New Jersey Court of Errors and Appeals.

BETWEEN MORDECAI T. ENDICOTT, *et al.*, Complainants-Respondents, AND PHILIP I. MARVEL, *et al.* and ST. LEONARDS LAND COMPANY, Defendants-Appellants.	**On Bill, &c.** **On Appeal from Decree in Chancery.**

BRIEF OF BOURGEOIS & COULOMB AND ROBERT H. McCARTER, SOLICITORS FOR AND OF COUNSEL WITH DEFENDANTS-APPELLANTS.

The appeal in this case is for the purpose of reviewing a decree of the Court of Chancery, granting the relief prayed for in a bill filed by Mordecai T. Endicott, Joseph W. Wilson, Charles P. Henry and Eva Davis Dodd, stockholders of the St. Leonards Land Company, to compel Philip I. Marvel, Maurice D. Youngman, Clement J. Adams, Louis Kuehnle and Israel G. Adams, five of the directors of that Company, to return to it one hundred and fifty shares of the capital stock issued to them as security for five separate loans of fifteen hundred dollars, made by each of the five directors to the Company in June of eighteen hundred and ninety-eight.

The decree (pp. 629–631) directs the defendants to re-transfer the stock and to pay to the Company all dividends received by them on said stock by way of distribution of the assets of the Company, together with interest from the time of the receipt thereof, and that upon such transfer and payment, each of said defendants be entitled to receive from the Company the sum of fifteen hundred dollars, so loaned, with lawful interest on the same. The decree does not take into consideration the fact that the majority of the stock, outside of that held by the defendants, was and is held either by persons who were thoroughly acquainted with the transaction from its inception, or acquired from persons who knew of and assented or acquiesced in the transaction complained of.

The objection of the appellants to the decree is two-fold:

FIRST. The decree is erroneous in that it sets aside the transaction to any extent whatsoever, because:

(1) The transaction was fair.

(2) It was not concealed.

(3) The complainants knew of or were chargeable with knowing the transaction, and were in laches.

(4) The company itself acquiesced in and ratified the transaction.

(5) The complainants are mere dummies, hiding behind Judge Endicott and Judge Thompson, two of the directors who at all times knew of the transaction.

(6) The company never was in a position to redeem the stock, either at the close of the year, or at any time, up until the liquidation of its assets in 1909.

(7) The stock was unsalable at the time of the transfer and at the close of the period of redemption.

SECOND. It is erroneous in that it fails to provide that if the transaction is to be set aside at all, it should be set aside only to the extent that the innocent stockholders are concerned.

Preliminary Statement.

The St. Leonards Land Company was incorporated in the spring of eighteen hundred and ninety-six for the purpose of exploiting the sale of real estate owned by Judge Allen B. Endicott, Judge Joseph Thompson and several of the defendants (p. 185, line 30). Just prior to the incorporation of the Company, all of the land of the various parties was conveyed to Endicott, Thompson and Marvel, and immediately after the incorporation of the Company, these gentlemen conveyed the land in question to the St. Leonards Land Company, subject to a blanket mortgage of sixty-five thousand one hundred dollars, the consideration paid by the Company being eighteen hundred and thirty-nine shares of the capital stock of said Company. The total capitalization of the Company was twenty-five hundred shares, of the par value of one hundred dollars each. Of the remaining six hundred and sixty-one shares, ten shares were the original organization stock, and six hundred and fifty-one shares were set apart to take care of the sixty-five thousand dollar mortgage. Of the eighteen hundred and thirty-nine shares which were issued in payment of the land, six hundred and ninety-nine shares were turned back to Philip I. Marvel, as trustee, two hundred being set apart for purchasing outlying plots of land not owned by the St. Leonards Land Company, and four hundred and forty-nine shares to be used for development purposes (p. 488, line 27; p. 133, line

10; p. 592, line 38; p. 193, line 93; p. 409, lines 10-30).

The land at the time of the conveyance to the Company was wild beach land. Before it could be placed on the market for sale it was necessary to level off the sand hills and fill up the lowland by pumping or dredging the sand from the thoroughfare. The Company had no means of financing these improvements, except from the sale of the 499 shares of stock above mentioned (p. 190, line 20; p. 402, line 36).

All the stock that could be sold was sold, and all that was sold was disposed of for less than par. In the spring of eighteen hundred and ninety-eight, the boom in real estate, which had prevailed in that section had subsided. The property was not sufficiently well developed to sell it off in lots, and at that time there was no demand for lots. The conditions of the property surrounding the land of the St. Leonards Land Company, and especially the land lying between it and Atlantic City, being in an unimproved condition and not in the course of development, was a material factor against the sale of the lots of the St. Leonards Land Company at that time (p. 189, line 10; pp. 499, 501, 516, 517 and 518).

In addition thereto, the Board of Directors had determined upon the size of the lots and restrictions that were to be placed thereon. The size being greater than in any other part of Absecon Island, the restrictions severer and the price correspondingly high, acted also as a deterrent to the sale of land at that time. There was some testimony to the effect that a commission was to be paid to the Adams Company, whether the sale was made through it or not, which had a deterrent effect upon other real estate agents, but the resolution and testimony clearly show that the independent agents who effected the sale were not required to share their commissions with the Adams Company, but that the St. Leonards Land Company was to pay a com-

mission to the Adams Company on all property sold, the reason being that that Company had spent its money in advertising and promoting the sale of the lots, and it was felt that the sale of lots by independent agents was largely the result of the advertising and promotion done by the Adams Company (pp. 385 and 386).

In the spring of eighteen hundred and ninety-eight the finances of the Company had become very precarious; there was no money in hand, and the Company was being pressed for payment of large bills owing to Alvin P. Risley and the West Jersey & Seashore Railroad Company for grading and filling, and for gravel, hauling, etc. As a result of this indebtedness and the pressing nature of it and the threats made to enforce it by judgment and execution, the directors held a meeting on May nineteenth, eighteen hundred and ninety-eight, at which a resolution was passed directing the proper officers to secure a loan for ten thousand dollars from the banks and to offer as collateral security therefor stock in the ratio of two to one. Dr. Marvel and Clement J. Adams, two of the defendants, made repeated efforts to obtain this money from all of the financial institutions in Atlantic City, as well as from several individuals, and made efforts to sell the stock, but without success in either direction. Among the banks applied to were the banks in which Judge Endicott and Judge Thompson, the real complainants in this cause, were interested as directors and officers. Marvel and Adams reported their non-success to the meeting of the corporation held in June of eighteen hundred and ninety-eight. It was first concluded to have a corporation note endorsed by all of the directors, but several of the directors, Dr. Youngman and Mr. Kuehnle especially, objected to this method of raising money because it would leave each of them responsible for the entire amount in the event of a default, but did agree to discount their individual notes for fifteen hundred dollars each and advance

the money so obtained to the corporation, upon the same basis as provided in the resolution of May nineteenth, namely, upon giving collateral security in the proportion of two to one. It was thought that all seven of the directors would come to the aid of the company in the same way; all did but two, namely, Judge Thompson and Judge Endicott, who refused to borrow for or loan to the Company any sum of money whatever, upon any condition. The money was borrowed and loaned to the Company in pursuance of that understanding, and on October fifth, the resolution was passed, which is the bone of contention in this case, which resolution provides that the Company issue stock to the directors who make the loans, the Company to have the right to redeem said stock within a year, and upon failure so to do, the stock to become the property of the directors who made the loan. No interest was charged on the loans from October fifth, eighteen hundred and ninety-eight.

After the making of the loan the Company continued on in business, but with very little sale for its lots and without paying any dividends, and with little, if any, financial success until nineteen hundred and six, when its affairs began to be a little more prosperous, and in the latter part of nineteen hundred and eight and in nineteen hundred and nine, the boom in the Ventnor section had reached such a state that the the stock had become quite valuable. Arrangements were made to liquidate the assets of the Company, and then it was discovered that the stock was worth over three hundred dollars a share. Then about this time Judge Thompson and Judge Endicott, the two directors who had refused to come to the aid of the Company when it was in dire need and distress, in the early stages of its career, began the agitation for the return of the stock. The complainants who appeared in the case, two of them being relatives of Judge Endicott and the other two close friends, were importuned by Judge Endicott to start these

proceedings, with the result that a bill was filed and the suit brought on for hearing, with the result above stated.

The one hundred and fifty shares of stock, the title to which is questioned in this suit, are part of the four hundred and ninety-nine shares of stock assigned to Dr. Marvel to be used in the development of the property (p. 134, line 8; p. 142, line 25).

The transaction whereby the five defendants loaned to the Company fifteen hundred dollars each and received from the Company thirty shares of stock of the par value of one hundred dollars, was fair and beyond criticism.

The needs of the Company at the time of the transaction in question were pressing; the bill admits it in the following language:

> "In October of the year one thousand nine hundred and ninety-eight, the Company was in need of money to pay a bill of Alvin P. Risley for grading lands owned by said Company, and the Directors took up the subject of raising money to meet the Company's obligations" (p. 3, line 10).

Judge Endicott, in his letter of January 27, 1899 (p. 247, line 20), says:

> "I regret very much that the Company finds itself in its present posture with the contracts. At all meetings when further grading was discussed, I insisted that the Company should provide the money before entering into any contract. It would give me pleasure to relieve the contractors and to assist the Company in caring for a part of this indebtedness, but I really am not in a position financially to do it, nor had I ever agreed personally to carry any of the indebtedness of the Company contracted in grade."

Judge Thompson, another one of the complainants, says (p. 269, line 1):

> "I have in mind that it was unsatisfactory. I do not know just how; that there had been some difficulty in getting money, and out of that grew the personal loans made by Dr. Marvel before the directors."

Again, on page 267, line 24, he testified:

> "I do not recall the meeting particularly. I recall the fact that the officers were authorized to borrow a sum of money for the purpose of paying some pressing claims against the Company, and I presume that was the meeting."

Clement J. Adams, one of the defendants, testifies (p. 181, lines 30–35):

> "Q. Now that was the critical period, wasn't it, in the life of the Company?"
> "A. During the year 1898."
> "Q. It was the time when you were being pressed and threatened with judgments and executions, as you said, in Chancery?"
> "A. I think the main meeting was at a time previous to that * * * They were in financial distress at that time."

On page 197, line 37, he says:

> "Q. Now, Mr. Adams, you say that Alvin Risley was pressing you. Wasn't the West Jersey & Seashore pressing you also at that time?"
> "A. They were."
> "Q. You owed them for gravel that they had hauled for you, that is, for gravel and the hauling?"
> "A. That is right."
> "Q. In other words, the Railroad Company had a gravel pit, and they furnished gravel to you people from that pit?"
> "A. They did."
> "Q. And you owed them the money for it?"
> "A. We did."
> "Q. Practically $10,000.?"
> "A. Yes."

At page 182, line 2, he says:

> "I make an explanation at this time: There was a committee authorized to borrow money in the sum of $10,000., and the Com pany did work and didn't secure the loans from the banks. The banks wouldn't loan us any money on the collateral that was offered, and as other directors were on obligations at that time with the Company, this action was taken on October 5th and put into effect."

Again, on page 189, line 10, he testifies:

> "Q. At that time was there a boom in real estate down the beach?"
> "A. There was not; no, it was a quiet market."

On page 194, line 18, he says:

> "We hadn't the money to go on with our improvements and pay our bills, and we were in debt and had no means of raising it at that time."
> "Q. Now why hadn't you the means of raising it? Why didn't you sell the stock?"
> "A. There was no sale for the stock."
> "Q. Did you try to sell the stock?"
> "A. We did."

Dr. Philip Marvel testifies (p. 411, line 17):

> "Q. What was the condition of the Company at that time with regard to its finances?"
> "A. We didn't have any finances."

On page 412, line 23, he testifies:

> "Q. What was the condition of the Company relative to the urgency of this money, or for this money?"
> "A. We were threatened that the Sheriff would be placed on us if we didn't furnish the money."

Dr. Youngman testifies (p. 541, line 18):

> "Well, the meeting was called and I attended the meeting, and I found the gentlemen there in great stress of mind, because they had been given notice by Mr. Risley that the Sheriff would be put upon the Company unless the money was forthcoming within twenty-four hours; that he had reached the limit of his patience. A great deal of talk had gone forward during the preceding months, and we had no money and the money had to be had at once."

Mr. Lucius Wright's testimony (p. 573) shows the financial condition of the Company during the years 1898 and 1899.

Mr. Louis Kuehnle testified (p. 575, line 11):

> "Oh, we had been struggling ever since I could remember; struggling, struggling every meeting; the taxes wasn't paid; the gravel wasn't paid, or Risley wasn't paid. Nothing but a hard-luck story every time you went to a meeting."

At the time the defendants loaned the money to the Company it had been unable to borrow money elsewhere.

On May nineteenth, eighteen hundred and ninety-eight, the Company, being in pressing need of financial assistance, passed the following resolution (p. 140, lines 20–40):

> "RESOLVED, that the President and Treasurer be authorized to borrow the sum of Ten Thousand Dollars, and to issue double the amount of stock to be applied for the payment of gravel purchased and to be purchased of the West Jersey & Seashore Railroad Company," etc.

In pursuance of this resolution, efforts were made to raise money, but without success.

Mr. C. J. Adams testified that he and Dr. Marvel made application to the Union National, the Second National and the Atlantic Safe and Trust Deposit Co., and that they wouldn't loan any money (p. 194, lines 20-40). Application was also made personally to Judge Endicott, as President of one of the banks (pp. 218, 219, 220).

Dr. Marvel testified as follows (p. 411, line 30):

> "I spoke to one of the Directors of the Union Bank, and he afterwards informed me that they didn't care to loan the money on the stock of the Company as security or collateral. I then went to the Second National Bank and spoke to the cashier, and he said that they wouldn't loan the money on the collateral; that they would loan it on my personal endorsement, or on members of the Company's personal endorsement."

He further testified (p. 412, line 20):

> "Q. Did you succeed in securing the money from the banks that you had endeavored to secure?"
>
> "A. We did not."

And at page 412, line 30, he testified as follows:

> " We endeavored, of course, to find someone who would loan—some institution that would loan the money, and we couldn't find such institution."

Dr. Morris Youngman testified as follows (p. 543, line 37):

> " The report was that there was a meeting held in May the month preceding; that a committee had been appointed to borrow $10,000. from the banks upon the stock of the Company, offering two for one, and that that committee had been unable to do it."
>
> " Q. Was any report made on what banks, to what banks they had applied?"
>
> " A. Well, the Union National Bank and the Second National Bank, and I think the Trust Company was applied to."

Mr. Kuehnle testified (p. 578, line 15):

> "Q. Now, do you remember hearing any report from any committee or any gentleman at a meeting of the Company or the Board, with regard to their success in making a loan on the banks?"
>
> "A. I heard the report; yes, sir."
>
> "Q. What was that report?"
>
> "A. That they couldn't loan the money; wouldn't accept the securities. The truth of the matter was that I was a member of the Board of Directors in the Atlantic Safe Deposit and Trust Company. We turned it down."
>
> "Q. Then an application was made to the company of which you were a member?"
>
> "A. Yes, sir."
>
> "Q. And that was turned down by the Board?"
>
> "A. Yes, sir."

Judge Endicott testifies (p. 245):

> "Q. But your opinion is that if they had applied formally for it they would have gotten a loan at that time?"
>
> "A. *I think so, if they had complied with the requirements of the bank as to keeping an account and balance.*"

It will be observed that Judge Endicott was present at the meeting at which the resolution to borrow the money was passed (p. 140, line 27). Judge Endicott, however, did not suggest to any of the Board of Directors of the St. Leonards Land Company or to any of its officers that they should make a formal demand for a loan (p. 247, line 3), and his letter to Dr. Marvel does not suggest that this be done (p. 247, line 20), and Mr. C. J. Adams testifies that he himself applied to Judge Endicott (p. 219, line 10), and also to Mr. Aikman, the cashier (p. 219, line 3), and Judge Endicott practically admits that Mr. Adams did speak to him personally about it. He says (p. 242, line 27):

> "I do not recall it, but it is very likely it occurred. If Mr. Adams says so, I should think he is correct, probably."

Judge Thompson testifies (p. 268, line 37):

> "Q. Do you recall receiving any report from them, either formal or informal, that is, through any talk on the street to that effect (inability to borrow money)?"
>
> "A. I don't know that I could recall anything special. I have in mind that it was unsatisfactory, I don't know just how; that there had been some difficulty in getting money, and out of that grew the personal loans made by Dr. Marvel and four other directors."

On cross-examination he says (p. 276, line 24):

> "I knew these men had loaned the money at a time when there had undoubtedly been difficulty in getting funds."

Mr. Joseph Marvel testifies, when asked why he didn't purchase the shares of stock offered to him (p. 359, line 27):

> "Because I knew the banks had turned it down, and I didn't think it was a good purchase, so I didn't buy it."

The stock of the St. Leonards Land Company, at the time of the pledging of it to the five defendant directors, was not salable, and was not worth more than fifty dollars a share.

C. J. Adams testifies (p. 225, line 280), as follows:

> "Q. You say that you endeavored to sell the stock of the Company along about 1898; to whom did you endeavor to sell the stock?"
>
> "A. I offered the stock to Mr. John McCurdy of Philadelphia; I offered it to Mr. Augustus Bacharach of Philadelphia, and a number of my clients."
>
> "Q. At what price per share?"
>
> "A. To Mr. McCurdy I offered sixty, and to Mr. Augustus Bacharach, fifty."

"Q. Did you succeed in selling any of it?"
"A. No."
"Q. What sort of men are Mr. McCurdy and Mr. Bacharach financially? Are they able to buy stock?"
"A. They are, and deal in stock."

John B. Adams testifies (p. 379, lines 1-20):

"Q. At what price was the stock of the St. Leonards Land Company offered to you at that time?" (1898.)
"A. Fifty a share."
"Q. In what quantities?"
"A. Any quantity I wanted it."
"Q By whom?"
"A. Israel G. Adams, my brother."
"Q. Did you purchase it?"
"A. Not a share."
"Q. Did you make any inquiry to ascertain the value of the stock at that time?"
"A. I did."
"Q. What did you ascertain the value of the stock to be?"
"A. No value."

As late as nineteen hundred and four the value of the stock was problematical (see Mrs. Howell's letter, p. 371).

Dr. Marvel testifies that there was no sale of the Company's stock after eighteen hundred and ninety-eight, excepting that assigned to Mr. Wright and Miss Freas in payment of their salary (p. 410, line 31).

The fact that none of the banks would loan on its collateral is evidence of its value, or rather lack of value.

Judge Endicott testifies that he bought some stock in eighteen hundred and ninety-nine, and paid one hundred and fifty dollars a share for it (p. 240, line 12), but the stock transfer books do not show any stock transferred to him at that time. This stock was purchased from Charles E. Davis a brother-in-law, and six shares of it were transferred to Eva Davis Dodd, the Judge's sister-in-law (p.

233, line 30), and the stock was part of the stock which Judge Endicott himself had formerly owned. Judge Endicott's letter (p. 247) would make it appear strange that he was in a position to pay a hundred and fifty dollars a share for ten shares of stock, and yet was unable to loan money to the association, in order to preserve the life of the corporation itself. Then, again, if the corporation stock was worth one hundred and fifty dollars a share, as Judge Endicott testifies, it was strange that the banks would not loan money on it at the rate of fifty dollars a share, even without the necessity of a deposit and an account.

Dr. Marvel testifies that during the period of development there was not a ready sale of shares of stock of the St. Leonards Land Company (p. 410, line 11). No dividends were paid on the stock until about the time of the dissolution and liquidation of the Company, which, curiously enough, was practically contemporaneous with the first objection made to the transaction now in controversy (p. 137, line 33; p. 153, line 20, and p. 144, line 20).

As has already been shown the finances of the Company were low, there was not a ready sale for its land, it was being threatened with execution, individuals had refused to purchase the stock as low as fifty, banks refused to loan on it, individuals refused to take it as collateral for loans—all of which speaks for the uncertainty of the value of this stock for which Judge Endicott says he paid one hundred and fifty dollars a share in eighteen hundred and ninety-nine.

Dr. Joseph Marvel testified (p. 359, lines 10-20), that he was approached by Byron Rogers of C. J. Adams Company, who offered him any amount of stock from five to fifty shares at fifty dollars, and that he didn't purchase it because he knew the banks had turned it down, and he didn't think it was a good purchase.

The Court itself says (p. 625, line 25):

> "It is not intended by these observations to attribute bad faith to these five directors. *On the contrary it may well be doubted whether, at the time referred to, either of them really wanted the stock at the price.*"

There were seven directors in the St. Leonards Land Company—the five defendants who loaned the money and Judge Thompson and Judge Endicott, who are really the complainants, although they do not appear as such, and who refused to loan money to aid the Company when it was in need of money, and when, as the testimony showed, it had difficulty in borrowing money from any of the institutions in Atlantic City, or from any individuals.

Mr. C. J. Adams testifies (p. 142, line 3), that neither Judge Thompson nor Judge Endicott secured any loans or made any loans. Judge Endicott himself in his letter under date of January 27, 1899, writes (p. 247, line 30):

> "It would give me pleasure to relieve the contractor and to assist the Company in caring for a part of this indebtedness, but I really am not in a position financially to do it, *nor had I ever agreed personally to carry any of the indebtedness of the company, contracted in grade.*"

Dr. Marvel testified that Judge Thompson refused to put any more money in (p. 414, line 16). This is not denied by Judge Thompson.

The St. Leonards Land Company was never in a position to redeem the stock pledged with the five defendant directors.

Doctor Philip I. Marvel on page 417, line 20, testifies as follows:

> "Q. When the notes came due, or about were maturing in October of 1898, what was the financial condition of the Company?
>
> A. The Company was without funds with which to pay the notes.
>
> Q. Tell me what the directors, what the directors did with these maturing notes? What did you do with regard to them?
>
> A. We held a conference and determined, or at least from conditions, from the financial condition of the Company, it was very evident that we would have to pay the discount on renewing our own notes, and under that, under conditions so strict as that, we felt the better plan for us to take our own notes and accept them under the provisions of the resolution of May, accepting two shares of stock in lieu of one hundred dollars, and release the Company from any further obligation whatever with reference to the notes, and at the same time to give the Company a period of one year in which to redeem the stock."

Again on page 418, line 37, he testifies:

> "Q. Did the Company within the period of one year thereafter redeem the stock?
>
> A. It did not.
>
> Q. Was the Company during the year succeeding, October fifteenth, 1898, in a financial condition to redeem the stock?
>
> A. It was not. From money in the treasury it was not."

Again on page 419, line 2, he testifies:

> "Q. Was it from the standpoint of selling lots down there? Was the land in a position so it could be sold?
>
> A. No. What land we sold at the time we sold at a sacrifice."

Doctor Marvel also testifies on page 419, lines 10-40, and on page 420, lines 1–20:

> "That the sale money received from lots sold was required to pay some of the running expenses of the company, including their bills for grading."

And beginning at 420, line 30, to page 422, line 40, he testifies as to the number of notes which he personally endorsed for the Company after the expiration of the period of redemption, all of which conclusively shows that the Company was in no financial condition to redeem the stock.

On page 489, on line 30, on cross-examination, he says:

> "The Company was already in debt, and to have reimbursed us and taken the stock back, would have been to have put the Company in further indebtedness, and we would have personally had to assume that indebtedness."

Again, page 512, line 17, he testifies:

> "Now, from 1898 until 1905, was there ever a time when the Company could have taken care of its fixed charges, such as interest on mortgage, taxes, and so on, and paid interest on this loan of seventy-five hundred dollars?
> A. No."

And on page 513, at line 15, he testifies:

> "Was it advantageous to you to retain that stock in place of the fifteen hundred dollars in October of 1899?
> A. Was more advantageous to have had the money."

And on page 514, lines 1–20 he testifies:

> "It is possible that it could have been sold prior to 1906 if we had found purchasers for

more than fity dollars a share, but things were very inactive so far as the Company was concerned, and we were in financial stress. At that time quite as much, and I say quite as much, because the Sheriff was pressing us the other time, but our indebtedness was quite as much at that time as it had been before."

And on page 521, lines 10-25, Dr. Marvel testifies:

"That at all times it would have embarrassed the Company to have used the money which the Company needed for its running expenses to have paid off the loan and redeemed the stock, and that the Directors conducted the affairs of the Company in the manner in which they felt would least embarrass the Company."

Dr. Youngman testifies on page 547, line 10, as follows:

"That after October fifteenth, 1898, and within a year from that date, the financial condition of the Company was very poor."

He further testifies, page 547, line 33:

"Well, the selling value of it, the land, I don't know, it was very, very low, because we couldn't sell it. At every meeting it was talked about selling some stock and pay taxes, and pay for gravel, and pay for other things, and the stock was never sold, and I wouldn't have bought it."

On page 548, line 9, he was asked:

"Q. When did the conditions change so as to make this stock of value?
A. Well, in 1906, seven or eight, really not until 1908. In the interim, between 1898 and 1906, we will say, what was the condition down there that prevailed with regard to the sale of land; sale of lots?
A. Dead.
Q. Was there ever a time when the Company had money to have paid the interest on

these mortgages, or mortgage, and its taxes, and at the same time have redeemed this loan between 1898 and 1904?

A. No."

On cross-examination, page 559, line 30, he testifies:

"Q. Were you willing in October, 1898, to receive the principal of that note, you having already been allowed the discount?

A. I would have been glad to have had the principal."

Mr. Kuehnle testifies (p. 581, line 40):

"Q. What had been the financial condition of the Company, Mr. Kuehnle, in 1899 and five or six years following?"

"A. Well, we were in very hard circumstances, from reports at every meeting they had. I didn't go into the books myself."

"Q. Well, what reports were made generally?"

"A. Well, they were short of funds; couldn't dispose of the property. Several times objected; thought the land too high; reduce them and get people; induce them to buy some of this property; tried all kinds of schemes, but it didn't seem to work."

Assuming that the so-called Thompson Resolution, alleged to have been passed in 1904, was really passed at that time, it conclusively shows that the Company was in no position to redeem the stock, or that its right of redemption was waived or expired. This resolution (p. 217, line 1) contains these paragraphs:

"WHEREAS said company did not redeem said stock within one year, and it has subsequently come to the knowledge of the persons above mentioned, that the company could not sell its stock in such manner, less than par value, and the said parties having only paid fifty per cent. of the par value for said stock, hereby return to the company fifteen

> shares each of the stock so received by them, as aforesaid, in order that the price that they had paid for the same shall be One hundred dollars per share and not fifty dollars per share as above stated.
>
> THEREFORE BE IT RESOLVED that said stock be accepted by the company and canceled, and in lieu thereof new certificates to be issued to each of the said parties for fifteen shares instead of thirty shares as originally issued."

The resolution made on motion of Judge Endicott, and seconded by Judge Thompson, in August of nineteen hundred and nine, shows that even down to that time there was no intention to redeem the stock (p. 286, line 30). The motion is as follows:

> "On motion of Judge Endicott, seconded by Judge Joseph Thompson, that the five directors who loaned $1,500. each to the Company and who received thirty shares of collateral be requested to return *fifteen* shares of the same and accept six per cent. interest."

The complainants are in a dilemma with respect to this resolution. If, as they insist, it was in fact passed, then the Company *pro tanto* affirmed the transaction, and agreed that the defendants should retain one half of the stock. If, on the other hand, as we insist, it was not passed, then the *laches* of complainants are all the greater.

The so-called Thompson Resolution.

Judge Thompson testified that at a meeting held February twenty-third, 1904, he suggested that there should be a compromise in the matter, that they, the defendants, should take the stock at par value, rather than fifty cents on the dollar as had been done before. He said, "I said that the Company had no right to sell its stock for less than par in that way, and after considerable discussion a

resolution was passed growing out of this resolution, to the effect that part of this stock should be returned" (269, line 40, to 270, line 27). This resolution is Exhibit C 4, and is printed at page 216. Mr. C. J. Adams testifies that the resolution was never received by him until the meeting of August seventeenth, 1909, which was about on the eve of the liquidating, when the value of the stock was plainly evident. See his testimony, pages 213, 216, 225, line 10; 228, line 1; 230, line 10; and Doctor Marvel's testimony, pages 429 to 439 inclusive, and 490 to 492 inclusive. It is significant concerning the alleged passage of this resolution that neither the bill, nor the amended bill make any claim concerning it or refer in any way whatsoever to it; that all of the directors repudiated it. In addition to the testimony above referred to, Doctor Youngman denies it was ever passed (p, 550, lines 1-20), and Mr. Kuehnle denies it was ever passed (p 580, line 39),

From the year 1904, when it was alleged to have been passed, down to 1909, when it was repudiated, there were a number of meetings of the Board of Directors of the Company had at which both Judge Thompson and Judge Endicott were present. They never inquired whether the stock had been returned and canceled, or made any inquiry whatsoever concerning it. Their silence would indicate that no such resolution ever existed. As a matter of fact there was no difficulty whatsoever until the assets of the concern had been liquidated at a large profit, and the value of the stock was seen to be greatly in excess of the loan made by the defendants.

The letter written by Mrs. Howell to her brother, one of the complainants, was written on February twenty-fifth, nineteen hundred and four (Exhibit C 13, p. 601) There is quite a discussion on the sale of stock in this letter, but not a word about any resolution to return the stock. It seems hardly credible that such an important matter would have remained unnoticed in a letter of this character, had

it in fact taken place. This letter was written a day or so after the meeting of February 23, 1904, when it is alleged the resolution was passed (p. 269, line 40).

Discussion of the Law on Question of Fairness.

The theory upon which the learned Vice Chancellor decided the case was expressed by him during the trial (p. 122, line 26), as follows:

> "I think the law is well defined that a director has no legal capacity to contract with his corporation as against the corporation itself, that is, the contract has no fidelity when asserted against the corporation. It is a voidable contract and the corporation has option to review the contract or refuse, of course, within a reasonable time."

And again, in his opinion, he says (p. 620, line 18):

> "It will be perceived that this was an engagement made by the corporation, through the medium of its Board of Directors, with members of its Board, touching the property of the corporation. * * * Such contracts are not void by reason of the circumstances stated; they are voidable. They cannot be enforced as such against the will of the corporation, promptly asserted."

The determination of the learned Vice Chancellor proceeds upon the theory that the question of the fairness is not debatable when the corporation has promptly asserted its will, to set aside a transaction made by the Board of Directors with any of the members of the Board.

The appellants' contention is that the rule is not as broad as that stated by the Vice Chancellor, and that the cases cited by him do not sustain the proposition to the extent which he claims for them.

Vice Chancellor Emery, in the case of *Mitchell* vs. *United Box Board and Paper Co.*, 66 Atl. Rep., 938–40, held:

> "Advances of money by a director to a corporation made to secure at a sale of property to the director to pay such debt, is valid, so far as the transfer is concerned, but the *price* must be a fair one and the *price* actually fixed is not final, but is subject to review."

The Vice Chancellor's reasoning in the Mitchell case is well expressed by him in the following language:

> "In the present case the agreement for sale was not communicated to the stockholders until after its execution. It has not been affirmed by the stockholders at any meeting, and if no such affirmance takes place, one of the questions at final hearing will be whether the Company or complainant suing on its right can avoid the transaction as being substantially a sale of the Company's assets to one or more of its directors; *and not merely, as in Wilkinson* vs. *Bauerle, an exercise in good faith of the power of the directors to sell or transfer assets of the Company for the purpose of paying its debts, leaving the fairness of price to be determined. If the sale should be held to be a proper exercise of the directors, a further question will then arise as to the fairness of the transaction and of the price. If the sale is to be treated as a sale to the directors, then the burden of showing such fairness is on the directors.*"

In the case of *Stewart* vs. *Lehigh Valley R. R. Co.*, 38 N. J. L., 105, the facts disclose that it was not a case where the directors came to the aid of the corporation by loaning their own credit or money for the purpose of preserving its entity, or of establishing its credit, and therefore cannot be urged as an authority in opposition to the principle set forth in *Mitchell* vs. *United Box Board and Paper Company, supra.*

In *Gardner* vs. *Butler*, 30 N. J. Eq., 702, the contract was one concerning the transaction of business as between the corporation and some of its directors, and was not in aid of the corporation's financial credit, or for the purpose of raising funds to pay the corporation's indebtedness.

In the case of *Marr* vs. *Marr*, 72 N. J. Eq., 797, Vice Chancellor Leaming, speaking for the Court of Chancery, held that a director could loan the Company, to which he held this trust relation, money, and upon failure to pay could sell out its property, and buy in under his own execution. The *Marr* case was appealed to the Court of Errors and Appeals and there reversed, but in the opinion reversing it, Chancellor Pitney considered at length the fairness of the transaction, and held that it was conceded as an admitted fact that "At the time of the sale the property is worth twice the amount of the judgment against it," and the Court in its opinion (73 N. J. Eq., 654), uses this language:

> "An important and perhaps controlling circumstance is that in the outcome the property sold for only half its value."

In the case of *Wilkinson* vs. *Bauerle*, 41 N. J. Eq., 635, 645, Justice Magie, afterwards Chief Justice and Chancellor, said:

> "But when directors make sale of corporate property to one of their number who takes part in the transaction as both buyer and seller and the creditors are thereby deprived of the opportunity to enforce their debts, then it results from the relation above mentioned as existing between them and the creditors, that it devolves on the directors to show that the transaction was made in good faith, and that the sale produced the full value of the property."

All of the cases cited in *Hodge* vs. *U. S. Steel Co.*, 64 N. J. Eq., 807-813, are cases where the matter involved in the transaction was one of antagonism,

so to speak, toward the corporation, or, in other words, business contracts and bargainings, properly so called. Not one of these cases in opposed to the views and reasoning set forth in *Mitchell* vs. *Box Board and Paper Co.*, above referred to.

In the case of *Vineland Grape Juice Co.* vs. *Chandler*, decided by Vice Chancellor Leaming and affirmed in the Court of Errors and Appeals in 80 N. J. Eq., 437, Chief Gummere, speaking for the Court, said, at page 440:

> " No attempt was made to show, either by the complainant or the defendant, just what was the value of these services, but eighteen hundred dollars for the three years of work done by Gould and a like sum for the five years during which each of the others served, the Company, can hardly be claimed to be an over payment to either of them; *unless it has it follows the stock has in fact been fully paid for, although such payment was not made at the time of its issue.*"

The point we wish to illustrate by the citation of this case is that the Court will consider the fairness of the transaction as against the promptly asserted will of the corporation, at least in those matters where the result of the transaction complained of is the preservation or the maintenance of the credit of the corporation itself. We reiterate that the cases cited in *Hodge* vs. *U. S. Steel Co.*, and having their prototype in *Stats* vs. *Bergen* and *Stewart* vs. *Lehigh Valley R. R. Co.*, do not decide this proposition, and, in fact, do not consider it.

It is the general doctrine that the director of a corporation may advance money to it, may take from it a mortgage or other security and may enforce the same like any other creditor, always under the obligation of acting in the utmost good faith. So, where advances are made by a director on an agreement that they shall be secured, the other directors may carry out the agreement by causing the proper instrument to be executed, and a court of equity

will give effect to such an agreement under proper conditions.

10 Cyc., 812 (Par. 14).

> "*A director is guilty of no breach of trust or violation of duty by reason of advancing his own money to the corporation on the best terms it would get from other people; as for example, where the corporation has put its debentures on the market and sold them at a discount because they will not bring par, and a director purchases them at market rates.*"
>
> 10 Cyc., 814.

In a very recent case decided in this Court, the opinion of which is written by Mr. Justice SWAYZE, a transaction, not dissimilar from the one under review, was attacked upon the theory that it was void because it involved the situation of a director contracting with himself. There had been a judgment in favor of the defendants below, and the Court, in affirming said judgment, considered at length the fairness of the transaction. The Court said:

> "But inasmuch as the payment was, on the face of it and in form, a mere gratuity * * * it may be well to examine a little further its real character *for the purpose of showing the fairness of the whole transaction to the stockholders who now seek to question it and recover the money.*"
>
> *New Jersey Car Spring & Rubber Co.* vs. *Fields*, 88 Atl., 1031-1032.

It cannot be questioned, and indeed it is not in this controversy suggested, that one or more directors cannot loan their Company money and take security therefor.

Richardson's Exr. v. *Green*, 133 U. S., 30.

Kinsmore v. *Fisk*, 31 N. Y. Suppt., 1045.

Duncomb v. *R. R. Co.*, 88 N. Y., 1.
First National Bank of Binghamton v. *Commercial Wireless Assn.*, 93 N. Y. Suppt., 454; affd. 185 N. Y., 575.

The tender which the bill here makes of a return of the interest to the lenders is a recognition by the complainants of this rule. The only question is whether, in view of the fact that such of the directors as were willing to make the loan and risk the money in the venture, have, in the course of events, reaped a profit from the stock, which, after the failure of the Company to meet its loan, with a year's grace included, they became the actual owners of, instead of mere pledgees thereof, the Company is now justified in the claim that the profit belongs to it, and that the relation of director prevents the defendants from reaping that profit as against the Company. It is believed that the universal trend of authorities is against the propriety of such a claim.

A leading case is *Twinlick Oil Co.* v. *Marbury*, 91 U. S., 587, where a company, being very much embarrassed, borrowed from one of its directors the sum of $2,000., securing him with a note and a deed of trust to a trustee of all the property, containing the usual power of sale in default of payment. After the note matured, being unpaid, the property was sold and bought in by the lender's agent for his benefit, and subsequently conveyed to him. A little later the property thus purchased by the director, who had loaned the money, having become valuable, a bill was filed in the company's name four years after the sale, to have a decree that the defendant, the director, holds as trustee for the complainant the property which he had thus bought, and also seeking an accounting as to the time he had control of the property. The bill was based upon an alleged abuse by the defendant of his trust relation to the company in taking advantage of its difficulties and buying in at a sacrifice its

valuable property and franchises. The opinion found as a fact that the defendant loaned the money in good faith, for the purpose of assisting it in an hour of embarrassment; that there was no actual fraud, nor oppression, nor advantage taken by the defendant of his position as director. In such a situation the Court, through Mr. Justice Miller, decided adversely to the claim, sustaining the title of the director. We quote the following from the opinion (p. 588):

> "That a director of a joint-stock corporation occupies one of those fiduciary relations where his dealings with the subject-matter of his trust or agency, and with the beneficiary or party whose interest is confided to his care, is viewed with jealously by the courts, and may be set aside on slight grounds, is a doctrine founded on the soundest morality, and which had received the clearest recognition in this court and in others. *Koehler* v. *Black River Falls Iron Co.*, 2 Black., 715; *Drury* v. *Cross*, 7 Wall., 299; *Luxenburg R. R. Co* v. *Maquay*, 25 Beav., 586; *The Cumberland Co.* v. *Sherman*, 30 Barb., 553; 16 Md., 456. The general doctrine, however, in regard to contracts of this class, is not that they are absolutely void, but that they are voidable at the election of the party whose interest has been so represented by the party claiming under it. We say, this is the general rule: for there may be cases where such contracts would be void *ab initio;* as when an agent to sell buys of himself, and by his power of attorney conveys to himself that which he was authorized to sell. But, even here, acts which amount to a ratification by the principal may validate the sale.
>
> The present case is not one of that class. While it is true that the defendant, as a director of the corporation, was bound by all those rules of conscientious fairness which courts of equity have imposed as the guides for dealing in such cases, it cannot be maintained that any rule forbids one director among several from loaning money to the corporation when the money is needed, and

the transaction is open and otherwise free from blame. No adjudged case has gone so far as this. Such a doctrine, while it would afford little protection to the corporation against actual fraud or oppression, would deprive it of the aid of those most interested in giving aid judiciously, and best qualified to judge of the necessity of that aid and of the extent to which it may safely be given.

There are in such a transaction three distinct parties whose interest is affected by it, namely, the lender, the corporation and the stockholders of the corporation.

The directors are the officers or agents of the corporation, and represent the interests of that abstract legal entity, and of those who own the shares of its stock. One of the objects of creating a corporation by law is to enable it to make contracts; and these contracts may be made with its stockholders as well as with others. In some classes of corporations, as in mutual insurance companies, the main object of the act of incorporation is to enable the company to make contracts with its stockholders, or with persons who become stockholders by the very act of making the contract of insurance. It is very true that as a stockholder, in making a contract of any kind with the corporation of which he is a member, is in some sense dealing with a creature of which he is a part, and holds a common interest with the other stockholders, who, with him, constitute the whole of that artificial entity, he is properly held to a larger measure of candor and good faith than if he were not a stockholder. So, when the lender is a director, charged, with others, with the control and management of the affairs of the corporation, representing in this regard the aggregated interest of all the stockholders, his obligation, if he becomes a party to a contract with the company, to candor and fair dealing, is increased in the precise degree that his representative character has given him power and control derived from the confidence reposed in him by the stockholders who appointed him their agent. If he should be a sole director, or one of a smaller number vested with certain powers, this obligation

would be still stronger, and his acts subject to more severe scrutiny, and their validity determined by more rigid principles of morality, and freedom from motives of selfishness. All this falls far short, however, of holding that no such contract can be made which will be valid; and we entertain no doubt that the defendant in this case could make a loan of money to the company; and as we have already said that the evidence shows it to have been an honest transaction for the benefit of the corporation and its shareholders, both in the rate of interest and in the security taken, we think it was valid originally, whether liable to be avoided afterwards by the company or not.

If it be conceded that the contract by which the defendant became the creditor of the company was valid, we see no principle on which the subsequent purchase under the deed of trust is not equally so. The defendant was not here both seller and buyer. A trustee was interposed who made the sale, and who had the usual powers necessary to see that the sale was fairly conducted, and who in this respect was the trustee of the corporation, and must be supposed to have been selected by it for the exercise of this power. Defendant was at liberty to bid, subject to those rules of fairness which we have already conceded to belong to his peculiar position; for, if he could not bid, he would have been deprived of the only means which his contract gave him of making his debt out of the security on which he had loaned his money. We think the sale was a fair one. The Company was hopelessly involved beside the debt to defendant. The well was exhausted to all appearance. The machinery was of little use for any other purpose, and would not pay transportation. Most of the stockholders who now promote this suit refused to pay assessments on their shares to aid the Company. Nothing was left to the defendant but to buy it in, as no one would bid the amount of his debt.

The next question to be decided is, whether, under the circumstances of this case, the com-

plainant had a right to avoid this sale at the time this suit was brought.

The bill alleges that both prior to the sale and since, the defendant made various declarations to other stockholders to the effect that he only designed to purchase the property for the benefit of all or a part of the stockholders; and there is some testimony to show that after the sale, he did propose that if his debt was paid by the company or the shareholders, he would relinquish his purchase.

But we need not decide whether any of these declarations raised a legal obligation to do so or not; nor whether without such declarations, the sale and deed were voidable, at the election of the complainant,—a proposition which is entitled to more consideration, resting solely on the fiduciary relations of the defendant to the plaintiffs, than on the evidence in this case of the declarations alluded to.

We need not decide either of these propositions, because plaintiff comes too late with the offer to avoid the sale.

The doctrine is well settled, that the option to avoid such a sale must be exercised within a *reasonable time.* This has never been held to be any determined number of days or years as applied to every case, like the Statute of Limitations, but must be decided in each case upon all the elements of it which affect that question. These are generally the presence or absence of the parties at the place of the transaction, their knowledge or ignorance of the sale and of the facts which render it voidable, the permanent or fluctuating character of the subject-matter of the transaction as affecting its value, and the actual rise or fall of the property in value during the period within which this option might have been exercised.

In fixing this period in any particular case, we are but little aided by the analogies of the statutes of limitation; while though not falling exactly within the rule as to time for rescinding, or offering to rescind, a contract by one of the parties to it for actual fraud, the analogies are so strong as to give to this latter great force in the consideration of the

case. In this class of cases the party is bound to act with reasonable diligence as soon as the fraud is discovered, or his right to rescind is gone. No delay for the purpose of enabling the defrauded party to speculate upon the chances which the future may give him of deciding profitably to himself whether he will abide by his bargain, or rescind it is allowed in a court of equity."

* * * * *

"While a much longer time might be allowed to assert this right in regard to real estate whose value is fixed, on which no outlay is made for improvement, and but little change in value, the class of property here considered, subject to the most rapid, frequent, and violent fluctuations in value of anything known as property, requires prompt action in all who hold an option, whether they will share its risks, or stand clear of them.

The case before us illustrates these principles very forcibly. The officers, and probably all the stockholders, who were not numerous, knew of the sale as soon as made. As there was no actual fraud, they knew all the facts on which their right to avoid the contract depended. They not only refused to join the defendant in the purchase when that privilege was tendered them, but they generally refused to pay assessments on their shares already made, which might have paid this debt.

The defendant then had a survey made of the ground leased to the corporation, the lease being the main thing he had acquired by the sale. When the lines were extended, the lease was found to embrace a well, then profitably worked by another company. Of this piece of good luck he availed himself, and by suit and compromise he obtained possession of that well. He put more of his money into it, and changed what had been a disastrous speculation by the company into a profitable business. With full knowledge of all these facts, the appellant took no action until this suit was brought, nearly four years after the sale; and not until all the hazard was over, and the defendant's skill, energy

> and money had made his purchase profitable, was any claim or assertion of right in the property made by the corporation or by the stockholders.
>
> We think, both on authority and principle,—a principle necessary to protect those who invest their capital and their labor in enterprises useful but hazardous,—that we should hold that plaintiff has delayed too long."

It seems to us that every word in this opinion is plainly applicable to the case at bar, only here, instead of the period being four years, it is about eleven years. In other words, in the case at bar the Company and its stockholders have slept on their so-called rights nearly three times as long as was considered fatal by the Supreme Court in the case just cited.

Another case very like the one at bar is *Hayward* v. *The National Bank*, 96 U. S., 611, where there was a pledge of stock to secure a debt which, being unpaid, was sold and bought in by one occupying a trust relation to the pledgor. Later the stock rose in value, whereupon the pledgor filed his bill to have the purchaser declared trustee for him. The sale was on the 8th of September, 1868. The bill was filed on the 14th of March, 1872. The Court, after showing that the borrower actually needed the money, that no concealment existed with regard to the disposition of the collateral after the note was unpaid, that the borrower neither expressed dissatisfaction with the sale or any purpose to repudiate it, and did nothing, but remained silent for three years and a half, during which time the stock greatly rose in value. The Court says (p. 617):

> "The facts present insuperable obstacles to any decree in favor of the appellant. If the sale made by the bank was originally impeachable by him, the right to question its validity was lost by his acquiescence. He was in a condition, immediately after the

sale, to enforce such rights as the law gave him, as he was fully apprised of their nature, and of all the material facts of the case. He now claims that the sale was in derogation of his rights and injurious to his interest; and yet his conduct was uniformly inconsistent with any purpose to repudiate the sale or assert ownership of the stock. His course was continuously such as to induce a reasonable belief of his fixed determination to abide by the action of the bank. He remained silent when he should have spoken. He will not be heard now, when he should be silent. He must be held to have waived and abandoned the right, if any he had, to impeach the transaction of Sept. 8, 1868.

But the appellant is equally concluded by the lapse of time during which that transaction has been allowed to stand, without any effort upon his part to impeach it. It must now be regarded as unimpeachable.

Courts of equity often treat a lapse of time, less than that prescribed by the Statute of Limitations, as a presumptive bar, on the ground 'of discouraging stale claims, or gross laches, or unexplained acquiescence in the assertion of an adverse right.' 2 Story Eq. Jur., Sec. 1520. In *Smith* v. *Clay* (Amb., 645), Lord Camden said: 'A court of equity, which is never active in relief against conscience or public convenience, has always refused its aid to stale demands, when the party has slept upon his right, and acquiesced for a great length of time. Nothing can call forth this court into activity, but conscience, good faith and reasonable diligence. When these are wanting, the Court is passive, and does nothing. Laches and neglect are always discountenanced.' These doctrines have received the approval of this Court in numerous cases. *Twinlick Oil Co.* v. *Marbury*, 91 U. S., 587; *Badger* v. *Badger*, 2 Wall., 87; *Marsh* v. *Whitmore*, 21 *Id.*, 178; *Harwood* v. *Railroad Company*, 17 *Id.*, 79. In the last-named case, this Court said, that without reference to any statute of limitation, equity has adopted the principle that the delay which will defeat a recovery must depend upon the particular circumstances of each case. The

question of acquiescence or delay may often be controlled by the nature of the property which is the subject of litigation. 'A delay which might have been of no consequence in an ordinary case, may be amply sufficient to bar relief when the property is of a speculative character, or is subject to contingencies, or where the rights and liabilities of others have been in the meantime varied. If the property is of a speculative or pecarious nature, it is the duty of a man complaining of fraud to put forward his complaint at the earliest possible time. He cannot be allowed to remain passive, prepared to affirm the transaction if the concern should prosper, or to repudiate it if that should prove to his advantage.' (Kerr, Mistake and Fraud (Bump's ed.), pp. 302, 306; *Twinlick Oil Co.* v. *Marbury, supra.*)

If Hayward was defrauded of his stock,—if the title did not pass from him or the bank because of the peculiar relations which the purchasers held to him and the property; if he had the right originally upon any ground to repudiate the sale and reclaim the stock,—it was incumbent upon him, by every consideration of fairness, to act with diligence and before any material change in the circumstances and in the value of the stock had intervened. No sufficient reason is given for the delay in suing. His poverty or pecuniary embarrassment was not a sufficient excuse for postponing the assertion of his rights. He must be deemed to have made a final election not to disturb the sale of 1868; and a court of equity should not permit him, under the circumstances, to recall that election. Upon the the grounds, then, both of acquiescence and lapse of time, he should be held to have forfeited all right to relief in a court of equity."

To the same effect is *White* v. *Latham*, 143 U. S., 533, the syllabus of which reads:

"While it is true that a trustee cannot legally purchase on his own account that which his duty requires him to sell on account of this *cestui que trust*, nor purchase on account of the *cestui que trust* that which he

> sells on his own account, and that the *cestui que trust* may avoid such a sale even though made without fraud and without injury to his interests, yet it is also true that such a transaction is not absolutely void in the sense that the purchaser takes no title, and that it may be ratified and affirmed by the *cestui que trust* either directly or by acquiescence and silent approval; and in such case when he has ample notice of the facts and waits before taking action to set the sale aside until he can see whether the transaction is likely to prove a profitable speculation, he is guilty of laches, which amount to a ratification and approval."

The delay in this case was about three years. The opinion says:

> "No explanation is given for their delay, and none is suggested, except that apparent intention to wait and see what the value of these lands was likely to become, and whether it would be more profitable to set aside the sale or let it stand. While the delay in this case was not a long one, measured simply by the time which elapsed after the sale was made, we think, under the circumstances, it amounted to a ratification of such sale, and that the bill should have been dismissed."

To the same effect see:

Gallaher v. *Caldwell*, 145 U. S., 368.
Pittsburg, &c., Co. v. *The Cleveland Iron Mining Co.*, 178 U. S., 270.

Laches.

Neither Joseph Wilson, Mordecai Endicott or Charles P. Henry, or, so far as has been shown, Eva Davis Dodd, ever made any inquiry whatsoever of the secretary or any of the officers of the Company as to the value of its stock, the condition of its financial affairs, or in any wise apparently concern

themselves with the affairs of the Company (see Testimony of Joseph Wilson, p. 161, lines 10-40; Charles P. Henry, p. 329, to p. 343; Mordecai T. Endicott, p. 366, line 37; pp. 367, 368 and 369).

Judge Endicott was present when the resolution of May nineteenth, eighteen hundred and ninety-eight, was passed (p. 140, lines 16-40), and he knew of the loans made by the directors (p. 234, lines 10-30). He claims he began his informal protests within a couple of years (p 234, line 40), but the bill was not filed until the spring of nineteen hundred and eleven.

Judge Thompson was also present at the meeting at which the resolution of May nineteenth, eighteen hundred and ninety-eight, was passed (p. 140, line 26). He knew of the loans made and of the pledging of the stock immediately (p. 269, line 20). He testifies that there was no discussion of the matter until two or three years later (p. 269, line 30), and that he himself introduced a resolution on February twenty-third, nineteen hundred and four, providing for the return of a part of the stock, which resolution has been discussed.

The testimony shows that there was no effort made to conceal the resolution or the action taken under it. It was well known to both Judge Thompson and Judge Endicott, who are the prime movers in this present suit, who importuned the bringing of it, and who, under the decree of the Court if affirmed, will benefit to even a greater extent than the actual complainants. There was no attempt made by either of these gentlemen, although sitting in the Board of Directors, to redeem the stock, nor in fact any question concerning the *bona fides* and validity of the transaction until nineteen hundred and nine or nineteen hundred and eight, when the stock was becoming attractive by reason of its enhanced value owing to the boom in the Ventnor real estate market.

Judge Endicott says that he began his agitation in nineteen hundred and two, but this is denied by

all of the directors, whose testimony is certainly tinged with no greater interest than that of either Judge Endicott or Judge Thompson in this case.

In nineteen hundred and four comes the alleged "Thompson resolution." The evidence and circumstances concerning this resolution are such that no reasonable person would think it was ever introduced or ever passed.

Then comes inaction down to nineteen hundred and nine, the famous meeting of August seventeenth, the so-called "stormy" meeting. Now for the first time was any question raised as to the validity, the *bona fides* or the fairness of this transaction. The five defendant directors, honorable men of repute in this community, denied that there was ever any agitation concerning the return of this stock or any part of it until nineteen hundred and eight and nineteen hundred and nine. Even after the repudiation of the so-called Thompson resolution of nineteen hundred and four, no action was taken by either Judge Thompson or Judge Endicott, whose partners afterward acted as solicitors in the case, nor by any of the complainants, all of whom knew of the difficulty in August of nineteen hundred and nine, until the spring of nineteen hundred and eleven, very nearly two years. In other words, assuming that the complainants themselves had no knowledge or were not chargeable with knowledge of the transaction until August of nineteen hundred and nine, or a few months prior thereto, they then at least had knowledge of the transaction, which, at that time, was over ten years old, concerning the title to valuable property, with full knowledge that the owners of the stock in question had refused to return it, and yet they then waited over two years before filing this bill. That of itself, under the circumstances of the case, is gross laches.

But these complainants cannot hide behind the excuse of lack of knowledge. The means of knowledge was open to them; their advisers in Atlantic City knew of the transaction in nineteen hundred

and two; the resolutions concerning the transactions were in the minutes; they were given notice of the meetings; they were in Atlantic City from time to time. Their lack of interest is neither a legal nor a moral excuse, but rather a culpable neglect.

In *Rabe* vs. *Dunlap*, 51 N. J. Eq., 40, where a stockholder applied to the Court to prevent a claimed misapplication of corporate property by the directors resulting in an improper consolidation, the Court directed the bill to be dismissed wholly on the ground of the complainant's laches. In that case it amounted to but about two years. The Court held, page 46:

> "But stockholders, to be entitled to the summary interference of the court in cases where they seek protection against acts which are merely in excess of the power of the corporation, and are not prohibited by law, must be diligent; they must apply so recently after the doing of the act of which they complain that the Court may stop or undo the wrong to them without doing equal wrong or greater wrong to some other person. The principle which must control the action of a court of equity, in cases where the defense is laches, was held down by Lord Camden, many years ago, in these words: 'No thing can call forth the activity of a court of equity but conscience, good faith and reasonable diligence. Where these are wanting the court is passive and does nothing. Laches and neglect are always discountenanced, and therefore from the beginning of this jurisdiction there was always a limitation to suits in equity.' *Smith* v. *Clay*, reported in a note to *Deloraine* v. *Brown*, 3 Bro., C. C., 639 (Amb., 645). This principle, as it is applied to stockholders who are tardy in seeking protection against acts *ultra vires* to the corporation, was expressed by Sir John Romilly, master of the rolls, in *Gregory* v. *Patchett*, 33 Beav., 595, 602, in this form: 'Shareholders cannot lie by sanctioning, or by their silence at least acquiescing in an arrangement which is *ultra vires* to the company to which they belong, watching the result; if it be favorable and profitable to themselves to abide by it

and insist on its validity; but if it prove unfavorable and disastrous, then to institute proceedings to set it aside.' And Lord Justice Turner's statement of the rule is equally pertinent to the case in hand. In *Great Western Ry. Co.* v. *Oxford, Worcester and Wolverhampton Ry. Co.*, 3 De G., M. & G., 341, 359, he said: 'Where the summary interference of this court is invoked, in cases of this nature, it must be invoked promptly. Parties who have lain by and permitted a large expenditure to be made, in contravention of the rights for which they contend, cannot call upon the court for its summary interference. The jurisdiction to interfere is purely equitable, and it must be governed by equitable principles. * * * The cases in which this principle, as it is applied to stockholders, has been discussed, are numerous. The doctrine they establish is, that where an act is done openly, and especially on notice, and without evil intent, though clearly in excess of the power of the corporation, a non-assenting stockholder will not be allowed to pause to speculate upon the chances—to wait until he can see whether such act is likely to result in profit or loss—but to be entitled to the summary interference of the court he must ask for it promptly, and before the act of which he complains has become the foundation of rights or equities which must be destroyed or greatly impaired if the act be nullified or undone. Or, stated with greater brevity, and in its simple essence, the rule is this: If he wants protection against the consequences of an *ultra vires* act he must ask for it with sufficient promptness to enable the court to do justice to him without doing injustice to others. *Kent* vs. *Quicksilver Mining Co.*, 78 N. Y., 159; *Sheldon Hat Blocking Co.* v. *Eickemeyer Hat Blocking Co.*, 90 N. Y, 607; Watt's Appeal, 78 Pa. St., 370; *Kitchen* v. *St. Louis, Kansas City and Northern R. R. Co.*, 69 Mo., 224; *Taylor* v. *South and North Alabama R. R. Co.*, 4 Wood (U. S.), 576; *Graham* v. *Birkenhead, Lancashire and Cheshire Junction R. R. Co.*, 2 Man. & G., 146.'"

The same principle was announced in *Harrigan* v. *Smith*, 57 N. J. Eq., 635, Court of Errors and Appeals, in a suit to compel an assignment of a fractional interest in a patent and for an accounting, as the defendant throughout the case admitted his willingness to make the assignment, the Court of Errors determined that it be made notwithstanding the lapse of several years, but in denying the right to an account said (p. 643):

> "It would be very unjust to permit the complainant, who, for years, during this unsettled state of the law, has stood idly by while the defendant, by his energy and industry, was building up a business, now to come in and even raise the question of a right to share in the success of that business in the past. He did not sow and he should not reap. It is enough that we do not suffer his laches to bar him from the aid of a court of equity to compel a formal assignment of his interest in the patent. He may stand upon his legal rights if he will, but if he seeks equitable aid he must accept it on equitable terms, and those are that an accounting be denied."

Reference may also, if necessary, be made to the following cases which prevent a stockholder from seeking to set aside a transaction of the directors which it is claimed to have been illegal, where he had stood by for years, with full knowledge, and waited until a change of circumstances has made it advantageous to act.

Twinlick Oil Co. v. *Marbury*, 91 U. S., 587, *supra.*
Hayward v. *National Bank*, 96 *Id.*, 611, *supra.*
White v. *Latham*, 143 *Id.*, 553.
Gallaher v. *Caldwell*, 145 *Id.*, 368;
Pittsburgh v. *Cleveland, &c., Co.*, 178 *Id.*, 270;
Johnson v. *Atlantic, &c., Co.*, 156 *Id.* 618;

Johnston v. *Standard Mining Co.*, 148 *Id.*, 360;
Alsop v. *Riker*, 134 *Id.*, 688.

Judge Endicott claims he began to protest about 1902. This is denied by all of the defendants; but assuming it to be true, mere protests are not enough. What is requisite is, "action, divine action."

In *Lehigh Valley R. R. Co.* v. *McFarlan*, 43 N. J. Law, 607, the question as to the effect of denials and protests upon the acquisition of a prescriptive right arose. Judge Depue, in delivering the opinion of the Court, after showing that mere protest or complaints or remonstrances are insufficient to prevent the acquisition of a right by prescription, said (p. 630):

> "Protests and remonstrances by the owner of the servient tenement against the use of the easement, rather add to the strength of the claim of a prescriptive right; for a holding in defiance of such expostulations is demonstrative proof that the enjoyment is under a claim of right, hostile and adverse; and if they be not accompanied by acts amounting to a disturbance of the right in a legal sense, they are no interruptions or obstructions of the enjoyment. * * * The jury should have been told that a continuous enjoyment under a claim of right for twenty years, not obstructed by some suable act, and having the other qualities of an adverse user, confers an indefeasible right."

Bearing out this view, it was held in *Byrne* v. *Schuyler Electric Mfg. Co.* by the Court of Errors of Connecticut, 31 Atl. Rep., 833, in considering the effects of laches in a stockholders' suit, that laches did not exist under the circumstances there. Immediately upon discovery of the situation, a notice was at once sent to the directors requesting that suit be instituted for the purpose of setting aside the fraudulent transaction.

> "Said directors refused to cause the institution of said proceedings and on the seventh

> day of March, 1888, the plaintiff caused to be presented to the stockholders at their annual meeting holden on said day (and at which meeting the stockholders ratified the said agreement) a written notice and demand that a suit be brought to set aside said contract. Said stockholders neglected and refused to take the action requested by said notice and thereupon *as soon as possible* the plaintiff instituted the present suit. I find that the failure to give reasonable notice to the plaintiff was not intentional but accidental. Laches is defined as 'inexcusable delay in asserting a right,' &c. One who acts as soon as possible after learning of his rights or that his right has been invaded cannot be charged with delay."

See also *Mumford* v. *Ecuador, &c., Co.*, 50 Atl. Rep., 476, where it was held by Vice Chancellor Howell that a dissenting stockholder cannot satisfy himself by merely protesting against the illegal or voidable action of his directors, but must follow up his protest with a suit to enforce his claim. Among the cases cited by the Vice Chancellor is *Rabe* v. *Dunlap*.

Under the principle announced in *Marr* v. *Marr*, *supra*, that in actions of this character seeking to set aside a transaction that is voidable because of the relation of corporation and director where the director has assumed a position of antagonism to the Company, the full requirements of the law are observed when the director has apprised other directors of his position, and thereby put it in their power to see that the Company is fully protected, we contend that this suit should fall.

There has not been a time during the thirteen years in which Judge Thompson and Judge Endicott have been fully aware of this whole transaction in which they did not have it completely in their power to apply to the court, as they through their dummies are now applying, to set it aside. The Company—the real plaintiff here—has for thirteen years, with its solicitors' and two of its directors'

sanction stood supinely by and made no effectual effort whatever to attack it

Meantime these defendants, unlike the two judges, have endorsed the Company's paper, have forborne interest on their debts, and payment thereof until they have outlawed, have borne the heat and burden of the day, have put good money in the enterprise when it seemed almost foolish to do so, and when the two judges were unwilling to be so foolish, have kept the Company alive and out of the Sheriff's hands, and enable the two judges and their sisters, cousins and aunts, to make a handsome profit, and now at this late day, the Company, for their benefit, seeks to avoid the transaction.

Again. Ignoring the rule of Marr *v.* Marr, *supra*, that the suit should fall because the nominal complainants are the mere dummies of the two judges, that they are the real plaintiffs and that the dummy cannot escape the taint of his real master.

This is particularly true in representative suits like the one at bar.

Belmont v. *Erie R. R. Co*., 52 Barb., 637;
Forrest v. *Manchester*, 7 Jur., N.S., 887;
Felder v. *London*, 1 Hem. & M., 489.

Once more

The transaction was plainly on the minutes and the stock books. The Company needed the money and openly borrowed it and as openly provided that if it was not repaid within one year the stock pledged as collateral should revert to the persons advancing the money. The Company was embarked in an enterprise requiring the expenditure of vast sums of money. It has no cash capital. It was constantly borrowing money. For years it had no income whatever. Under these circumstances I ask if a stockholder who is aware of the situation, can shut his eyes to the facts, never attend a stockholders' meeting of which there were several, never inquire, or ask for a statement, and now claim to have been ignorant?

Such is not the rule.

Means of knowledge plainly within reach of a stockholder by the exercise of the slightest diligence, is in legal effect equivalent to knowledge.

Harlan, *J.*, *Jesup* v. *Illinois Cent. R. R.*, 43 Fed. Rep., 483, 503.

Wood v. *Carpenter*, 101 U. S., 135.

In this last case, *Swayne, J.*, says:

> "A general allegation of ignorance at one time and of knowledge at another, are of no effect. If the plaintiff made any particular discovery, it should be stated when it was made, what it was, how it was made, and why it was not made sooner. * * * The presumption is that if the party affected by any fraudulent transaction or management, might with ordinary care and attention, have reasonably detected it, he reasonably had actual knowledge of it."

Hurdt vs. *Heidmeyer*, 152 U. S., 547;

Norris vs. *Haggin*, 136 U. S., 386;

Kessler vs. *Ensley Co.*, 123 Fed., 546, is particularly in point, in view of the speculative character of the corporate business.

In *Stephany* vs. *Marsden*, 5 Buch., 90 (aff'd 75 Atl., 899), V. C. Leaming charged stockholders who did not attend stockholders' meetings with notice of what occurred there, and announced the rule that it is the duty of stockholders to make some inquiry.

See also *Obert* v. *Obert*, 12 N. J. Eq., 423.

In *Boice* v. *The Montauk Gas Coal Co.*, 16 S. E., 501 (W. Va.), 1892, minority stockholders sought to prevent foreclosure of mortgage and to set mortgage aside on the ground of being *ultra vires* nine years later. Stockholder took no interest in corporation, did not know who was president or exactly how many shares he owned. Held, he cannot come in now and upset mortgage. Court said (p. 506):

> "So we may say with propriety with regard to Ezra J. Sterling, who * * * had the

> opportunity of knowing and should have known what was being done by the company; and a court of equity will not allow him to stand by for nine years while the plaintiff in this case was expending thousands of dollars in the purchase of adjoining coal lands * * * and allow him to reap the profits, if any are realized, and on the other hand repudiate the contracts if the venture proves unsuccessful."

In *Von Arnim* v. *American Tube Works*, 74 N. E., 680 (Mass., 1905), minority stockholder seeks to set aside resolution voting salaries illegal. Point of laches raised. Corporation's affairs *concealed* evidence by the fact suit was needed to obtain inspection of books. Held, complainant not charged with knowledge. This apparently *contra* case is cited for the purpose of being distinguished because the defendants actively concealed.

This case plainly distinguishes between the duty of a stockholder to know what is plainly on the books, and his responsibility when there is any concealment.

Federal Cases:

Taylor vs. *The S. & N. Ala. R. R.*, 13 Fed., 152 (C. C., Ala., 1882). In 1871 defendant corporation issued to L a large amount of preferred stock, transaction now held to be illegal. Complainant, a minority stockholder, over ten years later seeks to have the issue set aside, alleging ignorance of the fact that issue was of PREFERRED, that being reason for illegality. Held, complainant charged with knowledge of that fact and so was in laches. Bruce, *J.*, said, page 159:

> "There must, then, be some disposition and effort to obtain a knowledge of the facts, and that is what the law calls reasonable diligence. The question is not simply what facts the plaintiff knew, but of what facts might he have obtained knowledge had he sought it from the natural sources of information which were at his command."

Leavenworth v. *Chicago, &c., R.*, 18 Fed., 209, C. C. (Mo., 183). Two railroad corporations consolidated in 1869. Bill filed in 1883 by minority stockholder of one corporation alleging that consolidation was fraudulent and void, and all subsequent contracts as fraudulent and void. Conceded that there are laches unless complainant excused by lack of knowledge. Held, that the complainant was charged with knowledge of the fact of the consolidation and its terms and that it was *ultra vires*. The Court said, on page 211:

> "But where, as in the present case, the transaction complained of is the consolidation of two quasi politic corporations, made or attempted to be made under and by virtue of authority conferred by a public statute, by proceedings had and entered of record upon the books of the respective corporations, and by deeds of conveyance executed and recorded in the several counties and filed in the office of the Secretary of State, it is difficult to see upon what ground the transaction can be regarded as one which conceals itself. * * * The court would be inclined to hold that the stockholders of the respective corporations are charged with notice of the proceedings and bound to proceed with reasonable diligence to annul them. * * * No doubt the question in all cases must be, not whether complainant had knowledge of the act complained of, but whether he knew, or might by proper diligence, have known, of the facts constituting the fraud."

Jesup v. *Illinois Central*, 32 Fed., 483, C. C. (Ill.), 1890, Harlan, *J.* The D. Railroad leased the C. Railroad twenty years ago by act of its directors. It now, twenty years later, alleges that the lease was illegal because, among other reasons, directors on both sides of the bargain were the same. Held, the lease was voidable, only; there being no attempt in reasonable time, it stands. Harlan, *J.*, said, on page 503:

> "Taking all the evidence together, the court must proceed upon the ground that

> means of knowledge, plainly within reach of stockholders by the exercise of the slightest diligence, is in legal effect equivalent to knowledge, and that the fact of the lease, as well as its terms, were fully known to each stockholder and to every officer of the D. Company for twenty years and more prior to this litigation."

Kimball vs. *Chicago, &c., Co.*, 119 Fed. (C. C. A., 8th Cir., 1902). In 1890 the directors of a corporation issued more than half of its stock to L in exchange for property of equal value. In 1901 minority stockholder brings bill to set issue aside. Held that complainant be charged with knowledge of what appears on corporation books; barred by laches. *Thayer, J.*, said on page 106:

> "As stockholders, they are entitled at all times to have access to the books of the Company, and even a casual examination of the corporate books would have disclosed the consideration that was received originally for the stock in question, which, as it is now claimed, was issued illegally."

Calivada Co. v. *Hays*, 119 Fed., C. C. A., Pa., 1902. Bill filed in 1901 by Receiver of Corporation against Hays, in whom majority of stock was issued in 1895, and set aside issue as illegal. Alleged that minority stockholders were ignorant of controlling interest in H. It appeared on minutes. The question of actual knowledge in doubt. Held, that since minority stockholders have at least means of knowledge, they are in laches, and relief cannot now be worked out through them.

For points that defendants must explain long acquiescence and that mere allegations of non-discovery until recently is not enough, see *Edwards* vs. *Mer. Trust Co.*, 124 Fed., 381 (C. C., N. Y.) 1903; *Norris* vs. *Haggin*, 136 U. S., 386.

In *Phosphate, &c., Co.* vs. *Green*, L R., 7 C. P., 43, directors lent money to defendant, then a stockholder. Later the directors resolved to accept in satisfaction of this debt four hundred shares of the corporation to be delivered up to be cancelled, which

was done. Cancellation entered on books. Reorganization being proposed, directors' report contained statement of cancellation of above shares, reorganization made resulting first in profits and three years later in insolvency. Corporation sued the defendant for money lent. The defendant pleaded accord and satisfaction. Held that transaction was illegal, but that there was evidence from which a jury could find ratification thereof by the stockholders.

The following cases are also directly in point, and are apt illustrations of the rule that a party with an equity such as the complainant here asserts, cannot lie by acquiescence as to a transaction which it may possibly avoid, until speculative property becomes valuable, and then seek to set aside the transaction.

Johnson v. *The Atlantic Gulf & West India Transit Co.*, 156 U. S., 618.
Johnston v. *The Standard Mining Co.*, 148 *Id.*, 360, 370.
Alsop v. *Riker*, 155 U. S., 449,

where the rule is laid down that the length of time during which a party neglects the assertion of his rights which must pass in order to show laches in equity varies with the peculiar circumstances of each case, and is not subject to arbitrary rule. Laches, however, will often be imputed when the time that has passed is less than the period of the Statute of Limitations.

Leavenworth County Commissioners v. *Chicago, &c., Co.*, 134 U. S., 688.
Allen v. *Gillette*, 127 U. S., 589.

In *Snediker* v. *Ayres* (Sup. Ct. of Cal.), 80 Pacif. Rep., 511, it was held notwithstanding a provision of the code to the effect that a trustee or his agent may not take part in any transaction concerning the trust in which he has an interest adverse to that of his beneficiary, that a sale, in the absence of fraud, to a director, on an execution against the property of the corporation, upon a judgment obtained on

valid claims, is not void, but only subject to investigation.

See also *Osborn's Admx.* v. *Monks* (Ct. of App. of Kentucky), 21 S. W. Rep., 101, where the position of a director who purchases the property of a railroad under execution on a valid claim of his against the Company, is sustained.

Also

Rawlins v. *New Memphis Gaslight Co.*, 60 S. W. Rep., 206 (Sup. Ct. of Tenn.).
Hoyle v. *Plattsburg, &c., Co.*, 54 N. Y., 314.

On the subject of laches it is set down in *18 Am. & Eng. Enc. of Law*, page 114 :

> "When a party on ignorance of facts material to his rights, as an excuse for his laches, and delay in asserting them, he must show why he was so long ignorant and acquit himself of all knowledge of facts which would have put him on inquiry, and must shown how and when he first acquired a knowledge of the facts and where the question of laches is in issue, the plaintiff is also chargeable with such knowledge as he might have obtained upon inquiry."

The cases in the notes of the above question in support of the foregoing amply support it and reference is made thereto.

The question of laches is also important with respect to the right in the complainant to redeem the stock. Independently of the considerations above referred to, and proceeding upon the theory that there had been no conversion of the stock, it is submitted that it is now too late to redeem it.

> "The pledgor could not, after waiting some time after the sale, when the bonds had risen to par, maintain an action in equity to recover the value of the bonds where he had never made any tender for the purpose of redeeming them nor any effort to reclaim them."
>
> *Lecombe* v. *Forstall*, 123 U. S., 562 ; 31 L. Ed., 255.

The assignee of stock from one chargeable with knowledge or laches is himself chargeable therewith, and is in no better position than his assignor was in a suit of this character.

The title and devolution of the stock is shown in detail by the testimony of Louis E. Stern (p. 312).

His testimony shows that Charles P. Henry, one of the complainants, bought his five shares from Allen B. Endicott on May twentieth, nineteen hundred. The latter not only introduced him to the enterprise, but received and receipted for his stock, and in every way represented him (Testimony of Mr. Henry, p. 327).

Frederick C. Robbins and J. Estel Evans purchased from Isaac Bacharach on September fifteenth, nineteen hundred and nine. They have not seen fit to show what they knew. Their claim (Paragraph 12 of the Amended Bill) that they were ignorant of the whole matter is expressly denied in Paragraph 12 of the Answer. The denial must be taken to be the truth. Moreover, their consignor, Bacharach, knew all about the transaction and took an indemnifying agreement from I. G. Adams before he sold to Robbins and Evans and affirmed the transaction. He swore he had no intention of becoming a party to the suit or claim (Testimony of Isaac Bacharach, p. 348, lines 10–40).

Mordecai T. Endicott bought five shares of stock from Allen B. Endicott on March fifth, nineteen hundred and four, nearly six years after the transaction.

Joseph W. Wilson was told during the holidays of nineteen hundred and eight of the whole transaction (p. 381, lines 10–30), and yet he received since then and before commencing the suit (May twenty-sixth, nineteen hundred and eleven) several dividends which were ascertained and paid on the sup-

position that the defendants' stock here under attack, is valid (p. 138, line 1).

After Mr. Wilson's acquaintance with the transaction, occurred all the meetings of both stockholders and directors in August of nineteen hundred and nine and later in which the resolution to put up seventy-five shares of the Trust Company was rescinded, the exact amount of assets ascertained and a dividend declared of two hundred per cent. (which practically exhausted these assets) and paid on the one hundred and fifty shares. This dividend was followed by several others, including one paid on January thirteenth, nineteen hundred and eleven, leaving in bank four hundred and ninety-eight dollars and sixty-one cents, and one dividend was paid and accepted by Mr. Wilson as late as December thirtieth, nineteen hundred and eleven, seven months after his bill was filed, upon the assumption that this stock was valid. So far as the record shows, both Allen B. Endicott and Joseph Thompson voted for all these dividends but the first.

Of all the stock represented by the complainants in this suit, there are only the thirty shares belonging to Mordecai T. Endicott and the six shares belonging to Eva Davis Dodd. As to Mrs. Dodd, we are in the dark as to what she knew of the transaction, and under the cases, she must be chargeable with knowledge, in the absence of certain and specific proof to the contrary. Hence, in a final analysis, the complainant, Mordecai T. Endicott, is the only one whose rights can be considered, granting, for the purpose of argument, that any one has any standing to question the transaction.

