountant with \$1,000, the July dividend of 1866.

2d. In not allowing a credit of \$1,175, claimed to have been paid by the accountant to Wm. K. Gaston. Vide page 19, lines 19 to 35.

Steele, the accountant, received the trust funds in June, 1866, and in his account, as allowed, he credits himself with the purchase of the stock at 130 1-8, being the market price, including the July dividend. In August, 1866, after dividend was declared, stock declined to 122 1-8. See page 46, line 4.

If he had performed his duty and bought the stock in June, 1866, the trust would have participated in the July dividend. And after being credited in his account with a price for the stock, that included the dividend, upon the assumption that he had performed his duty and bought the stock, he ought to be charged with the dividend that he should have received.

Hill on Trustees, 522 and 523.

As to the credit claimed for \$1,175.

It is a claim without an itemized account.

It has no vouchers or receipts to support it.

The accountant is not certain that he is entitled to it.

Vide page 13, lines 1 to 25.

The accountant afterwards undertakes to qualify this admission, but his statement is contradicted by the cestu^e que trust.

The only argument in favor of the claim is that Mr. Gaston did not demand the money at once.

In 1866, W. K. Gaston made out a statement (Exhibit No. 2, vide page 66), and gave it to Mr. Steele, showing that the amount then due was \$1,250.00; this perhaps should be reduced a small amount for costs of brokerage on purchase of stock. The reason that Mr. Steele did not pay it over then will be found on page 47, lines 29 to 40.

The Trustee, either at that time or shortly after, used the money received from the sale of the farm and personal property belonging to the trust, in his own business, and

hypothecated the stock passed to him as part of the trust fund. This was discovered by Mr. Gaston in 1868, before all the payments on the 28 shares subscribed for had been made, and before Gaston could expect Steele to pay him any surplus, after what he had told him. See page 47, lines 29 to 40.

As soon as the defalcation of the Trustee was discovered a suit was commenced in Chancery to recover the certificates hypothecated.

This suit was determined in 1878, and during the pendency of this suit Mr. Gaston's sole anxiety was about the principal fund, because the stock so pledged was that handed over to the Trustee, by the Executrix of the former Trustee, and was not protected by the bond for \$15,000, conditioned for safe investment, but if the suit went against him, all he had to look to was the \$3,000 bond conditioned for faithful performance, etc.

Is it any wonder that an old and infirm man, with his whole fortune depending upon the result of a lawsuit, an adverse decision of which would make a pauper of him in his old days, was more concerned about the main issue, than he was about the surplus, which he knew his bond protected. As soon as the suit was determined he took steps to bring Steele to an account.

To allow this credit under these circumstances, supported only by the assertions of a Trustee who jeopardized the whole estate and wasted a large portion of it, would open the door for fraud so wide that no cestui que trust would be safe in the hands of a Trustee who through financial embarrassment, or for other reasons, found it convenient to use a part of the trust fund for his own use, and if

he lost it, a simple item of the proper amount on the credit side of the account would pay his debt.

This accountant had been Cashier of a Bank for a number of years, and is presumed to have known the necessity of keeping proper accounts, and taking vouchers for money paid, and it is not to be supposed that he overpaid Mr. Gaston \$1,175 without taking a receipt for it.

Mr. Gaston positively denies receiving the payment claimed by the accountant, and in ascertaining who is correct about the matter it should be remembered that Mr. Gaston's conduct in relation to the trust has been fair and honorable, while that of the accountant is open to the charge of at least gross mismanagement.

JAMES J. BERGEN,
Of Counsel with Respondent.

In Chancery of New Jersey. 10

IN THE MATTER OF THE TRUST
FUND OF WILLIAM K. GASTON
IN THE HANDS OF WILLIAM G.
STEELE.

*Account of Wil-
liam G. Steele,
Trustee.*

[Filed February 7, 1881.]

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The account of William G. Steele, Trustee for
William K. Gaston.

ACCOUNT OF PRINCIPAL FUND.

This accountant charges himself as follows :

1866, June.

To purchase price of farm	\$15,000 00	
“ proceeds of sale of farming im- plements	510 00	
	<hr/>	
	\$15,510 00	30
Less mortgage and interest paid,	2,100 00	\$13,410 00

To 100 shares of the capital stock
of the United New Jersey
Railroad & Canal Company
received from James Camp-
bell, former trustee.

This accountant prays allowance
as follows:

For purchase of 100 shares of the 40

capital stock of said Rail- road and Canal company, a 130 1-8	\$13,012 50
Commissions paid broker	10 63 \$13,023 13
	<hr/>
Balance on hand	386 87

RECAPITULATION.

In addition to the cash balance, there was in my hands the 200 shares of the capital stock of said United
10 Companies. Of this there has been transferred to Eugene S. Doughty, the trustee recently appointed to succeed me, 180 shares of the said capital stock, leaving in my hands, belonging to principal fund, \$386.87 in cash, and twenty shares of said capital stock.

ACCOUNT OF RECEIPTS AND DISBURSEMENTS OF THE INCOME OF SAID TRUST FUND.

This accountant charges himself as follows :

1866, July dividend	\$575 00
Stock privilege (being a right to subscribe for 20 fifty shares of said stock at par) privilege being worth twenty-three per cent.	1,150 00
Dividend received from July, 1866, to July, 1880, a period of fourteen years, at the rate of ten per cent. per annum	28,000 00
To stock privilege, in 1869, being right to subscribe for one share at par for every seven shares held, amounting to twenty- eight shares, worth twenty-three per cent.	644 00

This accountant prays allowance as follows:

30 Counsel fee paid by order of the Chancellor 1866, July, paid dividend to William K. Gaston	\$50 00
For cash paid William K. Gaston	1,175 00
Dividends paid William K. Gaston from January, 1867, to January, 1869	5,000 00
Cash advanced to William K. Gaston	550 00
Dividends paid William K. Gaston from July, 1869, to July, 1880	23,000 00
Commissions.	

NEW JERSEY, }
SOMERSET COUNTY. } ss.

WILLIAM G. STEELE, of full age, being duly sworn, on his oath saith, that the foregoing account is a true and correct exhibit of his trusteeship, since his appointment as trustee of William K. Gaston, as well of the receipts as of the disbursements thereof, to the best of his knowledge and belief.

W. G. STEELE.

Sworn and subscribed before me January 22, 1881. 10

JAMES J. BERGEN, Master and Examiner in Chancery.

ORDER OF REFERENCES.

By order of the Chancellor, dated February 7, 1881, the foregoing account was referred to Frederic W. Stevens, Esq., one of the Masters of the Court of Chancery, to examine and report upon, and to state 20 the account between said Steele and said Gaston, and also the condition and proper amount of the Trust Fund.

The Master's Report.

In pursuance of an order of this Court made in the above stated matter bearing date on the seventh day of February, eighteen hundred and eighty-one, whereby it was referred to the subscriber, one of the special mas- 30 ters of this Court, to examine and report upon and to state the account between said William G. Steele and said William K. Gaston, and also the condition and proper amount of the trust fund :

I do report that I have been attended by the accountant, William G. Steele and by James J. Bergen, the solicitor of the exceptant to the account rendered by said Steele, and that in their presence I have taken the depositions of witnesses produced before me and have examined into the matters thereby referred to me. 40

And I find and report that the trust fund in the hands of said Steele consisted of one hundred shares of stock of the Camden and Amboy Railroad Company and Delaware and Raritan Canal Company received by him from the executrix of James Campbell, deceased, the former trustee, and in addition thereto of one hundred shares of stock of said companies, purchased by said Steele with a part of the proceeds of the sale of a farm and of farming utensils, pursuant to a decree heretofore made by this Court in the matter of this trust, dated May 16th, 1866; and that the residue of said trust fund consists of money in the hands of the accountant, or with which he is chargeable, amounting with interest to the date of this my report to the sum of two thousand eight hundred and ten dollars and fifty cents.

And I further report that according to the undisputed testimony of the accountant, one hundred and eighty (180) shares of said stock have been transferred by him to Mr. E. S. Doughty, the new trustee, and that the certificate for the remaining twenty shares of said stock is in the possession of the Humbert Brothers, of New York city, to whom the said Steele had pledged it as collateral for his personal indebtedness; and that the money aforesaid belonging to said trust fund is in the hands of, or due from said Steele, who has never invested it

And I further report that I have examined and stated the account of said Steele, and that the statement thereof is contained in the schedules annexed to this, my report, and forming part hereof, and that in stating the same, I have charged the defendant, not only with his actual receipts, but with what, in the proper execution of his trust, he ought to have received, and that I have allowed him no commissions.

The charge of what he ought to have received is made up of two items—the first, an item of \$475.00, which is included in the first item of schedule “B” hereto annexed “July dividend for 1866, \$1,000.” This (\$475.00) would have been the amount of the dividend

which Steele would have received had he invested the money which came into his hands promptly. Gaston testifies that Steele admitted that the amount was due him (Gaston) and that he promised to pay it. The second item of charge is the item "stock, privilege, etc., \$1,150," in schedule "B" with which Mr. Steele has charged himself in his account rendered.

I have allowed Mr. Steele no commissions for the reason that he, for over two years after his receipts of the money derived from the sale of the farm, failed to invest a great part of it as directed by this Court, and that he pledged for his personal indebtedness stock of the trust fund to the amount of twenty shares, which still remains in the hands of the pledgee as herein above mentioned. 10

I have disallowed the sum of \$1,175 for which the accountant prays allowance because it does not appear from his own testimony that he has overpaid that amount or any part thereof to Mr. Gaston.

I have allowed the item "cash advanced to W. K. Gaston, \$550" claimed by the accountant. Four hundred and seventy-five dollars of it has been credited to the July dividend of 1866, on eighty-five shares of stock, which as hereinbefore explained Steele ought to have received and \$75 is allowed as an advance. 20

And I further report that schedules "A" and "B" annexed to this my report contain a statement of the account between said William G. Steele and said William K. Gaston, as directed in the order referring said account to me. 30

All of which is respectfully submitted this fourth day of May, in the year one thousand eight hundred and eighty-one.

FREDERIC W. STEVENS,
Special Master.

Schedule A.

Showing the receipts and disbursements of the principal of the trust fund which came into the hands of William G. Steele, the accountant. 40

The accountant is to be charged with :

One hundred shares of stock of
the Delaware & Raritan
Canal Company and Camden
& Amboy R. R. Company.

Also, proceeds of sale of the
farm \$15,000 00

Proceeds of sale of farming im-
plements 510 00

10
\$15,510 00

From which deduct amount of
mortgage on said farm, with
interest, payment of which
was authorized by the decree
mentioned in the report of
May 16, 1866 2,100 00—\$13,410 00

The accountant should be allowed for:

20 Purchase of one hundred shares
of capital stock of Camden
& Amboy Railroad and
Delaware & Raritan Canal
Company, *a* 130 1-8 . . . \$13,012 50

Commissions paid broker 10 63—\$13,023 13

Balance in hands of accountant \$386.87

Interest on balance, from Jan. 1,
1867, to date (May 4, 1881,)
at 7 per cent., to July 4,
1878, at 6 per cent. there-
after 30
\$377 20

Balance with which account-
ant is chargeable, May 4,
1881, for principal \$764 07

FREDERIC W. STEVENS,

Master.

Schedule B.

40 Showing the amounts derived, or which ought to

have been derived by way of income from said Trust Fund and the disbursements thereof.

The accountant is to be charged with :

July dividend for 1866, on 200 shares stock of said companies	\$1,000 00	
Stock privilege (of which accountant should have availed himself) to subscribe for fifty shares of stock at par, worth in the market \$23 per share: being the same amount with which accountant charges himself in his account as rendered	\$1,150 00	10
Interest thereon from July 1, 1867, to May 4, 1881, at 7 cent. to July 4, 1878, and then at 6 per cent.	\$1,081 00	
Dividends which accountant charges himself with from January 1, 1867, inclusive, to July, 1880, inclusive, 14 years, at 10 per cent.	\$28,000 00—\$31,231 00	20
The accountant should be allowed :		
Counsel fee paid by order of the Chancellor	\$50 00	
Difference between \$550, claimed by the accountant as an advance, and \$475 allowed accountant below, as payment of July dividend for 1866, on the 85 shares he ought to have subscribed for. The \$550 claimed is thus allowed accountant, but in a different way, viz: \$475 of it as payment of said dividend, and \$75 only as an advance	\$75 00	30
Interest on \$75 from January 1,		40

	1869, to May 4, 1881	\$62 57
	Dividends paid Wm. K. Gaston from July, 1866, inclusive, to July, 1880, inclusive, viz: 14 1-2 years, at 10 per cent. per annum	\$29,000 00-\$29,187 57
	Total received by accountant on income account	\$31,231 00
	Total disbursed in said account	29,187 57
10		<hr/>
		\$2,043 43
	Add amount due from accountant as per schedule "A."	\$767 07
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	Total due from accountant May 4, 1881	\$2,810 50

FREDERIC W. STEVENS,

Master.

20 May 4, 1881.

IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE TRUST
FUND OF WILLIAM K. GAS-
TON, IN THE HANDS OF WIL-
LIAM G. STEELE.

*Account of William
G. Steele, Trustee.*

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Depositions of Witnesses.

Examination of witnesses in the above stated matter taken at the office of Messrs. Gaston & Bergen, in Somerville, New Jersey, on Wednesday, the twenty-third day of February, in the year one thousand eight hundred and eighty-one in the presence of James J. Bergen, Esquire, of counsel with the exceptant, William K. Gaston, pursuant to an order of reference dated February 7, 1881, made in the above matter.

FREDERIC W. STEVENS,

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Master.

William G. Steele, the accountant, being duly sworn on his oath saith: I reside in Somerville; I am not in any business. I was for a number of years Cashier in the Somerset County Bank and after that member of Congress from this District. I became Trustee about June 1, 1866. The counsel of the exceptant offers in evidence a certified copy of the order appointing William G. Steele, from which it appears that such appointment was made May 16, 1866. [The copy of the order is marked Exhibit No. 1, ex parte Exceptant.] 10

My recollection is pretty distinct that it was not until June that I performed any duty connected with the Trust. I received one hundred shares of the capital stock of the United N. J. Railroad Co., from Mr. Campbell's, the former Trustee's, executrix. At the time I became Trustee there was also a farm which was a part of the Trust property. This farm was sold almost immediately after I became Trustee, by order of the Court and the proceeds of the sale were directed to be invested in the stock of the United N. J. Railroad Co's to the amount of one hundred shares, the balance, if any, in the Central Railroad Co's stock. My recollection is that the deed for the farm property was delivered by me on or about June 2, 1866, at which time I received the purchase money. The price of the farm as sold by me was fifteen thousand dollars. Out of the purchase money I paid \$2,100, the principal and interest due on a mortgage upon the land sold, leaving a balance of \$12,900 in my hands. I also sold the farming implements for \$510, which sum added to \$12,900 makes the whole amount, with which I am to be charged, viz: \$13,410. I bought one hundred shares of the stock of the United N. J. R. R. Co.'s stock with the proceeds, in the manner following: Within a few days after I received the money I went to Philadelphia and bought some stock. I do not now recollect how much; my account book in which the account was kept was lost and I can only speak from memory. I also bought of Mr. William K. Gaston fifteen shares which he owned individually at that time. The under- 40

standing between Mr. Gaston and myself was that I was to allow him for the stock the same price as that which I had paid in Philadelphia for the stock bought there, namely, 130 1-8. I *did* pay Mr. Gaston at that rate. The United Co's gave stockholders the privilege of subscribing at par for joint stock in the proportion of one new share for four shares then held by the stockholder. Under this privilege I subscribed at par for twenty-eight shares—and these twenty-eight shares are
10 included in the one hundred shares paid for out of the proceeds of the sale of the farm. The remaining shares necessary to make up the full amount of one hundred shares were bought on my behalf by Mr. John Veghte, one of my sureties on the bond. I do not know what Mr. Veghte paid for the stock he bought.

I have transferred one hundred and eighty shares of the stock held by me to Mr. E. S. Doughty, the new Trustee. The certificate for the remaining twenty
20 shares of stock are in the possession of Humbert Bros., of New York city. They were pledged by me—used as collateral in some business transactions I had with them—as long ago as A. D., 1868. Although they hold the certificate, the dividends have been regularly paid to the Trustee; the stock never having been transferred on the books of the company.

The cash balance derived from the sale of the farm was never invested, but is still in my hands.

With reference to the interest account, I paid Mr. Gaston from time to time the dividends on the stock, in
30 different amounts and kept the account in the book I have already stated was lost. I never took any receipts or vouchers from Mr. Gaston; he told me he would give me proper receipts at any time. I have paid him all the dividends; they amount to the sum stated in my account as presented. I should say that in 1869, by an understanding between myself and Mr. Gaston, Mr. Veghte collected the dividends for me and paid them over to Mr. Gaston and he continued to do so for several
40 years, after which I gave the orders for the collection of dividends to Mr. Walter Gaston for his father.

I have charged myself with the receipt of the July dividend, 1866, amounting to \$575. This amount I paid to Mr. Gaston. I cannot now explain why I did not invest the money received from the purchase of the farm in the stock immediately, and in time to obtain the July dividend declared in 1866.

The item, "stock privilege" (being a right to subscribe for fifty shares of stock) "privilege being worth 23 per ct., \$1,150," I explained as follows: I have charged myself with this privilege in respect of the whole stock 10 which I ought to have held at the time the privilege was given, viz: two hundred shares, although in fact I held but one hundred and fifteen shares. This is in the assumption that I did not purchase the stock at the time I ought to have purchased it.

The item "To stock privilege in 1869, right to subscribe for one share for every seven shares, held twenty-eight privilege worth twenty-three per cent.," I make the following explanation about: I desired to insert this item in my account as filed, with an explanation, 20 and I do not wish to be charged with it unless I am properly chargeable.

[The counsel for the exceptants states that he does not wish any advantage taken of the circumstances that it appears in the account as a charge against the accountant, and he desires it to stand or fall on its own merits.] I had no knowledge of the privilege having been given. I did not know of it till very recently, having just been informed of it by exceptant's counsel, Mr. Bergen. I never received any notice of its having 30 been given to the stockholders, and never heard of it till two or three months ago. I do not think I ought to be charged with the amount, having been guilty of no negligence in reference to it.

Since the adjournment for dinner I have obtained a paper which shows when I bought the shares of stock. When I assumed the trust there stood in the name of James Campbell, trustee, one hundred and fifteen shares of stock, fifteen of which belonged to Mr. Gaston individually, and which were the same shares I have 40

heretofore stated I bought of him on August 1, 1867, five shares more were taken in the name of James Campbell, Trustee, probably by mistake of some officer of the company. I know I never could have directed the investment to be made in that name. On August 1st, 1867, I purchased two (2) shares, August 17th, 1867, one (1) share, December 5th, 1868, twenty-eight (28) shares, (the same before spoken of as subscribed for at par,) and January 15th, 1869, one (1) share, February 10 9th, 1869, seven (7) shares. The last five items were stock of the Delaware and Raritan Canal Company, in addition to which I bought myself, September 7th, 1866, fifteen (15) shares of the Camden & Amboy R. R. stock; September 7th, 1866, five (5) shares of the same stock. On January 15th 1869, Mr. Veghte bought for me twenty (20) shares and January 15th, 1869, one (1) share of the same stock. Thus making the whole amount I held as Trustee, two hundred shares.

[The counsel for the exceptant admits that the first 20 two items of \$50 and \$575 have been paid.]

Witness being asked in reference to such items says: I paid these two items.

[Counsel for the exceptant states that the item of \$1,175 claimed in the account to have been paid is excepted to.]

Witness states in explanation of this item: the book which I have lost as before stated would show the correctness of this. Mr. Gaston and I had a running account and I would give him checks from time to time as 30 he needed the money until at last I had paid in excess of the amount coming to him from any source \$1,175. I was informed by Mr. Hugh Gaston that I might safely pay Mr. William K. Gaston for the fifteen shares of stock purchased of him as they really belonged to him, but the \$1,175 represents what I paid him beyond the dividends and the purchase money of the fifteen shares.

I think in my lost book I charged myself with only 40 of the privilege. I am quite positive, however, that ac-

ording to the balance appearing on my book Mr. Gaston had been overpaid \$1,175. This amount may have been subsequently reduced by dividends received which I retained to pay what he owed me—so that subsequently he was only overpaid the \$550 which I have charged as a subsequent item of my account. If I had my book I could explain it better. I don't claim that the \$1,175 was due me at the time when I paid him the last money which I personally paid. I think the account balanced except so far as the \$550 was concerned. 10

This item of \$550 was the balance due me at the time I made the last advance to Mr. Gaston on the dividends and at the time Mr. Veghte took the collection of the dividends into his hands. I expected to collect the dividend for January, 1869, and to apply it to the payment of the \$550 which I had advanced, but Mr. Veghte collected it. I wrote to him that I had paid this amount on the dividend and he sent me back a letter which he had received from Mr. Gaston complaining about my asking for the \$550 as I had had the use of the \$12,000 for some considerable time. My checks, check-book and all my papers I lost and have never been able to find although I have made search for my papers. I never took any receipts from Mr. Gaston. 20

Witness being shown order dated March 11, 1868, for \$40, in favor of Messrs. J. & C. Cox, payable out of dividend to be declared, and which order was accepted by the accountant, says: This order was accepted by me, but I did not pay it, nor charge Mr. Gaston in the account which I kept, with it. 30

Witness is also shown record of order dated December 28, 1868, in favor of Wagoner & Dakin, for \$145.03, and says: I did not pay this order nor charge it in the account. There is a judgment against me in this latter order.

I claim commissions on the amount that has passed through my hands, on the ground that Mr. Gaston has never failed to receive his dividends for a day, and my 40

sureties are perfectly responsible. I did not suppose that I was doing anything wrong when I pledged the stock, I expected it to be a merely temporary matter.

W. G. STEELE.

Sworn and subscribed this twenty-third day of February, A. D., 1881, before me, at Somerville, N. J.

FREDERIC W. STEVENS,

M. C. C.

- 10 **William K. Gaston**, being duly sworn, on his oath saith: About July 1, 1866, I was anxious to know whether Mr. Steele had bought the stock or not, because a dividend would be declared the last of July, and I did not want to lose the dividend. I saw Mr. Steele on the ferry boat about July 1, 1866, and asked him whether he had bought the stock, and he said he had not. I said I was sorry, because I would lose the dividend on eighty-five shares of stock. He then said, Mr. Gaston, you are entitled to the dividend and I will
20 pay it to you.

I hold in my hand a paper which is a statement I made out in November, 1866. I handed it to Mr. Steele; he put it in his pocket and said nothing then. Some three or four days after I saw him again, and he said the statement was correct, but he intended to hold that money—\$1,250, as in purchasing the stock he had purchased twenty-eight shares by subscription to be paid for at intervals of six months' installments, and the Chancellor might not approve of purchasing this stock
30 for me in this way, and might require him to go into the market and buy it; and he would keep the \$1,250 to protect himself.

[The statement is offered and marked Exhibit No. 2, ex parte exceptants.]

I never received the \$1,175 charged to me in the account on account of dividends. I never received it in one sum or in installments. He paid me prior to the time Mr. Veghte took charge, in all \$1,950 for fifteen shares of stock, and \$575 for dividend for July, 1866.
40 He also paid me the dividends till Mr. Veghte took

charge. Mr. Steele paid me the dividends less the orders. I kept an account of what Mr. Steele paid me from one dividend to another. I have not served the papers. When I was satisfied the dividend was paid I had no further reason to save them. I suppose a man who accepted an order would take it out of the dividend. I have no definite recollection as to these particular orders shown Mr. Steele.

WM. K. GASTON.

Sworn and subscribed this 23d day of February, 10
A. D., 1881, before me, at Somerville, N. J.

F. W. STEVENS,

M. C. C.

The examination was hereupon adjourned to a day to be agreed upon.

FREDERIC W. STEVENS,

Master.

Leroy H. Anderson, being duly sworn in the presence of James J. Bergen and the accountant William G. Steele, in Trenton, New Jersey, by consent of James J. Bergen, of counsel with the exceptants and said accountant, on his oath saith: I am secretary and treasurer of the United New Jersey Railroad and Canal Companies. The transfer books of the Camden & Amboy Railroad Company and Delaware and Raritan Canal Company are in my possession. I have here the subscription book showing a list of stockholders of the United Companies subscribing for new stock under resolution of joint board, dated May 17th, 1869. In that book I find the following entry on the page containing names beginning with "C": "Campbell, Jas. Trustee for William K. Gaston. D. & R. Canal. Number of shares July 15th, 1869, 105. C. & A. R. R., 15. Total number of shares, 120. Entitled to subscribe to 18. Number subscribed for 18 (crossed). Amount paid \$900. Date of first payment, August 9th—T."

The cross over the 18 in number subscribed for means that the scrip receipt for the \$900 was transferred and second installment of subscriptions not received

ed by the company to that account. "T" means transferred.

On page containing names beginning with letter "S" I find the following entry: William G. Steele, Trustee for W. K. Gaston—39 shares of Canal stock—41 shares C. & A. R. R. Total—80. Entitled to subscribe for 12. Number subscribed for, 12 (crossed). Amount paid, \$600. August 6th—T. The cross and "T" mean the same as I have above stated.

- 10 The cash book under date of August 9th, 1869, shows that the amount paid R. S. Trowbridge, cashier, on 30 shares, 18 of which were held in the name of James Campbell, Trustee of W. K. Gaston, and 12 of which in the name of W. G. Steele, Trustee of W. K. Gaston, was \$1,500—being 50 per cent. of the par value of the stock subscribed for.

I find that the second installment of all the stock subscribed for was paid by Charles McAlister, to whom the scrip receipts of first installment were assigned on

- 20 August 21, 1869.

The general practice of the company in reference to this particular issue of stock was to send printed circulars announcing the fact to the different stockholders as far as their addresses could be ascertained. I cannot say whether any notice was to be sent to Mr. Steele.

LEROY H. ANDERSON.

- 30 *Cross-examined.*—I don't know who paid for this particular installment of stock, nor by what authority the transfer was made or the stock issued; I did not myself have charge of the books I have referred to.

LEROY H. ANDERSON.

Sworn and subscribed before me the 1st day of March A. D., 1881, at Trenton, New Jersey.

FREDERIC W. STEVENS,

M. C. C.

Rule to Confirm Report.

- 40 The usual rule to confirm the foregoing report of the Master was entered by Gaston & Bergen, solicitors of

petitioner, May 28, 1881, and a copy served on the defendant, Wm. G. Steele, May 31, 1881, as appears by affidavit of Hugh K. Gaston, endorsed upon a copy of the rule, which copy was filed June 9, 1881.

Order of Confirmation.

An order confirming the report of the Master was made by the Chancellor June 10, 1881. Said order directed \$14.16 to be paid to the Master as his fees, and also \$25 additional for extra services; and that the Trustee should pay the solicitors of Wm. K. Gaston the costs of these proceedings, to be taxed. The order then directs: And it is further ordered that the two bonds both dated the fifteenth day of May, A. D. eighteen hundred and sixty-six, both given by William G. Steele, together with Nehemiah V. Steele and John V. Veghte, as his sureties to the ordinary of the State of New Jersey, one of the bonds being in the penal sum of fifteen thousand dollars conditioned for the faithful performance of his duty as such Trustee in investing the proceeds of the sale of the farm, and of the farming utensils and live stock in which the trust funds had been invested, in such manner as he might be specially ordered by this Court. The other of said bonds being in the penal sum of three thousand dollars, conditioned for the faithful performance by William G. Steele of his duties as such Trustee, be delivered to the present Trustee, Eugene S. Doughty, or to Gaston & Bergen, the counsel in these proceedings, for the purpose of prosecution to the end that the amounts due by William G. Steele, as Trustee, as found and established by the report of the Master above mentioned may be collected and paid over to the new Trustee, Eugene S. Doughty.