Trimble v. *American Sugar Refining Co.*, 60 N. J. Eq., 24. Pitney, *V. C.*:

> "It is to be observed that the complainant is the holder of one seven hundred and fortieth part of the capital stock of the company, a trifle less than one-seventh of one per cent. of the whole issue; and it does not appear that any other stockholder is dissatisfied with the conduct of the business of the company

in respect to the matters complained of by the bill. * * *

With this preliminary observation, I further remark that the bill does not state at what time complainant acquired the one hundred shares of stock which he holds, and it is common knowledge that the stock of this company, and many others of the same class, is daily dealt in on the Exchange. For aught that appears, he may have acquired it a very short time before the filing of the bill, from a holder who has acquiesced in everything that the company has done up to that time and in the policy the carrying out of which the complainant seeks to enjoin. That such acquiescence would bar the original holders of the shares now held by the complainant if he knew of it, is perfectly settled. It is necessary, on this point, only to refer to the case of *Rabe & Cross* v. *Dunlap*, 6 Dick., 40. And it seems to me that where a person holding so small a fraction of the capital stock as the complainant represents here, asks to interfere with a particular phase of the management of the corporation, which is presumably satisfactory to all the other stockholders, he ought to show affirmatively that neither he nor his predecessor in title has acquiesced in the policy of which he now complains, for I think he would be bound by the acquiescence of his predecessor in title."

Hodge v. *U. S. Steel Corpn. et al.*, 64 N. J. Eq., 90. Emery, *V. C.*:

"This is an application for a preliminary injunction on a bill filed by stockholders of the U. S. Steel Corpn. to restrain the retirement or redemption of preferred stock by issuing bonds of the company therefor. * * *

Three complainants are named in the bill, J. Aspinwall Hodge as the owner of 100 shares prefrred stock; William R. Curtis as owners of 2,000 shares, and Bernard Smith as the owner of 500 shares. The affidavits show that the complainant Hodge was the owner of record of 100 shares of preferred stock, bought about a year before the proceedings for conversion were begun, and that he did

> not assent to the plan. As to the complainant Smith, the affidavits show that at the time of filing the bill he was not the owner of any shares of stock, except shares whose previous owners had assented to the plan. Complainant Curtis, at the time of the bill, was not, nor has he ever been, the owner of record of any shares, nor is there any affidavit of ownership of shares made by him. In the absence of such affidavit showing his ownership and the certificate or certificates of shares which he holds, it cannot be known whether or not the previous holders of his shares, or any of them, have assented to the plan. If such previous holders of either the Smith or Curtis shares have assented, then neither Smith or Curtis is entitled to a preliminary injunction against the execution of the plan assented to, so far as their rights rest on the ownership of these shares. *Trimble* v. *American Sugar Refining Co.*, 16 Dick., 340."

In this respect the case is similar to the ultimate finding of the Court of Appeals in *Marr* v. *Marr*, *supra*. There, as here, there was a stockholder's suit for the benefit of the Company, but the recovery was expressly limited to such stockholders as affirmatively appeared to be free from *laches* or other infirmity. The Vice Chancellor attempts, in his opinion, to distinguish that case by the claim that there the corporation had practically gone out of business and was in the hands of its trustees for liquidation. He overlooked, however, the conceded fact that here, too, the Company had been liquidated (see pp. 26, 154, 159, 163, 164, 228, 236, 274, 275, and particularly 553 and 568). Indeed, the dividends that have been paid to the several stockholders, and which have already been referred to, were treated as and were in fact liquidating dividends, the Company having sold all its land, and having no further functions to perform than to distribute its profits among its stockholders. Instead, therefore, of the situation in the two cases being different, it is, to all intents and purposes, the same, and the ultimate rights of the complainants, as-

suming the Court should find any of them has any right, should be limited in the same way as they were in the *Marr* case, *supra*.

Church et al. v. *Citizens Railroad*, 78 Fed., 526 (Circuit Ct., D. Indiana, Feb., 1897), page 530. Baker, District Judge:

> "It is further objected that the plaintiffs in this case, having become purchasers of the stock, although they were good faith purchasers of it, took it and held it by no better or different title than the transferror of it to them. * * * Stocks are mere choses in action governed by the principles of the common law, and by the common law such choses in action are no better or higher evidence of title or right in the hands of an assignee than they were in the hands of the assignor. That is the central rule—a rule that, in my judgment is applicable to the present case—and without a reference to the adjudications that have been read to the Court, the Court would have reached the same conclusion by the application of the general principles of the law. * * * So, that in this case, I see no principle of the law that would authorize the plaintiffs to maintain the present bill on the ground that the stock that they had purchased by the transfer or assignment of it, had acquired some new rights or equities that the stock did not possess in the hands of the transferror or assignor."

Cook on Corpns., Vol. 3, Sec. 733; also Secs. 40, 730 and 735:

> "The fact that an officer of the company took part in a swindling scheme does not deprive the company of its rights to recover back moneys of which it was wrongfully deprived by such scheme. But the acquiescence of a stockholder bars an action by any transferee of that stock.

Babcock v. *Farwell*, 91 N. E., 683 (Supreme Ct., Illinois, April, 1910).

This was a stockholder's suit to have various

contracts between a corporation and some of its directors set aside. Dunn, *J.*, page 692:

> "The theory of a stockholder's suit is that the stockholder has sustained a wrong through the injurious effect upon his stock of the wrong done to the corporation. If he has himself consented to or participated in the acts constituting such wrong, or has waived his right to object to them, he cannot afterwards maintain a bill, on account of such transactions, for the benefit of the corporation or of other stockholders. Citing cases. Neither can an assignee of stock maintain a suit in regard to transactions with the corporation done or assented to by his assignor. The purchaser of shares of stock acquires no greater rights than his vendor. He holds by the same title and subject to the same liability. Shares of stock are merely choses in action, and the successive owners acquire only the rights held by their predecessors in title. *Home Ins. Co.* v. *Barber*, 93 N. W., 1024; 60 L. R. A., 927; *Venner* v. *Atchison, Topeka & Santa Fe Railroad*, 28 Fed., 581; *Church* v. *Citizens Railroad Co.*, 78 Fed., 526."

Brown v. *Duluth, &c., Co.*, 63 Fed., 889, 892. A stockholder's suit was filed to set aside alleged fraudulent and illegal issue of stock by a corporation. The complainant had purchased his stock from individuals who had originally participated in the fraudulent over-issue. The Court, speaking of these assignors, said:

> "They (the assignors) received their stock out of these blocks of stock, and it is a part of this stock which it is claimed by the complainant is fraudulently and illegally issued and held by the directors and other defendants, and which he seeks to have cancelled. The assignors having participated in the benefits of this alleged fraudulent scheme, would not be permitted to complain of it. The complainant, as their transferee, is in no better situation than they are. He has no greater rights than his transferers, as regards a remedy in validating the transaction. The maxim '*In pari delicto*' applies, and a court of equity

> will not aid him. He cannot bring suit on behalf of other stockholders against the corporation or other parties participating in the issue, as his own title is tainted with the same fraud."

Where one stockholder agrees with another at the formation of a corporation that the other may pay for his stock with property and afterwards consents to the issuing of stock and execution of contract, though the corporation is not bound by the contract, the consenting stockholder will be held bound by it.

> *Knoop* vs. *Bohmrich*, 49 N. J. Eq., 82–86.

In the case of *Breslin* v. *Fries-Breslin*, 70 N. J. L., 274–283, it was held that the assignee of stock illegally issued was estopped from questioning the power of the corporation to issue it. Of like effect is *Arnold* vs. *Searing*, 73 N. J. Eq., 262-265.

Subsequent stockholders have no standing, as a general rule, to attack prior mismanagement of the corporation.

> *Home Fire Ins. Co.* vs. *Barber*, 60 L. R. A., 927–933.
>
> *Clark* vs. *American Coal Co.*, 17 L. R. A., 557-562.

At page 933 of 60 L. R. A., the Court said:

> "Sound reason and good authority sustain the rule that a purchaser of stock cannot complain of the prior acts and management of the corporation." Citing a number of cases. "The weight of authority seems to be that a person who did not own stock at the time of the transactions complained of cannot complain or bring suit to have them declered illegal. As a general proposition the purchaser of stock in a corporation is not allowed to attack the acts and management of the Company prior to the acquisition of his stock. Otherwise he might have a case where stock, duly represented in a corporation, consented to and participated in bad management and waste, and, after reaping the benefit from

> such transactions, could be easily passed into the hands of the subsequent purchaser, who could make his harvest by appearing and contesting the very acts and conduct which his vendor had consented to."

In *Clark* vs. *American Coal Co.*, *supra*, the Court said:

> "If the purchaser was defrauded in the purchase, he could sue the vendor. As to the corporation and its managers, so long as he is not injured in what he got when he purchased and holds exactly what he got and in the condition in which he got it, there is no ground of complaint."

In this case it cannot be doubted but that the value of the stock owned by the complainants is greatly in excess of what they paid for it, and that they have not lost anything, but rather gained, by the transaction complained of.

Recovery is barred by the Act, commonly called the "Promoters' Act" of 1903 (P. L., 1903, p. 362).

The above act requires that any suit brought to set aside any transaction out of which a director, officer or agent of the corporation made or took any bonus, profit or reward of any kind, shall be brought within four years from and after the making or receipt of the same. The statute is pleaded (p. 89).

The Second Section of the Act provided that the Act should not affect any right of action in any corporation or of any of its stockholders against any such officer under existing law, provided that action be brought therein within six months after the Act took place.

The Act above referred to took effect on July 4, 1903. The transaction in question took place on October 5, 1898, nearly five years prior thereto, or if it be considered that the period of redemption measures the time then on October 5, 1909. Using the latter period as a basis for argument, the four

years' period provided for in the statute expired on October 5, 1903, or, allowing for the six months provided for in the Act, on January 4, 1904. Therefore if the Act is applicable, the right to bring the action now under review expired on January 4, 1904. It is true that the Act was repealed in 1907 (P. L., 1907, p. 631), but at that time the right of action had expired, and it is a familiar principle of law that the action could not be revived either by the passage of a new Statute of Limitations or the repeal of an old Statute of Limitations.

Moore vs. *State*, 43 N. J. L., 203.
Vol. 4, Comp. Stat., p. 4971, Sec. 3.

This section provides that the repealing of any statutory provision by any Act of the Legislature heretofore or hereafter passed shall not affect or impair any act done or right or limitation vested or accrued, but every such act done or right or limitation vested or accrued shall remain in full force.

This Act is taken from the revision of 1877, page 1120, as amended (P. L 1910, p. 555). The amendment does not in any wise limit the effect of this Act as applied to the Act of 1903.

The "Promoters' Act" provides that any director who shall have heretofore made or received or shall hereafter make or receive, while acting in such capacity, any bonus, profit or reward of any kind whatsoever, out or on account of any transaction for or with such corporation, without disclosure, etc., shall be liable to such corporation for the amount or value of such bonus, profit or reward, for and during the period of four years, etc.

The undisputed testimony of the complainants is that the stock at all times was worth par and above par, and it is also undisputed that it was purchased at fifty cents on the dollar. Indeed, the whole theory of the complainants' case rests upon these facts. Moreover, if the complainants' testimony is to be believed, at the time of the purchase by the defendant directors, the stock was actually worth from one hundred and fifty to two hundred dollars

a share. So that the actual bonus received by them was from one hundred to one hundred and fifty dollars. That this is a bonus or a profit within the contemplation of the Act of 1903, can scarcely be doubted. It certainly cannot be argued that the only bonus or profit contemplated by the Act is a cash bonus or profit. The Act itself says "Bonus, profit, or reward *of any kind whatsoever.*" This would include bonus in property, in stock or in any other of the assets of the corporation. The Act was designed to meet the precise situation as disclosed by the complainants' bill. A more apt illustration of its application could not be suggested.

The complainants contend that the "Promoters' Act" does not apply because the defendants were acting in a trust capacity. Their character as trustees grew out of their position as directors, and it is in their position as directors that it is alleged they made the bonus, profit or reward which the corporation now seeks to recover. It is respectfully submitted that this Act was enacted by the Legislature for the very purpose of limiting the period within which suits might be prosecuted between trustees and *cestui que trustents.* The Act specifically applies to directors, and it is as directors that these defendants are sued.

Another point made by the complainants is that it is uncertain when the stautory period of four years should run. The statute provides that it shall begin to run "after the making or receipt of the same," *i. e.*, bonus, profit or reward. The bonus, profit or reward was the excess value of the stock over and above the amount advanced for it, which, on a par value basis, was fifty dollars, or, on a market value basis, if the complainants' testimony is to be believed, one hundred to one hundred and fifty dollars. This bonus or profit was received, in this view of the case, on October fifth, eighteen hundred and ninety-nine. That is the time from which the statute begins to run. If there is any distinction as between the words "receipt" and "making," and we submit that there is none, certainly there was either a making or receipt of the bonus in October of eighteen

hundred and ninety-nine, and we contend that the period runs from the event which first happens.

A similar provision is found in the Municipal Mechanics' Lien Law of 1893, the Second Section of which provides that "notice of the claim may be given at any time before the work has been completed or accepted by the City, and within fifteen days after the same has been so completed or accepted by the City."

The Court of Chancery, in the case of *Somers Brick Co.* vs. *Souder*, 70 N. J. Eq., 388-393, held that the time commenced to run from whichever day came first, stating that the arrival of the one is intended to exclude the other. This view was adopted by the court of errors and appeals upon an appeal of this case.

In the case at hand, if the profit was made before it was received, then the four years commenced to run from the making thereof. That it has been made there can be no doubt, and the time when it was made was the time when the five members of the Board of Directors resolved to accept those shares in place of the original indebtedness of the Company, to wit, on October fifth, eighteen hundred and ninety-eight, or, at the latest, when the period for redemption of that stock had expired, to wit, October fifth, eighteen hundred and ninety-nine.

It is impossible to conceive of any sort of profit or bonus being derived by any person in a transaction with a corporation, acting in any capacity as agent for such corporation, without being included within the terms of this statute and limited and governed thereby.

We respectfully submit that the decree of the Court of Chancery should be reversed, and the bill dismissed, for the reasons discussed herein.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with
Defendants, Appellants.

ROBERT H. MCCARTER,
Of Counsel.

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NEW JERSEY COURT OF ERRORS AND APPEALS.

Between
MORDECAI T. ENDICOTT AND OTHERS,
Complainants and Appellees,
and
PHILIP MARVEL AND OTHERS,
Defendants and Appellants.

ON BILL, ETC.

BRIEF
FOR COMPLAINANTS AND APPELLEES.

This Bill was filed by certain shareholders of the St. Leonards Land Company for and on behalf of the company against five of the seven Directors of the company, charging them with the unlawful conversion to their own use of certain assets of the company.

The amount involved is approximately fifty thousand dollars.

The defendants had each loaned the company the sum of $1,500, and had each received thirty shares of the stock of the company (which was being held in trust for the uses of the company) as collateral security for their re-

spective loans; the stock in question was transferred as collateral; the loans not being repaid, the defendants claimed that the shares in question thereby became their individual property.

No sale of the collateral was ever made by the defendants; no proceedings to foreclose the equity of the company in the shares of stock was ever had; no transfer of the same on the books of the company was ever made to the defendants; the shares of stock transferred as collateral stand to-day on the books of the company precisely as they did at the time they were thus transferred to the defendants.

The defendants claim these shares as their own, and against protest of the other shareholders have insisted upon and have received in liquidation of the company the proportion of the assets and profits falling to said shares.

The company was organized for the purpose of acquiring certain lands on the beach near Atlantic City belonging to the incorporators, or some of them, who sold the lands to the company and received in payment stock of the company.

For the purpose of providing the company with working capital the grantors placed in the hands of Philip Marvel, the president of the company, certain of their shares in trust for the uses of the company; the shares of stock in question are part of the shares thus placed in trust.

The two dissenting Directors are Allen B. Endicott, late Circuit Court Judge, and Joseph Thompson, formerly Prosecutor and afterward Law Judge of Atlantic county; being in a minority, they were helpless to protect the

stockholders from the greed of the defendants except by protest, etc., as will appear.

No reports were ever made to the shareholders; no notice was given them of the loans in question and the defendants' claim to the stock in dispute; nor was anything brought to their attention from which notice might be implied.

It was not until all the property had been sold and division was being made that the complainants' attention was directed to the transaction. In fact, Judge Endicott and Judge Thompson did not realize until this time that the claim of ownership in the shares was being made by the defendants.

The company was capitalized at $250,000, divided into 2,500 shares at $100 each.

Ten shares were taken by the incorporators (page 117), six hundred and fifty-one shares (651) were held in the treasury to meet a mortgage of $65,100 on the property (page 153), that is to say, these 651 shares were not issued at the time of the purchase of the property, and, in fact, never were issued, the mortgage being taken care of in other ways. (Page 406.)

The balance of 2,500 shares (2,500 less 661) or 1,839 shares were issued to Marvel, Thompson and Endicott, who had conveyed the lands to the company. (Page 118; see also page 132, and Dr. Marvel, page 406.)

Out of the 1,839 shares issued to Marvel, Thompson and Endicott for land purchased by the company, these gentlemen transferred 699 shares to Philip Marvel, Trus-

tee, by two certificates, one for 200 shares and the other for 499 shares. (Page 119.)

The 200 shares were specifically set apart for the purchase of adjoining lands, and were so used. (Pages 133 and 134.)

The 499 shares in trust were for the development of the property (page 142); the 150 shares in dispute are part of the 499 shares. (Page 134.)

Some of the 499 shares were sold and the proceeds used for the purposes of the company, and the balance, 211 shares, were turned back to the company and cancelled. (Pages 439-441.)

The resolution of the Board of Directors under which the defendants claim the stock in question was adopted on the 5th day of October, 1898, at a meeting of the Directors, no one being present but the five defendants; Judge Thompson and Judge Endicott were absent.

The resolution is as follows:

> "Resolved, that each Director borrow the sum of "$1,500 for the period of one year and to receive 50 "per cent. excess of the company's stock as collateral "to the said loan to meet the obligation of Alvin "P. Risley, contractor, the company to have the priv- "ilege of redeeming the said stock in one year from "date with interest at 6 per cent., otherwise to revert "to the borrower." (See page 141.)

While the resolution authorizes the company stock to the extent of 50 per cent. in excess of the loan, yet, as matter of fact, the defendants each received 100 per cent. in excess of the loan; that is to say, that each received

$3,000 on the stock as collateral security for the loan of $1,500.

It is admitted by the five defendants, or at least by all that were interrogated in this respect, that no offer was made on their part to have the company redeem this stock, nor was any notice served on the stockholders or on the directors to redeem, neither was there a sale of this stock as provided for under the terms of the collateral note, which was necessary before the legal title could pass out of the stockholders. These directors had the right in the first instance to pledge this stock, but they could not possess themselves of its legal title. All that they could do was to give notice to the company to redeem it at the time they had limited for its redemption, and if the company failed to so redeem they had the right to sell this stock at public sale upon giving reasonable notice to the company, but they had no right to become purchasers themselves at a public sale.

Marr vs. Marr, 73 N. J. Equity, page 643.

The following is a copy of one of the notes given to the five defendants: (The discount being deducted.)

ATLANTIC CITY, June 20, 1898.

St. Leonards Land Co. have this day borrowed of Maurice D. Youngman Fourteen Hundred Twenty-eight and 59-100 Dollars, payable in four months from the date hereof and have deposited the following:

Certificate No. 116 for thirty (30) shares in the capital stock of St. Leonards Land Company as collateral security for the payment of the same. And, in default of the payment of said loan at maturity, hereby authorize and empower the holder of this obligation to sell, transfer and dispose of said collat-

eral securities, or any part thereof, at private or public sale, with the right of becoming the purchaser and absolute owner thereof, without notice to St. Leonards Land Co., its successors or assigns, and apply the proceeds of the same to the discharge of said loan, interest and expenses of sale; and, in case of any deficiency in realizing proceeds, holding St. Leonards Land Company responsible for any deficiency, with interest.

Payable at The Atlantic Safe Deposit and Trust Company.

[SEAL.] PHILIP I. MARVEL,
President.

ISRAEL G. ADAMS,
Treasurer.

(See page 603.)

The defendants constituted not only a majority of the Board of Directors of the Company, but they were a quorum of the Board, and it was their duty at all times to protect the interests of the stockholders and conserve its assets, and to do this, to pay from time to time any pressing claims, or any the enforcement of which would work hardship upon the Company.

Within one year after the resolution in question, the Company was in funds as is shown by the testimony, with which it could have extinguished this indebtedness. Mr. Isaac Backarach, a real estate broker of prominence in Atlantic City, took hold of the lands of the Company and conducted their sales to the great profit of the Company; his first purchase was in July of 1899, before the expiration of the year limited by the defendants for the redemption of the stock, and at that time he paid to the Company $22,000 for one block of land owned by the

Company; that was in July, 1899; the year for redemption, according to the resolution, did not expire until October, 1899, and yet these defendants took no steps to liquidate their indebtedness to the Company. No explanation whatever is given as to what use was made of this money.

Mr. Bacharach's testimony concerning this purchase and payment is found on page 352.

Further than that, Dr. Youngman, one of the defendants, testifies on page 560, that he was ready and willing at any time to take his money with interest up to the year 1907 or 1908; that is, he did not consider the stock had been forfeited to him prior to that time, and that the Company had the right to redeem up to that time. None of the other defendants seem to have been questioned on this point as to when they became the owners of the stock and the right of the company to redeem was forfeited.

There is nothing in the resolution pledging the stock as collateral for the loans, that indicates what amount, if anything, is to be credited to the company in event of failure to redeem; the five Directors still hold the company's notes and have not in any way indicated whether or not they consider them paid or satisfied by the appropriation of the stock in question which had been pledged as collateral.

No rights of third parties have intervened; the stock is still held by the five directors, who originally took the same, with the exception of I. G. Adams, who sold to Mr. Bacharach, who having notice of the dispute took a bond of indemnity from Mr. Adams; so that the situation in all respects is between the original parties to the transaction.

The defendants have never taken any steps to sell or to convert the collateral or to notify the company or the shareholders to redeem.

In fact any obligation on the part of the company to redeem the stock pledged as collateral, rested upon these defendants; they were the company; they constituted a quorum as well as a majority of the Board; they cannot take advantage of their own failure to perform their duty.

The defendant's right to have paid them the money loaned, with interest, is not challenged by the bill but is conceded therein.

The complainants urge that the conversion by the defendants of the stock pledged as collateral was unlawful; not its use as collateral but its conversion in the manner shown by the proofs.

The complainants further urge that the Directors could not lawfully make a contract with themselves to their own benefit without the knowledge and consent of the shareholders.

I.

The complainants are stockholders, owners of stock without notice, and who have not in any way acquiesced in the conversion of the stock in question by the defendants.

ADMIRAL ENDICOTT, 35 shares.

The Admiral purchased thirty shares from his sister, Kate B. Endicott, August 15, 1903, at $200 per share;

(page 361), Certificate 125, (page 316). She purchased these thirty shares from her brother, Judge Endicott, April 9th, 1898, (page 241), Certificate 108 (page 316). It is unnecessary to trace the history of this stock any farther back.

It will be noted that the transfer from the Judge to his sister in April, 1898, is prior to the loan in question, October, 1898, and is 18 months prior to the conversion of the collateral by the defendants, October, 1899.

These shares, therefore, are not tainted by acquiescence; that is, no notice has been shown to Kate Endicott after she became the owner in April, 1898, and nothing shown whatever to put her on inquiry; the Admiral had no notice of any character when he purchased; the Judge had parted with the shares before any question arose concerning this loan.

The Admiral purchased the other five shares from Dr. Henry, March 5th, 1904 (page 361), Certificate 140 (page 317); Henry purchased these five shares from Judge Endicott May 9th, 1900, Certificate 123 (page 317; see also page 240), so that this transfer was made by Judge Endicott to Dr. Henry, after the loan in question had been made, but there is no evidence whatever to show that Dr. Henry had any knowledge of the conversion of the collateral; on the contrary, he denies knowledge (pages 327-8). Further, it will be kept in mind that Judge Endicott denies acquiescence or assent on his part (page 238). He insists that at all times he was protesting with the defendants against their action in converting or attempting to convert the collateral stock to their own use. (Pages 234-5.)

FRED. C. ROBBINS, 25 shares.

Mr. Robbins purchased this stock in September of 1909 from Isaac Bacharach, Certificate 153 (page 320). It is claimed by the defendants that this was part of the stock of I. G. Adams, who was a party to the transaction. (But see next item.)

J. ESTEL EVANS, 30 shares.

Mr. Evans purchased this stock in September, 1909, from Isaac Bacharach, Certificate 156 (page 320).

The stock of Robbins and Evans both came from Bacharach, who at that time was the owner of 545 shares, under Certificate No. 146. (See stenographer's notes, page 316.)

Some of the stock owned by Bacharach came from parties who had no knowledge of the loan upon treasury stock as collateral, or the unlawful conversion of it by the defendants. Even if it be conceded that some of Mr. Bacharach's stock came from parties who it is alleged acquiesced in the conversion of the collateral, yet it is insisted that the burden of proof is upon the defendants to show that the stock of these two complainants, Robbins and Evans, was part of stock thus tainted. It is manifestly impossible to say that the identical shares transferred by Bacharach to these two complainants came from parties who are alleged to have acquiesced in the transaction; the stock transferred to Bacharach and by him transferred to complainants was not ear marked in any manner whatever; it is not for the complainants to show that this stock was not tainted, but the burden is upon the defendants to show the taint. There is no proof connecting the stock of Robbins and Evans with any knowledge of or acquiescence in the transaction in question.

Among the parties from whom Bacharach purchased stock were William Disston, Peter B. Reed, Hannah E. Howell and Laura Babcock. (Pages 324-5.)

Mr. Disston purchased 156 shares of stock from Dr. Marvel, Trustee, in May, June, July and August of 1897 (page 324). The stock was free from any taint of acquiescence, all having been acquitted and paid for by Mr. Disston prior to the loan in question.

In any event 30 of the shares owned by Admiral Endicott, one of the complainants, are beyond any question.

EVA DAVIS DODD, 6 shares.

Mrs. Dodd purchased these 6 shares from Mr. Charles E. Davis, February 27th, 1904, Certificate 138; he purchased from Judge Endicott, September 4th, 1897, Certificate 118 (see page 317). It is unnecessary to trace the title of this any farther back.

It thus appears that Davis purchased before the loan in question was made. Therefore, this stock is free from any taint of acquiescence. No notice was given either to Mrs. Dodd or Mr. Davis, nor has it been shown that any facts have been brought to the attention of either to put them upon inquiry.

CHARLES P. HENRY, 5 shares.

Dr. Henry purchased this stock from Judge Endicott on June 20th, 1900, Certificate 123; (page 318). This was after the loan in question was made. Dr. Henry had no knowledge of the conversion of the collateral at the time he purchased this stock (pages 327-8), and it is insisted therefore that it is free from any taint of acquiescence; it is further insisted that the proofs show that

Judge Endicott never acquiesced in the unlawful conversion of this stock.

JOSEPH W. WILSON, 50 shares.

Mr. Wilson purchased all of this stock from Philip Marvel, Trusteet, as follows:

March	25, 1898,	9 shares,	Certificate	96
February	24, 1898,	10 shares,	Certificate	97
January	3, 1898,	11 shares,	Certificate	104
March	26, 1898,	10 shares,	Certificate	105
April	14, 1898,	10 shares,	Certificate	111

(See page 318.)

The whole of Mr. Wilson's stock was issued to him and paid for prior to the loan in question; it is, therefore, free from any taint of acquiescence; no knowledge whatever of any fact to put him upon notice is brought to him prior to the liquidation of the company.

Peter B. Reed also purchased his stock, 50 shares, from Philip Marvel, Trustee, January, February, March and April, 1898 (page 324-5). This stock was also free from any taint by acquiescence, all having been acquired by Mr. Reed prior to the loan and conversion of the treasury stock in question.

Hannah E. Howell, owner of 35 shares, also acquired her stock prior to the loan in question (see page 325), as did Laura Babcock (same page). The rest of Bacharach's stock seems to have come from I. G. Adams and other members of the Adams family in small lots.

In passing, it may also be noted, that Judge Clarence L. Cole is the owner of 41 shares of stock, part of which he received March 20, 1897. This was before the loan and is free from any taint of acquiescence, although Mr. Cole is not named as one of the complainants.

II.

The one hundred and fifty shares of stock in question belonged to the company, and were part of its assets.

This was admitted in the Answer as originally filed:

> "Defendants further say * * * that the remaining 699 shares of stock issued of 1,839 shares had been by the owners of the lands first above mentioned turned back to the company for the purpose of creating a fund with which to carry on the business of said company; that said stock had been regularly issued to Marvel, Endicott and Thompson for property purchased, and was in no manner the property of the company until it was turned over to Philip Marvel as Trustee, by Marvel, Endicott and Thompson; that 699 shares of the capital stock of said company were so turned over to Philip Marvel, as Trustee, under the direction that 200 shares of said stock should be used for purchasing additional lands, and 499 shares should be used for the best interests of said company." (See Answer, page 15, line 20, etc.)

Subsequently, by order of the Court, this Answer was amended by changing the number of certain shares, but no change whatever was made in the foregoing averment. (See Order to Amend, page 33.) The defendants then filed an amended Answer in which exactly the same averment was made as to these 699 shares being the property of the company. (See Amended Answer page 40.)

Subsequently the order was made amending the bill by inserting a statement that the bill was filed on behalf

of the corporation, and additional stockholders were made parties complainant. (See Order, page 59.) To the amended bill filed an answer and cross-bill were filed, where for the first time the ownership by the company of the 499 shares, including the 150 shares in dispute, was questioned; with great ingenuity the pleader set up a dual trust to the effect that "so long as the stock remained

> "unsold it was held in trust by the said Philip I. "Marvel for the original contributors thereof." (Page 80, line 34.)

And further, "That until said stock was sold or dis-

> "posed of defendant company had no actual interest "therein, but its interests arose only after sale and "disposition thereof, when the defendant company "became entitled to so much of the proceeds of such "sale as was necessary for the grading and improve-"ment of said lands." (Page 81, line 24, etc.)

No attempt whatever was made by the defendants in their testimony to sustain this position, except by their president, Dr. Philip Marvel, and he, in attempting to prove this dual trust, became involved in such contradictions that his testimony became ludicrous; the Vice Chancellor took part in the examination of President Marvel on this point, and the result of this examination in connection with the undisputed facts in the case showing absolute control over the 499 shares of stock by the company was such that the Vice Chancellor disregarded this pretended claim.

At one time, in answering a question of the Vice Chancellor concerning this matter, Dr. Marvel said:

> "I want to say to the Court I am not trying to evade anything, but there are technicalities one has to be very careful of." (Page 481.)

And again, while being cross-examined, he commenced an answer by saying:

> "As to the technique of what took place, I can't state, etc."

On page 476, on cross-examination, he says, referring to this stock:

> "It belonged—it was put in the treasury of the company for the betterment of the company, etc."; and again, "We were holding it for the betterment of the company"; and again, "The purpose of turning that stock back was for the betterment of the company, and that was the purpose for which we used it." (Page 476.)

On page 478, he is asked:

> "Ques. There was no agreement or understanding between the Directors at that time as to whose property it would be?
>
> Ans. There was no actual agreement. That was my understanding."

On page 483, in answer to the Vice Chancellor, he says:

> "We had also figured out what we assume to be the approximate cost of the improvements and had set aside that amount of stock for that purpose, but as to figuring out what would be the ultimate use or application of any stock left over, I do not recall that there was anything said whatever." (See line 20.)

To which the Vice Chancellor remarked:

> "I think he has answered the question very fully, and as he has answered the same as he answered before, now we can make a little better progress." (See page 483.)

And immediately thereafter this final question was asked him and answer made thereto:

> "Ques. Doctor, did you ever assert any individual interest in that stock?
>
> Ans. I don't know that I did." (Page 483, line 30.)

It is quite evident that the testimony failed to meet the very ingenious attempt in the Answer and Cross-bill to destroy complainant's claim on the ground that the stock to which they were asserting an interest did not belong to the company.

It was pledged by the company for the company's debt; and Dr. Marvel, as Trustee, does not put himself in any better position by trying to show that the stock belonged to the parties who had turned the same over to him in trust, namely, to Marvel (himself), Thompson and Endicott; if it was their stock until sold, the doctor had no right to use it as collateral for the company's indebtedness. But this ingenious effort or attempt to construct a dual trust failed completely.

The stock belonged to the company, being held in trust for it; the action of the Directors of the company, including the five defendants, with respect to this stock, is in accord with the original Answer and Amended Answer, and shows clearly that it was part of the company's assets.

Dr. Marvel, one of the three to put this stock in trust to use for any and all purposes of the company, distinctly says that he never asserted any individual interest in it. (Page 483, line 30.)

Judge Thompson, one of the three parties who put this stock in trust, is asked:

"Ques. Was there any agreement entered into by you and the other owners of the land sold to the company with respect to the 499 shares of stock placed in the hands of Dr. Marvel, as Trustee, by which you or any of the others retained personally any interest or control in that stock or over it?

Ans. There was not; the stock belonged to the company.

Ques. And was it turned over to Dr. Marvel, as Trustee, for the benefit of the company, without any reservation?

Ans. It was, so far as I had any knowledge. I had no interest in it; that is sure.

Ques. Was there ever to your knowledge any claim made by any of the Directors who were vendors of the land of the company, prior to this suit, that they had, or had had from the beginning; any individual right or claim or control in and to, or over, that stock?

Ans. I never heard of either making any claim of any interest in it." (See page 589.)

Judge Endicott, one of the three who put the stock in question in the hands of the Trustee, testified with respect to this matter as follows:

"Ques. Judge Endicott, at the time the 499 shares of stock were placed in the hands of Dr. Marvel, as Trustee, by you and the other owners of the lands sold to the company, was there any reservation by you, or any of the others to your knowledge, of any individual interest in, or control over, that stock?

Ans. None whatever.

Ques. And what was the stock transferred to Dr. Marvel for?

Ans. For the benefit of the company.

Ques. Absolutely?

Ans. Yes.
Ques. And as treasury stock?
Ans. Yes."

C. J. Adams, one of the defendants, says:

"The 499 shares was for the development of the property." (Page 142.)

Dr. Youngman, one of the defendants in the course of a long answer on page 533, says, referring to the 499 shares:

"It was the remnant of the fund that had been turned back by those of us who had the land, to create a fund to develop the land." (See lines 9-10.)

The other two defendants, I. G. Adams and Louis Kuehnle, were not questioned about the purpose for which the 499 shares were put in trust.

The records of the company show that the Directors, including the defendants, recognized they treated the 499 shares of stock, including the 150 in question, as the property of the company, and that in no case did they consult the individuals who had put the stock in trust, nor did they by their action show that they recognized any individual right in the stock whatever.

On February 23, 1904, the Directors, including the defendants, authorized the issue of three shares of the stock to Mina J. Freas and three shares to Lucias I. Wright, in payment of services rendered (page 143).

On May 6, 1897, the Directors, including the defendants, passed a resolution not to offer any of the company's stock at less than par (see page 139). Mr. Bourgeois, of counsel with the defendant, interpolated a re-

mark that this referred to the 651 shares in the treasury (see page 140); there was no proof to this effect; and in fact it could not have referred to that stock. The 651 shares had never been issued and couldn't have been issued except at par, either for cash or property; there were two eminent lawyers, members of the Board, namely, Judge Endicott and Judge Thompson, and it is folly to suppose that these men would have entertained any action on the part of the company in violation of law; the resolution unquestionably referred to the 499 shares, part of which was actually sold and the proceeds used for the purposes of the company; 150 unlawfully taken by these defendants and the balance, 211 shares, turned back to the company and cancelled.

On May 19, 1898, the Directors, including the defendants, when they first attempted to borrow money, passed a resolution authorizing the pledging of double the amount of stock as collateral (see page 140). And on page 141, under date of October 5, 1898, is the resolution under which the defendants took the stock in question which they are now unlawfully retaining, together with the defendant's note thereon:

> "Resolved, that each Director borrow the sum of $1,500 for the period of one year and to receive 50 per cent. excess of the company's stock as collateral to said loan, to meet the obligation of Alvin P. Risley, contractor, the company to have the privilege of redeeming said stock in one year from date, with interest at 6 per cent. otherwise to revert to the borrower." (See line 30.)

On March 3, 1899, the minutes show the following:

> "The matter of loans made to the company under a resolution in which Dr. Youngman, Philip I. Mar-

> vel, I. G. Adams, Louis Kuehnle and C. J. Adams advanced $1,500 each, with 30 shares of the company's stock, collateral was discussed as to the redemption of the same, but no action was taken."

On August 17, 1909, Louis Kuehnle offered a resolution at a meeting when the defendants were present as follows:

> "On motion of Louis Kuehnle, seconded by Joseph Thompson, that a dividend of $30 be declared on all stock, and that it be paid on or before September 15, 1909, and as to the 75 shares in dispute, that the dividend of $30 per share be held in trust in the Atlantic Safe Deposit & Trust Co., at 3 per cent. interest, until the legality of issue of 75 shares is decided." (See page 16.)

This motion was carried, Judge Endicott opposing (see page 147).

It will appear further on in this Brief that this motion was based upon the action that had been previously taken upon what was known as the Judge Thompson Compromise Resolution, in 1904, whereby it had been agreed, Judge Endicott again opposing, that the defendants be allowed to retain one-half of the shares that they had received as collateral and turn the balance, that is 75 shares, back to the company for cancellation.

It will appear that Mr. Kuehnle and the other defendants blundered in passing this resolution in taking action contrary to their position with reference to the Thompson resolution, having been passed in 1904. So that at the next meeting this resolution of Mr. Kuehnle's was rescinded. (See page 150.)

On August 17, 1909, at the same meeting when the Kuehnle resolution was originally passed, Judge Endicott made a motion, seconded by Judge Thompson, that the directors who had loaned $1,500 be requested to return the stock issued to them as security and accept the principal with 6 per cent. interest. This motion was defeated, the five defendants voting against it.

In this connection it is to be noted that the defendants put upon record their reasons for voting against this resolution, and that none of them gave as a reason that there was any dual trust, or that the individual directors or any of them had any control over it.

Dr. Marvel states his reason as follows:

> "Dr. Marvel stated he voted no because at the time the matter came before the company it was in financial distress and the Board of Directors as a whole refused to make a company note."
>
> "Dr. Youngman voted no, and explained he wanted to consult an attorney about the legality of the original resolution before voting."
>
> "I. G. Adams voted no to protect the other stockholders and to preserve the property from sacrifice sale and the company's not redeeming its promise."
>
> "Louis Kuehnle voted no."
>
> "C. J. Adams voted no; the company had made an agreement and would not fulfill its agreement to those who came to the relief of the company."
>
> "A. B. Endicott voted yes."
>
> "Joseph Thompson voted yes."

At this same meeting further action was taken with respect to the stock in question and the dispute that had arisen and the reasons for the action of the defendants were put upon the record.

Mr. Thompson moved that the question of the legality of the stock issued to the five directors as collateral security be presented to Charles L. Corbin for his opinion. The motion was lost by the following vote: Mr. Endicott voted yes; Mr. Thompson voted yes; Mr. I. G. Adams voted no; Mr. Kuehnle voted no; Mr. C. J. Adams voted no; Dr. Youngman voted no; Dr. Marvel voted no. It will be noted that the five defendants voted against the above resolution as well as against the following.

Dr. Marvel explained his vote on the above resolution on the ground he was in favor of submitting the question to the Court, whose decision should be final.

Mr. Thompson moved that Judge Endicott bring suit against the company to determine the legality of the issue of the 75 shares in dispute.

Judge Endicott then stated that he was willing to bring the suit if the company desired it, and as no one had seconded Mr. Thompson's motion, he would reluctantly second the motion himself.

"Judge Thompson called for the 'yeas' and 'nays' on his motion."

"Dr. Youngman moved to adjourn, seconded by C. J. Adams, to meet at the call of the chair. Before putting the motion to adjourn Dr. Marvel asked to make a statement before his putting his motion. Dr. Youngman pressed his motion to adjourn.

This motion was lost by a tie vote, as follows: I. G. Adams, yes; Thompson, no; Marvel, no; Endicott, no; Youngman, yes; C. J. Adams, yes.

Mr. Kuehnle doesn't seem to be recorded.

Judge Endicott then called for Mr. Thompson's motion.

"Dr. Marvel explained his vote by stating that since a question had been raised by two members of the Board as to the legality of the action taken by the Board at its meeting on October 15, 1898, he would vote no to Judge Thompson's motion to have the question taken by Judge Endicott to Court, not because he did not favor the proceeding, but because two members of the Board having retired from the meeting, the question was too important to be passed without a record of their votes."

"The vote on this motion was lost by the following vote: Judge Endicott, yes; Thompson, yes; Youngman, no; C. J. Adams, no; Marvel, no."

Neither Mr. Kuehnle nor I. G. Adams are recorded as voting, and are probably the two referred to by the President, who had dodged the question by leaving. (See pages 148 and 149, and on 149 it will be noted that Judges Endicott and Thompson stayed with the Secretary that night until the minutes were written up, which accounts for the full minute of these proceedings.)

It nowhere appears that at these meetings when the matters were being brought to a crisis that any claim was made on the part of any of these defendants of a dual trust which was so ingeniously presented in the amended Answer and Cross-bill.

Again on August 31, 1909, the Directors of the company, including these defendants, took further action

with reference to a portion of the 499 shares, by which 211 of the shares were turned back to the company and cancelled; according to the pretended dual trust, the company had no right to these shares, but they should have been turned back to Messrs. Marvel, Endicott and Thompson.

The action of the Board at that time is as follows:

"Resolution offered by Judge Thompson at the meeting of August 31, 1909:

"Whereas, in the organization of this company there was issued to Dr. Marvel, as Trustee, 699 shares of stock, of which 211 shares were never sold by the company; therefore, be it resolved that the said 211 shares held by him as Trustee aforesaid be returned and cancelled." "On motion of Louis Kuehnle, the above minutes were unanimously approved." (See page 439.)

At the same meeting, when a resolution was offered for the distribution of the assets and profits of the company among the shareholders, Judge Endicott offered the following amendment to the motion to distribute, which was seconded by Judge Thompson, as follows:

"Provided that the dividends on one hundred and fifty shares of the stock issued by this company and now in dispute, be placed in the hands of the Atlantic Safe Deposit and Trust Company, to remain in escrow until such times as the validity of such stock shall be determined at law. If such cash be deposited, the same to bear interest at the rate of 3 per cent."

Vote on amendment: I. G. Adams, no; Judge Endicott, yes; Judge Thompson, yes; Louis Kuehnle, no; Dr. Youngman, no; C. J. Adams, no; Dr. Marvel, No.

On the original resolution to make distribution, not excluding therefrom the shares of stock in question,

Judge Endicott and Judge Thompson each voted no; the five defendants voted yes. (See page 151.)

It is evident that the shares in question, namely the 150 shares, part of the 499 shares, which with the 200 shares for the purchase of the land, had been put in the name of Dr. Marvel, as Trustee, belonged to the company and were part of its assets.

III.

The value of the one hundred and fifty shares in question was greatly in excess of the loans made by the defendants to the company.

Vice Chancellor Leaming, in his opinion, page 626, says:

> "The evidence is in harmony to the effect that the par value of the stock issued in payment for the land, represented the real value of the land, in excess of the mortgage, at that time."

The defendants, in their Answer, page 11, admit that the lands at the time of their purchase were fully worth the sum of $25,000, over and above the mortgage of $65,100 against the same.

On May 6, 1897, the Directors, including the defendants, passed a resolution not to offer any of the company's stock at less than par. (See page 139, referring to the trust shares.)

In January, February, March and April of 1898, the company sold five blocks of stock, amounting to fifty shares in all, at a discount of $5.00 per share. (See page 130, part of trust shares.)

It will be noted that this is at or about the same time when the loan was originally made by the defendants to the company.

At a meeting of the Directors, on May 7, 1900, the following appears on the Minutes:

> "Mr. Adams reported that there had been some negotiations touching the sale of the property of the company; on motion, the property was authorized to be sold for $563,000. This is to include the property now owned by the company, providing the same be closed within ten days from date of the motion."
>
> (Note:—The Minute Book, with the loose minutes, was offered in evidence, but the above does not seem to be printed.)

At a meeting of the Directors, under date of March 3, 1908, the value of the company's stock was fixed at $400 a share. (See page 145.)

Isaac Bacharach, who disposed of the property for the company, testifies, on page 352, that the property of the company from the time of its organization down to the time of its liquidation increased in value.

Judge Thompson testified that in 1909 he bought some of the stock at $250 a share. (See page 586.)

Judge Thompson testifies (page 265) that the lands at all times were appreciating in value. That as far back as 1899 the stock was selling at $100 a share.

Judge Endicott testified that in 1903 he purchased 30 shares and paid $200 a share for it. (See page 233.) And in 1904 he purchased five shares and paid $200 a share for it; that as far back as September of 1899 (which was about the time it is claimed the option to

redeem on the part of the company expired) he purchased 10 shares at $150 a share. (See page 233.)

Admiral Endicott testifies that in 1903 he bought 30 shares of stock at $200 a share, and in 1904 he purchased 5 shares more at the same price. (See page 361.)

Admiral Endicott also testifies to a conversation that he had with Dr. Marvel, the president, in October of 1906, of which he made memorandum on the margin of a newspaper, which he tore off and had preserved, and produced; Dr. Marvel told him that he considered the property worth $500,000 (see page 369); and advised the Admiral to buy all the stock that he could at $200 a share or less. (See page 370.) This conversation is not denied by the doctor.

In a letter to the Admiral from his sister, which was called for by counsel for the defendants and offered by them and read into the record (pages 370-371), she informs the Admiral that she had been advised that the stock was valued at that time at $350 each. That was in February of 1904.

In March of 1900, Dr. Henry, one of the complainants, purchased 10 shares at a special price named to him of $120 per share. (See page 328.)

Joseph W. Wilson, one of the complainants, acquired his stock from the company (being part of the 499 shares in trust) from January to April of 1898, at $95 a share. This was at the time the defendants first made their loan to the company. Mr. I. G. Adams, one of the defendants, told Mr. Wilson at the time he acquired this stock that it was very cheap, a good investment. (See page 160.)

There is no evidence of any stock being sold for less than the price above quoted.

In winding up the business and affairs of the company eight cash dividends have been declared and paid upon the outstanding shares of stock in the company, including 150 shares in question; these dividends amount in all to $319 per share. (See testimony of Luicius I. Wright, page 569.) It further appears by the same testimony (page 572) that the company still has undivided assets.

IV.

No notice was ever given by the defendants of their intention to convert the stock in question, nor has there been any laches on the part of the complainants.

No notices nor demands of any kind were served upon the company by the defendants, either to its Board of Directors or to the stockholders; no financial reports showing this transaction were sent out to the stockholders prior to the time for liquidation; no demands or notices of any character were put upon the minutes of the company by the defendants. The situation is that they have simply kept the stock which was given them as collateral and claim ownership by reason of the failure to redeem, yet they never made any demand upon the company or upon the shareholders to redeem, or to pay them back the moneys advanced by them. President Marvel admits this (page 485).

Admiral Endicott, one of the complainants, says that he did not learn of the loans on the company's stock as collateral until the spring or summer of 1909; that before

that time he had no knowledge whatever of the transaction; he had no knowledge that the defendants claimed to be the absolute owners of the stock by reason of the failure of the company to redeem; he had never received any notice of any character from the company with reference to this transaction; he had never received any financial statements or reports prior to the spring of 1909. (See testimony, page 361.)

This was about the time that the company commenced distributing the proceeds of the sales of its land and the profits (see page 569).

After learning of the transaction and the action of the defendants, Admiral Endicott consulted with other stockholders, laid the matter before counsel, and instituted this suit (page 361).

Charles P. Henry, one of the complainants, says that he never received from the company, nor any officer of the company, any statement of the affairs of the company, and that the first information he had of this transaction was in the fall of 1909, and at that time he requested Judge Endicott to enforce recovery by suit. (See pages 327 and 328.)

Joseph W. Wilson, one of the complainants, says that he never received any notice, nor was any information sent him that a loan had been made by the Directors on the company's stock as collateral, and first learned of the transaction from Judge Endicott, at or about the time of liquidation (see page 159).

It was asserted in the Answer that Admiral Endicott's stock really belonged to Judge Endicott, but this is denied by the Judge (page 232), and also by Admiral Endicott, who says that the company had his address, that his stock

certificates were sent direct to him by the company (page 363). The Admiral received notice of the annual meetings in 1908 and 1910, but none earlier. (See pages 375-377).

Nor did Judge Endicott act as attorney for his brother, the Admiral. (See page 233.)

Judge Endicott learned of this transaction shortly after it had been consumated, and thereafter repeatedly insisted on the stocks pledged being redeemed (see page 243). He says that the company, within one year from the time the loan had been made, was in position to redeem that stock, but instead of doing so that they spent their money, over his protest, in grading property. (See page 235.)

With reference to the protest made by Judge Endicott he is corroborated by Mr. C. J. Adams, Secretary of the company and one of the defendants.

The minute of March 3, 1908 shows:

> "The matter of loan made to the company under resolution in which C. J. Adams, I. G. Adams, M. D. Youngman, Philip Marvel and Louis Kuehnle advanced $1,500 each with 30 shares of the company's stock as collateral, was discussed as to the redemption of the same and no action was taken." (See page 145.)

Mr. Adams, Secretary of the company and one of the defendants was then asked:

> "Ques. That matter was brought up quite a number of times wasn't it, Mr. Adams?
>
> Ans. Frequently under discussion, the matter of loans.
>
> Ques. From the time the loans were made up to the time the company was ready to divide up its property?

Ans. More particularly since 1908.

Ques. But there were frequently references to it prior to that time in the Board?

Ans. There may have been references." (Page 145.)

This corroborates Judge Endicott, who says that it was at least as early as 1902 or two years before the so-called Thompson Resolution, that he commenced demanding the redemption of this stock by the Directors of the company, and which these defendants, a quorum, refused to do. (See pages 236, 7, 8 and 9.)

Judge Endicott says that there was usually a balance of a few thousand dollars in the treasury, and that the company could have sold lands or could have pledged its credit and redeemed this stock at any time in its history (page 254). He also says that the condition of the minutes and the books was such that it was impossible by reference to ascertain the condition of the affairs of the company; that it was a matter of frequent discussion that the minutes were years behind. (See page 262.)

Judge Endicott says, on page 590, that at the time the 211 shares were turned back to the company there was no suggestion whatever that they were returned for the purpose of settling any differences. He says that he first learned that the defendants proposed to keep this stock which they had taken as collateral on August 17, 1909. (See bottom of page 262.)

Judge Endicott, in answer to the Vice Chancellor's question, as to whether the occasions on which he brought up the subject matter of the redemption of this stock, was prior to the time that Judge Thompson introduced his resolution, says:

"Ans. Yes; his resolution I think was the outgrowth of my persistence.

Ques. He wanted to compromise the matter?

Ans. He did; I didn't.

The Vice Chancellor:

Ques. How early a date, Judge, could you confidently state you made any objection to these transactions before meetings of the Board?

Ans. I should say at least two years before 1904.

The Vice Chancellor:

Ques. Approximately 1902?

Ans. Yes.

Ques. What fixes 1904 in your mind?

Ans. Well, that date is fixed in my mind with the result of some conversation I had with Judge Thompson and some memorandum of his shown me."

Judge Thompson corroborates Judge Endicott to the effect that the latter had frequently brought up the matter of the redemption of this collateral at the Board meetings. This resulted in Judge Thompson making a motion or offering a resolution at a meeting of the Directors on February 23, 1904, which is known as the Thompson or the Compromise Resolution. (See page 269.)

The matter of this resolution is of considerable importance in the case, being the only disputed fact that is in any way material; its materiality rests upon the date when it was presented to the Board, and has bearing upon the question of laches.

It is insisted that Judge Endicott or Judge Thompson should have notified the stockholders of the wrongful acts of these defendants, or have taken steps to protect

their interests. But it appears from the testimony that as a result of Judge Endicott's persistent demand that the money realized from the sale of property should be devoted to the payment of these loans and not used for grading. Judge Thompson endeavored to compromise the matter by his resolution, C4, found in the Book, on page 216, and which is as follows:

EXHIBIT C4.

"Whereas, on or about October 15th, eighteen hundred and ninety-eight, the St. Leonards Land Company was embarrassed with debts and threatened with suit for bill due to Alvin P. Risley, for grading property, and was without funds or credit, and

"Whereas, it was necessary that money be raised at once, and M. D. Youngman, Philip Marvel, C. J. Adams, I. G. Adams and Louis Kuehnle each agreed to furnish fifteen hundred dollars, taking thirty shares of stock of the company as collateral security, and

"Whereas, the said parties each furnished the company the said sum of fifteen hundred dollars, and subsequently, to wit, October 15, 1898, at a meeting of the Board of Directors, the said issue of stock as above referred to was ratified by the following resolution;

"Resolved, that each Director borrow the sum of fifteen hundred dollars for the period of one year and to receive fifty per cent. excess of the corporation stock as collateral to said loan to meet the obligations of Alvin P. Risley, contractor, the company to have the privilege of redeeming the said stock in one year from date with interest at six per cent., otherwise to revert to the said borrowers, and

"Whereas, said company did not redeem said stock within one year and it has subsequently come to the knowledge of the said persons above mentioned that the company could not sell its stock in such manner less than par value, and the said parties having paid only fifty per cent. of par value for said stock, hereby return to the company fifteen shares each of the stock so received by them as aforesaid, in order that the price that they paid for the same shall be one hundred dollars per share and not fifty dollars per share, as above stated;

"Therefore, be it resolved that said stock so returned be accepted by the company and cancelled, and in lieu thereof new certificates be issued to each of the said parties for fifteen shares instead of thirty shares as originally issued."

Judge Endicott and Judge Thompson both say that this resolution was adopted at that meeting February 4, 1904. This is disputed by the defendants; no record is made of this resolution in the minutes of that meeting, but by reference to the Minute Book it will be seen that the minutes of that meeting are not complete; they are the only minutes written out which do not recite a motion to adjourn, and are the only minutes which have been written up which are not signed by the secretary; the Book shows this minute to be incomplete.

Resting upon the assurance that this compromise resolution had been adopted (although Judge Endicott voted against it, the other six voting for it, Judge Endicott consistently taking the position from beginning to end that the company should repay the loans with interest and that the collateral pledged should be turned back), it was not until liquidation and distribution of assets and profits that the question came up again.

When the Kuehnle resolution of August 17, 1909, (page 146) was adopted, by which the dividend on the 75 shares in dispute was to be held in trust by the Atlantic Safe Deposit & Trust Co., Judge Endicott, who voted against this resolution (page 147), says in answer to a question of the Vice Chancellor that he was under the impression that the defendants had conformed to that resolution of Thompson and had returned the half of their stock and kept the other half, and that it was the dividend on the stock retained that was referred to; that both he and Judge Thompson were under this impression, and that he was the one to tell Judge Thompson that defendants had not complied with his resolution. (See page 260.)

Judge Thompson also says that he knew that the resolution had been passed and therefore no action was required by him until he learned of defendants' claim at the time of the liquidation. (Page 277.)

On cross-examination (page 261) he says that the reason for believing the shares had been returned was because it had been resolved at a meeting of the Directors that it should be done. He says that he supposed that this Kuehnle resolution referred to the 75 shares retained by virtue of the Thompson resolution, passed in 1904, and that the other 75 shares had been returned. (See page 250.)

Judge Thompson fixes the date of adoption of this resolution; he says that the matter was brought up at the meeting of February 23, 1904, and adopted, but not reduced to writing that night; that he was requested to put the same in writing and hand it to the secretary; he says that it was necessary to go to the secretary's office to get

some data for reference as to the original resolution, etc., and that while there he asked the young woman in charge to give him a list of the shareholders of the company as of that date, which she did, and put the date on the list. Judge Thompson says that he kept a carbon of the resolution which he had prepared in an envelope in his office, and in that envelope he had also the dated copy of this list of shareholders; this envelope with its endorsement, a carbon copy of the resolution and a list of the shareholders was produced. (Pages 272-273.)

The defendants contend that the resolution was adopted; the Secretary claims that it was not handed to him until a much later date.

But Judge Thompson and Judge Endicott, as to the time of the passage of this resolution, are corroborated by the resolution itself and Judge Smathers and Mr. Littlefield. The resolution found in the Secretary's possession has a backing on it with the name of the firm printed thereon.

Judge Smathers entered the office of Thompson & Cole in 1903. He says that the backing on the resolution found in the Secretary's possession was the kind that was used up to 1906, and that after 1906 a raised die imprint was used on their backing. His recollection is strengthened by a letter received in reply to one which he wrote for the firm inquiring about the cost of a raised die. (See testimony of Judge Smathers, pages 297 and 298.)

Andrew K. Littlefield, the Court stenographer, testifies that he entered the employ of Thompson & Cole in September, 1907, as stenographer, and at that time and thereafter they used a backing with a raised or embossed imprint. (See page 303.)

The effort on the part of the defendants to fix the date of the receipt of this resolution by the Secretary some time in 1908 necessarily fails. The circumstances connected with the introduction and passage of this resolution are given by Judge Endicott. (Commencing bottom of page 235 and continuing to page 239.)

Judge Thompson testifies as to this resolution commencing on the bottom of page 269 and continuing to page 276, and further on cross-examination on page 286, etc.

The defendants sought to avoid liability by claiming that Directors Endicott and Thompson had knowledge of the transaction. *Marr vs. Marr, 73 N. J. E., page 643* is relied upon.

That case distinctly lays down the doctrine that when a Director's interests are antagonistic to those of the stockholders, the fullest notice to those he represents must be given of action on his part against the company.

Vice Chancellor Leaming in his opinion states this to be the law as laid down in that case: He says, "an absolutely essential prerequisite would have been such notice to the corporation as the circumstances demanded to fully and adequately disclose the fact of hostile proceedings against the corporation by those with whom the management and guardianship of the business interests of the corporation were for the time being primarily intrusted. This I understand to be the underlying principle upon which our Court of Appeals based its decision in *Marr vs. Marr, 73 N. J. E., (3 Buch.) 643.* (See opinion, printed book, page 624.)

It will be noted that at the meeting at which the arbitrary date of forfeiture was fixed no one was present but the five defendants. (Page 141.)

An examination of the testimony shows that these two directors, Thompson and Endicott, did endeavor as a matter of fact to protect the interests of the shareholders in this regard, and were under the impression they had succeeded.

A brief review of the testimony concerning this resolution will show that the position of the defendants in this regard is without weight.

A fuller review of the testimony concerning the adoption of the Thompson resolution.

Judge Endicott claims that from time to time he called the attention of the Directors to this stock insisting that it should be returned. In this he is corroborated by Judge Thompson, who says that he remembers on several occasions Judge Endicott bringing the matter up in the presence of the Board of Directors. It is further claimed by Thompson and Endicott that several years prior to the time when the company was in process of liquidation that at a meeting of the Board the question was brought up which resulted in a resolution being passed that provided for the return of this stock, the cancellation of the same and issuing in lieu thereof to each of the five Directors, one-half of the amount of their original holdings, which would make them purchasers of the stock at par value. This is denied by all of the Directors other than Endicott and Thompson. Thompson produced the carbon copy of a resolution which he says he prepared four or five days after the meeting of February 23rd, 1904, that the substance of that resolution was considered to be before the

meeting and was passed, that he was asked to prepare the resolution but stated it would take some time and some care to do so and that he would do it with his stenographer at his leisure and hand it to the secretary. Thompson fixes the date of the meeting at which the resolution was passed by a list of the stockholders furnished him on February 26th, 1904, and he says that he went to Miss Freas, who had been in the office of the Adams, was familiar with the company's business and that he asked her for data for the purpose of the preparation of the resolution and that he asked her for a list of stockholders, that they were furnished on that date and that it was four or five days after the meeting when he had this information and prepared the resolution. List of Directors, prepared by Miss Freas, bears date February 26th, 1904, and is in her handwriting. He further states that the resolution was handed to C. J. Adams, the Secretary, and that after that the matter was dismissed from his mind. Judge Endicott states substantially the same thing, being satisfied that the stock had been returned as provided for in the resolution; he knew nothing to the contrary until about March, 1908. Thompson further states that when he found there was some dispute about the resolution he went to the office of the Secretary for the purpose of examining the minutes of the company to ascertain if the original resolution could be found; that Mr. Adams was not in and that one of his clerks, Mr. Wright, who was the bookkeeper for this company, stated the minutes were not written up in the book and produced the loose leaves or memorandum of the minutes and then stated that he did not feel at liberty to permit Thompson to see them as Mr. Adams was very particular about them and that he should ask him personally for

them; that Thompson afterwards saw the Secretary personally and demanded the minutes, that after some hesitation Mr. Adams produced the minutes but would not permit him to have them in his hands, but at Thompson's request, went through the minutes and Thompson found the original copy of the resolution, C4. He then asked Adams the date of the meeting and Adams refused to tell him or show him the minutes, but closed up the papers; that at the next meeting of the company, which was held in August, 1909, Adams produced this original resolution which he had previously denied to Thompson that he had, until he, Thompson, had discovered it in the loose leaf memorandums of the minutes, and asked the several Directors present whether they had ever seen the resolution before or knew anything about it; the five Directors disclaimed any knowledge of it. They each had $10,000 of stock at stake. At the meeting known as the "stormy meeting", held in August, 1909, Thompson demanded of the Secretary the production of the minutes. There was then under discussion the passage of this resolution. He demanded these minutes in order that he might sustain his position. The controversy between Adams and Thompson evidently became acute from Adams' persistent refusal to produce the minutes and upon Adams' making the statement that he did not know where the minutes were, Thompson called him a liar and said that they were in the safe which was in the room and to which he pointed and stated that if Adams would open the safe he would show him where these minutes were. Adams still refusing to produce the minutes, Thompson called upon Dr. Marvel, the President of the company, and demanded of him as President that he require the Secretary to produce the minutes. This Dr. Marvel re-

fused to do. There were present at that meeting all five of the defendant Directors; none of them made any effort to see that the minutes were produced, which might have settled for all time this controversy. Thompson undoubtedly was satisfied and believed that the production of the minutes would vindicate his position and disclose the fact that this important resolution had been passed, as insisted upon by him. Unquestionably the determined resistance on the part of the Secretary to produce the minutes was due to the fact that the production of the minutes at that vital moment would have proved Thompson's contention.

It is in evidence that the minutes were not written up until some years after the organization of the company and then they were only written up to and including the meeting of February twenty-third, A. D. nineteen hundred and four. It is the testimony of C. J. Adams that these minutes were written up after each meeting of the Board by a Miss Kirkbride (now deceased), who was in his office at that time. An examination of the minutes contradict such a statement. It clearly appears that they were written covering this period from its organization for six years with the same kind of pen and the same ink, together with the same uniform hand, which would be quite impossible if they were entered at different times. Miss Freas testifies that the last two minutes in the book are in the hand writing of Mr. Wright. (Page 538.) This undoubtedly is true, that it is not the hand writing of Miss Kirkbride and presumably it is the hand writing of Mr. Wright, who entered such data as was furnished to him by the secretary. The significance is this, that sometime after Miss Kirk-

bride had left Mr. Adams' office, two minutes were entered and in the hand writing of Mr. Wright, one a stockholder's meeting, followed on the same day by a directors' meeting. This was February twenty-third, A. D. nineteen hundred and four, the meeting at which Thompson says his resolution was passed. An examination of that particular minute is important. It discloses that one-half of the entry is made in ink entirely different in color from the latter half of the minute. It further discloses that on at least two lines there have been erasures made, showing at least some correction or change with respect to those who were present. The minutes were never completed. They do not disclose any motion to adjourn, neither are they signed by C. J. Adams as secretary. An examination of all the minutes as entered in the book show a motion to adjourn except this one all important meeting. All of the minutes do not show that they have been signed by C. J. Adams, but they show that they were complete as to what took place at the several meetings, and then a motion to adjourn. They produce no original memorandum of this meeting and none can be found in their loose leaf minutes, yet other loose leaf minutes appear with respect to the several meetings as entered in the book. How is it that the original notes of this meeting are missing and the minutes incomplete, as before stated, as recorded in the minute book? If this resolution was offered and passed at that meeting the minutes would of necessity be incomplete unless this resolution appeared as a part of the minutes. At least something must have been done that was not fully recorded, otherwise the motion to adjourn would have appeared at the close as in every other case throughout the entire record.

Thompson, in his testimony, says at this particular meeting there was not a full Board, and that he is quite positive that neither Mr. Kuehnle or Dr. Youngman were present. An examination of the minutes shows that Kuehnle was not present but that Dr. Youngman is recorded as present. It does, however, appear somewhere in the testimony that it was the custom frequently to mark Directors present by consent in order to facilitate the transaction of business by making a quorum. In fact the last meeting ever held by this company and after the first adjournment of this case, the minute shows that Mr. Thompson was marked present by consent, so that Dr. Youngman's name appearing there as being present carries with it but little significance.

At the "stormy meeting" Dr. Marvel says in effect that C. J. Adams said that the minutes were in the safe and the safe unlocked, and that he did not oblige him to produce the minutes because of the language used by Mr. Thompson. There must have been something to provoke the language referred to out of the usual. Undoubtedly it was this. That the repeated call for the minutes and the demand upon Mr. Adams, which he refused to meet, with the statement as made by Thompson that Adams denied knowledge of where the minutes were, provoked the lie to be passed out. Before that Dr. Marvel, the president of the company, knew that the demand was made and did not come to Mr. Thompson's rescue, but attempted to excuse his failure of duty by stating that because of the language used he would leave it to Mr. Adams to determine whether he would perform his duty as secretary or not. In respect to what occurred at this meeting Dr. Youngman, one of the defendants in this case and a witness in his own be-

half, stated on direct and on cross-examination that what provoked the lie to be passed was the demand made by Thompson on Adams for the production of the minutes, and Adams replying that he did not know where they were. This is in flat contradiction of Dr. Marvel's version of it, but corroborates the statement made by Thompson. This demand was made, as stated by Youngman, because of the controversy then over this resolution, as to whether it had been passed or not, and that Thompson had demanded the production of the minutes in order that he could show that his contention was right. (Pages 561-2.) (See F. C. Leaming's examination on this point, page 563.)

These were undoubtedly the real facts and what actually transpired at the time. There was a contention as to whether this resolution had been presented, Endicott and Thompson on one side contending that it had and the five interested Directors on the other denying it. The production of the minutes was demanded by Thompson in order that his, Thompson's, contention might be proven. The minutes were refused although they were in the very room where the meeting was held. There must have been some purpose in withholding these minutes, and now at this late day when the minutes were produced of that particular meeting they are shown to be incomplete as recorded in the book and the last minute ever recorded, although the company is still in existence, six years later, and the original data from which the incompleted minute must have been made up, is lost. What has been omitted from this particular minute of February 23d, 1904? That there was something is evident. Was it not the resolution drawn by Thompson? And why did the Secretary fail to record

this resolution as a part of that minute? And again let me call attention to the fact that the original memorandum made by the Secretary of this meeting is lost. Yet this is one of the most important meetings the Board of Directors ever held. The original memorandums of other meetings are not missing.

The resolution in question was found in the custody of the Secretary, in the minute book or along with the loose minutes and memorandums relating to the minutes and transactions of the company. Why was it there if it be true, as Mr. Adams testifies, that he found it on his desk one morning in going to the office, after March 3, 1908. (See page 225.) If it had not been passed by the Directors; if it had no connection with the transactions of the company as he and the other defendants claim, why did he preserve it, and why put it among the papers of the company, where it was found by Judge Thompson when the dispute concerning its passage was raised?

Attention is called to the fact that the word October in the original typewritten resolution has been crossed out and the word June written over it, and 15 has been inserted in the place where there was a blank. (See page 215.) Judge Thompson testifies that these alterations were made after the paper left his office and in the hand-writing of Mr. C. J. Adams, the Secretary. (See page 271.)

Again a query is raised—why was this change made; October was the date of the resolution in question, and the notes seem to have been given in June, pursuant to some claimed resolution or action on the part of the Directors, which is not recorded.

As showing how little credit can be given to C. J. Adams' recollection as to the passage of this resolution or his possession of it, reference is made to the fact that when Judge Thompson went to the office and asked to see the minutes, Mr. Adams denied that any such paper was there, but in turning over the loose memorandum Judge Thompson saw it, and instantly seized it, declaring, "That is the paper I want"; he then asked Mr. Adams to show him the date of the minute, which he declined to do, and closed the books and papers and would not let him see anything further. (See page 274.)

Again, why did the defendants refuse to produce the Minute Book when it was demanded in the Directors' meeting, and when Judge Thompson claimed that it would show the adoption of this resolution? It appears by the book itself that in other respects the minutes had been doctored or changed.

This fact cannot be disputed; that the backing and the original resolution as produced by Adams, which he claimed he found on his desk sometime in August, nineteen hundred and eight, was a backing used in the office of Thompson & Cole up until about nineteen hundred and five or nineteen hundred and six, but not after that date; that at that time they changed the stationery of the office from the flat printing to the embossed or raised type and from that time on discarded entirely the use of the flat printing that had been used prior to that time. The resolution could not have been prepared in nineteen hundred and eight and that stationery used. This is testified to by Mr. Littlefield, who came as a stenographer in the office of Thompson & Cole September, nineteen hundred and seven, and he found them using the embossed stationery at that time. Mr. Smathers also testifies that

he was there and that the stationery was changed, and that after that date the old flat printing, such as was on the backer to the original resolution, was entirely discarded. All of this proves conclusively and without any contradiction that the resolution must have been dictated prior to nineteen hundred and six at least.

There is nothing in the case to show acquiescence or laches on the part of either Judge Endicott or Judge Thompson or such knowledge on their part prior to the date of liquidation which put upon them the duty of advising the complainants. On the contrary, the evidence is clear and satisfactory that both Judge Thompson and Judge Endicott had a right to believe that the matter in dispute had been satisfactorily adjusted in 1904.

Even if this matter appear to be doubtful, or even if these two directors failed to notify the shareholders, yet it is insisted that this doesn't foreclose the complainants from their right of action, and that as soon as the matter is brought to their attention they proceeded with all diligence.

V.

As to the force and effect of the Act commonly known as the "Promoters' Liability Act."

I.

It is claimed by the defendants that this act precludes recovery by the complainants; this contention is not well founded.

The act in question was approved April 8, 1903, and is known as Chapter 182 of the Laws of that year, page 362; it was repealed without qualification on the 17th

day of June, 1907, by Chapter 250 of the Laws of that year, page 631.

The purport of that act is that an action must be brought on behalf of a corporation to recover any bonus, profit or reward, or the value thereof, &c., within four years from and after the making or receipt of the same by any director, officer, &c., where disclosure has not been made to the corporation and its approval obtained.

The Promoters' Liability Act is not applicable to the present case; the situation is vastly different from that contemplated by the act.

Complainants' bill is not a suit to recover the bonus, profit or reward, or the value thereof, obtained by the defendants, but is a bill filed to compel the defendants to put back into the treasury of the company the shares of stock unlawfully converted by them to their own use.

It is not a bill for accounting in the sense used in the act in question in order to determine the amount of bonus, profit or reward, &c., in order that a decree might be made for the amount thus obtained; in addition to the return of the stock the defendants are asked to pay into the treasury of the company the amount of dividends they have received on the stock upon liquidation of the company long after the act in question was repealed. (See prayer to Amended Bill, page 69, sec. P11, page 64.)

The language of the act is:

> "Shall be liable to such corporation for the amount "or value of such bonus, profit or reward for and "during the period of four years from and after the "making or receipt of the same."

Can it be said that the defendants have received any "bonus, profit or reward," in the sense of the statute, by unlawfully converting to their own use, and without sale, collateral belonging to the company?

Further, is a breach of trust, the commission of an unlawful act, the illegal appropriation of a pledge "a transaction for or with such corporation" within the meaning of the Act? It may be admitted that the borrowing of the money, and taking the stock in question, as collateral security, was a transaction for or with the corporation, but this certainly cannot be so declared with respect to an unlawful conversion of the stock—a conversion without due authority of law, and without any of the forms of law. It is the conversion of the stock to their own use, and not the taking of it as collateral, that is the charge in the Bill.

Again, this is a case where not only a majority of the Board, but a majority of a quorum of the Board are acting in collusion to defraud the corporation: Is not the Act in question necessarily restricted to the conduct or illegal operations of a Director or Promoter, and not to the act or conduct of the official organization, to the prejudice of the stockholders?

In *Vineland Grapejuice Company vs. Chandler, 80 N. J. Equity, 437 and 439,* it was claimed that the Directors of the company had secretly and fraudulently issued to themselves nine hundred shares of the treasury stock of the corporation for two per cent. of the par value of the stock, and that no further payment has at any time since been made upon it.

It was claimed that the suit in that case was barred by reasons of the act in question. This court, speaking

through the Chief Justice, said "We doubt the applicability of the statute (which was repealed in 1907), to "such a state of facts as that disclosed by the pleadings "and proofs in this case."

The situation in that case was very similar to the one now presented to the Court, namely, a wrongful and fraudulent conversion or taking of the assets of the company by the Directors.

II.

Assuming that the act is applicable to the present case, when does the statutory period of four years commence to run is the all important inquiry and subject of investigation?

Certainly not from the time when the stock was first pledged as collateral in June of 1898, nor in October of that year when the resolution under consideration was passed; no exception has been taken to the use of the treasury stock in question as collateral for loans made to the company; the Bill is based upon the unlawful conversion of the stock so pledged as collateral; when did this conversion take place?

The shares of stock in question have never been converted by the defendants to their own use and made absolutely their own property. It is admitted in the case that no sale of the collateral or pledge was ever made and that the same stands on the books of the company and in the possession of the defendants to-day as it did in October of 1898.

It is conceded that the stock was taken by the defendants as collateral for loans made by them to the company;

the notes offered in evidence are collateral notes accompanied by the stock (page 603); the stub of the Certificate Book shows that these shares of stock were issued as collateral for the loans made to the company (see letter of Mr. Bourgeois at end of this Brief). The certificates themselves are not produced by the defendants; no surrender of the collateral Certificates was ever made, no issue of Certificates in the place of them to the defendants in their own right was ever made.

Mr. Kuehnle admits that he holds to-day his note and his stock as he has ever held it since October of 1898 (page 584); Dr. Youngman's note and Certificate were lost in the office of C. J. Adams where so many of the minutes of the transactions of the company were lost; a duplicate Certificate for the shares was issued and the original note and Certificate turned up after the suit was commenced; to be sure Dr. Youngman says they were in the possession of the proper officer of the company, but not with him as an officer of the company but with him as the agent for Dr. Youngman. It is not recalled that any of the other defendants testified as to their notes or Certificates.

But of still greater significance is the testimony of Dr. Youngman as given on cross-examination, who says that up to 1907 or 1908 the company could have redeemed the stock in his hands upon payment of the $1,500 with interest (pages 559-560). This doubtless was the attitude of the other Directors. In any event there is nothing on the records of the company, nor in the testimony of the defendants showing that at any specific time the stock in question was converted to their own use prior to the liquidation of the company, which was after the statute in question had been repealed. The minutes of the meet-

ings at or about this time unmistakably show that the defendants had not at that time determined to convert to their own use even one-half of the shares of stock pledged as collateral; (see Kuhnle Resolution directing the deposit of the dividends on one-half of the shares in dispute with a Trust Company, &c., (page 146).

It was not until the repeal of the Kuehnle resolution, August 31, 1909, that the Directors determined to convert the whole of the stock in question to their own use; this must be considered as the overt act, so to speak, from which the statute would begin to run. (Page 150.)

The only thing in the case which indicates unmistakably any intention or act on the part of the defendants to appropriate the stock pledged as collateral to their own use and to exercise over it acts of ownership was when the company went into liquidation in 1909 and commenced dividing its assets among its members by the several dividends declared; at this time the defendants did appropriate to their own use the dividends on the stock which had been pledged and was still held by them as collateral security for their loans; prior to this time they had exercised none of the acts of ownership over this stock. (See testimony, Lucius I. Wright, page 569.)

Therefore the first clearly expressed intention or act on the part of the defendants to claim the absolute ownership of the stock in question was when they took the dividends upon the same in liquidation over the protests of Judge Endicott and Judge Thompson. At this time the statute had been repealed; further, four years had not run from the time of the act of conversion, when the bill was filed.