And it is further ordered, that the said Trustee and said William K. Gaston may apply for any other order in the premises that may be reasonable or just.

THEODORE RUNYON, C. 40

Petition of John V. Veghte.
IN CHANCERY OF NEW JERSEY.

IN THE MATTER OF THE ACCOUNT
OF WILLIAM G. STEELE,
TRUSTEE OF WILLIAM K. GAS-
TON.

10 *To his Honor, Theodore Runyon, Chancellor of New Jersey.*

The petition of John V. Veghte, of Hillsborough Township, Somerset County, New Jersey, respectfully showeth unto your Honor that as he is informed and believes to be true the said William G. Steele as Trustee of William K. Gaston, has filed his account in this court and the same was referred to F. W. Stevens, Esq., one of the masters of this court, and evidence was taken before such Master and subsequently the
20 said Master made his report to this court and thereupon an order was made by your Honor that the said report would be confirmed in all things unless exceptions thereto were filed within eight days thereafter. And your petitioner further shows unto your Honor that one Nehemiah V. Steele and your petitioner are the sureties on the bond of the said William G. Steele, Trustee; that the said Nehemiah V. Steele, before the reference of said account to the said master to wit, on
30 the twenty-sixth day of January, A. D. eighteen hundred and seventy nine, departed this life; that the first knowledge your petitioner had with reference to the accounting by the said Trustee, the taking of evidence and reference of said account to the said Master, and the said order that the report of the master would be confirmed was after the expiration of the said eight days, and upon two certain summons being served upon your petitioner wherein the Ordinary of the State of New Jersey is plaintiff and William G. Steele and your petitioner defendants; that such summons were
40 served on or about the day of June last past,

returnable June 20th, 1881, and within a few days after said return two declarations were served upon your petitioner, one claiming that there was due from the said Trustee, according to the report of said Master, on the 4th day of May, A. D. eighteen hundred and eighty-one, the sum of twenty hundred and forty-three dollars and forty-three cents, and as income from said estate in the hands of said Trustee, the other the sum of seven hundred and sixty-four 7-100 dollars as principal on the said fourth day of May; that your petitioner then for the first knew of an accounting report and the object and purposes of the said actions. Your petitioner further showeth unto your Honor that he at once took steps to ascertain the character of the report for the purpose of ascertaining whether it was correct, your petitioner being interested because the said William G. Steele is insolvent, and in case of judgments being entered upon said actions your petitioner would be at once obliged to pay the same; that your petitioner is informed that the said Master by his report charged the said Trustee with the sum of one thousand dollars as a dividend upon said trust funds declared in July, eighteen hundred and sixty-six, instead of the sum of five hundred and seventy-five dollars, the dividend actually declared and received. Your petitioner insists that the report of the said master is incorrect in such respect and the order of confirmation of such report should be set aside and your petitioner permitted to intervene and take exception thereto. And your petitioner further shows unto your Honor that as he is advised and believes the said Master has also failed to credit the said Trustee with the sum of eleven hundred and seventy-five dollars which the said Trustee claims to have paid the said William K. Gaston his *cestui que trust*; your petitioner claims that the report of the said master is incorrect in that respect, that your petitioner is in possession of knowledge with respect to the dealings and business transactions between the said *cestui que trust* and his trustee by which he claims that if he had had an opportunity to have been heard by him-

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self and such proofs as he could adduce he would be able to show that the said report in that respect was unjust and erroneous. Your petitioner, therefore, prays that the order confirming said report of said Master may be set aside and for nothing holden ; that the said matters of account may be re-referred to the said master to take such further proofs as can be adduced touching the matters above referred to, and that an order may be made allowing your petitioner to inter-
 10 vene for his own protection and all further proceedings touching the collection of the said sum of two thousand and forty-three dollars and forty-three cents reported by the said Master as a sum of money due from the said Trustee from the income of said trust estate be stayed until the further order of this court.

ALVAH A. CLARK,
 Sol. Petitioner.

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

20 John V. Veghte of full age, being duly sworn upon his oath saith, that he is the petitioner in the foregoing petition named ; that the matters and things in the foregoing petition named, so far as they relate to his own acts are true, and so far as they relate to the acts of others he believes them to be true.

JNO. V. VEGHTE,

Sworn and subscribed before me July 15th, 1881, at
 Somerville, N. J.

CHARLES CLARK,

[L. s.]

Notary Public of N. J.

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Order to Show Cause.

Upon filing the foregoing petition, the *cestui que trust*, William K. Gaston, was ordered to show cause, at the State House, in Trenton, on Tuesday, August 2, 1881, at 10 A. M., why the said petitioner as surety should not be allowed to intervene for his own protection, and why the confirmation of the report should not be set
 40 red to the Master to afford the securities of the trus-

tee an opportunity to offer further proofs, and all proceedings by way of suit in the name of the ordinary against the trustee and John V. Veghte, touching the collection of the moneys due to the *cestui que trust*, stayed until the further order of the court.

Order to take Depositions.

On August 5th, 1881, the Chancellor ordered that said John V. Veghte have leave to intervene so far as may be necessary to prove that the trustee, William G. Steele, is entitled to a credit of \$1,175, (eleven hundred and seventy-five dollars) contained in his account, and disallowed by the Master, and that depositions may be taken before any Master of the Court upon two days' notice, and the same brought on for hearing on the 16th instant, at the State House, at Trenton, so that on that day it might be determined whether or not it will be necessary to take off the order of confirmation heretofore made in the matter and send the account back to a Master for restatement.

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Depositions.

IN CHANCERY OF NEW JERSEY.

IN MATTER OF FINAL ACCOUNT
OF WILLIAM G. STEELE,
TRUSTEE, OF WILLIAM K.
GASTON.

*On petition to
open order confirm-
ing Master's Re-
port.*

Examination of witnesses, etc., in the above stated matter before the subscriber, a special Master in Chancery, at his office in Somerville, on the ninth of August, A. D. eighteen hundred and eighty-one, in the presence of A. A. Clark, Esq., solicitor of the petitioner, and of James J. Bergen, Esq., solicitor of the respondent, notice of the taking of the evidence admitted, in pursuance of an order of the Chancellor in the above matter, bearing date the fifth of August, instant.

J. VRED. VOORHEES,

M. C. C. 40

John V. Veghte, the petitioner, being produced and sworn, testifies as follows: I am the petitioner and one of the securities of William G. Steele; my co-security, N. V. Steele, is dead; he died the twenty-sixth of January, A. D. eighteen hundred and seventy-nine; the first knowledge I had of any proceedings before Mr. Stevens, the Master in this matter, was the service of two summons on me about the seventeenth of June, eighteen hundred and eighty-one; after this there were
10 two declarations filed, from which I first learned the nature of the demand made against me; I mean I so learned from the copies served on me June twenty-eighth, or about that time; the summons and declarations are here offered, and marked exhibits A, B, C and D.

Q. Were you in any way prevented from giving attention to the matter between the service of the summons and the service of the declarations?

A. In the first place I did not understand it, didn't
20 know what it was; I handed the summons to Mr. Clark with request that he look after the matter; I was sick at the time with malaria fever and chills and fever.

Q. What do you know about the July dividend for eighteen hundred and sixty-six, on the two hundred shares of the stock of the companies held by the Trustee, \$1,000 stock privilege of which the Trustee should have availed himself to subscribe for fifty shares of stock at par, worth in the market \$1,150, according to the report of the Master, being accounted for by the
30 Trustee to William K. Gaston?

This question objected to because the only matter allowed by the order of the Court to be examined into relates to the payment of the \$1,175 claimed by the Trustee.

Question withdrawn because of a misunderstanding of the report of the Master.

Q. What do you know about the Trustee being indebted to William K. Gaston in any amount by way of income from the estate, by reason of conversations

had with Mr. Gaston during the year 1868, and subsequently?

A. I know, even from the commencement of William G. Steele's Trusteeship up to January, 1872. I was at that time cashier of the Somerset County Bank, and advanced to Mr. Gaston sums of money from time to time, and reimbursed myself when his dividends were paid; he was always in advance of his dividends, either in part or in whole, Mr. Gaston never claiming to me that Mr. Steele was in arrears with him in the income account. 10

Q. Did you, on the 4th of December, 1868, or about that time, make any purchase of any stock for this trust estate? If so, state fully all that you did in that respect, and any conversations you had with William K. Gaston in relation to the trust.

A. On the 4th of December, or about that time, N. V. Steele and myself purchased 28 shares of the stock of the United Companies; that was the privilege of 1866; the last installment had not been paid; and between that and the 20th of January, following, we purchased 29 additional shares of the stock of the same companies, making the trust as appeared on the books of the United Companies complete, being 200 shares of stock; about this time I was in daily communication with William K. Gaston to know how the account between him and William G. Steele stood as to income, Mr. Steele, the Trustee, claiming that he had overpaid him; Mr. Gaston said that Mr. Steele was a personal friend of his and a good, clever fellow; that he didn't know exactly how the account stood between them, but he thought there was something due him, but be that as it would, if N. V. Steele and myself would make good the 200 shares he would settle with Mr. Steele for whatever there might be due him, and exonerate N. V. Steele and myself from any responsibility; pecuniary liability, I mean. 20 30

Q. Had anything occurred to occasion this inquiry on your part?

A. Yes, we were advised by an officer of the United 40

Companies that 112 shares of this trust was held by the American National Exchange Bank of New York city, and they had sent it to the office of the company to have it transferred to themselves, Mr. Steele having used it in his individual business; upon reflection, I think there were 120 shares, instead of 112, as I first stated; the purchases of stock by us were made after this information given us by the companies; when this information reached William K. Gaston that the stock
10 had been presented for transfer to the bank, he went to H. M. Gaston, Esq., his counsel, and he came to me; and upon consultation he went at once before the Chancellor (same day, I think,) and obtained an injunction restraining the companies from making the transfer; after that I went to Mr. Gaston, asking him to act as our counsel in the case; he agreed to do so, provided we would purchase at once, or as soon as we could 57 shares that the trust was short, which we did; we then
20 instituted a suit in Chancery to recover this 120 shares of stock, we paying the whole costs so far as I know and believe; I mean counsel fees and all expenses; we paid all we were asked to pay.

Q. At the time of the conversation which you have narrated which took place between yourself and William K. Gaston, could you or not have protected yourself and N. V. Steele had you known of any claim on the part of William K. Gaston, so far as dividends or stock privileges were concerned?

A. Yes, I think we could.

30 Q. Did you or not make this fact known to William K. Gaston at the time?

A. I don't think I did, for he didn't claim anything of Mr. N. V. Steele or myself.

Q. What do you know about the Trustee accounting to W. K. Gaston for a stock privilege equivalent to fifty shares of stock in the year eighteen hundred and sixty-six?

A. I know that Mr. Steele acknowledged himself responsible; I would like to refresh my memory on this

point; but Mr. Gaston knew all about this stock privilege to which he was entitled.

Q. When was the first you ever heard this stock privilege of 1866 was claimed to be unpaid to William K. Gaston?

A. After the report of the Master was made.

Q. In this conversation with W. K. Gaston was anything said by you to him about any claim made by Wm. G. Steele to him of \$550, or thereabout, of overpayment? If so state fully all that passed between you on that subject. 10

A. Mr. Steele had given me an order on the Treasurer for the dividend and at that time he said he had paid W. K. Gaston \$550 in money on that dividend and told me to keep it out and pay Mr. Gaston the balance, but Mr. Gaston wouldn't agree to it, saying that Steele had his money using it in his business and he had no business to ask him for it and I didn't keep it out, but Mr. Gaston didn't deny but what he had had it; I know what Mr. Gaston's condition was with reference to his want of money; he was always short and in want of money; was sued and didn't pay the judgments; not at that time; this relates from the time of Steele's appointment in 1866 to 1872; from 1866 to 1872 I drew the bulk of the dividends myself; such is my recollection; I drew them on the order of Mr. Steele, the Trustee, and I paid them to Mr. Gaston, at least the bulk of them. [Being shown paper dated May 2, 1870, is asked to state what it is and in whose hand writing. Says]: It is a letter from W. K. Gaston to me in his own hand writing and signed in his own signature, and received by me on or about May 2, 1870; I presume I complied with the request of the letter; the letter is offered in evidence and I have marked it exhibit E. 20 30

Cross examined by Mr. Bergen :

I suppose the letter means that there was a small balance in my hands of the previous dividend; that's my impression; when I drew the bulk of the dividends, between 1866 and 1872, as I have said I paid the money 40

to W. K. Gaston, either in cash or in his notes upon which I had advanced the money; I don't now recollect whether I paid any money to Mr. Steele, the Trustee, but if I did I paid for advances made by him to Mr. Gaston on which they agreed; I never knew but one dispute that I now recollect and that was about the \$550; Mr. Steele gave me the amount; I took receipts from W. K. Gaston after 1868; I don't remember that I took any before that time; if I did I gave them to
10 Mr. Steele; I haven't got them; I had nothing to do with the sale of the stock privilege in 1866; I knew about it at the time; the stock we bought in 1868 we paid between \$740 and \$750 for it; we bought 28 shares; Mr. Steele, the Trustee, made the previous payments, three payments. Mr. Steele, the Trustee, subscribed for the stock; we got it at par; we protected ourselves for amount of the stock we purchased by Mr. Steele transferring to us certain real estate, but when we came to wind up, after paying for the stock, and the costs of
20 litigation, etc., we were short between \$300 and \$400; we thought we had taken more than enough property from him to secure us, but we hadn't; we had not taken all the property he had; he had the house in which he lived; he had some land along the Pluckamin road, some 20 acres, I think; he had also some water power stock; but we did not take any indemnity against the 140 shares of stock he had hypothecated.

Here the further examination was adjourned to Thursday, the 11th inst., at 9 o'clock in the forenoon, at same
30 place, by consent of parties.

August 11th, 1881, parties present as before.

Mr. Clark, by consent of Mr. Bergen, proceeds with the examination in chief. The witness being shown eight receipts purporting to be made by W. K. Gaston, is asked what they are, says they are receipts for dividends signed by Wm. K. Gaston; they were paid without deducting any commissions. [These receipts are marked Exhibits F, G, H, I, J, K, L and M;] I took
40 these receipts because we had found that Mr. Steele

had hypothecated the stock, and so it was agreed by Mr. Gaston, Mr. Steele and myself, that I should collect the dividends and account to Mr. Gaston for the same, as the responsibility was placed on me and I took these receipts; I made the settlement personally with Mr. Gaston myself.

Q. Did you have the settlement with Mr. Gaston for any dividends excepting those for which you hold receipts?

A. No sir. I case judgment is obtained on this suit, 10 which is stayed, I will be obliged to pay it, Mr. W. G. Steele being irresponsible.

Q. Do you know why the Trustee delayed the purchasing of the stock after the sale of the farm; if so, state fully all you know on that point?

A. Wm. G. Steele, Trustee, at that time was a broker in Wall street; supposed to know more about such matters than Mr. Gaston or myself; thought the stock would go lower, and Mr. Gaston acquiesced in that opinion; W. K. Gaston, I mean; I had no other in- 20 interest in the matter except to have the stock purchased, and insisting all the while in having it purchased; I had frequent conversations with him, Mr. Gaston, in relation to the purchasing this stock, and he didn't want it purchased at that time, because he believed it was going lower, and the lower the stock was the more money he'd have over.

The cross-examination is here resumed by Mr. Bergen:

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These receipts show all the money I paid to Wm. K. Gaston for dividends for which I took receipts.

Q. What do you mean when you say that you had no settlement with Mr. Gaston for dividends excepting those shown by these receipts?

A. I mean to say that Mr. Steele settled the others, but I didn't know in what way.

Q. Did you assist Mr. Steele in making settlements other than these?

A. I had more or less to do with the collection of 40

dividends from his appointment as Trustee, but nothing to do with the settlements; I had to do with collections as cashier of the Somerset County Bank; I do not remember the first dividend I collected, or the amount; I do not remember the amount of any of the dividends I collected outside of the receipts, or can I tell how often I collected them; the earliest date of my receipt is March 12th, 1869, and is for the dividend of February 1, 1869.

10 Q. As you made no settlements previous to that date you took receipts, did you?

A. I don't recollect; if I did I gave them to Mr. Steele.

Q. Did you not tell Mr. Wm. K. Gaston that you had no doubt that Mr. Steele owed him a large sum of money, or words to that effect, at the time you took the first receipt, about March 12th, 1869?

A. I did not; I don't believe he owed him then, and I don't believe he owes him now; I do not recollect
20 that Mr. Gaston wrote me a letter to the effect that Mr. Steele owed him, and I did not, that I recollect of, send that letter to Mr. Steele; but I did send one letter to him; I have never seen that letter since, but I think I know what it was about.

Q. If you thought Mr. Steele did not owe Mr. Gaston anything why didn't you keep out the \$500 for him?

A. Because Mr. Gaston wouldn't consent to it; I do not know what proportion of the dividends I collected
30 previous to March 12th, 1869.

Q. You have bought and sold stocks in Wall street in connection with Mr. Steele, have you not?

Objected to because impertinent.

A. I decline to answer it. Mr. Clark says "why," and the witness says: "because it is none of his business."

Q. You lost a large amount of money, did you not, in such transaction?

40 Mr. Clark advises the witness not to answer

question, because it does not pertain to matters in hand.

A. I decline answering it.

Q. Are you not indebted to Mr. Steele?

Objected to by Mr. Clark, because if he was it is no cross-examination.

A. No, sir; I don't owe Mr. Steele anything.

Q. Did you not tell Walter Gaston that you would not see Mr. Steele, nor help him make out his account of this Trust Fund, upon an application by him to you 10 for that purpose, at the request of Mr. Steele, as Mr. Gaston informed you, some time in the Spring of 1880?

A. I have no recollection of having a conversation with Walter Gaston, except so far as relates to the 20 shares of stock held by Humbert Bros., who do business, as I am informed, in No. 7 Nassau street, New York; that's the only conversation I ever had with Walter Gaston on this matter, so far as I recollect.

Q. Did you not tell Walter Gaston when you were in your carriage with David M. Sutphen, in front of 20 Adair & Thompson's store, in Somerville, that he should go to Mr. Steele and tell him to make out his own account, and with an oath say that Steele did not want to see you, in the Spring of 1880?

A. I have no recollection of any such meeting as that, and I don't think it ever occurred, either; David M. Sutphen is dead.

Q. Did you not, about the same time, tell Walter Gaston, in a conversation with him in the Somerset County Bank, to go to Steele and tell him that he 30 (Steele) must make out his account?

A. I have no recollection about it.

Q. Did you not tell Wm. K. Gaston, about March, 1869, that you did not believe that Mr. Steele could make out an account; that you had repeatedly asked him for an account, and that the reason you did not pay him the \$550 was because he could not show by any account that it was due to him?

A. I know I never asked Mr. Steele for an account,

that I know; and I have no recollection of any such conversation between Wm. K. Gaston and myself.

Q. You said in your examination in chief that you collected the bulk of the dividends from 1866 to 1872; do you mean that you collected any dividends from 1866 to March, 1869; if so, what proportion, and how did you collect them?

A. I think I did collect dividends from 1866 to 1869, but I can't tell what proportion; but they were
 10 collected by an order of W. G. Steele on the treasurer of the United Companies; I first heard of Mr. Steele's defaults in November, 1868, but I don't know whether I then knew that he had not bought the 100 shares of stock; my impression was that he had; I don't know when I first heard of Steele's being in failing circumstances, but it was not previous to November, 1868; I don't remember how these orders for dividends read, or what amount they called for; I knew at the time I had the orders; I don't know whether the order said how
 20 many shares there were upon which the dividend was was to be drawn.

It is agreed by the counsel that the testimony of Mr. Veghte shall be read without his signing the same on account of his having been taken suddenly ill. And it is also agreed that the property which was conveyed to Mr. Veghte and Steele as sureties depreciated in value between the time of the conveyance to them and their sale.

(Signed)

ALVAH A. CLARK,
 JAMES J. BERGEN.

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William G. Steele, a witness produced on the part of the petitioner, being duly sworn says: I am the Trustee and accountant; I think it was last week that I first saw the Master's report on which his calculation is based; Mr. Bergen sent me the result of his calculation some time previous to that; a copy of his report was brought to me last week one day and I made a copy of it; I have not in any way been represented by counsel
 40 in this matter until this present time; if you will

allow me I will state that prior to my filing my account Mr. Bergen and Walter Gaston spoke to me urging me to file my account as they wanted the matter brought to a close; finished up; I told Mr. Bergen that I had mislaid the book I kept the account in, or it had been left in G. & L. Haight's office in New York and had got lost, but that I thought Mr. Gaston know all about the account, how it was and that we could easily make a statement of the account; Mr. Bergen kindly volunteered to assist me in making out the account and prepared the forms and came up to my house once or twice to assist me in making it out; upon reading the report of the Master I find that I failed to make him understand how I had made up the charge in my account of \$1,175. I intended to say in my evidence that the \$1,175 was paid to Mr. Gaston over and above the amount due him for the fifteen shares of stock I purchased of him and the dividends that were due to him; it was in this way: When I was appointed Trustee in 1866, Mr. Hugh Gaston, who acted as counsel for both of us, told me that when the 200 shares of stock were made good for the Trust that the fifteen shares of stock then in the trust belonging to Wm. K. Gaston might be by me purchased from him and in fact that any thing over and above the 200 shares belonging to Wm. K. Gaston might be paid to Wm. K. Gaston, as it belonged to him; I received \$12,900 for the proceeds of the farm and some considerable time afterwards received \$510 for farming implements that were on the farm which belonged to Wm. K. Gaston, except what it might require to be taken out of it to pay for the 100 shares of stock; I bought the 15 shares of stock of him agreeing to pay him for it the same price that I paid for other stock when I purchased to make the 100 shares; there was a dividend of \$575 declared shortly after I was appointed Trustee upon 115 shares of the stock which stood in the name of Campbell, Trustee; Mr. Wm. K. Gaston, very soon after my appointment, appeared to be very much in need of money and called upon me every day or two, or at least every few days, for money;

I paid him in a short time, can't exactly state how long, between \$3,300 and \$3,400; I then called his attention to the fact that he was drawing a good deal more than there was due him for the fifteen shares of stock I bought of him and the dividend I had collected on the 115 shares, which would have amounted to only a little over \$2,500; he said his expenses then were heavy, that his son Walter was then in Princeton, in college, and was costing him a good deal of money and that having
10 sold the farm, everybody that he owed was pressing him for money, but that he would try and get along with as little in future as possible; he said that this privilege to subscribe for stock would at any rate pay me for the money advanced; I speak of the privilege of 1866; the account then ran on, and he kept getting different amounts of money from me at short intervals, until I found by looking at the account that I had paid him \$1,175 more than the amount of his stock and dividends amounted to; after that I paid him the
20 amount of the dividends up till August, 1868, I think it was; and upon the dividend that was to be due in January, 1869, I paid him \$550, after which time, by agreement, Mr. Veghte was to collect the dividends and pay them to Mr. Gaston; the \$1,175 was paid him over and above the stock bought of him and the dividend, and my calculation was to pay him for the stock privilege; and my calculation was that this \$1,175 a little more than paid him; I at first thought I'd only be bound for 28 shares of stock privilege, there being
30 only 115 shares of stock on the books of the companies in the name of the Trustee; but Mr. Bergen told me when we were making out the account that I would have to charge myself with the whole fifty shares; that the Trust would be entitled to the dividend on 200 shares; I didn't think at the time it would, but I put it down so.

Q. You were examined before Mr. Stevens, the Master, and signed that examination, did you not? Have you seen that examination since?

40 A. I saw it this morning for the first time.

Q. What have you to say with respect to the matters therein pertaining to the \$1,175, in so far as that statement differs from your present statement?

A. According to the statement made in this examination, as it appears here where it says, "I am quite positive, however, that according to the balance appearing on my book, Mr. Gaston had been overpaid \$1,175; this amount may have been subsequently reduced by dividends received, which I retained to pay what he owed me, so that subsequently he was only overpaid the \$550 which I have charged as a subsequent item in my account;" and then I said, "I didn't claim that the \$1,175 was due me at the time I paid him the last money; I think the amount balances, excepting so far as the \$550 is concerned." Now, as regards this \$1,175, I meant to be understood it to be as a payment of what was due to Mr. Gaston for the privilege of the fifty shares; we had not agreed upon any price for that privilege at that time, but I was satisfied that the \$1,175 would more than pay it at any reasonable price, and I was to pay only the market price; I am made to say in this testimony here before Mr. Stevens, so that subsequently he was only overpaid \$550; I meant to say that he was paid \$550 on the dividend of January, 1869, and that the charge of \$1,175 was paid him for the privilege of subscribing for 50 shares of stock at par; that was what I meant when I said that I don't claim that the \$1,175 was due me at the time I paid him the last money; I meant that the \$1,175 fully paid him for the privilege of subscribing for the fifty shares.

Q. If you are to be charged in your account with the stock privilege of fifty shares, what credit, if any, are you entitled to, as a counter charge?

A. With the \$1,175—the amount of money I paid him.

Q. Have you in any way been reimbursed that \$1,175, excepting through this stock privilege?

A. No, sir.

Q. You signed the examination you hold in your

hand before Mr. Stevens ; when were you first apprised of the statements therein as they appear ?

A. This morning.

Q. How do you account for the apparent error; by the examination it appears that you said "this amount," meaning the \$1,175, "may have been subsequently reduced by dividends received, which I retained to pay what he owed me?"

A. Well, I account for it in this way: Mr. Gaston
10 was in the habit of getting money from me on his dividends always before they became due, and I meant that those advances would be reduced or paid off when I collected the dividend.

Q. Did you understand that your examination contained that statement as expressed in the next preceding question at the time you subscribed your name to it ?

A. No, sir; I did not; if I had I should not have
20 signed the deposition, because I did not mean to be understood that the \$550 was all that he owed me, if I was charged with the 50 share privilege.

Q. Did you mean to be understood that \$1,175 was reduced by dividends at any time, and as a matter of fact, was it reduced ?

A. No, sir; at the time I transferred the property to my sureties spoken of by Mr. Veghte, I was abundantly able to have indemnified them if I had thought I owed anything.

Q. Has your resolution why you did not purchase
30 the stock at once after the sale of the farm been refreshed since your last examination, if so, state what you now remember about it ?

A. I knew at the time I was examined before, that Mr. Gaston and myself talked about the purchase of this stock, and we thought it would be bought at a lower price, and I had not quite money enough on hand from the proceeds of the farm to buy 100 shares; we concluded to wait and not purchase the whole of it at any rate, till some subsequent time; no particular time;
40 I told him that I would account to him for the same

dividends that was declared by the companies after the dividend of August, 1866, on the 200 shares; I did not agree to pay him the dividends on 200 shares of August, 1866, but I only agreed to pay him on what stood in my name—115 shares.