It is claimed that this is a statute of limitations, and that by virtue thereof all persons are precluded from bringing an action after the lapse of four years; but those four years, according to the language of the act, "are from and after the making or receipt of the same"; that is the bonus, profit or reward; the statute would then run four years from and after the making or receipt of the bonus, profit or reward.

So that the first question naturally arises, when did the defendants make or receive this bonus, profit or reward, as this is the time from which the statute begins to run, and at the expiration of four years from that time the complainants would be barred according to the contention of the defendants.

The subject matter of the bill of complaint is not the use of the stock as collateral, but its conversion by the defendants as their own property. When was this done? When did they receive any bonus, profit or reward; not when the stock was supposedly delivered to them to be used as collateral in June of 1898, nor was it in October of 1898, for at that time it was expressly stated that the company was to have the right to redeem it at the end of a year. Was it converted in October of 1899? Dr. Youngman says it was not; that he was ready and willing to take his money in 1907 or 1908.

There was, therefore, no conversion, that is, no overt act by the defendants until they claimed and received dividends on the stock in question. Up to that time they had exercised no right to or over it. They still held their notes against the company and the stock as collateral, and it was not until the stormy meetings that their expressed intentions and determinations to convert the

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stock constituted an overt act. The statute was no longer then in force, having been repealed.

There is nothing anywhere on the minutes or in the actions of the defendant Directors prior to the stormy meetings of 1908 or 1909 that amounts to a conversion or a declaration of an intention to convert.

The language of the resolution of October, 1898, giving the company one year in which to redeem, did not amount to a conversion by the defendants in October of 1899; the company had the right to redeem even after default, if it be considered that default was made; and if any default was made it was the result of the maladministration of the affairs of the company by the defendants: they attempt to profit by their own wrong.

If the defendants took no steps in October of 1899 to convert the stock to their own use, that is, to make it their individual property, to change its character from a pledge to ownership, then when can it be said that they did make any such change in ownership?

It is only by the conversion of the pledge to property, or ownership in property, that a bonus, profit or reward accrued, fixing a time from which the statute would commence to run.

When did the defendants make or receive their bonus, profit or reward?

The defendants have never converted the stock in question or changed its title or the ownership of it; the certificates which they hold and on which they have been claiming and receiving their dividends are the same certificates which were issued to them as collateral, as appears on the stub of the Certificate Book.

III.

No greater force of efficacy can be given to the four years limitation in the act in question than is given to the ordinary statute of limitations, and with respect to that statute it has been held that where relief is sought on the ground of fraud which has been concealed the statute begins to run only from the time when the fraud is discovered.

Todd vs. Rafferty, 30 N. J. Eq., 254; affirmed, 34 N. J. Eq., 352.

Williams vs. Carle, 10 N. J. Eq., 543.

Lincoln vs. Judd, 49 N. J. Eq., 387.

Williams vs. McKay, 40 N. J. Eq., 189; 25 Cyc., p. 1114.

The doctrine of equitable estoppel should prevail in this case; it is inequitable that the defendants should be permitted to claim the advantage of the statutory bar obtained by fraud and breach of trust.

Holloway vs. Appelget, 55 N. J. Eq., 583.

Clark vs. Augustine, 62 N. J. Eq., 689.

VI.

Authorities.

The authorities cited by the Vice Chancellor in his opinion amply sustain his findings, and the general principles involved are so well settled in this State that further citation of authority seems unnecessary.

In addition, however, to the citations in the opinion on the question of laches or acquiescence, attention is directed to the case of *Gerhard vs. Welsh, 80 N. J. E., (10 Buch.) 203,* where this Court speaking through Justice Voorhees says, "From equivocal circumstances positive "affirmance by shareholders of unauthorized acts "of directors will not be inferred, and prompt dis- "affirmance is unnecessary and mere delay by the "shareholders in bringing suit, which has not occa- "sioned loss or prejudice to the defendants, does "not raise an estoppel and will not deprive the com- "plainants of their remedy."

In the case cited the statements of the Building Association sent out to the shareholders for five years previous to the bringing of the suit, showed at first ownership of the stock, later as loan on the stock, etc.

In the case now before the Court, it appears that no statements whatever were ever sent to the shareholders and no knowledge whatever was had by them in any way of the transaction complained of.

In *Marr vs. Marr, 73 N. J. E., 643,* it appeared that the company was defunct and had had no corporate existence for several years; a decree was awarded the complainant on the ground that he was a minor at the time the transactions complained of took place. But it appears in the recital of facts by Chancellor Pitney (at the bottom of page 647), that Marr had, previously to the action complained of, tried to get the stockholders to interest themselves in raising the money due to him, but had found it impossible and that he was warranted in putting his claim into judgment and bringing the property to sale. From this the clear inference is that everyone had due notice of the claim of Marr against the com-

pany of which he was an officer, with the exception of the minor, who afterward filed the bill.

That case holds, "The director of a corporation "occupies a position of trust or agency for his com- "pany of such a character that dealings between "him and the company, where his interest is op- "posed to that of the company, will be subject to "close scrutiny and not sustained against the stock- "holders unless consistent with good faith and fair "dealing on the part of the director."

"But a director, who is also a creditor of his "company, must, on taking legal proceedings for "collection of his debt, relinquish his trust *pro hac "vice, not covertly, but openly* and with fair notice "to his company. Whether such notice should be "given to the stockholders or to the directors may "depend on circumstances."

Chancellor Pitney, speaking for the Court in that case, cites with approval another decision of the Court by Justice Knapp in *Marshall vs. Carson, 38 N. J. E., (11 Stew.) 250,* as follows: "The rule that one clothed "in a fiduciary character cannot, either directly or "indirectly, become the purchaser of the trust prop- "erty at his own sale and hold such property against "the dissent of the *cestui que trust,* is of such uni- "versal prevalence and so grounded in the de- "mands of public policy that no one ventures to "question its existence or seeks now to overthrow "it."

Chancellor Pitney also quotes with approval another decision of this Court in *Stewart vs. The Lehigh Railroad Co., 38 N. J. E. Law (9 Vr.), 505, 522:*

"Where the right is one which must stand, if at "all, upon an express contract, and which does not

"arise by operation or implication of law, then shall "he not hold it against the will of his *cestui que trust;* "for in the very bargain which gave rise to it, in "which he should have kept in view the interest of "that *cestui que trust,* there intervened before his "eyes the opposing interest of himself."

Commenting upon these two authorities Chancellor Pitney says:

"We cite the last two cases because they show that "a director occupies a position of trust, or agency, "for his company of such a character that all deal- "ings between him and the company, where his in- "terest is opposed to that of the company, will be "regarded with jealousy and suspicion and subjected "to the closest scrutiny, and not sustained against "the stockholders unless they are consistent with the "utmost good faith and fair dealing on the part of "the Director."

Further, the Chancellor speaking for this Court, says:

"But we deem it clear that the Director, who is "also creditor, must, on taking legal proceedings for "collection of his debt, relinquish his trust *pro hac* "*vice,* not covertly, but openly, and with fair notice "to his company. Whether such notice should be "given to the stockholders or to the Directors may "depend upon circumstances."

In the case under consideration no demand was ever made by the defendants upon the company for repayment given either to the Directors as a body, or to the two dissenting Directors or to the shareholders. At a meeting at which the defendants alone were present they resolved to keep the stock, if not redeemed in a year, and never notified anyone of their action and the same did not become known until at or about the time of liquidation.

In *Loudenslager vs. Woodbury Heights Land Co., 58 N. J. E., (13 Dick.) 566,* Justice Garrison in speaking for this Court on page 560, quotes from Bishop's Equity with approval as follows:

> "Equity not only views gifts, and contracts which "are made or take place between parties occupying "a confidential relation, with a jealous eye, but it "goes further, and forbids any person standing in a "fiduciary position from making any profit in any "way at the expense of the party whose interest he is "bound to protect, without the fullest and most com- "plete disclosure."

In *Lillard against Oil, Paint and Drug Co, 70 N. J. E., (4 Rob.),* Vice Chancellor Emory, on page 205 says:

> "The contract for compensation of a Director, like "any other contract made by the Board in which a "Director is personally interested, is a contract which "is voidable but not void, and may therefore be rata- "fied. Such contracts are voidable, however, as "against the company, considered as composed of the "whole body of stockholders, not voidable against "each stockholder in his own individual right."

It is submitted that the learned Vice Chancellor has properly stated the underlying principles and rules established in the United States Steel against Hodge decided in this Court and found in *64 N J. E., (19 Dick.), 807.*

In that case Justice VanSyckel in reciting the facts, on page 812 says:

> "There is an entire absence in the case of anything to show a taint of fraud or an attempt to conceal from the shareholders any fact which should have influenced their action."

> "It appears that a special meeting of the stockholders of that corporation had been called and that full notice of the object of the meeting was given which was largely attended and by an almost unanimous vote of those present the action of the Directors complained of was sustained."

Justice VanSyckel in the same case on page 813 lays down the rule which is the basis of the present action as follows:

> "The rule that Directors cannot lawfully enter into a contract, in the benefit of which even one of their number participates *without the knowledge and consent of the stockholders,* is so firmly entrenched in our Jurisprudence that it is not open to debate." Citing numerous decisions.

In the same case Justice VanSyckel says, page 809:

> "The Vice Chancellor properly held that the case must be considered as based wholly upon the rights of Hodge as a shareholder."
>
> "Referring back to the decision of the Vice Chancellor in the same book, page 93, the Vice Chancellor says, 'the complainant's case must be considered as based solely on the right of the complainant Hodge as a single stockholder *filing the bill on behalf of himself and other stockholders.*' "

Therefore this Court has affirmed the right of a single stockholder having proper status to file a bill not only on behalf of himself but on behalf of the other stockholders of the company.

This Bill is filed on behalf of the company.

By further examination of the Opinion of the learned Vice Chancellor in the Hodge case it will be seen that

the rights of the other complainants were disallowed because they had purchased shares since the action complained of had taken place and from the parties who had assented to the plan. In other words the former owners of the shares of the other complainants in that case had attended the special stockholders' meeting of the Steel Corporation and had voted in favor of the resolution in question.

The situation in the present case is not parallel as will be seen in the former part of this Brief.

It is respectfully submitted that the decree below should be in all things sustained. The counsel fee allowed by the Vice Chancellor and as stated by him is inadequate compensation, (See printed book, page 614) and should be sustained or affirmed.

JOSEPH H. GASKILL,
Solicitor for and of Counsel with Complainant.

June Term, 1914.

Law Offices
BOURGEOIS & COULOMB
Atlantic City, N. J.

25-28 Law Building

May 11, 1914.

ENDICOTT VS. MARVEL

Endicott & Endicott, Esqs.,
Union Bank Building,
Atlantic City, N. J.

Gentlemen:

In compliance with the letter addressed to you by Judge Gaskill, I beg to advise you that an examination of the stock book, Exhibit C2, discloses that:

Certificate No. 113, for 30 shares of the stock of the St. Leonards Land Co. was issued to Israel G. Adams. On the stub of the check is the following inscription: "To secure note of 4 months, $1,500, bearing even date herewith, and renewals of said note?" Dated June 20, 1898, but not receipted for. This certificate was afterwards cancelled and was included in the certificate issued to Isaac Bacharach;

Certificate No. 114, for 30 shares, issued to Louis Kuehnle; has the same marginal notation on the stub; dated June 20, 1898, but not receipted for;

Certificate No. 115, for 30 shares, issued to Philip I. Marvel; same notation on the stub; dated June 20, 1898, but not receipted for;

Certificate No. 116, issued to Maurice D. Youngman; has the same notation; dated June 20, 1898; but this certificate was never given to Dr. Youngman, having been mislaid, and Certificate No. 124 was issued in its stead.

That certificate, however, has no notation to indicate that it was issued for the collateral.

Certificate No. 117, issued to Clement J. Adams; has same notation; for 30 shares; dated Nov. 28, 1898.

If Judge Gaskill finds it essential to have the books before the Court, there will be no difficulty about having them there.

We return herewith the letter from Judge Gaskill.

Yours very truly,

LOUIS E. STERN.

LES-A
Enc.

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New Jersey

Court ofErrors and Appeals

Bill of Complaint

(Filed,)

CHANCELLOR OF THE STATE OF NEW JERSEY

To His Honor Mahlon Pitney,

Chancellor of the State of New Jersey:

Complaining shows unto your Honor your Orator, Mordecai T. Endicott of the City of Washington in the District of Columbia, Joseph W. Wilson and Charles P. Henry of the City of Philadelphia in the State of Pennsylvania, Eva Davis Dodd of the City of Schenectady in the State of New York, who are stockholders of a corporation known as the St. Leonards Land Company; that they file this Bill in their own behalf and for the benefit of all the other shareholders of said company who may come in and contribute to the expense thereof.

1. Your Orators show that on or about the ninth day of October in the year of our Lord one thousand eight hundred and ninety-six, a corporation known as the St. Leonards Land Company, was organized and duly incorporated according to the laws of the State of New Jersey, its object being to buy, sell, lease and improve the lands and real estate, to erect and construct

houses, buildings, wharves, bulkheads, and to reclaim lands and make other like improvements, and to sell and lease the same; to build and maintain streets, sidewalks, turnpikes, and other roads; to operate stage lines for the transportation of passengers and baggage, and for all other purposes incident thereto and naturally connected therewith; and to make, execute, deliver, take and receive deeds, bonds, mortgages, promissory notes and other instruments in writing connected therewith.

2. Your Orators further show that the authorized capital stock of the company was two hundred and fifty thousand dollars, divided into twenty-five hundred shares of the par value of one hundred dollars each, and commenced business with one thousand dollars paid; that it purchased several tracts or parcels of land in the neighborhood of Atlantic City and made improvements thereon, and thereby acquired substantial assets; that it issued additional stock from time to time as authorized by its charter to a large number of persons who paid cash for the same at par and became stockholders in the said company.

3. Your Orators further show that the entire amount of stock authorized by the charter was issued, including one hundred and fifty shares which were authorized by the stockholders and directors to be issued to Philip Marvel, President of the company, In Trust to be used for the purpose of promoting and protecting the interests of the company.

4. Your Orators further show that the management of the affairs and business of the company was conducted by its officers, to wit, a president, vice-president, secretary, and treasurer under the direction and authority of a board

of directors consisting of seven members, namely —Philip Marvel, Maurice D. Youngman, Louis Kuelhnle, Clement J. Adams, Israel G. Adams, Joseph M. Thompson and Allen B. Endicott.

5. Your Orators further show that the said board of directors and officers of the company actively prosecuted the development of the company's land and business so far as the funds of the company enabled it to do; that in October of the year one thousand eight hundred and ninety-eight the company was in need of money to pay a bill of Alvin P. Risley for grading lands owned by said company, and the board of directors took up the subject of raising money to meet the company's obligations.

6. Your Orators further show that on the fifteenth day of October, A. D., one thousand eight hundred and ninety-eight a resolution was adopted by the board of directors by the vote of five members present, to wit, Philip Marvel, Maurice D. Youngman, Louis Keuhnle, Clement J. Adams and Israel G. Adams providing that each director borrow the sum of fifteen hundred dollars for one year and that one hundred and fifty per cent of the company's stock in the hands of Philip Marvel In Trust as foresaid be used as collateral, the company to have the privilege of redeeming the stock in one year from the date thereof with interest at six per cent. That said five directors paid to the treasurer of the said company the sum of fifteen hundred dollars each, and used the said stock so transferred to them as collateral upon which to raise the said money.

7. Your Orators further show that the whole of the stock issued to Philip Marvel In Trust for the purpose of promoting and protecting the interests of the company was thereupon transferred to the above named five directors of the said

company who voted in favor of the passage of the said resolution as collateral, and that they did not permit the company to redeem same in accordance with the terms of the resolution, nor offer to redeem the same upon repayment to them of the moneys advanced by them to said company.

8. Your Orators further show that Philip Marvel, the president and Clement J. Adams, secretary and Israel G. Adams, treasurer of the company, as the officers and agents of the said company, exceeded the terms of the said resolution authorizing an issue of one hundred and fifty per cent of said company's stock held in trust as aforesaid to be used as collateral, and that said officers and agents of the company actually caused to be issued to the said above named five directors two hundred per cent, or all of the stock held by said Philip Marvel In Trust as aforesaid.

9. Your Orators further show that thirty shares of said stock were issued to each of the said five directors under cover of the said resolution to secure each for the sum of fifteen hundred dollars loaned by each to the company; that said stock was of great value and is now worth the sum of three hundred and twenty-two dollars per share, or the sum of nine thousand six hundred and sixty dollars for each thirty shares, so that each of the said five directors has unlawfully profited at the expense of the stockholders of the company in the sum of eight thousand one hundred and sixty dollars by appropriating to himself said shares of stock which were held in trust as aforesaid for the purpose of promoting and protecting the interests of the company.

10. Your Orators charge that the said officers and directors of the company stood in a fiduciary relationship to its stockholders with respect

to the shares of stock placed in the hands of Philip Marvel In Trust for promoting and protecting the interests of the company, and that they were and are trustees by virtue of a constructive trust created with respect to said shares for the stockholders of said company, and that the issue of said stock as made to said directors is in fraud of the rights of your Orators and the other shareholders of said company and is contrary to equity and good conscience.

11. Your Orators further show that the said stock so transferred from Philip Marvel to the said five directors by virtue of the said resolution has never been voted upon, and that no dividends were declared upon it or upon other stock of the company until August, A. D., one thousand nine hundred and nine when two dividends of twenty per cent each were declared on all the stock of the company as a method of liquidation; since which time other dividends were declared on said stock until the liquidation is substantially effected; that the stock has never been sold by the parties to whom it was issued, with the exception of Israel G. Adams who has sold all or part of his stock to Isaac Bacharach.

12. Your Orators further show that your Orators and the other stockholders of said company were ignorant of the action taken by the board of directors on the fifteenth October, A. D., one thousand eight hundred and ninety-eight for the purpose of raising money to meet the obligations of the company, that they were not consulted nor informed of the said resolution and proposed means of raising money, nor was the said resolution or any other resolution for that purpose ever submitted to the stockholders of the company for their information or approval.

13. Your Orators further show that on the seventeenth day of August, A. D., one thousand nine hundred and nine, at a meeting of the said board of directors at which all seven directors were present, it was moved and seconded by the two directors Allen B. Endicott and Joseph M. Thompson, who were not present at the meeting of October fifteenth one thousand eight hundred and ninety-eight, that the company redeem the said Trust stock, transferred to be used as collateral as aforesaid, and that the five directors holding the same return the said stock to the company and accept the sum advanced by them to the company on the said stock with interest but that this motion was lost, the other directors interested therein as aforesaid voting in the negative.

14. Your Orators charge that the directors who wrongfully profited by the transaction thus committed the company to the policy of not redeeming the said Trust stock transferred by virtue of the said resolution from the said Philip Marvel to them and attempted to confirm its transfer as aforesaid at an inadequate consideration and at a large personal profit to themselves.

15. Your Orators show that in said month of August one thousand eight hundred and eighty-nine there was a large number of shares of stock outstanding, to wit, the number of one thousand six hundred and thirty-eight shares of stock of a par value of one hundred dollars each worth at that time about three hundred and twenty-two dollars each.

16. Your Orators charge that the said action of the five members of the board of directors who voted to retain the stock issued to them as collateral by virtue of the resolution of October one thousand eight hundred and ninety-eight was a breach of the duty owing by them as directors

to your Orators and the other stockholders of the said company by reason of their fiduciary relationship, and that the said action of the said five directors was unconscionable, inequitable and a fraud upon your Orators and the other stockholders of the said company.

17. Your Orators charge that the said one hundred and fifty shares of stock issued to Philip Marvel, president of the company In Trust to be used for the purpose of promoting and protecting the interests of the company and transferred by him to the said five directors of the company to be used by them as collateral was in fact issued to the said directors as collateral security for the advances made by them to the company, and that the attempted limitation for redemption of said stock to one year is null and void, and contrary to equity and good conscience.

18. Your Orators charge that the said five directors to whom the Trust stock was transferred as aforesaid occupied a fiduciary relationship to your Orators and the other stockholders of the company with respect to the said stock, and were required to exercise the utmost good faith in their dealings with their *cestui que trustents* and were barred from making a personal profit by reason of that relationship, and that the said five members of the board of directors who had profited by the transaction aforesaid contrary to law must account therefor as trustees for your Orators and the other stockholders of the said company.

19. Your Orators further show that they have repeatedly requested the said five directors, namely—Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams to accept the sum of fifteen hundred dollars advanced by each of said five directors to

the said company with interest thereon, and return to the company the said stock received by them as collateral wherewith to borrow said money, and your Orators well hoped that they would have complied with such reasonable request as in equity and good conscience they oguht to have done, but so to do they have hitherto refused and still do refuse and claim to be the absolute owners of said shares of trust stock so transferred to them as aforesaid.

All of which actings, doings and pretences of the said defendants are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of your Orators in the premises.

In tender consideration whereof and for as much as your Orators are without adequate remedy in the premises at and by the strict rules of the common law and can only obtain relief in this honorable court where matters of this nature are properly cognizable and relievable:

To the end therefore that the said defendants Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams may without oath, oath being expressly waived, to the best and utmost of their respective knowledge, remembrance, information and belief full, true and perfect answer make to all and singular the matters aforesaid and that as particularly as if the same were here repeated and they and each of them distinctly interrogated thereto:

And that the said defendants Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams may be required and decreed by this honorable Court to be Trustees of said shares of stock for the benefit and use of your Orators and the other shareholders of said company and be required to account for

the said one hundred and fifty shares of stock of the St. Leonards Land Company as trustees and to assign, transfer and deliver the same to the St. Leonards Land Company at their own expense and to accept each the sum of one thousand five hundred dollars with interest thereon; and also to account for and pay back into the Treasury of said company all dividends and profits therefrom derived and all moneys received from the sales thereof with interest:

And that your Orators may have much further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your Orators the State's writ or writs of subpoena issuing out of and under the seal of this honorable Court to be directed to the said Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams, Israel G. Adams, commanding them, and each of them, by a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your Orators, as in duty bound, will ever pray, etc.

ALLEN B. ENDICOTT, JR.,
Solicitor with Complainant,
GASKILL & GASKILL,
Of Counsel with Complainant.

A True Copy.
Sam. K. Robbins,
Clerk.

Answer

(*Filed,*)

IN CHANCERY OF NEW JERSEY

Between MORDECAI T. ENDICOTT, *et al.*, Complainants, and PHILLIP MARVEL, *et al.*, Defendants.	Answer

The answer of Phillip Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams to the bill of complaint filed by complainants in the above stated cause:

1. Defendants admit that on or about the ninth day of October, eighteen hundred and ninety-six, to wit, on the tenth day of October, eighteen hundred and ninety-six, a corporation known as the "St. Leonard's Land Company," was organized and duly incorporated according to the laws of the State of New Jersey, and that the objects expressed in its charter included the objects mentioned in complainants' bill of complaint.

2. Defendants admit that the authorized capital stock of the company was two hundred and fifty thousand dollars, divided into twenty-five hundred shares of the par value of one hundred dollars each, and admit that it purchased several tracks of land in the neighborhood of Atlantic City in manner herein stated, and admit that improvements were made thereon and that said company had substantial assets, but deny that said company ever issued any stock after the original issue of

stock at the time of the incorporation of said company, and say that defendant Phillip Marvel and Allen B. Endicott and Joseph Thompson were the owners of the legal title to the aforesaid several tracts of land situate in the vicinity of Atlantic City, and upon the incorporation and organization of the St. Leonard's Land Company proposed to sell all their right, title and interest in said lands to the St. Leonard's Land Company for one hundred and eighty-three thousand nine hundred dollars, to be paid for in the capital stock of the St. Leonard's Land Company at par; that at the time of said proposition said lands were subject to a mortgage of sixty-five thousand one hundred dollars; that said lands at the time aforesaid were fully worth the sum of two hundred and fifty thousand dollars; that the St. Leonard's Land Company accepted the offer of said Marvel, Endicott and Thompson to purchase said lands, and thereupon deeds of conveyance were made by the said Marvel, Endicott and Thompson to the St. Leonard's Land Company for the lands mentioned in complainants' bill of complaint; that eighteen hundred and thirty-nine shares of the capital stock of the St. Leonard's Land Company were issued to the said Marvel, Endicott and Thompson in payment for the lands aforesaid; that at the same meeting, to wit, the meeting of November thirtieth, eighteen hundred and ninety-six, five shares of the capital stock of said company were issued to Israel G. Adams; four shares of the capital stock of said company were issued to Clement J. Adams, and one share of the capital stock of said company was issued to Clarence L. Cole, the original organizer of said company, and the remaining six hundred and fifty-one shares were held in the treasury of said company for the purpose of sale, the proceeds of which were to be

applied to liquidate the sixty-five thousand one hundred dollar mortgage on said property; that said six hundred and fifty one shares and no part thereof were ever issued, and that said mortgage was liquidated and paid off in the manner hereinafter mentioned.

3. Defendants deny that the entire capital stock authorized by the charter of said company, including one hundred and fifty shares alleged to have been issued to Phillip Marvel defendant, was issued to the said Phillip Marvel in trust to be used for promoting and protecting the interest of the company.

4. Defendants admit that the affairs of the company were conducted by its officers, to wit, a president, vice-president and secretary, under the direction and authority of the Board of Directors consisting of seven members, and admit that Phillip Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams, Israel G. Adams, Joseph Thompson and Allen B. Endicott were during the greater part of the life of said company such directors.

5. Defendants deny that the Board of Directors and officers of said company actively prosecuted and developed the lands of said company, and say that there were no funds of said company with which to develop said lands, and further say that while the lands of said company were of the full and fair value of two hundred and fifty thousand dollars that said company was without actual cash in hand and without any means of raising cash except from the sale of said lands; that at the time of the purchase of said lands and for twelve years thereafter said lands continued to be in an outlying district with little or no demand for them; that there were but infrequent sales

and that the moneys received from the sale of the lots by said company were insufficient to make improvements and provide for the carrying charges of said company, and that these defendants personally endorsed the promissory notes of said company to an amount in excess of ten thousand dollars during the first two years of its existence.

Defendants further answering said paragraph admit that in October, eighteen hundred and ninety-eight, the company was in need of money to pay a bill of Alvin P. Risley for grading lands owned by said company, and the directors took up the subject of raising money to meet the company's obligation, and say that said obligation had been outstanding for a long time prior to October of eighteen hundred and ninety-eight, and that on the nineteenth day of May, eighteen hundred and ninety-eight a resolution was passed by the Board of Directors, at which meeting Israel G. Adams, Phillip I. Marvel, Louis Kuehnle, Allen B. Endicott, Joseph Thompson and C. J. Adams, being all the directors excepting Morris D. Youngman, were present, appointing Phillip Marvel and Clement J. Adams a committee to borrow ten thousand dollars, and to issue double the amount of stock, the ten thousand dollars to be applied to the payment of gravel purchased and to be purchased from the West Jersey and Seashore Railroad Company.

Defendants further say that the said Allen B. Endicott, director, was then President of the Union National Bank of Atlantic City, and that Joseph Thompson, director, was then a director and solicitor of the Second National Bank of Atlantic City; that pursuant to said resolution the said Phillip Marvel and Clement J. Adams applied to the Union National Bank for a loan of ten thousand dollars, offering to pledge the capital

stock of said company in double the amount of said loan as security therefor; that said application was refused by the said Union National Bank, and the cashier thereof informed said committee that said capital stock would not be taken as collateral security at any value by said bank; that thereupon said committee applied to the Second National Bank for said loan and there offered to pledge said stock, and the application for said loan was refused by said bank; that the indebtedness for gravel mentioned in the minutes of the meeting of May nineteenth, eighteen hundred and ninety-eight and the indebtedness for gravel mentioned in the meeting of October fifteenth, eighteen hundred and ninety-eight, was one and the same indebtedness; that said committee after repeated efforts by it made to obtain a loan pursuant to said resolution utterly failed, said committee being unable to find anyone willing to loan the money to said corporation; that at the meeting of the Board of Directors of said company on the fifteenth day of October, eighteen hundred and ninety-eight, the question of raising money to satisfy and pay for the gravel aforesaid was brought before said meeting; that the payment of said claim was imperative as in default of payment thereof the property of said company was about to be sold; that some of the directors who are defendants in this suit were then personally obligated by their endorsements in upwards of ten thousand dollars for said company, while others of the directors, including Allen B. Endicott and Joseph Thompson, had refused and did then refuse to become personally obligated in any sum for said company; that on said fifteenth day of October, eighteen hundred and ninety-eight, there was no means known to the directors of said

company of raising the moneys necessary to prevent the sale of the lands of said company except for the directors individually to raise it.

Defendants further say that six hundred and fifty-one shares of unissued stock still remained unsold, but held in the treasury for the redemption of the sixty-five thousand one hundred dollar mortgage; that of the eighteen hundred and thirty-nine shares of capital stock issued to Marvel, Endicott and Thompson there had been a re-issue of two hundred and fifty-nine shares to Phillip Marvel; two hundred and fifty-one shares to Allen B. Endicott; five shares to Joseph Thompson; two hundred and fifty two shares to Clement J. Adams, ninety-two shares to Morris D. Youngman, and two hundred and fifty-one shares to Israel G. Adams, aggregating eleven hundred and forty shares; that the remaining six hundred and ninety-nine shares of said issue of eighteen hundred and thirty-nine shares had been by the owners of the lands first above mentioned turned back to the company for the purpose of creating a fund with which to carry on the business of said company; that said stock had been regularly issued to Marvel, Endicott and Thompson for property purchased, and was in no manner the property of the company until it was turned over to Phillip Marvel as trustee by Marvel, Endicott and Thompson; that six hundred and ninety-nine shares of the capital stock of said company was so turned over to Phillip Marvel as trustee under the direction that two hundred shares of said stock should be used for purchasing additional lands and four hundred and ninety-nine shares should be used for the best interests of said company; that on the fifteenth day of October, eighteen hundred and ninety-eight there remained in the hands of said Phillip Marvel, trustee, three hundred and

forty-five shares or thereabouts, part of the original issue of eighteen hundred and thirty-nine shares to Marvel, Thompson and Endicott.

6. Defendants further answering say that they admit that on the fifteenth day of October there was a meeting of the Board of Directors of said company, at which five members, to wit, Phillip Marvel, M. D. Youngman, Louis Kuehnle, Clement J. Adams, and Israel C. Adams were present and that at said meeting a resolution was offered and passed in the following language:

> "*Resolved,* That each director borrow the sum of fifteen hundred dollars for the period of one year and to receive fifty per cent excess of the company's stock as collateral to said loan to meet the obligation of Alvin P. Risley, contractor. The company to have the privilege of redeeming said stock in one year from date, with interest at six per cent, otherwise to revert to the borrower."

Defendants further say that while said resolution was inaptly drawn, the intent thereof was to pledge three thousand dollars of the capital stock of the company for each fifteen hundred dollars loaned to the company, and that in the event of the company repaying said loan within the period of one year that the loan to the company should thereby be cancelled and the stock should become the property of the person so loaning the money to the company.

Defendants further say that after the passage of said resolution each director, including Allen B. Endicott and Joseph Thompson, was asked to advance to the company fifteen hundred dollars with which to pay the said outstanding indebtedness; that each of the directors responded to said request, excepting Joseph Thompson and Allen B.

Endicott, each of whom refused to advance any moneys to said company; that the other directors who are now defendants in this suit, each advanced fifteen hundred dollars to the said company, and the moneys thus received were used by said company in liquidating the indebtedness of said company.

These defendants further answering say that Charles P. Henry and Joseph Wilson, stockholders and complainants, knew of the loan made by these defendants to the company, and knew of the proviso that the stock which had been given to these defendants should become the property of these defendants unless said company should redeem said stock within the said period of one year.

These defendants further answering say that they deny that Mordecai T. Endicott and Eva Davis Dodd are stockholders of the St. Leonard's Land Company, and say that Allen B. Endicott is the owner of said stock, he having purchased and paid for the same, but said certificates of stock not having been transferred to the name of the said Allen B. Endicott upon the books of the company.

Defendants further answering say that said moneys were not repaid to these defendants at the expiration of one year from the date of said loan; that said indebtedness was considered by said company to be cancelled and the stock taken by these defendants to be the absolute property of these defendants, the said stock delivered to these defendants being a part of the original issue of eighteen hundred and thirty-nine shares which had been made to Marvel, Endicott and Thompson, and a part of the four hundred and ninety-nine shares which had been turned over and transferred to Phillip Marvel as trustee by Marvel, Endicott and Thompson, for the benefit of said company, and that from the time of the making of

said loan until the year nineteen hundred and nine no objection was ever made to said transaction by Joseph Thompson, Allen B. Endicott, Joseph Wilson, Charles P. Henry, Mordecai T. Endicott or Eva Davis Dodd or any other stockholders of said company; that with the seventy-five hundred dollar indebtedness of the St. Leonard's Land Company existing on the fifteenth day of October, eighteen hundred and ninety-eight liquidated, there were sufficient funds received from the sale of lots to pay the fixed charges, and from said fifteenth day of October, eighteen hundred and ninety-eight until the year nineteen hundred and nine, no offer was ever made to repay to these defendants the moneys they had loaned to said company on the fifteenth day of October, eighteen hundred and ninety-eight, and the moneys which the said company considered to be in payment of the stock aforesaid upon the expiration of one year from said date; that no interest was ever paid by said company on account of said loans and no offer to pay any interest thereon was ever made prior to the year nineteen hundred and nine; that during the summer of nineteen hundred and nine, and on or about the day of one Isaac Bacharach became interested in the said St. Leonard's Land Company, and through his efforts the entire holdings of said company were disposed of at prices aggregating upwards of six hundred thousand dollars, as a result of which the stock of said company became of the value of three hundred and twenty-two dollars per share or thereabouts; that two dividends of thirty per cent each were declared on all the stock of said company including the thirty shares of stock delivered to each of these defendants on the fifteenth day of October, eighteen hundred and ninety-

eight without protest from either directors or stockholders; that afterwards, to wit, on the seventeenth day of August, nineteen hundred and nine, Joseph Thompson and Allen B. Endicott set on foot a claim that these defendants had secured no title to the stock aforesaid, and that it should be returned to said company together with the dividends received by these defendants thereon, less six per cent interest on said loan from the fifteenth day of October, eighteen hundred and ninety-eight to the seventeenth day of August, nineteen hundred and nine.

These defendants further say that these complainants and Joseph Thompson and Allen B. Endicott had full knowledge of the transfer of said stock to these defendants at all times from the fifteenth day of October, eighteen hundred and ninety-eight until the seventeenth day of August, nineteen hundred and nine, and thence until the filing of this bill and that during all of said time between the fifteenth day of October, eighteen hundred and ninety-eight until the fifteenth day of October, eighteen hundred and ninety-nine, when said transfer became absolute in these defendants, and thence until the seventeenth day of August, nineteen hundred and nine, neither the said stockholders, complainants, nor the said Allen B. Endicott nor Joseph Thompson made any protest touching or concerning the transfer of said stock to these defendants, and made no effort to have the moneys so advanced by these defendants to the said company repaid to them or any of them, and that during all of said term when the financial success of the said St. Leonard's Land Company was unknown and problematical, the said complaining stockholders and the said Allen B. Endicott and Joseph Thompson were quiescent and content that defendants should receive the stock so transferred

to them in consideration of the seventy-five hundred dollars advanced and paid by these defendants to said company, and not until Isaac Bacharach had interested himself in said lands and had created a boom in real estate in said locality and thereupon sold said lands at a sum far in excess of the par value of the stock of said company did the said complainant stockholders or the said Allen B. Endicott or Joseph Thompson entertain a thought of considering said transfer not absolute after the fifteenth day of October, eighteen hundred and ninety-nine.

Defendants further answering say that during the entire existence of the said St. Leonard's Land Company until August of nineteen hundred and nine, the said Joseph Thompson and Allen B. Endicott acted as and were consulted as legal advisors or solicitors for the said St. Leonard's Land Company, and as such as well as in the capacity of directors they were informed and advised or every act or measure taken by the directors, and that no act of the directors of such company was ever done during the time aforesaid contrary to the advice of said Thompson and Endicott, and that every act taken by the directors for said company during the term aforesaid was taken either by the specific advice of the said Thompson and Endicott or one of them, or else with their acquiescence and consent; that the transaction touching the loaning of the moneys aforesaid having been fully known and understood by said Thompson and Endicott at the time, and they acquiescing in and consenting to the issuing of the stock to these defendants, these defendants then believed, as they now believe, that said transaction was entirely regular and binding.

7. These defendants deny that the whole of the stock issued to Phillip Marvel in trust was trans-

ferred to these defendants, and aver the fact to be that of the six hundred and ninety-nine shares issued to Phillip Marvel in trust by Marvel, Thompson and Endicott for the advancement of the interests of said company, being part and parcel of the original issue of eighteen hundred and thirty-nine shares, there remained in the hands of said Marvel on the fifteenth day of October, eighteen hundred and ninety-eight, three hundred and fifty-four shares or thereabouts, and that from this three hundred and fifty-four shares so held by the said Marvel were issued the one hundred and fifty shares to these defendants.

Defendants further answering say that while said Marvel, Endicott and Thompson transferred six hundred and ninety-nine shares of the original issue of eighteen hundred and thirty-nine shares to be re-issued to Phillip Marvel, trustee, only two hundred shares of said re-issue of six hundred and ninety-nine shares were subject to any express trust, and said two hundred shares being issued for the purchase of adjoining lands, and the other four hundred and ninety-nine shares having been re-issued to said Marvel, trustee, under no express trust but to be used for the advancement and improvement of said corporation generally, and deny that these defendants did not permit said company to redeem said stock and say that at all times within one year after the said fifteenth day of October, eighteen hundred and ninety-eight these defendants and each of them stood ready to accept a repayment of the moneys so advanced by them and each of them, together with six per cent interest thereon, and not until after said year had expired, at which time the said company was without funds with which to repay said loan and without ability to make sales to secure funds with

which to repay said loan, did these defendants consider said stock to be their absolute property, and further say that at no time between the fifteenth day of October, eighteen hundred and ninety-eight and the fifteenth day of October, eighteen hundred and ninety-nine, could the said capital stock of the St. Leonard's Land Company have been sold in the market for as much as fifty dollars per share; that while it owned lands of much prospective value said lands because of their being located in an outlying district were not of ready sale, and said stock was not salable at the price at which these defendants accepted it.

8. Defendants further answering deny that Phillip Marvel, President, Clement J. Adams, Secretary and Israel G. Adams, Treasurer, of said company acceded to the terms of said resolution in issuing thirty shares of stock as security for the repayment of fifteen hundred dollars advanced to the company by each of said directors, said stock to be redeemed within one year as above mentioned, and say that said resolution is ambiguous and inaptly drawn, but that the meaning of said resolution was that the loan of fifteen hundred dollars should be fifty per cent of the amount of stock issued to each of them; that such was the meaning as all of the directors had of said resolution at the time of its adoption, and such meaning of said resolution was conveyed to Allen B. Endicott and Joseph Thompson at the time, and to Joseph Wilson and Charles P. Henry thereafter, and that during all the years aforesaid and from the fifteenth day of October, eighteen hundred and ninety-eight, they the said Joseph Wilson, Charles P. Henry, Allen B. Endicott, Joseph Thompson and other stockholders know that thirty shares of stock had been transferred to each of the directors to become the absolute property

of such directors unless the loan of fifteen hundred dollars with interest thereupon by each of them to the company should be repaid within said year.

9. These defendants deny that they or any of them have profited at the expense of the stockholders of the company in the gross sum of eight thousand one hundred and sixty dollars or any other sum, and deny that these defendants or any of them have appropriated to themselves shares of stock which were held in trust for the purpose of promoting and protecting the interests of said company, and say that except for the loan of said moneys by these defendants the entire property of said company would have been exposed to sale and sacrifice at a time when there was no demand or market for it, and that the advancing of the moneys aforesaid by these defendants made possible the increased value of the stock to the stockholders of this company, and further say that at the time these defendants advanced the moneys to the said company these defendants, in the exercise of an honest judgment, regarded thirty shares of stock as scanty security for fifteen hundred dollars in cash, and that at that time there was no thought upon the part of these defendants or any of them of realizing any particular sum out of said shares, and that said moneys were loaned in fact by these defendants, for the purpose of preventing the sacrifice of said property, and that it is inequitable and unjust for complainants to now insist that the St. Leonard's Land Company is authorized to redeem said shares of stock at par after said complainants permitted the moneys advanced by these defendants to remain in jeopardy for all the time between October fifteenth, eighteen hundred and ninety-eight and the summer of nineteen hundred and nine, during which period at no time did any

of said .complainant stockholders, or Joseph Thompson or Allen B. Endicott come forward and offer to assume a part of the indebtedness which these defendants paid, or to reimburse these defendants for any part of the moneys which they had paid and advanced to said company.

10. Defendants further answering deny that they stood in any fiduciary capacity with relation to the stockholders of said company touching and concerning the one hundred and fifty shares of stock herein mentioned other than as directors of said company, and say that the eighteen hundred and thirty nine shares of stock of which the one hundred and fifty shares in question was a direct part, were assigned by Marvel, Endicott and Thompson to Phillip Marvel, trustee, for the improvement and advancement of the interests of said company generally, and not subject to any expressed trust or condition; that said four hundred and ninety-nine shares were placed in the name of Phillip Marvel as trustee, so that they could be disposed of by the directors at such price as the directors or the majority of them should deem to be for the best interests of said company that the transfer of said four hundred and ninety-nine shares to Phillip Marvel as trustee was the voluntary act of the owners of said eighteen hundred and thirty-nine shares; that after the purchase of said lands and the payment therefor by the issuing of the eighteen hundred and thirty-nine shares to Marvel, Endicott and Thompson, said company had no interest in said shares whatever, and that the turning over of said shares to Marvel as trustee was in fact a gift by the owners of said eighteen hundred and thirty-nine shares to the company or to Phillip Marvel as trustee to be used as above stated for the improve-

ments and advancement of said St. Leonard's Land Company.

These defendants further deny that these defendants were created trustees by virtue of any constructive trust respecting said shares, and say that said shares were property of the same character as the lands of said company, and that the directors had the same power of sale over said shares of stock as they had over other property of the company, and that the sale of said shares was made *bona fide* for the best interests of the company when said company was in a solvent condition because of the value of the company's real estate, but when there was no immediate sale for said real estate, and no sale for the stock of said company, and that the disposition made of said one hundred and fifty shares by these defendants, directors, was the only means possible at that time of preserving the large prospective value of said lands for the benefit of the stockholders of the said St. Leonard's Land Company, and deny that the issue of said stock was in fraud of complainants and the other stockholders, and say that the entire transaction was taken for and was for the best interests of the stockholders.

11. Defendants admit that the said one hundred and fifty shares were never voted upon prior to August of nineteen hundred and nine, and say that during the whole existence of said company from its organization in October of eighteen hundred and ninety-six until the present time there was never any election of officers and directors after the meeting of November thirtieth, eighteen hundred and ninety-six, and from that date until the present time the directors of said company were Allen B. Endicott, Joseph Thompson, Phillip Marvel, Morris D. Youngman, Clement J. Adams and Israel G. Adams and Louis Kuehnle, and

that from the date aforesaid until the summer of nineteen hundred and nine, the officers of said company have been Phillip Marvel, President, Israel G. Adams, Treasurer and Clement J. Adams, Secretary.

Defendants further admit that no dividends were paid on the one hundred and fifty shares of stock or on any other shares of stock of said company from the date of its incorporation up to August of nineteen hundred and nine, and say that during all of said period said company by the sale of lots and the moneys advanced to it by these defendants was financially able only to meet its carrying charges, and not until the sale of said land by Bacharach aforesaid was the company in position to declare dividends, and that when said dividends were declared they were declared upon all the stock including the one hundred and fifty shares aforesaid, and then for the first time after Allen B. Endicott and Joseph Thompson had refused to come to the assistance of the company in eighteen hundred and ninety-eight and had permitted these defendants to come to its assistance and advance the moneys of these defendants for its benefit and after said Joseph Thompson and Allen B. Endicott, with the knowledge of the said Joseph Wilson and Charles P. Henry, had been content and willing that these defendants should accept the stock aforesaid as payment for the moneys advanced by them, did the said Joseph Thompson and Allen B. Endicott, Joseph Wilson, Charles P. Henry, or any other stockholder object to such transfer.

Defendants admit that said company is practically liquidated, and that these defendants have never sold their stock excepting Israel G. Adams, who these defendants admit sold all or a part of his stock to Isaac Bacharach, and say that it was

the sale of the stock of the said Israel G. Adams to Isaac Bacharach that induced the said Bacharach to boom said lands, which resulted in the sudden advancement of the value of said stock from less than par to upwards of three hundred dollars per share, and that said Israel G. Adams received no benefit whatever from the said advancement.

12. Defendants deny that complainants were ignorant of the action taken by the Board of Directors on the fifteenth day of October, eighteen hundred and ninety-eight, and say that Joseph Wilson and Charles P. Henry had knowledge of said action immediately thereafter, and further say that on the fifteenth day of October, eighteen hundred and ninety-eight that Mordecai T. Endicott and Eva Davis Dodd were not stockholders in said company, but that their stock was then owned by Allen B. Endicott, who had knowledge thereof, and further say that after the sale of said stock to the said Allen B. Endicott to the said Mordecai T. Endicott and Eva Davis Dodd have said Allen B. Endicott repurchased and paid for said stock and is now the owner thereof, and that Moredcai T. Endicott and Eva Davis Dodd have no interest therein except that the title to said stock has not been transferred upon the books of said company.

13. Defendants admit that on the seventeenth day of August, nineteen hundred and nine, Allen B. Endicott and Joseph Thompson moved that the company redeem the said one hundred and fifty shares of stock, the title to which had become absolute in these defendants on the fifteenth day of October, eighteen hundred and ninety-nine, and they admit that said Allen B. Endicott and Joseph Thompson were not present on the fifteenth day

of October, eighteen hundred and ninety-eight, but say that the said Allen B. Endicott and Joseph Thompson were informed of the resolution of October fifteenth, eighteen hundred and ninety-eight immediately thereafter, and that they, the said Joseph Thompson and Allen B. Endicott were solicited to advance to the company fifteen hundred dollars, each, pursuant to said resolution and receive thirty shares of stock each therefor, to become absolute in them if not redeemed in one year from said date, and that each the said Joseph Thompson and Allen B. Endicott refused to advance said money and refused to take said stock and informed the Board of Directors of their respective banking institutions that said stock was no value as collateral security, and admit that the said Allen B. Endicott and Joseph Thompson at said meeting of August seventeenth, eighteen hundred and ninety-nine, proposed to repay out of the funds of said company the fifteen hundred dollars each to these defendants with six per cent interest thereon.

14. These defendants deny that these defendants, directors have wrongfully profited by the transaction concerning said one hundred and fifty shares of stock, and deny that they received said stock at a price which was an inadequate consideration at the time said consideration was paid, and say that for Allen B. Endicott, Joseph Thompson, Joseph Wilson, Charles P. Henry, Mordecai T. Endicott or Eva Davis Dodd to now ask that the company be permitted to redeem said stock after more than ten years have elapsed since the time the redemption fixed by said company has expired and after these complaining stockholders have knowingly permitted these defendants to take the risk of loss attendant upon the transfer of the absolute title of said shares to them in liquidation

of their claim against the company in eighteen hundred and ninety-nine, is inequitable, unjust and unconscionable.

15. Defendants say that the St. Leonard's Land Company was not in existence in August eighteen hundred and eighty-nine, but admit that in August of nineteen hundred and nine there was a large number of shares outstanding to wit, one thousand six hundred and thirty-eight or a somewhat larger number, and admit that the par value of said shares was upwards of three hundred dollars per share, and say that the shares above mentioned then outstanding did not include the six hundred and fifty-one shares which had been held in the treasury for the redemption of the sixty-five thousand one hundred dollar mortgage; that said lands were sold by said company subject to said mortgage, and that the said six hundred and fifty-one shares were never issued by said company and that all of the shares outstanding in August of nineteen hundred and nine were part and parcel of the eighteen hundred and thirty-nine shares issued to Marvel, Endicott and Thompson, excepting the ten shares issued to the organizers, and that the difference between the actual number of shares outstanding in August of nineteen hundred and nine and the eighteen hundred and forty-nine shares was made up of shares part and parcel of the four hundred and forty-nine shares transferred by Marvel, Endicott and Thompson to Marvel, trustee, which shares had not been disposed of and are still held by defendant Marvel as such trustee.

16. These defendants deny that these defendants, directors, voted to retain the stock issued to them pursuant to the resolution of October fifteenth, eighteen hundred and ninety-eight, and

deny that these defendants, directors, have committed any breach of duty which they owed as directors to complainants or the other stockholders of said company, and deny that the action of these defendants in that behalf was unconscionable, inequitable or a fraud upon complainants or the other stockholders, and say that the action of these defendants was taken in utmost good faith, and honesty, for the purpose of protecting the land of the said company which had a large prospective value but which at that time was unsalable upon the market, and that these directors made every effort to raise moneys to protect said prospective value from banking institutions, and were unable to do so, and that no means at that time offered itself for the protection of this large prospective value except for these defendants at their own risk and expense to furnish the moneys necessary to safe said company from insolvency.

17. These defendants admit that they held the one hundred fifty shares of stock as collateral security for the repayment of the seventy-five hundred dollars from the fifteenth day of October, eighteen hundred and ninety-eight till the fifteenth day of October, eighteen hundred and ninety-nine, but they deny that the limitation for redemption of said stock to one year was null and void or contrary to equity and good conscience, and say that these directors, acting in good faith, advanced said moneys to said company for the purpose of protecting it from loss and insolvency; that the capital stock of said company was at that time unsalable in the market; that these defendants, acting as directors, were of the opinion that if said stock should become salable within the period of one year that a sale thereof could be made and thereby raise the moneys with which to

repay said loans; that if said stock should not become salable within said period of one year the company would be without means of repaying said loan, and that if the money to be borrowed, pledging the stock as collateral with a limitation such as was placed in the resolution, that the company would be protected because the transaction amounted in fact to a conditional sale of the stock, giving the company the right to repay the loan in the event of the stock becoming salable and relieving it from further liability from said loan in the event that said stock should not become salable.

18. These defendants answering admit that these defendants, directors, occupied precisely such a fiduciary relation to complainants and other stockholders as the directors of every corporation in this State occupy to their stockholders, and deny that they held any other fiduciary relation to said stockholders. They admit that they were required to exercise good faith in their dealings, but deny that they have ever exercised other than good faith in their dealings with said stockholders, and deny that there is any relation, fiduciary or otherwise, that prevents a director from purchasing the stock of a corporation of which he is director at a full and fair consideration therefor, when said company is solvent, and deny that these defendants have profited by said transaction contrary to law, and deny that they are liable to account to complainants touching and concerning the same.

19. These defendants deny that complainants have requested defendants to return to said company the one hundred and fifty shares of stock above mentioned, and say that none of said complainants have requested these defendants to return said stock, and further say that said com-

plainants, nor any of them, have ever requested a suit to be instituted touching and concerning the same and further say that these defendants proposed to Allen B. Endicott and Joseph Thompson in August of nineteen hundred and nine, that a friendly suit be instituted to ascertain the respective rights of complainants and defendants touching the one hundred and fifty shares aforesaid, but that the said Allen B. Endicott and Joseph Thompson requested and insisted that the matter be referred to a particular lawyer, whom they named, whose decision they insisted should be final, and this course not being acceptable to these defendants, the matter was dropped until the filing of complainants' bill.

20. Defendants further say that they deny each and every allegation not hereinabove denied or specifically admitted, and say that complainant's bill is without equity and insufficient in law to sustain the relief prayed for and pray the same relief thereto by way of answer as if they had specifically demurred thereto, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

BOURGEOIS & COULOMB,
Solicitors of Defendants.

Order to Amend

(*Filed,*)

IN CHANCERY OF NEW JERSEY

Between Mordecai Endicott, *et al.*, Complainants, and Phillip Marvel, *et al.*, Defendants.	On bill, etc Order to amend.

This matter being opened to the Court by Bourgeois and Coulomb, of counsel with defendants, and it appearing that an answer has been filed to the bill of complaint in the above stated cause, and that in Paragraph 17 on page 20 of said answer the words "fifteen hundred shares" appear instead of "one hundred and fifty shares,"

It Is, Therefore, on this Twenty-fourth day of June, nineteen hundred and eleven, Ordered that defendant have leave to amend said answer by striking out "fifteen hundred" and inserting therein and instead thereof "one hundred and fifty."

MAHLON PITNEY,
C.

A true copy,
Sam K. Robbins,
Clerk.

Amended Answer

IN CHANCERY OF NEW JERSEY

Between
MORDECAI T. ENDICOTT, *et al.*,
Complainants,
and
PHILIP MARVEL, *et al.*,
Defendants.

The answer of Philip Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams to the bill of complaint filed by complainants in the above stated cause:

1. Defendants admit that on or about the ninth day of October, eighteen hundred and ninety-six, to wit, on the tenth day of October eighteen hundred and ninety-six, a corporation known as the "St. Leonard's Land Company" was organized and duly incorporated according to the laws of the State of New Jersey, and that the objects expressed in its charter included the objects mentioned in complainants' bill of complaint.

2. Defendants admit that the authorized capital stock of the company was two hundred and fifty thousand dollars, divided into twenty-five hundred shares of the par value of one hundred dollars each, and admit that it purchased several tracts of land in the neighborhood of Atlantic City in manner herein stated, and admit that improvements were made thereon and that said company had substantial assets, but deny that said company ever issued any stock after the original issue of stock at the time of the incorporation of said company, and say that defendant Philip Marvel and Allen B. Endicott and Joseph Thompson were

the owners of the legal title to the aforesaid several tracts of land situate in the vicinity of Atlantic City, and upon the incorporation and organization of the St. Leonard's Land Company proposed to sell all their right, title and interest in said lands to the St. Leonard's Land Company, for one hundred and eighty three thousand nine hundred dollars, to be paid for in the capital stock of the St. Leonard's Land Company at par; that at the time of said proposition said lands were subject to a mortgage of sixty-five thousand one hundred dollars; that said lands at the time aforesaid were fully worth the sum of two hundred and fifty thousand dollars; that the St. Leonard's Land Company accepted the offer of said Marvel, Endicott and Thompson to purchase said lands, and thereupon deeds of conveyance were made by the said Marvel, Endicott and Thompson to the St. Leonard's Land Company for the lands mentioned in complainants' bill of complaint; that eighteen hundred and thirty-nine shares of the capital stock of the St. Leonard's Land Company were issued to the said Marvel, Endicott and Thompson, in payment for the lands aforesaid; that at the same meeting, to wit, the meeting of November thirtieth, eighteen hundred and ninety-six, five shares of the capital stock of said company were issued to Israel G. Adams; four shares of the capital stock of said company were issued to Clement J. Adams, and one share of the capital stock of said company was issued to Clarence L. Cole, the original organizer of said company, and the remaining six hundred and fifty-one shares were held in the treasury of said company for the purpose of sale, the proceeds of which were to be applied to liquidate the sixty-five thousand one hundred dollar mortgage on said property; that said six hundred and fifty-one shares and no

part thereof were ever issued, and that said mortgage was liquidated and paid off in the manner hereinafter mentioned.

3. Defendants deny that the entire capital stock authorized by the charter of said company, including one hundred and fifty shares alleged to have been issued to Philip Marvel defendant, was issued to the said Philip Marvel in trust, to be used for promoting and protecting the interest of the company.

4. Defendants admit that the affairs of the company were conducted by its officers, to wit, a president, vice-president and secretary, under the direction and authority of the Board of Directors consisting of seven members, and admit that Philip Marvel, Morris L. Youngman, Louis Kuehnle, Clement J. Adams, Israel G. Adams, Joseph Thompson and Allen B. Endicott were during the greater part of the life of said company such directors.

5. Defendants deny that the Board of Directors and officers of said company actively prosecuted and developed the lands of said company, and say that there were no funds of said company with which to develop said lands, and further say that while the lands of said company were of the full and fair value of two hundred and fifty thousand dollars that said company was without actual cash in hand and without any means of raising cash except from the sale of said lands; that at the time of the purchase of said lands and for twelve years thereafter said lands continued to be in an outlying district with little or no demand for them; that there were but infrequent sales and that the moneys received from the sale of the lots by said company were insufficient to make improvements and provide for the carrying charges of said company, and that these defendants per-

sonally endorsed the promissory notes of said company to an amount in excess of ten thousand dollars during the first two years of its existence.

Defendants further answering said paragraph say that these defendants refused to further endorse for said company and refused to become jointly liable for the benefit of said company, and admit that said company on or about the nineteenth day of May, eighteen hundred and ninety-eight, was indebted to Alvin P. Risley and West Jersey and Seashore Railroad Company for grading land owned by said company, and further say that the directors took up the subject of raising money to meet the company's obligation, and say that said obligation had been outstanding for sometime passed and was due and unpaid, and that on the nineteenth day of May, eighteen hundred and ninety-eight a resolution was passed by the Board of Directors, at which meeting Israel G. Adams, Philip I. Marvel, Louis Kuehnle, Allen B. Endicott, Joseph Thompson and Clement J. Adams, being all the directors excepting Morris D. Youngman, were present, and that said directors appointed Philip I. Marvel and Clement J. Adams a committee to borrow ten thousand dollars and to issue double the amount of stock to secure the payment thereof; the ten thousand dollars so to be borrowed to be applied to the payment of gravel purchased and to be purchased from the West Jersey and Seashore Railroad Company.

Defendants further say that the said Allen B. Endicott director was then President of the Union National Bank of Atlantic City, and that Joseph Thompson, director, was then a director of and solicitor for the Second National Bank of Atlantic City; that pursuant to said resolution the said Philip I. Marvel and Clement J. Adams, commit-

tee, applied to the Union National Bank for a loan of ten thousand dollars, offering to pledge the capital stock of said company in double the amount of said loan as security therefor; that said application was refused by the said Union National Bank and the cashier thereof informed said committee that said capital stock would not be taken as collateral security at any value by said bank; that thereupon said committee applied to the Second National Bank for a loan of ten thousand dollars and offered to pledge the capital stock of said company in double the amount to secure the payment thereof, which application for said loan was refused by said bank; that upon the committee being unable to borrow said moneys a meeting of said directors was held on or about the twentieth day of June, eighteen hundred and ninety-eight, at which meeting the said committee reported their failure, and the financing of said indebtedness was again considered by said board; that these defendants refused to become jointly liable for the indebtedness of said company but finally agreed to raise the sum of fifteen hundred dollars each and advance or loan said sum to defendant company; that on June twentieth, eighteen hundred and ninety-eight defendant Youngman advanced to the said company the sum of fourteen hundred and twenty-eight dollars and fifty-nine cents; and on June twenty-third, defendant Kuehnle advanced to said company fifteen hundred dollars; on June twenty-fifth, defendant Israel G. Adams advanced to said company fifteen hundred dollars; on July thirtieth, defendant Marvel advanced to said company fourteen hundred and seventy dollars and twenty-five cents, and on December fifth, defendant Clement J. Adams advanced to said company fifteen hundred dollars; that said company on the twenty-third

day of June, eighteen hundred and ninety-eight, paid to defendant Kuehnle thirty dollars, four months' interest on said loan; on June twenty-fifth said company paid to defendant Israel G. Adams forty dollars interest on said loan; on December fifth, paid to defendant Clement J. Adams thirty dollars interest on said loan; that said defendant company undertook to give to each of these defendants its promissory note payable in four months, as evidence of said indebtedness, and to execute and deliver to each of these defendants its capital stock in double the amount of the moneys so advanced as collateral security for the payment thereof; that when the four months were about to expire to wit, on the fifteenth day of October, eighteen hundred and ninety-eight, a meeting of the Board of Directors of said company was held and the repayment of the moneys so advanced was considered and discussed; the said company then being financially unable to repay said moneys, and the stock of said company having been offered for sale upon the street at fifty dollars per share, these defendants agreed to accept the shares of stock so issued to them as payment of the moneys so previously advanced by them, and to give the company the privilege of redeeming said shares upon repayment of the moneys so advanced with six per cent interest thereon at any time within one year from the date thereof, and in pursuance of said offer by these defendants, and because the company was unable to find any one willing to loan money to said corporation, the Board of Directors of said company on the fifteenth day of October, eighteen hundred and ninety-eight, passed a resolution as set forth in the next succeeding paragraph, and further say that at that time six hundred and fifty-one shares of unissued stock remained unsold but was held

in the treasury for the redemption of the sixty-five thousand one hundred dollar mortgage that of the eighteen hundred and thirty-nine shares of capital stock issued to Marvel, Endicott and Thompson there had been a reissue of two hundred and fifty-nine shares to Philip Marvel; two hundred and fifty-one shares of Allen B. Endicott; five shares to Joseph Thompson; two hundred and fifty two shares of Clement J. Adams, ninety-two shares to Morris D. Youngman, and two hundred and fifty-one shares to Israel G. Adams, aggregating eleven hundred and forty shares; that the remaining six hundred and ninety-nine shares of said issue of eighteen hundred and thirty-nine shares had been by the owners of the lands first above mentioned turned back to the company for the purpose of creating a fund with which to carry on the business of said company; that said stock had been regularly issued to Marvel, Endicott and Thompson for property purchased, and was in no manner the property of the company until it was turned over to Philip Marvel as trustee by Marvel, Endicott and Thompson; that six hundred and ninety-nine shares of the capital stock of said company was so turned over to Philip Marvel as trustee under the direction that two hundred shares of said stock should be used for purchasing additional lands and four hundred and ninety-nine shares should be used for the best interests of said company; that on the fifteenth day of October, eighteen hundred and ninety-eight, there remained in the hands of said Philip Marvel, trustee, three hundred and forty-five shares or thereabouts, part of the original issue of eighteen hundred and thirty-nine shares to Marvel, Thompson and Endicott, a part of which was issued to defendants as collateral, as aforesaid.

6. Defendants further answering say that they admit that on the fifteenth day of October there was a meeting of the Board of Directors of said company, at which five members, to wit, Philip Marvel, M. D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, were present, and that at said meeting a resolution was offered and passed in the following language:

> "*Resolved,* That each director borrow the sum of fifteen hundred dollars for the period of one year and to receive fifty per cent excess of the company's stock as collateral to said loan to meet the obligation of Alvin P. Risley, contractor. The company to have the privilege of redeeming said stock in one year from date, with interest at six per cent, otherwise to revert to the borrower."

Defendants further say that while said resolution was inaptly drawn, the intent thereof was to pledge three thousand dollars of the capital stock of the company for each fifteen hundred dollars loaned to the company, and that in the event of the company repaying said loan within the period of one year that the loan to the company should thereby be cancelled and the stock should become the property of the person so loaning the money to the company.

Defendants further say that after the passage of said resolution each director, including Allen B. Endicott, and Joseph Thompson, was asked to advance to the company fifteen hundred dollars with which to pay the said outstanding indebtedness that each of the directors responded to said request, excepting Joseph Thompson and Allen B. Endicott, each of whom refused to advance any moneys to said company; that the other directors

who are now defendants in this suit each advanced fifteen hundred dollars to the said company, and the moneys this received were used by said company in liquidating the indebtedness of said company.

These defendants further answering say that Charles P. Henry and Joseph Wilson, stockholders and complainants, know of the loan made by these defendants to the company, and knew of the proviso that the stock which had been given to these defendants should become the property of these defendants unless said company should redeem said stock within the said period of one year.

These defendants further answering say that they deny that Mordecai T. Endicott and Eva David Dodd are stockholders of the St. Leonard's Land Company, and say that Allen B. Endicott is the owner of said stock, he having purchased and paid for the same, but said certificates of stock not having been transferred to the name of the said Allen B. Endicott upon the books of the company.

Defendants further answering say that said moneys were not repaid to these defendants at the expiration of one year from the date of said loan; that said indebtedness was considered by said company to be cancelled and the stock taken by these defendants to be the absolute property of these defendants, the said stock delivered to these defendants being a part of the original issue of eighteen hundred and thirty-nine shares which had been made to Marvel, Endicott and Thompson, and a part of the four hundred and ninety-nine shares which had been turned over and transferred to Philip Marvel as trustee by Marvel, Endicott and Thompson, for the benefit of said com-

pany, and that from the time of the making of said loan until the year nineteen hundred and nine no objection was ever made to said transaction by Joseph Thompson, Allen B. Endicott, Joseph Wilson, Charles P. Henry, Mordecai T. Endicott or Eva Davis Dodd or any other stockholders of said company; that with the seventy-five hundred dollar indebtedness of the St. Leonard's Land Company existing on the fifteenth day of October, eighteen hundred and ninety-eight liquidated, there was sufficient funds received from the sale of lots to pay the fixed charges, and from said fifteenth day of October eighteen hundred and ninety-eight until the year nineteen hundred and nine, no offer was ever made to repay to these defendants the moneys they had loaned to said company on the fifteenth day of October, eighteen hundred and ninety-eight, and the moneys which the said company considered to be in payment of the stock aforesaid upon the expiration of one year from said date that no interest was ever paid by said company on account of said loans and no offer to pay any interest thereon was ever made prior to the year nineteen hundred and nine; that during the summer of nineteen hundred and nine, and on or about the day of one Isaac Bacharach became interested in the said St. Leonard's Land Company, and through his efforts the entire holdings of said company were disposed of at prices aggregating upwards of six hundred thousand dollars, as a result of which the stock of said company became of the value of three hundred and twenty-two dollars per share or thereabouts; that two dividends of thirty per cent each were declared on all the stock of said company including the thirty shares of stock delivered to each of these defendants on the fifteenth day of October, eighteen hundred and ninety-

eight without protest from either directors or stockholders; that afterwards, to wit, on the seventeenth day of August, nineteen hundred and nine, Joseph Thompson and Allen B. Endicott set on foot a claim that these defendants had secured no title to the stock aforesaid, and that it should be returned to said company together with the dividends received by these defendants thereon, less six per cent interest on said loan from the fifteenth day of October, eighteen hundred and ninety-eight to the seventeenth day of August, nineteen hundred and nine.

These defendants further say that these complainants and Joseph Thompson and Allen B. Endicott had full knowledge of the transfer of said stock to these defendants at all times from the fifteenth day of October, eighteen hundred and ninety eight until the seventeenth day of August, nineteen hundred and nine, and thence until the filing of this bill, and that during all of said time between the fifteenth day of October, eighteen hundred and ninety-eight until the fifteenth day of October, eighteen hundred and ninety-nine, when said transfer became absolute in these defendants, and thence until the seventeenth day of August, nineteen hundred and nine, neither the said stockholders, complainants, nor the said Allen B. Endicott nor Joseph Thompson made any protest touching or concerning the transfer of said stock to these defendants, and made no effort to have the moneys so advanced by these defendants to the said company repaid to them or any of them, and that during all of said term when the financial success of the said St. Leonard's Land Company was unknown and problematical, the said complaining stockholders and the said Allen B. Endicott and Joseph Thompson were quiescent

and content that defendants should receive the stock so transferred to them in consideration of the seventy-five hundred dollars advanced and paid by these defendants to said company, and not until Isaac Bacharach had interested himself in said lands and had created a boom in real estate in said locality and thereupon sold said lands at a sum far in excess of the par value of the stock of said company did the said complainant stockholders or the said Allen B. Endicott or Joseph Thompson entertain a thought of considering said transfer not absolute after the fifteenth day of October, eighteen hundred and ninety-nine.

Defendants further answering say that during the entire existence of the said St. Leonard's Land Company until August of nineteen hundred and nine, the said Joseph Thompson and Allen B. Endicott acted as and were consulted as legal advisors or solicitors for the said St. Leonard's Land Company, and as such as well as in the capacity of directors they were informed and advised of every act or measure taken by the directors, and that no act of the directors of such company was ever done during the time aforesaid contrary to the advice of said Thompson and Endicott, and that every act taken by the directors for said company during the term aforesaid was taken either by the specific advice of the said Thompson and Endicott or one of them, or else with their acquiescence and consent; that the transaction touching the loaning of the moneys aforesaid having been fully known and understood by said Thompson and Endicott at the time, and they acquiescing in and consenting to the issuing of the stock to these defendants, these defendants then believed, as they now believe, that said transaction was entirely regular and binding.

7. These defendants deny that the whole of the stock issued to Philip Marvel in trust was transferred to these defendants, and aver the fact to be that of the six hundred and ninety-nine shares issued to Philip Marvel in trust by Marvel, Thompson and Endicott for the advancement of the interests of said company, being part and parcel of the original issue of eighteen hundred and thirty-nine shares there remained in the hands of said Marvel on the fifteenth day of October, eighteen hundred and ninety-eight, three hundred and fifty-four shares or thereabouts, and that from this three hundred and fifty-four shares so held by the said Marvel were issued the one hundred and fifty shares to these defendants.

Defendants further answering say that while said Marvel, Endicott and Thompson transferred six hundred and ninety-nine shares of the original issue of eighteen hundred and thirty-nine shares to be reissued to Philp Marvel, trustee, only two hundred shares of said reissue of six hundred and ninety nine shares were subject to any express trust, and said two hundred shares being issued for the purchase of adjoining lands, and the other four hundred and ninety-nine shares having been reissued to said Marvel, trustee, under no express trust but to be used for the advancement and improvement of said corporation generally, and deny that these defendants did not permit said company to redeem said stock and say that at all times within one year after the said fifteenth day of October, eighteen hundred and ninety-eight, these defendants and each of them stood ready to accept a repayment of the moneys so advanced by them and each of them, together with six per cent interest thereon, and not until after said year had expired, at which time the said company was with-

out funds with which to repay said loan and without ability to make sales to secure funds with which to repay said loan, did these defendants consider said stock to be their absolute property, and further say that at no time between the fifteenth day of October, eighteen hundred and ninety-eight and the fifteenth day of October, eighteen hundred and ninety-nine, could the said capital stock of the St. Leonard's Land Company have been sold in the market for as much as fifty dollars per share; that while it owned lands of much prospective value said lands because of their being located in an outlying district were not of ready sale, and said stock was not salable at the price at which these defendants accepted it.

8. Defendants further answering deny that Philip Marvel, president, Clement J. Adams, secretary and Israel G. Adams, treasurer, of said company exceeded the terms of said resolution in issuing thirty shares of stock as security for the repayment of fifteen hundred dollars advanced to the company by each of said directors, and say that thirty shares of stock were issued and delivered to each of these defendants on or about the twentieth day of June, eighteen hundred and ninety-eight, except in the case of defendant Youngman, whose certificate was mislaid by the treasurer of said company, and not delivered to defendant Youngman until the year nineteen hundred and one, when a new certificate was issued and delivered to him in place of the certificate which had been issued to him but not delivered on June twentieth, eighteen hundred and ninety-eight, but that the certificates of stock whatever were issued to these defendants on the fifteenth day of October, eighteen hundred and ninety-eight, but that the certificates of stock issued to

these defendants in June of eighteen hundred and ninety-eight were issued pursuant to the resolution of May nineteenth, eighteeen hundred and ninety-eight, and that on October fifteenth, eighteen hundred and ninety-eight the agreement was made to accept said stock in payment of said indebtedness with the privilege to the company that said stock might be redeemed within one year as above mentioned, and say that said resolution is ambiguous and inaptly drawn, but that the meaning of said resolution was that the loan of fifteen hundred dollars should be fifty per cent of the amount of stock issued to each of them; that such was the understanding all of the directors had of said resolution at the time of its adoption, and such understanding of said resolution was conveyed to Allen B. Endicott and Joseph Thompson at the time, and to Joseph Wilson and Charles P. Henry thereafter, and that during all the years aforesaid and from the fifteenth day of October, eighteen hundred and ninety-eight, they, the said Joseph Wilson, Charles P. Henry, Allen B. Endicott, Joseph Thompson and other stockholders knew that thirty shares of stock had been transferred to each of the directors to become the absolute property of such directors unless the loan of fifteen hundred dollars with interest thereon by each of them to the company should be repaid within said year, and that these complainants and each of them after more than six years have elapsed since said original notes became due and payable, are now barred by their laches and the statute of this state thereafter in force from compelling these defendants to return said stock to the company and consider the original transaction as consummated on October fifteenth, eighteen hundred and ninety-eight as a loan, said suit not having been

instituted within four years next after the fifteenth day of October, eighteen hundred and ninety-eight, nor within six months next after the eighth day of April, nineteen hundred and three.

9. These defendants deny that they or any of them have profited at the expense of the stockholders of the company in the gross sum of eight thousand one hundred and sixty dollars or any other sum, and deny that these defendants or any of them have appropriated to themselves shares of stock which were held in trust for the purpose of promoting and protecting the interests of said company, and say that except for the loan of said moneys by these defendants the entire property of said company would have been exposed to sale and sacrifice at a time when there was no demand or market for it, and that the advancing of the moneys aforesaid by these defendants made possible the increased value of the stock to the stockholders of this company, and further say that at the time these defendants advanced the moneys to the said company these defendants, in the exercise of an honest judgment, regarded thirty shares of stock as scanty security for fifteen hundred dollars in cash, and that at that time there was no thought upon the part of these defendants or any of them realizing any particular sum out of said shares, and that said moneys were loaned in fact by these defendants for the purpose of preventing the sacrifice of said property, and that it is inequitable and unjust for complainants to now insist that the St. Leonard's Land Company is authorized to redeem said shares of stock at par after said complainants permitted the moneys advanced by these defendants to remain in jeopardy for all the time between October fifteenth, eighteen hundred and ninety-eight and the summer of

nineteen hundred and nine, during which period at no time did any of said complainant stockholders, or Joseph Thompson or Allen B. Endicott come forward and offer to assume a part of the indebtedness which these defendants paid, or to reimburse these defendants for any part of the moneys which they had paid and advanced to said Company.

10. Defendants further answering deny that they stood in any fiduciary capacity with relation to the stockholders of said company touching and concerning the one hundred and fifty shares of stock herein mentioned other than as directors of said company, and say that the eighteen hundred and thirty nine shares of stock of which the one hundred and fifty shares in question was a direct part, were assigned by Marvel, Endicott and Thompson to Philip Marvel, trustee, for the improvement and advancement of the interests of said Company generally, and not subject to any expressed trust or condition; that said four hundred and ninety-nine shares were placed in the name of Philip Marvel as trustee, so that they could be disposed of by the directors at such price as the directors or the majority of them should deem to be for the best interests of said company; that the transfer of said four hundred and ninety-nine shares to Philip Marvel as trustee was the voluntary act of the owners of said eighteen hundred and thirty-nine shares; that after the purchase of said lands and the payment therefor by the issuing of the eighteen hundred and thirty-nine shares to Marvel, Endicott and Thompson, said company had no interest in said shares whatever and that the turning over of said shares to Marvel as trustee was in fact a gift by the owners of said eighteen hundred and thirty-nine shares to the company or to Philip Marvel as trustee to be

used as above stated for the improvements and advancement of said St. Leonard's Land Company.

These defendants further deny that these defendants were created trustees by virtue of any constructive trust respecting said shares, and say that said shares were property of the same character as the lands of said Company, and that the directors had the same power of sale over said shares of stock as they had over other property of the company, and that the sale of said shares was made *bona fide* for the best interests of the company when said company was in a solvent condition because of the value of the company's real estate, but when there was no immediate sale for said real estate, and no sale for the stock of said company, and that the disposition made of said one hundred and fifty shares by these defendants; director was the only means possible at that time of preserving the large prospective value of said lands for the benefit of the stockholders of the said St. Leonard's Land Company, and deny that the issue of said stock was in fraud of complainant's and the other stockholders, and say that the entire transaction was taken for and was for the best interests of the stockholders.

11. Defendants admit that the said one hundred and fifty shares were never voted upon prior to August of nineteen hundred and nine, and say that during the whole existence of said company from its organization in October of eighteen hundred and ninety-six until the present time there was never any election of officers and directors after the meeting of November thirtieth, eighteen hundred and ninety-six, and from that date until the present time the directors of said company were Allen B. Endicott, Joseph Thompson, Philip Marvel, Morris D. Youngman, Clement J. Adams

and Israel G. Adams and Louis Kuehnle, and that from the date aforesaid until the summer of nineteen hundred and nine, the officers of said company have been Philip Marvel, President, Israel G. Adams, Treasurer, and Clement J. Adams, Secretary.