Q. Why did you not state this at your previous examination?

A. Well, Mr. Bergen asked me quite a good many questions; I had a kind of conversational examination; I don't know how it happened that I did not then mention it; I did not think it of any importance; I knew we had talked on the subject, and I knew, too, that Mr. Gaston knew I had not purchased the stock; there was another reason why I did not purchase the stock at the time was that we knew we would be able to purchase it after the dividend at the least the amount of the dividend less, and so could make no difference to Mr. Gaston. 10

Q. What has become of your book and papers relating to this matter, and what search have you made for them? 20

A. My recollection is that I left them in a desk in the office of S. L. & L. Haight, where I had my office at that time in New York, and when I went to look for them they had moved their office and the desk I used was gone, and I got Louis Haight to look through all their old papers and he said he could not find anything of them; in fact I helped him look but couldn't find anything of them.

Q. When did your term of Representative in Congress expire with reference to your appointment as Trustee? 30

A. March 4, 1865; I was appointed Trustee in 1866.

Q. What was your situation financially at the time of your appointment?

A. I was, I think, worth at least \$50,000; yes, I think \$75,000.

Q. When was it that you examined your account and discovered that you had paid Mr. Gaston \$3,300 or \$3,400 and called his attention to it? 40

A. I can't state the exact time now; it was some three or four months probably after my appointment as Trustee.

Q. Do you remember when about it was that you examined your account and found that you had paid \$1,175 more than was due by way of dividends and for the 15 shares of stock.

A. It was some considerable time after I found that I had paid him between \$3,300 and \$3,400.

10 Q. Did you or not call the attention of Mr. Gaston to that fact?

A. I don't think I ever did; he knew that the money was coming to him for the stock dividend, and I didn't think anything more was ever said about it.

Q. When was the first you ever heard of any demand against you for the stock privilege of fifty shares from Mr. Gaston or any one in his behalf?

A. It was after I had made out my account and given it to Mr. Bergen.

20 Q. You say you paid \$550 to Mr. Gaston on the dividend due January, 1869; when and how did you pay it?

A. I paid it during the months of August, probably September, October and November, 1868; I paid it to him in different amounts and at different times.

Q. At the time of these payments had you any thought of transferring the management of this trust to Mr. Veghte?

A. No, sir. According to my figures there is an
30 error of \$50.

The counsel of respondent admits that this is an error, and that Mr. Steele should be allowed \$50 more than he is allowed, also an error of \$3 in transfer due to Mr. Steele.

Cross-Examined by Mr. Bergen:

I remember the day I was examined by Mr. Stevens. I don't think my testimony was read over to me; Mr. Stevens was in a hurry to catch the cars; I glanced over it and said I had no doubt it was right, and
40 signed it; I have no doubt he intended to have it right;

I believe I was the first witness examined that day ; I think Wm. K. Gaston was examined right after me, can't say positive in what order the examination was taken. I found when I went to Mr. Bergen's office that the order of Chancellor required me to buy New Jersey Central Rail Road stock with the surplus, but I never knew it before ; don't think I had read the order. Mr. Hugh Gaston told me that the trust was for 200 shares and that the 15 shares, or anything else, belonged to Wm. K. Gaston.

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Q. Do you mean to say that Mr. Hugh M. Gaston misled you as to the order of the Chancellor and told you to act differently from the terms of the order which required you to invest the surplus after purchasing 100 shares of stock ?

A. I don't mean to say that he intentionally intended to mislead me at all ; I believe that he thought and I thought that the Trust consisted of the 200 shares of stock and that when that was full any balance there might be due belonged to Wm. K. Gaston. I know now that the order in some contingency requires me to buy Central R. R. stock with any surplus there might be, but I didn't suppose there'd be anything to invest; that the 2 1-2 per cent. allowed me would consume the balance; I mean allowed me on disbursements. I kept a book of account of this trust fund ; my recollection is that at the time of receiving the \$12,900 I made a minute of it in a ledger which I have at home, and I think that is the only entry of that kind I made in that book. I had another book in which I kept this account, a pretty large size pocket book of 150 or 200 pages which I could carry in my pocket ; I kept the account of the money I paid Mr. Gaston in that book ; I charged him in it. When he'd get \$50 of me I'd charge on the Dr. side cash \$50, if I paid an order on me I'd charge that as paid order so much ; in fact any amount he might be chargeable with I'd put it in this book ; all the account I had with him was in that book ; I can't recollect that I ever struck a balance in the book and carried it forward, but I made balances and knew

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how it stood; what I mean by made balances, I added up each side of the account to see how it stood. This account covered a great many pages in the book, a great many small charges besides some pretty large ones; when I get to the bottom of a page I add up both sides and carry it forward; my impression was that the last balance I made in that book the balance was \$1,175 in my favor, and it was about the time of the payment of a dividend; by balance I mean the kind
10 of balance I have stated; I think it was during the year 1867; I do not know whether it was the Summer or Winter dividend; I paid Mr. Gaston in a great many different ways; the \$3,300 which I have spoken, was paid almost entirely in checks; and all except \$100 paid by checks on the Bank of the Commonwealth; I never took any receipts from Mr. Gaston for these payments; I didn't know that I owed Mr. Wm. K. Gaston \$1,175 in 1866 for stock privilege; I didn't know exactly what the price of it would be; I did not know at that time
20 the price of it in the market; I did not avail myself of the stock privilege, except as to the 28 shares subscribed for; I advanced this \$1,175 at different times from the time I was appointed Trustee up to the time I added up the amount on both sides and found that amount due after paying Mr. Gaston the dividends and for the stock; I don't think I charged in that book the installments paid on the 28 shares; I paid three installments on the 28 shares, and I don't recollect why I didn't pay the last one; perhaps I had not the money
30 convenient; Mr. Veghte and father paid it afterwards; I had Trust funds sufficient in my hands to pay for the 28 shares; I suppose I had Trust funds enough in hand to buy the 100 shares, buying the 28 by subscription; I had \$12,900 in hand; I don't remember now whether I made out my account in this case in pencil and handed it to Mr. Bergen, or not, perhaps I did. [The witness is shown a paper which I have marked Exhibit — He says]: I made out that account; I was served with an order in Chancery requiring me to make
40 out an account; perhaps I may have sent for Mr. Bergen

to come and see me, I was infirm; it was after the service of the order; I had no account made out when he came; had no books or vouchers from which to make out an account; I made out the account mostly from memory; I calculated I had overpaid him on the stock privilege, but I had no definite idea how much, but tho't it ranged anywhere from \$50 to \$300, or \$400; I never knew what these stock privileges were worth till Walter showed me; I knew in the neighborhood of what they were worth; I have allowed in my account 23 per cent.; I charged 130 1-8 for the 100 shares; the 28 which I bought at par is a part of the 100 shares I charged for. 10

Q. So you get the benefit of 30 1-3 per cent. for the privilege of subscribing for the 28 shares at par?

A. No sir. I do not. I paid Mr. Gaston 23 for that in accounting for 50 shares and I had to pay the money for it in four different installments of \$700 each, for which I received no interest and I lost the whole of the 23 per cent. on 22 shares I have allowed Mr. Gaston in the settlement. 20

By Mr. Clark in chief:

I glanced over my examination before Mr. Stevens, but I did not notice that part that I refer to of the \$1,175 or I certainly should have asked to have it corrected as it was so entirely different from what I was certain the amount was. Whenever I have got to stop in a statement and want to have it written down, I am very apt to lose the connection and get wrong; I didn't say that this happened in that way; I can't say how it happened but it is entirely different from what my understanding of it was. 30

W. G. STEELE.

Sworn and subscribed before me, August 11th, 1881.

J. VRED. VOORHEES.

Master in Chancery.

The further examination of witnesses was here ad- 40

journed by the consent of parties to the 15th inst., at 9 o'clock in the forenoon at same place.

J. VRED. VOORHEES,

August 11th, 1881.

M. C. C.

August 15th, 1881. Parties present as before.

Hugh M. Gaston, a witness produced and sworn on the part of the respondent, is asked :

Q. Mr. Steele in his testimony says that you informed him that the trust fund in this matter consisted of 200 shares of stock and that the surplus belonged to Wm. K. Gaston and could be paid to him and that he (Steele) never knew until recently that he was to invest the surplus in Central R. R. stock; what have you to say as to the truth of this statement?

A. I now remember and have always remembered that by the decree of the Chancellor the surplus of the proceeds of the sale of the farm and farming utensils and personal property belonging to the trust over the amount required to purchase 200 shares including the stock then owned by the Trust was to be invested in the stock of the Central Railroad of New Jersey; I drew the decree to this effect and remember my conversations with the Chancellor and Wm. K. Gaston on the subject; my recollection is that there was 15 shares of extra dividend stock that belonged to Wm. K. Gaston and by the proceedings in Chancery had been pledged to secure the investment by the Trustee of a part of the trust funds in personal property; this was the only stock I ever knew of that belonged to Wm. K. Gaston, absolutely; I could not have told Mr. Steele that the surplus of the proceeds of the sale of the farm after purchasing the stock required to make the 200 shares belonging to Wm. K. Gaston, for it would have been in violation of the decree; I of course had many conversations with Mr. Steele on the subject of this Trust but have now no distinct recollection of but one conversation and that referred to the transfer by the representatives of Campbell to him; there was never any intended concealment of the terms of the decree.

Cross-examined by Mr. Clark :

I acted in behalf of the trust for Mr. Gaston and of the Trust on the appointment of Mr. Steele; Mr. Steele was not represented by any individual counsel that I know of.

Q. I understood you to say 'and not otherwise.'

A. I mean that he had no counsel for himself, other than myself as counsel for the trust fund and W. K. Gaston; no contest whatever in the matter and I suppose I was paid by the Trustee for my services, but I have no 10
recollection; don't know any thing about it now.

Q. Since 1868 has there not been such difficulty in respect to the Trust as required the assistance of counsel and have you not had charge of the same as counsel?

A. There was a bill filed by me as counsel of Wm. K. Gaston some time; it may have been in 1868, for an injunction to prevent the assignment and transfer of the larger portion of the Trust to the American Exchange Bank of New York; this cause I argued some 3 or 4 years ago before the Chancellor, but since that 20
time I have had personally nothing to do with the Trust; I know of no other trouble except what was involved in that suit.

Q. Although the bill was filed in the name of Wm. K. Gaston; were you not employed and paid for your services by the sureties of Wm. G. Steele?

A. Partially; after the injunction was granted the companies recognized the right of Wm. K. Gaston to the dividends and the Trustee or Mr. Veghte as his surety as I understood received them; the suit lay a number of years without being moved, and after Mr. N. V. 30
Steele's death his executor and John V. Veghte came to me and wished the suit proceeded with and gave me a fee for that purpose. I don't know how otherwise I was paid but I suppose out of the Trust fund.

Q. Being shown three papers purporting to be signed, two of which purporting to be signed by Gaston & Bergen, and one by yourself; is asked, are you able to state now any more particularly than before as to who paid the expenses?

A. Only in this that the receipt for \$25 and \$100 were receipted to Mr. Veghte and N. V. Steele; my previous impression was that Mr. Frelinghuysen, the executor, had been with Mr. Veghte and had made one of these payments but I was mistaken; I know he was in my office with Mr. Veghte on this business; as to the last receipt I have no personal knowledge of it at all; it is in the hand writing of Mr. Bergen; I wish to explain that I have not much to do personally with
10 the moneys received in the office; these papers, the first two in date, are in my hand writing signed by me, the other in Mr. Bergen's.

Q. Can you state any sum paid you by the Trust for your services other than \$50 directed by the Chancellor at the time of Mr. Steele's appointment as Trustee?

A. I had forgotten that the \$50 was paid but I suppose the costs were paid out of the Trust fund, but I have no definite knowledge about it.

Q. Have you not had frequent conversations with
20 Mr. Steele since his appointment as Trustee in relation to the Trust?

A. I have.

Q. Do you remember on any occasion that he read the decree, or have you any distinct recollection at any time of apprising him of its contents?

A. I have no recollection of the precise act of reading the decree to Mr. Steele; I am very confident that Mr. Steele knew, that he was informed that the surplus was to be invested in Central Railroad stock.

30 Q. Would you be willing to state as a matter of fact that he was so informed, or is that your impression only from your knowledge of the whole matter?

A. The precise occasion of informing him I cannot state, but from the course of business in the office I would have informed him, and from his selling the farm pursuant to the decree makes it impossible for me to suppose he was not acquainted with the decree and its terms.

40 Q. Then your opinion is that he must necessarily have had knowledge of the decree from the character

of the business in charge and therefore you conclude that he was informed not relying on any recollection you have of having informed him?

A. My convictions on this subject are not based merely upon the nature of the business; if you wish to know all the grounds of this conviction I will state them.

Q. I do not ask now for your conviction, I simply wish to know if you have any clear and distinct recollection at any time of telling Mr. Steele the character 10 of the Trust and his duties as Trustee?

A. I cannot identify the conversation or give its date.

Q. Is that your only answer?

A. Not if you wish me to amplify.

Q. Can you not answer the second preceding question categorically?

A. My answer is that I cannot identify any particular conversation, but Mr. Steele must have been informed of the decree to some extent, for he sold; and there was no wish or intention or interest to conceal any 20 part of the decree and he was a man of too much intelligence not to have examined the decree which governed his action in the premises.

Q. Did you not at the time of the sale of the farm and personal property or thereabouts inform Mr. Steele that he was entitled to a commission of 2 1-2 per cent. on such sales as were made for the charge of the Trust?

A. Not to my knowledge or belief.

Q. Do you not understand that the Trustee by the terms of the Trust was entitled to receive a commission 30 of 2 1-2 per cent?

A. I remember that by the will of Wm. Gaston, of Savannah, the Trustee was to be paid a certain commission on something, whether the principal or the dividend I don't remember, but I think it was the dividend.

Q. Did you not have that knowledge at the time Mr. Steele was appointed Trustee?

A. Yes, much more exactly than I have now.

In chief by Mr. Bergen:

Q. You have said you remember a fact in relation to the commission; please state what it was.

A. Mr. Steele, before he gave bond as Trustee, refused to give a bond for some amount then spoken of on account of the smallness of his commissions, which I think he stated at \$50 a year and the result of his objections was the giving of two bonds, one for the faithful investment of the proceeds of the sale of the farm in \$15,000 and the other for \$5,000, perhaps \$3,000, for the general faithful performance of his duties as Trustee.

Cross-examined again by Mr. Clark:

Q. As a matter of fact was not the farm and farm implements sold by yourself and Wm. K. Gaston at the time of Mr. Steele's appointment as Trustee, and did he not for a time decline to accept the trust and convey the property, giving as his reason that he did not want to be troubled with it because he'd only receive small compensation without naming what sum he would receive or be entitled to?

A. My recollection is that before Mr. Steele's appointment as Trustee that Wm. K. Gaston had made a verbal sale or had an understanding with Edward Schott, the purchaser, as to the price for the farm; I had nothing to do with it; Mr. Steele never declined to be Trustee to my knowledge; was always perfectly willing to be Trustee so far as I can remember; his only objection was to giving the bond proportionate to the Trust Fund as I have mentioned.

H. M. GASTON.

Sworn and subscribed before me, August 15th, 1881.

J. VRED. VOORHEES,

Master in Chancery.

William K. Gaston for respondent being duly sworn is asked:

Q. Mr. Veghte says he advanced you money from 1866 to 1872; on whose order did he pay you?

A. On Mr. Steele's order.

Q. Mr. Veghte testifies that you told him in 1868 that Mr. Steele was a personal friend and clever fellow; that you did not know how the account stood between you; that you thought Steele owed you something, but if he and N. V. Steele would make the 200 shares good you would release them; is this true?

A. No, sir; I don't recollect of having any conversation with Mr. Veghte of that kind.

Q. What have you to say about the \$550 which Mr. Steele claims he advanced to you in 1868? 10

A. There had been a dividend declared some time before that; I went to the bank to Mr. Veghte; he told me that Mr. Steele claimed \$550 and that he (Veghte) must not pay it to me; Mr. Veghte said he'd asked Mr. Steele for his account, and he said further, Mr. Gaston, I believe Mr. Steele owes you money, and I will notify him that if he don't finish his account by the next day or the day after, I will pay you the money; I don't believe that Mr. Steele can make out an account; the next day or the day after I went again 20 to the bank; Mr. Veghte said Mr. Steele has not sent in his account and I will pay you the money, and he did so.

Q. Mr. Veghte testifies and so does Mr. Steele that the purchase of the stock after the sale of the farm was delayed by an agreement made with you; is this true?

A. No, sir. The first time I saw Mr. Steele about buying the stock was the 8th of July, 1866; I saw him on the ferry boat going over to New York; said I, Mr. Steele have you bought that stock yet? He said he had 30 not; I said I was sorry as I would lose the dividend on it; the dividend was to be declared the last of the month of July.

Q. Did you say to Mr. Steele anything about the time the dividend would be declared?

A. I don't know that I said that; when I said I was sorry he said you are entitled to that and I will pay it to you. The next conversation with Mr. Steele was on the 8th of August, 1866; I take the Phila. Public Ledger which is authority, etc., for sale of stock; I 40

said Mr. Steele, have you bought the stock yet; judging from his manner he appeared to be annoyed at the question; he said he had not; I told him now was his time to buy; the stock had gone down to 122-3; you had better purchase at once as the stock will go up again probably within a week; he said he would either send a telegram or write to Drexel & Co. on his arrival in New York and order the stock bought; I remember the date because Mr. Van Deventer's daughter was married that evening to Mr. Doughty's son; I never spoke to him again about buying the stock; during 1867 I had occasion to ask Mr. Steele to accept an order, the amount to be paid out of the next dividend; in drawing the order I drew it in these words: "Please pay C. & T. "Cox," naming the amount, "out of the next dividend that may be declared on 172 shares stock of the "Delaware and Raritan Canal and Camden and Amboy "R. R. Companies held in trust by you for my benefit;" he would carefully read the order over and then
 10 accept it; I supposed from his accepting an order for dividends on 172 shares that he had purchased the stock; the 28 shares were not yet on the dividend list; the installments had not yet been paid.

Q. Mr. Steele testifies that in a very short time after his appointment he had paid you \$3,300 or \$3,400; is that true?

A. No, sir.

Q. Mr. Steele testifies that you told him that the privilege to subscribe would pay all the money advanced; did you say that or anything like it?
 30

A. No, sir.

Q. Mr. Steele says that he paid you \$1,175 over and above the dividends, and the 15 shares of stock; is this true?

A. No, sir. I went to New York to see Mr. Steele to get some money from him; he gave me a check on the bank of the Commonwealth; this was the beginning of September, 1866; when he handed me the check he said you must have had pretty much all that is coming
 40 to you on the 15 shares of stock; he said I will look

over the account; I then left him; the next time I saw him was some two or three weeks after this; it was in New York; he gave me another check; in handing it to me he said this makes the 15 shares all right, or to that effect, that in substance at all events.

Q. Mr. Steele says he did not agree to pay you the dividends on all the stock declared July, 1866, the same as if he had completed the Trust.

A. He made no statement more than this; as I have before stated, he said I was entitled to that dividend 10 and he'd pay it to me.

Q. Mr. Steele says that he called your attention to the overpayment of the \$3,300 a few months after his appointment; is this true?

A. No, sir.

Q. Did you ever see that little black book Mr. Steele has spoken about, in which he kept his accounts?

A. No, sir; we never have had any settlement.

Q. Have you never had the \$1,175 or any part of it which Mr. Steele has charged against you? 20

A. No, sir.

Q. Did you or not, in November, 1866, furnish Mr. Steele with a written statement of your claim against him on account of the proceeds of the sale of the farm, and if so what did he do and say about it, and what reason did he give for holding the surplus, if any?

Objected to because it is leading.

A. I made out a statement beginning in November, 1866; in making the statement I did not know what Mr. Steele had paid for the stock, the 72 shares; I put it in 30 my statement at 130 for 72 shares, \$2,800 to 28 shares that showed a surplus of \$1,250; he took it out of my hand; that was all that was said about it at that time; a short time after, some three or four days, I saw him again; he said the statement you handed me is correct, there will be about \$1,250 surplus; I intend, he said, to hold on to that, as the Chancellor may not approve my purchasing the 28 shares by subscription, and he may oblige me to go out and furnish the stock

at the market price, and I'll keep the \$1,250 to protect myself.

Q. You were present at the examination before Mr. Stevens; do you remember what the Master did after he had written down Mr. Steele's testimony?

A. He read it over to Mr. Steele and he signed it; I was examined after he was on that day; my testimony was read to me before signing it.

10 *Cross-examined by Mr. Clark:*

Q. When did you first have your attention called to the fact that Mr. Steele had or had not the testimony taken before Mr. Stevens read to him?

A. Walter asked me at the depot on Saturday, at 6 o'clock, whether Mr. Stevens read Mr. Steele's testimony over to him before he signed it; he said he did.

Q. Was Mr. Steele's testimony read before your examination commenced or after?

A. I don't remember.

20 Q. What circumstance, if any, occurred in connection of the reading by Mr. Stevens by which you can now say that you are certain that he read to Mr. Steele the evidence before he signed it?

A. I don't know that any particular circumstance occurred, I merely heard him read the evidence.

Q. Do you mean read it to Mr. Steele after he had finished his examination, or read it during his examination?

30 A. I am trying to think; he may have read part of the time over, and I may have confounded the one with the other.

Q. Mr. Steele has sworn that Mr. Stevens did not read his testimony to him after his examination was finished, but that he took it himself to look at, while you were being examined; are you prepared to say that is untrue?

A. No, I am not prepared to say that.

Q. You say you made a statement in November, 1866, by which there appeared a balance as surplus of

\$1,250 which you gave to Mr. Steele, where did you give it to him ?

A. I gave it to him right by the flag station by J. Doughty's; I walked with him from the depot.

Q. From what data or memoranda did you make that statement ?

A. I made it assuming that he had paid \$1.30 for 72 shares and \$100 for 28 shares; I did'nt take into account any dividends received.

Q. Did you keep any account of moneys paid you 10 by Mr. Steele or by Mr. Veghte for him or orders given by you and accepted by him ?

A. I generally kept an account from one dividend to the next, and then destroyed the account; had no further use for it.

Q. At the time you made this statement you knew you had not received a dividend on 200 shares of stock for July, 1866, did you not ?

A. Yes, I knew I had not received it; I have received a dividend of \$575 on 115 shares. 20

Q. You knew if Mr. Steele did as you say he agreed that he was still in your debt on the July dividend in the sum of \$425, did you not at the time you made the statement ?

A. The statement I made out for Mr. Steele was concerning the Trust Fund, and had nothing to do with the dividends, these were my own personal property; I am seventy-five years old; my health is pretty good, but I am somewhat infirm from my age.

Q. You say that Mr. Steele never advanced to you 30 in excess of the dividends and 15 shares of stock the sum of \$1,175, how can you be sure of that, having kept no account of the advances he made to you or the orders he accepted for you ?

A. I kept an account of the orders and of the sums he paid from one dividend to another; I kept a little memorandum book in my pocket.

Q. Does that book show a correct account of all the moneys received by you from Mr. Steele or any one for him, as well as all orders given by you or him ? 40

A. This little book I kept the small accounts of money I received from Mr. Steele from time to time till the dividend was paid and then I rub them out.

Q. Did you erase the account at any time when there was a failure of the Trustee to pay you the full amount of dividend due you or was there no such instance?

A. Mr. Steele paid me all the dividends except the July of 1866.

Q. Then you have no claim against the Trustee for any income from the Trust excepting the balance due you for the July dividend of 1866.

A. No, I have not except for the privileges.

Q. And that balance is \$425, is it not?

A. Yes sir.

Q. You say you have no claim excepting for \$425 and the privileges do you refer to the privileges of 1866 of 50 shares?

A. 50 shares, and I contend that he ought to have bought the stock at \$122 instead of \$130; the difference would be due me.

Q. You knew that you were entitled to the 50 shares privilege as your own individual property, knowing that are you now prepared to say that Mr. Steele never paid you any thing on account of the same?

A. No; unless it is buying the 28 shares at par; I ought to be entitled to the difference between that and \$130.

Q. Were you not from 1866 on, incurring expenses which required all your dividends and in excess thereof to meet them?

A. Yes, but I generally borrowed the money to meet them.

Q. Did you ever at any time make demand of Mr. Steele for the amount due you on the July dividend of 1866 or the stock privilege of the 50 shares?

A. No sir; I left that for the final settlement of the Trust fund.

Q. Did you ever claim of Wm. G. Steele, or John V. Veghte, or N. V. Steele, that there was any money

due you on account of this July dividend or stock privilege?

A. No sir, as I said before I left it for the final settlement of the Trust fund.

Q. What had this to do with the Trust fund, it being your individual property?

A. Well, I, in the final settlement of the account, what belonged to the Trust Fund would go to the Trust Fund and I would get what was due me.

Q. You were borrowing money all the time or getting your notes discounted in anticipation of your dividends, were you not, from the time of Mr. Steele's appointment up to 1872?

A. I was at times, but not all the time; during the time Mr. Steele was paying me the \$1,950 and the July dividend I was not borrowing money.

Q. These payments of which you have just spoken were prior to the month of November, 1866, were they not?

A. Yes, sir.

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Q. You remember the fact that an arrangement was made during the year 1868 that John V. Veghte should draw the dividends and account to you for them, and did he not do so from that time until 1872?

A. Yes, sir.

Q. Did not Mr. Veghte and you at about the time this arrangement was made have frequent interviews with respect to the trust and the extent of the liability of Mr. Steele's bondsmen?

A. No, sir.

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Q. Do you say that you and Mr. Veghte had no conference in relation to his taking charge of the Trust?

A. No, sir, we had none.

Q. How did you come to go to Mr. Veghte, then, to draw your dividends, after it was arranged that he should pay them?

A. Mr. Veghte paid them to me; I suppose Mr. Steele gave him an order.

Q. [Repeated.]

A. I didn't know that there was any particular ar- 40

rangement between Mr. Veghte and Mr. Steele, but Mr. Veghte used to advance me money and take it out the dividends.

Q. Did you ever ask Mr. Steele for any money after 1868?

A. I had no connection with Mr. Steele in regard to money until 1872; I mean between 1868 and 1872.

Q. You remember a bill in Chancery being filed and its object in 1868, do you not?

10 A. Yes, I remember.

Q. Remembering that, do you not now recollect that John V. Veghte was greatly concerned as one of the bondsmen of Mr. Steele and did he not talk with you on the subject?

A. No, sir.

Q. Mr. Veghte has sworn that he was interested to know the extent of his liability and for that purpose talked with you telling you that Steele claimed you were overpaid and asked you to state how the account
20 between you and him did really stand; do you say that statement is false or have you no recollection of it?

A. I have no recollection of that statement or Mr. Veghte conversing with me at all.

Q. You have had stated to you this morning certain statements to which John V. Veghte has sworn in relation to conversations between you and him with respect to this Trust Fund and its income; are you prepared to say that those statements of Mr. Veghte are false, or have you no recollection about them?

30 A. I will say I have no recollection of it; I never had any conversation with him about the matter, except he only asked me once whether Steele had bought all the stock or not.

Q. Did not Mr. Veghte at one time come to your house and talk with you about the Trust, being about the time when the bill in Chancery was filed, and did not Mrs. Gaston complain and express alarm, and Mr. Veghte calm her stating that Mr. Steele's bond was good?