Defendants further admit that no dividends were paid on the one hundred and fifty shares of stock or on any other shares of stock of said company from the date of its incorporation up to August of nineteen hundred and nine, and say that during all of said period said company by the sale of lots and the moneys advanced to it by these defendants was financially able only to meet its carrying charges, and not until the sale of said land by Bacharach aforesaid was the company in position to declare dividends, and that when said dividends were declared they were declared upon all the stock including the one hundred and fifty shares aforesaid, and then for the first time after Allen B. Endicott and Joseph Thompson had refused to come to the assistance of the company in eighteen hundred and ninety-eight and had permitted these defendants to come to its assistance and advance the moneys of these defendants for its benefit and after said Joseph Thompson and Allen B. Endicott, with the knowledge of the said Joseph Wilson and Charles P. Henry, had been content and willing that these defendants should accept the stock aforesaid as payment for the moneys advanced by them, did the said Joseph Thompson and Allen B. Endicott, Joseph Wilson, Charles P. Henry, or any other stockholder object to such transfer.

Defendants admit that said company is practically liquidated, and that these defendants have

never sold their stock excepting Israel G. Adams, who, these defendants admit, sold all or a part of his stock to Isaac Bacharach, and say that it was the sale of the stock of the said Israel G. Adams to Isaac Bacharach that induced the said Bacharach to boom said lands, which resulted in the sudden advancement of the value of said stock from less than par to upwards of three hundred dollars per share, and that said Israel G. Adams received no benefit whatever from the said advancement.

12. Defendants deny that complainants were ignorant of the action taken by the Board of Directors on the fifteenth day of October, eighteen hundred and ninety-eight, and say that Joseph Wilson and Charles P. Henry had knowledge of said action immediately thereafter, and further say that on the fifteenth day of October, eighteen hundred and ninety eight that Mordecai T. Endicott and Eva Davis Dodd were not stockholders in said company, but that their stock was then owned by Allen B. Endicott, who had knowledge thereof, and further say that after the sale of said stock by the said Allen B. Endicott to the said Mordecai T. Endicott and Eva Davis Dodd, the said Allen B. Endicott repurchased and paid for said stock and is now the owner thereof, and that Mordecai T. Endicott and Eva Davis Dodd have no interest therein except that the title to said stock has not been transferred upon the books of said company.

13. Defendants admit that on the seventeenth day of August, nineteen hundred and nine, Allen B. Endicott and Joseph Thompson moved that the company redeem the said one hundred and fifty shares of stock, the title to which had become absolute in these defendants, on the fifteenth day of October, eighteen hundred and ninety-nine, and

they admit that said Allen B. Endicott and Joseph Thompson were not present on the fifteenth day of October, eighteen hundred and ninety-eight, but say that the said Allen B. Endicott and Joseph Thompson were informed of the resolution of October fifteenth, eighteen hundred and ninety-eight immediately thereafter, and that they, the said Joseph Thompson and Allen B. Endicott were solicited to advance to the company fifteen hundred dollars, cash, pursuant to said resolution and receive thirty shares of stock each therefor, to become absolute in them if not redeemed in one year from said date, and that each the said Joseph Thompson and Allen B. Endicott refused to advance said money and refused to take said stock, and informed the Board of Directors of their respective banking institutions that said stock was of no value as collateral security, and admit that the said Allen B. Endicott and Joseph Thompson at said meeting of August seventeenth, eighteen hundred and ninety-nine, proposed to repay out of the funds of said company the fifteen hundred dollars each to these defendants with six per cent. interest thereon.

14. These defendants deny that these defendants, directors, have wrongfully profited by the transaction concerning said one hundred and fifty shares of stock, and deny that they received said stock at a price which was an inadequate consideration at the time said consideration was paid, and say that for Allen B. Endicott, Joseph Thompson, Joseph Wilson, Charles P. Henry, Mordecai T. Endicott or Eva Davis Dodd to now ask that the company be permitted to redeem said stock after more than ten years have elapsed since the time the redemption fixed by said company has

expired and after these complaining stockholders have knowingly permitted these defendants to take the risk of loss attendant upon the transfer of the absolute title of said shares to them in liquidation of their claim against the company in eighteen hundred and ninety-nine, is inequitable, unjust and unconscionable.

15. Defendants say that the St. Leonard's Land Company was not in existence in August eighteen hundred and eighty-nine, but admit that in August of nineteen hundred and nine there was a large number of shares outstanding to wit, one thousand six hundred and thirty-eight or a somewhat larger number, and admit that the par value of said shares was upwards of three hundred dollars per share, and say that the shares above mentioned then outstanding did not include the six hundred and fifty-one shares which had been held in the treasury for the redemption of the sixty-five thousand one hundred dollar mortgage; that said lands were sold by said company subject to said mortgage, and that the said six hundred and fifty-one shares were never issued by said company, and that all of the shares outstanding in August of nineteen hundred and nine were part and parcel of the eighteen hundred and thirty-nine shares issued to Marvel, Endicott and Thompson, excepting the ten shares issued to the organizers, and that the difference between the actual number of shares outstanding in August of nineteen hundred and nine and the eighteen hundred and forty-nine shares was made up of shares part and parcel of the four hundred and forty-nine shares transferred by Marvel, Endicott and Thompson to Marvel, trustee, which shares had not been disposed of and are still held by defendant Marvel as such trustee.

Amended Answer

16. These defendants deny that these defendants, directors, voted to retain the stock issued to them pursuant to the resolution of October fifteenth, eighteen hundred and ninety-eight, and deny that these defendants, directors, have committed any breach of duty which they owed as directors to complainants or the other stockholders of said company, and deny that the action of these defendants in that behalf was unconscionable, inequitable or a fraud upon complainants or the other stockholders, and say that the action of these defendants was taken in utmost good faith, and honesty, for the purpose of protecting the land of the said company which had a large prospective value but which at that time was unsalable upon the market, and that these directors made every effort to raise moneys to protect said prospective value from banking institutions, and were unable to do so, and that no means at that ime offered itself for the prote ction of this large prospective value except for these defendants at their own risk and expense to furnish the moneys necessary to save said company from insolvency.

17. These defendants admit that they held the one hundred and fifty shares of stock as collateral security for the repayment of the seventy-five hundred dollars from the fifteenth day of October, eighteen hundred and ninety-eight till the fifteenth day of October, eighteen hundred and ninety nine, but they deny that the limitation for redemption of said stock to one year was null and void or contrary to equity and good conscience, and say that these directors, acting in good faith, advanced said moneys to said company for the purpose of protecting it from loss and insolvency; that the cap-

ital stock of said company was at that time unsalable in the market; that these defendants, acting as directors, were of the opinion that if said stock should become salable within the period of one year that a sale thereof could be made and thereby raise the moneys with which to repay said loans; that if said stock should not become salable within said period of one year the company would be without means of repaying said loan, and that if the money to be borrowed pledging the stock as collateral with a limitation such as was placed in the resolution, that the company would be protected because the transaction amounted in fact to a conditional sale of the stock, giving the company the right to repay the loan in the event of the stock becoming salable and relieving it from further liability from said loan in the event that said stock should not become salable.

18. These defendants answering admit that these defendants, directors, occupied precisely such a fiduciary relation to complainants and other stockholders as the directors of every corporation in this state occupy to their stockholders, and deny that they hold any other fiduciary relation to said stockholders. They admit that they were required to exercise good faith in their deal ings, but deny that they have ever exercised other than good faith in their dealings with said stockholders, and deny that there is any relation, fiduciary or otherwise, that prevents a director from purchasing the stock of a corporation of which he is director at a full and fair consideration therefor, when said company is solvent, and deny that these defendants have profited by said transaction contrary to law, and deny that they are liable to account to complainants touching and concerning the same.

Amended Answer

19. These defendants deny that complainants have requested defendants to return to said company the one hundred and fifty shares of stock above mentioned, and say that none of said complainants have requested these defendants to return said stock, and further say that said complainants, nor any of them, have ever requested a suit to be instituted touching and concerning the same, and further say that these defendants proposed to Allen B. Endicott and Joseph Thompson in August of nineteen hundred and nine, that a friendly s uit be instituted to ascertain the respective rights of complainants and defendants touching the one hundred and fifty shares aforesaid, but that the said Allen B. Endicott and Joseph Thompson requested and insisted that the matter be referred to a particular lawyer, whom they named, whose decision they insisted should be final, and this course not being acceptable to these defendants, the matter was dropped until the filing of complainants' bill.

20. Defendants further say that they deny each and every allegation not hereinabove denied or specifically admitted, and say that complainants' bill is without equity and insufficient in law, to sustain the relief prayed for and pray the same relief thereto by way of answer as if they had specifically demurred thereto, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

BOURGEOIS & COULOMB,
Solicitors of Defendants.

Order Amending Bill

IN CHANCERY OF NEW JERSEY

(Filed,)

Between, MORDECAI T. ENDICOTT, *et als.*, Complainants, and PHILIP MARVEL, *et als.*, Defendants.	On Bill.

IT IS, on this twenty-ninth day of January, 1912, as of the fourth day of December, one thousand nine hundred and eleven, on motion of Gaskill & Gaskill, of Counsel with the Complainants, and in the presence of George A. Bourgeois Counsel for the Defendants,

ORDERED that Complainants have leave to amend their Bill by filing an amended bill, said amended Bill stating that the Bill is filed on behalf of the corporation and for the benefit of all the Shareholders of the same, and that said Complainants have leave in filing said amended Bill to add J. Estell Evans and Fred C. Robbins as Complainants, the Saint Leonard's Land Company and Philip Marvel, Trustee, as defendants, with permission to make such averments in said amended Bill and the prayer thereof as will be occasioned by the addition of parties and as they may be advised is necessary or advisable.

And that a copy of said amended Bill and this order which need not be certified, be served upon the Solicitor of the answering defendants.

Respectfully advised,

E. R. LEAMING.
V. C.

Amended Bill

IN CHANCERY OF NEW JERSEY

(Filed,)

To His Honor Mahlon Pitney, Chancellor of the State of New Jersey:

COMPLAINING shows unto your Honor your Orators, Mordecai T. Endicott of the City of Washington in the District of Columbia, Joseph W. Wilson and Charles P. Henry of the City of Philadelphia in the State of Pennsylvania, Eva Davis Dodd of the City of Schenectady in the State of New York, J. Estel Evans and Fred C. Robbins of New Jersey, who are stockholders of a corporation under the laws of the State of New Jersey known as the St. Leonard's Land Company; that they file this Bill on behalf of the corporation and for the benefit of all the shareholders of the same.

1. Your Orators show that on or about the ninth day of October in the year of our Lord, one thousand eight hundred and ninety-six, a corporation known as the St. Leonard's Land Company was organized and duly incorporated according to the laws of the State of New Jersey, its object being to buy, sell, lease and improve the lands and real estate, to erect and construct houses, buildings, wharves, bulkheads, and to reclaim lands and make other like improvements, and to sell and lease the same; to build and maintain streets, sidewalks, turnpikes, and other roads; to operate stage lines for the transportation of passengers and baggage, and for all other purposes incident thereto and naturally connected therewith; and to make, execute and deliver, take and receive deeds, bonds, mortgages, promissory notes and other instruments in writing connected therewith.

2. Your Orators further show that the authorized capital stock of the Company was two hundred and fifty thousand dollars, divided into twenty-five hundred shares of the par value of one hundred dollars each, and commenced business with one thousand dollars paid; that it purchased several tracts or parcels of land in the neighborhood of Atlantic City and made improvements thereon, and thereby acquired substantial assets; that it issued additional stock from time to time as authorized by its charter to a large number of persons who paid cash for the same at par and became stockholders in the said Company.

3. Your Orators further show that the entire amount of stock authorized by the charter was issued including certain shares which were issued and transferred to Philip Marvel, In Trust to be used for the purpose of promoting and protecting the interests of the Company.

4. Your Orators further show that the management of the affairs and business of the Company was conducted by its officers, to wit, a president, vice-president, secretary, and treasurer under the direction and authority of a board of directors consisting of seven members namely—Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams, Israel G. Adams, Joseph M. Thompson and Allen B. Endicott.

5. Your Orators further show that the said board of directors and officers of the Company actively prosecuted the development of the Company's land and business so far as the funds of the Company enabled it to do; that in October of the year one thousand eight hundred and ninety-eight, the Company was in need of money to pay a bill of Alvin F. Risley for grading lands owned by said Company, and the board of direct-

ors took up the subject of raising money to meet the Company's obligations.

6. Your Orators further show that on the fifteenth day of October, A. D., one thousand eight hundred and ninety-eight a resolution was adopted by the board of directors by the vote of five members present, to wit, Philip Marvel, Maurice D. Youngman, Louis Keuhnle, Clement J. Adams and Israel G. Adams providing that each director borrow the sum of fifteen hundred dollars for one year and that the Company's stock in the hands of Philip Marvel In Trust as aforesaid to the amount of one hundred and fifty percent of the loan be used as collateral, the Company to have the privilege of redeeming the stock in one year from the date thereof with interest at six percent. That said five directors paid to the treasurer of the said Company the sum of fifteen hundred dollars each, and used the said stock so transferred to them as collateral upon which to raise the said money.

7. Your Orators further show that stock in the hands of Philip Marvel In Trust for the purpose of promoting and protecting the interests of the Company was thereupon transferred by him to the above named five directors of the said Company including himself, who voted in favor of the passage of the said resolution as collateral, and that said directors did not permit the Company to redeem same in accordance with the terms of the resolution, nor offer to redeem the same upon repayment to them of the moneys advanced by them to said Company.

8. Your Orators further show that Philip Marvel, the president, and Clement J. Adams, secretary, and Israel G. Adams, treasurer of the Company, as the officers and agents of the said

Company, exceeded the terms of the said resolution authorizing a transfer of said Company's stock held in trust as aforesaid to an amount equal to one hundred and fifty percent of the loan to be used as collateral, and that said officers and agents of the Company actually caused to be transferred to the said above named five directors including said Philip Marvel, the stock held by said Philip Marvel in trust as aforesaid to an amount equal to two hundred per cent of said loan.

9. Your Orators further show that thirty shares of said stock equal to two hundred per cent of said loan, were thereupon transferred to each of the said five directors including said Philip Marvel under cover of the said resolution to secure each for the sum of fifteen hundred dollars loaned by each to the Company; that said stock was of great value and is now worth the sum of three hundred and twenty-two dollars per share, or the sum of nine thousand six hundred and sixty dollars for each thirty shares, so that each of the said five directors including said Philip Marvel has unlawfully profited at the expense of the stockholders of the Company in the sum of eight thousand one hundred and sixty dollars by appropriating to himself said shares of stock which were held in trust as aforesaid for the purpose of promoting and protecting the interests of the Company.

10. Your Orators charge that the said Philip Marvel Trustee as aforesaid and the officers and directors of the Company stood in a fiduciary relationship to said Company and to its stockholders with respect to the shares of stock placed in the hands of Philip Marvel In Trust for promoting and protecting the interests of the Com-

pany, and that the said Philip Marvel and said directors were and are trustees by virtue of a constructive trust created with respect to said shares for said Company and the stockholders of said Company, and that the transfer of said stock as made to said Philip Marvel and said directors is in fraud upon said Company and the rights of your Orators and the other shareholders of said Company and is contrary to equity and good conscience.

11. Your Orators further show that the said stock so transferred from Philip Marvel to the said five directors by virtue of the said resolution has never been voted upon, and that no dividends were declared upon it or upon other stock of the Company until August, A. D., one thousand nine hundred and nine when two dividends of twenty per cent each were declared on all the stock of the Company as a method of liquidation; since which time other dividends were declared on said stock until now the liquidation is substantially effected; that the said stock has never been sold by the parties to whom it was issued, with the exception of Israel G. Adams, who has sold all or part of his stock to Isaac Bacharach.

12. Your Orators further show that your Orators and the other stockholders of said Company were ignorant of the action taken by the board of directors on the fifteenth of October, A. D., one thousand eight hundred and ninety-eight for the purpose of raising money to meet the obligations of the Company, that they were not consulted nor informed of the said resolution and proposed means of raising money, nor was the said resolution or any other resolution for that

purpose ever submitted to the stockholders of the Company for their information or approval.

13. Your Orators further show that on the seventeenth day of August, A. D., one thousand nine hundred and nine, at a meeting of the said board of directors at which all seven directors were present, it was moved and seconded by the two directors Allen B. Endicott and Joseph M. Thompson, who were not present at the meeting of October fifteenth one thousand eight hundred and ninety-eight, that the Company redeem the said Trust stock, transferred to be used as collateral as aforesaid, and that the five directors holding the same return the said stock to the Company and accept the sum advanced by them to the Company on the said stock with interest, but that this motion was lost, the directors interested therein as aforesaid including said Philip Marvel voting in the negative.

14. Your Orators charge that said Philip Marvel, Trustee and directors who wrongfully profited by the transaction thus committed the Company to the policy of not redeeming the said Trust Stock transferred by virtue of the said resolution from the said Philip Marvel, Trustee, to them and attempted to confirm its transfer as aforesaid at an inadequate consideration and at a large personal profit to themselves.

15. Your Orators show they have been informed that in the month of August, one thousand eight hundred and ninety-eight the number of shares of stock of said Company then outstanding was one thousand six hundred and thirty-eight shares of stock of a par value of one hundred dollars, and worth at that time about three hundred and twenty-two dollars each.

16. Your Orators charge that the said action

of the said Philip Marvel, Trustee as aforesaid, and the five members of the board of directors who voted to retain the stock issued to them as collateral by virtue of the resolution of October, one thousand eight hundred and ninety-eight, was a breach of the duty owing by said Philip Marvel, Trustee, and said directors to said Company, and to your Orators and the other stockholders of the said Company by reason of their fiduciary relationship, and that the said action of the said Philip Marvel and the five directors was unconscionable, inequitable and a fraud upon said Company and upon your Orators and the other stockholders of the said Company.

17. Your Orators charge that the said shares of stock issued to Philip Marvel In Trust to be used for the purpose of promoting and protecting the interests of the Company and transferred by him to himself and the said five directors of the Company to be used by them as collateral security for the advances made by them to the Company were in fact transferred to them as collateral and not absolutely, and that the pretended limitation for redemption of said stock to one year is null and void, and contrary to equity and good conscience, and that the said Philip Marvel, Trustee, has violated the trust reposed in him.

18. Your Orators charge that said Philip Marvel and the said five directors to whom the trust stock was transferred as aforesaid occupied a fiduciary relationship to said Company your orators and the other stockholders of the Company with respect to the said stock, and were required to exercise the utmost good faith in their dealings with their *cestui que trustents* and were barred from making a personal profit by reason

of that relationship, and that the said Philip Marvel, Trustee and the five members of the board of directors who had profited by the transaction aforesaid contrary to law must account therefor as trustees for said Company and your Orators and the other stockholders of the said Company.

19. Your Orators further show that they have repeatedly requested the said Philip Marvel, Trustee, and the five members directors, namely, Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams to accept the sum of fifteen hundred dollars advanced by each of said five directors to the said Company with interest thereon and return to the Company the said stocks received by them as collateral wherewith to borrow said money, and your Orators well hoped that they would have complied with such reasonable request as in equity and good conscience they ought to have done, but so to do they have hitherto refused and still do refuse and claim to be the absolute owners of said shares of trust stock so transferred to them as aforesaid.

20. And your Orators show that they have been compelled to file this bill in their own names on behalf of said Company for the reason that the said Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams constitute a majority of said board and refuse to file this bill in the name of said Company and therefore these complainants make said Company a defendant herein.

All of which actings, doings and pretences of the said Philip Marvel, Trustee and the five directors, namely, Philip Marvel, Maurice D. Youngman,

Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants, are contrary to equity and good conscience and tend to the manifest wrong, injury and oppression of said Company and your Orators and the other stockholders in the premises.

In tender consideration whereof and forasmuch as your Orators are without adequate remedy in the premises at and by the strict rules of the common law and can only obtain relief in this honorable Court where matters of this nature are properly cognizable and relievable:

To the end therefore that the said defendants, St. Leonard's Land Company, Philip Marvel, Trustee, Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams may without oath, oath being expressly waived, to the best and utmost of their respective knowledge, remembrance, information and belief full, true and perfect answer make to all and singular the matters aforesaid and that as particularly as if the same were here repeated and they each of them distinctly interrogated thereto;

And that the said defendants, St. Leonard's Land Company, Philip Marvel, Trustee, Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams may be required and decreed by this honorable Court to be Trustees of said shares of stock for the benefit and use of said Company and your Orators and the other stockholders of said Company and be required to account for the said shares of stock of the St. Leonard's Land Company which were held by said Philip Marvel in Trust and to assign, transfer and deliver the same to the St. Leonard's Land Company at their own expense and to ac-

cept each the sum of one thousand five hundred dollars with interest thereon; and also to account for and pay back into the Treasury of said Company all dividends and profits therefrom derived and all moneys received from the sales thereof with interest.

And that your Orators may have such further or other relief in the premises as the nature of the case may require and as shall be agreeable to equity and good conscience.

May it please your Honor, the premises considered, to grant unto your Orators the State's writ or writs of subpoenas issuing out of and under the seal of this honorable Court to be directed to the said St. Leonard's Land Company, Philip Marvel, Trustee, Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, commanding them, and each of them, by a certain day and under a certain penalty therein to be expressed to be and appear before your Honor in this honorable Court, then and there to answer all and singular the premises, and to stand to, abide by and perform such order and decree therein as to your Honor shall seem meet and as shall be agreeable to equity and good conscience.

And your Orators as in duty bound will ever pray, etc.

ALLEN B. ENDICOTT, Jr.,
Solicitor with Complainant.

Gaskill & Gaskill,
Of Counsel with Complainant.

Answer and Cross-Bill

IN CHANCERY OF NEW JERSEY

(Filed,)

Between MORDECAI T. ENDICOTT, *et als.*, Complainants, vs. PHILIP MARVEL, *et al.*, Defendants.	On Bill, &c.

The answer of Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle to so much of the amended bill of complaint filed in the above stated cause as these defendants are advised it is necessary and proper for them to answer:

1. Defendants admit the allegations contained in paragraph 1 of complainants' bill.

2. Defendants admit that the authorized capital stock of defendant company was twenty-five hundred shares of the par value of one hundred dollars each, and that said company commenced business with one thousand dollars paid, and that it purchased several tracts of land in the neighborhood of Atlantic City, but say that said several tracts of land so purchased were purchased from Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman, the title to which lands at the time of said purchase stood in the name of Philip I. Marvel, Allen B. Endicott and Joseph Thompson, who held said lands in trust for themselves and the said Philip I. Marvel, Clement J.

Adams, Israel G. Adams and Morris D. Youngman.

Defendants admit that defendant company by the purchase of said lands acquired substantial assets, but say that said lands were acquired by the issuing of the capital stock of said company for a like value, so that as the company acquired substantial assets it at the same time incurred liabilities of equal value.

These defendants deny that said company issued additional stock from time to time as authorized by its charter to a large number of persons who paid cash for the same at par, and became stockholders in said company, and say that prior to the organization of defendant company, Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman owned various tracts of land within what is now the City of Ventnor; that these persons, conceiving that their lands would become more valuable if the title thereto was concentrated in one person or corporation and the whole tract improved and sold subject to proper buildings restrictions, agreed among themselves to form a corporation to take over said lands, and said persons to receive stock of said corporation in proportion to the value of the lands they severally owned, and place the title to all of their said lands in the name of Philip I. Marvel, Allen B. Endicott and Joseph Thompson for the purpose aforesaid, and thereupon defendant corporation was organized under the laws of the State of New Jersey by Clement J. Adams, Israel G. Adams and Clarence L. Cole, Esquire, as incorporators; that at the time aforesaid there were several small tracts of land lying contiguous to the lands above mentioned, and sometimes lying between

the lands of the various persons above mentioned, which said small tracts of land were necessary to complete the title to all the lands within the tract which the above persons designated as "St. Leonards Land Company Tract," and upon the organization of defendant company the said Philip I. Marvel, Allen B. Endicott and Joseph Thompson proposed and offered to sell to the St. Leonard's Land Company all of the lands by them so held subject to a mortgage of sixty-five thousand one hundred dollars for eighteen hundred and forty-nine shares of the capital stock of said St. Leonard's Land Company; six hundred and fifty-one shares of said stock to remain in the treasury to be sold, and the moneys received therefrom to be paid on account of the principal of said mortgage of sixty-five thousand one hundred dollars, which proposition was accepted by the St. Leonard's Land Company, and the lands of the various persons above mentioned so held by Philip I. Marvel, Allen B. Endicott and Joseph Thompson were transferred to St. Leonard's Land Company, and they received in compensation therefor the aforesaid issue of eighteen hundred and forty-nine shares of stock; that the proposition of Philip I. Marvel, Allen B. Endicott and Joseph Thompson to sell to St. Leonard's Land Company included a proposal to sell the various smaller tracts of land which were necessary to complete the title of the lands known as the St. Leonard's Land Company's lands, and for the purpose of acquiring said outstanding tracts, the owners of said lands, to wit, Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman agreed that two hundred shares of the capital stock of said company

should be issued to Philip I. Marvel as trustee, and the proceeds thereof should be used to purchase the outlying lands; that said two hundred shares were so issued to the said Philip I. Marvel and the outlying tracts of land were purchased and the title to the entire block perfected in defendant company; that some of said two hundred shares were transferred to the owners of some lands in exchange therefor at par, but none of said stock was ever sold at par for cash.

Defendants further answering said paragraph say that at and after the transfer of said lands by persons above named to the said defendant company, said lands consisted of sand hills, coarse grass, red cedar trees, and such other vegetation and condition as usually exist in an unimproved sand beach, and before the same could be placed on the market for sale it was necessary to grade the same, lay out, open, grade and curb the streets, prepare maps, deeds, restrictions, etc., so that the same could be placed on the market for sale in a reasonably attractive condition, subject to uniform restrictions, etc., that the owners of said stock realizing this fact, and further realizing that with a first mortgage of sixty-five thousand one hundred dollars against said unimproved land, that it would be impracticable to attempt to raise further moneys by way of loan with which to make said improvements, and not desiring to advance the actual cash necessary to make said improvements, and being the owners of all of said stock, agreed among themselves that they would place four hundred and ninety-nine shares of said capital stock in the hands of Philip I. Marvel as trustee, said stock to be by him sold and the proceeds thereof to be applied as far as was necessary to the improvement of said lands,

and thereupon the said Philip I. Marvel and Allen B. Endicott and Joseph Thompson, to whom the eighteen hundred and forty-nine shares of stock had been issued, issued to the said Philip I. Marvel, trustee, four hundred and ninety-nine shares of said capital stock and thereafter the remaining shares of said stock were divided among the owners thereof as follows, to wit: Philip I. Marvel, two hundred and fifty-nine shares; Allen B. Endicott, two hundred and fifty-one shares; Joseph Thompson thirty-five shares; Clement J. Adams, two hundred and fifty-two shares; Morris D. Youngman, ninety-two shares, and Israel G. Adams, two hundred and fifty-one shares, making eleven hundred and forty shares, which together with the two hundred shares issued to Philip I. Marvel, trustee, to be used for purchasing land, and the four hundred and ninety-nine shares issued to Philip I. Marvel, trustee, for the purpose of improvement, in the manner above stated, and the ten shares incorporators' stock, aggregated the eighteen hundred and forty-nine shares first above mentioned.

3. Defendants deny that the entire amount of stock authorized by the charter of said company was issued including certain shares which were issued and transferred to Philip I. Marvel in trust to be used for the purpose of promoting and protecting the interests of said company, and say that ten shares of the capital stock of said company were issued to the incorporators thereof; that eighteen hundred and thirty-nine shares of the capital stock of said company were issued to Philip I. Marvel, Allen B. Endicott and Joseph Thompson in trust in fact for Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Young-

man as compensation for the lands by them conveyed and caused to be conveyed to defendant company; that six hundred and fifty-one shares of the capital stock of said company were never issued by said company, and said six hundred and fifty-one shares of said capital stock nor any part thereof was ever sold; that of said eighteen hundred and thirty-nine shares so issued to the said Marvel, Endicott and Thompson six hundred and ninety-nine shares and no more were transferred to Philip I. Marvel, trustee, upon the trust above mentioned.

4. Defendants admit that the business affairs of said company were conducted by a Board of Directors through its officers, and that during the entire existence of said company after the purchase of the lands first above mentioned, said Board of Directors had consisted of Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman, and the latter and after Louis Kuehnle purchased some of the four hundred and ninety-nine shares of stock above mentioned, he also became and still is a member of the Board of Directors.

5. These defendants admit that the Board of Directors prosecuted the development of said company's land and business so far as the funds of the company enabled it so to do, and say that it was impossible to sell the capital stock of said company, to wit, part and parcel of the four hundred and ninety-nine shares above mentioned, with sufficient rapidity nor for sufficient money to properly develop said lands; that none of said four hundred and ninety-nine shares were sold for par except twenty shares sold to Louis Kuehnle, and twenty shares sold to Morris D. Young-

man, but that all of the other of said four hundred and ninety-nine shares which were sold were sold at a discount, including the shares of Joseph Wilson, complainant, who became the owner of a part of said four hundred and ninety-nine shares; that anticipating the sale of said shares beyond their realization, said Board of Directors incurred obligations in the name of said company for gravel purchased and grading done on its streets, etc., in excess of its ability to pay, and on the nineteenth day of May, eighteen hundred and ninety-eight, it owed to West Jersey and Seashore Railroad Company for gravel purchased, beyond its ability to pay, a considerable sum of money, and owed to Alvin P. Risley at the same time for labor in grading said lands and building said streets, beyond its ability to pay, the sum of seven thousand five hundred dollars, and at and prior to the said nineteenth day of May, the demands upon defendant company for the payment of said sums were insistent, and on said following day of May, eighteenhundred and ninety-eight a resolution was passed by the Board of Directors in the following words:

> "*Resolved,* That the President and Treasurer be authorized to borrow the sum of ten thousand dollars, and to issue double the amount of stock to be applied for payment of gravel purchased and to be purchased of the West Jersey and Seashore Railroad Company."

And at said meeting Philip I. Marvel, and Clement J. Adams were appointed a committee to secure said loan.

The directors present at said meeting were: Israel G. Adams, Philip I. Marvel, Louis Kuehnle, Allen B. Endicott, Joseph Thompson and Clement J. Adams.

Defendants further answering say that immediately after passing of said resolution the said Philip I. Marvel and Clement J. Adams endeavored to borrow the said sum of ten thousand dollars, and offered as collateral security therefor double the amount of the capital stock of said company; that they applied to Union National Bank, of which the said Allen B. Endicott was president, for said loan but were refused, and then applied to the Second National Bank of Atlantic City for said loan, of which bank Joseph Thompson was a director and solicitor, and were refused, and there after endeavoring to sell said stock or a portion thereof at the rate of fifty dollars per share, but were unable to sell the same; that afterwards, to wit, about the first day of June, the said Alvin P. Risley became persistent in his demands for payment, and threatened to reduce his claim to judgment and sell the property of defendant company to make the amount of the money due to him; that at the time, to wit, in June of eighteen hundred and ninety-eight, said property had not been fully graded and the streets had not been fully built, and said property was not in a salable condition; that at said time the real estate of said defendant company was in fact of the value of two hundred and fifty thousand dollars, but said company was unable at that time to raise money to meet its then pressing obligations; that a meeting of the Board of Directors was called, and prior to said meeting each of the directors had notice of the purpose thereof, to wit, to devise means of liquidating said indebtedness; that at said meeting there were present: Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle; absent: Allen B. Endicott

and Joseph Thompson; that after discussing the question of said indebtedness and the means of raising money to liquidate the same it was evident that it was impossible at that time to raise the money necessary to pay said indebtedness except by personal loan from the directors or else by a sacrifice of the property of defendant company the sum of fifteen hundred dollars and reloan to defendant company the sum of fifteen hundred dollars, making seventy-five hundred dollars in all, and took as collateral security therefor stock held by Philip I. Marvel, trustee, in double the amount of such loan, pursuant to the resolution of May eighteenth, eighteen hundred and ninety-eight, and thereupon each of said five directors advanced and loaned to defendant company the sum of fifteen hunred dollars and received from the said Philip I. Marvel thirty shares of stock as collateral security therefor; that immediately after said meeting of June twentieth, Allen B. Endicott and Joseph Thompson were notified of the action of said board, and requested to advance fifteen hundred dollars each for the purpose of said company; that Allen B. Endicott expressed his desire to do so but stated that he was financially unable and that Joseph Thompson refused to make any loan to the said company; that defendant company issued its promissory notes in the sum of fifteen hundred dollars each to the said several directors, to wit, Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle, and Philip I. Marvel delivered therewith to each of said directors thirty shares of the capital stock, part and parcel of the four hundred and ninety-nine shares aforesaid; that upon said notes maturing, to wit, on the fifth day of October, eight-

een hundred and ninety-eight, defendant company was still without means to pay the same and with no immediate prospect of receiving moneys with which to pay the same, and thereupon the said Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle, still desiring to protect the interests of said company and prevent the sacrifice thereof agreed to suspend payment of their said several promissory notes for the period of one year during which time said company should be privileged to repay the sum and redeem the stock so by them held, and if said stock should not be redeemed by said company within the period of said year, then they were to accept said stock as payment of said indebtedness, and defendant company should be released from the payment of said notes, and thereupon a resolution was offered to the effect above mentioned, at a regular meeting of said company held on the fifth day of October, eighteen hundred and ninety-eight; that said resolution is inartistically drawn, but the intent thereof was that the company should borrow or continue to owe to each of the directors the sum of fifteen hundred dollars previously loaned to said company, and should have as collateral security for the payment thereof capital stock of said company at the rate of two for one, and if said loan was not repaid within one year from the date of said meeting, then said indebtedness should be considered as cancelled and said stock should become the property absolute of each of said directors.

Defendants further answering say that on the fifth day of October, eighteen hundred and ninety-eight, while the prospective value of said lands was two hundred and fifty thousand dollars, the

present market value of said stock was less than fifty dollars a share, and was unsalable at fifty dollars a share; that said stock was offered at the rate of fifty dollars per share and no purchasers could be found.

6. Defendants deny that the subject of borrowing fifteen hundred dollars was taken up on the fifteenth day of October as above mentioned in paragraph 6 of said bill, and say that said question was taken up and discussed on the fifth day of October, eighteen hundred and ninety-eight in the manner and with the result mentioned in paragraph 5 of this answer, and not otherwise.

7. Defendant answering say that the stock transferred to these defendants was part and parcel of the stock held by the said Philip I. Marvel in trust, which said stock was transferred to the said Philip I. Marvel, by Philip I Marvel, Allen B. Endicott and Joseph Thompson, who held said stock for the benefit of all of the original owners thereof, who agreed that said stock should be transferred to the said Philip I. Marvel in trust and the moneys received from the sale thereof should be used for the purpose of grading and otherwise improving said lands so that the same should become salable in the market.

Defendants admit that these five directors voted in favor of pledging said stock to themselves as security for the said loan of seventy-five hundred dollars, but deny that said stock was the stock of defendant company, and say that Philip I. Marvel held said stock in a dual trust, to wit, so long as said stock remained unsold it was held in trust by the said Philip I. Marvel, for the original contributors thereof, and that said contributors had caused said stock to be placed in the hands of the said Philip I. Marvel for the

purpose of selling and disposing of the same for the improvement of the lands of defendant company, and that upon the sale or other disposition of said stock the moneys received therefrom was held by the said Philip I. Marvel in trust for said company for the purpose of improving said lands, and that all of the moneys received by the said Philip I. Marvel from the disposition of said stock was accounted for and turned over to defendant company; that said defendant company never paid to the said Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson or Morris D. Youngman any compensation whatever for said stock so transferred to Philip I. Marvel in trust, and that as a gift the said Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman agreed that the proceeds from said stock should be given to defendant company for the purpose of improving said lands.

Defendants further answering say that until said stock was sold or disposed of defendant company had no actual interest therein, but its interest arose only after sale and disposition thereof when defendant company became entitled to so much of the proceeds of said sale as was necessary for the grading and improvement of said lands, and deny that these directors would not permit defendant company to redeem said stock in accordance with the terms of said resolution, and deny that a repayment of said moneys was ever tendered to these directors, or that any offer was ever made to repay said moneys by any person until the year nineteen hundred and nine, long after the statute of limitation had run against said original indebtedness, and long after the

time had passed when these defendants could have enforced payment of said loan, and not until said stock had suddenly become of a value far in excess of the price paid for it by these defendants, and that defendant company had no interest in said stock, it having received the proceeds from the disposition thereof.

8. These defendants deny that these defendants exceeded the terms of the resolution authorizing a transfer of said company's stock held in trust, and say that the stock so held in trust was not the stock of the St. Leonard's Land Company, but if the stock of the St. Leonard's Land Company, these defendants did not violate said trust, and that the true intent and meaning of said resolution was and is that stock of said company should be issued as security for said loan in the ratio of two for one.

9. Defendants admit that stock equal to two hundred percent of the loan was issued to these defendants, and say that such was the purport of the resolution of May nineteenth, eighteen hundred and ninety-eight, and such was the true intent and meaning of the resolution of October fifth, eighteen hundred and ninety-eight, which latter resolution was in confirmation of the loan made to defendant company pursuant to the terms of the previous resolution of May nineteenth, eighteen hundred and ninety-eight, and deny that said stock was of great value, and say that said stock at that time was of the value of less than fifty dollars per share in the open market, but admit that said stock now is of the value of three hundred and twenty-two dollars per share, but deny that each of these defendants has unlawfully profited at the expense of the other share holders of said company in the sum of eight

thousand one hundred and sixty dollars, or in any other sum by appropriating to himself shares of stock which were held in trust for promoting and protecting the interests of said company, and say that said stock was fairly, honestly, and *bona fide* transferred to these defendants for cash moneys actually advanced and paid by the defendants, which said moneys were used for the grading and improvement of the lands of said company, and in that manner for the purpose of protecting and promoting the interest of said company.

10. These defendants admit that they stood in a fiduciary relation to said company and its stockholders with respect to the four hundred and ninety-nine shares placed in the hands of the said Philip I. Marvel in the following manner, and no other, to wit: That so long as said stock remained unsold, it was held by the said Philip I. Marvel in trust for the persons who paid for and contributed said stock to said trust fund, and after sale thereof the proceeds therefrom were held by the said Philip I. Marvel in trust for the grading and improvement of the lands of St. Leonard's Land Company so long as said moneys were necessary therefor, and that all of the moneys by him received and by him so held in trust were accounted for by him, the said Philip I. Marvel, to defendant company, and paid over to defendant company by said Philip I. Marvel, trustee; that said shares were never transferred to defendant company; that the trust under which the same was held was an express trust, but never reduced to writing, and that the terms of said express trust were as above set forth, and that neither the said company nor the stockholders thereof had any interest in said stock except to secure a sale thereof so that they might benefit

by the proceeds from said sale to the extent of the necessities of defendant company, and that the necessities of defendant company never required the sale of the entire number of shares of stock so transferred to the said Philip I. Marvel as trustee, and deny that the transfer of said stock by the said Philip I. Marvel to these defendants was a fraud upon said company or upon the rights of the stockholders thereof, and say that said transaction was taken in good faith by those defendants for the purpose of protecting the interests of said company and its stockholders; that the risk of the success of said company was by said transaction to the amount of seventy-five hundred dollars aforesaid assumed by these defendants, and which said risk said defendant company and its stockholders permitted these defendants to carry, and for a period of eleven years acquiesced in, and not until after the stock had increased in value and the risk of loss had passed, did either the company or the stockholders make any pretence or contention that said stock was not the stock in fact of these defendants.

11. Defendants answering paragraph 11 of complainants' bill admit that said stock was not voted on, and say that no other stock was voted on during said period, and that no stockholders' meetings were held at which said stock might be voted upon, and admit that no dividends were declared upon said stock prior to August of nineteen hundred and nine, and say that no dividends were declared on any stock prior to said date, and say that defendant company prior to that date was without funds or means for paying dividends, and admit that two dividends of twenty per cent each were declared on all the stock of said company,

and that further dividends have been declared on all the stock of said company, until liquidation is now substantially effected, including dividends on the stock so transferred to these defendants, and admit that none of the defendants have parted with their stock excepting Israel G. Adams, and say that not until the sale of stock by Israel G. Adams to Isaac Bacharach was there any boom in the real estate of the said defendant company, and that after the sale of his stock by the said Israel G. Adams to the said Isaac Bacharach, he, the said Isaac Bacharach, created a demand for real estate in Ventnor City, as a result of which the land of the St. Leonard's Land Company was disposed of for a large sum of money, which made the stock worth three hundred and twenty-two dollars per share as herein stated, and further say that it became necessary for the said Israel G. Adams to sell and dispose of his said stock in defendant company, and that he thereupon did sell and dispose of said stock to the said Isaac Bacharach at the price of two hundred and fifty dollars per share, which was the highest price the said Israel G. Adams could receive for said stock on the market at that time.

12. Defendants answering the allegations of paragraph 12 of complainants' bill say that the transaction concerning said loan was known to the stockholders of said company, at and immediately after the time thereof; that the minutes of May nineteenth, eighteen hundred and ninety-eight were written at or about the date of said meeting; that the minutes of the meeting of October fifth, eighteen hundred and ninety-eight, were written at or about the time of said meeting; that said transaction was entirely open and free from

colusion of secrecy; that Allen B. Endicott and Joseph Thompson, members of the Board of Directors, knew of said transaction; that Mordecai T. Endicott, Eva Davis Dodd and Charles P. Henry purchased their stock after the said transaction, and both the said Israel G. Adams, defendant, and Isaac Bacharach had full knowledge of said transaction; that Joseph Wilson had knowledge of said transaction, and was chargeable with knowledge and notice thereof by reason of the entries in the said minute book of defendant corporation, which were open to the said Joseph Wilson, and further that the stock of the said Joseph Wilson was part and parcel of the four hundred and ninety-nine shares of stock so transferred to the said Philip I. Marvel in trust as aforesaid and sold to the said Joseph Wilson below par.

13. Defendant answering paragraph 13 of complainants' bill of complaint say they admit the making of a motion by the said Allen B. Endicott and Joseph Thompson on the seventeenth, day of August, nineteen hundred and nine, and admit that said Allen B. Endicott and Joseph Thompson were not present at the meeting of October fifteenth, eighteen hundred and ninety-eight, but say that both the said Allen B. Endicott and Joseph Thompson were present on the nineteenth day of May, eighteen hundred and ninety-eight, and voted for the resolution directing the borrowing of ten thousand dollars and the pledging of stock at two for one as collateral security therefor, and further say that both the said Allen B. Endicott and Joseph Thompson had notice of the meeting of June twentieth, eighteen hundred and ninety-eight, at which said loan was actually made to the company, and that the said

Allen B. Endicott stated that he was in accord with the action of said defendants but was unable to financially assist, and that the said Joseph Thompson stated that his holdings were so small in the said company that for that reason he would not advance or loan the company any money but would rather lose the moneys he already had invested.

Further answering, defendants say that the said Allen B. Endicott and Joseph Thompson were directors in said company from and before the nineteenth day of May, eighteen hundred and ninety-eight until the present time, and had full knowledge of the whole transaction during all of the time intervening between the twentieth day of June, when said moneys were advanced, to the present time, and that at no time intervening when said company was in straightened, precarious financial circumstances did the said Allen B. Endicott or Joseph Thompson make any offer or proposal or make any motion to have said transaction considered as a loan but during all of said time while the ultimate success of said company was problematical assented to said company considering the payment of said moneys by these defendants as a payment for stock purchased and not as a liability of said company and not until the sale of the lands of the defendant company in nineteen hundred and nine at a profit and the sudden increase in the value of said stock to the sum of three hundred and twenty-two dollars a share did either the said Allen B. Endicott or Joseph Thompson ever make any effort to have said transaction considered other than as a sale of stock, but admit that on said date in August of nineteen hundred and nine, after these defendants by loaning to said defendant company in a

time of dire need had preserved the existence of said company and prevented its assets being sacrificed at a sheriff's sale at a time crucial to its existence, and as a result of said loan the existence of the company had been prepetuated and the increase in value of the capital stock made possible, the said Allen B. Endicott and Joseph Thompson moved that the transaction so had by these defendants be considered at a loan, and that the stock be returned to the company, thereby further increasing the value of the stock of the said Allen B. Endicott and Joseph Thompson.

14. These defendants answering the allegations in paragraph 14 deny that the said Philip I. Marvel and those directors wrongfully profited by the transaction and committed the company to the policy of not redeeming said stock by virtue of said resolution, and deny that these defendants attempted to confirm its transfer at an inadequate consideration, and take large profits to themselves, and say that these defendants at the time of making said loan had only the best interests of said company in view; that said loan of fifteen hundred dollars was made by many of these defendants at a personal sacrifice, and at a time when it was extremely inconvenient for defendants to make said loan; that in order to raise the money with which to make said loan a number of these defendants borrowed the money from bank upon their own collateral, and at a time when the future outlook of defendant company was dark and uncertain, loaned said money to said corporation and took as security the shares above mentioned, and later when the defendant company was unable to repay said loan, as a further concession to said company agreed to suspend payments thereof for the period of a year, and if

at or during said period the company should be unable to redeem said stock, then to accept said stock as payment for said loan, although said stock was of the value on the market of less than fifty dollars a share.

Further answering these defendants say that said defendant company was at no time during the year intervening between October fifth, eighteen hundred and ninety-eight and October fifth, eighteen hundred and ninety-nine, in a financial position which would warrant the repayment of said moneys to these defendants, and that these defendants could not have secured said moneys from defendant company during said period without seriously embarrassing the future of said company or forcing said company into the hands of a sheriff or receiver, and at no time thereafter until the summer of nineteen hundred and nine was said company in a financial position where it could have repaid said loan without embarrassment to itself, if the time within which said loan might be repaid had been indefinite instead of limited to one year.

These defendants further answering say that complainants who are in a position to ask the relief they seek upon the theory of complainants' bill have slept on their rights, and that now after these defendants have risked their money for the common good and have surrendered their legal rights against said company for repayment of said loan, are precluded in equity and in justice from attempting to have this transaction of sale decreed to be something else than a sale.

Further answering said paragraph, these defendants say that more than four years have elapsed since the making of said transaction and the receiving of the profit thereof, and that the

right to have and hold said certificates of stock has become absolute in these defendants, and that complainants are barred from receiving the relief they pray by virtue of the statue of this state.

15. Answering paragraph 15 of complainants' bill defendants deny that in the month of August, eighteen hundred and ninety-eight, there were sixteen hundred and thirty-eight shares of the capital stock of the par value of one hundred dollars outstanding, and allege that there were then outstanding eighteen hundred and forty-nine shares of the capital stock of said company or the par value of one hundred dollars, and deny that at that time said stock was worth three hundred and twenty-two dollars per share, and aver the fact to be that the land of defendant company at that time had a prospective value, over and above the mortgage then existing against it, of one hundred and eighty-four thousand nine hundred dollars, but that the value of said shares of stock on the market was less than fifty dollars per share, and that the entire increase in the value of the shares of said company from less than fifty dollars a share in eighteen hundred and eighty-nine to three hundred and twenty-two dollars a share in nineteen hundred and nine, was solely due to the fact that these defendants loaned and advanced to defendant company in a time of dire need the aforesaid sum of seven thousand five hundred dollars, and to the further fact that when said loan became due and payable these defendants did not insist upon a repayment of said loan but accepted the stock of said company at fifty dollars per share in payment thereof.

16. These defendants answering paragraph 16 of said bill deny that the said Philip I. Marvel or any of these defendants committed any breach

of trust owing by the said Philip Marvel or these directors to said company or to the stockholders thereof by reason of any fiduciary relation, and say that said entire transaction was taken and done by these defendants for the best interests of all the stockholders of said company and for the best interests of said company, and further say that neither defendant company nor the stockholders of said company, other than Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman, had any interest whatever in the four hundred and ninety-nine shares of stock transferred to Philip I. Marvel, trustee, so long as said stock remain unsold, except to procure the sale thereof, so long as the moneys received therefrom should be necessary for grading and improving said lands, and that all of said stock was not sold, and that neither said defendant company nor the stockholders thereof have any interest whatever in the shares of stock transferred to these defendants unless Allen B. Endicott and Joseph Thompson have some interest therein, and any such interest these defendants deny.

18. Defendants answering paragraph 18 of complainants' bill, say that these defendants did exercise the utmost good faith with their *cestui que trustents*, and did not make a personal profit by reason of said relationship, but paid full value for said stock at the time of the purchase thereof, and deny that these defendants or any of them acted contrary to law, and deny that they must account to defendant company or its stockholders touching and concerning said shares, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

And by way of cross bill against the said Mordecai T. Endicott, Charles P. Henry, Eva Davis Dodd, J. Estell Evans and Frederick C. Robbins, complainants, and St. Leonard's Land Company, defendant, these defendants show that the true intent, meaning and purport of the resolution of October fifth eighteen hundred and ninety-eight as offered and adopted by said Board of Directors was that defendants company having borrowed fifteen hundred dollars from each of the directors of said company, towit, Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle for the purpose of paying the obligation of Alvin P. Risley, and having pledged as security for said loan capital stock held by Philip I. Marvel, trustee, in the sum of three thousand dollars, with each of said directors as security for said loan of fifteen hundred dollars, that said loan should continue for the period of one year, and said directors to receive and retain said thirty shares of the stock each as collateral, and if said loans be not repaid within the period of one year with interest, then such stock should become the property of the respective directors, and by inadvertence and mistake said resolution was entered in the minutes of said company in words follows:

> "Resolved that each director borrow the sum of fifteen hundred dollars for the period of one year and to receive fifty per cent excess of the company's stock as collateral security to it loaned to meet the obligation of Alvin P. Risley, contractor, the company to have the privilege of redeeming said stock in one year from date, with interest at six per cent; otherwise to revert to the borrower."

These defendants, therefore, pray that said resolution be reformed to conform to the true intent, meaning and purport of the same as offered and as hereinabove set forth.

In consideration whereof, these defendants pray the said Mordecai T. Endicott, Charles P. Henry, Eva Davis Dodd, J. Estell Evans and Frederick C. Robbins, complainants, and St. Leonard's Land Company, defendant, shall without oath full, true and perfect answer make to all and singular the premises hereinabove set forth, and that as fully and particularly as if same were here repeated and they particularly interrogated thereto.

And defendant will ever pray.

BOURGEOIS & COULOMB,
Solicitors for and of counsel
with defendants.

Answer of St. Leonard's Land Company

(*Filed,*)

IN CHANCERY OF NEW JERSEY

Between MORDICAI T. ENDICOTT, *et al.*, On Bill, etc. Complainants, and ST. LEONARD'S LAND COMPANY, *et al.*, Defendants.	On Bill, etc.

The answer of St. Leonard's Land Company to so much of the bill of complaint filed in the

above stated cause as this defendant is advised it is necessary to answer, says:

1. Defendant admits that it was organized as a corporation under the laws of the State of New Jersey as set forth in Paragraph 1 of complainants' bill.

2. It admits that the authorized capital stock of said company was two hundred and fifty thousand dollars, divided into twenty-five hundred shares of the par value of one hundred dollars each, and commenced business with one thousand dollars paid, and admits that it purchased several tracts or parcels of land in the neighborhood of Atlantic City, to wit, in Ventnor, and made improvements thereon, and thereby acquired substantial assets as set forth in Paragraph 2 of said bill; but denies that it issued additional stock from time to time as authorized by its charter to a large number of persons who paid cash for the same at par and became stockholders in said company, and says that all the stock of said company was issued at the meeting of its organization, ten shares being issued to the incorporators in consideration of the thousand dollars paid in as aforesaid, as follows: five shares to Israel G. Adams; four shares to Clement J. Adams, and one share to Clarence L. Cole; and eighteen hundred and thirty-nine shares, together with six hundred and fifty-one shares hereinafter mentioned, being issued in payment for the several tracts of land above mentioned for property purchased to Marvel, Endicott and Thompson, who represented said owners.

3. Answering Paragraph 3, this defendant denies that the entire amount of the authorized capital stock of this company was issued in trust to be used for the purpose of promoting and protecting the interests of said company, and says

that at the time of the organization of defendant company, Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Israel G. Adams and Morris D. Youngman were the owners of the said various tracts of land above referred to, nearly all of which were continuous with one another, and the said Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman and Israel G. Adams realizing that said lands would be of greater value if laid out and sold subject to uniform building restrictions, and for the purpose of developing said lands, defendant company was incorporated; that the lands of the said Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman and Israel G. Adams were fairly of the value of two hundred and fifty thousand dollars; that said lands were subject to a mortgage of sixty-five thousand one hundred dollars; that the title to said lands was in or placed in the name of Philip I. Marvel, Allen B. Endicott and Joseph Thompson, and all of the stock of said company, except six hundred and fifty-one shares, to wit, eighteen hundred and thirty-nine shares, were issued in payment of said lands; ten shares thereof having been issued to the incorporators as above mentioned, and eighteen hundred and thirty-nine shares being issued to Marvel, Endicott and Thompson as above stated; that in addition to the lands so conveyed to defendant company by Philip I. Marvel, Allen B. Endicott and Joseph Thompson, there were certain other small tracts of land which it was necessary to procure so as to make the said lands one contiguous tract, and for the purpose of securing said tracts the said Philip I. Marvel, Allen M. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman, and Israel G.

Adams, who were the owners of all the stock issued, agreed instead of advancing money from their own pockets with which to purchase said outlying tracts, twenty thousand dollars worth of stock, to wit, two hundred shares of the eighteen hundred and forty-nine shares should be set aside for the purchasing of said lands, which said two hundred shares were set aside, sold, and the proceeds used for the purchasing of said outstanding lands, which lands were purchased and conveyed to defendant company; that in addition to acquiring these outstanding tracts of land, the said Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman and Israel G. Adams, being all of the stockholders of said company, realizing that to properly place said lands on the market for sale the same must be graded and streets built and curbed, which would cost approximately fifty thousand dollars, agreed among themselves that instead of advancing the money necessary for grading, curbing and street building that four hundred and ninety-nine shares of the capital stock, which together with the one share of the capital stock issued to Clarence L. Cole, incorporator, aggregated five hundred shares, or fifty thousand dollars capital stock should be set aside by them, sold, and the proceeds thereof used for the purpose of grading, curbing and street building on said tract, and after deducting from the eighteen hundred and thirty-nine shares of stock issued as above stated to Marvel, Endicott and Thompson the four hundred and ninety-one shares for improvements, the one share which had been previously issued to Clarence L. Cole, incorporator, and two hundred shares for the purpose of purchasing said outstanding lands, left eleven hundred and forty shares to be divided among the original stockhold-

ers, to wit, Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman and Israel G. Adams; that said eleven hundred and forty shares were divided as follows: Philip I. Marvel, two hundred and fifty-nine shares; Allen B. Endicott, two hundred and fifty-one shares; Joseph Thompson thirty-five shares; Clement J. Adams, two hundred and fifty-two shares; Morris D. Youngman, ninety-two shares; and Israel G. Adams, two hundred and fifty-one shares; that thereupon the original certificate issued to Marvel, Endicott and Thompson for eighteen hundred and thirty-nine shares was surrendered; a certificate for four hundred and ninety-nine shares was issued to Philip Marvel as trustee; a certificate for two hundred shares also issued to Philip Marvel as trustee; and certificates for the number of shares above mentioned were issued to Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman, and Israel G. Adams, no certificate being issued for the six hundred and fifty-one shares, but said six hundred and fifty-one shares remaining in the corporation unissued, which shares were to be sold and the proceeds thereof applied in payment of the above mentioned mortgage of sixty-five thousand one hundred dollars.

This defendant further answering, denies that the six hundred and ninety-nine shares of stock so issued to Philip I. Marvel, trustee, part and parcel of the eighteen hundred and thirty-nine shares of stock issued to the said Marvel, Endicott and Thompson as above stated for property purchased, were held in trust for this defendant or that this defendant had any interest therein except such interest as this defendant might acquire by way of gift from the above mentioned

Philip I. Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, Morris D. Youngman and Israel G. Adams.

4. Defendant admits the allegations of paragraph 4 of complainants' bill.

5. This defendant denies that the officers and directors of said company actively prosecuted the development of defendant's land, but admit that they prosecuted the development thereof as rapidly as the funds could be secured from the sale of stock, part and parcel of said four hundred and ninety-nine shares, and in the spring of eighteen hundred and ninety-eight at a meeting held on the nineteenth day of May, eighteen hundred and ninety-eight, a resolution was adopted in the following language:

> "*Resolved,* That the President and Treasurer be authorized to borrow the sum of ten thousand dollars, and to issue double the amount of stock to be applied for the payment of gravel purchased and to be purchased of the West Jersey and Seashore Railroad Company."

At the same meeting Philip I. Marvel and Clement J. Adams were appointed a committee to secure said loan, and at the same time and for some time immediately thereafter Alvin P. Risley, to whom had been given a contract for grading the lands and streets by defendant company, was pressing for a claim of about seven thousand dollars due to him for work done, and immediately after the nineteenth day of May, eighteen hundred and ninety-eight, the said Philip I. Marvel and Clement J. Adams endeavored to borrow for defendant company the sum of seven thousand five hundred dollars, and in their effort to do so applied to the Union National Bank of which the said Allen B. Endicott was president, and to

the Second National Bank of which the said Joseph Thompson was a director and solicitor, and in both cases said banks refused to loan said money to said company, and said Philip I. Marvel and Clement J. Adams made further efforts to borrow said money for said company but without success, and later on or about the fifth day of June, eighteen hundred and ninety-eight, the said Alvin P. Risley became insistent in his demands for payment of the moneys due to him and threatened to reduce his said claim to judgment and sell defendant's property to make the amount thereof, and the said company being unable to secure the money with which to pay said claim, Philip I. Marvel, Clement J. Adams, Morris D. Youngman, Israel G. Adams, and Louis Kueknle, who had become a director in said company, agreed that in order to prevent the lands of the said defendant from being sold at a forced sale they would raise the necessary moneys to pay the said Alvin P. Risley and prevent the sacrifice of defendant's lands, and thereupon requested the said Joseph Thompson and Allen B. Endicott to join with them in raising said moneys, but the said Allen B. Endicott and Joseph Thompson neglected and refused so to do, whereupon each of these defendants loaned and advanced to defendant company the sum of fifteen hundred dollars, aggregating in all seventy-five hundred dollars, and the moneys so received by defendant company were paid to the said Alvin P. Risley in liquidation of his claim for moneys due him for grading and street building on the lands aforesaid; that said loans were evidenced by the promissory note of this defendant company to each the said Philip I. Marvel, Clement J. Adams, Morris D. Youngman, Israel G. Adams and Louis Kuehnle, in the sum of fifteen hundred dollars.

Defendant further answering says that the said Philip I. Marvel and Clement J. Adams were authorized by the directors of said company at and before the time of making the application for the loan from the Union National Bank and Second National Bank to pledge as collateral security for said loan two shares of the capital stock of said company for each one hundred dollars borrowed.

Further answering this defendant says that none of the four hundred and ninety-nine shares of stock which were issued to Philip I. Marvel, trustee, for the purpose of raising money to develop said lands were ever sold at par and at the time of the application for the loan aforesaid, and at the time the loans were made by the aforesaid directors to said company, the said stock was being offered for sale at fifty dollars per share, and that upon the five directors aforesaid making the individual loans to this company of fifteen hundred dollars each, thirty shares of the capital stock of said company was pledged as collateral security for the repayment of each of said fifteen-hundred dollar loans; that upon said promissory notes falling due, this company was without funds with which to repay the same, and there was no immediate prospect of defendant company being in possession of sufficient funds to pay the same, and upon maturity of said notes, the said directors not being able to collect the amount thereof and not desiring to sell at a sacrifice the lands of defendant company to make the money so due to them, extended the payment thereof for a period of one year from the fifth day of October, eighteen hundred and ninety-eight, and at the same time agreed that if said company should be unable to pay said indebtedness within the said period of

one year, that then and in such case said stock should become the property of said Philip I. Marvel, Clement J. Adams, Morris D. Youngman, Israel G. Adams and Louis Kuehnle.

This defendant further answering says that it was not able during the period of said one year to repay to the said five directors the said sum of seventy-five hundred dollars, and also pay its current obligations; that the capital stock of defendant company at that time was not salable in the open market for as much as fifty dollars a share, and for this reason defendant company did not redeem the said stock but permitted the title to said stock to be absolute in said five directors, and thereby become relieved from the payment of the principal or interest of said seventy-five hundred dollars.

6. Defendant answering paragraph 6 says that the transaction set out in said paragraph is the same transaction as above related, and that the moneys loaned to this company had in fact been advanced more than three months prior to the fifteenth day of October, eighteen hundred and ninety-eight, and that said resolution was intended only to carry into effect the arrangement above set forth, to wit, to give defendant company one year in which to repay said principal and interest and redeem said stock, and in the event of failure of said company to so redeem said loan and redeem said stock within said year, then to enable defendant company to consider the transfer of said stock as a sale, and the liability of said company for the moneys so loaned to be at an end.

7. Further answering defendant denies that the stock mentioned in said paragraph was at that time transferred to the said five directors, but says that the said stock had been delivered to said directors three months prior thereto, and at the

time of and with the original promissory note evidencing said loan, and denies that said directors did not permit the company to redeem the same in accordance with the terms of the resolution nor offer to redeem the same upon repayment to them of the moneys advanced by them to said company, and says that the best interests of said company demanded that the funds of said company be expended in other lines for the benefit of said company rather than in the repayment of said loan, and that Allen B. Endicott and Joseph Thompson were at all times cognizant of and familiar with the entire transaction, and at no time between the fifth day of June, eighteen hundred and ninety-eight and the fifteenth day of October, nineteen hundred and nine, did either the said Joseph Thompson or the said Allen B. Endicott offer any motion or resolution that defendant could pay said notes and redeem said stock.

8. This defendant further answering denies that Philip I. Marvel, President, and Clement J. Adams, Secretary and Israel G. Adams, Treasurer of defendant company, as the officers and agents of said company exceeded the terms of said resolution authorizing a transfer of said company's stock, and says that the true intent and meaning of said resolution was that Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle should receive stock equal to double the amount of the moneys by them severally loaned; and denies that said stock was held in trust for defendant company in the manner set forth in paragraph 8 of complainant's bill, and says that said stock was held by the said Philip I. Marvel in trust for the said Philip I. Marvel, Clement J. Adams, Allen B. Endicott and Israel G. Adams, Joseph Thomp-

son and Morris D. Youngman, the proceeds thereof to be used for the improvement of the lands sold and transferred by said persons to defendant company and further says that said stock was sold by this company to Philip I. Marvel, Clement J. Adams and Allen B. Endicott for full value, and that the consideration for the purchase thereof was furnished by the said Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Joseph Thompson, Israel G. Adams and Morris D. Youngman.

Defendant further answering says that a majority of the persons owning said stock voted to pledge the same as collateral security for the repayment of said loans, and that the moneys received from the pledging and sale thereof was received for the purpose for which said stock was conveyed to the said Philip I. Marvel in trust, and that the said transaction was fully known to the stockholders of said company, and especially that it was fully known to the owners of said trust stock, to wit, Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman; that the said owners of said stock all concurred in the disposition thereof to the said Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle in the manner above set forth.

9. Defendant further answering denies that the thirty shares of stock were transferred to each of the five directors at the time of the passing of said resolution, and says that said stock was issued to each of said directors three or four months prior thereto when the original loan was made, and that the resolution mentioned in complainant's bill of complaint was passed when said loan was due and payable, and at a time when it was finan-

cially impossible for defendant company to repay said loan, and that the object of the resolution was to secure to defendant company the option of redeeming said stock within the period of one year if it should be to the advantage of said company, so to do, or to consider said transaction as a sale, and be freed from the liability on account of said loan if at the expiration of said year it was considered for the best interests of said company not to redeem said stock.

Defendant denies that said stock was at that time of great value, and says that it was not then of a value greater than fifty dollars a share nor that it was not salable at fifty dollars a share nor could it be otherwise or elsewhere pledged for the sum of fifty dollars a share except to the five directors who loaned the money as aforesaid, that the said Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle regarded the agreement made by them as binding upon them and upon the company, and that that defendant company did not redeem said stock, nor was it financially for the interest of said company to redeem said stock upon the expiration of or at any time during the one year next succeeding the fifth day of October, eighteen hundred and ninety-eight; that while the actual value of the lands of defendant company were equal to the indebtedness of said company, yet said lands were not developed and there was a large quantity of other undeveloped land in the same neighborhood so that defendant's land could not have been sold at that time for anything like their actual value, if they could in fact have been *bona fide* sold at all; that the action of the said five directors in loaning said money and thereafter accepting stock of the company in payment thereof, thereby relieving the company of a press-

ing indebtedness of seventy-five hundred dollars, made it possible for defendant company to continue in existence and ultimately to pay to its stockholders large profits on their investments; that for many years after the fifth day of October, eighteen hundred and ninety-eight, and until the summer of nineteen hundred and nine the sales of the lands of defendant company had been infrequent, and not only sufficient money was realized therefrom to meet the current expenses of said company; that in nineteen hundred and nine by reason of a boom in real estate defendant's lands became valuable, and being placed upon the market at an opportune time were closed out at high prices, netting to defendant company such sum as equalled three hundred and twenty-two dollars per share or thereabouts; that none of the stock of said company except the stock of Louis Kuehnle was sold at par, and that all of the stockholders of said company excepting the said Louis Kuehnle received more than two hundred and twenty-two dollars per share profit on their shares and that this great profit was made possible by the action of the said Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuernle have unlawfully profited at the company the seventy-five hundred dollars aforesaid, and in accepting the stock of said company at a time when it could not be sold on the market, in satisfaction of said loan.

Further answering said paragraph, defendant denies that the said Philip I. Marvel, Clement J. Adams, Israel D. Adams, Morris D. Youngman and Louis Kuehnle have lawfully profited at the expense of the other stockholders of said company and says that none of complainants excepting Joseph Wilson was a stockholder of said company at the time said transaction took place, and

further says that the said Joseph Wilson did not pay par for his said stock; and further answering says that Charles P. Henry and Eva Davis Dodd and Mordecai T. Endicott purchased their stock from Allen B. Endicott, who was a stockholder at the time said moneys were borrowed and who had full and complete knowledge of every circumstance and detail touching said transaction, and that J. Estell Evans and Fred C. Robbins purchased their stock from Israel G. Adams, who was a stockholder at the time of said transaction and one of the participants therein, through Isaac Bacharach.

10. Answering paragraph 10, defendant says that Philip I. Marvel, trustee, stood in a mixed fiduciary relation to said company touching and regarding the shares of stock transferred to him as trustee, in that the said stock had been purchased and paid for by the said Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson, and Morris D. Youngman, and that said persons being all the owners of the stock of defendant company at the time agreed to place said four hundred and ninety nine shares of stock in the hands of Philip I. Marvel for sale, and he, the said Philip I. Marvel, to sell the same, and the moneys realized therefrom to turn over to defendant company; that the said Philip I. Marvel did not hold said shares of stock in trust for defendant company prior to the sale thereof, and after the sale thereof held only the moneys received therefrom in trust for said company, and that the said Philip I. Marvel did fully account to said company for his said trust, and did turn over to defendant company all the moneys received by him from the sale of said stock, and denies that the transfer of said stock to the said Philip I. Marvel and the said directors above

mentioned is a fraud upon said company or upon complainants or the stockholders of said company.

11. Defendant answering paragraph 11 says that it is true that the stock so transferred to said five directors was not voted on, but says that during the time said stock was held that no stockholders' meetings were held, and that the same stockholders held over during all of said period, and that there was no occasion when said stock could have been voted on, and further answering says that no dividends whatever were declared upon any of the stock of said company until August of nineteen hundred and nine, for the reason that said company was at no time in a financial position to declare dividends, and that when said company became financially able to declare dividends, they were declared on all of the outstanding stock alike.

Defendant admits that none of the said stock so sold and transferred to said five directors has been sold except the stock of Israel G. Adams, and says that the said Israel G. Adams sold his stock to Isaac Bacharach or else to various persons through Isaac Bacharach.

12. Defendant denies that orators and the other stockholders of said company were ignorant of the action of the Board of Directors touching and concerning the raising of money to meet the obligations of said company, and says that those stockholders who were stockholders at the time were cognizant of such action, and those stockholders who purchased their stock since that time have purchased from other stockholders who were cognizant of such action, and are bound by the knowledge and acquiescence of the stockholders from whom they purchased their stock.

Defendant further answering says that none of the stockholders of defendant company are legally or equitably entitled to call upon the defendants, Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle, to transfer said stock to defendant company, and receive in compensation therefor the moneys loaned by them to said company in the year eighteen hundred and ninety-eight.

Defendant further answering says that defendant company was not in a position to redeem said stock within the time limited in said resolution nor within any future time within the period of six years after the making of said loan without such financial embarrassment as would have been more detrimental to said company than the issuing of said shares of stock; that defendant company or any of its directors or stockholders did not, between the fifth day of October, eighteen hundred and ninety-nine and August of nineteen hundred and ten, ever contemplate the redeeming of said stock or the treating of said transaction as a loan.

13. Defendant admits the allegations contained in paragraph 13, but says that the said Joseph Thompson and Allen B. Endicott had full knowledge of the entire transaction from April, eighteen hundred and ninety-eight until August of nineteen hundred and nine, and during said period neither contributed, themselves, to the financial needs of said corporation nor loaned any of their money to it, nor objected to the loaning of said company the seventy-five hundred dollars by Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle, but consented and acquiesced therein.

14. Defendant denies that Philip I. Marvel, trustee, and Clement J. Adams, Israel G. Adams,

Morris D. Youngman and Louis Kuehnle wrongfully profited by said transaction or that they received said stock for an inadequate consideration.

15. Defendant denies that in August of eighteen hundred and eighty-nine there were only sixteen hundred and thirty-eight shares of the capital stock of said company outstanding, and denies that the worth of said shares at that time was three hundred and twenty-two dollars a share, and says that there were outstanding in the month of August, eighteen hundred and ninety-nine, eighteen hundred and forty-nine shares of the par value of one hundred dollars, a share, which were salable on the market for less than fifty dollars a share; that while said stock had a prospective value equal to one hundred dollars a share, at said time it could not be sold in the market for one hundred dollars a share nor for so much as fifty dollars a share, and that the capital stock of said company was offered for sale at said time at fifty dollars a share and no purchaser could be found.

16. Defendant denies that the action of Philip I. Marvel, Clement J. Adams, Israel G. Adams, Morris D. Youngman and Louis Kuehnle touching and concerning said stock during the month of October, eighteen hundred and ninety-eight, or at any other time, was a breach of duty owing by them or any of them to complainants and other stockholders, or to this defendant, and denies that said action was unconscionable, inequitable or a fraud upon defendant or upon any of the stockholders of said company.

17. Defendant denies the allegations contained in paragraph 16, and says that the shares of stock issued to Philip I. Marvel in trust were the shares of stock of the said Philip I. Marvel, Clement J.

Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman; that the said Philip I. Marvel held said shares of stock in trust to sell the same, or so much thereof as should be necessary for improving the lands of defendant company, and further says that said defendant company had no interest in said stock until after the same was sold, and then its interest was only in the proceeds received from the sale of said stock, and that the stock so transferred to the said Philip I. Marvel in trust by the persons above mentioned remained the stock of said Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman until said stock should be sold for the purpose of securing money for improving the lands of said company, and that when the necessity for moneys with which to improve said lands had ceased, the remaining stock then unsold, transferred to the said Philip I. Marvel, in trust, belonged to the persons by whom it was placed in trust as aforesaid.

18. Defendant admits that the said Philip I. Marvel, trustee, occupied a fiduciary and confidential relationship to defendant company touching and concerning the moneys received by him from the sale of said stock trasferred to him in trust so far as the necessities of defendant company for improvements extended, but denies that the said Philip I. Marvel held said shares of stock in trust for defendant company and admits that the said Philip I. Marvel was required to exercise utmost good faith in dealing with his *cestui que trustents,* and was barred from making any personal profit by reason of such relationship, and says that the said Philip I. Marvel, trustee, faithfully and fully accounted for and transferred to

defendant company all moneys received by him from the sale of said stock, and is responsible to the said Philip I. Marvel, Clement J. Adams, Allen B. Endicott, Israel G. Adams, Joseph Thompson and Morris D. Youngman for the stock so held by him unsold, wherefore defendant prays to be dismissed the Court with costs.

BOURGEOIS & COULOMB,
Solicitors for and of counsel with
defendant, St. Leonard's Land Co.

Answer of St. Leonard's Land Company to Cross Bill of Philip I. Marvel, et al.

(*Filed,*)

IN CHANCERY OF NEW JERSEY

Between
MORDECAI T. ENDICOTT, *et al.*,
Complainants,
and
PHILIP I. MARVEL, *et al.*,
Defendants.

The answer of St. Leonard's Land Company to the cross bill of Philip I. Marvel, *et al.*, defendants:

This defendant answering the allegations of the cross bill of Philip I. Marvel, *et al.*, defendants,

says that it neither admits nor denies the allegations contained in said cross bill, and leaves defendants to prove same.

BOURGEOIS & COULOMB,
Of Counsel with Defendant,
St. Leonard's Land Company.

Replication

(Filed,)

IN CHANCERY OF NEW JERSEY

Between
MORDECAI T. ENDICOTT, *et als.*,
Complainants,
and
PHILIP MARVEL, *et als.*,
Defendants.

The replication of Mordecai T. Endicott, Joseph W. Wilson, Charles F. Henry and Eva Davis Dodd, complainants, to the answer of Philip Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants.

The complainants join issue on the answer of the defendants.

ALLEN B. ENDICOTT, JR.,
Solicitor of Complainants.

Testimony

IN CHANCERY OF NEW JERSEY

Between MORDECAI T. ENDICOTT, *et als.*, Complainants, and PHILIP MARVEL, *et als.*, Defendants.	On Bill, &c. Final hearing,

Atlantic City, N. J., April 1, 1912.

Before his Honor, E. B. Leaming, Vice Chancellor at the Chancery Chambers, Atlantic City, N. J.

Allen B. Endicott, Jr., Esq., and Gaskill & Gaskill for complainants.

Bourgeois & Coulomb, and Robert H. McCarter, Esq., for defendants.

Mr. Gaskill: If your Honor please, I would like to state that Admiral Endicott, one of the complainants, is one of the government directors of the Panama Canal Company and so many of the directors of that company were out of the country it was necessary for him to be present for the meeting of the board of directors today in order to constitute a quorum. I desire to examine the Admiral before the case is closed and the argument is had if counsel on the other side and the Court are willing.

Mr. Bourgeois: Counsel is.

Mr. Gaskill: If the Court is willing.

The Vice Chancellor: Entirely agreeable to me.

Mr. Bourgeois: If your Honor please, I would like to amend the answer of the St. Leonard's Land Company in two immaterial points. On page eleven I have written 5th of October, 1998, which should be 1898.

The Vice Chancellor: I think perhaps, to save confusion, the better way would be if counsel consent to make interlineations right in the answer.

Mr. Gaskill: I think that the clerical error Mr. Bourgeois speaks of perhaps was the result of a clerical error on the part of the copyist copying my bill and that he fell into that date. I want to amend my bill with reference to the same date, if you will turn to the bill, page fifteen.

The Vice Chancellor: Let's get his amendment embodied right in his and then we will amend yours.

Mr. Gaskill: Mine is the same. We first made use of the word "1998" instead of "1898."

Mr. Bourgeois: The answer of the St. Leonard's Land Company seems not to be here. I don't know how that is; they were both sent to the Chancery office at the same time. On page eleven the twelfth line down, the company's answer, 5th October, 1898.

Mr. Gaskill: What line? My copy has "1998." It ought to be 1800.

Mr. Bourgeois: Yes, we haven't gotten along that far. Now on page fourteen at the bottom of the page, next to the last line there is the same error.

Mr. Gaskill: Eighteen hundred ninety-eight; this copy was corrected to before it was served.

The Vice Chancellor: Now, Judge, if you will correct your bill.

Mr. Gaskill: Mr. Bourgeois, won't you look at your answer; I think you have got eighty-nine instead of ninety-nine?

Mr. Bourgeois: Yes, that is right.

Mr. Gaskill: That should be ninety-nine. Now in a corresponding paragraph in the answer filed by the directors the same thing appears, page twenty-two of the directors' answer.