A. I don't remember of his ever being there at the house.

Q. You say you never talked with Mr. Veghte about the Trust but once and then he asked if Mr. Steele had purchased the stock; is that true, and if so, state when and where that occurred?

A. Yes; it was at the bank; it was in 1868; I'm quite certain.

Q. State all that was said in that conversation.

A. He asked me whether Steele had bought all the stock yet; I said I supposed he had; nothing else said; not positive as to time of year; think it was early in 1868. 10

Q. You say positively that Mr. Veghte never had any other conversation with you in relation to the Trust or its income, or do you say if he had any other conversations with you you have no recollection of them?

A. I have no recollection, but I am almost positive that he did not; he never mentioned his name. 20

Q. Did Mr. N. V. Steele ever come to see you to ascertain how the account of the Trust stood with the Trustee?

A. No, sir; he never came to my house.

Q. The first time you ever claimed any money due on the July dividend of 1866, or the stock privilege of 1866, was at the accounting before Mr. Stevens as Master, was it not?

A. Yes, sir.

Q. Knowing, as you say you did, that there was money due you on this dividend and privilege, why did you not ask for it from 1866 to 1881?

A. As I stated before, I was waiting for a final settlement of the Trust Fund in Mr. Steele's hands.

Q. What effort was made by you for a final settlement, as you have stated, during the years 1866 to 1872?

A. I have made none.

Q. You were to a greater or less extent borrowing

money during those years and anticipating your dividends, were you not?

A. Yes, I borrowed money in anticipation of the payment of the dividends, and when they were paid I paid Mr. Veghte.

Q. Did you not always or nearly so give your notes and have them discounted in anticipation of the dividends?

A. Yes, sir.

10 Q. Were you not indebted during those years to various persons in Somerville, and were not judgments obtained against you, and which you were not able to pay because the dividends were insufficient to meet your expenses and pay them?

A. Those judgments were confessed judgments, except two, and that was Mr. Barcalow and Mr. Troutman, and I was not able then at that time to pay them and pay my necessary expenses out of the dividends; I have paid these judgments since; my family expenses
20 are not so large as they then were.

Q. Have you any recollection of any conversation with Mr. Steele about the purchase of stock immediately after the sale of the farm?

A. Only when I met him on the boat, as I have stated, and August of the same year.

Q. Do you know why the purchase of stock was delayed, or did you ask Mr. Steele, when you met him on the boat, why he had delayed the purchase of the stock?

30 A. I did not.

In chief again by Mr. Bergen:

Witness being shown paper marked Exhibit B, on the part of respondents, is asked what paper it is.

A. It is the statement I made out in the beginning of November, 1866, of which I have before spoken; it is a copy of the one I gave Mr. Steele. I have no recollection of telling H. M. Gaston at the time of the trouble about the stock in 1868, that if Messrs. Veghte and N.
40 V. Steele would make good the 200 shares of stock I

would look to Wm. G. Steele for anything due me, or words to that effect.

WM. K. GASTON,

Sworn and subscribed before me, August, 15, 1881.

J. VRED. VOORHEES,

Master in Chancery.

Walter Gaston, on the part of the respondents, being duly sworn, says: My first interview with Mr. Steele was in the Fall, I think, of 1879; I met him at depot in Somerville about five or six o'clock, P. M.; walked with him to Mr. E. S. Doughty's office; told him we wanted to close this matter up, and to shorten matters he'd better resign and file his account of the Trust; he said he was willing to resign if it would in no wise compromise himself; but as to the account, he had paid moneys to father various small sums, and that he had never kept any account, and unless father and myself helped him he could not make out any account; he appealed to me to take into consideration all his trouble, saying, "God knows I have had trouble enough," and asked me not to make any more trouble than we could help; I told him we wouldn't ask anything more than was due; I left him then, he saying he'd go home and look through his papers and see what he could find; my next interview was at his house, some two weeks after; he not having resigned, I went to learn the reason; he again said he was willing to resign, but wanted to see Mr. Veghte in relation to the matter before he did so; I said I'd see Mr. Veghte, if he wished, and tell him that he wanted to see him; he then referred to his account, and said he failed to find among his papers what he was looking for; he said he thought he had a book which would throw some light on the matter, although he never had kept a regular account; said they might be among the papers left in Haight's office, a broker in Wall street; might be among other papers left there; he asked what kind of an account he should make; I told him he should account for farm money and legitimate earnings of Trust

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Funds in his hands; he began to figure out an account then; after some hesitancy claimed \$130 1-8 for 100 shares of stock; asked me if Mr. Veghte had paid us all the dividends; figured 14 years about and \$28,000; claimed an advance of about \$500 on the January dividends of 1869, collected by Mr. Veghte, paid to father by Mr. Veghte under protest by Mr. Steele; he figured out the debit side of the account farm proceeds, \$13,410 which I gave him, and the dividends up to that time, making a small balance in his favor; I told him we should ask him to account for balance due on dividend July, 1866, \$425 stock privilege of September 1, 1866, and difference on 28 shares stock between par and the price charged the Trust Fund; he asked me what I meant by stock privilege of 1866; he said it was the first he ever heard of it, I told him I thought not as he had availed himself of 28 shares for trust fund; asked me to explain it and I spent some time in doing so; asked me what I meant by market value of it; I told him the price the option would be worth in the market of subscribing for the stock at par, and I had ascertained that to be from 5 to 7 per ct. below the market value of the stock—no claim made for the \$1,175; I saw him again after I had seen Mr. Veghte to whom I had delivered Steele's message, to which he replied d—n him, or G—d d—n, he didn't want to see me at all; tell him to resign and make out his own account; I told Mr. Steele that Mr. Veghte refused to come and I asked him if he had his account made out; he called me to the window and showed me an account at which he had been working; I looked over it, first I noticed the balance and found about the same balance due from us as before, and then at the debit and found he had charged himself with stock privilege of Sept., 1866, and that being about twice the amount claimed to be due him when I had seen him before I thought that in error he had put the balance on the wrong side; in looking on his credit side I found a charge of \$1,175 which he had not claimed at the previous interview; I asked him when

that was paid, but he could give me no definite or satisfactory explanation, only that he remembered that he had paid a great deal of money soon after taking the Trust; I said we admitted the payment of \$1,950 for 15 shares, but from what I knew of father's accounts we should take exceptions to the \$1,175 unless he had receipts to show that we were in error; he said he had no receipts whatever; I left him with request that he'd make out his account such as it was and file it, and we'd take exceptions as we might think advisable. 10

Q. Was there any reason or had anything happened in regard to the Trust Fund which induced you in 1879 to take steps to have the account settled?

A. I had taken charge of father's affairs in 1875; the orders for the collection of dividends were drawn in my favor signed by Mr. Steele, Trustee.

Q. What became of the lawsuit in 1879?

A. It had been decided in our favor; that matter being in shape we thought the time had come to close up the matter, and I took an active interest in it having it in charge for my father; my recollection is that that suit lasted about 8 or 9 years; I saw Mr. Veghte four times about this matter; I asked to see the certificates he had; he showed them to me; I told him what efforts I was making to close up the matter and that Mr. Steele was delaying by refusing to resign and to make out his account; he told me to urge him on and get it arranged; he expressed himself very disparagingly about Mr. Steele; I next saw him in front of Adair & Thompson's store in Somerville, D. M. Sutphen with him; I then delivered the message from Mr. Steele to him as I have before stated; I next saw him in our office at Chester and told him I was going to try to find where the 20 shares of stock hypothecated in New York; he said do and let me know; I next saw him in the Ten Eyck House in Somerville, and told him I had found out where the stock was; he impatiently left me and went up stairs; said I must go to Steele and tell him to get the certificates; I remember one other interview with Steele, it was in Doughty's office; I asked 40

him with whom he had hypothecated the 20 shares of stock in New York; he said he couldn't remember, but would look when he went to New York and try to find out, but after awhile he mentioned the name of Humbert.

Cross-examined by Mr. Clark:

I am 31 years of age; myself and my sister are the only beneficiaries under this trust as I understand it; 10 my father's family consists of himself, mother, my sister Mary and myself.

Q. Didn't Mr. Steele at the several interviews you have mentioned instead of saying that he had kept no account say that he had no account and also say that the book containing the memoranda of charges against your father he could not find, thought it must be at Haight's office?

A. No, sir; at the first interview he had no account; hadn't kept any account; at the second interview he 20 referred to the book, but not in such a way as to lead me to believe that it contained anything more than a few items relating to our account.

In chief again by Mr. Bergen:

I was present at the examination before Mr. Stevens; In the first place I heard Judge Stevens read over to Mr. Steele the second time all his replies to his questions; I heard him say: Mr. Steele I want you to be correctly understood in your testimony before me, and my 30 recollection is that both Mr. Steele and father's affidavits were read to them before signing; I remember of hearing Judge Stevens ask Mr. Steele as well as father whether or not the testimony was correct before signing, and heard him tell Mr. Steele if he had any papers or letters which would throw any further light to send them to him.

Cross-examined again by Mr. Clark:

Q. Have you any such clear and distinct recollec- 40 tion of hearing Judge Stevens read Mr. Steele's tes-

timony to him so as to be able to swear that he did read it to him after his examination was concluded, or is it only your impression?

A. My recollection is so distinct as to that matter, that I was greatly surprised to hear it said that it had not been read to him before it was signed, and I called father's attention to it at the depot the other evening.

Q. What fact or circumstance in connection with the reading occurred by which you have the recollection you have stated?

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A. What seemed to me the waste of time after the numerous readings and re-readings of the same matter by the Master during the examination by the Master to get at what Mr. Steele really did mean to say.

Q. Have you any other reason for your recollection?

A. No, I don't know that I have.

Q. Then from the circumstances you have stated, are you willing to swear as a matter of fact that the testimony was read to Mr. Steele after his examination was concluded, or is that only your belief according to the best of your recollection?

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A. I can only speak from my recollection of the fact, and that seems to warrant me in saying that it was.

WALTER GASTON.

Sworn and subscribed before me, August 15, A. D., 1881.

J. VRED. VOORHEES,

Master in Chancery.

Wm. G. Steele, recalled for petitioner.

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Q. Wm. K. Gaston says he saw you on board the ferry boat July 8th, 1866, and asked you if you had bought the stock yet, you replied you had not; and to the remark that he would lose a dividend, and you replied that he was entitled to it, and you'd pay it to him; what have you to say in relation to any such conversation?

A. No such conversation as that took place; I never agreed to pay him more than that \$575, the amount of the dividend upon the stock standing in the

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name of the Trustee at the time I was appointed; I think I told him that either at that time or about that time, that date, that I would account to him for the dividends upon 200 shares at the rate paid by the companies for all future dividends.

Q. He says that on the 8th of August, 1866, he again asked to buy the stock, as it had gone down to 122-3; what have you to say to that?

A. He never urged me to buy the stock; on the
10 contrary thought it best to wait awhile and we'd get it at a lower price.

Q. He says that about the 1st of September, 1866, in New York, you gave him a check of \$100, and then stated that this sum about paid him for the 15 shares of stock, and a short time after you saw him again and gave another check, and said that made the 15 shares all right; what do you know about that?

A. I gave him a great many different checks about that time, but I have no distinct recollection of making
20 any remark of that kind to him; I recollect perfectly of telling him, (my impression is it was some time later than that date) that he had drawn quite a large amount more than his stock and dividend amounted to.

Q. During the year 1867 he had occasion to draw an order to Messrs. J. & C. T. Cox, or he used that name, and he inserted 172 shares as the number; that you carefully read the order and induced him to suppose you had purchased the stock; what have you to say as to any particular attention paid to the form of any of
30 the orders?

A. I did not pay any particular attention to the form of the orders as to the number of shares, but only as to the amount of the order; I had agreed to pay him a dividend on 200 shares; he drew quite a number of orders on me at about that time to be paid out of future dividends.

Q. He says he gave you a statement in November, 1866, a copy of which has been offered in evidence, by which there appeared a balance of \$1,250 of the Trust; that a few days after you saw him and said that state-
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ment was correct, but you intended to hold that amount to protect yourself; state what you have to say in regard to this matter.

A. He never gave me any such statement, and I never told him that I intended to hold that to protect myself for anything, for at or about that time I had paid him a considerable amount more than was due to him for the stock and for the dividend on the stock; I mean the 15 shares.

Q. You heard Walter Gaston testify to-day in relation to certain interviews he had with you, state what you have to say with reference to his recollection of the same. 10

A. He is entirely mistaken as to what I said to him about my keeping an account of the amounts paid to his father; I never told him that I kept no account, but I may have told him that I had mislaid or lost the book in which I kept the account, and consequently could not easily make an account, or something like that I may have told him, but that his father knew that I had paid him all the amount due him, and that I thought there would be no difficulty in our agreeing upon an account to be submitted; I suggested to him that he could come down (his father being deaf) and we would agree upon the statement of the account; I likewise told him that I had paid his father \$550 on the July dividend of 1869. 20

Q. He said at the second interview you told him that you had a book which you had left at Haight's office, which would throw some light on the subject, although you had never kept any regular account; state what you have to say with respect to that matter. 30

A. I never told him that I had a book that would throw some light upon the matter, but told him that I had a book in which I kept the account, and which I had either lost or left in Mr. Haight's office, as I have before stated; the reason why I said I didn't know how to make up the account was that I had not this book in which I had entered the amounts I had paid Mr. Gaston in different ways; I didn't think at first 40

about the stock dividend, but when Mr. Bergen, who I think was the first one who spoke to me about, and not Mr. Gaston; I recollected it, but thought that I would only be chargeable with the dividend on 115 shares which stood in the name of the Trustee when I was appointed; Mr. Bergen said, however, I was chargeable with the 50 shares; I did'nt claim to Walter anything but the \$550, because I supposed that the \$1,175, or nearly that which I had paid to Mr. Gaston, 10 was due to him for this privilege; I put in that \$1,175 in the account because, as I have stated before, I paid him that amount over and above his dividends and stock, and I charged myself with the privilege.