Mr. Bourgeois: In what?

Mr. Gaskill: On the top; it is 1889; you mean either 1909 or 1899. Top of page twenty-two, at the end of the first line, beginning of the second line, Mr. Bourgeois?

Mr. Bourgeois: Of Marvel's answer?

Mr. Gaskill: Of the answer of the directors. Should be 1898.

Now then in the amended bill on page fifteen, Mr. Bourgeois, the same mistake has occurred paragraph fifteen, I should say.

The Vice Chancellor: In what were you making the other amendment?

Mr. Bourgeois: In the bill; on page six of the amended bill.

The Vice Chancellor: Those you have just been making?

Mr. Gaskill: They are simply as to a date.

The Vice Chancellor: In what pleading?

Mr. Gaskill: In the answer and cross bill filed by the five directors to the amended bill and in the answer of the company to the amended bill.

Now I wish to make that same correction as to a date in the amended bill, paragraph fifteen; fifteenth paragraph instead of eighty-nine ought to be ninety-eight.

Mr. Bourgeois: Yes, that is right. Now, Judge, will you correct that in your pleadings, the original?

Mr. Gaskill: I have that.

Mr. Gaskill then opens the case to the Vice Chancellor.

Mr. Gaskill: Just another word. No answer has been filed by Philip Marvel, trustee, and we have entered a decree *pro confesso* against him.

Mr. Bourgeois: We will ask to have that opened up because the answer is by each of these men individually and that question is answered.

Mr. Gaskill: I am only stating what the situation is; there is no answer by Philip Marvel, trustee.

Mr. Bourgeois: There is an answer by each of these men individually; an answer by each individually is as much an answer by him as trustee.

The Vice Chancellor: His *cestiu que trusts* answered, but the trustee himself doesn't answer; is that right?

Mr. Bourgeois: There is an answer by the five men who are defendants; it is a joint and several answer.

The Vice Chancellor: That includes Marvel?

Mr. Bourgeois: Certainly, and answers the allegations they set up, every one of them, so that his answer is an answer by himself as trustee for those men as much as trustee for their benefit or individually either.

Mr. Gaskill: It isn't so stated in the answer, in the formal answer.

Mr. Bourgeois: If there is anything in that we will ask to open up the decree and if there is a separate answer necessary we shall ask to interpose a separate answer.

Mr. Bourgeois then gave the defendant's views of the case.

Andrew K. Littlefield, first duly sworn as official stenographer.

CLEMENT J. ADAMS, a witness produced in behalf of the complainants, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. Gaskill:

Q. Mr. Adams, you are one of the defendants in this suit? A. I am.

Q. You are also a director and secretary of the St. Leonards Land Company? A. I am.

Q. And have been since its organization? A. I have.

Q. You were subpoenaed to bring with you here today the minute book, loose minutes, copies of resolutions, certificate book, stock ledger and other books and papers of the company. Have you brought them? A. They are here.

The Vice Chancellor: What is your office, Mr. Adams? A. Secretary.

Q. Secretary and one of the directors? A. Director and secretary.

Q. Will you please produce the stock certificate book containing the stubs of the first certificates that were issued?

(Witness complies.)

Q. The book that you hand me now is that book, is it? A. It is.

Q. The incorporators of the company were Israel G. Adams, yourself and Clarence L. Cole, were they not? A. Yes.

Q. And Israel G. Adams had certificate number one issued to him for five shares which was afterwards surrendered; Clement J. Adams, yourself, had certificate number two for four shares, which is aftewards surrendered and cancelled; and Clarence L. Cole had issued to him one share making ten, which certificate has never been sur-

rendered or cancelled? A. That is correct, I think.

Q. And still outstanding? A. It is.

The Vice Chancellor: Three shares each?

Mr. Gaskill: No, five to Israel Adams, four to C. J. Adams and one to Clarence L. Cole.

Q. Mr. Cole was then a stockholder at the time of these transactions in connection with this loan by some of the directors to the company, was he not? A. Yes, an incorporator.

Q. And he is a stockholder now? A. So far as I know he is.

Q. At present he is the owner of forty-one shares of stock, isn't he? A. One share.

Q. Forty-one shares, isn't he? Doesn't he own forty shares in addition to that one share? A. I don't know.

Mr. Gaskill: Perhaps Mr. Bourgeois and myself can dig that out ourselves.

Mr. Bourgeois: I didn't know he owned it.

Q. I have a record dated December 10, 1911, showing a record on which Clarence L. Cole was the owner of forty-one? A. I know he is an incorporator with one share.

Q. The next certificate that appears in this book is certificate number four for 1,839 shares, is it not? A. That is correct.

Q. And it is issued to— A. Waid a moment

Q. Eighteen hundred thirty-nine shares; that is right, isn't it? A. Yes.

Q. And it is issued to Marvel, Endicott and Thompson? A. That is right.

Q. Without giving any first names and without saying anything about any trust relation? A. Yes. It was simply the transfer—

Q. I didn't ask you about that now?

Mr. Gaskill: I offer those four—I offer this whole book in evidence, especially now those four certificates.

Said certificate book marked Exhibit C-1

Q. Now, this certificate of 1,839 shares was cancelled, was it not, and divided up? A. That is correct.

Q. Now, I call your attention to certificates five and six, five being to Philip Marvel, trustee, for 499 shares and six being to Philip Marvel, trustee, for 200 shares? A. That is correct.

Q. Those two certificates were part of the 1,839 shares, were they not? A. The 699 you refer to?

Q. Yes, the 200 and 499? A. Yes.

Q. And the rest of that certificate number four of the 1,839 shares was divided among Philip Marvel, Allen B. Endicott, Joseph Thompson, Clement J. Adams, yourself, M. D. Youngman, Israel G. Adams, was it not? A. Correct.

Q. Being certificates seven to twelve inclusive. Now these were the parties to whom certificates were issued for land purchased by the company, were they not? A. Land and improvements.

Q. I wasn't referring, Mr. Adams, in the question I just asked you to certificates four and five for the trust stock, but certificates six to twelve inclusive; they were issued to the parties who sold land to the company and in payment for the land, were they not?

Mr. Bourgeois: That is objected to because the book speaks for itself.

Q. Well, did this St. Leonards Land Company to your knowledge purchase any land? A. Yes, bought our land.

New Jersey State Library

Q. And from whom did they buy land? A. Different individuals.

Q. Name them; from whom did they make their first purchase? A. I haven't the facts just in my mind in regard to the purchase; there were outlying lands there were purchased by the company.

Q. Were those lands at the time of the purchase held by Judge Thompson, Judge Endicott and Philip Marvel, as you recollect? A. Not those lands. 1,839, I think, was the transfer of stock that conveyed from the individuals to the company.

Q. For those lands? A. For the lands that it puchased.

Q. Of those three people? A. Yes.

Q. Now, have you the stock ledger with you? A. Stock ledger is here.

Q. Just get it, will you, please? A. No stock ledger; I thought you meant the ledger.

Q. You had no stock ledger? A. No.

Q. Will you turn to these books and tell me who were stockholders of the company in 1898, May, 1898? A. Well, the original directors, Judge Endicott, Thompson, I. G. Adams, C. J. Adams, Dr. Marvel in 1898. There was probably some outstanding shares of stock at that time, I forget; I haven't them.

Q. Now, will you turn to the books and tell me who were owners of any of the shares of stock other than owned by the parties whom you have just named? May be I can refresh your recollection by a few questions. Clement J. Adams, yourself; you were an owner of stock then? A. I was.

Q. And owner of stock now? A. I am.

Q. And Philip Marvel was an owner of stock at that time? A. He was.

Q. And is now? A. He is.

Q. Allen B. Endicott was an owner of stock at that time? A. Yes.

Q. And is now? A. Yes.

Q. Dr. Youngman was an owner of stock at that time? A. Yes.

Q. And is now? A. Yes.

Q. Joseph M. Wilson was an owner of stock at that time, was he not? A. Yes, he was an owner of stock.

Q. And is now? A. To the best of my knowledge he is.

Q. Clarence L. Cole was an owner of stock at that time? A. One share, yes.

Q. I didn't ask you how much. He was an owner of stock at that time, wasn't he? A. Yes.

Q. And is now? A. To the best of my knowledge he is.

Q. Thompson Irving was an owner of stock at that time, was he not? A. I am not sure what time he purchased stock from Dr. Marvel, Philip Marvel.

Q. Owner now? A. I think he is.

Q. Just turn to the transfer from Dr. Marvel to himself and see if he wasn't an owner at that time? A. At what date?

Q. In May, 1898. Turn to your book? A. He was an owner of stock at that time.

Q. He was an owner of stock at that time and is now? A. To the best of my knowledge and belief.

Q. Louis Kuehnle was he an owner of stock at that time? A. Yes.

Q. And is now? A. He is.

Q. J. Byron Rogers, was he an owner of stock at that time? A. 1898?

Q. Yes? A. I am not positive of that.

Q. Will you look and see? A. Yes, he was an owner.

Q. And is an owner now? A. I don't know that.

Q. You don't know that. Have you any record of any transfer of his stock? A. I think not.

Q. Well, will you look at your book and verify that?

Mr. McCarter: I can't see the use of getting at these outside stockholders who are not parties complainant.

Mr. Gaskill: This suit is for the benefit of all stockholders.

Mr. McCarter: Benefit of the company. I can'e see the use of finding out if A, B and C had stock.

Mr. Gaskill: You allege in your answers there is not anybody who had stock then who has stock now except Mr. Wilson.

Mr. McCarter: We object, your Honor, to taking the date of the other stockholders than those who are either complainant or defendant, the suit being for the company's benefit.

Mr. Bourgeois: I can't find those certificates Mr. Adams says were stockholders at that time. The stock book is here and we have verbal testimony about it.

The Vice Chancellor: I can't see it is important. What difference can possibly exist whether other stockholders existed then or not than those whom you represent?

Mr. Gaskill: Well, we represent all stockholders; we represent the company.

The Vice Chancellor: In a measure, but why go further to determine who they were; what would be the advantage of it?

Mr. Gaskill: I don't know there is anything.

The Vice Chancellor: I will permit you to do it if you feel convinced there is any material benefit to be gained from it.

Mr. Gaskill: I don't, but from the stress that was laid upon it in certain parts of the answer, I had this matter looked up.

The Vice Chancellor: The evidence already shows the complainants were stockholders then and now and some others were stockholders then and now and I don't see any advantage in going further unless you have some specific purpose.

Mr. Gaskill: Very well.

Q. Now I wish to get some dates when some of these complainants acquired their stock. Mr. Adams, tell me when it was that Joseph P. Wilson —well, I don't know that is—well. when did he acquire his stock? A. I couldn't from memory.

Q. Here are the books before you I subpoenaed you to bring. Just look at them.

Dr. Philip Marvel: January sixth and twenty-seventh, 1898.

Mr. Gaskill: Now, Mr. Bourgeois, your client, Dr. Marvel, is reading from book; what is this?

Dr. Marvel: It is a record of the trustee's stock sale.

Mr. Gaskill: In the company's books?

Dr. Marvel: Yes. Here is a record of the date of sales of stock.

Q. Then as your recollection is refreshed by the statement of Dr. Marvel from the company's books, you say that is in January, 1898? A. Yes.

Q. Was that stock all paid for at once or was it paid for in different instalments?

Mr. Bourgeois: Which stock is that, Judge?

Mr. Gaskill: This Wilson stock.

A. I think it was paid in two instalments, as there are two different dates.

Q. Weren't there several instalments showing payments? Mr. Adams I hand you the ledger of the defendant corporation and ask you who kept this book? A. Mr. Wright kept the book.

Q. An employee of yours? A. Yes.

Q. Kept in your office? A. Yes.

Q. Now turning to book, page 382, you find there the account of Joseph W. Wilson, do you not? A. Yes.

Q. Now give us the different dates from that when he purchased stock and amounts of stock that he purchased at those several times? A. This gives 1898, January 6th, 27th, February 26th, March 3d.

Q. But you didn't give me the number. January 6th, how many? A. Eleven shares.

Q. How much? A. Eleven hundred dollars.

Q. One hundred and ten dollars a share?

Mr. Bourgeois: What makes you think that?

Mr. Gaskill: Why, eleven shares eleven hundred dollars—I beg pardon.

Q. January 27th? A. Yes.

Q. Nine shares? A. Nine shares, three hundred dollars, nine hundred dollars.

Q. Nine hundred dollars? A. Yes.

Q. What did you say about for three hundred dollars; where did you find any of that? A. Nine hundred dollars for nine shares.

Q. You said something about three hundred dollars; that was a mistake? A. Yes.

Q. Now the next date? A. February 26th.

Q. Twenty-sixth? A. Or tenth, rather; there was ten shares, ninety-seven dollars a share, one thousand dollars.

Q. What is the next date? A. March 30th same year, ten shares for one thousand dollars.

Q. And what is marked in there as the price that he gave for that, one hundred and five, isn't it? A. He may have given one hundred and five for it.

Q. If the one above in pencil, ninety-seven represents what he gave for it, this is the same character of an entry? A. Yes.

Q. Now, the next date? A. April 18th, ten shares.

Q. And how much? A. One thousand dollars.

Q. One thousand, and how much a share? A. Marked one hundred and eleven.

Q. Now then, give us the dates of the payments? A. Credit by check on January 6th, 1898, ten hundred and forty-five dollars.

Mr. McCarter: How much?

A. Ten hundred and forty-five.

Q. Yes? A. Then on the 27th—there was a discount there of fifty-five dollars. On January 27th was a check for eight hundred fifty-five dollars, discount forty-five.

Q. Yes? A. February 26th, check nine hundred and fifty dollars, discount fifty dollars. March 8th check nine hundred fifty dollars, discount three hundred and seventy-four dollars.

Q. No, that is a page? A. Fifty dollars. April 18th, check for nine hundred and fifty dollars, discount fifty dollars.

Q. Well now then any other items? A. Not on that account—1909—

Q. These here— A. Yes.

Q.— represent distribution of profits and so on? A. Yes.

Q. Now, I would like you to give me the date when the stock to Kate B. Endicott was issued.

Perhaps Mr. Bourgeois can help you with that book?

Mr. Bourgeois: That came from Judge Endicott; that won't appear in that book. Kate B. Endicott, 9th of April, 1898.

Mr. McCarter: She is not a party?

Mr. Endicott: The stock is now owned by one of the complainants.

Q. Mr. Adams, I call your attention to certificate one hundred and eight, that is to Kate B. Endicott, for thirty shares, is it not? A. Yes, issued to Kate B. Endicott.

Q. And dated the 9th of April, 1898? A. 1898; yes.

Q. And was transferred to her by Allen B. Endicott part of that original issue? A. Well, he signed for the certificate; yes.

Q. He signed for the certificate; well, who did it come from? A. K. B. Endicott is the name of the stock and signed for by A. B. Endicott.

Q. And she purchased it; that is part of that trust stock? A. I presume she purchased the stock.

Q. Well that certificate has been cancelled, hasn't it? A. Yes.

Q. What certificate is issued in place of it? A. One hundred and twenty-five.

Q. Just turn to certificate 125 and for thirty shares— A. Certificate—to—

Q. To Mordecai T. Endicott is it not? A. That is to say in lieu of 108.

Q. That is this certificate is in place of 108 to Kate B. Endicott? A. Yes.

Mr. McCarter: What is the date of that?

Mr. Gaskill: One hundred and twenty-five and is dated August 23d 1903, is it not?

A. Yes.

Mr. McCarter: Can't we find out where that certificate 108 came from?

Mr. Gaskill: I have no objection, Mr. McCarter. Might be a good idea as we go along.

Q. That says on the margin, does it not, Mr. Adams, in lieu of certificates eighty-two and eighty-six returned cancelled? A. Yes.

Q. Now lets turn to eighty-two and eighty-six—we will have to get the other book—certificate eighty-two is certificate for ten shares issued to Allen B. Endicott September 4, 1897? A. Yes.

Q. And returned cancelled. Certificate eighty-six is another certificate issued to Allen B. Endicott for twenty shares— A. Pardon me—

Q. —dated September 4, 1897? A . That is correct.

Q. Both certificates eighty-two and eighty-six say that they are in lieu of number eight, do they not? A. They do.

Q. Now then, let's turn to number eight and we find that to be a certificate of March 20, 1897, for 251 shares to Allen B. Endicott, do we not? A. Yes, that is the original issue of stock to Judge Endicott.

Q. That certificate was returned and cancelled? A. Yes.

Q. Now then that says in the margin, in lieu of number four. Now lets turn to number four and number four is the certificate that was issued to Marvel, Endicott and Thompson for the 1,839 shares? A. That is correct.

Q. Now, let's have the date of the issue to Eva J. Dodd, Eva Davis Dodd.

The Vice Chancellor: Who is that stockholder?

Mr. Gaskill: Eva Davis Dodd, one of the complainants.

Q. The date of the issue to Charles E. Davis by certificate 118; what is the date? A. That is September, 1899.

Q. For how many shares? A. Ten shares.

Q. In lieu of eighty—want that traced back?

Mr. Bourgeois: Why don't we admit that is a part of the 251 shares issued to Judge Endicott?

Mr. Gaskill: That is correct.

Q. This certificate was transferred to Eva J. Davis by certificate 138 for six shares and by certificate 139 for four shares to Allen B. Endicott on February 27, 1904, wasn't it? A. That is correct.

Q. Mordecai T. Endicott's stock?

Mr. Bourgeois: Here is Charles P. Henry; want his?

Mr. Gaskill: Yes, as long as you have it there.

Q. We will take Charles P. Henry. I call your attention to certificate 122 for five shares issued to Charles P. Henry on 9, 1900; that is right is it? A. Yes.

Q. In lieu of eighty-one cancelled.

Mr. Gaskill: Judge Endicott was that part of your stock?

Mr. Endicott: No, that came through M. T. Endicott. Probably issued first to me then to Kate B. Endicott, then to him.

Mr. Gaskill: Part of the 251 shares issued to Judge Endicott, transferred to Kate Endicott and transferred to Admiral Endicott and by him to Charles P. Henry? Then this is reissued or transferred, been returned cancelled, and a new issue, certifi-

cate 140 to Mordecai T. Endicott for those five shares?

Mr. Endicott: Let me correct that. That did not go to M. T. Endicott, came back to him. I said it went from Endicott; it came from Henry to M. T. Endicott, five shares. I think that Charles P. Henry's stock was issued direct to me and was part of my original purchase and afterwards Charles P. Henry sold five shares of it to M. T. Endicott; never was in the name of Kate B. Endicott.

Q. Date is March 5, 1904, is it not, for five shares to Mordecai T. Endicott? A. Yes.

Q. And that certificate is outstanding? A. Yes.

Mr. McCarter: Then does Charles P. Henry own this stock?

Mr. Gaskill: Yes, he owns stock, but not these five.

Q. I call your attention to certificate 123 or rather the stub of that certificate for five shares issued to Charles P. Henry dated June 20, 1900, in lieu of certificate 121; that is right isn't it? A. That is correct.

Q. And that certificate is outstanding? A. Yes.

Mr. Bourgeois: And that also was a part of the original 251 shares issued. Want that on the record Judge? It will save us cross-examining if you do.

Mr. Gaskill: Yes, anything of that character that will help expedite the trial; we will save up our fireworks for the real fight.

Q. I call your attention to certificate 125 for thirty shares made to Mordecai T. Endicott in lieu of 108— A. That is correct.

Q.—dated August 15, 1903? A. That is correct.

Mr. Bourgeois: Judge, shall we put on the record also that is a part of the original issue of 251 shares to Judge Endicott?

Mr. Gaskill: Yes.

Q. I call your attention to certificate 138 for six shares to Eva Davis Dodd dated February 27, 1904, in lieu of 118? A. Correct.

Q. That is still outstanding, is it? A. It is.

Q. I call your attention to certificate 139 for four shares to Allen B. Endicott in lieu of 118; that six and the four makes up the ten? A. That is correct.

Mr. Bourgeois: And they are both part of the 251 shares issued to Judge Endicott?

Mr. Gaskill: I admit that.

Q. I call your attention Mr. Adams to the corporation ledger page 381 under the heading of Peter B. Reed and will you give me the dates when he acquired stock? A. January 1898, eleven shares, $1,100.

Q. I don't care about the amounts there? A. January 27th, nine shares, $900. February 26th, ten shares, $1,000 dollars; March 30th, ten shares, $1,000; April 16th, ten shares, $1,000.

Q. And he paid for it at different times from January 5th, to April 16th, inclusive? A. Yes.

Mr. Bourgeois: Show how much he paid for it.

Q. Just read the other side down.

A. January 5, 1898, $1,045, discount fifty-five dollars; on the 27th of January, check, $855; discount forty-five dollars; February 26th, check $950; discount fifty dollars; March 30th, check $950, discount fifty dollars; April 16th, check $950, discount fifty dollars.

The Vice Chancellor: What were those discounts?

Mr. McCarter: Sold for less than par.

Mr. Bourgeois: Bought the stock for $950.

Mr. Gaskill: That is the way I understand it.

Q. That is correct, isn't it, Mr. Adams? A. Yes.

Q. I call your attention to certificate stub 153, Frederick C. Robbins, twenty-five shares issued September 16, 1909; that is correct, isn't it? A. Yes.

Q. And the certificate is outstanding? A. That is correct.

Mr. Bourgeois: I will admit that, Judge, that both Mr. Robbins and Mr. Evans received their certificate by assignment from Mr. Bacharach and was a part of that 545 shares, if you want, because I think that is the fact.

Mr. Gaskill: Part of the 545?

Mr. Bourgeois: The certificate you have right there to Issac Bacharach. Will you do that or do you want to trace it?

Mr. Gaskill: Now then I don't care to trace it. You admitted that Reed was included, Evans and Reed? Reed we had; we proved Reed; Evans and Robbins?

Mr. Bourgeois: Yes, Evans and Robbins both, a part of Mr. Bacharach's share.

Mr. Gaskill: Certificate 146, 545 shares.

Mr. McCarter: I don't think it has appeared yet what became of Reed's stock? Reed went to Bacharach, did it?

Mr. Gaskill: Reed came from Bacharach.

Mr. Bourgeois: No, Reed's went to Mr. Bacharach. Peter B. Reed's stock went to Bacharach.

Now, I want to find out, Mr. Adams, where Mr. Wilson got his stock from Joseph W. Wilson.

Dr. Marvel: Came from the trustee stock.

It is admitted that Mr. Wilson, one of the complainants' stock came from Philip Marvel as trustee and Peter Reed's also. It is admitted that came that same way.

Q. Have you the minute book with you, Mr. Adams? A. They are here; yes, sir.

Q. Just turn to that minute book. Is there anything on the minute books with reference to the stock that was issued to Philip Marvel trustee?

Mr. Bourgeois: Now Judge, which do you have reference to, all of it or any particular part?

Mr. Gaskill: Either the 499 or the 200.

The Vice Chancellor: Have you shown then, Judge, or will the pleadings sufficiently admit the issuance of the 1,839 as a consideration for the purchase of the land?

Mr. Gaskill: That is all admitted, yes.

Mr. Bourgeois: Well, it is admitted in the pleadings.

Mr. Gaskill: It is also admitted that the 200 and 499 were parts of the 1,839 shares.

The Vice Chancellor: There is some testimony as to just what the present stock was turned back for.

Q. Is there anything on the minute book of the corporation which shows anything about that trust stock of either the 200 or the 499 shares? If so turn to it? A. I think we have a minute there.

(Witness turns to minute book of the company on page 15.)

Q. The minute to which you have directed my attention on page fifteen is part of the proceedings of the organization under date of November 30, 1896, as shown on page seven, isn't is? A. It is.

Q. Now just read what you have on page fifteen there with respect to this trust stock? A. A total number of shares held—

Q. No, these two items? A. Philip Marvel trustee 499 shares and Philip Marvel trustee to be used in purchasing land 200 shares, in purchasing additional lands, 200 shares; 499 shares and 200 shares.

Q. Do you find anything else on the minute with reference to that 499 shares as to the trust that was created with reference to it? A. Well, I know what the intent was.

Q. I didn't ask you that, Mr. Adams; I am just asking you— A. Four hundred ninty-nine shares and 200 shares.

Q. —is there anything else on the minute showing the nature of the trust connected with that 499 shares? A. I think there is a further minute there that explains that the two hundred was to be used, 200 shares for the use of purchase—

Q. This minute here; I am talking about the 499? A. The 499 for development.

Q. I didn't ask you—I ask that be stricken out—is there anything else on your minute book in regard to that 499 shares?

Mr. Bourgeois: Why won't the minutes show? The minutes are the best evidence.

Mr. Gaskill: I know, but the only way to prove a negative is—

Mr. Bourgeois: To have somebody testify.

Q. There isn't anything else there with reference to that 499 shares?

Mr. Bourgeois: Nothing there until 1908, then there is a minute with reference to those 499 shares.

Mr. Gaskill: They may go in as an admission.

Q. The 150 shares in dispute in this case are part of that 499 shares, are they not, Mr. Adams?

A. It is, yes.

Q. The 200 shares were used in the purchase of the additional lands that adjoins the first purchase?

Mr. McCarter: That is very leading.

Mr. Gaskill: I understood that from the answers there were several pieces lapped in between and these 200 shares were used—

Mr. McCarter: I don't think they were used up.

Mr. Bourgeois: We will admit that all of the 200 shares that were issued under the minutes marked for use of purchasing additional land were used to purchase additional land, either sold and the land purchased for cash or else the stock itself was issued to the owners of the land in compensation for it.

Q. Now then can you tell me how many of the 200 shares were thus used?

Mr. Bourgeois: I don't know; I think almost all of it.

Dr. Marvel: Mr. Wright can tell you.

Mr. Gaskill: How much of the 200 shares was used for the purchase of additional land either by giving it to the vendors or selling it and using the cash? (Turning to Mr. Wright.)

Mr. Lucius I. Wright: There was about

ten in stock; stock was issued for the purchase of land.

Mr. Bourgeois: And how much was sold and lands purchased with the proceeds?

Adjournment taken until 2 p. m.

Afternoon session, 2 p. m.

CLEMENT J. ADAMS, resumed:

Direct-examination resumed by Mr. Gaskill:

Mr. Gaskill: Now I offer in evidence the stock certificate books and stubs that have been used by the witness, Mr. Adams, and I think we had better mark them.

The certificate book which contained certificates one to one hundred and three inclusive is marked Exhibit C-1. And the other certificate book referred to commencing with certificate 103 is marked Exhibit C-2.

Q. Mr. Adams, you have in your hands the minute book of the company? A. I have.

Q. Kept by you as secretary of the company? A. I have.

Q. Are all of the minutes of the company written up in that book? A. They are not.

Q. What is the date of the last minute that is regularly written up in that book? A. February 23, 1904.

Q. That minute is on page thirty-seven of the book, is it not? A. Yes.

Q. When were the minutes written up that appear on the first thirty-seven pages of this book? A. Well, they were written up at different times.

Q. When was the last writing done there on those first thirty-seven pages?

The Vice Chancellor: That includes the whole book?

Mr. Gaskill: Includes all that have been written up.

A. There are copies of the minutes however.

Q. But I ask you when they were written in this book, Mr. Adams? A. I gave the date there, February 23rd, isn't it?

Q. Well, 1904; that is the date of that minute. Now when was that actually written on that page? A. That I couldn't say.

Q. Well, has it been recent— A. About at that time. No.

Q. Was it before this suit was commenced? A. Yes.

Q. Positive of that? A. Positive of that.

Q. All preceding this you are positive was written prior to the commencement of this litigation? A. I am.

Q. Have you written up a minute of a meeting that occurred in 1908 or 1909? A. There is a copy of that minute; yes, sir.

Q. Whereabouts is that?

(Witness produces bundle of loose minutes.)

Q. In addition to the minute book which contains entries on the first thirty-seven pages, you produce a folder containing a lot of loose memorandum copies of resolutions and memorandum of minutes, do you? A. I do.

Q. I would like you to turn to your minute book of May 6, 1897, or to the loose memorandum of the minutes of that date. I call your attention to the minute as recorded in the minute book on page twenty and ask you if that is not the minute of May 6, 1897? A. It is.

Q. Please tell me who were present at that meeting? A. A. B. Endicott—

Q. The following directors were present—

Mr. Gaskill: I will withdraw the question for the moment, Mr. Wright having come in and brought the book I wanted.

I offer in connection with the certificate books already offered the ledger of the corporation page 306 containing the account of Philip Marvel, trustee, in connection with the stock in question and ask to have this marked Exhibit C-3.

Said book and page marked Exhibit C-3.

Q. Mr. Adams, in connection with that stock matter to which we have gone back, have any dividends been declared on the stock and paid to the stockholders? A. Since 1909?

Q. Any time? A. Yes.

Q. There has? A. Yes.

Q. Including the 150 shares in question in this case? A. Yes.

Q. What dividend has been paid on those 150 shares and when? A. I will have to refer to the ledger for that.

Mr. Gaskill: I understand, if your Honor please, Mr. Wright was the bookkeeper for Mr. C. J. Adams and actually made the entries at the request of Mr. Adams.

The Vice Chancellor: Read it right into the record.

Mr. McCarter: Just let what Mr. Wright says be put down as the answer of Mr. Adams.

A. There has been eight dividends declared, the first one commencing September 15, 1909. Do you want the different ones?

Q. Yes? A. Two hundred dollars a share, the first one.

The Vice Chancellor: Two hundred per cent dividend?

A. Yes, sir; that was the first one. The second dividend was November 24, 1909 of twenty dollars a share. Number three April 9, 1910, ten dollars a share; number four dividend, November 18, 1910, thirty dollars a share. Dividend number five, January 13, 1911, ten dollars a share. Dividend number six, March 20, 1911, twenty-five dollars a share. Number seven dividend April 14, 1911, twenty dollars a share. Number eight dividend, December 30, 1911, four dollars a share. Making a total of 319 per cent dividends paid under the eight dividends declared.

Q. Were those dividends paid at or about the time they were declared? A. Yes, sir; the same day.

Q. Paid the same day?

Mr. Gaskill: That may be taken as the answer of Mr. Adams?

Mr. Bourgeois: Yes. Won't you also let it appear that those same dividends were paid on all the stock?

Mr. Gaskill: I have no objection to that.

Q. Those same dividends were paid on all the outstanding stock of the company? A. Yes, sir; on 1,638 shares.

Mr. Gaskill: On all of the stock of the company including the 150 shares, Mr. Bourgeois, in dispute?

Mr. McCarter: That is right.

Q. Now, Mr. Adams, referring to that minute of May 6, 1897, tell me what directors were present at that meeting? A. A. B. Endicott, I. G. Adams, C. J. Adams, Philip I. Marvel and M. D. Youngman.

The Vice Chancellor: What were the two absentees? Were there seven directors?

Mr. Gaskill: The absentees were Thompson and Kuehnle.

Mr. Bourgeois: Was Kuehnle a director then? I don't think he was.

Mr. Gaskill: No, not in 1907.

Q. Do you find on the minutes any resolution or action by the directors with reference to any of the stock of the company? A. Yes, "On motion it was resolved not to offer any of the company's stock at less than par."

Q. What stock was that?

Mr. McCarter: I object to that question. It speaks for itself. I don't think this witness, in other words, can construe the action of the company.

(Question withdrawn.)

Q. Had all of the 2,500 shares of stock been issued except the 651 reserved for the mortgage at that time? A. It had not.

Q. What hadn't been issued? A. I don't just remember the amount of stock not issued; there was some stock that wasn't issued.

Q. What stock was it?

The Vice Chancellor: That in the hands of Marvel, trustee?

A. That in the hands of Dr. Marvel as trustee.

Q. And this resolution referred to that stock?

Mr. McCarter: I don't think that is right.

The Vice Chancellor: Is that all the resolution says?

Mr. Gaskill: It is on motion.

The Vice Chancellor: Read it please.

A. "On motion it was resolved that to offer any of the company's stock at less than par."

The Court: I don't know whether this witness is competent to testify whether that

has any restrictive meaning or not as it stands. It refers to any stock.

Mr. Bourgeois: If the Court please, we think as it stands it refers to the 651 shares of the stock, because all the stock had been issued, because 651 shares was in the treasury of the company and of course that they couldn't issue less than par.

(Question withdrawn.)

Q. Turn to the minutes of the meeting February 10, 1898?

The Vice Chancellor: Page what?

Q. I call your attention to the minute on page thirty. Is there any other minute beside that one on page thirty of February 10th? A. Not to my knowledge; no.

Q. Well, turn to the minute of February 19th—no, of May 19, 1898, on page thirty-one. Do you find any minute there with reference to this stock? Answer yes or no first.

Mr. Bourgeois: To which stock?

Mr. Gaskill: Any stock.

A. I do.

Q. Who were present at that meeting of the directors? A. I. G. Adams, Philip I. Marvel, Louis Kuehnle, A. B. Endicott, Joseph Thompson and C. J. Adams.

Q. Whole board were present then? A. No, Maurice D. Youngman wasn't there.

Q. Read the resolution? A. "Resolved that the president and treasurer be authorized to borrow the sum of $10,000 and to issue double the amount of stock to be applied for the payment of gravel purchased and to be purchased of the West Jersey and Seashore Railroad Company."

Q. Turn now to the minute of October 5th?

The Vice Chancellor: Read that again.

That is the resolution under which this is distributed? A. "Resolved that the president and treasurer be authorized to borrow the sum of $10,000 and to issue double the amount of stock to be applied for the payment of gravel purchased and to be purchased of the West Jersey and Seashore Railroad Company."

The Vice Chancellor: It says issue double the amount?

Mr. Gaskill: That is not the resolution under which the stock is taken.

The Vice Chancellor: I thought that was the fatal one.

Mr. Gaskill: The next one is the fatal one.

Q. Turn to the minute of October 5, 1898? A. All right.

Q. Got it? A. Yes.

Q. What page is that? A. Page thirty-one.

Q. Who were present at that meeting? A. I. G. Adams, C. J. Adams, M. D. Youngman, Philip I. Marvel and Louis Kuehnle.

Q. Judge Thompson and Judge Endicott were not present? A. Were not present.

Q. Read the resolution that was passed at that meeting which contains any reference to the company's stock? A. Just the resolution?

Q. Yes? A. "Resolved that each director borrow the sum of $1,500 for the period of one year and to receive fifty per cent excess of the company's stock as collateral to said loan to meet the obligation of Alvin P. Risley, contractor, the company to have the privilege of redeeming said stock in one year from date with interest at six per cent, otherwise to revert to the borrower."

Q. It is within your knowledge, Mr. Adams, is it not, that the five directors, defendants, loaned

the $1,500.00 each to the company? A. That is true.

Q. And that neither Judge Thompson nor Judge Endicott secured any loans or made any loans? A. That is also true.

The Vice Chancellor: They each loaned $5,000.00.

Mr. Gaskill: Fifteen hundred. Seventy-five hundred dollars in all; each of the five.

The Vice Chancellor: That included all the directors; that included Adams and Adams, Young and Marvel, was Kuehnle in that at that time?

Mr. Gaskill: Kuehnle.

The Vice Chancellor: And Kuehnle; everybody but Thompson and Endicott?

Mr. Gaskill: That is right.

Q. Now, please turn to the certificate book, Mr. Adams, and tell me what stock that had been placed in trust was transferred to these five directors or if you can tell me without? A. It is out of the four hundred and ninety-nine shares the six hundred and fifty-one shares originally, of which the four hundred and ninety-nine shares was for the development of the property.

Q. The stock transferred to these five directors as collateral was part of the four hundred and ninety-nine shares that had been set apart for the development of the company, you say? That right? A. That is correct.

Q. And how many shares did each of those five get, including yourself, thirty wasn't it? A. Thirty shares; fifteen additional shares as collateral.

Q. You loaned $1,500.00 and you each received in par $3,000.00 of the stock? A. That is correct.

Q. And on that stock you have received dividend as testified to? A. I have.

Q. Now turn to the minute book—does the minutes go up as far as 1904, I forget—turn to the minute book February 23d, 1904? A. What is the date?

Q. February 23d, 1904, must be near the last; there it is, I guess. Now I want the one about the stock to Freas and to Wright. A. That is right.

Q. Do you find in the minute of that date on page thirty-seven any reference to any stock of the company? A. Yes.

Q. If so, read the entry. A. "On motion the president and treasurer were authorized to issue to Mina J. Freas three shares of stock and to Lucius I. Wright three shares of stock of the St. Leonard's Land Company in payment of services rendered said company."

Q. Is that the last minute that was recorded in the book? A. Last one.

Q. Then you may lay aside that book and please look at your loose memorandum of the minutes of the meeting of May 7th, 1900.

(Question withdrawn.)

Q. I will refer to that minute. Just refer to the memorandum of the minute of proceedings of May 7th, 1900—Mr. Adams, by consent of counsel on the other side you may use a copy of the minute. Read me the last entry on that memorandum of the proceedings at that meeting. First tell me who was present.

The Vice Chancellor: Which date is that now?

Mr. Gaskill: This is May 7th, 1900.

A. Joseph Thompson, I. G. Adams, Dr. Marvel, Louis Kuehnle, A. B. Endicott, Dr. Youngman—

Q. Dr. Marvel? A. Yes.

Q. All present then except—well, Mr. Kuehnle was present. A. Yes, Mr. Kuehnle was present. All was present. I was absent, C. J. Adams.

Q. C. J. Adams was absent? A. Yes, the minutes by Joseph Thompson.

Q. What is the last entry? A. "Dr. Marvel reported that the Doughty property adjoining the company's track had been purchased and also the Ireland property. On motion the purchase of the property was ratified."

Q. Do you know whether that was paid for out of the two hundred shares of stock—not stock, but cash for the sale of stock of that two hundred shares, or can't you tell? A. From my recollection I can't tell without referring to the books.

Q. Now turn to the memorandum of your minute of March 3d, 1908—first let me go back to that minute, will you please? A matter has just been called to my attention. Is there on that minute any action authorizing the sale of the property and, if so, read it, what price? A. Yes, five hundred and sixty-three thousand.

Q. Read it. A. "On motion, Louis Kuehnle was appointed special committee"—

Q. No, no—"On motion the property"— A. "On motion the property was authorized to be sold for $563,000, this to include all property now owned by the company, providing same be closed within ten days from the date of the motion."

Mr. Bourgeois: Why not let him read the first part of that?

A. "Mr. Adams reported that there had been some negotiations touching the sale of the property of the company"—

Q. Then follows what you read? A. Yes.

Q. Now turn to the minute of March 3d, 1908. By consent of counsel you may use a copy that

they hand you which contains your signature as secretary. Your original signature, isn't it? A. Yes.

Q. Just tell us who was present at that meeting? A. Joseph Thompson, Phillip I. Marvel, Dr. Youngman, I. G. Adams and A. B. Endicott.

Q. Kuehnle was absent and yourself; that right?

Mr. Bourgeois: He was there; he was secretary.

Q. Then you may read the whole of that record. A. "The minutes of the previous meeting were read and approved. The matter of the reduction in the price of the company's holdings was fully discussed but it was decided not to make any change of price of same except when parties desired to build and then submit offers to the company. The question of building jetties on the ocean front was discussed and Joseph Thompson and C. J. Adams were appointed to get prices for pilings, etc. The value of the company's stock was considered and thought to be worth $400.00 a share. The matter of loan made to the company under resolution in which C. J. Adams, I. G. Adams, M. D. Youngman, Phillip I. Marvel and Louis Kuehnle advanced fifteen hundred each with thirty shares of the company's stock as collateral was discussed as to the redemption of same and no action was taken."

Q. That matter was brought up quite a number of times, wasn't it, Mr. Adams? A. Frequently under discussion the matter of the loans.

Q. From the time the loans were made up to the time the company was ready to divide up its property? A. More particularly since 1908.

Q. But there were frequently references to it prior to that time in the board? A. There may have been references.

Q. Now turn to the minute of August 17th, 1909. I would like to have that read at length into the record. A. August 17th, 1909. "A meeting of the directors of the St. Leonard's Land Company was held at the office of C. J. Adams Company, room six, on Thursday evening August 17th at eight-thirty p. m. Present were Dr. Marvel, Dr. Youngman, I. G. Adams, Louis Kuehnle, A. B. Endicott, Joseph Thompson and C. J. Adams—"

The Vice Chancellor: That is everybody?

A. That takes them all. —"On statement of Joseph Thompson that the company could not legally change its stock at more than par for lands and which was passed at the meeting of August 16th be rescinded by a vote of the directors."

Mr. Gaskill: I call your Honor's attention to it. That motion was this. On the sixteenth this was the motion: "On motion it was decided that owners of the stock of the company could substitute their stock for the purchase of land or take mortgages of the company in some manner on a basis of three hundred and fifteen per share," and I take it that this motion to rescind is the rescission of that. We both so understand that.

A. That is August 9th and this is August 17th.

Q. Go on with the next. A. "On motion of Louis Kuehnle, seconded by Joseph Thompson, that a dividend of $30.00 be declared on all stock and that it be paid on or before September 15th, 1909, and that the seventy-five shares in dispute that the dividend of $30.00 per share be held in trust in the Atlantic Safe Deposit Company at 3 per cent interest until the legality of issue of seventy-five shares is decided."

Mr. Gaskill: Does your Honor understand about that seventy-five?

The Vice Chancellor: I understand how there is one hundred and fifty in dispute.

Mr. Gaskill: There was a movement, as will appear shortly, to give these five directors one share for every hundred dollars that they have loaned the company, which would be seventy-five shares, on condition that they returned the other seventy-five. I have a resolution that don't appear in the minutes, the real offer of it, that will explain that.

A. This motion was carried Endicott opposing. "On motion of Judge Endicott, seconded by Mr. Thompson, the directors who loaned $1,500.00 each to the company in 1898 were requested to return the stock issued to them as security therefor and accept the principal paid with 6 per cent interest." "Motion lost, two in favor, five against. Marvel, no; Youngman, no; I. G. Adams, no; C. J. Adams, no; Louis Kuehnle, no; Endicott, yes; Thompson, yes."

"Dr. Marvel stated he voted no because at the time the matter came before the company it was in financial distress and the board of directors as a whole refused to make a company note.

"Dr. Youngman voted no and explained he wanted to consult an attorney about the legality of the original resolution before voting.

"I. G. Adams voted no to protect the other stockholders and to preserve the property from sacrifice sale and company would not redeem its promise.

"Louis Kuehnle voted no.

"C. J. Adams voted no; company had made an agreement and would not fulfill its agreement with those who came to the relief of the company.

"A. B. Endicott voted yes.

"Joseph Thompson voted yes.

"Mr. Thompson moved that the question of the legality of the stock issued to the five directors as collateral security be presented to Charles L. Corbin for his opinion. The motion was lost by the following vote: Mr. Endicott voted yes; Mr. Thompson voted yes; Mr. I. G. Adams voted no; Mr. C. J. Adams voted no; Mr. Kuehnle voted no; Dr. Youngman voted no; Dr. Marvel voted no.

Dr. Marvel explained his vote on the ground he was in favor of submitting the question to the Court whose decision should be final.

Mr. Thompson moved that Judge Endicott bring suit against the company to determine the legality of the issue of seventy-five shares in dispute.

The motion was not seconded"—

Q. The motion was seconded? A. Was not seconded. "Judge Endicott then stated that he was willing to bring the suit if the company desired it, and as no one had seconded Mr. Thompson's motion he would reluctantly second the motion himself.

"Judge Thompson called for the 'yeas' and 'nays' on his motion.

"Dr. Youngman moved to adjourn, seconded by C. J. Adams, to meet at the call of the chair. Before putting the motion to adjourn Dr. Marvel asked to make a statement before his putting his motion. Dr. Youngman pressed his motion to adjourn.

"This motion was lost by a 'tie vote' as follows: I. G. Adams, yes; Thompson, no; Marvel, no; Endicott, no; Youngman, yes; C. J. Adams, yes.

"Judge Endicott then called for Mr. Thompson's motion.

"Dr. Marvel explained his vote by stating that since a question had been raised by two members of the board, as to the legality of the action taken by the board at its meeting October 15th, 1898, he would vote no to Judge Thompson's motion to have the question taken by Judge Endicott to Court, not because he did not favor the proceedings but because two members of the board having retired from the meeting, the question was too important to be passed without a record of their votes.

"The vote on this motion was lost by the following vote: 'Judge Endicott, yes; Thompson, yes; Youngman, no; C. J. Adams, no; Marvel, no.

"Judge Endicott moved that the minutes be approved as read; motion seconded by Dr. Youngman. Motion carried.

"On motion of Dr. Youngman motion to adjournment was made to meet next Tuesday, August 24th, 1909, at 8 p. m.

"These minutes approved August 18th, 1909." —next morning—signed, C. J. Adams, Secretary.

Q. Mr. Adams, Judge Thompson and Judge Endicott stayed with you that night until those minutes were written out, didn't they? A. They did.

Q. Now, turn to the minute of August 31st, which is the next following minute is it not—what time did you adjourn that night? A. About one-thirty, I think; it was after 12 o'clock, but they adjourned to the next morning, the 18th.

Q. August 31st, 1909; read that, please. A. A meeting of the St. Leonard's Land Company—This is August 31st, 1909—A meeting of the St. Leonard's Land Company was held at the office of the C. J. Adams Company, room six, Real Es-

tate and Law Building, on Tuesday evening, August 31st, 1909; present Dr. P. I. Marvel, I. G. Adams, Judge A. B. Endicott, Judge Joseph Thompson, Dr. M. D. Youngman, Louis Kuehnle, Isaac Bacharach and C. J. Adams.

"A report was made by Mr. Isaac Bacharach, who was made a committee to wait on Mr. Charles Osborne, of Virginia, for the purchase, sale or exchange of his holdings in the St. Leonard's tract.

"Mr. Louis Kuehnle made a motion, seconded by I. G. Adams, that the motion of Louis Kuehnle seconded by Joseph Thompson, that a dividend of $30.00 be declared on all stock and that it be paid on or before September 15th, 1909, and that the seventy-five shares in dispute, that the dividend of $30.00 per share be held in trust in the Atlantic Safe Deposit Company at 3 per cent interest until the legality of issue of seventy-five shares is decided, be rescinded. Upon motion the original resolution was rescinded, and carried.

"A proposition was offered by Isaac Bacharach, seconded by I. G. Adams, which reads as follows:

"Whereas it appears by the statement of this company that its assets now in the treasury is partly composed of several mortgages aggregating at least $350,000.00, which mortgages may not be converted into cash within the next few days, and

"Whereas it is the desire of the company that these assets be distributed among its several stockholders as promptly as possible, either by assigning the mortgages in payment of dividends based upon the par value of said mortgages, or for the distribution of cash arising from the sale therefrom:

"Therefore, be it resolved that a dividend of $200.00 per share be declared by the company, pay-

able on or before September 15th, next, in cash, in case said mortgages are sold, or by assignment of said mortgages to such stockholders as will receive the same at par, in payment of dividends.

"Judge Endicott offered amendment to the motion, seconded by Judge Thompson, as follows:

"Provided, that the dividends on one hundred and fifty shares of the stock issued by this company and now in dispute, be placed in the hands of the Atlantic Safe Deposit and Trust Company, to remain in escrow until such times as the validity of such stock shall be determined at law. If such cash be deposited the same to bear interest at the rate of 3 per cent.

"Vote on amendment: I. G. Adams, no; Judge Endicott, yes; Judge Thompson, yes; Louis Kuehnle, no; Dr. Youngman, no; C. J. Adams, no; Dr. Marvel, no.

"Vote on resolution: I. G. Adams, yes; Judge Endicott, no; Judge Thompson, no; Louis Kuehnle, yes; Dr. Youngman, yes; C. J. Adams, yes; Dr. Marvel, yes.

"Mr. Kuehnle made a motion, seconded by Dr. Youngman, that the proposition of Edgar S. Hill, being a cash payment of"—

Mr. Gaskill: I don't want that unless you do, Mr. Bourgeois. That motion of Mr. Kuehnle's there about the sale of the lots that follows, I don't want. I only want that last resolution.

Mr. Bourgeois: I don't care.

Q. Just then omit from the vote on that resolution down to the last clause and resolution that appears on the minutes of that date and read that. A. "The following resolution was offered by Judge Thompson.

"Whereas in the organization of this company, there was issued to Dr. Marvel as trustee six

hundred ninety-nine shares of stock, of which two hundred and eleven shares were never sold by the company;

"Therefore, be it resolved that the said two hundred and eleven shares held by him as trustee aforesaid be returned and cancelled."

Q. Now, Mr. Adams, turn to your bunch of memorandums contained in this folder and see if you can find there a resolution prepared by Judge Thompson, and if so, produce it. I want the original. A. They are both originals.

Q. Well, produce them both then?

(Witness produces paper.)

Q. This paper which you now hand me, consisting of one and a half typewritten sheets with a backing "Thompson & Cole" is in answer to my request, is it? A. Yes. Judge, may I read that?

Q. Yes, I have no objection to your reading it to yourself to refresh your recollection. Now, having read the paper, Mr. Adams, from whom did you receive this paper? A. That paper was left on my desk by someone in August—

Q. I didn't ask you anything about the date. I asked you from whom you received this paper? A. The paper I found on my desk I think the evening of August 17th.

Q. I didn't ask you about the time. A. You asked me where I found it.

Q. Had there been any action—is there any reference to this in your minutes, this paper? A. There is no reference to that.

Q. There is no reference to this resolution in your minutes? A. No, sir.

Q. Nor in your loose minutes? A. No.

Q. Had any action been taken by the directors on the subject-matter covered by this resolution? A. Nothing more than a general conversation just referred to as I read in the minutes.

Q. There had been a general conversation concerning this matter? A. It had been talked over; yes.

Q. At one of the meetings of the company, of the board? A. Yes, I think it had been mentioned before the board.

Q. Don't you recall the fact that Judge Thompson was asked to put the matter in writing and hand it to you as secretary? A. He did, in 1908—

Q. Wait a moment; I didn't ask anything further—

Resolution in question marked Exhibit C-4 for identification.

Q. Mr. Adams, this company was organized in 1896, I believe? A. October, 1896.

Q. October, 1896, and you were ready for distribution of its assets in 1909; is that right, declared your first dividend? A. In 1909.

The Vice Chancellor: Ready to do what in 1909?

Mr. Gaskill: Distribution of its assets.

Q. The company had sold all of its lands at that time, practically? A. Practically sold all of them, not all.

Q. What was left was taken by the shareholders at a valuation as part of their dividends? A. Part of it was and part in cash.

Q. One thing I omitted when we were going over the stock, I wish to call your attention to now in your minute book, page 16, is there any entry there with reference to any of the stock being held to cover the mortgage on the property and, if so, give us that item? A. Sixty-five thousand one hundred dollars.

Q. There it is. On page 16 witness says he finds the following entry? A. Mortgage against property $65,100.00.

Q. And that added to the item which reads as follows; read that. A. "Stock issued to Marvel, Endicott and Thompson for land purchased and to be purchased one hundred eighty-three thousand nine hundred."

Q. Making all together? A. Two hundred and forty-nine thousand, with the addition of the organizers stock $1,250.00.

Q. Mr. Adams, from 1896, the organization of the company to 1909, when you were ready to liquidate, how many meetings of the stockholders had been held? A. There had been a number of calls sent out, but a very few stockholders came.

Q. During that period of thirteen years how many meetings of shareholders were there of which you have record? A. I don't presume there was over five.

Q. During that time were any statements sent out to the stockholders of the operations of the company, its assets and liabilities and so on? A. There was no annual statements made.

Q. And no other statements you know of regularly sent to the stockholders? A. Unless there was inquiry for the condition of the company.

The Vice Chancellor: Have you the minutes of your stockholders' meeting here?

A. Part of them.

The Vice Chancellor: I was going to suggest, Judge that—perhaps they are matters of defence—while you are putting in the minutes couldn't you put in those to?

Mr. Gaskill: Yes, I was going to look at those minutes and see if there is any reference to anything about this loan.

I will offer the minutes in this book of the various stockholders meetings so far as they appear.

Q. Is there any record at any of the stockhold-

ers' meetings after this loan had been made or these loans made by those directors to the company in reference to the—in the minutes—to that or of the collateral that had been given? A. At the annual meeting?

Q. Yes, any of the stockholders' meetings? A. Yes, and statements made on the minutes at that time.

Q. Show it to me on the minutes. A. February 23d, I think.

Q. Witness opens book to page thirty-seven the month of February 23d, 1904; what do you say with reference to that, Mr. Adams? A. That is an annual meeting.

Q. Is there any reference in this minute to this loan? A. No, there is not.

Q. None here? A. Everything was dead and quiet.

Q. Now, is there any other minute of stockholders' meeting between the meeting for organization and the minute that you have just referred to of February 23d, 1904? A. Yes.

Q. Turn to it, will you please. A. There are others there, but I can't find them. A number of notices were sent out.

Q. I didn't ask you about the notices. I asked you to point out in the book you have there any meeting of the shareholders between the time of the organization and the meeting of 1904. You don't find any in that minute book, do you? A. No.

Q. Now turn to your memorandum of minutes of February of 1904 and give me the memorandum of any stockholders' meeting after that time? A. February 25th, 1908.

Q. I guess there is one before that. Just look

and see if there isn't one February 23d, 1907. I have got a memorandum of that. A. February 23d.

Q. February 23d, 1907, there was an annual meeting and that is the next one of which you have a record, isn't it, Mr. Adams? A. Yes.

Q. Now look over that minute and see if you find any reference there to these loans or this stock which had been pledged as collateral? A. There is nothing of that nature in there.

Q. Now that is the last meeting of stockholders that you find any minute of, isn't it?

The Vice Chancellor: I thought he said there was a later one.

Q. Oh, is there a later one? A. 1908.

The Vice Chancellor: February what?

A. This being an adjourned meeting from the annual meeting. We had no quorum. Notice was sent out to the directors and also the stockholders, this being an adjourned meeting from the 24th instant, the 23d falling on Sunday, at which meeting there was not enough members present, meeting was adjourned to the following Tuesday on the advice of the solicitor who stated that we couldn't elect officers at an adjourned meeting; 1908.

Q. This is that new sheet that has been discovered since that and copied, isn't it? A. No new sheet to it.

Q. You don't find any reference there to this loan or this trust stock, nor to the collateral? A. No, sir.

Q. Now what other one do you have, any more? A. No.

Q. Don't find any other, do you, Mr. Adams? A. No.

Q. Mr. Adams, did you, as one of the parties

who loaned money to the company make any sale of the collateral that was given you for that loan? A. I did not. I borrowed money on it.

Q. Did you ever serve any written notice upon the company or upon the shareholders of the company to redeem that stock? A. Serve a written notice?

Q. Yes. A. No.

Q. To your knowledge was any of the stock held by the other four directors as collateral for the loan sold? A. I think not; no, it wasn't.

Q. And so far as you know no notice from them passed through your office or was mentioned on your minutes to the company or to the stockholders to redeem? A. There was no written notice served; verbal notice.

Q. One other question I neglected to ask you, Mr. Adams, with reference to the minutes of the annual meetings. You reported there all that took place at those meetings? A. I have.

The Vice Chancellor: I don't think you heard that part; he said verbal notice had been given.

Q. Who made any verbal demand for redemption? A. Why the four or five men that came to loan to the company.

Q. When did they make that verbal demand? A. I called Judge Endicott over the—

Q. When did they make that verbal demand? A. Oh, several demands, verbal demands were made stating the conditions.

Q. And where was it made? A. I took—if you want me to be personal.

Q. I will put the question this way; was ever any demands made by you or any one of the company or of the directors of the company for repayment? A. Well, they knew the true condition.

The Vice Chancellor: In the first place, is such a demand on any of your minutes, so far as you know?

Q. There is no such a demand on any of your minutes, either stockholders' meeting or directors' meeting? A. There is not.

The Vice Chancellor: Did you receive any for the company as secretary?

A. What is that?

Q. Was any demand filed with you or made upon you, as secretary of the company, any demand upon the company of that nature? A. Not in writing, no.

Q. And was any made at any of the meetings of the directors or of the stockholders, any formal demands made for repayment? A. To redeem the stock you mean?

Q. Yes. A. No, they knew the condition as well as we did: they were part and parcel of us.

Q. When you say they who do you mean? A. I mean Judge Endicott and Judge Thompson.

(Witness temporarily withdrawn.)

JOSEPH W. WILSON, one of the complainants, being first duly sworn according to law, upon his oath says:

Direct-examination by Mr. Gaskill:

Q. Where do you live, Mr. Wilson? A. Devon.

Q. In the State of Pennsylvania? A. Pennsylvania.

Q. You one of the complainants in this suit? A. Yes, sir.

Q. And stockholder of the company? A. Yes, sir.

Q. Were you a stockholder in May of 1898? A. Yes, sir.

Q. Did you ever receive any notice or have any information sent you by the company of the loan that had been made by several of the directors to the company on the company's stock as collateral? A. No, sir.

Q. When did you first learn of that transaction? A. From Judge Endicott.

Q. When? A. Oh, probably a couple of years or more ago.

Q. About the time— A. Of this litigation.

Q. About the time the company was liquidating? A Yes, sir.

Q. What did you give for your stock, Mr. Wilson? A. Ninety-five dollars a share.

Q. From whom did you buy? A. My stock, I think, came from the company. I mailed check and the stock in return was mailed to me.

Q. Who, if anyone, negotiated the sale for you or through whom did you make the negotiation? A. I think Captain Reed spoke to me first and afterwards Mr. I. G. Adams.

The Vice Chancellor: Does it appear whether or not it was prior to this matter?

Mr. Gaskill: Yes, and he said he was a stockholder in May, 1898.

Q. When did you buy your stock, Mr. Wilson? A. I think the payments were made or called at least in instalments and they ran from January until the end of April, 1898.

Q. The I. G. Adams that you have spoken of was he one of the directors of this company, one of the defendants? A. From what I have heard today he was.

Q. Israel G. Did he make any statement or representation to you at that time as to the value

of the stock? A. He assured me it was very cheap, a good investment.

Mr. McCarter: We object.

Mr. Gaskill: In view of the statement in that answer and the things they are going to rely upon that the stock was not worth par and could not borrow any money on it, wasn't worth more than $50.00 a share, and therefore justified in taking two shares for one and justified in keeping it, I think we can show not only the value of the stock, but if one of these defendants made representations to a purchaser at that time, it is competent; that is my thought.

The Vice Chancellor: I should think not.

Mr. Gaskill: If your Honor please, at a suggestion from one of my clients, may that question and answer stand until the end of the case so that if it becomes competent in rebuttal I will not be put to the necessity of bringing Mr. Wilson back?

The Vice Chancellor: Let it stand anyway as a part of your case, if you want, for what it is worth.

Q. Did you ever receive any statements from the company or the officers of the company? A. I think I had at least two, just about the time of the litigation.

Q. None before that? A. No, sir.

Q. Did you receive any stockholders' notices prior to that time? A. I think I did and came down here once, but it was an adjourned meeting; I believe they didn't get a quorum or something of the kind; there was nothing done; I think that is the only notice I ever received and only one I attended.

Q. Was your notice at that time or in any man-

ner have reference to those loans and the pledge of the stock of the company as collateral? A. No, sir.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Mr. Wilson, you say you live in Devon? A. Yes, sir.

Q. And you are frequently then in Atlantic City? A. No, sir.

Q. How frequently? A. I have only been down just when on this case.

Q. I know, but before this you came to Atlantic City sometimes, didn't you? A. Very rarely.

Q. How many times have you been down here in the last ten or twelve years? A. Probably a half a dozen times.

Q. And during that period of time and during the times you were down here did you ever get into the office of the St. Leonard's Land Company? A. I have been in the habit when here of making a call, both there and other places.

Q. Did you ever examine the minute book of the St. Leonard's Land Company? A. No, sir.

Q. Ever examine the stock book? A. No, sir.

Q. Ever make any inquriy as to how they were getting along? A. Yes, sir.

Q. From whom? A. Generally from Mr. Wright.

Q. But never made any inquiry from any of the directors? A. Yes, I have asked Mr. Adams frequently when I have met him in town.

Q. Which Mr. Adams? A. Both, but more particularly Mr. I. G. Adams.

Q. But you never made any investigation of the minute books at all yourself? A. No, sir.

Q. Now have you sold the remaining portion of your stock? A. I have not.

Q. Still own it? A. Yes sir.

Q. How many shares? A. Fifty.

Q. I understood you to say you thought you paid for this fifty shares in instalments? A. I think it was called instalments.

Q. Didn't you buy in instalments? A. No, I bought fifty shares; at least that is my recollection.

Q. I show you a stub, Mr. Wilson, No. 104 which appears to have been issued to you for eleven shares on January 3d, 1898; you received a certificate of eleven shares, didn't you? A. I think so.

Q. Have you your certificates with you? A. No, I haven't; if I had known you wanted them I would have brought them. Eleven shares.

Q. Now the next issue was on March twenty-sixth, 1898; you received ten shares? A. No, January 25th.

Q. And that was for nine shares, was it? A. Correct.

Q. Nine shares January 25th, 1898; then on February 24th you received ten shares, didn't you? A. Correct.

Q. That is February 24th, 1898? A. Yes.

Q. And then on March 26th, you received ten shares more? A. Correct.

Q. March 26th, 1898, that was? A. Yes.

Q. Then on April 9th, 1898— A. April 14th I received them.

Q. On April 14th, 1898 you received another ten shares? A. Yes.

Q. Now, Mr. Wilson, that would indicate— A. Completing my subscription of fifty shares which I said I would take.

Q. You subscribed all at one time and you re-

ceived your stock in instalments, didn't you? A. As I understood it was needed at that time.

(Question repeated.)

A. Yes, sir.

Q. And that stock I understand you purchased at a discount of five per cent? A. I paid ninety-five dollars a share.

Q. When you came to Atlantic City on the occasion of that stockholders meeting who were present at the meeting? A. The only one I recall now was a Mr. Scull and it was held at a real estate office on the opposite side of the street, but I don't know just where.

Q. What Mr. Scull, Mr. Wilson? A. I think he was in the real estate business.

Q. Harry Scull? A. I think that was his first name.

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

Q. Give us an approximate date? A. Well, it was just about the time that they were taking into consideraton of liquidating.

Q. Of liquidating? A. Yes.

Q. That was 1909? A. Possibly.

Q. Whose real estate office, did you know? A. I do not.

Q. And you are sure it was a meeting of the stockholders of the St. Leonard's Land Company? A. That is what I was notified down there.

Q. Now who else was there besides Mr. Scull? A. I don't recall; there were probably six or seven or possibly eight gentlemen there, but I don't recall any others I knew; I think they were all strangers to me.

Q. Was Dr. Marvel there? A. I don't recall; I never met him until recently and if I did I wouldn't remember.

Q. Was Dr. Youngman there? A. I don't know the gentleman.

Q. Was Mr. Kuehnle there? A. I don't know that gentleman.

Q. Was Mr. Clement J. Adams there? A. I don't recall that he was.

Q. Was Mr. Israel G. Adams there? A. No.

Q. Was Judge Thompson there? A. No.

Q. Was Judge Endicott there? A. No.

Q. What inquiry did you make at that time as to the condition of the company? A. My inquiries were generally made when I met these gentlemen in the city.

Q. Just discussed the thing and talked it over?

The Vice Chancellor: That is you mean in Philadelphia? A. In Philadelphia or wherever I met them.

Q. In what business are you engaged, Mr. Wilson? A. Ship chandlery.

Q. And you frequently see Mr. Israel G. Adams? A. Very.

Q. And occassionally Clement J. Adams? A. Yes, sir.

Q. You never attended any of their meetings in Atlantic City excepting the one you have spoken of? A. That is the only one I knew of.

Q. And when you came here you never made any investigation of the minute books or stock books of the company? A. I did not.

Q. Are you acquainted with Mr. Israel G. Adams' brother, John B. Adams? A. I am.

Q. Ever talk with him about it? A. Yes, sir.

Q. How long ago? A. Oh, at very rare occasions; just as we would meet.

Q. And covering what period of time, all the way back in 1898? A. I think just about the time since the liquidation.

Q. Not until 1909? A. I don't recall any.

Q. In other words, Mr. Wilson, until 1909, you didn't think it was worth talking about it? A. Yes, I never have any investment I don't make inquiries about.

Q. What inquiry did you make about this particular property at the time you bought the shares of stock you now hold? What particular inquiry did you make? A. The only inquiries I made was from Mr. I. G. Adams and I took his word for it.

Q. What inquiry did you make of him? A. Well, what investments they had, what it would do.

Q. What investments did he tell you they had? A. Land at St. Leonards.

Q. Did he tell you the condition the land was in? A. Not particularly.

Q. Did he state whether or not it was in a saleable condition? A. He spoke it was a good investment and it would pay to take it; only in a general way; we didn't go into particulars.

Q. Did you make any investigation either from Mr. Adams or anybody else to ascertain whether this land had been levelled off and graded? A. No, sir.

Q. Did you make any investigation to find whether there was any streets opened? A. Yes, I understood there was streets opened and wanted this money for improvements.

Q. At the time you went in you understood the land was not in position to develop; you knew that? A. I understood they were and were going to continue developing it.

Q. After you put your money in did you ever make any inquiry to find out whether or not they got money to continue their development? A. No, sir.

Q. Just put it in and rested there? A. On account of the confidence in the advice I had.

Q. You put in how much money, forty-five hundred dollars? A. It would be half of ninety-five, it would be forty-seven hundred and fifty dollars.

Q. Forty-seven hundred and fifty? A. Figured up.

Q. And of course you understood it would take the forty-seven hundred and fifty dollars to develop the St. Leonards tract? A. The conversations at times they were merely going to sell off.

Q. But you understood your money was not going to be enough to do it; you knew they were going to sell other stock? A. I don't think I asked directly about it; I don't recall I did.

Q. Did you ever ask afterwards if they had sold other stock? A. No.

Q. Did you ever ask or make any inquiry how they were getting along down there? A. Yes, sir.

Q. To whom? A. Oh, Mr. I. G. Adams principally; he is the one I would see oftener.

Q. And when or how frequently did you make those inquiries? A. Oh, when we would occasionally meet.

Q. And you met occasionally and semi-occasionally in nineteen eight and nineteen hundred, didn't you? A. Oh, occasionally.

Q. Tell us what you mean by occasionally, Mr. Wilson. A. If they happened to be in town meet sometimes on the street.

Q. In 1908 Mr. Adams was in Philadelphia about three or four times a week, wasn't he? A. That I don't know.

Q. Along up until, from 1895 until 1904 wasn't he up there almost every day? A. Not that I am aware of.

Q. Wasn't he in your office almost every day? A. Oh, no indeed.

Q. How frequently was he in your office? A. Just when he was in the neighborhood, I suppose; very rarely.

Q. And that is all the inquiry you ever made regarding your investment such as you made casually when he happened in your place? A. And of Captain Reed.

Q. Captain Reed wasn't a director of your company, was he? A. No, sir.

Q. Now you say you didn't know anything of this loan until Judge Endicott had told you just at the time this suit was instituted. What was told you? A. That some of the directors had illegally subscribed for some of the stock; that is as I recall it.

Q. And when was that it was told to you, what was the date of it? A. I will say perhaps two years ago.

Q. That was about 1910 the early part of 1910? A. Possibly; I don't recall the date.

Q. Was it after you received some of the dividends on your stock? A. Nineteen hundred and nine; no I think it was before, possibly; I can't recall that now.

Q. How long was it before the suit was instituted, Mr. Wilson? A. Oh, some time.

Q. Well, tell me what you mean by some time? A. I would say possibly two years.

Q. Two years before the suit was instituted? A. I think so; nearly that long; I should say it was a long time, but just how long I couldn't pretend to say.

The Vice Chancellor: When was the suit filed? A. I don't know.

Q. And who told you about it, Mr. Wilson? Who was it told you about this stock having been subscribed for illegally? A. Judge Endicott.

Q. Anybody else ever tell you about it? A. No, sir.

Q. Just Judge Endicott and that was about two years before the suit was filed? A. I think so.

Mr. Gaskill: May 6th, 1911.

Q. Then you must have known about it from somewhere along in the early part of the summer of 1909? A. Perhaps.

Q. And in the meantime between the summer 1909 when you learned of it and the time when you instituted your suit you had received in dividends about three hundred dollars a share on your stock, hadn't you? A. I can tell by referring to my memorandums.

Q. Now will you tell that, please? A. Yes, sir.

Q. When did you get your first dividend? A. September 16th, 1909.

Q. And the next dividend? A. November 26th.

Q. 1909? A. 1909.

Q. And the next one? A. March 17th, 1910. No, no; April 1910.

Q. Which one? A. April, 1910—April the 11th, 1910.

Q. Now what amount of dividends did you get during those years? A. In 1909 I received two thousand dollars.

Q. Yes. A. And the first one in 1910 was five hundred, followed by two more in 1910.

Q. But before June of 1910 you had received how much, twenty-five hundred dollars in dividends? A. Twenty-five hundred dollars in dividends.

Q. You are a party complainant in this suit? A. Yes, sir.

Q. When did you determine that you would institute suit against these directors, at the time this suit was instituted? A. At the time Judge Endicott called on me and asked me to join him in this suit.

Q. You at that time concluded they ought to be sued, did you? A. From the statement I had received.

Q. And at that time you determined that you would be a party complainant? A. Yes, sir.

Q. And later you did become a party complainant? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. Mr. Wilson, since you have become a party complainant Dr. Marvel has called on you and tried to buy your stock, hasn't he? A. No, sir; he has called on me, but he didn't try to buy my stock.

Q. Has anyone on behalf of the complainants been there to try to buy your stock since this suit has been instituted?

(Question withdrawn.)

Q. Mr. Wilson, how long have you known Captain Adams, I. G. Adams? A. All my life.

Q. He used to be a sea captain, didn't he? A. Yes, sir.

Q. And were you a ship chandler at the time he was captain of coasting vessels? A. Yes, sir.

Q. Fit out his vessel for him? A. Yes, sir.

Q. And ever since then your relations have been pleasant and friendly? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. Bourgeois:

Q. Mr. Wilson, do you remember meeting Mr. C. J. Adams in Philadelphia during the holidays in 1908 at Fourth and Walnut or on Walnut Street near Fourth Street? A. I don't remember any particular date, but I have met him.

Q. Do you remember meeting him during the holidays in 1908 at Fourth and Walnut and of a conversation held between him and you in which he told you all about this loan? A. No, the fullest explanation I ever had of the affair was from Dr. Marvel and Mr. I. G. Adams when they called on me at the store.

Q. I don't mean that; when Mr. Clement J. Adams met you in 1908 don't you remember or do you remember that he went over all this with you and told you about it? A. I don't.

Q. Will you say he did not? A. No, I don't say that, but I don't recall that he did.

Q. Don't remember that he told you? A. No, sir.

Q. You met Mr. Adams? A. I have met him occasionally; I might say frequently; I don't recall 1908.

Q. Between Christmas and New Years 1908 at Fourth and Walnut Street? A. I don't recall the date; I don't recall meeting him that particular spot.

Q. Not that particular spot? A. Don't recall that.

Q. May have met him, is that the idea? A. Possibly.

By Mr. Gaskill: Q. When was this that you say Dr. Marvel and I. G. Adams called on you and made this full explanation that you received? A.

Three or four months ago—four or five months ago; I don't recall the date. I made no memorandum of it.

CLEMENT J. ADAMS, re-called:

Direct-examination resumed by Mr. Gaskill:

Q. With reference to those minutes that appear written up, Mr. Adams, were they severally written up after the meetings or were they written up in batches? A. Why they were usually written up about the time of the meetings, just after the meetings.

Q. Isn't it a fact that a number of the meetings would pass by before anything was written in the minute book and then a number of minutes would be written down? A. No, they were usually written up at the time.

Q. I didn't ask what was usually the case; I asked you wasn't it a fact that there were occasions? A. There may have been laps.

Q. And wasn't that the subject-matter of some complaint in the board of directors that the minutes were not kept written up in the book? A. There was no direct—anything said to me directly that I understand.

Q. Wasn't it talked over in the board meetings? A. Might have been between themselves.

Q. No, to you? A. Not to my knowledge any particular case.

Q. Isn't it a fact that some of those minutes that are written in that book weren't written in there for a year or more after the transactions that had taken place that are recorded? A. I

don't think that is true, written in by my employees.

Q. Wasn't they at one time seven years behind? A. Not to my knowledge; minutes were written.

Q. Just answer the question. Wasn't there one occasion when there was a period of seven years elapsed since the minutes had been written in that book? A. Not to my knowledge.

Q. What do you mean by that not to your knowledge? A. I don't know how anyone could define the time, took so very little interest in that.

Q. You have now nothing in there since 1904? A. Nothing; I have in duplicate, yes.

Q. When were those duplicates made up? A. They were made up at different times.

Q. Recently, weren't they? A. Yes.

Q. And signed by you since this suit was commenced? A. Originals were signed.

Q. Since this suit? A. Originals were signed at the time of the meetings.

Q. And duplicates that were used they have been written up since the suit commenced? A. Absolutely no.

Q. Well, were they copied since this suit was commenced and signed by you? A. The copies were signed by me; yes.

Q. And were the copies made and signed by you since this suit was commenced? A. Copies were made and signed, part of them, since, but the original minutes were made.

Q. Whereabouts are the original memorandums by which those copies were made and signed by you since the suit was commenced? A. They are here.

Mr. Gaskill: Mr. Bourgeois, may we have access to that overnight?

Mr. Bourgeois: So far as I am concerned.

Mr. Gaskill: Mr. Adams, have you any objections?

The Witness: I have no objection.

Q. Just look through this bundle and give me the original memorandum of the minutes of February 23rd? A. They are all originals with my name signed to them.

Q. Mr. Adams, I hand you the bundle of original memorandum of your minutes and ask you from this bundle to select for me the original memorandum of the minutes of February 23rd, 1904. A. Well, it is there unless it has been taken out.

Q. No, Mr. Bourgeois just handed it to me. I don't suppose he has taken it out.? A. What date do you want?

Q. February 23rd, 1904.

(Question repeated as follows: "Mr. Adams, I hand you the bundle of original memorandum of your minutes and ask you from this bundle to select for me the original memorandum of the minutes of February 23rd, 1904.")

The Vice Chancellor: If, while you are going over them you happen to see the original memorandum of October 5th, 1898, just hand it out, so we can look at that too.

Q. Now, then, what is your answer to that question, Mr. Adams? A. That is recorded in the book; I do not find there a duplicate of it.

Q. You do not find the original memorandum of that minute? A. It was there; it may have been mislaid.

Q. Well, now look and see if you can find the original memorandum of the minutes of proceedings of October, 1898, when that resolution was passed authorizing—

Mr. Gaskill: Vice Chancellor, you had asked the witness if he could find the original memorandum of the minute of October, 1898, and the witness produces four papers pinned together from that memorandum which he hands to your Honor.

The Vice Chancellor: I suppose this front page is the same thing as copied in the minutes?

Mr. Gaskill: I think there is a variation between that and the typewritten copy which appears: "Resolved that each director borrow the sum of fifteen hundred dollars for the period of one year and to receive fifty per cent excess of the company's stock as collateral to said loan—the word before loan 'asc' scratched out in pencil and after the word loan—to meet the obligations of Alvin P. Risley, contractor, the company—then the words 'to have' crossed out—and it reads 'the company redeem said stock in one year—then there is an interlineation there without any caret indicating where it would come, but probably here—with interest at six per cent, otherwise to revert to the borrower.'"

Q. That is the original resolution that was offered, wasn't it, Mr. Adams, in pencil? A. Yes.

Q. And this typewritten copy that is here on the telegram is the same thing? A. Yes.

Q. Now, Mr. Adams, I call your attention to the pencil memorandum of the minutes of that meeting that is written on the letterhead of Israel G. Adams and Company, is it not? A. Yes, sir.

Q. And the date is October 5th, 1898? A. That is right.

Q. Date of the minutes? A. Yes.

Q. And up at the top what is this? A. "Entered date noted as October 15th instead of October 5th." No, that is not my handwriting.

Q. The whole of this paper is your handwriting, isn't it, the minute of that meeting? A. Yes.

Q. When was that written out after the meeting was over? A. That was written at the time of the meeting.

Q. All written at one time? A. This part of it written at the same time.

Q. Referring to this part of the pencil minute of that meeting that was all written at one time as one consecutive piece of work, wasn't it? A. Yes.