Cross-examined by Mr. Bergen :

I credited Mr. Gaston in this book of mine with the dividends at the time I received them; I agreed to pay him the full dividends; I was willing to wait to buy the stock at a lower figure and at same time pay him 20 full dividends; I do not recollect exactly on how many shares I received dividends during 1866 and '67, but I think between 135 and 150; in 1866 I only got dividends on 115 shares.

The witness desires to state in reference to the statement of Mr. H. M. Gaston that I must have known what that decree or order was as I had acted under it and sold the farm; that I did not sell the farm; that all the sale and arrangement had been made before I knew anything about it, and that he, Mr. H. M. Gaston, had 30 all the papers ready for me to sign to convey it when I was appointed Trustee.

W. G. STEELE.

Sworn and subscribed before me, August 15, 1881.

J. VRED. VOORHEES,

Master in Chancery.

Order Confirming Master's Report.

[Filed February 8, 1882.]

The Court having by its order dated on the tenth day 40 of June, eighteen hundred and eighty-one, confirmed

the report of Frederick W. Stevens, Esq., the Master to whom the account filed by William G. Steele as Trustee as aforesaid had been referred to examine and state. And John V. Veghte, one of the sureties on the bond of said William G. Steele, having filed his petition in this Court asking that he, the said Veghte, might be allowed to intervene for his own protection and also that the account might be sent back to the said Master to take such further proofs as the petitioner might be able to produce to sustain the allegations contained in 10 his said petition of the errors made by said Master, which in said petition were charged to be as follows: First, that the Master had charged the said Trustee with the sum of one thousand dollars as a dividend upon said Trust Funds declared in July, eighteen hundred and sixty-six, instead of the sum of five hundred and seventy-five dollars, the dividend actually declared. Second, because the Master had failed to credit the said Trustee with the sum of eleven hundred and sev- 20 enty-five dollars which the said Trustee claimed to have paid to said William K. Gaston. That upon the filing of said petition a rule to show cause was on the sixteenth day of July, eighteen hundred and eighty-one granted, returnable on the second day of August, eighteen hundred and eighty-one, requiring the said William K. Gaston to show cause on that day why the prayer of the petition should not be granted, and the Court having read the proofs taken under said rule to show cause, and heard the arguments of counsel, re- 30 fused to allow the prayer of said petition and denied the application with costs; and by its further order dated on the twenty-third day of August last past, approved and confirmed the report of said Master. And the said John V. Veghte having afterwards applied for a re-hearing of the matters aforesaid, which application was granted. It being admitted upon the hearing of this application by the respective counsel that the said Master had made an error in his calculations in two particulars, viz: First, in charging against the Trustee as a balance due from the dividend of July, 1866, the 40

sum of four hundred and seventy-five dollars when he should only have charged the sum of four hundred and twenty-five dollars. Second, in charging the Trustee with seven hundred and sixty-seven dollars and seven cents of principal and interest when he should only have charged him with seven hundred and sixty-four dollars and seven cents. And the Court having further examined the matters in dispute and having heard the argument of counsel, being still of the opinion that the account as stated by the Master was correct, except

10 as to the two matters above set out. It is on this thirty-first day of January, eighteen hundred and eighty-two, ordered that the Master's report and account as stated by him be amended in the above particulars and that as to all other matters and things it stand approved and confirmed, and that the application to have the order heretofore made, bearing date the twenty-third day of August, eighteen hundred and eighty-one, vacated and set aside in other respects, be and the same is hereby

20 denied with costs. THEODORE RUNYON, C.

Respectfully advised,

A. V. VAN FLEET, V. C.

Notice of Appeal.

[Filed January 26, 1882.]

John V. Veghte, one of the sureties of the said Trustee, William G. Steele, having filed his petition in the above entitled matter, and the same having been heard, and a decree made thereon, hereby appeals from

30 the decree made in the said matter on the twenty-sixth day of January last past, and from the whole and every part thereof to the Court of Errors and Appeals in the last resort in all causes.

ALVAH A. CLARK,

Solicitor and of Counsel with the petitioner, John V. Veghte.

Dated January 26, 1882.

I conceive there is good cause of appeal in the above stated cause or matter. ALVAH A. CLARK,

Petition of Appeal.

[Filed Jan. 26, 1882.]

To the Honorable the Court of Errors and Appeals in the last resort in all causes:

The humble petition of John V. Veghte, the appellant in the above stated matter, respectfully shows that your petitioner finds himself aggrieved by a final decree, made in the Court of Chancery by his Honor Theodore Runyon, Chancellor of New Jersey, bearing date the twenty-sixth day, January, in the year of our Lord one thousand eight hundred and eighty-two, in the matter of the final account of William G. Steele, Trustee for William K. Gaston wherein John V. Veghte, the petitioner, by reason of being the surety of the said Steele made application by petition to the said Court of Chancery for an order to intervene, etc., in this respect, to wit: that the said decree orders, adjudges and decrees "that the report of the Master is correct so far as it relates to the matters and things complained of in the petition filed by the said John V. Veghte and that the said order should be discharged with costs against the said John V. Veghte to be taxed." And your petitioner humbly appeals from that part of the decree which decrees as aforesaid upon the ground that the same is erroneous, for that the report of the said Master in said matter is not correct in respect to the matters complained of in the petition of the said John V. Veghte, the petitioner. And your petitioner prays that the said decree of the said Chancellor may be reversed, set aside and for nothing holden. And that your petitioner may have such relief in the premises as to this honorable court shall see meet.

ALVAH A. CLARK,

Sol'r. and of Counsel with Petitioner.

Answer to Petition of Appeal.

[Filed]

The answer of William K. Gaston to the petition of the appeal of William G. Steele:

This respondent, not acknowledging all or any of 40

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 made and entered in the above cause for the purpose mentioned in the petition of appeal, 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 prays that the same may be affirmed with 10 costs to be adjudged to this respondent.

GASTON & BERGEN,
Sol'rs for and of Counsel with Respondent.

Exhibit No. 2.

EX PARTE EXCEPTANT.

	Farm sold for		\$15,000 00
	Farming implements		510 00
			<hr/>
			\$15,510 00
20	Mortgage		2,100 00
			<hr/>
			\$13,410 00
	72 shares Camden & Amboy, a 130	\$9,360 00	
28	" " " " a 100	2,800 00	12,160 00
			<hr/>
	Surplus		\$1,250 00

IN THE MATTER OF THE TRUST FUND OF
WILLIAM K. GASTON.

The Opinion.

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[Filed December 20, 1881.]

1. Trustees are bound to keep clear and accurate accounts, and in case doubts or obscurities arise from their failure to do so, they should be resolved against the Trustees. If the accounts of a Trustee become lost, through his carelessness, he should be required to bear any injurious consequences arising from their loss.
2. Sureties stand bound for the defaults and fraud of the Trustee, and have no right to any favor or immunity that would not be accorded to the Trustee.

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On petition, order to show cause, and depositions.

Mr. A. A. Clark, for application.

Mr. James J. Bergen, *contra*.

VAN FLEET, V. C.: This is an application on behalf of the sureties of a Trustee to open his account.

His account has been stated by a Master, and confirmed by the courts, after service of a rule *nisi*.

The reason the sureties desire to have the account opened is, that allowance may be made to the Trustee of a credit which the Master disallowed. 30

In the account presented by the Trustee he claimed two credits in this indefinite form:

“For cash paid William K. Gaston, \$1,175

“Cash advanced to William K. Gaston, 550”

The Trustee was required to prove both. The Master, after hearing his proofs, allowed the last and rejected the first.

The action of the Master, on the proofs presented to him, is conceded to have been correct. The Trustee 40

then testified that there was a time when his account showed a balance against his *cestui que trust* of \$1,175.

In his subsequent examination, under the order to show cause, he fixed the time when this balance was struck as some time during the year 1869.

In further testifying before the Master, he said, in speaking of the \$1,175:

10 "This amount may have been subsequently reduced by dividends received, which I retained to pay me what he owed me, so that subsequently he was only over-
paid the \$550, which I have charged as a subsequent account. If I had my book I could explain it better. I do not claim that the \$1,175 was due me at the time when I paid him the last money which I personally paid. I think the account balanced, except so far as the \$550 was concerned. This item of \$550 was the balance due me at the time I made the last advance to my *cestui que trust* on the dividends, and at the time my sureties took the collection of the dividends into their hands."

20 His sureties assumed the collection of the dividends in January, 1869. This evidence of the Trustee presented a plain statement of facts, which was easily comprehended, and left the Master but one course to pursue.

If he believed the Trustee's statements, he was bound to give him credit for the item of \$550, and disallow the other. He clearly admitted that the \$1,175 had been paid, and showed how it had been paid, namely, by the retention of dividends which he had collected for his *cestui que trust*.

30 But the Trustee now says, in his evidence taken under the order to show cause, that he has been entirely misunderstood, and made to say what he did not mean. He says he meant to say, and what he thinks he did say, was, not that he had reimbursed himself for the \$1,175, by retaining dividends, but by charging himself with the market value of the privilege which accrued to the Trust in 1866, to subscribe for fifty shares of new stock, at par, to be issued by the Camden

and Amboy Railroad and Delaware and Raritan Canal Companies. To explain:

The Trustee was appointed May 16, 1866. At that time the Trust property consisted of one hundred shares of the stock of the joint companies, a farm, and some personal property. The Trustee, by the order of his appointment, was directed to sell the farm and personal property, and purchase with the proceeds one hundred additional shares of the stock of the joint companies, and if any residue remained after such purchase and 10 paying necessary expenses to invest, to invest it in stock of the Central Railroad Company of New Jersey.

The farm and personal property were sold very shortly after his appointment, and he received their proceeds in ample time to have made the purchase of the one hundred additional shares of stock prior to July 1, 1866, but neglected to do so. In July, 1866, the joint companies gave their stockholders the privilege of subscribing for one share of new stock, at par, for each four shares then held. Had the Trustee pur- 20 chased the one hundred shares, as directed by the Court, within the time that he ought to have made the purchase, the Trust would have had a right to subscribe for fifty shares of the new stock. The market value of this privilege at that time is shown to have been \$23 a share, making a total of \$1,150. The Trustee has charged himself with that sum.

The Trustee's two statements, it will be observed, are absolutely irreconcilable. The first is, that in less than two years after he had assumed the duties of the 30 Trust he had overpaid his *cestui que trust* \$1,175, but had subsequently retained a sum out of the dividends payable to his *cestui que trust* sufficient to reduce this balance to \$550; so that in 1869 his account showed a balance in his favor of only \$550.

The other is, that when the balance of \$1,175 was struck in 1867, the Trustee had not charged himself with the value of the stock privilege of 1866, and that subsequent to the time of striking such balance, the Trustee made a further advance of \$550 to his *cestui* 40

qui trust, so that the total sum due to him after such advance, leaving out of the account the value of the stock privilege, was \$1,725; and that when he said the sum due to him had been reduced to \$550, he did not mean that it had been reduced by dividends which he had received and retained, but that it should be reduced by charging him with the value of the stock privilege of 1866. So that his present insistent is this: That no dividends, properly so called, were ever
 10 retained by him in payment of the balance due to him, but what he meant to describe by the word dividends, when testifying before the Master, was the stock privilege.

Hence, he says, in order to state his account correctly, he must, if he is charged with the value of the stock privilege, be also credited with the \$1,175.

Now as it seems to me, the account presented by the Trustee, and which he was attempting to elucidate when he gave his evidence before the Master, shows, almost
 20 conclusively, that the theory upon which a change in the account is now asked should not be adopted. The account was prepared from data furnished by the Trustee. The debit side of it contains but four items, and the other only six. It will thus be seen that it was an affair of the simplest sort. The Trustee had been a bank cashier and a broker. In his account he had charged himself with the value of the stock privilege of 1866, and craved allowance for both the \$1,175 and \$550. When, therefore, he stated before the Master
 30 that the balance struck in 1867 had been reduced by dividends retained, so that in 1869 it stood at \$550, he knew he stood charged with the value of the stock privilege and just how important an item of his account it constituted. In the face of this fact, it is difficult for me to see how the least credence can be given to the Trustee's present claim.

But suppose it be conceded that the Trustee is right in his present theory, can the Court, in view of the facts, charge the *cestui que trust* with the balance struck
 40 in 1867? The book containing the account is lost. The

cestui que trust has never seen the account. The Trustee does not seem to have looked at it since 1869, and he is scarcely able to reproduce from memory a simple item of it. Nobody knows what the items on either side of it are. Whether the Trustee has charged himself with everything with which he is properly chargeable and entered on the credit side nothing but what he is justly entitled to credit for, nobody can tell.

In this position of affairs, to allow the credit claimed, the Court must accept an arbitrary sum filed by the Trustee, in utter ignorance whether it is just or not, and without affording the *cestui que trust* the slightest opportunity either to investigate or dispute its correctness. Such a thing, I venture to say, has never been done by any tribunal having the slightest acquaintance with the law defining the duties and obligations of Trustees. 10

Trustees are bound to keep clear and accurate accounts, and in case doubts or obscurities arise from their failure to do so they should be resolved against the Trustees. If the accounts of a Trustee become lost through his carelessness, he should be required to bear any injurious consequences arising from their loss. The law imposes the duty of keeping accounts on Trustees for the protection of their *cestui que trusts*, and a Trustee will not be permitted to defeat this salutary purpose by his carelessness. 20

The persons seeking the aid of the Court in this matter stand bound as sureties for the defaults and fraud of the Trustee, and have no right, therefore, to any favor or immunity that would not be accorded to the Trustee. 30

The application must be denied with costs.