Said memorandum offered in evidence and marked Exhibits C 5-1, C 5-2, C 5-3, C 5-4.

Q. Now, Mr. Adams, having found the original memorandum will you please hand me the original memorandum or notes of February 23rd, 1904? Now, wasn't there a directors' meeting and stockholders' meeting both on the same day? A. February 24th, yes.

Q. February 23rd, 1904. The stockholders meeting page thirty-six and directors meeting page thirty-seven. Now then give me the original memorandum of those two meetings. A. It is among these papers, but I don't know whether you have it or not.

Q. Well, they are here; Mr. Bourgeois hunted up the other one. Are you going to hunt up this one for him?

Mr. Bourgeois: No, I am busy.

(Witness hands paper to Mr. Gaskill.)

Q. What you hand me is three pieces of paper pinned together? A. That is about 1907; this is the minute here.

Q. The first two pieces of paper being typewritten notes of a meeting of the stockholders and the other piece of paper being the letterhead of C. J. Adams Company with four or five lines of pencilling on. A. Simply a note of that meeting. A great deal of this work was done by a committee.

Q. Now where are the original pencil memorandum of minutes or anything, memorandum of minutes from which you made out this typewritten paper that you now hand me of two sheets dated February 23rd, 1907? A. That is recorded in the book.

Q. I know, but what did you copy this from that you hand me? I know this is copied in the book, but where is the original from which you copied this? A. Our meetings were usually held in the evening. I haven't a stenographer in the office in the evening, that must have been made from the notes the next morning.

Q. Where are those notes? A. That I don't know.

Q. Look and see? A. I couldn't find them.

Q. Have you made a thorough search for them? A. I have.

Q. When was it you signed your name to that typewritten sheet in pencil? A. That was signed directly at the time.

Q. Hasn't been signed since this suit was commenced? A. No, sir.

Q. You have no original memorandum of the directors minutes other than these four lines? A. It is already in the book.

Q. I am asking you about the original memorandum that you made at the time of the meeting, C. J. A. This was taken off from that the next morning.

Q. That is what I want, what you took this off from; you see the trouble is we claim there has something been omitted. Now I want that original memorandum? A. Do you imply I forged the minute?

Q. Answer the question. The question I put to you where is the original memorandum? A. I will state absolutely there was no forgery, Judge, if that is what you are driving at.

Q. I am asking you a question, Mr. Adams; where are the original notes? A. I don't know.

Q. You haven't got them, have you? A. I haven't them in my possession at the present time.

The Vice Chancellor: What meeting was that, Judge?

Mr. Gaskill: That is February 23rd, 1907.

Q. Mr. Adams, neither the minutes of the stockholders' meeting of that date nor the directors' meeting were signed by you? A. It was intended to be signed by me.

Q. I am not asking what you intended; neither of them are signed? A. I will make affidavit of them if you wish.

Q. Won't you answer that question? A. It is not signed.

Q. Neither of them are signed? A. No, sir.

Q. Mr. Adams, when were these four papers pinned together representing the memorandum of the minutes of October 1898? A. I don't know; I presume they were pinned together at the time of that meeting.

Q. Night of the meeting? A. There is one date there 1907, don't belong to that I think.

Q. That last sheet don't belong to it you say?

A. That is all right; that belongs to it. I think that is a copy—was taken off for Dr. Youngman. It is the same thing.

Q. Now have these last two of these four papers any connection with the notes of the minutes of the meeting of that night? A. This has and this and this; this is simply a copy, (referring to the first three of the four papers) which was taken off for Dr. Youngman.

Q. Now the other paper here is a copy made on a typewriter on a telegraph blank of the resolution which appears written out on the first of the series of papers, isn't it? A. That is the resolution was sent to Dr. Youngman afterwards; he was in the Palace Hotel.

Q. When was that sent? A. It is about that time; I couldn't say; could have been the next day. I think doctor went away, I am not sure; I think that is a copy of a resolution.

Q. Is that a copy of a telegram that you sent to Dr. Youngman? A. That is what it is.

Q. A copy of a telegram? A. Yes.

Q. Then that telegram or the copy of the telegram is no part of the original notes? A. No; this is a part.

Q. Is that fourth sheet then which you say is a portion? A. This, the copy of a telegram that was sent to Dr. Youngman.

Q. I say it was no part of the notes which you took the night of the meeting? A. Only confirming this resolution.

Q. Well, then, you are referring to the fourth of these papers confirming this resolution? A. That is the minute.

Q. That is a copy of the minute? A. That is correct.

Q. In other words the first of these four papers is the original pencil copy of the resolution that was offered and adopted at that meeting? A. It is.

Q. And the second of these papers is the consecutive writing out by you, without interruption, of the proceedings at that meeting? A. It is.

Q. And the third of these papers is a copy of a telegram which you sent to Dr. Youngman containing the resolution which was adopted? A. It is a copy of the resolution; I don't know whether it was sent.

Q. And the fourth of these papers is a copy of the second or pencil paper, isn't it? A. And the original resolution; yes.

Q. And of the original resolution? A. Yes.

Q. Mr. Adams, isn't it a fact that this resolution which is pinned here was presented and adopted at another meeting than that of October 5th, 1898? A. It is October 15th or it is October 5th.

Q. Wasn't it adopted in June? Wasn't that presented and adopted in June before the loan was made? A. This is the October 5th meeting; yes.

Q. Wasn't it a resolution that was adopted at the June meeting? A. My impression is that was the—at the June meeting, yes.

The Vice Chancellor: Then this resolution, October 5th, 1898, you think was passed at the June meeting?

Mr. Gaskill: Prior to the loan.

A. I think that was prior to the loan, yes.

The Vice Chancellor: What do you mean prior

to the loan? What is there that indicates the date of the loan? Is there anything to indicate the date of the loan?

Mr. Gaskill: No, not yet.

Q. To refresh your recollection, Mr. Adams, let me hand you one of the notes purporting—one of the collateral notes purporting to have been given for the fifteen hundred dollars which bears date June 20th, 1898, and now with that before you, isn't it a fact that this resolution, the pencil copy of which is annexed there, was adopted prior to that night the date of that note? A. My impression it was; it was on the October meeting.

The Vice Chancellor: Your impression was what? A. At the October meeting. I think the notes were given in June.

Q. Notes were given in June and the authority under the resolution to issue this stock was prior to the making of the notes, as you recall? A. Yes, and my impression is in October. I am not sure without a reference to that.

Q. Will a reference to the certificate book, where the stock was issued to them, help you? Referring now to certificate 114 for the thirty shares to Louis Kuehnle, whose note we have handed you, bearing date June 20th, 1898—

A. June 20th.

Q. —and the one to Philip Marvel has the same date; one to Maurice Youngman same date and the one to C. J. Adams, yourself, the same date; all the same date. A. Yes.

The Vice Chancellor: Well, Judge, may not this note of June 20th have been in pursuance of the resolution of May 19th.

Q. The authority to issue this stock as collateral preceded the making of the notes did it not? A. It did.

Mr. Gaskill: As that note has been handed to the witness to refresh his recollection, I think it better be marked, perhaps for identification.

Referred to as the Kuehnle note.

Adjournment taken until Tuesday, April 2, 1912, 10:45 a. m.

Tuesday morning session.

Hearing resumed at 10:45 a. m. April 1912.

CLEMENT J. ADAMS, resumed:

Direct-examination resumed by Mr. Gaskill:

Q. I call your attention to the minute book, page 31, containing the minutes of the meeting of May 9th, 1898, and also the commencement of the minutes of October 5th, 1898, and ask you if there wasn't a meeting of the directors held in between those dates? A. To my knowledge there was no meeting between those dates.

Q. You won't say positively there was no meeting, Mr. Adams, will you? A. I have no knowledge of any meeting.

Q. Answer the question I put, please. I say you won't swear there was no meeting during that time? A. I would not.

Q. Now, that was the critical period, wasn't it, in the life of the company? A. During the year 1908-1898.

Q. It was the time when you were being pressed and threatened with judgment and exe-

cution, as you state, in Chancery? A. I think the May meeting was at the time of that, previous to that.

Q. I say it was during the year 1898 from May to October when the affairs of the company were in such a critical condition? A. They were in financial distress at that time.

Q. Now, Mr. Adams, wasn't there a resolution passed by the directors in the month of June of that year authorizing a transfer of shares of stock to the directors in consideration of their loaning the company money, transferring shares as collateral? A. About June fifteenth or twentieth.

Q. About June fifteenth or twentieth, there was? A. Yes.

Q. Now, there is no minute of that in the books, is there? A. I think there is.

Q. Well, now, turn to the minute book page 31, which contains the minutes of May nineteenth and the minutes of October fifth—and tell me if there is any minutes of any meeting such as you have spoken of in June of that year? A. That resolution was passed, I think, the fifteenth day of June and we were trying to borrow money in the meantime and had had a meeting, borrowing fifteen hundred dollars each; the meeting was, I think, deferred to October fifth, when that action was taken.

Q. You have no minute of passing of that resolution you speak of in June, have you? A. Nothing more than the minute you have there.

By the Vice Chancellor: Q. I don't believe I understood you, Mr. Adams; did you say the minute dated October 15th, 1898, was a meeting really held in June? Is that the idea? A. It was held in June, yes.

Q. What? A. It was held in June.

Q. And it is in the minute book under date of October, is that the idea that you now express? A. I make an explanation at this time; there was a committee authorized to borrow money in the sum of ten thousand dollars, and the company did work and didn't secure the loans from the banks, the banks wouldn't loan us any money on the collateral that was offered and as other directors were on obligations at that time for the company, this action on October 5th was taken and put into effect.

By Mr. Gaskill: Q. Still you don't answer the question I asked, and that is, you have no minute of this resolution which you say was adopted in June of that year? A. Don't appear here of June 5th.

Q. I call your attention again to Exhibit C-5 and directing your attention to C 5 1, I ask you whether or not that is not the resolution that was adopted in June of that year.

The Vice Chancellor: One is the first paper?

Mr. Gaskill: Yes, the first of the papers, being the pencil copy of the resolution.

A. It is June 15th.

Q. What was? A. June 15th it is.

The Vice Chancellor: That is the same resolution that appears in tne minutes under date of October?

Mr. Gaskill: Yes, sir.

Q. Mr. Adams, whose handwriting is this?

The Vice Chancellor: Was any definite date given? June 15th, did he say?

A. 15th, yes.

Q. Turning to the minutes that are written in this minute book, I ask you in whose hand writing they are? A. That is in the hand writing of

Miss Sarah Kirkbride, clerk in my office, since deceased.

Q. She is dead now, isn't she? A. Yes.

Q. Didn't you hand to Miss Kirkbride the rough notes of minutes which you took at different meetings for her to copy in the book? A. I went over the copy with her, yes.

Q. And you marked on them the way in which they were to be copied in the book, didn't you, this first, and so on? A. Took the dates, yes.

Q. And you marked them that way for to copy in the book, the order? A. I think she was present when they were copied.

Q. Now, isn't it a fact that some of those rough minutes were undecipherable? A. I can't say that.

Q. And that they had to be discarded? A. No, not to my knowledge.

Q. Well, will you say that isn't the case? A. That isn't the case, no.

Q. Are you sure that there wasn't any rough notes of any minute that was discarded? A. May have been several notes that were not used in the meeting at the time because changed around so much, pretty nearly impossible to follow just what transaction had taken place.

Q. Really, as a matter of fact, Mr. Adams, I suppose you assumed this was all a friendly gathering and didn't pay the strict attention to keeping the notes of the proceedings that you otherwise would have done, wasn't that so? A. Well there was very little interest taken, until the time it was proved to be profitable by certain directors.

Q. And you didn't keep the minutes with that accuracy if you had known it was going to result in litigation? A. I couldn't say that, judge.

Q. What do you say? A. I can say there was no additions made to the minutes.

Q. I am not prepared to say there were but I am inclined to think there was some omissions? A. There may have been, I won't say there wasn't.

Q. Mr. Adams, after this suit was commenced and Mr. Bourgeois was employed as counsel for you five, you went over the affairs of the company with him before the answers were prepared, and filed for you, did you not, and explain the situation? A. In conjunction with Dr. Marvel, Youngman and others interested.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Mr. Adams, I call your attention to the minutes of the company appearing on page five and six under date of November 10th, 1896, and ask you to refer to that minute and tell me if the properties mentioned in that minute were the properties that were purchased by St. Leonard's Land Company for which the company gave the eighteen hundred and thirty-nine shares of capital stock? A. The record is correct.

Mr. Bourgeois: The minute reads as follows:

"Atlantic City, N. J.,
November 10th, 1896.

The St. Leonard's Land Company,

Gentlemen:

We, the undersigned, who are owners of certain real estate situate, lying and being on Absecon Beach in the township of Egg Harbor, County of Atlantic and State of New Jersey, do hereby propose to grant and convey to your company the land and premises included in the deeds hereinafter recited in consideration of your com-

pany issuing to us its stock to the amount of one hundred and eighty-three thousand, nine hundred dollars which stock shall be issued to us for property purchased and shall be full paid and non-assessable. The following are the deeds above referred to:

Lewis B. Scull to Philip I. Marvel, dated January 31, 1896 and recorded in book 200 of deeds, folio 341, etc.

Florence E. Bacharach and husband to Philip I. Marvel, dated December 23, 1895 and recorded in book No. 197 of deeds, folio 410, etc.

Somers S. Lake and wife to Philip I. Marvel, dated April 1st, 1896, and recorded in book 208 of deeds, folio 125, etc.

Albert L. Lake and wife to Philip I Marvel, dated April 1st, 1896, and recorded in book 203 of deeds, folio 5, etc.

Derestus B. Steelman, *et ux.* to Joseph Thompson, dated October 28th, 1895 and recorded in book 196 of deeds, folio 212, etc.

John B. Steelman, *et ux.* to Joseph Thompson, dated October 28th, 1895, and recorded in book 196 of deeds, folio 214, etc.

Henry M. Snyder and wife to Allen B. Endicott, dated May 23, 1896, recorded in book 203 of deeds, folio 249.

Ashbrook Lincoln and wife to Allen Endicott, dated July 6th, 1896, and recorded in book 208 of deeds, folio 135, etc.

Elias Wright and wife to Allen B. Endicott, dated August 1st, 1895, and recorded in book 193 of deeds, folio 391, etc.

Henry Boyce and wife to Allen B. Endicott, dated August 1st, 1895, and recorded in book 193 of deeds, folio 497.

Caroline N. Snyder and wife to Allen B. Endicott, dated October 1st, 1895, and recorded in book 199 of deeds, folio 233.

Maurice D. Youngman and wife to Philip I. Marvel, dated April 24th, 1896, and recorded in book 203 of deeds, folio 135.

Lewis B. Scull to Philip I. Marvel, dated Febduary 18th, 1896, and recorded in book 189 of deeds, folio 401.

James A. Filley, *et ux.* to Philip I. Marvel, dated May fifteenth, 1896, and recorded in book 202 of deeds, folio 371.

Frank E. Thomas to Philip I. Marvel, dated April 8th, 1896, and recorded in book 200 of deeds, folio 477.

John Trenwith, *et ux.* to Philip I. Marvel, dated May 19th, 1896, recorded in book 203 of deeds, folio 232.

Elizabeth Zimmerman to Philip I. Marvel, dated January 16th, 1896, and recorded in book 201 of deeds, folio 444.

Lewis B. Scull to Philip I. Marvel, dated January 28th, 1896, and recorded in book 200 of deeds, folio 67.

Camden, Atlantic and Ventnor Land Company to Philip I. Marvel, dated January 14th, 1896, and recorded in book 198 of deeds, folio 488.

Somers S. Lake and wife to Philip I. Marvel, dated January 31st, 1896, and recorded in book 196 of deeds, folio 214, tec.

Mahalah Gardner and Philip B. Gardner to Philip I. Marvel, dated March 30th, 1896, and recorded in book 202 of deeds, folio 382.

Robert T. Marshall to Philip I. Marvel, dated April 15th, 1896, and recorded in book 202 of deeds, folio 385.

Elias Wright and wife to Philip I. Marvel, dated October 1st, 1895, and recorded in book 195 of deeds, folio 316.

Yours truly,
JOSEPH THOMPSON,
ALLEN B. ENDICOTT,
PHILIP MARVEL.

Witness:
John Price."

Q. Now, Mr. Adams, I noticed in these conveyances one from Florence Bacharach and husband to one of the parties; who was Florence Bacharach's husband? A. That I don't remember just at the date. I can refresh my memory by going to the office.

Q. Wasn't she Florrie Scull, Hary Scull's daughter? A. That's right.

Q. And married who? A. She married Isaac Bacharach.

Q. These lands when they were conveyed to the company were subject to a mortgage for sixty five one hundred dollars, I believe, were they not? A. That is correct.

Q. And the eighteen hundred and thirty-nine shares of stock were the par value of a hundred and eighty-three thousand, nine hundred dollars? A. That is right.

Q. And that value plus the sixty-five thousand one hundred made the two hundred and fifty thousand dollars? A. That is correct.

Q. And it was the fair value of all the lands that are mentioned in that minute at that time they were conveyed to the St. Leonard's Land Company? A. Well, all the land already in our possession with title in the St. Leonard's Land Company, there were other additional lands that

we proposed to purchase and I should think that with that property that we purchased that the two hundred and fifty thousand would have been a fair price for the property.

Q. Just at that time? A. At that time.

Q. How is that? A. At that time no development of the property.

Q. At that time was there a boom in real estate down the beach? A. There was not.

Q. When you purchased? A. No, it was a quiet market.

Q. Quiet market at that time? A. Yes.

Q. Now, after you had purchased the lands, all of you together what was the object or what induced you to go into this corporation, to put your lands all together?

Mr. Gaskill: Don't seem to me that is material, I object.

Mr. Bourgeois: We think it is because the case of Loudenslager against Woodbury Heights says that adds value to the land.

The Vice Chancellor: I will overrule the objection if you think it is material.

Q. What object did you have in combining all of you men, and putting all of these lands in one tract? A. So that we might purchase lands required to complete the tract and then develop it.

Q. And develop it. What do you mean by developing it? A. Well, to lay out streets, to grade, gravel and lay out streets.

Q. Mr. Adams, this land which you purchased, which the St. Leonard's Land Company purchased, had previously been mapped, had it not by the Camden and Atlantic Land Company? A. It had.

Q. And according to that map what was the width of the lots, the blocks? A. The blocks were three hundred feet on the old plan.

Q. And you purchased all together seven blocks of them, did you not? A. Seven blocks.

Q. And after you replotted it how many blocks did you have of it? A. Made one, dividing two hundred and fifty feet blocks on the ocean front.

Q. That gave you eight sections, that is, eight blocks on Atlantic Avenue, extending all the way from the Bay to the ocean, did it not? A. Yes.

Q. Not bay to the ocean, thoroughfare to ocean. Now after the company became the owner of this land what did it do? A. We built up the land, replotted the land and lay it out.

Q. What was the physical condition of the land when you purchased it? A. It was rough beach land and also meadow land on the rear on the thoroughfare side.

Q. Along the ocean front it was sand hills was it not? A. Yes, sand dunes.

Q. Well, there was some sand hills, wasn't there? A. Yes.

Q. How high were some of those hills? A. I presume some of those hills were eight feet.

Q. Eight feet? A. From three to eight.

Q. Why, do you recall the hill, the sand hill that stood between Darby and Cornwall Avenues as late as 1904 just on the outside—

Mr. Gaskill: I can't see where this has anything to do with the issue involved here. I object as being immaterial.

Mr. Bourgeois: If the Court please, we propose to show how truly impossible it was to sell that land at that time.

Mr. Gaskill: I don't think that is material.

Mr. Bourgeois: We think it is, because we think we have a right to show why this money was to be loaned, why it was impossible to get it from the other people.

The Vice Chancellor: It will be received.

A. I was speaking of the average elevation of those sand dunes covering those eight blocks. There was one elevation there, I presume, fifteen or eighteen feet high. I was speaking of the averages.

Q. The hills all along from Cornwall Avenue to Oxford Place were fifteen and eighteen feet high along Atlantic Avenue, were they not? A. Some places, yes.

Q. And then as you went back towards the thoroughfare they gradually became smaller until you got back to where Ventnor Avenue is now—that is how many feet north of Atlantic Avenue?

A. That is about five hundred feet.

Q. Now, when you got that far back there were practically no hills, it was level there? A. Meadow land.

Q. On Ventnor Avenue? A. Up to Ventnor Avenue.

Q. Beyond Ventnor Avenue to the thoroughfare, meadow land? A. Marsh land.

Q. What was it necessary to do with that land before you could put that into a condition to sell it? A. We had to grade those lots off from the excess sand we had and afterwards pump from the thoroughfare to make up for the deficiency and elevation of about five and a half feet.

Q. Five and a half feet fill? A. Yes.

Q. And that extended over the whole eight blocks, did it not? A. Over the whole eight blocks.

Q. The whole eight blocks. Extended from

Ventnor Avenue to the thoroughfare, which in some places, was about seven hundred feet was it not? A. That is correct.

Q. Down at Cambridge Avenue, may be more that that? A. From Surrey to Cambridge.

Mr. Gaskill: I don't want to interfere, but it seems to me we are unnecessarily consuming time here. I do not think that the facts that the company needed money or for what purpose it needed money is at all relevant to this issue. The fact is that these men did loan money to the company and have some sort of a claim, and always have had, for the return of that money, which we are perfectly willing shall be done and the interest paid to them, but the purposes for which the company used it and the necessity of the company and all that sort of thing seems to me totally irrelevant and immaterial.

The Vice Chancellor: I don't see how it can be of any particular service, Mr. Bourgeois. I think the law is well defined that a director has no legal capacity to contract with his corporation as against the corporation itself. That is, the contract has no fidelity when asserted against the corporation. It is a voidable contract and the corporation has the option to ratify the contract or refuse, of course, within a reasonable time, but it may be that where the question is going to be, as it is here, whether there has been a ratification of this act or whether there has been a condition from which laches can be imputed to the stockholders from asserting the right which they should assert, that the conditions surrounding the transaction will be

important. It may be that the conditions of the tract at that time in its undeveloped state brought about an emergent situation of such a nature that it can be bought to the knowledge of all the stockholders that these directors came to the aid of the corporation. I do not feel sufficiently certain that this is incompetent to feel justified in excluding it in this Court. Of course, you understand we here let in matters in which there is any doubt for the purpose of saving the necessity of a new trial. I think I will admit the testimony.

Q. How soon after the company became the owner of this tract of land was it that the company commenced the grading and improving of it? A. Well, we commenced almost at once, probably six months, six or eight months.

Q. Did the company have any money at the time of its incorporation? A. I think there was one thousand dollars put in.

Q. Was that paid in cash or was it afterwards paid in land and later in service, or don't you know? A. I don't remember.

Q. Mr. Adams, were the shares that were held by Dr. Marvel, that is, the issue of four hundred and ninety-nine shares to him as trustee, were those shares sold, do you know? A. They were not sold.

Q. Were they sold, I mean, after the company was organized? A. No, they were held to develop the land.

Q. I know, but were they gradually sold to get money? A. Yes.

Q. And what was done with the money that he received for those shares that were sold? A. Well, it was applied for grading.

Q. And filling? A. And filling, leveling and gravel from the Pennsylvania Railroad.

Q. Do you know how much money was expended by the St. Leonard's Land Company during the years 1897 and 1897 for grading, filling and street building? A. Mr. Wright had the book there. It would show exactly but I should suppose somewhere in the neighborhood of thirty thousand dollars up to that time.

Q. Now, there was a meeting held on the nineteenth day of May, Mr. Adams, in which the company was authorized to borrow some money, ten thousand dollars, and you and Dr Marvel were made a committee to do the borrowing. What was the cause or the reason of that attempt to borrow money? A. We hadn't the money to go on with our improvements and pay our bills, and we were in debt and had no means of raising it at that time.

Q. Now why hadn't you the means of raising it? Why didn't you sell the stock? A. There was no sale for the stock.

Q. Did you try to sell the stock? A. We did.

Q. You say you couldn't raise it. Then you passed this resolution? A. Yes.

Q. You were appointed a committee. What did you do as a committeeman with reference to borrowing the ten thousand? A. Dr. Marvel and I made application to the different banks here.

Q. What banks did you apply to? A. Union National or the Second National or the Atlantic Safe.

Q. What was the nature of your application to the Union National Bank? A. They wouldn't loan us any money.

Q. Was there any statement made to you as to why they wouldn't loan the money?

Mr. Gaskill: I object to that as incompetent, hearsay.

Mr. Bourgeois: I don't think so; here is a company appoints this man an agent to go and make a loan.

The Vice Chancellor: It may be in the aspect this is the company's suit, that it is competent. I hadn't thought of that.

Q. Was the result of your application to the banks reported back to the directors of the company?

Mr. Gaskill: I object, because the minutes must speak for themselves in regard to that.

Mr. Bourgeois: Not necessarily.

The Vice Chancellor: The minutes are only the best evidence. It can be shown they are not complete. I suppose, on behalf of any person, but if this witness knows as a fact that this committee reported back to its corporation, I think it is competent for him to testify so and what they reported back whether the minutes show it or whether they don't. It is possible the minutes would not show a report of that kind, might or not.

(Question repeated.)

A. It was.

Q. Now, what did you report back to the company as the result of your application to the Union National Bank? A. Of our inability to borrow money for the St. Leonard's Land Company on this stock that we offered as collateral.

Q. And what did you report to the directors that the bank had said in answer to that application?

Mr. Gaskill: I object to that as incompetent.

(Question admitted.)

A. The banks refused to loan us the money.

Q. Well, but did you tell the directors—with whom did you actually deal, the cashier? A. I think I was a member of the board of directors at that time—

Q. In the Union National? A. —and the matter was presented to them and turned down.

Q. In board meeting, and you were there?

Mr. Gaskill: Which bank?

A. That was the Union.

Q. Well, did you report to the directors anything further than you have already stated? A. Our inability to borrow on the collateral that was offered.

Q. That was from the Union. Now did you make an application to the Second National? A. An application was made to the Second National and treated the same way.

Q. Did you make the application or not? A. I think Dr. Marvel made that.

Q. Those applications were made following the meeting of May nineteenth, 1898, weren't they? A. They were.

Q. I now show you the stock certificate book and call your attention to certificate No. 113 for thirty shares of stock issued to Israel G. Adams on the stub of which appears this notation, "To secure a note of four months, fifteen hundred dollars, being even date herewith and renewal of said note." The stub of No. 114 for thirty shares of stock to Louis Kuehnle with notation, "To secure a note of four months, fifteen hundred dollars, bearing even date herewith and renewal of said note." The stub of No. 115 for thirty shares of stock to Philip I. Marvel, with notation, "To

secure a note of four months, fifteen hundred dollars, bearing even date herewith and all renewals of said note." Certificate stub No. 116 for thirty shares of stock issued to Maurice D. Youngman with the notation, "To secure note of four months for fourteen hundred and twenty-eight dollars and fifty-nine cents, bearing even date herewith, and all renewals of the same;" and show you also an original note of the St. Leonard's Land Company bearing date June twentieth, 1898, for fourteen hundred and twenty-eight dollars and fifty-nine cents, made payable to the order of Maurice D. Youngman, collateral note in which it states that certificate No. 116 for thirty shares in the capital stock of the St. Leonard's Land Company are pledged as security and ask you to state what that transaction was? Why were all those shares of stock issued at that time and the note given or those notes given? A. After the refusal of the banks to loan us money on our collateral, we were threatened with suit by Mr. Alvin Risley, the contractor. We owed him considerable money and we had kept promising the money, promising it different times, and finally he threatened suit and gave us twenty-four hours in which to raise this money or enter suit against us, and the result was that we tried to raise the money, the ten thousand dollars, from the directors of the company, each pledging fifteen hundred dollars, taking the fifteen shares of the stock of the company as collateral.

Q. Fifteen shares or thirty shares? A. Thirty shares.

Q. Now, Mr. Adams, you say that Alvin Risley was pressing you. Wasn't the West Jersey and Seashore Railroad Company pressing you also at that time? A. They were.

Q. You owed them for gravel they had hauled for you, that is for gravel and the hauling? A. That is right.

Q. In other words the Railroad Company had a gravel pit and they furnished gravel to you people from that pit? A. They did.

Q. And you owed them the money for it? A. We did.

Q. Practically ten thousand dollars? A. Yes.

Q. Now these notes and the certificates appear to be dated on the twentieth day of June. Do you remember the meeting at which it was voted that you folks should loan to the company this money? A. It was on about the fifteenth, somewhere around there.

Q. Wasn't it on the twentieth? Didn't Dr. Youngman pay his money into the company on the same day that the meeting was held or the same night? A. He did. I will state right here to make that appear a little clearer, probably, to the Chancellor, that the discount was allowed for Mr. Youngman as his stock appears with the discount.

Q. The discount allowed. Now there was something else there. Didn't you owe Dr. Youngman interest on a mortgage? Didn't Dr. Youngman hold a mortgage of the company for some twelve or fifteen hundred dollars? A. We did.

Q. And didn't you owe him something like forty dollars for interest? A. We did.

Q. And didn't he deduct that amount of money?

Mr. Gaskill: I must object to Mr. Bourgeois testifying and Mr. Adams nodding his head in answer.

A. I would ask the Judge if my answers are intelligible? Are my answers intelligible?

Mr. Gaskill: Yes.

Q. Mr. Adams I call your attention to the bills payable account of the St. Leonard's Land Company for the purpose of refreshing your memory as to the time when you received the fourteen hundred and twenty-eight dollars and fifty-nine cents from Dr. Youngman. A. June twentieth, 1898.

Q. And you received the money from Louis Kuehnle on what date? A. On June twenty-third.

Q. And from Israel G. Adams on what date? A. June twenty-fifth, 1898.

Q. And from Dr. Marvel on what date? A. July thirtieth, 1898.

Q. And from yourself when? A. December fifth, 1898.

Q. Now, each of these people paid their money in full, the total fifteen hundred dollars? A. Dr. Youngman and Louis Kuehnle—

Q. And yourself? A. No—yes, I took a note, which wasn't used. In November, I think, it was paid.

Q. And they paid, the company paid Kuehnle interest on his fifteen hundred dollars do you know? A. They did, for the first six months.

Q. First four months, I guess wasn't it? A. Four months.

Q. And to Isreal G. Adams pay him the interest? A. Four months.

Q. And pay you the interest? A. Yes.

Q. And Dr. Marvel took the discount out of his? A. He did.

By the Vice Chancellor: Q. The note was a four months note? A. Four months' note.

Q. Notes were issued to each director very similar to the one that has been shown to you, were they? A. I am under the impression that a note wasn't issued to me of that form. I think

I put up the cash and took a regular note without a collateral.

By Mr. Bourgeois: Q. You discounted your own note and used your stock as collateral and got money? A. I did.

Q. And the others got notes? A. They did.

Note of Dr. Youngman marked Exhibit D-1.

Q. Now, Mr. Adams, you say you had your meeting on the twentieth of June. Then it was you four agreed to loan money. How much money was it intended at that meeting to raise? A. Ten thousand dollars.

Q. How did you propose to raise it? A. Fifteen hundred dollars from each director.

Q. And there was seven directors? A. Yes.

Q. That made ten thousand five hundred dollars? A. Yes.

Q. How many directors were there present at that meeting? A. Five.

Q. Which two were absent? A. Judge Thompson and Judge Endicott.

Q. Where was the meeting held? A. C. J. Adams Company.

Q. Did Judge Endicott and Judge Thompson have previous notice of that meeting? A. They did.

Q. Who gave them notice of it? A. Given from our office.

Q. Did you have any telephone communication with them before the meeting was held? A. I called judge over the 'phone that evening.

Q. Which judge do you mean, they are both judges? A. Judge Endicott.

Q. Mr. Adams, what conversation did you have with Judge Endicott over the 'phone previous to that meeting? A. Well, I told him of our financial condition and what we proposed to do.

Q. Was he asked to come? A. He was.

Q. Do you know what reply he made? A. I don't remember his exact words—He agreed—

Mr. Gaskill: I object; that is stating a conclusion.

Mr. Bourgeois: It is not a conclusion; it is what he said.

Q. But you can't recall the exact words, can you recall the exact words he said? A. He would concur with what we did.

Q. They were the exact words? A. They were the exact words.

Q. Now, after you had had the meeting did you have any other conversation with the judge that evening, with Judge Endicott? A. We notified him what had been done.

Q. Who notified him? A. Either I or Dr. Marvel; I am not positive.

Q. Do you know if Judge Thompson was notified of the meeting also previous to the holding of it? A. He was.

Q. From the office? A. Yes.

Q. Who notified him; do you recall? A. Dr. Marvel.

Q. And do you know if Judge Thompson was notified after the meeting was held of what was done?

Mr. Gaskill: One moment, did you do it? If you didn't do it, you only know by hearsay.

Mr. Bourgeois: He knows positively. He was right in the room.

A. Dr. Marvel did telephone him from the office.

Q. How do you know? A. I heard him.

Q. Will you state what it was that you said to Judge Endicott after the meeting took place on

that night in regard to what you had done? A. Well, I had general conversations at different times.

Mr. Gaskill: The question is what was said that night after the meeting.

Q. This particular meeting, Mr. Adams, after you had voted to each loan the company $1,500.00 what did you say to Judge Endicott? A. Well, I told him the action the board had taken. His previous conversation was to concur in what we did.

Q. Then he knew, did he, that you had agreed to loan the company the money? A. He positively knew it.

Q. Did you ever have a conversation with him after that day asking him to loan the money, that is to advance his part? A. I could only answer that in a general way. There were so many conversations I had on the street and in the office and different places.

Q. Did Judge Endicott ever advance the money? A. He did not.

Q. Now tell me—you say that you told Judge Endicott about what was done there; did Judge Endicott know that the stock was pledged for the payment of the money?

Mr. Gaskill: I object to that form of question.

(Question withdrawn.)

Q. Did you make any statement to Judge Endicott, say anything to him about the pledging of the stock for the security of the money? A. I did, either at that time or afterwards, tell him the action of the board.

Q. What time afterwards, if afterwards? A. Either that night or within a week or ten days.

Q. So that he knew along in June of 1898 that

those thirty shares of stock had been pledged? A. He did.

Q. The certificates of stock were made out immediately upon the making of the notes? A. Well, about that time.

Q. Do I understand you to say, Mr. Adams, that you made some use of your certificate after you got it? A. I borrowed money on it; yes.

Q. What do you mean by borrowing money on it? A. I got a loan of $1,500.00.

Q. And pledged the stock? A. And pledged the stock with other stock.

Q. As collateral security? A. Yes.

Q. With whom did you pledge the stock? A. With Mr. Bacharach of Philadelphia; Augustus Bacharach.

Q. Was that before or after October of 1898? A. Somewhere about November, December I think the settlement was made; I gave twenty shares of the St. Leonard's Land Company additional to the thirty shares.

Q. Now, Mr. Adams, this exhibit in four parts, marked C-5, I think it is, I want to call your attention to some of it. Do you remember or do you know whether or not after the question about the validity of this issue of stock was agitated in 1909, do you know whether or not a committee of you defendants, it is now, consulted Pitney, Hardin and Skinner? A. We did.

Q. I show you a telegram—Pitney, Hardin and Skinner have their offices in Newark, do they not? A. Yes.

Q. I show you a telegram which appears to be without date but is addressed to Dr. Maurice D. Youngman, Palace Hotel, Newark, and signed M. D. Youngman, and ask you do you know another M. D. Youngman besides Maurice D. Youngman? A. He has a son.

Q. Do you recall the date on which—who was the committee that waited on Judge Skinner? A. Doctors Marvel and Youngman.

Q. Do you recall on the day that Doctor Marvel and Dr. Youngman were in Newark consulting Judge Skinner of Dr. Youngman coming into the office—what did he come there for? A. To get a copy of that resolution, minute rather.

Q. And is the copy of the telegram or is the original telegram, I guess it is, that is a part of that exhibit a copy of the resolution? A. It is.

Q. Who gave young Dr. Youngman the copy of the resolution? A. I think I gave it to him myself, either I or Mr. Wright; I am not positive.

Q. And then the telegram was sent where? A. Palace Hotel, Newark.

Q. To Dr. Maurice D. Youngman? A. Yes.

Q. And that was about 1909, was it not? A. 1909.

Q. Now, I call your attention to the number two of this exhibit under date of October 5th, 1898; look that over will you please? And also to the minute of the meeting of October 5th, 1898 and the resolution contained in there—will you look at that, please—the resolution in the minute book; not the one you have there, but the resolution in the minute book. Have you examined it? A. I have.

Q. Now I call your attention to this number one of the Exhibit C-5 on American Fire Insurance Company and ask you if that memorandum of the resolution is not the resolution that was passed on the 5th day or 15th day of October, 1898, and not in June of 1898?

Mr. McCarter: Read it.

A. That is correct, yes.

Q. Now, Mr. Adams, Judge Gaskill has asked you a number of questions, most of them—

The Vice Chancellor: At the same time the resolution was passed at the same time Dr. Youngman or Mr. Youngman paid in his money?

Mr. Bourgeois: I didn't understand him to say the resolution was passed then.

Mr. Gaskill: Yes, that is the night of the meeting.

Mr. Bourgeois: That is what he told you, but didn't tell that to me.

The Vice Chancellor: The motion and resolution, I am treating as the same thing.

Mr. Gaskill: I handed him that lead pencil paper at the last and asked him if that wasn't the resolution passed.

The Vice Chancellor: There is no motion separate from the resolution?

Mr. Bourgeois: There is no meeting, June meeting at all, but there was an action had by the board at the June meeting.

Mr. McCarter: On the same date Mr. Youngman paid his money.

Mr. Bourgeois: But that wasn't this resolution.

The Vice Chancellor: At the same time this motion has not found a place on the record.

Mr. Gaskill: I don't want your Honor to accept these statements of counsel without verification, because the witness answered me distinctly, when I showed him that lead pencil resolution, if that wasn't what he referred to as the action of June 20th or 25th and he said it was.

Q. Mr. Adams, you had—I mean the board of directors had passed a resolution under date of May 19th authorizing the borrowing of $10,000.00 and

the giving of the company's stock as collateral at two for one? A. That is correct.

Q. And you endeavored to borrow the money under that resolution from the banks and failed? A. We did.

Q. Now finally you had to loan it yourselves, didn't you? A. We did.

Q. Did you loan it under that same resolution or was there some other resolution?

Mr. Gaskill: I object.

Mr. Bourgeois: Cross-examination, Judge.

Mr. Gaskill: You are asking him for a conclusion.

Mr. Bourgeois: No, I am asking him for a fact; that is a fact whether he did or not.

The Vice Chancellor: I think it embodies the element of a conclusion. Are you trying to establish that the board actually met between May nineteenth and October fifth?

Mr. Bourgeois: Certainly they did.

The Vice Chancellor: He said they met June fifteenth and at that time took some action the minute of which was not recorded.

Mr. Bourgeois: But that action was under this previous authorization.

The Vice Chancellor: Let him show what the board did if they had a meeting and the minutes of that meeting are not recorded and let him show what the board did at that meeting.

Mr. Bourgeois: If the Court please, I think I am entitled to ask this witness leading questions.

The Vice Chancellor: I suppose you are, but it will lose the force of the testimony

if you do. I can't accept as his testimony what you place in his mouth which he has forgotten. You may make a record, but it won't do you any good. I don't think he ought to be cross-examined in that way if you are trying to get new matter.

Q. Now, Mr. Adams, I call your attention to the meeting of October fifth, 1898, and ask you to refer to the resolution of the board as of that date.

The Vice Chancellor: Minute of October fifth?

Mr. Bourgeois: Not October fifth, of the meeting of May 19th, 1898.

A. That is correct.

Q. Now you had a meeting or did you have a meeting after that time and at the time when you authorized, or when you gave the notes to Dr. Youngman?

Mr. Gaskill: I object to that method of fixing the time.

Q. When you gave the note to Dr. Youngman and also issued the certificates of stock to Dr. Youngman, Dr. Marvel and Louis Kuehnle.

Mr. Gaskill: I renew my objection.

The Vice Chancellor: I think that is competent.

Q. I don't mean to ask you if the minute is there, I want to know if you had a meeting in fact at the time you arranged to loan these moneys to the company? A. We must have had a meeting in order to complete this transaction from our former meeting.

The Vice Chancellor: Can't you remember of your own recollection? You say you must have had. Can't you remember positively whether you did have or whether you did not, because if you can't remember, just say so.

A. There was a meeting but I can't fix the date of it; it was immediately after that.

Q. Now, Mr. Adams, at that meeting when you agreed to loan this money—

Mr. Gaskill: I object to that form of question. I think that he should be asked to state what took place at that meeting and not counsel—

The Vice Chancellor: That he has already said.

Mr. Gaskill: At the meeting we have no minute, which is the one counsel is questioning him about.

The Vice Chancellor: He has already said they had a meeting on the twentieth, but now he says he don't know the date.

Mr. Gaskill: The only fair way is to ask this witness what took place at that meeting.

The Vice Chancellor: He has done that. He then gave the date as the twentieth and later he has said he doesn't know what date it was.

Mr. Gaskill: I object to this question concerning the transactions at that meeting in which the counsel proposes to tell him what took place and get his affirmative assent to it.

(Question repeated.)

Q. That is when the directors agreed to loan the money to the company on or about the twentieth day of June. What was the nature of the action you took to bring about the loan, that is whether it was—Was it in the nature of a motion or was it in the nature of a resolution? A. It was in the nature of a resolution to borrow so much money, advance so much money rather.

Q. On what date was that resolution passed? A. Passed on or about the fifteenth of June.

Q. Where is that resolution if there was such a resolution?

The Vice Chancellor: I think the most accurate statement of that action he has made is he can't remember the date.

Q. Well, Mr. Adams, will you state what you understand to be the distinction between a motion and a resolution? A. Well, a motion as I understand—I don't know that I can draw the nice distinction between a resolution and motion, but I should suppose one that had prefixed to it resolved such and such be the case and the other is a regular motion made by some member and seconded and carried.

Q. Mr. Adams, I call your attention to the minute of March third, 1908, that Judge Gaskill examined you about, and call your attention to the last paragraph of it and ask you whether or not prior to that date there had been any discussion about this loan of fifteen hundred dollars? A. The matter had been talked about but this is the first time it was brought prominently before the board of directors.

Q. What did you say when you say the matter had been talked about? A. Frequently made a talk with us individually about the financial condition of the company.

Q. Do you mean to say that you had talks about the financial condition of the company other than at the corporate meetings? A. Oftentimes, yes.

Q. With whom did you have these conversations? A. Judge Endicott, Judge Thompson knew the whole commission and so did all the other directors.

Q. But it never had come up before a meeting of the board until—the question of the fifteen hundred dollars never had come up before the meeting of the board until the third of March, 1908, after the fifth day of October, 1898; is that correct? A. That is correct.

Q. Now you know Joseph Wilson, don't you? A. I do.

Q. Do you remember of meeting him in Philadelphia during the holidays of 1908 at Fourth and Walnut Street? A. I do about that time.

Q. Have a conversation with him? A. I did.

Q. What was that conversation?

Mr. Gaskill: I object to that as incompetent.

Question withdrawn.

Q. Did you at that conversation communicate to him or inform him of the fact that the company had borrowed from you five directors fifteen hundred dollars in June of 1898 and of the resolution that was passed in October, 1898?

Mr. Gaskill: I object to that as immaterial; can't be any acquiescence as a statement of a conversation afterwards can not be used as acquiescence.

Mr. Bourgeois: Can from that date on.

The Vice Chancellor: I think it is competent. Mr. Wilson testified that he never heard of this conversation at all.

Mr. Bourgeois: Yes, same question I put to him and he said no.

The Vice Chancellor: It may be out of turn now.

Mr. Gaskill: I won't object to it on that ground.

The Vice Chancellor: I think it is com-

petent to show Mr. Wilson may not have been surprised and acquiesced.

(Question repeated.)

A. I did; he knew the—

Mr. Gaskill: I object to anything further.

A. I am simply going to lead up.

Mr. Gaskill: You have no right to lead up.

The Vice Chancellor: You have already answered; you said you told him. That will be sufficient.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. Mr. Adams, that was a mere chance conversation with Mr. Wilson in Philadelphia, wasn't it, at that time; you didn't go up there on purpose to see him to make any communication with him, did you?

Mr. Bourgeois: Objected to as irrelevant and immaterial.

The Vice Chancellor: I think it is competent for him to examine on the details of that conversation if he wants.

A. I did not.

(Question repeated.)

Q. You say, Mr. Adams, that this matter about the return of this stock, which is recorded in your minute of March third, 1908, was then brought up for the first time prominently. It had been discussed in the board of directors or among the directors prior to that time, to your knowledge, had it not?

Mr. Bourgeois: I object to that question; it is two questions in one and he can't answer it intelligently.

The Vice Chancellor: I don't hear but one.

Mr. Bourgeois: He has said that it was discussed before the board of directors not in meeting. He said it was discussed in meetings. Judge Gaskill asked both in one.

The Vice Chancellor: The witness is competent to determine that; if it had been discussed among the board and not discussed among the directors he can say so. Do you understand the question?

A. I do.

Q. Very well, you can answer it. A. There may have been side discussions of the matter, but this was the first time it was brought prominently before the Board of Directors and discussed at length.

Q. Don't you mean, Mr. Adams, that this was the first time a motion was made in reference to it to your recollection?

Objected to as leading.

The Vice Chancellor: I think this is cross-examination. Without any consideration of whether it is strictly cross-examination or re-direct the witness is entirely competent to correct the statement he formerly made if it was erroneous or to repeat it if his former statement was correct. His former statement was this was the first action taken before the board, as I recall it. Now Judge Gaskill wants to know whether it had not been considered before the board before without any formal motions and discussed. It would be what the fact is with reference to that.

A. It may have been discussed, but this is the first time, the March third meeting, where it was prominently brought before the board.

Q. Isn't it a fact, Mr. Adams, that at the board meetings soon after this transaction Judge En-

dicott entered a protest and repeated that protest meeting after meeting as to the right and the propriety of pledging this stock as collateral for this loan or these loans made by the directors.

The Vice Chancellor: Beginning at this meeting, you mean, in May?

Q. Beginning right after the loan, not after June, but after the loan, that the stock had been pledged; didn't he repeatedly make protests in the board meetings as to that use of the treasury stock or the trust stock? A. He did not.

The Vice Chancellor: There were no protests made by Judge Endicott from the time he was informed of this in 1898 until along about 1908?

A. 1908; some ten years afterwards; yes.

Q. And isn't it a fact that as the result of these repeated protests on the part of Judge Endicott that at one of the directors' meetings of which you have no minute Judge Thompson offered a resolution concerning this matter—

Mr. Bourgeois: Objected to as leading. Objection overruled.

Q. —or made a motion?

Mr. McCarter: I think that question is improper, your Honor, not because it is leading, but because it involves a conclusion as to these protests. He can ask whether Judge Thompson did not offer a resolution. In fact he has already offered—

Mr. Gaskill: I think that is a good objecton, Mr. McCarter and I will eliminate the first part of the question.

Q. Didn't Judge Thompson make a motion or offer a resolution concerning the matter of this stock which had been pledged to the directors as collateral security?

Mr. Bourgeois: On what date, Judge?

Q. Between October 1898 and 1908, March third? A. There may have been such a resolution presented, but it was never acted upon.

Q. Didn't Judge Thompson make a motion or present a resolution on or about the thirteenth day of—twenty-sixth day of February, nineteen hundred and four—twenty-third, 1904, which was adopted by the Board of Directors and he requested afterwards to put it in writing and hand it to you to be recorded in the minutes? A. I have no knowledge of such a transaction.

Q. Will you say that such a transaction didn't take place? A. That it was passed by the Board of Directors?

Q. Answer this question. A. Involved in your question?

(Last three questions and answers repeated.)

A. As to its adoption by the board of directors I will say no.

Q. You recall his offering a motion or resolution, do you not? A. He may have done so.

Q. Of which you have no record in your minutes? A. We have the copy that was left on my desk.

Q. But you have no record in your minutes? A. I have not.

Q. And that paper which was shown you yesterday and marked as an exhibit and which you say was a paper left on your desk, that is the paper or resolution offered by Judge Thompson? A. I presume so from the fact it has the wrapper on of Thompson and Cole.

The Vice Chancellor: That was 1904?

Mr. Gaskill: 1904; yes, sir, the twenty third day of February.

The Vice Chancellor: Is it dated?

Mr. Gaskill: No.

The Vice Chancellor: Well, you can establish the date.

Q. When were those words "Oct." and "15" written in there in the first line of this paper? A. I don't know.

Q. Whose handwriting is it? A. I don't know.

Q. Isn't it yours? A. I should think not.

Q. It isn't Judge Thompson's, is it? A. I don't know.

Q. Do you know when it was put there? A That was after the March meeting of March eighth, I think, or the last meeting when this matter was discussed.

Mr. Mc Carter: What year, Mr. Adams?

A. That was 1908.

Q. This date October, "Oct. 15" or five was put in there after 1908, after that meeting that we have referred to? A. That I don't know.

Q. Well, it wasn' there when it was left on your desk; it was in blank, wasn't it? A. When I found it? I don't remember the date because no such resolution had passed the board.

Q. That is not what I asked you; what I asked you, Mr. Adams, is wasn't that date in blank when it was left on your desk? A. Might have been; I don't know.

Q. The word "June" was there, blank date, and the word "June has been crossed out with a pen at the time "Oct." was put over it; that is true, isn't it? A. Yes.

Q. And you don't know who did that? A. No, sir.

Mr. Gaskill: I will offer this in evidence. I now offer in evidence and will read into the record what I call the Thompson resolution.

Mr. McCarter: I ask the Court's atten-

tion to it in connection with the payment. Thompson resolution marked Exhibit C-4.

Mr. Gaskill then read Exhibit C-4 into the record as follows:

Exhibit C-4

"Whereas on or about Oct. 15th, eighteen hundred and ninety eight, the St. Leonards Land Company was embarrassed with debts and threatened with suit for bill due to Alvin P. Risley, for grading property, and was without funds or credit, and

"Whereas it was necessary that money be raised at once and M. D. Youngman, Philip Marvel, C. J. Adams, I. G. Adams and Louis Kuehnle each agreed to furnish fifteen hundred dollars, taking thirty shares of stock of the company as collateral security, and

"Whereas the said parties each furnished the company the said sum of fifteen hundred dollars and subsequently, to wit, October 15, 1898, at a meeting of the Board of Directors the said issue of stock as above referred to was ratfied by the following resolution:

" 'Resolved that each director borrow the sum of fifteen hundred dollars for the period of one year and to receive fifty per cent excess of the corporation stock as collateral to said loan to meet the obligation of Alvin P. Risley, contractor, the company to have the privilege of redeeming the said stock in one year from date with interest at six per cent otherwse to revert to the said borrower' and

"Whereas said company did not redeem said stock within one year and it has subsequently come to the knowledge of the said persons above mentioned that the company could not sell its stock in such manner less than par value, and the said parties having paid only fifty per cent of par value for said stock, hereby return to the company fifteen shares each of the stock so received by them as aforesaid in order that the price that they paid for the same shall be one hundred dollars per share and not fifty dollars per share as above stated;

"Therefore be it resolved that said stock so returned be accepted by the company and cancelled and in lieu thereof new certificates be issued to each of the said parties for fifteen shares instead of thirty shares as originally issued."

Q. Mr. Adams, have you not refreshed your recollection since yesterday as to there being a stock ledger or having been a stock ledger of this company at one time? A. We have a general ledger.

Q. I am asking you about a stock ledger in which the stock transactions and the record of the transfers and so on were entered; wasn't there ever such a book? A. Not to my knowledge.

Q. Are you sure of that? A. I am.

Q. I give notice in open Court to counsel on the other side—A. I can explain that Mr. I. G. Adams was treasurer and Mr. Wright kept the treasurer's books.

Mr. Gaskill: I wish to give notice in open Court that I have been informed there is or has been such a book and I notice counsel on the other side to produce it.

Mr. Bourgeois: The only stock ledger we have is a stock ledger I had Mr. Gill to make up in my office.

Mr. Gaskill: I refer to a stock ledger that the company kept from the beginning, and will you make inquiry from all the parties and see if you can ascertain of its existence?

Mr. Bourgeois: Certainly, but I never heard anything about it. On the other hand I have asked for it and I was informed they didn't have any.

Q. Mr. Adams, with reference to this application that you said that you made to the banks, you personally went to one of the banks and Dr. Marvel attended to the other; is that right, the application to the other bank? A. I am not sure but what we each went to the banks; I am not sure.

Q. Which bank did you go to? A. I went to the Union.

Q. Are you a member of the Board of Directors of that bank? A. I am not now.

Q. Were you at that time? A. I am under the impression that I was. I will refresh my mind on that, Judge.

Q. If you weren't a member of the board of directors then, of course you only know from what you have been told that it has been brought up in the directors meeting. I don't know what the fact is and I don't want to confuse you, I want to know what the situation is. A I don't want to be too explicit on that, Judge, unless you force me to tell it. If you do, I will tell you. I want to be gentlemanly.

Q. Did you personally make any application to the board of directors at a board meeting? A. I am not certain of that, Judge.

Q. To whom did you apply at the Union National Bank for a loan of ten thousand dollars to the company? A. Mr. Aikman and Mr. Endicott.

Q. Are you positive you personally applied to Judge Endicott? A. I did.

Q. Where was Judge Endicott at the time? A. I presented the matter to Judge Endicott right here by the Second National Bank and had a conversation in regard to it. Do you want me to tell the rest?

Q. I am asking you where Judge Endicott was, when you made application to him for the loan, whether he was at the bank or on the street or a chance meeting? A. I will answer you, Judge.

Q. Answer that and nothing else. A. The first conversation?

Q. I ask you the plain question again, where was Judge Endicott when you made application for that loan? A. I attempted to answer you.

Q. Where was he? A. Right here by the Second National Bank.

Q. On the street? A. Yes.

Q. Had you a note of the company for ten thousand dollars? A. I offered—

Q. That is not what I asked you; had you a note of the company which you asked him to present to his board? A. I had no note; no.

Q. What security did you tell Judge Endicott you offered the bank for that loan? A. Two for one.

Q. Of what? A. Of the stock of the St. Leonard's Land Company.

Q. And what note was it? A. Would be the note of the St. Leonard's Land Company.

Q. Without endorsement? A. Well, if they demanded endorsement we would have to have given it; we did give it.

Q. That is not what I asked you. Did you ask him to loan ten thousand dollars on the note of the company with the stock of the company as collateral without any individual endorsements? A. I asked the cashier.

Q. I am talking about Judge Endicott. Now you are getting off on something else. A. Pretty close together, they are.

Q. Just answer the question I ask you, Mr. Adams. It is a plain question.

> Question repeated, as follows: "Did you ask him to loan ten thousand dollars on the note of the company with the stock of the company as collateral without any individual endorsements?"

A. I don't know the amount was ten thousand dollars exactly because the ten thousand was what we wanted.

Q. Did you ask him to loan money to the company on its note with its stock as collateral without any individual endorsement? A. I presented it to members of the board, Judge Endicott was one; I don't know whether I offered it in the board meeting.

Q. Won't you answer the question I asked you, Mr. Adams? A. I did.

Q. Now didn't you say you met Judge Endicott out here on the street by the Second National Bank; now then, you say at that time you applied to him for a loan. Now I ask you if you applied to him at that time for a loan on the company's note without endorsement, without individual endorsement, with the company's stock only as collateral? A. Well, I wouldn't say all is correct except the endorsement; now we did give individual endorsement.

Q. That isn't what I asked you; what did you

do? I asked you what you asked Judge Endicott? A. I talked with Mr. Endicott—will you allow me to complete that?

Q. No, I ask you to answer the question I put. A. And I also—

Q. Go on. A. Then I can't answer the question.

Q. Now you say you made a report to the company. Did you make a report of the application to Judge Endicott to the board of directors? A. Dr. Marvel and I both made report of the success of our application.

Q. Did you make that report to the board of directors? A. At a directors meeting?

Q. At a directors meeting? A. Yes.

Q. Who was present at that meeting? A. Marvel was present, Youngman was present, I don't think Mr. Kuehnle was present and I don't doubt Judge Endicott was present.

Q. Do you know whether he was present or not? A. He was usually at the meeting.

Q. That ain't what usually took place. A. I can't say.

Q. And where is the record of that meeting; where you say you made this report? A. It was an informal meeting.

Q. Of which you have no record? A. Oftentimes we would meet.

Q. You say it was an informal meeting; I ask you of which you have no record; is that right? A. I have no record of it.

Q. I understood you to say to Mr. Bourgeois that you had tried to sell some of this stock of the company—A. I did.

Q. —prior to making this loan? A. I did try to sell some of the stock.

Q. Isn't it a fact that a large block of the stock had been sold and was at that time being paid for

in installments by Mr. Disston at a price above par, at par? A. No, that is not true.

Q. Twenty thousand dollars worth of stock? Isn't that a fact? A. We sold some stock to Mr. Disston.

Q. And you had sold it to him in the fall or just preceding this financial stress that you speak about, hadn't you, and given him a considerable length of time in which to pay for it? A. That may be so.

Q. And didn't in these original minutes—and didn't your board of directors pass a resolution giving Mr. Disston additional time in which to pay for that stock at or about the time these loans were being made in consideration of his building a house? A. We made some concession on account of having a house built and to get the money.

Q. I call your attention to one of the memorandum taken from that envelope containing the rough notes of minutes and ask you if the paper which I have handed you is a note of the minute of that meeting held at the office of I. G. Adams and company on the twenty third day of August, 1897, at 8 o'clock p. m., present A. B. Endicott, Philip I. Marvel, Joseph Thompson, M. D. Youngman, William Disston, I. G. Adams and C. J. Adams. Is that a memorandum of the transactions at that meeting, that paper that you hold in your hand? A. The last payment, September 1897; that is correct.

Q. This is a memorandum of the meeting at that time? A. Yes.

Q. Now then I wish you to read the minute of a motion or resolution offered by Dr. Marvel. Dr. Marvel offered the following resolution, read it, please. A. "Whereas the St. Leonards Land

Company did on the fifteenth day of April, 1897, enter into a sealed contract with William Disston of Philadelphia for the purchase of twenty thousand dollars of the capital stock of the company payable as follows: five thousand dollars on the first day of May, 1897, five thousand dollars on the first day of June, 1897, five thousand dollars on the first day of August, 1897 and five thousand dollars on the first day of September, 1897, and

"Whereas the said William Disston having paid for fifteen thousand dollars worth of stock and received the same as per agreement;

"Be it resolved that in consideration of the said William Disston building a house to cost not less than five thousand dollars on lots purchased by him of the association, that the payment of the five thousand dollars coming due on September 1st, 1897 be extended to May 1st, 1898, and that it then be optional with him whether he take the same or not."

Q. Do you know whether he did take it? A. He did.

Q. He did take the additional five thousand? A. Yes.

Minute just read offered in evidence and marked Exhibit C 6.

Q. Mr. Adams your company did not have any account at the Union Bank? A. No.

Q. You kept your account at the Second National? A. Second National.

Q. And three of your directors of the St. Leonard's Land Company were directors of the Second National Bank? A. Yes.

RE-CROSS-EXAMINATION by Mr. Bourgeois:

Q. Mr. Adams, I call your attention to the ledger account of William Disston in which it ap-

pears that he made certain purchases of stock and I ask you to state what purchases of stock he made, of how many shares, on the first of May, 1897, what was the par value of it? A. 1897, May 1st, fifty-five shares, fifty-five hundred dollars.

Q. Look on the credit side of the ledger and tell me how much he paid in cash and how much he got in discount? A. Got discount five hundred and fifty dollars.

Q. Paid how much in cash? A. Paid that less the cash, forty-five hundred and fifty dollars.

Q. Five thousand? A. Yes.

Q. Under date of May 1st? A. Yes.

Q. Now the next time he took stock was in July? A. Yes. Fifty-six shares, fifty-six hundred dollars.

Q. And he paid on July third a check for how much? A. Five thousand dollars.

Q. And discount he got how much? A. Five hundred and sixty.

Q. On August the second he purchased how many shares and got how many? A. There is a balance of account there.

Q. I mean this August the second? A. Fifty-five shares.

Q. And the par value was fifty-five hundred? A. Yes.

Q. August the 2d he gave a check for how much? A. Five thousand.

Q. And received a discount of how much? A. Five hundred and fifty dollars.

Q. Is there any other purchase of stock by William Disston from the company? A. No.

Q. I now call your attention to the minute of August 23d, 1897, to which Judge Gaskill just called your attention, and to the later part of it which says "that the payment of the $5,000.00 coming

due on September 1st, 1897 be extended to May 1st, 1898 and that it then be optional with him whether he takes the same or not;" did William Disston take that last five thousand? A. After that minute; no.

Q. I show you the minute of March 3d, 1898, no, 1908 I mean, and call your attention to the minute of that meeting in which it says, "the question of the $1,500.00 was discussed," and then I call your attention to Exhibit C-4 for complainant and ask you whether that resolution C-4 was found on your desk before or after the 3d day of March, 1904? A. It was after the 3d day of March, 1904.

Q. Not 1904—1908. A. 1908 according to the minutes.

Q. You say it was after the 3d of March, 1908 when this resolution was found on your desk? A. When it came into my possession.

Q. Can you state whether or not this discussion that was had on the 3d day of March, 1898 was the forerunner of the resolution that you afterwards found on your desk? A. I presume it was.

Mr. Gaskill: I object to that.

Q. I ask if you know, can you state whether it was or not? A. I couldn't distinctly state that.

Q. You say that you endeavored to sell the stock of the company along about 1898. To whom did you endeavor to sell the stock? A. I offered the stock to John McCurdy of Philadelphia. I offered to Mr. Augustus Bacharach of Philadelphia, and a number of my clients.

Q. At what price per share? A. To Mr. McCurdy I offered sixty and Mr. Bacharach, Mr. Augustus Bacharach fifty.

Q. Did you succeed in selling any of it? A. I did not.

Q. What sort of men are Mr. McCurdy and Mr. Bacharach financially? Are they able to buy stock? A. They are and deal in stock.

Q. Beg pardon. A. They are and deal in stock.

Q. And both are wealthy men? A. Yes.

Q. Did you mention a third one, Mr. McCurdy? A. Mr. McCurdy and Mr. Bacharach. I also mentioned Mr. Simon Bacharach, now deceased, a brother of Augustus Bacharach.

Q. Did you make any price to him? A. At that time I told him the stock could be bought at fifty.

Q. Was he a man at that time able to buy stocks? A. He was.

Q. Do you know if he dealt in stocks? A. He did.

Q. Do you know if he loaned moneys on Atlantic City properties, beach properties down here? A. Both loaned moneys.

Q. And Bacharach and McCurdy too. A. And Mr. McCurdy was quite a large owner here at one time.

Q. Did you succeed in selling to Mr. Simon Bacharach? A. I did not.

Q. When was it that these efforts or attempts to sell the stock were made? A. Made through the year 1898 and later.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. What stock was this, that you offered to these persons as you have just stated? A. This was the stock of the four hundred and ninety-nine shares which were used for development.

Q. Who authorized you to offer that stock at the prices that you have stated? A. There was no change in the value when they offered us to purchase two shares for one in the meeting where we were authorized to borrow $10,000.00.

Q. Then you assumed to sell this stock or offer it for sale at the price stated by reason of the action of the directors authorizing two for one to the directors who loaned money? Is that right? A. I will answer that, Judge, in this way, all the four hundred and ninety-nine shares which was for improvement and I always understood that was for sale of stock for the improvement of the property.

Q. Now then I am asking you by what authority you offered it at the low price? A. I considered I had the authority under the resolution.

Q. Under the resolution which authorized the transfer of two shares for one to the directors who loaned the money. That is what you assumed as your authority; is that right? A. Not only mine, but the board of directors.

Q. That is what you assumed as your authority to make that offer? A. I did.

Q. When was it you made these offers? A. That was through the year 1898.

Q. And 1897? A. 1898 and 1899. No, we weren't so pressed for money until 1898.

Q. This resolution I am going to read you had never been revoked, had it, under date of May 6th, 1897; "On motion it was resolved not to offer any of the company's stock at less than par." That had never been formally revoked, had it?

Mr. McCarter: That wasn't the company's stock.

Mr. Gaskill: Which was the company's stock?

Mr. McCarter: The six hundred and fifty-one shares.

Mr. Gaskill: That was tied to a mortgage.

Q. Had this resolution ever been revoked? A.

No, I think not. I will give you the reason if you wish, Judge.

Q. Now, how is it that you fix the date when that resolution was found on your table the Thompson resolution, how do you fix that? A. The night of the discussion of that very matter.

Q. Now then, Mr. Adams, at or about the time the company was preparing to liquidate isn't it a fact that Mr. Thompson came to your office and called your attention to the fact that a motion of his had been adopted by the company and you denied it and that then he said if you would let him have your memorandum of the minutes he thought he could find it there and you said there was no such thing and turned over the bundle of papers to him and he did find there in that bundle of papers this—

Mr. Thompson: Didn't turn them over to me; kept possession.

Q. —kept possession of them and there was found this resolution that you had forgotten all about. Isn't that a fact? A. Will you fix the date of that, Judge?

Q. Yes, it was at the time you were preparing to liquidate, divide up the assets, and the quantity of shares was a material matter among which the division was to be made, 1908. A. 1908; no, this was later. This matter was discussed, I think somewhere about—this matter was brought to a conclusion and in the presence of all the members present—

Q. I am not asking you about that. I am asking you about an occurrence in your office when Mr. Thompson came to your office? A. What time?

Q. In 1908, about the time of the liquidation—didn't Mr. Thompson come there and call your at-

tention to the fact that a resolution had been passed which cancelled one-half of these shares that had been pledged and you denied it and wouldn't let him have the papers, kept them in your possession and he turned them over and found that resolution, which I have offered here and you said you had forgotten all about it? A. I answer no to that question.

Q. I show you a paper that came from the bundle of memorandum of minutes and ask you if that is in your handwriting? A. It is.

Q. Dated August 23d, 1899. Is this an original minute made by you of the proceedings at that meeting, "Aug. 23/99." A. Correct.

Q. Is this the same minute that is recorded in the minute book?

Mr. Gaskill: I will offer in evidence the paper just identified and have marked Exhibit C 7.

Mr. McCarter: We object as immaterial.

Said paper admitted and marked Exhibit C 7.

The Vice Chancellor: It is filed and the minute is in the book and can't we save time?

Mr. Gaskill: I will state what my purpose was to show the inaccuracy of these minutes and that was not even correctly transcribed from the loose notes of minutes which are produced. In other words I am attacking the minutes and the method of keeping the minutes and that is my purpose and that would be the purpose of the comparison.

Mr. McCarter: Is that accuracy or inaccuracy of the minutes entered in the bill and set up as a charge of fraud against Dr.

Marvel or any other of these gentlemen?

The Vice Chancellor: The minutes are both in and you can argue on it.

RE-CROSS-EXAMINATION by Mr. Bourgeois:

Q. Mr. Adams, you have two or three times attempted to tell what took place when you found this resolution that is marked C-4 on your desk and each time the Judge has prevented you.

Mr. Gaskill: I object to that form of question.

Q. I ask you, Mr. Adams when you found this resolution on your desk what did you do in regard to it? A. They claim that such a resolution had been passed and I put it to each member present. I denied it myself, Dr. Youngman, Louis Kuehnle said no—

Mr. Gaskill: I object and ask that be stricken out; that is self-serving testimony.

The Vice Chancellor: I think that is incompetent, but you may show what transpired with reference to this paper.

Q. I understand you to say that you denied it ever passed and you asked each of the directors.

Mr. Gaskill: I object to that.

Mr. Bourgeois: He has a perfect right to show all that and ought to show what he did with it.

The Vice Chancellor: I think that is competent; you may show what process that paper has been through from your standpoint.

Q. Don't say what they said to you but you tell what you did? A. I asked each director present.

Q. Asked them what? A. Dr. Marvel, Dr.

Youngman, I. G. Adams, and Louis Kuehnle and myself being present.

Q. What did you ask them? A. If such a resolution had been passed.

Mr. Gaskill: All that is under my objection.

Q. And after you had asked that question state whether or not the resolution was ever entered on the minutes as having been passed? A. It had not been passed.

Q. Was it ever entered on the minutes? A. It was not.

Q. And remained where? A. Remained in my possession until it was brought here.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. Was that resolution written out and offered at a meeting or was it written out afterward? A. This had been written before.

Q. This was written before the meeting? A. Certainly.

Q. And was offered at a meeting and not adopted? A. It wasn't adopted, no.

Q. Was it offered at a meeting?

By the Vice Chancellor: Q. Was it offered in this form at a meeting and voted down? A. Yes.

Q. A vote was taken and the vote was negative against its adoption? A. Yes.

By Mr. Gaskill: Q. When was that? A. I think the final of that was—

Q. I didn't ask the final but when was it first? A. I think it was August the 17th, 1909 when this was fully discussed.

Q. That is not what I asked you. What I asked you was when was this paper now before you presented to the board of directors and voted down? A. It was March 17th, 1909.

Mr. Bourgeois: March 17th, or August 17th, do you mean?

A. August 17th.

Adjourned until 2 p. m.

Afternoon session, April 2, 1912.

Hearing resumed at 2 p. m.

ALLEN B. ENDICOTT, a witness produced on behalf of the complainants, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. Gaskill:

Q. Judge Endicott, you were one of the incorporators or no—you were one of the officers of the St. Leonard's Land Company? A. I was a director.

Q. How long did you serve as director? A. From its organization up to the present time.

Q. Up to the present time. You were a stockholder then? A. Always.

Q. And stockholder now? A. Yes.

Q. While we are passing that I will ask you whether or not you have any interest of any character in the stock standing in the name of your brother Mordecai T. Endicott? A. None whatever.

Q. And have you had at any time since the stock was acquired by him and transferred to him? A. No, nor for some years before he acquired it.

Q. Judge Endicott with respect to the stock of your brother the Admiral that he acquired from you was it for a consideration or not? A. I don't think he ever acquired any from me.

Q. Never acquired any from your direct? A. No—I can tell you, he purchased in 1903 thirty shares of my sister, Kate B. Endicott and paid $200.00 a share for it.

Mr. McCarter: That must be hearsay. I don't think Judge Endicott ought to testify what he paid.

Q. Did you conduct the transactions for your sister? A. Yes. In 1904 he purchased five shares of stock of Dr. Charles P. Henry of Philadelphia and paid $200.00 a share for that.

The Vice Chancellor: 1904 did you say?

A. 1904.

Q. Have you acted for your brother in looking after his interest in this company at all, Judge, or has he attended to his own affairs? A. Usually attends to his own affairs.

Q. Have you acted for your sister, Mrs. Davis? A. Yes.

Q. Did Mrs. Davis acquire any of her stock from you? A. Mrs. Dodd.

Q. Mrs. Dodd, I should say. A. Eva Davis Dodd. Well, I will answer that yes and no.

Q. Just explain the transaction. A. On the 8th day of September, 1899 I purchased ten shares of the capital stock of Charles E. Davis at $150.00 a share, four shares of that stock retained and six shares of it, I think, went to Eva Davis Dodd. I may be wrong about that. She may have got the six shares elsewhere, but I think the certificate will show it was a part of that purchase which I made.

Q. You were one of the three in whom the title to the lands afterward conveyed to the St. Leonard's Land Company vested, were you not? A. Yes.

Q. Your associates were Judge Thompson and Dr. Marvel? A. Yes.

Q. And the proposition read from the minutes this morning was the proposition sent in by you three to the company? A. I assume so; I didn't listen to it.

Q. After the organization of the company and the purchase of this property what part, if any, did you take in the management of the company affairs? A. I think the directors were all equally diligent or negligent as the case may have been in attending to its matters.

Q. Do you remember the matter of the loans that were made by some of the directors to the company? A. Yes.

Q. You weren't present at that meeting, were you? A. I was present at meetings at which it was discussed before any loans were made, but I seem not to have been present at the time the resolution was passed.

Q. Were you made acquainted with the transaction of the directors afterward? A. Yes.

Q. And learned of the fact that company's stock had been pledged as collateral for the loans that they made to the company? A. Yes.

Q. Did you enter any objection or protest against that loan or the pledging of the stock of the company as collateral for the loans? A. None whatever.

Q. What action if any did you take with reference to these loans and the collateral subsequently at the meetings of the directors? A. I repeatedly insisted on the stocks being redeemed.

Q. How soon was that action taken by yourself at any of the board meetings after the loans had been made and the stock pledged? A. Well, I can't say exactly, within a few years certainly.

Q. What was the nature of your protest? What, if anything, did you say in the board meetings concerning the matter? A. Well, I can't say

exactly what I said. I always insisted that the stock should be redeemed, owned by the company and not held by the individuals.

Q. Was the company in position, from your knowledge of its affairs, to redeem that stock? A. When?

Q. At any time within the year or so after the loans had been made? A. Oh, I think so.

Q. And instead of redeeming the stock for what purposes was the money or funds of the company used? A. Well, in grading lots, building streets, paying taxes, paying interest on mortgages, and some other things. I don't know how much was spent in furnishing a water supply or sewer supply. My recollection is rather vague as to that.

Q. Did you ever make any protest or objection in the board of directors to these improvements being made unless the funds were on hand?

Mr. McCarter: I think you better let Judge Endicott testify what he said or did, and not lead him this way.

Mr. Gaskill: I don't intend to lead, Mr. McCarter; I only want to draw his attention to the particular thing.

A. As to grading?

Q. Yes. A. I objected to the grading, contracts being made for grading until the money was supplied, provided to pay for the work.

The Vice Chancellor: You referring now to after this transaction?

A. No, before.

Q. You didn't loan any money to the company at the time the other five directors or five of the other directors made the loan? A. No.

Q. What action, if any, was taken by any of the directors as the result of these protests or objections which you made about the non-redemption of the stock that had been pledged as collateral?

A. Well, Judge Thompson came along with what might be considered sort of a compromise measure, a proposition that these directors should return one-half the stock which they had taken and retain the other half.

Q. Was that proposition presented to the board of directors for action? A. It was.

Q. Was it acted on? A. It was.

Q. With what result? A. Favorably; that is that should be done.

Q. It was adopted, was it? A. It was.

Q. Was it in writing at the time it was presented to the board? A. It was not.

Q. What was done with reference to that or any instructions given to Judge Thompson with reference to it? A. Judge Thompson was requested to reduce it to writing and hand it to the secretary to be incorporated in the minutes.

Q. When was that, Judge Endicott, when was that action taken on the resolution of Judge Thompson? A. I have no way of fixing that time definitely; it was several years ago.

Q. Was it before or after the company was ready for liquidation? A. Oh, it was long before that. The first—and I speak with confidence upon that for one reason because when the first dividend was to be declared in 1908 a motion was made and seconded by Judge Thompson—

Q. Who made the motion? A. Louis Kuehnle.

—that the seventy-five shares in dispute be deposited in the trust company at interest and there remain until this disputed question of the ownership of this stock was discussed. It was assumed then that—

Mr. McCarter: One moment.

Q. The Thompson resolution as adopted, as you say, provided that they might have seventy-five

shares and were to return seventy-five shares? A. That is right? That is my recollection; it speaks for itself. It is here.

The Vice Chancellor: Did I understand you to fix the time with reference to—

A. I say because of this action in 1908 when the matter of paying dividends on this disputed stock was under discussion the first dividend, 30 per cent I think it was, there was then a motion made, seconded and carried, that this disputed stock, the dividends upon that, be deposited in bank at interest to wait the final and proper determination of the question, whether these gentlemen were entitled to the stock.

The Vice Chancellor: The Thompson resolution before or after?

A. Oh, long before that. That resolution speaks of depositing seventy-five instead of one hundred and fifty.

Mr. Bourgeois: Wasn't that 1909 and not 1908 you speak of, and first dividend?

A. The minutes here show it.

Mr. Bourgeois: 1909?

A. I may be corrected if that is so.

Mr. Gaskill: I will read from the minutes of August 17th, 1909.

The Vice Chancellor: I recall that minute; there was a minute and I understand he is fixing that with reference to that minute.

Q. Now how long before the adoption of this minute or this motion of Louis Kuehnle's was it that this Thompson resolution or motion was introduced and adopted? A. Several years before.

Mr. Gaskill: "On motion of Louis Kuehnle, seconded by Joseph Thompson, that a dividend of $30.00 be declared on all stock and that it be paid on or before Sep-

tember 15th, 1909, and that the seventy-five shares in dispute, that the dividend of $30.00 per share, be held in trust in the Atlantic Safe Deposit Company, at 3 per cent interest until the legality of the issue of the seventy-five shares be decided. Carried, Endicott opposing."

A. Hearing this resolution read I want to correct my testimony and say it was the year 1909 and not 1908.

Q. Now, Judge Endicott, I show you Exhibit C-4 and ask you whether or not that embodies the motion made by Judge Thompson and carried, as you say, several years prior to the minute of 1909?

A. It does.

Q. Did you at any time assent to the directors' retaining those thirty shares assigned to them as collateral security or any portion of them?

Mr. McCarter: Now, I object—

The Vice Chancellor: I don't know whether that can be reached in any other way, Mr. McCarter.

Mr. McCarter: He can assent by acquiescence not doing anything; question is what did he do about it?

The Vice Chancellor: Might state what he did about it. That wouldn't reach it, I think. I can't think that anyone could state fully enough what they did to cover the ground. I should think it was competent for him to testify on direct-examination that he never did assent. If you can find anything that conflicts with that statement you may produce it either by cross-examination or other evidence. I think it is competent.

(Question repeated.)

A. No.

Q. State if you can what action you did take with respect to that from time to time and when the several actions, if there were more than one by you, took place? A. Well, I think I have stated that on several different occasions I introduced the subject at meetings of the directors.

Mr. McCarter: Won't you please say what you did; you say you introduced the subject; what did you say?

A. After so many years I can't say just what I said but I insisted upon the redemption of the stock.

The Vice Chancellor: Do you recall whether any of those occasions were prior to the time Mr. Thompson introduced his resolution?

A. Yes, his resolution, I think, was the outgrowth of my persistency.

Q. He wanted to compromise the matter? A. He did; I didn't.

The Vice Chancellor: How early a date, Judge, could you confidently state you made any objection to this transaction before meetings of the board?

A. I should say at least two years before 1904.

The Vice Chancellor: Approximately 1902?

A. Yes.

Q. What fixes 1904 in your mind, Judge? A. Well, that date is fixed in my mind with the result of some conversation with Judge Thompson and some memorandum he has shown me.

Q. Some question has been raised here as to the prices at which stock sold at or about 1898. Have you any personal knowledge of any sales at or about that time and if so what sales and at what prices? A. Well, 1897 we sold $20,000.00 worth to William Disston at par less some discount, which was allowed and which has been shown here upon the books. I don't know what

that was. It was, I think, intended to be about what the stock cost the rest of us. For some reason, which I can't explain, while the certificates are stamped $100.00 par it only stood us ninety some dollars a share. A few persons were allowed to take stock at ninety some dollars, putting them on an equal footing with the incorporators, original owners.

Q. What sales or purchases of stock did you personally participate in within a year or so of that time? A. In 1899, September, I purchased ten shares and paid $150.00 a share.

Q. Were you obliged to take that for a debt or anything of that character? A. Not at all.

Q. Any other transactions? A. In 1900 I sold, I think, first five and then five again, ten shares, in all, to Charles P. Henry for $120 a share. There was a reason why that was sold so cheap.

Q. You may state it.

Mr. Bourgeois: Well, was it his own stock?

A. My stock.

Mr. Bourgeois: That is objected to.

A. I sold it for less. I had sold it previously for less than I considered it worth, I said for a reason.

Q. You may state the reason, unless it is a private personal matter? A. No, I have no pride in concealing it. In all my professional life, so far as I know—

Mr. Bourgeois: If the Court please, this isn't in answer to anything. If he wants to state the reason—

Mr. Gaskill: That is what he is going to do.

The Vice Chancellor: I think it will be incompetent for him to testify to if it is

objected to by counsel for the defence. He says it is not a basis, market value, and that may so stand. If it wasn't sold at market value by him unless counsel for the defendant wants to inquire into it, it may stand as not the market value in his idea.

Q. In transacting business for your sister, Judge Endicott— A. I have not answered all your inquiries about sales.

Q. I beg pardon. A. In 1903 I had charge of the sale of thirty shares of stock for my sister, Kate B. Endicott, to M. T. Endicott, for which $200.00 a share was paid. In 1904 Dr. Henry sold to M. T. Endicott five of the shares which I had sold him in 1904. He was paid $200.00 a share for those five shares. I know of other sales that have occurred, but I don't know that I can tell the exact pride for which the sales were made.

Q. Did this stock increase or decrease in value from the time of the organization of the company and its acquirement of the lands? A. In my opinion it always increased from the time the stock was issued, gradually and steadily from that day to this.

Q. And how about the value of the land owned by the company? A. The value of the stock depended upon the value of the land in my opinion and the land has always steadily advanced in value from the time the company was incorporated until today.

Q. To your knowledge was any communication ever sent out to the shareholders other than those that were directors, of this transaction of the loans and the pledging of the stock as collateral and the claiming of that collateral by the parties who had made the loans? A. No.

Q. Did you ever receive any notice of any sale

of this collateral or was any sale of it, to your knowledge, ever made? A. There was not.

Q. Judge Endicott, are you the president of the Union National Bank? A. Yes.

Q. And were you at the time these loans were made by the director's to the St. Leonard's Land Company? A. Yes.

Q. To your knowledge was any application ever made to the officers of the bank the officers or directors for a loan to this company? A. To the best of my knowledge I believe no application was ever made to the board of directors for a loan for this company. There was some discussion of a loan, I think, with me.

Q. In a board meeting? A. No.

Q. Outside of the board? A. Never in a board meeting to my knowledge, no formal application was known by the president or cashier ever to have been made to the bank.

Q. Do you remember the time when Mr. C. J. Adams says that he met you on the street near the Second National Bank and had a talk with you about a loan? A. I do not recall it; but it is very likely it occurred. If Mr. Adams says so, I should think he is correct, probably.

Q. Was there any effort ever made to your bank or to you as a representative of the bank of individual endorsement of the company's paper as the basis of a loan? A. No.

Q. Would there have been any difficulty in obtaining a loan with the individual endorsements?

Mr. McCarter: I object to that.

Objection withdrawn.

The Vice Chancellor: I don't think any of it is material. I don't think it makes a bit of difference how serious were the straits of this company at the time this loan was made, or how sudden the need of the

company was at that time to obtain money. I think it is purely a question of whether or not this transaction has been ratified or there has been laches in the present attempt to enforce it. That is the way it impresses me at this time; I may be wrong about it.

(Question repeated.)

A. Not if the company complied with the usual requirements of the bank.

The Vice Chancellor: Which were?

A. They should keep an account there and have some balance. Of course we wouldn't loan money to strangers, those who didn't keep an account in the institution.

Q. And did the St. Leonard's Land Company keep any account with your institution? A. Never; that is never to my knowledge. I have no recollection of it.

Q. Where did they keep their account, if you know? A. In the Second National Bank. Israel G. Adams, I think, was treasurer, and three or four directors I think, of the directors of the land company, were also directors of the bank.

Q. That is you say Israel G. Adams was the treasurer of the St. Leonards Land Company? A. Yes.

Q. And was director of that bank? A. Yes.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Judge, I understand you to say that the bank wouldn't have loaned the St. Leonards Land Company on its note but would have loaned the St. Leonards Land Company on its note if endorsed by the directors individually? A. I didn't say that.

Q. What did you say? A. I was asked if the company would have loaned the money, if the

bank would have loaned the money to the company upon the note of the company upon the individual endorsements of the directors.

Q. You were asked before that, Judge, the question whether they would have loaned the money to the company without the individual endorsements? A. I don't recall having been asked that question.

Q. I thought you did. Let me ask then. Would the Union National Bank at that time have loaned the St. Leonards Land Company ten thousand dollars upon its note secured by the twenty thousand dollars worth of the stock of the company as collateral? A. I have no doubt but what they would have done it, if the company had an account there and kept a fair balance. I should have them do that any time in its history. In fact I alweys felt they ought to have done that thing.

Q. You had some conversation with Mr. Adams about it, did you, had some conversation with him about it? A. I think it is very likely.

Q. Now did he ask you if your bank would loan the St. Leonards Land Company ten thousand dollars upon collateral of twenty thousand dollars worth of the stock? A. I don't recall his asking me.

Q. What did he ask you if he talked with you about it? A. I have already stated I don't recall, although it is correct that he did talk with me.

Q. If he did talk to you what did you say, you tell him the bank would loan the money or bank wouldn't loan the money? A. I can't speculate as to what I said if I don't remember it.

Q. Did Dr. Marvel—I understood you to say that the matter was never presented formally to

the board, that is neither to the president or cashier or the board, but was informally discussed, is that correct? A. I think it was.

Q. And where was it informally discussed, in the board meeting? A. Never to my knowledge. I mean it was mentioned by Mr. Adams or Mr. Martin to some of the bank people, I think perhaps by myself.

Q. Did Dr. Marvel ever speak to you about making a loan to the company? A. I don't recall whether he did or not, but if they did the loan, of course, wasn't made because they never asked the bank in a formal way for it and they never complied with the conditions which would have been necessary before they could have obtained a loan.

Q. But your opinion is that if they had applied formally for it they could have gotten a loan at that time? A. I think so, if they had complied with the requirements of the bank as to keeping an account and balance.

Q. And by endorsing notes personally? A. Our discounts are made by a board of directors. I can't say what they would have done. Personally I always had a good opinion of this stock.

Q. Now I understood you to say that there was never any notice given to the stockholders by the directors of this loan of seventy-five hundred dollars made by these directors to the St. Leonards Land Company nor of the transfer of issuance to them of the one hundred and fifty shares of capital stock from Dr. Marvel as trustee? A. Never to my knowledge.

Q. And you knew of this transaction how early? A. I think I knew when it was in contemplation and I knew when it occurred.

Q. And you knew after October of that meeting

too, didn't you? A. I think it occurred, I think the loan was authorized before the loan was made, that is before June 20th.

Q. It was authorized in May, wasn't it, Judge? A. I think I knew it; I don't know; seem to be no minutes of that meeting.

Q. Isn't this minute of May 19th the meeting at which the loan was authorized? A. Not by the directors. That referred to the borrowing of money from the banks.

Q. Well, was there ever any meeting when there was a resolution authorizing the directors as such to borrow? A. I don't know whether the resolution was passed, but I do know before the money was borrowed that matter was discussed in board meeting.

Q. Now, Judge, I ask you to look at the minute of May 19th, 1898, and ask you if you did not discuss—that is not limited to borrowing from the bank but refers to borrowing of ten thousand dollars? A. The resolution does not state where it shall be obtained.

Q. I ask you isn't that the resolution that you have reference to that authorized the borrowing of the money and the pledging of the stock? A. Not at all.

Q. That is not the one? A. That occurred, but it was proposed that the directors should each loan failed to get the money through any banks that it was proposed that the directors should each loan a certain sum of money and take stock as collateral.

Q. And you knew of that proposition, did you? A. I knew of that before they loaned the money.

Q. Now when you learned of that did you call the attention of the directors or Dr. Marvel or

Mr. C. J. Adams to the fact that they had not formally applied to the Union National Bank for the loan? A. I don't think so.

Q. Didn't tell them that? A. I don't think so.

Q. I show you a letter of January 27th, 1899, and ask you if that is your letter? A. That is my signature; I haven't read the letter.

Q. Will you read it please, or shall I read it? 10

(Witness reads letter.)

A. That is my letter.

Mr. Bourgeois then read the following letter into the record:

"Atlantic City, N. J.,
January 27, 1899.

Philip Marvel, M. D.,
1616 Pacific Avenue,
Atlantic City, N. J. 20

Dear Sir:

I received your letter of a week or more ago and should have answered it then had I not hoped to see and talk with you personally about its contents. I regret very much that the company finds itself in its present posture with the contracts. At all meetings when further grading was discussed I insisted that the company should provide the money before entering into any contract. 30 It would give me pleasure to relieve the contractors and to assist the company in caring for a part of this indebtedness, but I really am not in a position financially to do it, nor had I ever agreed personally to carry any of the indebtedness of the company contracted in grade. Before a meeting of the company which I could not attend Mr. C. J. Adams asked me if I would concur in whatever action a majority of the directors would take towards liquidating that indebtedness. 40

As to this I assented. Of course, I had no thought of incurring or being bound by any action the company did. I say that not by way of criticism, but to convince you of two things, but first I never assumed or promised to assume any personal liability for the company and secondly that my failure to join some of the directors in raising the money to pay for the grading is due simply to my inability to do so and not my lack of interest in what concerns the company. I shall be glad to attend the meeting of the directors any time it is called, provided I have sufficient notice. I do not go to my office in the evening nor do I receive the evening mail, consequently a letter mailed in the afternoon would not be read by me until tomorrow morning at the office.

Yours Truly,

ALLEN B. ENDICOTT."

Said letter marked Exhibit D-2.

Q. Judge, do you have the letter that Dr. Marvel wrote to you to which this Exhibit D-2 is the answer? A. No. That is I presume I haven't. I know of no reason I should keep it. I don't keep much correspondence, didn't then I might say. My son has reformed me in some respects and now I think we have a copy of everything that goes out of the office.

Q. Kate B. Endicott was your sister? A. Yes.

Q. And you had sold her some of your stock prior to June of 1898? A. Yes, in the early part of that year, I think.

Q. And did you act at that time as her attorney? A. I think I may say that I—well, I don't know just what is meant by that; she had no other attorney.

Q. Did you turn your stock over to your sister or did you hold it for her, I mean the physical possession? A. I turned it over to her.

Q. And of course she relied on you, being a director, of the company, in regard to her stock, I suppose, did she not? A. Very likely.

Q. I understood you to say that no notice was given to the stockholders by the directors touching this loan or the pledging of the stock two for one with the directors? A. I never heard of such a thing.

Q. Why didn't you notify your sister of it, you as a director? A. It never occurred to me there was any occasion to do it.

Q. At that time it was thought to be all right, wasn't it, Judge? A. The loan of the money by the directors?

Q. The loan and the pledging of the stock, both, were considered to be all right? A. I have always thought that was proper; the only improper thing, in my opinion, was the failure to redeem it.

Mr. Gaskill: That is you say it was proper to make the loan and give the stock as collateral? A. Yes.

Q. Now then I understood you to say that as early as 1902 you became insistent that this stock should be redeemed? A. I haven't fixed the year exactly, Mr. Bourgeois; I think it was that early because I think it was at least two years before what has been called the Thompson resolution was passed and that—

Q. And that was about 1902; you think, that is two years before that? A. No, I think the Thompson resolution was 1904.

Q. That is what I say, two years before would make it 1902. Now your brother Mordecai had been the owner of thirty-five shares of this stock

for how long a time at that time? Your brother was the owner of thirty-five shares of stock that he purchased from Kate B. Endicott? A. Purchased thirty shares in 1893.

Q. And he had purchased from Charles P. Henry five shares in March, 1904, hadn't he? A. 1904.

Q. Now, Eva Davis Dodd at that time was the owner of shares of stock was she not? A. I think she became the owner in 1904.

Q. February, 1904, wasn't it? A. I haven't the month; I have the year.

Q. February 27th. And what relation is Eva Davis Dodd to you? A. My wife's sister.

Q. And what relation is Charles P. Henry? A. None whatever.

Q. If you became insistent why did you become insistent upon those directors turning back that stock to the company? A. I always felt that the stock was worth a great deal more than par and I thought it should be returned from whence it was taken, where I thought it belonged.

Q. Now you thought it belonged there for the interests of the stockholders, I suppose, of course? A. Yes.

Q. Why didn't you take some proceeding to compel them to return it? A. Well, I never thought that would be necessary. In fact we thought half had been returned for several years and was surprised to find it had not.

Q. At the time we are speaking of in 1902 your brother was a stockholder to the extent of thirty shares, at least and your sister-in-law was a stockholder? A. I think you are wrong on the year. My brother became a stockholder in 1903.

Q. Yes, 1904 is what I mean. Along from 1902 to

1904 your wife or your sister-in-law was a stockholder to the extent of some six shares in addition to the other stockholders. Why didn't you take some step to compel the return of that stock for two reasons, first from your standpoint as a director and second because you wanted to protect the stockholders? A. I never felt and never doubted but what the stock would be returned until a meeting of August 1908 the minutes of which are in evidence. Am I right in the year, what might be called the stormy session of August 17th?

Q. 1909. A. I thought of that as 1908. I may be wrong.

Q. The first was discussed in the meeting? A. I don't refer to the meeting of March 3d, 1908; I refer to the meeting of August that lasted until two o'clock in the morning.

Q. And during all that time, Judge, I understand you are insisting that the stock be returned to the company? A. I do not know what you mean by all the time; I did at intervals.

Q. Covering the whole period from 1902 to 1909, that is right, isn't it? A. At intervals, yes.

Q. After you had insisted on this for four or five years didn't it occur to you that maybe they didn't intend to return it? A. I don't know whether it occurred to me or not; they never refused to return it, I think, until 1909.

Q. That was the stormy session, wasn't it? A. That was the stormy sesion.

Q. You say you thought it had been returned, what made you think it had been returned, Judge? A. Because of the action of the board deciding that it should be returned when the Thompon resolution was introduced.

Q. Judge, wasn't that Thompson resolution introduced later? A. No.

Q. Now, I want to call your attention to the meeting of March 3d, 1908, the latter paragraph, the last paragraph of it, to refresh your memory, and then ask you, wasn't that meeting, the discussion that was had at that meeting, March 3d, 1908, the forerunner of the resolution introduced by Judge Thompson? A. I think not. I think the Thompson resolution was several years before that.

Q. You were a stockholder all the time too, weren't you, Judge, from the beginning to the present time? A. Yes.

Q. And you had access to the stock book? A. I assume that wouldn't have been denied me if I had asked for it.

Q. And also had access to the ledger, the general ledger? A. Well, I don't know about that; we had a great deal of trouble to see some of the minutes and we had a very stormy session on another night when we couldn't get the books or papers.

Q. I don't mean the papers; I mean the ledger, this you had access to the ledger, the accounts? A. I was never denied access to it; I don't know that I ever looked at it.

Q. And during all of the time these certificates of stock you thought had been returned were not returned to the stock book, were they; they were not pasted in? A. Well, it afterwards seemed that the individuals retained the stock.

Q. When did you learn, Judge, that the individuals had held the stock, hadn't returned it, as you had thought they had? A. I don't know. It was some years after the resolution to return it and I think it was about 1908 or 1909. I, for

some reason, seem to associate the action of the stormy session with 1908. I find I am mistaken in that; it was 1909. Probably it was 1909 therefore when I learned these had not been returned, possibly 1908; I don't know.

Q. I understood you to say that you knew of this transaction at its inception and that about 1902 you became insistent on the stock being returned and kept up that insistence until 1909 when you had your stormy session; is that right? A. Yes.

Q. And I also understood you to say that there was a period there of several years when you thought the stock had been returned, that so, wasn't it? A. Yes, a few years.

Q. And that extended from 1904 until practically 1909 or 1908? A. Yes.

Q. What was the necessity of your insisting on the return of the stock during the interval that you thought the stock had been returned? A. I always insisted that the entire stock should be returned and didn't acquiesce in this motion to return part of it. That is where Judge Thompson and I differed.

Q. Why did you not take some action against the board of directors to compel the return of this other stock that you thought they had not the right to keep, take that action in the interest of the stockholders during these ten years? A. Well, I hoped and didn't think it would be necessary to do that and finally it was.

Q. Now, Judge, I understand that you became insistent upon the return of this stock in 1902. The money was loaned and the stock was pledged in 1898 and according to the resolution the time for redemption of the stock expired in 1909; why did you—1899—why did you wait from October

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1899 until 1902 before you insisted upon the directors returning this stock? A. I don't think I knew of the wording of that resolution, or that there was any such limitation in it, until years after the money was loaned. I don't recall ever having seen it in the early days.

Q. Do you recall a conversation had with you over the 'phone by Mr. Adams about this loan? A. No.

Q. Now you say the company was in a position to redeem within a year or so; was there ever a time when the St. Leonards Land Company had money by which it could have repaid this loan between 1898 and 1909 without sacrificing or jeopardizing itself by nonpayment of taxes or interest? A. Oh, I don't know what balance there was in the treasury. I think there was usually a few thousand dollars, but the company could have sold land or could have pledged its credit and raised the money and redeemed this stock at any time in its history.

Q. Why didn't they then, Judge? A. Well, I don't think we managed the company wisely; I think that is the reason we didn't have money in the treasury always, plenty of it.

Q. Why didn't you individually as a director insist upon selling enough of the land along in 1900 or thereabouts to repay the loan of seventy-five hundred dollars if it could be done, if it was feasible? A. Well, we tried to sell land and we had embarrassments. It was difficult to sell this land because almost at the beginning of the company the directors had guaranteed to Israel G. Adams and Clement J. Adams the payment of a commission on every lot sold. If any real estate agent in Atlantic City sold a lot of land they had to divide their commission with them for several

years. That became known and it was almost impossible to get the other real estate agents in Atlantic City to handle this property. Afterwards finding our mistake in conducting business in that way we tried to correct it by allowing full commission to other agents, but the harm had been done and we never were able to overcome that.

Q. Now wasn't this commission allowed to the Adams because they themselves advertised the property? A. I don't criticise what they received; I stated the fact.

Q. I say the reason they were allowed the commission on those sales was because they had at their own expense advertised the property? A. I don't know about that.

Q. Let me ask you something else about this property. Wasn't the reason that you couldn't sell this property— A. We did sell frequently, but it should have been sold in half the time we took to sell it.

Q. Wasn't the reason the property remained unsold for a number of years there the fact that this property was laid out in lots sixty and sixty-five feet front on Atlantic Avenue and fifty feet front on other avenues by a depth of 125 feet and all those lots restricted so you couldn't build within twenty feet of the front property line and five feet of the side lines, whereas the property immediately above and below was sold without restrictions, the lots varying in size thirty, fifty and sixty and so on, small lots in other words; wasn't that the reason your property didn't sell? A. I don't know it was. In other words I have never thought it was so.

Q. In other words wasn't your property at that time ahead of the times? A. I don't know about that. I think the restrictions on the property made it more valuable.

Q. For the people who could afford to buy? A. Yes.

Q. But your property sold down there from three to five thousand dollars apiece? A. I am not able to speak as to that.

Q. Now let me ask you about the development. You remember about the development. Didn't the development of that property down there come about in this way, first the property immediately north of your property was developed, that is by building and so on? A. I don't know about immediately north; of course—

Q. Don't you remember about five years ago there were a hundred houses built in Ventnor City on the property just easterly adjoining the easterly land of the St. Leonards land and there weren't as much as five built on the St. Leonards Land Company? A. I don't know how many. The city gradually extended south and west, of course.

Q. Don't you remember, Judge, that they built one year a hundred houses in Ventnor just this side of the St. Leonards Land Company and the next year almost as many and then the St. Leonards Land Company itself built three houses on its own property to kind of start to boom it? A. The Ventnor Company did build three houses.

Q. Also don't you remember, Judge, that the properties below the St. Leonards Land Company also built up during the past five or six years before there was any sale of lots of the St. Leonards Land Company, any material sale? A. No, I can't say that; I think we were always selling some lots and there was some houses being built.

Q. How many, Judge; not many, were there? A. I don't know what time you refer to.

Q. I refer to any time from 1904 up until 1909. A. There weren't many.

Q. I don't think there was as much as four were there? A. I am not able to say as to how many.

Q. Do you remember that the property of the St. Leonards Land Company was joined on the west by the land of the Atlantic City Beach Front Improvement Company? What was the name of that company? A. That extended to the street where the Carisbrooke Inn was.

Q. The Beach Front Improvement Company; you remember that, don't you? A. I don't know who owned the adjoining lands.

Q. Don't you remember that company—didn't you have stock in the Beach Front Improvement Company, Bacharach and Kuehnle and Judge Thompson and Harry Scull. A. No, I wasn't so fortunate.

Q. Don't you recall that land was sold off just about 1904 and 1905? A. No, I don't know about it.

Q. Do you remember the vast number of houses that were built on that tract of land about that time? A. West of the St. Leonards Land Company?

Q. Just below Cambridge Avenue. In fact two squares below, Portland Avenue most of it. A. I am not able to state about the building there, Mr. Bourgeois; I wasn't especially observant.

Q. Now, what did the St. Leonards Land Company have to do with the water supply you speak about spending something for the water supply. A. No, I didn't; I said I couldn't recall whether we spent any money on water supply or sewer supply. I remember that matter was discussed; I don't know whether we did or not.

Q. The water company wasn't the St. Leonards Land Company, was it? A. I think the in-

dividuals who were in the St. Leonards Land Company formed a separate company and furnished a water supply but my recollection isn't clear about that.

Q. The water company was formed by Harry Scull, Frank Martin, and those men, was it not? A. It may be.

Q. And there was no sewer company there, was there, until the Atlantic City Sewer Company installed its plant? A. I don't know about that. I said I didn't know whether we spent any money on those things; I know they were subjects of discussion frequently.

Q. Now you say that Judge Thompson was all the time in favor of compromising this? A. I didn't say all the time; one time.

Q. And you always thought it was wrong, that is the whole thing was wrong? A. No, I haven't said that. I thought it was quite proper at the beginning I sanctioned it; that is I sanctioned the borrowing the money from these gentlemen and their taking collateral, but I thought this collateral should be treated as any other collateral, redeemed at the proper time.

Q. Was there ever a time when you caused the company to tender to them the amount of money they had loaned? A. No.

Q. Was there ever a time when you introduced a resolution that the company do tender them the amount of money they had loaned? A. I think not. I introduced a resolution or a motion asking them to accept their principal with interest.

Q. Was there—how was that, Judge; that was later, wasn't it? A. That was, I should say 1908, but I so often say 1908 when I mean 1909, that perhaps it was 1909.

Q. Let me ask you if it wasn't 1909 as soon as I get the minutes. A. I think it was August 17th, 1909.

Q. I anticipate this wasn't August 17th; I imagine it was August 19th—I imagine this was August 24th, 1909; I haven't had a chance to examine the original minutes. I call your attention to the minutes of August 17th, 1909, in which it appears, "on motion of Judge Endicott, seconded by Joseph Thompson, that the five directors who loaned fifteen hundred dollars and who received thirty shares be requested to return fifteen shares of the same and receive six per cent interest. On calling of yeas and nays the motion was lost. Yeas, Thompson, Endicott; Nays, I. G. Adams, C. J. Adams, Louis Kuehnle, Dr. Marvel and Dr. Youngman."

Q. Is that the occasion? A. That is the occasion.

Q. And that was either August 17th or August 24th, 1909; it says here 17th, but I am inclined to think that was the 24th, possibly. Now Judge, during the time you were insisting upon the return of this stock did you ever examine or look or make inquiry to find if the company had enough money in the treasury to pay off the loan of seventy-five hundred dollars? A. I think not.

Q. Now can you tell us how much money was expended for grading during the years 1898 and 1899 by the St. Leonards Land Company? A. No, a great deal of money; of course it was a large tract of eight blocks extending from the ocean to thoroughfare.

Q. And some stock was sold to raise the money? A. Yes.

Q. William Disston never took but the one hundred and sixty-six shares of his proposed two

hundred shares, did he? A. I don't know. He paid in fifteen thousand dollars less discount, probably in 1897 and then the time for paying the other five thousand was extended for one year in consideration of his building a house on one of the lots.

Q. And he built the house, didn't he? A. Yes. You are living in it, aren't you?

Q. Yes, I am living in it. Now from 1902 until 1908 the company's notes were individually endorsed and discounted for the purpose of securing moneys necessary to carry on this concern, were they not, almost continuously? A. I don't know.

Q. Did you ever personally endorse any of the notes? A. I think I did in the early history of the company, but I didn't latterly. I am not certain I did. I have a recollection of endorsing some notes for this or some similar company which were discounted by the Camden Safe Deposit and Trust Company. I don't assert positively it was this company.

Q. That was for the money that you bought the land to make the company with, wasn't it? A. I don't know that.

By the Vice Chancellor: Q. During the period, Judge, after the Thompson resolution was passed that you were under the impression that the members of the board had conformed to that resolution and returned the half of their stock and kept the other half— A. Yes.

Q.—what was the final outcome of it? A. Yes, Judge Thompson and I were both of that impression and I think I was the one to tell him it hadn't been done a long while afterwards.

RE-CROSS-EXAMINATION by Mr. Bourgeois:

Q. Judge. the Vice Chancellor has asked you or repeated some of your testimony that you were of the opinion that half of the stock had been returned. Now what gave you the impression that half of that stock had been returned? A. Because it was resolved at a meeting of the directors that it should be done.

Q. And you never followed it up to find out whether it was done or not? A. I don't think I did.

Q. Now who was present at the meeting of directors when the resolution was passed that half of this stock should be turned back to the company? A. I can't state.

Q. Was Dr. Marvel there? A. I wouldn't pretend to say. I am sure there was a quorum present. At least we were transacting business in a regular way.

Q. And it took four for a quorum, didn't it? A. Yes.

Q. Now Judge, do you recall soon after the next meeting after the meeting at which Judge Thompson claimed this resolution had been passed do you recall Clem Adams asking each of the directors present if the resolution had been passed at the previous meeting? A. I don't remember.

Q. Do you recall him asking Dr. Marvel if it had been passed and Dr. Marvel replying no and Dr. Youngman if it had been passed and Dr. Youngman saying no, I. G. Adams if it had been passed and him saying no, Mr. Kuehnle and he said no and Clem Adams himself said no and then he asked you if it had been passed and you said

you didn't remember, couldn't say, and he asked Judge Thompson and Judge Thompson said yes? A. I don't recall that.

The Vice Chancellor: Who was making those inquiries?

Mr. Bourgeois: Secretary, Clement J. Adams.

Q. Do you say that colloquy didn't take place at the next meeting after Clem Adams found that on his desk? A. I don't say that.

Q. Beg pardon? A. I don't say that.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. First with reference to Eva Davis Dodd. You have said that she is a sister of yours or a sister-in-law? A. A sister-in-law.

Q. Is she here? A. No.

Q. Do you know the reason why she is not? A. Her health is not good; she wouldn't be able to appear as a witness.

Q. You have been asked about the minutes of the company and the books whether you had access to them at all, deeds and so on. I want to ask you whether or not the condition of the minutes of the company, written up and so on, was ever brought to the attention of the board, and, if so, what was the condition within your knowledge at different times? A. It was a matter of frequent discussion the minutes were not kept up; sometimes they were years behind.

Q. When was it that you first learned that the directors or any of them repudiated the adoption of the so-called Thompson resolution? A. Well, I don't know. I think in August seventeenth, 1909, I first learned that they proposed to keep this stock which they had taken as collateral.

Q. Now, with reference to sales of land; do

you remember at or about the time of these loans or within the one year given for the repayment of the loans or the redemption of the stock, according to the resolution, there had been any large sale of any portion of the lands of this company to Mr. Bacharach? A. Mr. Isaac Bacharach bought a block of land.

Q. For how much? A. Oh, I think it was twenty some thousand dollars.

Q. Twenty-two thousand dollars, wasn't it? A. Very likely.

Q. And was a deed to him ever made for it? A. I think he sold it before a deed was delivered.

Q. At what advance? A. I don't know, a few thousand I think.

Mr. Bourgeois: Two?

A. A few thousand, I think.

Q. Wasn't it seven thousand dollars advance in the price of that block before the time came for the delivery of the deed?

Mr. Bourgeois: More than that, Judge.

Mr. Gaskill: It was more than that? As long as you admit that, won't you admit, George, that the sale was made July tenth, 1899. The ledger will show I suppose, doctor, won't it?

Q. Judge, I hand you the company's ledger under the account of mortgages received, page 28, and ask you to look at that first item and see if that will help you to fix the date? A. No, I didn't know enough of that to testify.

Mr. Gaskill: Property was sold November thirteenth, 1899. That is when the mortgage was received.

The Vice Chancellor: Was there any cash?

Mr. Gaskill: I think I will cover that;

I will fix that as July. In other words it was within the year for the redemption of that stock.

Mr. Bourgeois: Not that the money was received.

By Mr. Bourgeois: Q. The company only received forty some hundred dollars cash from that sale, didn't they? A. I don't know. I didn't handle the money or make any of the sales.

Q. During that same year? A. I simply know we sold a block and that he sold it in advance.

Q. During that same year, 1899, you owed Alvin Risley ten thousand dollars, didn't you? A. I think his bill was about seven thousand five hundred.

Q. I think it was ten thousand five hundred. The first one— A. I don't pretend to remember exactly. That can be shown, of course, by those who do know.

JOSEPH THOMPSON, a witness produced on behalf of the complainants, being first duly sworn according to law, upon his oath says:

Direct-examination by Mr. Gaskill:

Q. Judge Thompson you are one of the directors of the St. Leonards Land Company? A. Yes, sir.

Q. And have been since the organization of the company? A. Yes, sir.

Q. You are a stockholder now? A. I am.

Q. And have been during the whole existence of the company? A. I have been.

Q. What do you know, Judge, with reference to the value of the stock at or about the time these loans were made by directors to the com-

pany? Have you any personal knowledge of sales or transfers? A. I sold part of my stock I think in 1899. I am not sure.

Q. At what price? A. I sold it either at par or above par and I am not certain at this time.

Q. Did the stock stand the original incorporators and parties to the organization of this company at one hundred dollars or something less? A. My recollection is something less than a hundred dollars.

Q. And when you made sales to parties who were coming in, joining you in the enterprise, at what price were the sales made in comparison with what it stood the original incorporators? A. I don't know that I can speak with any positive certainity. The stock, I think, generally was sold less than its par value but at a price to correspond with what the original parties had paid, I am not sure. I think they paid a little bit more, however, than we did.

Q. Was the stock—what was the value of the stock from time to time after the incorporation with respect to whether it was worth more or less than at the time the loans were acquired? A. It never was worth less in my judgment.

Q. And the value of the shares depended as a matter of course on the value of the lands? A. Yes.

Q. What have you to say about the value of the lands from the time of the original purchase? A. I think the lands at all times was appreciating in value, sometimes more and sometimes less, depending upon money conditions.

Q. Some question has been raised here about the fact that the company did not readily dispose of its lands. What was the reason for that, if there was any, or if that condition existed? A. There were two reasons. I think one was that

the price fixed by the company for lots was too high, in advance of their market value, and in the second place I don't think there was any real estate agent in town that would advocate the purchase of these lots outside of Adams and Company.

Q. And why not? A. Because of it being necessary to divide their commission with Adams and Company.

Q. In other words Adams and Company had a commission on all lots sold? A. I think so.

Q. Adams and Company at that time consisted of I. G. Adams and C. J. Adams; they both were in that? A. They were both there; I don't know whether anyone else was connected with it.

Q. Did you attend the meetings of the company from time to time? A. Not always.

Q. When present what attention did you give to the affairs of the company? A. About the same attention, I think, as the other directors.

Q. Did you act as the counsel for the company? A. I don't know whether I did at all times, but frequently; I incorporated the company and from time to time did some work for them.

Q. Did you receive any stated salary as solicitor or counsel? A. I did not.

Q. Did you have occasion at any of the meetings of the company to notice the condition in which the minutes had been kept? A. I did.

Q. And what did you notice? A. That they were very badly and very indefinitely kept.

Q. Were they written up and presented in a written form in the book at each of the meetings of the company? A. They never were presented in a written form until several years after the organization of the company.

Q. Can you state from your recollection whether or not at any time there was any considerable

period when there were no minutes except the rough notes? A. There were no minutes entered in the minute book from the organization of the company until shortly prior to the time when the company was practically ready to liquidate and then they were written up at that time covering a period from the organization of the company until February twenty-third, 1904, and there never has been a minute written from that day down to the present in the minute book; that I have seen at least.

Q. When did you learn of the proposed loan by the directors to the company? A. I can't state just the time, but I presume about the time the loan was made.

Q. I note by the memorandum of the minutes produced under date of May nineteenth, 1898, when the resolution authorizing the president and treasurer to borrow ten thousand dollars was adopted, that you are marked as being present at the meeting. Do you recall that? A. I don't recall the meeting particularly. I recall the fact that the officers were authorized to borrow a sum of money for the purpose of paying some pressing claims against the company and I presume that was the meeting.

Q. At that time, Judge Thompson were you the president of the Second National Bank in Atlantic City? A. I was one of its directors.

Q. Was any application to your knowledge made to the Board of Directors for a loan to the company, St. Leonards Land Company? A. At what time?

Q. At or about that time or shortly thereafter for ten thousand dollars? A. I don't recall at this time whether such an application was made or not.

Q. Do you recall an application being made at any time by Dr. Marvel or C. J. Adams as a committee or either of them to your bank for a loan of ten thousand dollars on the stock of the company as collateral? A. Loans were frequently made by the Second National Bank to this company, but as to any specific amount asked for, I can't state.

The Vice Chancellor: I don't quite understand you; did you say loans had been made with stock as collateral?

A. Loans were made from time to time, whether collateral was used or whether it was upon personal endorsement, I am not sure. I think perhaps some loans may have been made in the latter part of the company upon just the company's note, but I am not sure. Loans were made, I am quite sure of that.

Q. The St. Leonards Land Company banked with the Second National Bank of which you are a director, kept their account there? A. Yes.

Q. At that time was the stock of the St. Leonards Land Company considered a good collateral? A. Where do you mean considered a good collateral.

Mr. Bourgeois: That is objected to, as it asks for a conclusion.

(Question withdrawn.)

Q. Were you present at the meeting of the Board of Directors when Dr. Marvel and C. J. Adams or either of them reported that they had been unable to secure the loan of ten thousand dollars from either of the two banks named? A. Not that I recall.

Q. Do you recall receiving any report from them either formally or informally, that is through any talk on the street to that effect? A. I don't know that I could recall anything

special. I have in my mind that it was unsatisfactory, I don't know just how, that there had been some difficulty in getting money and out of that grew the personal loans made by Dr. Marvel and the four other directors.

Q. Do you know when the action was taken which resulted in those loans being made by the directors upon the stock of the company as collateral? A. I only know what the minutes disclose. I wasn't present at the meeting.

Q. Do you recall any conversation with C. J. Adams at or about that time with reference to the loan of fifteen hundred dollars by these five directors upon the stock of the company as collateral? A. I don't think I do.

Q. Now how soon after the loans were made by these directors and the stock, two shares for each hundred dollars loaned, pledged as collateral, did you learn of that fact? A. I presume I knew it immediately; I don't know. Very soon undoubtedly.

Q. Now after that transaction, that is after these several loans had been made by the directors and the stock issued as collateral, was there any discussion in the board of directors meetings with reference to the redemption of that collateral or the return of it by these persons to the company? A. Not immediately; not for two or three years, I should say.

Q. And who brought it up then, as you recollect? A. Judge Endicott.

Q. How frequently? A. More than once; I don't know beyond that.

Q. After Judge Endicott had thus brought up this matter more than once at the directors meetings did you offer any motion or resolution with respect to this matter? A. At a meeting held February twenty-third, 1904, the matter was again

brought up by Judge Endicott and he insisted that this stock should be returned. That meeting was not a full board, as I remember now.

Q. Was there a quorum present? A. There was a quorum present. I don't think Mr. Kuehnle was present at the meeting and I don't think Dr. Youngman was present. At that meeting I suggested that there should be a compromise in the matter; that they should take the stock at par value rather than fifty cents on the dollar as had been done before. I said that the company had no right to sell its stock for less than par in that way and after considerable discussion a resolution was passed growing out of this discussion to the effect that part of this stock should be returned—

Q. How much of it? A. Half of it—and I was asked to put that in proper legal shape and I said that it would take some time to do it and I would have to have some data to do it and it was proposed I should do it and give it to Mr. Adams later, but on the assumption that it was there the matter was acted upon and adopted.

Q. Now passing over, for a moment some questions that ought to follow there I want to ask you when was it you first learned of it at all that the directors repudiated the adoption of this resolution? A. Well, I didn't know it until surely four years later.

Q. Now then going back, Judge Thompson, did you get the necessary data to enable you to put this resolution in shape and did you put it in shape? A. I went to Miss Freas who was a clerk in I. G. Adams's office and who had access to the books of the company and was familiar with the company, told her what I wanted and asked her to give me a copy of the stockholders and the

number of shares that each had. That was probably the day after this meeting or perhaps the day after that. She furnished me within a matter of a day or two the data that I desired. After that was furnished to me I dictated the resolution. I took that resolution and went down to C. J. Adams' office and handed it to him personally. He was sitting at his desk and that was three or four days after the meeting of February twenty-third, 1904.

Q. I show you exhibit C-4 and ask you if that is the paper which you thus prepared and took to C. J. Adams? A. Yes, sir, that is the paper with this exception it had the word "June" with blank date; that has been crossed out and October fifth there is a one apparently been scratched out, which is, in my judgment, C. J. Adams' writing.

Q. Are you acquainted with C. J. Adams' handwriting? A. I have seen it very frequently.

Q. And in your judgment that is his handwriting? A. I think it is. I have a copy of—

Q. I was going to ask you, Judge Thompson, did you find among the papers in your office a carbon copy of the resolution which you then prepared and took to C. J. Adams? A. There is a carbon copy and there is the list that Miss Freas loaned to me of the stockholders and it bears date February twenty-sixth, 1904, which was three days after the meeting when I was authorized to prepare that resolution.

Q. Is this the envelope in which those papers had been kept in your office ever since? A. They had been kept in there for several years and were not opened until there was some confusion over this and I knew that I had or should have a copy of that resolution and a copy of the stockholders and I found it in the desk that I use, in the

drawer, and opened it and found those papers just as I had put them there several years before.

The Vice Chancellor: Stockholders or directors you mean

A. Directors, I mean.

By the Vice Chancellor: Q. Let me ask you about this writing up here, whose handwriting is that? A. Well, I think that was Mr. Adams' writing.

Q. Whose is that October fifteenth in pencil? A. I think that is Mr. Adams' writing also.

Q. Neither of them are yours at any rate? A. No, sir.

By Mr. Gaskill: Q. And were they on the paper when you took it in there? A. No, they were not.

Q. Judge Thompson did I understand you this paper which you have handed me is a carbon copy of the resolution made at the time that you made the one that you took to Mr. Adams? A. It is.

Q. And you kept this in your office files or in your office ever since? A. Yes, sir.

Mr. Gaskill: I will have that offered in evidence and marked Exhibit C-8.

Said paper marked Exhibit C-8.

Q. This list of the stockholders, is this the list that was handed you by Miss Freas at the time that you speak of? A. It is.

Q. And has been in this envelope with that carbon copy of the resolution ever since? A. Ever since.

Q. And that bears on it the date; was that date on it at the time you were given it? A. When she handed it to me it had that date.

The Vice Chancellor: I guess he meant stockholders.

A. Yes, stockholders; I thought you had reference to directors' meetings. That memoran-

dum shows issued to Dr. Youngman two certificates of thirty shares each. As a matter of fact one of those was never delivered to Dr. Youngman and sometime after the issue of the first certificate a duplicate was issued to Dr. Youngman and subsequently the certificate that Dr. Youngman should have had was found evidently and returned and is marked canceled in the stock book.

Q. So that instead of footing up one hundred and eighty shares there to six people repeating Dr. Youngman's name twice, it should be one hundred and fifty? A. Should be one hundred and fifty, but at that time the books showed that Dr. Youngman had sixty shares instead of thirty, which was an error.

Mr. Gaskill: This stock list bearing date February twenty-sixth, 1904, I will offer in evidence and have marked Exhibit C-9.

Said list marked Exhibit C-9.

Q. The envelope which you handed me, Judge Thompson, which has on the back of it St. Leonards Land Company is that the envelope in which you had kept those two papers in your office. A. It is.

Q. And is it in the same condition now except age as it was at that time? A. Well, it is with the exception it is soiled and the flap of the envelope is broken off by reason of its being opened so often.

Mr. Gaskill: We will put the flap inside with the papers and I will offer the envelope in evidence and have it marked Exhibit C-10.

Said envelope marked Exhibit C-10.

Q. At any time after you learned that the resolution was repudiated, your resolution, did you

go to C. J. Adams' office to make any inquiry concerning the minutes? A. I did.

Q. When was that? A. I can't fix the date, but it was about the time that the company was ready to commence paying its dividends, liquidation of the company.

Q. Please tell to the Court what occured at that time. A. I first went to the office and Mr. Adams wasn't there. I saw Mr. Wright and asked him for the minutes, and he said—I can't repeat his exact language, but he told me, in a general way, that the minutes were not written up and he couldn't give them to me and he didn't feel like letting me see them in the absence of Mr. Adams, I left the office and went back later and then saw Mr. Adams. I asked Mr. Adams to see the minutes and he told me they were not written up. I asked him for his original data, memorandum, and he got it out, took it out of a safe, and they were held together by some sort of a clip with a spring in it, there was quite a large bundle of papers and I asked him to look through the minutes, that I wanted to find this resolution. He said that there was no such resolution there. I told him there was or should be and after a good deal of trouble and my insisting upon it he consented not to let me have the minutes but to go over them himself and in turning them over I found among the papers the original which is in evidence. I said, "That is the paper that I want." I then asked him to show me the date of that minute. He declined to do it, closed the papers together and said he wouldn't show it to me.

Q. Judge, do you remember one occasion at a meeting of the board of directors when either you or Judge Endicott wanted to see the minutes

and papers and were refused and there was a pretty hot time in the old town? A. I remember it very well.

Q. When was that, Judge?

Mr. McCarter: I object as irrelevant and immaterial.

The Vice Chancellor: Judge, have you any definite purpose?

Mr. Gaskill: Yes, for the purpose of showing the action of these five directors and the secretary, who was one of them, in refusing access to the books, questioning their good faith and their sincerity.

Objection withdrawn.

A. That was about the time of the commencement of the liquidation of this company.

Q. What was it took place that night? State the circumstances as near as you can recall them.

A. It would take a long while. It covered a period of about five hours.

Q. Well, I don't care about the whole of the quarrel that night or the discussion, but what took place with reference to the papers themselves. In the first place where was the meeting held? A. It was held in Mr. Adams' office.

Q. C. J. Adams' office? A. Yes.

Q. Weren't the papers of this company in his safe in the room in which we were meeting and

A. Yes, I demanded the minutes and he said he couldn't tell me where they were. I said I could tell him where they were if he would open the safe in the room in which we were meeting and told him they were in there and told him the side of the safe in which they were deposited. He wouldn't open the safe and I demanded that it be opened, demanded of Dr. Marvel, the president, that he demand that the safe be opened and the minutes produced and there was considerable confusion over it.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. What did you want of the minutes, Judge? A. I wanted to show this resolution which is in evidence.

Q. The one that is Exhibit C-4? A. That is the one, yes.

Q. Now I understood you to say that you knew about the original loan from its inception and knew about the stock having been pledged for security within a couple of years thereafter? A. I think I did; yes, sir.

Q. Now, Judge, what effort did you make to secure this stock to be returned to the company, if any. A. Never made any until—I never made any effort, so far as I can recall, until I suggested the compromise which was in 1904 when that resolution was prepared.

Q. The compromise in the resolution offered in evidence, C-4? A. That was my suggestion, be compromised in that manner.

Q. Why did you suggest a compromise of the matter? A. Because I knew these men had loaned the money at a time when there had undoubtedly been difficulty in getting funds and thought they should have proper consideration in the matter and I wasn't willing the stock should be taken away from them any more than leaving them owing this stock at its par value.

Q. And in the resolution whenever that was offered you proposed that they should have retained of it one-half? Now you say that was when? A. I say that was at the meeting on February—I think it is twenty-third—1914.

Q. Now what other business was transacted at that meeting, Judge? A. I don't know of anything special. That meeting followed an annual meeting of the stockholders, an annual meeting of the stockholders was rather unusual, I think, in that company.

Q. When was that annual meeting held? A. I rather think just preceding the directors meeting, although I won't state positive.

Q. And was the question of this stock that they had taken discussed at the annual meeting? A. There were none present at that annual meeting, so far as I remember, except those who were directors and were immediately present at the directors meeting.

Q. But I say was the question of this loan discussed there at the stockholders meeting? A. I couldn't say about that.

Q. Do you know whether it was discussed at the stockholders meeting or the directors meeting? A. It was discussed, I know, at the directors meeting because out of that discussion I was asked to draw this resolution.

Q. But I am trying to find out if it also was discussed at the stockholders meeting? A. I couldn't answer that question.

Q. Were the stockholders' meeting and the directors' meeting held separately or were they all held together? A. I think the one followed the other.

Q. All one meeting, wasn't they? A. No, not one meeting. They formally organized and adjourned undoubtedly and then proposed and proceeded by the—I am giving only my recollection, Mr. Bourgeois.

Q. Beg pardon? A. I say I am stating as I remember. The minutes will—

Q. You don't recall specifically? A. No.

Q. Now why did you not follow up this resolution C-4 and see that the stock was returned if you understood that the resolution had been passed? A. I knew that the resolution had been passed.

Q. Then why didn't you follow up the resolution and see that the stock was returned? A. Because I supposed it would be returned and knew nothing to the contrary until probably four years later.

Q. That was in 1908? A. Well, I am fixing the time as late as that; I can't tell definitely. Judge Endicott informed me first, as I remember now.

Q. Let me ask you, Judge, if this resolution that you speak of under date of, C-4, wasn't from the following meeting of March third, 1908? A. It was not. It was done practically four years before that.

Q. Now what was the object or why did you want a list of the stockholders of the St. Leonards Land Company in order to prepare a resolution that these five directors return fifteen shares of their stock? A. I had to have more than that; I had to know the time when the meeting was held which authorized this stock to be issued to these men as collateral and I had to also have a copy of the resolution which was passed ratifying that at a still later date. I had none of the data.

Q. I can understand, Judge that you would want that data, but I want to know why you should have or why you should want a list of the stockholders? A. Well, I wanted to know just how much each of these gentlemen had. I don't know whether that was the reason for my getting it or not, but I know when I got the data I asked for it, I asked for a list of the stockholders.

Q. Now the data you had to have in order to draw the resolution was a copy of the resolution of October fifteenth, 1898 and also the date of the meeting and the loan? A. Yes.

Q. Now where is that data? A. I can't tell you.

Q. The data you got for the purpose of drawing this resolution? A. I don't know.

Q. Why was that not put away in the envelope with this list of stock if the list of stock and this resolution were a part of the same transaction? A. I can't tell you why it was not.

Q. Now Judge, didn't you get that list of stockholders for some other purpose and not for the purpose of preparing this resolution? A. No, sir; I got it at the same time and got it for the purpose of the preparation of that resolution.

Q. Why did you need to know the stockholders and the number of shares they held? A. It may have been that I wanted to personally know about it.

By The Vice Chancellor: Q. I might want to? A. I wanted to know in relation to this stock that these men had.

Q. Check up this stock issued to these men to see what had become of it? A. I asked for this at the same time.

Q. To see what had been issued to them?

Mr. McCarter: Said he knew each had thirty shares, ought to have fifteen.

A. I knew it in a general way; I never saw them have it.

By Mr. Bourgeois: Q. You had known it for two years in 1904? A. I understood so, yes.

Q. If you wanted to convince yourself about the stock having issued you, of course, would have referred to the stock book yourself; that would have showed that had been issued? A. I don't know whether I could have gotten the stock book; the minutes couldn't get.

Q. Did you ask for the stock book? A. No, I didn't ask for it; I went to Miss Freas and told her what I wanted and she brought me the data and with it was that list.

Q. As I understand you the fact that originally I. G. Adams had two hundred and fifty shares and Clem Adams two hundred and fifty-seven and Philip Marvel as trustee had three hundred and sixty-one and Dr. Youngman had one hundred and four shares had nothing to do with the resolution that you prepared? A. Certainly not.

Q. And the only data that you received from Miss Freas that had to do with the resolution that you prepared was a copy of the resolution appearing in your resolution as follows: "Resolved, that each director borrow the sum of fifteen hundred dollars," etc. and the date on which the loan was originally made? That is right, isn't it? A. No, not entirely; I think I would want to know positively whether this stock was issued to these men.

Q. Well, I thought you said a little while ago that you knew that from about two years after the stock had been issued to them? A. I didn't know all of it, because Dr. Youngman had sixty issued to him.

Q. How much? A. Sixty, so appeared at that time, but that was an error and shouldn't have been but thirty.

Q. And you understood he only had thirty? A. That was my understanding.

Q. And when you prepared the resolution you drew it on the theory he had thirty? A. Certainly.

Q. Then what did the fact that Dr. Youngman had sixty shares have to do with it? A. Didn't

have anything to do with it. I haven't said it did.

Q. I haven't said that. I am just trying to find out, Judge, what relation this list of stockholders could have had to this resolution? A. Probably none.

Q. Can you explain it any more lucidly than you have already done? A. Well, I can go all over what I have said; I will do so.

Q. No, I don't mean for you to repeat what you have said before? A. Then I can't help you.

Q. Now who filed these papers in the envelope in which you say they have remained during all these years; can you tell me? A. I did.

Q. And who drew in fact the resolution for you, if you know? A. I think it was done by Harry Raup, who was a stenographer at that time and whose minutes after he left the office was all destroyed.

Q. Do you know—was the resolution drawn from your dictation? A. I dictated that resolution.

Q. What became of the data that you received from which you drew the resolution, that is the data that you received, the date of the resolution or date of the loan and the resolution that was actually passed; what became of that? A. I told you a moment ago I didn't know.

Q. Don't know. How did Miss Freas learn, if you know, that this meeting had been held in June of 1898? Do you know? A. I do not.

Q. She gave you that as the date? A. I must have received it from her.

Q. Now, you say that they couldn't sell the real estate down there because Israel G. Adams and Company were the exclusive sales agents. I understood you to say that is one of the reasons? A.

I said that was one of the reasons why it was difficult to sell, I think.

Q. The first sale of property you made down there was the property between Cambridge and Cornwall Avenues, the Herring property? A. I couldn't tell.

Q. You remember when the Herring property was sold, don't you? A. I remember it was sold, but not when.

Q. And that was sold through Mr. Bacharach, wasn't it? A. I don't know.

Q. But that was a full block of land and was a large sale, was it not? A. I think it was a full block, yes.

Q. And extended from Atlantic to Ventnor and from Cornwall to Cambridge? A. From Atlantic to Ventnor, but I am not sure about the other avenues.

Q. Now the next large property you sold was the Penrose property extending from Dorset to Dudley and extending back about two hundred and fifty feet from Atlantic Avenue? A. That was sold, I don't know when.

Q. And do you know that Mr. Devine sold that? A. I do not.

Q. Don't know who the agent was that sold that? A. No.

Q. They were the only two large tracks of land or considerable portions of land that were sold during the year 1909, were they not, by the St. Leonards Land Company? A. 1909?

Q. I mean 1899. A. Well, only what I heard here today that Mr. Bacharach negotiated a sale in, I think they said 1899, for a large tract. He personally bought I think they said.

Q. Judge, I understood you to say that loans were frequently made from the Second National

Bank. A. Perhaps not frequently; there were some loans made there.

Q. Well, the earliest loans that were made from the banks in Atlantic City were made from the Atlantic Safe Deposit and Trust Company, were they not? A. I may confuse the two institutions; I am a director in each institution.

Q. There was a loan made by the Atlantic Safe $2,000.00, later $4,500.00 little more than that—is that what you have in mind? A. Yes, loans were made. May have been made in either institution because as I say I was a director in both.

Q. The first loan that was made by the Atlantic Safe was a loan of $3,000.00 made in February, 1902, was it not? A. I couldn't tell you.

Q. And the next loan was a loan of $3,500.00 made by the same institution in February, 1904? A. I presume the books will show.

Q. And the next loan was a loan of $4,000.00 made by the same institution in September, 1905, or don't you know? A. I don't know. I know there were loans made different periods.

Q. Do you know whether or not those loans were made upon the collateral of the company alone or were they personally endorsed as well as the collateral of the company? A. I am rather inclined to think there was a personal endorsement by some of the directors; I am not sure.

Q. And there was no collateral given with them, I think, was there Judge? A. I don't recall any collateral having been given for any loan. I think generally it was a personal endorsement.

Q. Did you individually ever endorse any of those notes? A. I can't state at this time. I may have.

Q. I understood you to say that the company couldn't sell its stock below par; was I correct in that? A. It had no right to sell it below par.

Q. But it did sell it all below par, didn't it? A. I am rather inclined to think Louis Kuehnle had to pay par for his, if I remember right. He wasn't favored like some of the rest of them. I may be wrong in that.

Q. If he did he is the only one unless Dr. Youngman paid par for some of his? A. He is the only one I know of that paid par and I may be wrong about him. I rather think he paid par, though. Paid as much as par, maybe he paid more.

Q. It was thought, up until 1899 that they might sell the stock for less than par, wasn't it? A. I don't know, Mr. Bourgeois. The only stock that I recall that was actually sold below par was the Disston stock and there were some concessions made there because he had agreed to take a considerable amount of stock, but the friends of I. G. Adams and Captain Reed and Wilson and others that got their stock below par I don't think I knew anything about. I don't recall knowing anything about those people, but the Disston matter I think I remember.

Q. Well, Judge, everybody's friends who had friends who would buy that stock got it below par, didn't they? A. Well, I don't know; I didn't sell any except half of my own holdings, which was small in the company and that I got par or more for it.

Q. You are a stockholder at the present time? A. I am.

Q. How many shares now? A. I am not right sure; I think I bought one hundred and twenty shares sometime before the liquidation of the company, about the time, well, before they made the wholesale sale of the property and I had, I think, before that about eighteen shares.

Q. You had thirty-five and you sold seventeen, I understand, about what year was it? A. Oh, I

think about two years after the organization of the company, perhaps. I think I bought one hundred and twenty shares at the time Mr. Bacharach and one or two others came to me.

Q. Now you said that some one at the meeting suggested you reduce the resolution to writing and couldn't do it at that time, but did prepare it later. Who was it proposed to you that the resolution should be reduced to writing? A. I don't think I said anyone proposed to me. It was the general conversation that it should be considered as before the meeting and I stated the preparation of the resolution was important and I must have the data to do it and I wanted to dictate it to a stenographer and out of that grew the reference of the matter to me to prepare it.

Q. Why couldn't you get all of that information that you desired right from the secretary in the meeting? A. Mr. Bourgeois, there never was a time at any meeting of this company when any individual that I know of could have got access to the minutes of the company. If any member did, I don't know it.

Q. What I mean is this, why couldn't you have gotten or got from the directors at the meeting the date on which the loan was made? They knew it didn't they? A. No, I don't think anyone there at that time had knowledge enough to give me the information.

Q. Why couldn't you have gotten from them the copy of the resolution if they had desired to have this put in the form of another resolution? A. Well, I don't know whether the directors had copies of the resolution or not.

Q. What I mean is this; if the majority of them there wanted this resolution prepared that you later prepared, why wouldn't they get for you the

data from which it was prepared? A. They probably would have had the same difficulty of getting access to the loose minutes that I had. There was repeated effiorts made to get the minutes written up and have them before the meetings and we never did succeed.

Q. Judge, tell me why it was that you didn't make inquiry between the time of passing the resolution that is the offering the resolution C-4 and 1909 to find out if that stock had been transferred? A. I supposed it had been returned.

Q. Just assumed and rested on that? A. I had no doubt of it because of that resolution.

Q. Now, Judge, I want to ask you one other question and I think that is all. I want again to call your attention to the meeting of March 3d, 1908, the last paragraph of which reads as follows: "The matter of loans made to the company under a resolution in which Dr. Youngman, Philip I. Marvel, I. G. Adams, Louis Kuehnle and C. J. Adams advanced $1,500.00 each with thirty shares of the company's stock as collateral was discussed as to the redemption of the same but no action was taken." Now I want now to call your attention to the meeting of what I think was August the 24th, but which appears here as August the 17th, as follows: "On motion of Judge Endicott, seconded by Joseph Thompson, that the five directors who loaned $1,500.00 each to the company and who received thirty shares of collateral be requested to return fifteen shares of the same and accept 6 per cent interest. On the call of the yeas and nays the motion was lost, two voting in favor and five against. Yeas, Thompson, Endicott; Nays, Adams, Kuehnle, Marvel and Youngman." And ask you if the resolution C-4 wasn't introduced or rather prepared soon after March

3d, 1908, and if it did not afterwards become a question about its having been passed and thereupon was again reintroduced by Judge Endicott, seconded by yourself on August 17th, 1909? A. Well, your question is so long and involves so much.

(Question repeated.)

A. No, that grew out of the agitation or the question of what had been done four years before when there was a dispute as to whether that resolution had passed in 1904.

Q. If the resolution that you prepared had been passed in 1904 demanding them to turn back the fifteen shares, I say if that had been passed, then why was the resolution of August 17th, 1909 introduced by Judge Endicott and seconded by you compelling them to return back the one hundred and fifty shares? A. Because it was then known that they had not complied with the original resolution of 1904 and that was a meeting, I think, when there was a good deal of confusion and well, it had then been suggested that they return all of the stock—

Q. I misled you in that. Let me correct it. You may want to change your testimony. To each turn back fifteen shares. It is only the half of it. I said all of it. This resolution provided they turn back fifteen shares each. Now then, if they had—the company had passed the resolution that they should turn back that stock, if it had actually been passed, I want to know why the latter resolution, practically in the same language was passed in August, 1909? A. There was no resolution passed in practically the same language. At that meeting it was known that the stock had not been returned and I presume that was an effort to get them to do it at that time.

Q. Well, why was it necessary to request them to turn that stock back again if they had voted long before to turn it back? A. Because at that meeting the directors said, with the exception of Judge Endicott, that they had no recollection of any such meeting, that is the one in 1904.

Q. And Judge Endicott said he didn't remember whether it was passed or not, didn't he? A. No, he did not.

Q. What did he say? A. He remembered it.

Q. He said it had been passed? A. I don't know just his language but he remembered the resolution.

Q. Do you mean that he remembered the resolution had been passed? A. I think so.

Q. Now, Judge, the point I am trying to— A. Dr. Marvel, C. J. Adams, I. G. Adams and Mr. Kuehnle and Dr. Youngman said they had no recollection of it.

Q. The part I am trying to get at is this— A. And probably part of them hadn't because I don't think two of them were present at the meeting when it was passed, that was Dr. Youngman and Mr. Kuehnle.

Q. Judge the part I am trying to get at is this as to why you and Judge Endicott, believing that the resolution which you prepared had been passed and it had become a fixed fact so far as the action of the board was concerned, that fifteen shares of stock should be returned, turned back into the treasury, then why should you have put the same resolution again in 1909 requesting to have it turned back and have it turned back? A. I didn't put the same.

Q. Practically the same. A. No, it is very different.

Q. What is the difference? A. Why one states they had signified their willingness to return the

stock and by reason of that there should be reissued to them half the amount there had originally been issued to them. In that respect it was entirely different from the other.

Q. What I want to find out is why you didn't stand upon the resolution you had prepared, if it had been passed by the board, because it would seem from the minutes of the August meeting, 1909, that there was a wide deviation and it would also seem but a small chance of having that second resolution, that is the resolution offered in 1909, passed. Now if it had been passed previous to that time, the one that provided for the return of the fifteen shares, even though different in language, why was the resolution introduced requesting them to return that same stock in August, 1909? A. I don't know unless it was to see whether they would be willing to do it. I don't know any special reason.

Q. Now can you tell me, Judge, whether or not it was a yearly occurrence to borrow money, for this company to borrow money to pay taxes? A. Well, if they paid their taxes promptly every year perhaps it was. I am not sure but what they were in default sometimes; I don't know.

Q. Do you recall at the February meeting, 1904, a motion was made to borrow $3,500.00 on a note to pay taxes? A. Well, I don't recall it particularly, no. They did, I know, borrow money to pay taxes at different times.

Q. I want to read this minute, if the Court please under date of February 23d, as follows: "On motion the president and treasurer were authorized to negotiate a note for $3,500.00 for the purpose of paying taxes for 1903 and other bills now due." I ask you, Judge Thompson, if you recall that action having taken place at that time? A. I don't know that I can recall that par-

ticular action of the company. I know they authorized notes to be made to borrow money to pay taxes.

ALLEN B. ENDICOTT, re-called:

Direct-examination by Mr. Gaskill:

Q. Judge Endicott, you have said that you represented Eva J. Davis— A. Eva Davis Dodd; you better add that. Former name was Eva J. Davis and then became Mrs. Dodd, Eva J. Davis Dodd, to avoid confusion; she has been referred to as Eva J. Davis and also Eva Davis Dodd heretofore.

Q. To your knowledge was there ever any communication to her concerning this loan and the transfer of this stock as collateral? A. Not until just before the beginning of this suit.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Who conveyed the knowledge to her just before this suit? A. I did.

Q. Why didn't you do it before, Judge? A. I didn't think there was any occasion. I always hoped the stock would be returned.

Mr. Gaskill: You thought these were honorable men?

A. Of course. I think so now.

ISRAEL G. ADAMS, a witness produced on behalf of the complainants, being first duly sworn according to law, upon his oath says:

Direct-examination by Mr. Gaskill:

Q. Mr. Adams, you are one of the defendants to this suit? A. Yes, sir.

Q. And was formerly a stockholder and director of the company? A. Yes, sir.

Q. You have sold all of your stock, have you not? A. Yes, sir.

Q. To Isaac Bacharach? A. Yes, sir.

Q. At the time you sold that stock you knew there was a dispute about thirty shares you sold him? A. At that time?

Q. And you gave him an indemnity bond on that occasion? A. He asked for an indemnity bond on that occasion.

Q. And you gave it to him? A. I gave it to him.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. And Mr. Bacharach knew also there was a dispute about the shares? A. At that time, yes, sir.

Q. And he knew what the dispute was? A. I couldn't say as to that.

Q. Where is the indemnity? A. He has it.

Mr. Gaskill: I want to put on record, if your Honor please, the list of the present holdings of the company and the names of the persons, which has been verified by Mr. Wright over night in comparison with the books.

Clement J. Adams,	257 shares.
Philip I. Marvel,	237 shares.

They do not either of them include the thirty shares in dispute.

Isaac Bacharach,	190 shares.

Which does include the thirty shares of Mr. Adams which are in dispute.

Allen B. Endicott,	185 shares.
Joseph Thompson,	160 shares.

M. D. Youngman, 16 shares.
undisputed and thirty disputed.
Joseph W. Wilson, 50 shares.
Clarence L. Cole, 41 shares.
Harry Bacharach, 36 shares.
Thompson Irving, 35 shares.
Mordecai T. Endicott, the owner of thirty-
J. Estel Evans, 30 shares.
Fred C. Robbins, 25 shares.
Louis Kuehnle, 20 shares,
not disputed and thirty shares in dispute.
Bertha Hanstein, 12 shares.
Joseph H. Marvel, 12 shares.
Fred Ingraham, 10 shares.
Lewis Evans, 10 shares.
Eva Davis Dodd, 6 shares.
Charles P. Henry, 5 shares.
Lucius I. Wright, 3 shares.
J. Byron Rogers, 3 shares.

Amounting in all to 1638 shares.
including the one hundred and fifty in question.

The Vice Chancellor: Who are the complainants?

Mr. Gaskill: The complainants are Joseph W. Wilson, owner of fifty shares; Mordecai T. Endicott, the owner of thirty-five shares; J. Estel Evans, the owner of thirty shares; Fred C. Robbins, the owner of twenty-five shares; Eva Davis Dodd, owner of six shares; and Charles P. Henry the owner of five shares. In addition to that, if your Honor please, we shall insist that these complainants represent as well the other shareholders.

When I made my offers yesterday I think I made my offer of the books a little

more restricted than I intended. I think in offering the minutes I offered the minutes I referred to. I now offer the whole minute book so that there may be no question.

Mr. Bourgeois: We have no objection. Introduce these minutes too, if you want to, Judge?

Mr. Gaskill: And also that bundle of loose memorandum of minutes of which we have an index.

Also in offering the ledger account yesterday my recollection is that I offered one account in the ledger which showed the account of Dr. Marvel as trustee in connection with this stock. I wish to offer the whole ledger in evidence.

Mr. Bourgeois: Won't you give to us what pages you have reference to? We are entitled to know that.

Mr. Gaskill: I don't know there is any page there, Mr. Bourgeois.

Mr. Bourgeois: We have no objection to the book going in evidence, but we are entitled to know what pages he has reference to.

Mr. Gaskill: I offered that page in evidence and that record showing it was the company's stock, being dealt with and recorded on the company's books and all the other pages where there are any sales of that stock, receipts of money on account of it that also would be pertinent to the one page that I specifically offered.

Now, if your Honor please, I don't know it is necessary, but I want to be sure I am right and I offer in evidence the original

answer filed by the defendants to the original bill and subsequently they filed an amended answer to the original bill. I want to offer that original answer and the amended answer.

The Vice Chancellor: I don't think it is necessary but you may consider it in.

Mr. Gaskill: Mr. Bourgeois, I wish you would produce to me the checks of the treasurer of the company which went to Mordecai Endicott and Eva Davis Dodd. I don't care about your doing it this moment. I offer them in evidence for the purpose of showing that the payment went to those two persons and was received by them and Charles P. Henry too.

Now, if your Honor please, I think admiral Endicott can be here in the morning and I have during the day received a telegram from the other complainant, whom I wish to call, that sickness in his family prevents him from leaving today. That is Charles Henry. Reserving the right to call these two, I am prepared to rest and as it is ten minutes to five, if the counsel on the other side prefer I should call them before they go on with their case, I am sure I can have them here in the morning.

Mr. Bourgeois: If your Honor please, let me make a motion to open up the interlocutory decree against Dr. Marvel. He says they entered an interlocutory decree and yesterday I hadn't looked at the answer. I find the answer is filed by all these people and answers the direct allegations which is directed to Dr. Marvel and so that is Dr. Marvel's answer to those allegations, even though—

The Vice Chancellor: You mean he doesn't appear as an answering defendant?

Mr. Bourgeois: They said he doesn't; I think he did.

The Vice Chancellor: You think you omitted the name by inadvertence?

Mr. Bourgeois: I thought this was an answer by these men and Dr. Marvel as trustee. What I do is answer every one individually and answered every allegation.

Mr. Gaskill: If his answer is sufficient in his judgment there is no occasion for amending. I want to call attention to the Court that all the way through this amended bill after I repeated the names of those five people I repeated the name of Dr. Marvel, trustee, and there are distinct paragraphs where Dr. Marvel as trustee is charged with failure to properly perform and carry out his trust in which the names of the others are not mentioned and Dr. Marvel as trustee is made a party defendant as trustee in addition to being made defendant as one of the five and upon the amended bill sued a subpoena against Dr. Marvel as trustee and against the St. Leonards Land Company and it was served.

The Vice Chancellor: What trust are you referring to Dr. Marvel?

Mr. Gaskill: The trust of those four hundred and ninety-nine shares of which the one hundred and fifty shares are part. These one hundred and fifty shares were in his hands as trustee and we allege he did not properly perform his duties as trustee

when he allowed these one hundred and fifty shares belonging to the stockholders to pass out of his hands and control.

Mr. Bourgeois: What I say, if your Honor please, I think he designates him as trustee.

The Vice Chancellor: There will be no difficulty about that; if you want to answer for Dr. Marvel as trustee you have privilege to do so.

Mr. Gaskill: So there is no new matter and new points.

The Vice Chancellor: You may amend in that form if you want and have the decree opened. Of course, we want a full defence here.

Adjourned until Wednesday morning, April 3, 1912, 10:40 a. m.

Wednesday morning session, April 3, 1912.

Hearing resumed at 10:40 a. m.

Mr. Gaskill: I would like to enter on the record that certificates five and six made out to Philip Marvel, trustee, one for four hundred ninety-nine shares and the other for two hundred shares, bearing date March 20th, 1897, are in the certificate book, never having been detached and do not contain on them any memorandum of any transfers to any parties nor does the stub contain any such memorandum. Filled out and signed and never receipted for.

The Vice Chancellor: And stock was issued from that lot?

Mr. Gaskill: It will be admitted, I suppose, that stock was issued from that lot? That is in the proof.

Mr. McCarter: Yes.

FRANK SMATHERS, a witness produced on behalf of the complainants, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. Gaskill:

Q. Judge Smathers you are now the law partner of Judge Thompson? A. Yes, sir.

Q. And you are the judge of the District Court of Atlantic City? A. Yes, sir; I have that distinction.

Q. How long have you served in the offices of Judge Thompson or Thompson and Cole? A. I went there in 1903.

Q. 1903. I show you Exhibit C-4 and call your attention to the backing, blue backing on that paper that has the imprint of Thompson and Cole, rooms 15 and 17 Real Estate and Law Building, Atlantic City, New Jersey, and ask you if you can tell me whether that form of backing was ever discarded from the office of Thompson and Cole, and, if so, when and any new backing substituted or new form? A. This backer was used by Thompson and Cole when I went in the office in 1903. It was used exclusively in the office up until sometime—

Q. You mean 1903 or 1893? A. No, 1903. Did I say 1893?

Q. No. A. 1903 and used exclusively up until sometime in 1906.

Q. After 1906 what form of backing was used? A. The raised die.

Q. And was this used after the raised die? A. Never.

Q. Never was used afterward? A. No, because we ran out of them. I used them gradually and then I got them from a different company, a different form of die and we have used that die exclusively ever since, the raised die.

Q. Have you anything that helps you fix the date? A. Yes.

Q. What is it? A. I have a letter from Graham Chisholm Company dated November 3d, 1905 in reply to a letter which I wrote myself inquiring about the cost of a raised die. Following this letter we got the letter heads and then in 1906 or the year following we got the backers of the same die and I have a bill—I have gone over the files in the office and the first bill we ever paid to Graham Chisholm Company for any covers with a die attached to it was the sixth, eighth, nineteen hundred and six. That is the first bill we ever paid to Graham Chisholm Company for the covers.

Mr. Gaskill: I will offer this letter under date of November 3d, 1905 and the bill under date of six, eighth, nineteen hundred and six.

Said letter and bill marked respectively Exhibits C-11 and 12.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. Have you a copy of the backing sheet you got from Graham Chisholm Company? A. The kind we are using now, we have used that since 1906.

Q. Then do I understand you to say that the only two styles of backing sheets you used from

the time you went into the office in 1903 until the present time is that attached to the resolution and the one I now hand to you? A. I answer that in this way. We had a lot of these in the office and when they ran out then we began to use the raised die.

Q. And you used that style? A. We have used that ever since then and if we have ever used any of these I don't know of it and it was done—if we have ever used any of these I don't know anything about it. If there any in the office I don't know anything about it, but we thought we had used all up before we bought the new ones.

Q. (Repeated.) Then do I understand you to say that the only two styles of backing sheets you used from the time you went into the office in 1903 until the present time is that attached to the resolution and the one I now hand to you? A. I answer that yes with the qualification I just made, if there were any used I don't know of it. We have used the raised die ever since.

Q. Did you ever or was there ever a time when you used a raised die different from the raised die, different from the sample sheet which you now hold in your hand and which I will asked to be marked D-3 in evidence?

Said sheet marked D-3.

A. If there was any change made in the die I don't know, but we have used the raised die. May have been counsellors at law or attorneys and counsellors at law. Might have been some change in it.

The Vice Chancellor: But the improved style.

A. That is what I mean, raised style. This says room fifteen and seventeen Real Estate and Law Building. Some immaterial change like the

rooms might have been changed in the die. I don't know anything about it but so far as the raised die, we have been using exclusively since 1906.

Q. Were they all printed by the same concern? A. No, we tried to get them cheaper and I think we stopped Graham Chisholm and went to somebody else and finally Graham Chisholm said they could do it as good as anybody.

Q. In other words in 1905 you concluded that you would add a little bit of style to the office? A. Apparently.

Q. And that was apparently due to you? A. I was admitted to the bar in 1904 and I was then emloyed by Thompson and Cole and I began then to straighten out such things as the old dockets that didn't have any date on them and little other things, just thrown around in books and I began to straighten—

Q. Incidentally add a little tone? A. That was my idea, and I tried to do it and I tried to take down in the books; our seals were all placed away in the closet, put a little piece of paper on them, a stamp, and this was the last thing I did in the way of straightening out the office.

Q. Consequently when your backing sheets commenced to get low—(withdrawn). You first put the raised die on the letterheads? A. That is my recollection.

Q. And then when your banking sheets commenced to run low you concluded you would also have the raised die on them? A. That is it.

Q. Of course, Judge, it would be impossible for you to figure before hand just how many sheets you would need while the printer was filling the order? A. No.

Q. Consequently you had some on your hands? A. Might have been a few.

Q. Have a few; might have been natural to use the new and discard the old unless in a pinch you needed the old? A. My opinion is we was so proud of the new die we used all together; we didn't want to use the old. May have been same laying around there.

Q. So far as you know those weren't used after that time? A. They were not.

Q. Now when was this particular kind of backing sheets used, if you know? A. Mr. Bourgeois it was used in 1903.

Q. You are speaking now just of that type. You are speaking just of the non raised letters? A. Yes, that was used all together up until we got the raised letters.

Q. Now I want to ask you if you can tell me—that is one of Thompson and Cole's backing sheets—when that was used? A. That is when we first got, our new, Graham Chisholm Company.

Q. How long did you use that? A. That was the first that we got of the raised die.

Q. That was the first? A. Yes.

Q. Then this other, the one you have offered in evidence, wasn't the first? A. I am talking about the raised die. That is the Graham Chisholm; that is the people we went to after we threw these old dies away we went to the Graham Chisholm Company.

Q. Did you always have these of the same style, that is the color, was the same color? A. No, I think we had different colors.

Q. When did you use the bluish green ones? A. I don't know. That was the—I don't know the colors. It was only the style of the firm name that I have in mind whether it was raised or not raised. That is what I have in mind—I think we had some white ones once.

Q. Do you remember when that was used? A. That is the old form.

Q. When was that used? A. Before 1906.

Q. Before 1906; how long before 1906? A. I don't know but it was being used when I went there in 1903.

Q. Now what color backing sheet did you use in 1904? A. I don't know what color but we were using this form, either white or blue of the non raised.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. The paper which Mr. Bourgeois showed you from his office has the firm name of Thompson and Cole, rooms fifteen and seventeen Real Estate and Law Building, Atlantic City, New Jersey, printed on it, does it not? A. Yes.

Q. And the backing that was submitted with the raised head on it is Thompson and Smathers the new firm? A. Yes.

Q. When did you become a member of the firm in place of Judge Cole? A. I think it was February, 1910.

Q. Was the letterhead— A. February, 1911; last year.

Q. Was the letterhead or imprint of Thompson and Cole of the same character of type as this Thompson and Smathers on this paper shown you? A. Yes.

Q. And that is what you mean by the raised? A. Yes. The most I believe is the die.

ANDREW K. LITTLEFIELD, a witness produced on behalf of the complainants, being first duly sworn according to law, upon his oath testifies as follows:

Direct-examination by Mr. Gaskill:

Q. Mr. Littlefield, you are the stenographer

taking the transcript of the proceedings in this case, are you not? A. Yes, sir.

Q. Are you a member of the bar? A. No, sir.

Q. Have you at any time been in the employ of Judge Thompson or Thompson and Cole? A. Yes, sir.

Q. When did you enter their employ? A. Sometime in September 1907.

Q. 1907? A. Yes, sir.

Q. In what capacity? A. Stenographer.

Q. How long did you remain in their employ as stenographer? A. Until the dissolution of the firm in February, 1911, and then—

Q. That is at the time when Judge Cole was appointed to the Circuit Court? A. Yes, sir.

Q. During the time that you were in that office what can you say with reference to the character of imprint on the backings of papers used by the firm of Thompson and Cole? A. They used the raised backings or the embossed.

Q. I show you a paper that has been marked as exhibit D 3 having the embossed backing of Thompson and Smathers, counselors at law, Law Building, Atlantic City, New Jersey, and ask you to tell us in what respects the embossed backing or imprint of Thompson and Cole resembled or differed from this? A. Well, had Cole in the place of Smathers and I think Real Estate and Law Building in the place of Law Building.

Q. Was it an embossed imprint similar to this or raised as it has been called? A. Yes, sir.

Q. When you went there do you know whether there were any of the old style of backings there similar to that on Exhibit C 4—same as on C 4? A. We had some white backings with this same name on, printed, and I think a few of these blue ones.

Q. What became of them, if you know, those backings that were printed similar to this on C 4? A. I threw them away.

Q. Do that yourself personally? A. Yes, sir.

Q. Just describe what you mean by throwing them away? A. Threw them in the waste-basket. There were two or three in the bottom of the desk and probably a dozen of the white ones, which I used on some stuff of my own, turned backwards, and threw the others away.

CROSS-EXAMINATION by Mr. Bourgeois:

Q. When did you throw them away, Mr. Littlefield? A. Well, I couldn't exactly—I know it was after we moved out into the hall there.

Q. And you moved out into the hall when? A. In January—I don't know what year?

Q. Of 1908, wasn't it? A. Either 1908 or 1909.

Q. Into the hall on January 1908 or 1909. Where did you keep—where were the backing sheets kept in Thompson and Cole's office? A. In my desk.

Q. In your desk. And in the same place where these backings sheets of the blue and white color of which you speak were kept? A. Yes.

Q. And in the same drawer? A. Yes, sir; but the blue and white printed backers were underneath.

Q. Now, how many stenographers were there in Thompson and Cole's office when you went there in 1907? A. One besides myself.

Q. And who was that one? A. Miss Edna Rogers.

Q. And is she still with them? A. Yes, sir.

Q. That is with Thompson and Smathers at the present time? A. Yes, sir.

Q. Do you know how long Miss Rogers has

been with Thompson and Cole and Thompson and Smathers? A. I think she went there in the spring of 1907.

Q. Prevous to your going there? A. Yes, sir.

Q. And did she also having backing sheets in the drawer of her typewriting desk? A. No, sir.

Q. All in yours? A. Yes, sir.

Q. Did she have access to the backing sheets in your desk? A. Yes, sir.

Q. And there were times, of course, when you were not present that Miss Rogers was present; is that true? A. Yes, sir.

Q. Times each day when she was present and you were absent from the office, weren't there? A. Yes, sir.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. Mr. Littlefield, did you ever use any of those old backings after the new ones had been purchased and placed in your drawer on top of the few old ones that you have spoken of? A. Well, the new or the raised letters were there when I went there; I don't remember of ever using the others.

Q. How many of the new or raised ones was there in a pile or bundle on top of the old ones? A. Well, I don't know how many, but we got them in five hundred lots.

Q. And was the whole lot put in the drawer? A. Yes, sir.

Q. So that to get an old one they would have to reach down underneath this large pile of the new embossed backings, would they? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. Bourgeois:

Q. Mr. Littlefield, in some law offices they use

the backing sheets until they are pretty well gone and occasionally the stock runs out and they have to use some old ones; did that ever happen in your office? A. I don't think so.

Q. Are you prepared to say that you never did run out of backing sheets of the particular kind that you had? A. Yes, I think I can say that.

Q. Now, let me show you two backing sheets of Thompson and Cole, both with raised letters, one having at the bottom of the card the names "Graham Chisholm Company" the other not having those words at all at the bottom. Are you prepared to say which of those you used first? A. I don't think we used this after I went there.

Q. That is this with the statement Graham Chisholm Company on? A. Yes, sir.

Q. Did you ever see any of those backing sheets at all? A. I don't remember whether I have or not.

Q. Did you ever use any of them? A. I don't remember that.

ALLEN B. ENDICOTT, re-called:

By Mr. Bourgeois: Q. Judge, you testified yesterday that you sold some of your stock to your sister Kate? A. Yes.

Q. And that you acted as her attorney? A. No, I didn't say I acted as her attorney. I said she had no other attorney.

Q. Now your brother Mordecai was stationed at this time, that is 1908, in Washington? A. I am not certain; I think so.

Q. Did you negotiate the sale of the stock for your sister with your brother? A. I think not.

Q. How was that done? A. By them direct.

Q. And to whom was the stock—A. I knew of it, of course.

Q. And to whom was the stock of your brother delivered after your sister Kate had transferred it to him? A. Well, I don't know. That is I don't know—it was delivered to him and has been owned by him and held by him, but whether he received it direct from the company or whether I received it and receipted for him I am not certain.

Q. I want to show you certificate—I see on examination it was the other certificate; it was two certificates, one of those you received and the other you did not, for your brother? A. I don't remember.

Q. I will show you the one for five shares and from same you will refresh your recollection. A. That is the Dr. Henry five.

Q. Oh, yes, the Henry five? A. I handled that undoubtedly.

Q. The other doesn't appear who receipted for it. In fact nobody receipted for it. I want to call your attention to certificate 140, which is 138, for the certificate to Eva Davis Dodd, and ask you who receipted for that? A. I did.

Q. And you were acting for her at that time? A. In that respect.

Q. And going back to the certificate of Kate B. Endicott you conveyed that stock to her direct, I think was from you to her? A. Yes, I think so.

Q. And you say she had no other attorney. Now who transacted that business she had to transact, who looked after it for her? A. I presume I attended to the transfer.

Q. And at the time the certificate was transferred to her do you know how she got it, who handed it to her? A. No, I can't remember.

Q. Do you remember whether or not you receipted for it for her? A. I don't recall; I should think that was very likely.

Q. I show you the certificate issued to Kate B. Endicott for the thirty shares and ask you if that is your signature to the receipt? A. Yes.

Mr. Bourgeois: I want to offer this particular certificate in evidence; it reads as follows, stub, certificate attached: No, 108. Thirty shares issued to Kate B. Endicott in lieu of 32, 36 returned cancelled, dated April 9th, 1908; received the above described certificate. A. B. Endicott, attorney. April 11th, 1898. Returned and cancelled August 15, 1903.

Q. That is the original certificate to Kate B Endicott was returned and cancelled? A. What is the date of the issue?

Q. New issue certificate 125, the date of the issue to Kate B. Endicott is April 9th, 1898. Now, Judge, you say that you acted for your sister in this transaction. Do you mean by that in the transaction of receiving this certificate for her? A. Yes.

Q. And you forwarded it to her? A. Yes.

Q. And in that respect at least you acted as her attorney, didn't you? A. I should think so to that extent, yes, sir.

Q. Now your sister had some other estate besides this, had she not? A. Yes.

Q. And that required some business attention, did it not? A. Yes.

Q. And she wasn't a business woman, was she? A. Well, I think she was a pretty good business woman.

Q. Well, did she attend all that business herself

or did you attend to it for her? A. I attended very little of her matters. It has been attended to chiefly by other persons.

Q. Beg pardon? A. By Mr. Howell.

Q. And who attended to Mr. Howell's business; didn't you? A. No.

Q. Didn't you attend to all—Mr. Howell married another of your sisters, didn't he? A. Yes.

Q. And she had an estate? A. Some, yes.

Q. And didn't you attend to her business? A. I don't think I ever had occasion to represent her in any matter in particular. I sold her, I think, thirty-five shares possibly the same date I sold these thirty to my sister Kate or it was sold by the, I think she bought in the early history of the company.

Q. Didn't you transact for your sister all of the law business which they had to transact? A. I don't recall any law business in which I represented them.

Q. What sort of business do you recall you represented them in? A. I recall this transaction now and I think I drew a will for one of my sisters.

Q. Which one do you recall? A. Kate.

Q. Now what other business did you transact for her? A. I don't recall any other legal business. I think they were fortunate enough not to require the services of an attorney often.

Q. Now what other business did you transact for her not legal business? A. Really I don't recall anything. There may have been. If you can refresh my recollection I shall be glad to tell you about it.

Q. Judge, I am not intimately enough acquainted with the family to tell you, who made the investments, who made your sister's invest-

ments for her? A. I don't think I ever made one except this one. I think Mr. Howell.

Q. And how soon after you received the certificate of stock was it before you delivered it to your sister? A. I think it was mailed soon. I remember a queer co-incidence. She thought she hadn't received it and sent word to me and I sent her on another batch of my stock, so she is holding double the amount.

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

Q. Was it any considerable time after the transaction? A. Certainly.

Q. And if it hadn't been she wouldn't have thought you hadn't delivered it to her? A. She said it was found in her possession and that is where I discovered I had sent stock twice.

Q. Have you any means of ascertaining or determining just when you did deliver the stock to her? A. No, I presume it was done at once. That is I know of no reason why I should have held it.

The Vice Chancellor: Is the other sister to which you refer a party complainant?

A. No.

Q. She sold the stock, didn't she? A. Her stock was sold to Bacharach and either held by him or Estel Evans and Fred Robbins.

Q. You have no means of knowing whether either Estel Evans or Fred Robbins got her particular stock, have you? A. I didn't say who got it. I said it went to Bacharach and was held by him or one of those other two gentlemen. Now I shouldn't say that because I think he let others have part of his holdings. I think Judge Cole has some.

Q. He got five hundred forty-five shares and then he transferred all excepting one hundred and ninety from that one certificate? A. Yes.

By Mr. Gaskill: Q. Judge Endicott, do you recall whether or not your brother-in-law, Mr. Howell, had anything to do with this matter of the sale of stock, the investment in the stock of this company by your sister, whether he advised or looked after the matter for her? A. I can't recall just how that was done. He has always attended, I think, to her business matters since their marriage.

Mr. Bourgeois: I have drawn an order opening that decree and I thought they would consent and they don't want to consent and I will ask your Honor to sign it.

Mr. Gaskill: If your Honor please, two witnesses whom I expect have not reached us by train. Their testimony is exceedingly brief and I can state and I am ready and willing to state just what I am going to prove by them and limit myself to the proof of those matters and if your Honor will permit me, I will state.

The Vice Chancellor: I don't want to force counsel on a question of that kind. I wouldn't try it without consent of the defendants. I wouldn't feel justified in doing that.

Mr. Gaskill: Then I ask for permission to call those two witnesses when they arrive.

The Vice Chancellor: I would rather, if the defence wants those witnesses to testify, I would rather take a postponement until the arrival of the train.

Mr. Gaskill: Admiral Endicott will be here on the New York train, at one ten and Dr. Henry left Philadelphia at 11 o'clock and will get here at 12:40.

The Vice Chancellor: I am powerless. I don't want to exclude any testimony from the case and I don't feel justified in compelling the defence to go ahead, without the complainant's case being concluded, against their own judgment. I don't see anything to do but wait.

Mr. Bourgeois: We will do this, if your Honor please, and the others will consent, we will put Mr. Stern on and prove the devolution of this stock, which we are gong to do, provided we are not required to go on further with our case until after all of complainants' witnesses have been sworn.

The Vice Chancellor: Go ahead with that part anyhow.

Defendant's Testimony

LOUIS E. STERN, a witness produced on behalf of the defendants, being first duly sworn according to law, on his oath says:

Direct-examination by Mr. McCarter:

Q. You are in the office of Bourgeois and Coulomb, Mr. Stern? A. I am.

Q. Attorney at law? A. I am, sir.

Q. Have you made an examination of the stock books of the St. Leonards Land Company to trace the devolution of the stock? A. I have.

Q. How far have you gone in that examination and what has been the result, what have you got before you? A. I have before me first a tabulation showing the amount of stock held by the defendants, the amount of stock held by the direct-

ors, the amount of stock held by the complainants and the amount of stock held by the stockholders not complainants to this bill.

Q. Now the directors defendants; give their holdings. A. The defendants hold eight hundred and sixty shares and the seven directors combined, that is including Judge Endicott and Judge Thompson, hold twelve hundred and five shares.

Q. Give their respective holdings? A. Judge Endicott, one hundred and eighty-five; Thompson one hundred and sixty.

Mr. Gaskill: That doesn't include the stock in dispute?

A. No, I am going to give that afterwards.

Q. Those are the holdings of the two individuals, Judge Endicott and Judge Thompson as it stands on the books. A. Clement J. Adams two hundred and fifty-seven shares; Philip I. Marvel two hundred and thirty-seven shares; M. D. Youngman one hundred and fifty-six shares; Louis Kuehnle twenty shares and I have I. G. Adams and I have got that charged to Isaac Bacharach, but I. G. Adams is responsible, one hundred and ninety shares.

The Vice Chancellor: Does that include the thirty shares in dispute?

A. Yes, that includes the thirty shares in dispute.

Mr. Gaskill: That is Isaac Bacharach does?

A. Yes.

The Vice Chancellor: All of them do except Thompson and Endicott? A. No.

Q. You have taken them just from the books without regard to stock in dispute or otherwise? A. No, I didn't include the thirty shares in dispute.

Q. In which lot have you not included them? A. In all with the exception of Isaac Bacharach's.

Q. All right; go ahead. Now the complainants own how much? A. Joseph Wilson fifty shares.

Q. Got his? A. And got his directly from Philip Marvel, Trustee; Mordecai T. Endicott thirty-five shares; Eva Davis Dodd six shares; Charles P. Henry five shares; Fred Robbins twenty-five shares and Estel Evans thirty shares.

Q. Complainants therefore totally hold? A. One hundred and fifty-one shares.

Q. Now there are outstanding on the books held by other stockholders neither directors nor complainants? A. One hundred and sixty-two shares.

Q. Held by? A. C. L. Cole forty-one shares; Harry Bacharach thirty-six shares; Lewis Evans ten shares; Bertha Hanstein twelve shares; Fred Ingraham ten shares; Joseph H. Marvel twelve shares; Thompson Irving thirty-five shares; Lucius Wright three shares; Byron Rogers three shares.

Q. Now where do you include, then the thirty—or the stock in dispute belonging to the defendant directors? A. Now, if you will let me explain this my own way. That totals up fifteen hundred and eighteen shares. I deducted thirty shares in the hands of Isaac Bacharach which are in dispute leaving a balance of fourteen hundred and eighty shares undisputed and held by different stockholders and then there is in dispute here one hundred and fifty and unissued shares are two hundred and eleven, making a total of eighteen hundred and forty-nine shares, which was issued, including the ten shares organization stock.

The Vice Chancellor: Fourteen hundred and eighty-eight not in dispute, one hun-

dred and fifty in dispute, unissued two hundred and eleven?

A. Two hundred and eleven.

Mr. Bourgeois: That is unissued of the trustee stock four hundred and ninety-nine shares.

The Vice Chancellor: That makes the total of?

A. Eighteen hundred and forty-nine and that includes the ten shares organization stock.

Q. Now, take up the first one, Mordecai T. Endicott, and show where his stock came from and when it was acquired.

The Vice Chancellor: By unissued you mean in the name of Philip Marvel, trustee?

A. Yes, they still stand in the name of Philip Marvel Trustee.

The Vice Chancellor: He said two hundred and eleven unissued; I take it stand in his name.

A. I assume they stand in his name.

Mr. Gaskill: I offered those two certificates four and five.

Mr. McCarter: Do you know, Mr. Bourgeois, whether the two hundred and eleven have been retransferred?

Mr. Bourgeois: Never transferred out; they were never transferred anywhere.

Mr. Gaskill: Reason I offered those certificates this morning and the absence of memorandum on them.

Q. Now we will take up the stock of Admiral Endicott.

The Vice Chancellor: This does not include the six hundred and fifty-one shares at all that was reserved, does it?

A. No, sir.

Mr. McCarter: Never has been issued.

Mr. Gaskill: That added to the eighteen hundred and forty-nine makes exactly twenty-five hundred.

Q. Now, shall we take up Admiral Endicott and give the history of his holdings? A. Mordecai T. Endicott, one of the complainants, holds certificate number 125 dated August fifteenth, 1903, for thirty shares. He acquired it from Kate B. Endicott who held certificate 108 and which was dated April ninth, 1898 for a like amount of shares.

Q. Kate got hers? A. Kate got hers from Allen B.

Mr. Gaskill: I didn't get who the Admiral got it from?

A. Kate B. Endicott.

Mr. Gaskill: And what date?

A. The date the Mordecai acquired or the date Kate acquired? He acquired it from Kate B. Endicott. Kate acquired here in 1898.

The Vice Chancellor: She acquired in 1898?

A. Yes.

Mr. Gaskill: What was the date?

A. April 9th, 1898.

By Mr. Bourgeois: Q. Mordecai T. Endicott acquired his from whom? A. Mordecai T. Endicott holds certificate 125 dated August 15th, 1903 for thirty shares. He acquired it from Kate B. Endicott who held certificate 108 which was dated April 9th, 1898 for thirty shares. Kate B. Endicott acquired same from Allen B. Endicott who held certificates eighty-two dated September 4th, 1897 for ten shares and certificate eighty-six dated September 4th, 1897 for twenty shares. Allen Endicott acquired this from himself from certificate number eight dated March

20th, 1897, which was for two hundred and fifty-one shares. Now Judge Endicott obtained certificate number eight from Marvel, Endicott and Thompson, trustees, who held certificate number four dated March 20th, 1897 for eighteen hundred thirty-nine shares.

Now Mordecai T. Endicott, the complainant, also holds certificate number one hundred and forty dated March 5th, 1904, for five shares. This he acquired from Charles P. Henry who held certificate number one hundred and twenty-three dated May 9th, 1900, for five shares. Charles P. Henry acquired this certificate from A. B. Endicott who held certificate eighty-one dated September 4th, 1897, for ten shares and A. B. Endicott acquired certificate eighty-one from A. B. Endicott who held certificate eight dated March 20th, 1897, for two hundred and fifty-one shares and this certificate came from the original trustee certificate of eighteen hundred and thirty-nine shares.

Q. Now, next we will take Eva Davis Dodd; give the history of her holdings. A. Eva Davis Dodd another one of the complainants holds certificate one hundred and thirty-eight, which is dated February 27th, 1904, for six shares. She acquired hers from Charles E. Davis who held certificate one hundred and eighteen dated September 4th, 1897 for ten shares and he acquired that certificate from A. B. Endicott who held certificate number eighty dated March 20th, 1897 for ten shares and this certificate was acquired from A. B. Endicott who held certificate number eight dated March 20th, 1897 for two hundred and fifty-one shares and this was acquired from Marvel, Endicott and Thompson who held certificate number four for eighteen hundred and thirty-nine shares.

Q. Next the history of the stock held by Mr. Charles P. Henry. A. Charles P. Henry the other complainant holds certificate one hundred and twenty-three dated June 20th, 1900 for five shares; he acquired it from A. B Endicott who held certificate one hundred and twenty-one dated May 9th, 1900 for five shares and he acquired it from A. B. Endicott who held certificate eighty-one dated September 4th, 1897 for ten shares and this certificate comes from A. B. Endicott who held certificate eight dated March 20th, 1897 for two hundred and fifty-one shares and this comes from the original certificate of eighteen hundred and thirty-nine shares.

Q. Next take the history of the holding of Mr. Joseph W. Wilson? A. Joseph W. Wilson holds certificate ninety-six dated the 25th of January, 1898, for nine shares and he also holds certificate 97 dated February 24, 1898 for ten shares; he also holds certificate one hundred and four dated the 3d of January, 1898 for eleven shares and he also holds certificate one hundred and five dated the 26th of March, 1898 for ten shares. He also holds certificate one hundred and eleven dated April 14th, 1898 for ten shares, making a total of fifty shares. These certificates were transferred to him from Philip Marvel, trustee, who held certificate number five dated March 20th, 1897, for four hundred and ninety-nine shares.

Mr. Bourgeois: If the Court please, we think that will be important to show where Joseph Wilson's stock came from, whether from the four hundred and ninety-nine shares or the two hundred shares.

Mr. Gaskill: Then I want reference made to the stub of the certificate book to see if there is any such notation on that.

The Vice Chancellor: I was wondering how you could tell. Certificate five was four hundred and ninety-nine and certificate six was two hundred; did all of these come out of—

A. I took it from the stock book and I looked at the ledger page, Philip Marvel Trustee, where the cash is charged up as against Philip Marvel, Trustee.

The Vice Chancellor: Can you tell whether or not all of those were charged against five or six?

The Witness: I could if I looked at the book.

Mr. Bourgeois: This is the first one. All of the others have come from Judge Endicott.

Mr. Gaskill: I object to the witness's statement as to where the stock of Wilson came from and ask it to be overruled because reference to the certificate book, ninety-six, does not show any such memorandum, nor does certificate ninety-seven. I call attention to certificate one hundred and four, or the stub of it, no such memorandum; certificate one hundred and five no such memorandum and certificate one hundred and eleven no such memorandum on the certificate book, and move that the witness's statement be stricken from the record as to where those came from.

The Vice Chancellor: The witness's statement can stand in view of the other parts of the record. If the witness wants to change his answer, he may do it on cross-examination. I can't strike out his testimony.

Mr. Gaskill: The part I am asking to be struck out is his statement that those cer-

tificates came from a certain certificate.

The Vice Chancellor: Well, if he still maintains that is the truth, why his statement can stand.

Mr. Gaskill: He is not testifying of his own knowledge; he says by reference to a certan book he testifies to that. I submit that is incompetent testimony.

The Vice Chancellor: I think not. We will have no difficulty in arriving at the fact. If I recall right as these various issues by Marvel Trustee were made there was no stock surrendered at all. The whole four hundred and ninety-nine shares and two hundred shares represented by certificates five and six respectively were still allowed to stand and he issued out of them without making any surrenders at all.

By Mr. McCarter: Q. Then we will take the history now of the stock of Mr. Robbins, Fred C. Robbins. A. Fred C. Robbins, another complainant, holds certificate one hundred and fifty and fifty-three dated the 16th of September, 1909 for twenty-five shares which he acquired from Isaac Bacharach who held certificate one hundred and forty-six dated September 15th, 1909 for five hundred and forty-five shares.

Q. You have traced then Mr. Robbins into Bacharach. Now take up Mr. Evans, J. Estel Evans and trace him also. A. J. Estel Evans holds certificate one hundred and fifty-six dated September 16th, 1909 for thirty shares which he acquired from Isaac Bacharach who held certificate one hundred and forty-six dated September 15th, 1909 for five hundred and forty-five shares.

Q. Now, having gotten the stock of Robbins and Evans from Bacharach, where did Bacharach get his?

(Question withdrawn.)

Q. Now take up the holdings of the other outstanding stockholders, neither complainants or defendants, and trace their history.

The Vice Chancellor: Have you got all of the complainants?

Mr. McCarter: All in now.

The Vice Chancellor: I thought Kate Endicott was one?

Mr. Bourgeois: She conveyed hers to Mordecai.

A. Now the following names are not complainants or defendants: Harry Bacharach holds certificate one hundred and fifty-four dated September 16th, 1909 for thirty-six shares which he acquired from Isaac Bacharach who held certificate one hundred and forty-six dated September 15th, 1909 for five hundred and forty-five shares. Lewis Evans holds certificate one hundred fifty-seven dated September 16th, 1909 for ten shares which he acquired from Isaac Bacharach who held certificate one hundred and forty-six dated September 15th, 1909 for five hundred and forty-five shares. Bertha Hanstein holds certificate one hundred and fifty-five dated September 16th 1909 for twelve shares, which she acquired from Isaac Bacharach who held certificate one hundred and forty-six dated September fifteenth 1909 for five hundred and forty-five shares. Clarence L. Cole holds certificate one hundred and forty-eight that he acquired September 20th, 1909 for forty shares and he got it from Isaac Bacharach who held certificate one hundred and forty-six dated September 15th, 1909 for five hundred and forty-five shares. Clarence L. Cole also holds certificate number three which is dated March 20th, 1897, and marked "for legal services rendered" one share, making a total of forty-one shares.

Mr. Gaskill: What was the date of Judge Cole's certificate?

A. March 20th, 1897.

Mr. Bourgeois: Making a total of forty-one shares to him?

A. Which Judge Clarence L. Cole holds. Fred Ingraham holds certificate one hundred and fifty-two dated the sixteenth of September 1909 for ten shares which he acquired from Isaac Bacharach who held certificate one hundred and forty-six dated September fifteenth, 190⁹ for five hundred and forty-five shares. Now J. Byron Rogers holds certificate ninety-four dated the thirteenth of December, 1897 for three shares and marked "for services rendered." Lucius I. Wright holds certificate number one hundred and thirty-four dated the 24th of February, 1904 for three shares. This he acquired from certificate number two which was held by Clement J. Adams and is dated the 20th of March, 1897. Now this certificate was subsequently surrendered to Philip I. Marvel, trustee, who issued the certificate to Lucius I. Wright and to Mina Freas for services and the balance still in his name. Joseph M. Marvel holds certificate one hundred forty-three and certificate one hundred forty-four both dated the 11th of April, 1905, for twelve shares; this is acquired from Philip I. Marvel who held certificate number seventy-five dated the tenth of July, 1897 for fourteen shares and this certificate was acquired from Philip I. Marvel who held certificate fifty-eight dated the tenth of July, 1897 for forty-nine shares and this was acquired from Philip I. Marvel who held certificate number seven dated the 20th of March, 1897 for two hundred and fifty-nine shares and this was acquired from the original trustee certificate of eighteen hundred and thirty-nine

shares. Thompson Irving holds certificate number ninety-nine dated the nineteenth of March, 1898 for five shares which he acquired from Philip Marvel who held certificate seventy-four dated the tenth of July, 1897 for five shares and who acquired his from Philip Marvel, certificate fifty-eight, dated the tenth of July, 1897, for forty-nine shares and this was acquired from Philip I. Marvel who held certificate number seven dated the 20th of March, 1897 for two hundred and fifty-nine shares, which in turn was acquired from the original trustee certificate. Now Thompson Irving also holds certificate number one hundred dated the 19th day of March, 1898 for ten shares and this comes from Philip Marvel who held certificate seventy-three dated the tenth of July, 1897 for ten shares and this comes from Philip Marvel's certificate fifty-eight for forty-nine shares, which in turn comes from Philip Marvel's certificate number seven for two hundred and fifty-nine shares. Thompson Irving also holds certificate one hundred and one dated the 19th day of March, 1898 for ten shares which comes from Philip Marvel's certificate sixty-three dated the tenth of July, 1897 and which comes from Philip Marvel's certificate number seven dated the 20th of March, 1897 for two hundred and fifty nine shares; making a total that Thompson Irving holds of thirty-five shares all coming from Philip Marvel. Now those are all of the stockholders.

By Mr. Bourgeois: Q. Now, Mr. Stern, will you show where Isaac Bacharach, from where he received his five hundred and forty-five shares? A. Now Isaac Bacharach held certificate one hundred forty-six dated September 15th, 1909 for five hundred and forty-five shares. He acquired these from the following stockholders: I. G. Adams two

hundred eighty-one shares; this includes the thirty shares in dispute. William Disston one hundred sixty-six shares. Peter B. Reed fifty shares.

Mr. Gaskill: All of this you are going to show the certificates? You say got it from William Disston and so on which you will show?

A. Yes. Hannah F. Howell, thirty-five shares; Mina Freas three shares; I. Morton Adams one share; Charles R. Adams one share; Florence Adams one share; Mabel F. Adams one share; Emily S. Corson one share and Laura Babcock five shares, making a total of five hundred and forty-five shares. Now I can trace all the rest of that.

Q. Yes. A. I. G. Adams held certificate number twelve dated the 20th of March, 1897 for two hundred and fifty-one shares, the original issue which comes directly from the three trustees. He also held certificate one hundred and thirteen dated the 20th of June, 1898 for thirty shares, which was the collateral in dispute, making a total of two hundred eighty-one.

William Disston held certificate number thirty-six dated May 1st, 1897, for fifty-five shares. William Disston also held certificate fifty-five and dated July 1st, 1897 for fifty-six shares. William Disston also held certificate number seventy-six dated the 2d of August, 1897 for fifty-five shares, making a total of one hundred and sixty-six shares, all coming from—

Q. Came from Philip Marvel, trustee? A. Yes, Philip Marvel as trustee. Peter B. Reed held certificate number ninety-five dated the 25th of January, 1898 for nine shares; Peter B. Reed also held certificate number ninety-eight dated the 24th of February, 1898 for ten shares. He also

held certificate one hundred and two dated the 26th of March, 1898 for ten shares. He also held certificate one hundred and three dated the 1st of March, 1898, the 3d of January that should be, 1898 for eleven shares and he also held certificate one hundred and ten dated April 14th, 1898 for ten shares, making a total of fifty shares, all coming from Philip Marvel, trustee.

Now Hannah F. Howell held certificate one hundred and nine dated the 9th of April, 1898 for thirty-five shares which she acquired from A. B. Endicott who held certificate fifty-six dated the first day of July, 1897 for five shares from A. B. Endicott who held certificate eighty-three dated the 4th of September, 1897 for ten shares from A. B. Endicott who held certificate eighty-seven dated the 4th of September, 1897 for twenty shares, making a total of thirty-five shares, which in turn came from A. B. Endicott certificate number eight dated the 20th of March, 1897 for two hundred and fifty one shares, which came directly from Marvel, Endicott and Thompson.

Laura Babcock held certificate fourteen dated the 1st day of April, 1897 for five shares which came from Phlip Marvel, trustee. Mina Freas held certificate one hundred and thirty-two dated the 24th of February, 1904, for three shares, which was issued to her for services and this certificate comes from I. G. Adams' certificate number one dated March 20th, 1897 for five shares, which was afterwards cancelled, being the organization stock, and transferred to Philip Marvel, trustee. Do you understand this, Vice Chancellor, about three shares?

The Vice Chancellor: Oh, yes.

A. Now, the next five shares were acquired from I. Morton Adams who held certificate one

hundred and twenty-nine dated the 23d of February, 1904; Charles R. Adams who held certificate one hundred twenty-eight dated the same date; Florence Adams who held certificate one hundred and thirty dated the same date for one share; Mabel F. Adams certificate one thirty one dated the same date for one share and Emily S. Corson certificate one hundred forty-one dated the 20th of February, 1905 for one share. Now these five shares came from certificate number one hundred twenty-six which was held by I. G. Adams dated the 16th of January, 1904 for five shares. I. G. Adams acquired this certificate from Alvin P. Risley who held certificate number seventy-seven dated the 16th day of August, 1897 for five shares.

Q. And he acquired it from whom? A. He acquired it from Philip Marvel, trustee.

Q. That is Alvin P. Risley did? A. Alvin P. Risley acquired it. Now this includes all the stockholders.

Q. Now, Mr. Stern, I want to call your attention to this ledger account—from what data did you gather the information to which you have just testified? A. I gathered it from the original stock books using the annotations marked on the stubs and also from the ledger.

Q. And which account? A. Of the account of Philip Marvel, trustee.

Q. Now, I call your attention to the ledger account of Philip Marvel, trustee, and ask you if you notice in examining this account that the first item on the debit side was to four hundred ninety-nine shares for improvement and immediately below that, for two hundred shares for real estate; did you notice the two hundred shares for real estate? A. I did.

Q. Then why did you say this was a part of the four hundred ninety-nine shares instead of the two hundred shares?

Mr. Gaskill: I object as calling for a conclusion.

Question allowed.

A. Because it was marked "For real estate," this two hundred shares, I took it, and had used for the purchase of real estate and knowing that they had some parcels of lands unacquired I took it these two hundred shares should be used for the purpose of acquiring the outstanding parcels of land and, therefore, the shares of stock were charged against the four hundred and ninety-nine; of course, that is a conclusion.

Adjourned until 1.30 p. m.

Afternoon Session, April 3, 1912.

Hearing resumed at 1.45 p. m.

CHARLES P. HENRY, a witness produced on behalf of the complainants, being first duly sworn according to law, upon his oath says:

Direct-examination by Mr. Gaskill:

Q. Dr. Henry, you are one of the complainants in this case? A. Yes, sir.

Q. Stockholder in your own right? A. Yes.

Q. Did you ever receive from the company or any officer of the company any statements of the affairs of the company? A. Never.

Q. When was it that you had—when was it you first received any information concerning the

loans made by the directors of the company and the pledging of the company's stock as collateral? A. That was in the fall of 1909.

Q. And what action did you take then? A. I requested Judge Endicott to enforce the recovery of the money, if necessary, by suit.

Q. When did you become a stockholder, Doctor?
10 A. In March, 1900.

Q. And how much? A. Ten shares.

Q. What did you give for it? A. One hundred and twenty, but that was a special price.

Mr. Bourgeois: I object.

The Vice Chancellor: Was it ten shares? This list shows the date of your stock certificate to be June 20th, 1900, for five shares, certificate twenty-five. Did you have some other stock? A. I had two blocks of five shares each, when I say March
20 it was in the neighborhood of March. I couldn't tell you exactly when the stock was transferred to me. It was in March or April.

The Vice Chancelor: Well, is there a mistake in the testimony that was given? It was given as certificate one twenty-three for five shares.

Mr. Bourgeois: No, I don't think so. There is a conveyance of stock of five shares to Dr. Henry and then back again from Dr.
30 Henry to Davis, but he held two blocks of stock, certificates of five shares each, one certificate he conveys from himself to Davis.

The Witness: Admiral Endicott.

The Vice Chancellor: That accounts for it.

The Witness: That was later, however, some years later.

CROSS-EXAMINATION by Mr. McCarter:

Q. Are you a relative of Dr. Endicott, I mean of Judge Endicott? A. No, no relation at all.

Q. Who negotiated the sale to Admiral Endicott? A. Judge Endicott negotiated. I don't know as I understand negotiated; he had it sold for me anyhow. Do I understand what you mean by negotiated?

Q. Did you see Admiral yourself when you sold him your stock? A. No, I didn't see him at that time.

Q. It was done through Judge Endicott, the transaction? A. Yes.

Q. Judge represented the Admiral and you represented yourself? A. That is right.

Q. And was it the Judge that brought this matter to your attention? A. Which matter do you speak of?

Q. About this dispute? A. Yes.

Q. He came to see you about it, did he? A. Yes.

Q. He told you about it? A. Yes.

Q. Where was that? A. That was in Philadelphia.

Q. You say that was in the fall of 1909? A. Fall of 1909, yes, sir.

Q. And he suggested you bring suit? A. He didn't suggest that, but I thought myself.

Q. What did he suggest? Did he say suit was going to be commenced? A. No suit; that this action had been taken and that it was an unjust act and I thereupon requested him to try and get the money back, if necessary by suit.

Q. Well, did he say that others were contemplating suit? A. Yes.

Q. He told you that? A. Yes, I now recall; yes.

Q. Who else did he say was contemplating suit? A. I don't remember that.

Q. Well, see if you can't think? A. Admiral Endicott he mentioned and if I recollect right a Mr. Wilson, but I am not clear on that.

Q. He told you he had seen Mr. Wilson about it? A. No.

Q. Did he tell you about his sister-in-law, Eva Davis Dodd? A. No.

Q. Did you ever see Judge Gaskill or Mr. Allen Endicott about this suit? A. No, I did not.

Q. Ever pay them anything? A. No.

Q. Have you ever paid anything on account of the suit? A. Not yet; no, I have not.

Q. What was said by Judge Endicott to you, at the time that he saw you and gave you this information, about the expense of this litigation, anything? A. He said that my share of the expense, if any, would be slight.

Q. If any? A. Yes, that is all.

Q. That was all he said? A. That is all he said.

Q. Now I think you said you got your stock from Judge Endicott about 1900? A. Yes.

Q. And it was 1909 when he came to you upon this errand— A. 1909?

Q.—to tell you? A. Yes.

Q. At that time did he make any explanation to you of his not having told you of this fact when he sold you the stock in 1900? A. No.

Q. Sir? A. No.

Q. Did you inquire of him how long he had known it? A. No, I did not.

Q. Made no inquiry? A. No.

Q. Well, now, had you seen Judge Endicott between 1900 when he sold you the stock and 1909 when he came to see you? A. Yes, I had seen him several times.

Q. How often, do you suppose, Doctor? A. Well, perhaps seven or eight times.

Q. Was he accustomed to do any work for you, professionally or otherwise? A. Just friends.

Q. Just friends? A. I only saw him in a personal way on those occasions; not in a business way at all.

Q. Did the Judge in 1909 when he came to see you give any explanation of his failure to have told you this thing between 1900 when he sold you the stock and 1909 when he told you about it? A. Nothing was said of that at all.

Q. And you didn't inquire? A. I didn't inquire; no.

Q. Did you get the impression from his conversation in 1909 when he did tell you of it that he had just learned it? A. No, that wasn't my impression.

Q. You had the impression that he knew about it all the time? A. I couldn't say.

Q. Didn't he in fact tell you that the loan had been made when the company hadn't the money and these directors had come to the rescue of the company and loaned the company the money when it was in distress? A. I didn't understand they had come to the rescue of the company.

Q. Didn't say anything about that? A. Didn't say anything about the rescue of the company.

Q. What did he tell you? A. He told me, as I remember it, that these directors were in a position, through their official power, in a position to make a loan on very advantageous terms to themselves and that they had received at a very low price, low valuation, some shares of stock as a collateral and that they later converted these shares to their own use.

Q. Well, that struck you right away as a dreadful thing or did he tell you that was a dreadful

thing from a legal standpoint? You are not a lawyer? A. No, I am not a lawyer.

Q. Did you see it right away as unlawful or did you see that was wrong? A. Well, it didn't look to me what you might call ethical. I don't know about legal.

Q. You are lawyer enough for that? A. In a general sense.

Q. Did he tell you the straits that the company was in at the time this loan had been made? A. No.

Q. Did he tell you that the company had passed a resolution to pledge the same amount of stock to anybody that would loan them the money? A. No, he did not.

Q. Did he tell you that the company was borrowing money right along at this time to pay taxes even? A. No.

Q. Did he tell you that the directors of the company were constantly endorsing its paper so that they could get money to pay the current expenses? A. No.

Q. Didn't tell you anything of that kind? A. He didn't tell me that. The conversation was short. Conversation with the Judge was short.

Q. Did he tell you at the time these directors had done this thing that he had been applied to to do the same thing and he thought he hadn't enough money to do it or enough interest in the thing to do it? A. No.

Q. Did he tell you that he had written a letter in which he said he approved of the transaction but he didn't approve of going on and becoming personally responsible? A. No.

Q. Didn't he tell you that? A. No, as I say the conversation was brief.

Q. Did he tell you what lawyer he was going to employ? A. No.

Q. When did you first learn who had been employed? A. I can't say that clearly.

Q. Did you know until today? A. Yes.

Q. When did you first learn? A. Well, say six months ago; I can't fix the date, but I know it is some months.

Q. Who told you that, the Judge? A. The Judge, yes.

Q. In another interview? A. I don't recall that; I suppose it was. I don't know. I remember his telling me that Judge Gaskill—

Q. Didn't speak of his son, Allen Jr.? A. No.

Q. Well, do you know when this suit was commenced? A. Well, I am not very intelligent in answering things. I don't know what you mean by commencing this suit. I know I was here myself at a former meeting.

Q. That was January, I think?

Mr. Gaskill: December.

A. December, yes. It wasn't long before that that I learned.

Q. How long before that, a week or so? A. No, probably a month or so before that, because I recollect I was ready for sometime and wanted to be present at the meeting and I arranged my engagements.

Q. Now, a month or so before that time, either in December or January last, when you were down here, at the time the case went off for some technical reason—what was it you learned about a month before then that the suit had been commenced? A. No, that the case was to come up then, that morning.

Q. Then you were told that the case was likely to be tried on a given date? A. Only in the neighborhood of a given date.

Q. And is that the time you learned that Judge Gaskill was in the case? A. That was the time, yes.

Q. So before that time you didn't know what lawyer was in the case, didn't know the case had been begun, did you? A. I can't say that positively; I can't answer positively.

Q. You didn't know what lawyer was in it certainly? A. No.

Q. Now did you know as a fact that the case had been commenced? A. I had no knowledge but I had been so informed, I think.

Q. By whom? A. By Judge Endicott.

Q. By letter? A. By letter, yes.

Q. You owned some stock since 1900? A. Yes.

Q. Have you ever attended an annual meeting? A. No.

Q. You have received notices of annual meetings? A. No, I have not.

Q. Sure of that? A. I am sure of that.

Q. Did you ever inquire as to whether there was or was not an annual meeting? A. I never did; no.

Q. Your name is Charles P. Henry, isn't it? A. Charles P. Henry.

Q. Aren't you quite mistaken, Doctor, in the statement that you never received any notice of an annual meeting? A. No, never received any.

Q. Your name appears upon the list of stockholders to whom notices are said to have been sent? A. I never received any.

Q. You knew the company had annual meetings? A. No, I didn't even know that.

Q. Is this your only holding in any corporation? A. No.

Q. I ask you if you don't know that corporations do hold annual meetings? A. I know some of them do and some don't.

Q. Did you ever make any inquiry from anybody about this company from 1900 until 1909? A. Friendly inquiries as to what its progress was, yes.

Q. From whom? A. Judge Endicott. Mrs. McGlade, whom I knew and knew something about Atlantic City matters. I asked her casually about how it was getting along and she said she didn't know anything about it.

Q. Who was Mrs. McGlade? Mrs. Charles McGlade? A. Mrs. Charles McGlade.

Q. She a friend of yours and you casually inquired about it from her? A. Yes; my holding wasn't enormous.

Q. I don't suppose she gave you much information? A. No.

Q. She knew more about other things than real estate? A. Yes.

Q. What did you inquire from Judge Endicott? A. I asked how it was getting along and he said very well.

Q. You had no dividends in the meantime? A. No dividends at all until—

Q. In the meantime? A. None in the meantime; that is right.

Q. So that for nine years you never made any inquiry concerning this company except such casual talk as you had with Mrs. McGlade a lady who wasn't a stockholder in it and of Judge Endicott in a casual way how it was getting along and it was all right; that was the extent of your inquiry and interest in the matter? A. Not the extent of my interest; the extent of my inquiry, but I wouldn't say the extent of my interest.

Q. Now according to the minute book it appears that there was an annual meeting held on the 23d of February, 1904. Will you swear that you did

not receive notice of that meeting? A. Yes, didn't receive such a notice.

Q. Never received it? A. No.

Q. There seems to have been a call for a meeting for February 23d, 1906; will you say you got no notice of such a proposed meeting? A. Never got such a notice.

Q. There seems to have been an annual on the 23d of February, 1907; will you say you got no notice of that meeting? A. I got no notice.

Q. There seems to have an annual meeting called and held on February 23d, 1908. Will you say you received no notice of that meeting? A. Now you are getting close to the time of the dividend, but at the time of the dividends I got my dividend checks, but I got no notice of a meeting.

Q. Then there seems to have been a meeting on the 23d of February, 1909, you say you got no notice of that meeting? A. No, got no notice of that.

Q. And there seems to have been a meeting on the 15th of February, 1910; did you say you got no notice of that meeting? A. Nineteen hundred and ten. I won't say positively because I couldn't distinguish between a notice of the meeting and notice of a dividend. It may be I had the two confused.

Q. Do you know what a dividend is? A. Yes.

Q. Do you know what a notice is? A. Yes.

Q. You are a doctor of medicine? A. Yes.

Q. You say you wouldn't distinguish between a dividend and notice of a meeting? A. My memory might be indistinct. My memory might be confused between a notice of meeting or dividend.

Q. And the same confusion might exist with regard to having received a notice back in 1904? A. No, I am very positive of not receiving a

notice in those years; I got no notice of any kind and therefore I got no notice of a meeting.

Q. Have you been down to Atlantic City during these nine years, Doctor? A. Yes, several times.

Q. Is that where you would see your friend, Mrs. McGlade? A. No, in Philadelphia I would see her; she is a widow.

Q. But you have visited Atlantic City though? A. Yes.

Q. Did you ever have the curiosity to learn where the office of this company was? A. I learned that from Judge Endicott.

Q. When did you learn that? A. When I say I learned that, I learned it was in Mr. Adams office, wherever that was.

Q. When did you learn that? A. I can't recall that.

Q. At the time you bought the stock? A. Probably at the time I bought the stock.

Q. When you were in Atlantic City—you had how much money invested in this company? A. Twelve hundred dollars at first and afterwards six hundred dollars.

Q. When you were in Atlantic City, you had no notice, heard nothing, didn't you have the curiosity enough to go in the office and inquire what this company was doing? A. No, I didn't like to do that even if I had the curiosity.

Q. Didn't like to do it? A. Didn't like to do it for the reason it was a sort of, it was a company, what I understood, it was a sort of a close corporation. I didn't want to appear to be meddling into its affairs and displaying any lack of faith in its management, as I thought such questions as that might imply.

Q. In other words you trusted entirely to Judge Endicott? A. I trusted Judge Endicott.

Q. Didn't know another soul in it? A. No.

Q. Did you know the president by reputation or name? A. Knew of him.

Q. Did you know which Marvel it was? A. Yes.

Q. You simply knew of him? A. Yes.

Q. He is a professional brother? A. Yes; very favorable; indeed his name was an additional guarantee to the good faith of the company.

Q. Now did the dividends that you received come direct from the company to you or through Judge Endicott? A. Checks were made out in my name; they were transmitted to me through Judge Endicott.

Q. So Judge Endicott was your representative to collect these dividends? A. I wouldn't say that.

Q. Did you authorize him to do it? A. No, I didn't authorize him.

Q. He assumed that burden? A. He was gracious enough to transmit them to me. He wasn't my agent, however.

Q. After you invested your money do I understand that Judge Endicott handed you the stock certificates? A. He mailed them to me.

Q. Mailed them to you? A. Yes.

Q. You never sent your address in Philadelphia to the company, did you? A. No.

Q. Do you happen to know that your address upon the company's books was in the care of Judge Endicott in Atlantic City? A. I don't know that.

Q. Didn't know that? A. No.

Q. How did you, when you received your stock from Judge Endicott, expect to get any notice or dividend or anything else if the company, as far

as you know, didn't know your address? A. I intended, if any symptom should arise appearing to require vigilance on my part, I intended then, of course, to take such action, but until such time then I rested in the security of my confidence in Judge Endicott and Dr. Marvel.

Q. How would you feel these symptoms, by absent treatment? A. If you know there is nothing more sensitive than people's nerves to financial matters.

Q. You had twelve hundred dollars in this? A. Yes.

Q. I want to know how you expected your investment to make this symptom known to you? A. There are a thousand ways that a person who comes to Atlantic City without a great deal of trouble on his part would learn whether or not there were adverse rumors respecting the standing of a company in which those gentlemen were interested. Their names alone would guarantee to me the good faith and good management of it.

Q. Now you have told us very pleasantly of your high regard for the professional reputation of Dr. Marvel and your confidence in him during all this time— A. Undoubtedly that is true.

Q. —and also Judge Endicott. A. I can't say it about—

Q. Why, when Judge Endicott opened your eyes, as he did in his visit in the fall of 1909, didn't you write Dr. Marvel something about it? A. I wasn't acquainted with Dr. Marvel about it.

Q. He was president, of this company? A. Yes.

Q. You had confidence in him? A. Not as much as in Judge Endicott.

Q. Then why didn't you ask Judge Endicott how long he had known this? A. Oh, I don't know why; couldn't tell you why.

Q. Did you feel the Judge had abused your confidence by coming and telling you this and not having told you before? A. No.

Q. You felt he had a perfect right to keep this from you during the nine years? A. I don't think he was keeping it from me.

Q. He hadn't told you? A. He hadn't told me; no.

Q. But you know that he had known it since the beginning of 1898? A. I knew nothing about that.

Q. You supposed he had just learned it, did you? A. No, I didn't really stop to think when he had learned it.

Q. Here is a thing you called unethical? A. Yes.

Q. Now are you surprised to learn that Judge Endicott knew it since 1899? A. I don't know now that he knew it.

Q. Supposing that is true, believe me for a moment. A. If he knew—shall I answer that question?

Q. Sure. A. If he knew that something had been done injuriously affecting me and didn't tell me I should be surprised, although he doubtless had good reasons for it, but not reasons prejudical to me.

Q. Did you ever inquire as to who signed the receipt for your two certificates five shares each? A. I beg pardon.

Q. Did you ever inquire as to who signed your two certificates? A. Certificates of stock?

Q. Certificates of stock of five shares each, signed the receipt? A. You mean the certificates themselves.

Q. No, the receipts on the stub? A. Oh, no.

Q. I show you certificate 122, which seems to be issued to Charles P. Henry for five shares, on the

stub—I suppose you know what a stub is, Doctor? A. I think I do, sir.

Q. —on the stub, issued to Charles P. Henry, "received the above described certificate. Allen B. Endicott, H. L. Butler." You never knew before who that was receipted by did you? A. No, I did not.

Q. Do you know who Mr. H. L. Butler is? A. No, I do not.

Q. Now we will turn to the next stub, 123, issued to Charles P. Henry for five shares in lieu of 121, dated June 20th, 1900, "received the above described certificate. Allen B. Endicott, H. L. B." in initials, receipted by him. Now you never knew who receipted for that either, did you? A. No.

Q. You don't question the authority of Judge Endicott to sign his name there, Allen B. Endicott, upon the voucher or stub of certificate 122? A. Let me understand you; I don't question his authority?

(Question repeated.)

A. I want to understand the question. I want to be perfectly frank about it.

Q. There is the stub for certificate 122, which was for five shares. A. I understand that part.

Q. I showed you. Now you see that against each one of these stubs is a receipt. A. Oh, now I understand.

Q. "Received the above described certificate, Allen B. Endicott, H. L. Butler," I guess it is. Now I ask you if you have any question as to Judge Endicott's right to have signed— A. I have no question, no. He wasn't authorized by me to do it, but I dare say he done the right thing.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. Doctor, as Mr. McCarter says, believe me for a moment and assume during all these years Judge Endicott knew of this loan and the pledge of the collateral he was trying to protect your interest by protesting at the various directors meetings, do you think it is strange that he didn't tell you about it?

(Question withdrawn.)

Q. I want to ask you this question, Doctor, do you remember receiving from Allen B. Endicott, Jr., a copy of an opinion that we had given them concerning this transaction in January 1910, and for the purpose of refreshing your recollection I will hand you the original, and ask you to see if you recall receiving it. The opinion of Gaskill and Gaskill? A. I don't remember.

Q. Don't remember? A. No.

Q. What hotel is it that this Mrs. McGlade keeps, Doctor? A. Oh, she—her husband used to keep the Mansion House here. He was well versed in Atlantic City realty—at least—

Q. Did she deal in real estate here? A. She did, yes, and she was something of what you might call an amateur broker too in a great deal of it. I say amateur, she didn't have a sign out but nevertheless she done a rousing business in that line.

Q. Did you frequently stop at the Mansion House? A. Yes.

Q. Now with reference to the expenses of the suit didn't Judge Endicott tell you—

Mr. McCarter: Don't lead him.

Q. What did he say with reference to its distribution, with reference to the holdings of the

parties? A. That is what I understood, my share, on account of the amount of shares I held, would be very little and almost negligibly small.

By Mr. McCarter: Q. That was on the supposition that you recovered? A. What?

Q. That was on the supposition you were successful? A. That wasn't said.

ALLEN B. ENDICOTT, re-called:

Direct-examination by Mr. Gaskill:

Q. Judge Endicott was any notice of a stockholders' meeting to Dr. Henry ever addressed in your care? A. I never received such a notice so far as I can recall.

Q. Or to the Admiral or any other stockholder? A. No.

CROSS-EXAMINATION by Mr. McCarter:

Q. Judge, you seem to have receipted for Dr. Henry's shares on the book or your clerk? A. Yes, Henry L. Butler was a student in my office.

Q. Did you at that time give Dr. Henry's address to the company? A. I don't remember; I should think not because his dividends came along.

Q. I didn't ask you why, I simply asked you whether you did or not. Then you sold him this stock. How did you expect, if you didn't give his address—he was a stranger to the other gentlemen connected with the company—that the company was to know where his address was? A. I have said I don't recall whether I gave his address or not.

Q. You remember having received his dividend checks, don't you? A. Yes.

Q. Did you tell the disbursing officers to give those dividend checks to you or were they sent to you? A. I don't think I ever told them to send them to me.

Q. They were sent to you? A. They were.

Q. Well, you didn't keep your letters, did you Judge, or didn't for a while—I think you say until after your son came to take charge of it, like mine is doing in my office? A. Letters received I kept very few.

Q. Now that being so will you positively swear you never received any notices or your office never received any notice of annual meeting for Mr. Henry whose address was not known? A. I will only say I have no recollection of ever receiving them.

Mr. Gaskill: Now, if your Honor please, with the exception of Admiral Endicott, concerning whose testimony I made a reservation when I moved the case, I am ready to close. The Admiral has not been able to get away. His testimony will be exactly the same as Dr. Henry's on direct. I don't know what you propose to show on cross.

Mr. Bourgeois: If the Court please, it is quite evident we can't finish this case today and personally I perfer not to go into the actual defence until after they have finished it. They think they want only to show by the Admiral just what the Judge suggested, but they may want to show a good deal and we would like to have a chance to get at him. We would like, however, to call on Mr. Bacharach, but not go into the defence today.

ISAAC BACHARACH, a witness produced on behalf of the defendants, being first duly sworn according to law, upon his oath says:

Direct--examination by Mr. McCarter:

Q. Mr. Bacharach, you are the Isaac Bacharach who has comparatively recently become interested in the St. Leonards Land Company? A. I am.

Q. And you purchased sometime in 1909 the stock of Israel G. Adams in the company did you not? A. I did.

Q. Was that purchase accomplished by an option first? A. Yes, sir; it was.

Q. Could you tell us about when that option was made? A. I think I can. I think I have it here.

Q. You have it here? A. Yes, I think I have some information here; at least I did have yesterday. Seventeenth day of June, 1909.

Q. The option was for the purchase of all Mr. Israel G. Adams' holdings? A. Purchase of 282 shares of the stock of the St. Leonards Land Company.

Q. And have I correctly described the document as an option? You weren't bound but you had a privilege of buying? A. That is right; an option.

Q. And you paid down a dollar a share? A. I paid down a dollar a share; yes, sir.

Q. That was in the month of June? A. June 17th; sir.

Q. Now, after that option had been acquired you made some kind of an arrangement with the officers of the company by which you took hold of the property to sell it, did you not? A. I did at a later date; I think at a later date.

Q. How soon after the option did you undertake the sale of the land? A. I don't really know, but I should think it was about the latter part of July, I would say.

Q. You were quite successful? A. Yes, sir.

Q. You were paid a good commission and you hustled and succeeded? A. Disposed of the property.

By the Vice Chancellor: Q. Your option was what time, did you say? A. Seventeenth of June and then there was some money to be paid—

Q.1890? A. 1909.

By Mr. McCarter: So that before September 14th the land had practically been disposed of? A. A good portion of it had and I think everything but the beach front, very likely.

Q. At quite advantageous rates? A. That was correct.

Q. Can you tell us the date when you closed with Mr. Adams and availed yourself of the option? A. On the 15th of September, paid for all the stock on the 15th of September, 1909, all that I had taken an option on.

Q. Then had you options from other people as well as from Adams or did you busy yourself in the meantime acquiring other holdings? A. Options from everybody.

Q. Acquired about the same time? A. Acquired about the same time; what I was trying to do to get the majority interest.

Q. And you succeeded, did you not? A. Well, I succeeded in getting the promise of various gentlemen that wouldn't sell.

Q. Now at the time that you closed with Mr. Adams and took his stock pursuant to your option did you take from him an agreement which I now show you? A. No, I did not—this agreement I made with Mr. Adams the day before I settled with him.

Q. Day before you settled with him? A. Yes, sir.

Q. So you were careful to get this agreement or rather you were prudent enough to get that agreement before you availed yourself of your option? A. That is correct.

Q. "Agreement made this fourteenth day of September, A. D. Nineteen hundred and nine between Israel G. Adams of Linwood, New Jersey, and Isaac Bacharach of Atlantic City, New Jersey, of the second part; whereas Israel G. Adams, being the owner of two hundred and eighty-one shares of the capital stock of the St. Leonards Land Company, a corporation of New Jersey, did agree to sell same to Isaac Bacharach, settlement to be made on the fifteenth day of September, nineteen hundred and nine, and

Whereas some stockholders of said company have threatened to bring lawsuit to stop the sale of fifteen or thirty of said shares belonging to said Israel G. Adams.

Now this agreement witnesseth that upon the payment of said sum mentioned in said agreement of sale by said Isaac Bacharach to said Israel G. Adams and upon said Israel G. Adams delivering said stock to said Isaac Bacharach, that said Israel G. Adams will save said Bachahach harmless from all loss that may be occasioned to him by reason of the success of said suit above mentioned regarding said number of shares. That the basis of said loss shall be the amount paid for said shares by said Bacharach said Adams.

(Signed) ISRAEL G. ADAMS,
ISAAC BACHARACH."

Those are the genuine signatures of Mr. Adams and yourself? (Showing paper to witness.) A. Yes, sir.

Q. May I ask you as a matter of curiosity who drew that document? A. I don't really know now.

Q. Was that drawn by Judge Thompson or yourself? A. It was drawn in our office, very likely by myself.

Q. Well now when had you heard of the threat of some stockholders to bring a lawsuit as is referred to in the agreement which I have just read into the evidence? A. Probably July or August, 1909.

Q. And who had told you of that? A. I was present at the meeting when there was a commotion about some stock.

Q. Were you present at the so-called stormy meeting? A. Yes, sir.

Q. You are not a party to this suit, as I understand? A. No, I am not a party to it.

Q. And so far as you are concerned, after this agreement was signed you were quite content that the suit should fail or succeed? A. I hadn't any interest in it at all.

Q. Hadn't any interest? A. No, sir.

Q. You didn't, as a matter of fact, take much stock in the claim, did you, Mr. Bacharach?

Mr. Gaskill: Objected to as immaterial.

The Vice Chancellor: I can't see any materiality.

Q. Well you never undertook to attack the transaction in any way yourself, did you? A. I did not.

Q. Never intended to, did you?

Mr. Gaskill: Objected to. A matter of intention that is not carried out or expressed.

The Vice Chancellor: I think the objection is well taken.

Q. Well, when you made your deal with Mr. Adams or before you consummated your deal with

Mr. Adams you were careful enough to procure this agreement by which, in the event of Mr. Adams being compelled to meet this suit that was threatened, you were harmless? A. I did, protected myself.

Q. And if the stock benefited on the other hand you were not interested, were you? A. Not in that stock, I wouldn't say. I don't know about that, if at all; I hadn't considered that at all.

Q. Now, after you secured this agreement that I have read into the record, this indemnity agreement from Mr. Adams which protected you amply, as I read it, you never had any expectation or intention of becoming a party to or joining in a lawsuit against the directors concerning the stock in dispute, had you?

Mr. Gaskill: Same objection as before as an intention that is not expressed or carried out as not material.

The Vice Chancellor: What is the force of that? I have the highest respect for Mr. Bacharach's judgment in most matters, but I can't think it can be made the basis for an adjudication in this suit. What is the purpose?

Mr. McCarter: That his point of view concerning this matter is important.

Mr. Bourgeois: His attitude toward this stock at this time is important.

The Vice Chancellor: You might ask that.

Mr. Bourgeois: Can we tell you at side bar?

The Vice Chancellor: I would sooner have you spread it upon the record.

Mr. Bourgeois: We simply want a free and fair expression.

The Vice Chancellor: If you have some theory you don't care to disclose, I will not require it.

Mr. Gaskill: Answer comes in over my objection.

Q. (Repeated) Now, after you secured this agreement that I have read into the record, this indemnity agreement from Mr. Adams which protected you amply, as I read it, you never had any expectation or intention of becoming a party to or joining in a lawsuit against the directors concerning the stock in dispute? A. I had an intention? No, no intention of becoming a party to the suit.

Q. Can you remember the date of that stormy meeting? A. No, I can't say as I do.

Q. Sometime in August? A. I couldn't tell you whether it was July or August.

Q. Pretty hard to remember dates? A. It is for me.

Q. Hot weather? I don't mean a hot meeting, hot weather? A. It was in the summer; I know that.

Q. Now were you one of the hot ones or was the dispute and the heat between the other gentlemen that were present or some of them? A. I got out of there as quick as I could.

Q. You didn't take any part in the discussion, did you? A. I did not; no, sir. I wasn't the holder of any stock of record at that time.

Q. Prior to that time you had never heard of this matter? A. Not to the best of my knowledge.

Q. Now, Mr. Bacharach, I am a little interested as a stranger in learning how it was that you accomplished the sale of that property so quickly in the first place you had a pretty good commission, didn't you, to make you? A. Well, we had the right prices on the property.

Mr. Gaskill: Is that material at all? It seems to me we are spreading something on the record that has absolutely no bearing on the case. I object to it on that ground.

(Question withdrawn.)

Q. And do you remember the total amount realized on the sale? A. I couldn't tell you, something over half a million dollars.

Q. I am speaking of the real estate without regarding the mortgages. A. I am speaking of the real estate.

Q. And you speak of all having gone at that time except the beach front; how soon after did the beach front go or hasn't that gone yet? A. Oh, yes; that was disposed of very promptly.

Q. Was that out of the way at the time of your agreement with Mr. Adams? A. I am not quite sure; practically all.

Q. All but about one block? A. May have been only one block; my thought is three or four of them.

Q. Just give us an idea what relation in value to the whole was the block or so that had not been disposed of. A. If there was one block I would say it was about—I don't know, probably eight per cent of the whole.

Q. Eight? A. Eight; if there was one block.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Mr. Bacharach, When was it that you obtained the option on the stock of Mr. Disston with respect to the time of that stormy meeting, was it before or after? A. Before.

Q. And when was it you obtained the option on the stock of Mrs. Howell with respect to the date of that meeting, before or after? A. Before.

Q. What options did you obtain after that date? A. None.

Q. All had been acquired before you received this information, then? A. All had been acquired before.

Q. One question that I omitted to call you and make him my witness in this respect: what is the date of the purchase by you of the block of land from the St. Leonards Land Company for some twenty-two odd thousand dollars? A. That was in 1899. I think the agreements was made in July.

Q. July 1899? A. I think the agreement was; yes, sir.

Q. What was the amount and what was it you purchased then? A. Purchased a block of land known as block No. 1 of the St. Leonards Land Company for twenty-two thousand dollars, five thousand cash and seventeen thousand mortgage.

The Vice Chancellor: That was in 1899? A. Yes, sir, July I think it was; I don't think I settled until later.

Q. Mr. Bacharach, you were acquainted with this land long before you became interested in it? A. Oh, yes.

Q. You have been a real estate broker and dealer in Atlantic City for a good many years? A. I have.

Q. Of large transactions? A. Yes, sir.

Q. Did this property, from the time of the organization of the company in 1896 down to the time of the liquidation increase or decrease in value in your judgment? A. I would say that it increased in value.

Q. Continuously? A. I don't think there was any period when there was any decline in it.

The Vice Chancellor: When there was any period what?

A. Any decline in the value.

Q. You said it increased constantly? A. Yes.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. These options you got from Mrs. Howell and Mr. Disston and others were literally options again, you were under no obligations to purchase? A. No, and weren't taken in my name, as a matter of fact, were taken in an agent's name.

Q. Weren't known in them at the time? A. No.

Q. And you didn't avail yourself of the right as undisclosed principal in them until after the stormy meeting, did you? A. Why yes, because I had to make a payment, another payment in July, if I recall; I think about two dollars a share.

Q. That didn't bind you? A. That did so far as I was concerned; it did bind me, all right.

Q. You weren't legally obligated? A. No, I wasn't legally obligated.

Q. You were three dollars a share out? A. Practically.

Q. And the shares cost you in round numbers? A. Two hundred and fifty dollars a share.

Q. So that you paid the difference between the three dollars and the two hundred and fifty odd after the stormy meeting? A. I did.

Q. The Disston stock was bought through Charlie Adams, wasn't it? A. I think Charlie Adams acted as agent for quite a little of the stock.

Q. Not the Disston stock? A. I am not sure of that. I have the agreement over in the office if you are interested.

Q. Did you pay Disston two dollars or Adams the two dollars? A. That I couldn't say; as a matter of fact I didn't disclose who was the principal and I kept out of it pretty well until the final payment.

Q. Had you actually put up the three dollars with Adams? A. Yes.

Q. Adams himself? A. I don't know whether it was Adams; who ever it was; it was either Adams or Cuthbert.

Q. Before the stormy meeting? A. Yes, sir.

Q. Now, speaking of this matter about which Judge Gaskill asked you. Is it not a matter of fact that from 1898 for several years, owing either to the character of the restrictions and the size of the lots and what not upon this St. Leonard's Land Company property or owing to the fact that the fashion of building seemed to be on either side of there, there wasn't as much improvement in real estate at this particular point as it was above and below it? A. I don't think that quite accounts for it. I should say the reason there wasn't any particular activity in that section was the fact that either the directors or the management didn't seem to want to dispose of the property.

Q. Isn't it a fact that the property was laid out in larger lots than at that time were being sold North, South or East and West as you call it? A. Yes, but I personally always considered it a good thing.

Q. But that of course belongs to the more wealthy, doesn't it? A. My experience was only with that one block, you know, and I was so successful.

Q. As a matter of fact the property that was sold either side— A. That had been selling.

Q. —that had been selling and was sold at about the time I have been speaking of was sold to less ambitious purchasers and in smaller amounts? A. I would say most of it was sold this side before 1899; this side of the St. Leonard's tract; in other words hadn't gone down as far as Ventnor to any extent.

Q. Now, do you remember the size of the lots that were laid out by the St. Leonard's Land Company before you got your block in 1899? A. I never knew this to be any different size than fifty foot front.

Q. What size did you make your lots on that block? A. They were fifty by one hundred and twenty-five; they were restricted.

Q. Did you ever know that the St. Leonards Land Company land scheme of lots was a frontage of sixty-five feet on the corners and sixty feet on side lots— A. That is true on Atlantic Avenue; yes, sir.

Q. —on Atlantic Avenue? A. That is true on Atlantic Avenue; still true, I guess.

Q. That is not true of the lots this side, is it? A. No. They are the largest size lots on Atlantic Avenue that is restricted; largest size.

Q. And is it not true, looking at it as a whole, a more wealthy class, willing and able to pay the larger price for a lot has come to this St. Leonards tract than had previously come to the Ventnor district? A. I think the lower end of Atlantic City had the better class houses and still have the better class houses.

Q. Now it is a fact, isn't it, Mr. Bacharach and I am asking for information, that the type or character of houses that have been erected in the St. Leonards tract is finer and superior to any that were erected in the Ventnor District? A. Yes, I think that is—

Mr. Gaskill: I have not objected because I understand you do not intend to do anything else this afternoon, but I really don't see the necessity of putting this on the record. I don't think it material.

Mr. McCarter: I think it is, in getting rid of this property.

Q. Do you remember the tract in its original condition when these people took hold of it? A. I can say I remember a portion of it.

Q. You knew it was very wild?

Mr. Gaskill: I say this is immaterial. We do not controvert the testimony with respect to the character of the land and what was done with it, so that testimony can stand.

The Vice Chancellor: It already appears as a part of your case that it was a wild land. Do you want to supplement that?

Mr. McCarter: Your Honor will remember that Judge Gaskill asked the witness whether the property had ever depreciated and I want to show that it was expensive to put that land in condition.

Q. You remember generally, do you not, the condition of this land? A. Yes, in a general way.

Q. Still a great deal of work had to be done and money spent before it could be put upon the market, as you put it? A. It had to be leveled off, streets built and sidewalks built.

Q. And filled in? A. I don't recall. I think the filling in was done at a later day.

Q. Had to be done it was sold in lots? A. No question about it.

Q. All of that requires a great deal of money? A. Required money; there is no doubt of it.

RE-CROSS-EXAMINATION by Mr. Gaskill:

Q. In connection with the difficulties about the sale of this property before you took hold of it, did the fact that Messrs. Adams had the sole agency and were entitled to commissions no matter who made the sale have anything to do with it, hindering it in your judgment? A. Well, I wouldn't want to say whether it was the agents or whether it was the company themselves. It was very difficult to get prices on the land, very difficult to get it.

Q. Do you know whether or not the Messrs. Adams had adjoining lands that were put in the market at that time when they were agents for this? A. I couldn't say that.

Q. Well, do you know they had adjoining lands? A. I do not know.

By Mr. McCarter: Q. Now, as a matter of fact, isn't it true that C. J. Adams' office has sold about fifty per cent of the property that you are credited with disposing of? A. No, I don't think they did.

Q. How much have they? A. I don't know; they didn't sell any fifty per cent.

Q. Not as much as that? A. No.

JOSEPH H. MARVEL, a witness produced on behalf of the defendants, being first duly sworn according to law, upon his oath says:

Direct-examination by Mr. Bourgeois:

Q. Mr. Marvel, you live in Atlantic City? A. I do.

Q. And you are a brother of Dr. Philip I. Marvel? A. I am.

Q. You are acquainted with the St. Leonards Land Company? A. I think so.

Q. Own some stock in it? A. I do.

Q. You bought your stock from whom, your brother, Philip? A. I got it through brother, Philip. I was one of the first men.

Q. Now you received your stock from your brother, Philip, I think, in 1905? A. Yes.

Q. Prior to that time had any person importuned you to purchase stock of the St. Leonards Land Company?

Mr. Gaskill: Objected to as incompetent and immaterial. I don't see how that can be any evidence.

Mr. Bourgeois: The purpose of it is to show the stock was on the market and what it was offered for. The price it was offered on the market prior to 1905.

The Vice Chancellor: Going to show the market price of stock; that the idea?

Mr. Bourgeois: I am going to show this stock was on the market at the time this very loan was made and to show the prices at which it was offered on the market. Now they say it is worth a hundred or two hundred dollars a share.

Question allowed.

(Question repeated.)

A. Prior to 1905?

Q. Yes. A. No.

Q. Not prior to 1905? A. Not prior to 1905.

Q. Who had importuned you to purchase stock of the St. Leonards Land Company?

Mr. Gaskill: I object to it as immaterial.

The Vice Chancellor: But this is way down to 1905.

Mr. Bourgeois: That is not relevant un-

less I can show it was previous to that time.

The Vice Chancellor: You think the witness has misapprehended dates?

Mr. Bourgeois: Yes.

(Question repeated.)

A. I was approached by Byron Rogers of C. J. Adams Company.

Q. Do you know when it was that you were approached by Rogers? A. It was in August of 1908.

Q. 1908? A. I mean 1898.

Q. Then when you said 1905 you had in mind 1895? A. Yes. So if the stenographer might correct that?

Q. Who was Byron Rogers? Who is he? A. Byron Rogers was a man at that time associated with C. J. Adams and Company.

Q. And at what price did he offer you the stock? A. He told me he could sell me some stock if I wanted at that time for fifty dollars a share.

Q. And how many shares did he want to sell you? A. He would sell me any amount from five to fifty.

Q. Did you purchase them? A. I did not.

Q. Why? A. Because I knew the banks had turned it down and I didn't think it was a good purchase, so I didn't buy it.

By Mr. Gaskill: Q. Had you the money for investment at that time? A. I had, sir.

Q. Did you make other investments at or about that time? A. I did, sir.

Adjourned until May 6, 1912, 10:30 a. m.

IN CHANCERY OF NEW JERSEY

Between MORDECAI T. ENDICOTT, *et als.*, Complainants, and PHILIP I. MARVEL, *et als.*, Defendants.	On Bill, &c.

Testimony before Hon. F. B. Leaming, Vice Chancellor, at Chancery Chambers, Atlantic City, New Jersey, May sixth, nineteen hundred and twelve.

Appearances:

For the Complainants, Gaskill & Gaskll, Allen B. Endicott, Jr., and Frank Smathers, Esq.,

For the Defendants, Bourgeois and Coulomb and Robert H. McCarter, Esq.

Hearing resumed at 12 noon, May 6, 1912, having been adjourned from April 3, 1912.

Further testimony of Complainants.

MORDECAI T. ENDICOTT, one of the complainants, being first duly sworn, upon his oath testifies:

Direct-examination by Mr. Gaskill:

Q. Admiral you are one of the complainants in this suit? A. Yes, sir.

Q. And one of the stockholders of the St. Leonards Land Company? A. Yes, sir.

Q. When did you acquire your stock and from whom? A. In October, nineteen hundred and three I bought thirty shares from my sister, Katherine B. Endicott and in March—

Q. How many shares? A. Thirty.

Q. Yes; what did you give for them? A. Two hundred dollars a share.

Q. Now go on. A. And in March, nineteen hundred and four I bought five shares from a Doctor Harden, I think is his name, one of the complainants in this case.

Mr. McCarter I beg pardon?

A. Dr. Henry, I think.

Q. At what? A. Two hundred dollars a share.

Q. That constitutes your holdings, does it? A. My entire holdings; yes, sir.

Q. When did you first learn, Admiral, that the loans had been made by directors to the company on some of the company's stock as collateral? A. I believe it was in the spring or summer of 1909.

Q. Had you any knowledge of the transaction whatever before that time? A. No, sir.

Q. Had you before that time learned that the defendants, directors, claimed to be the absolute owners of this stock by reason of the failure of the company to redeem? A. No, sir.

Q. Did you ever receive any notice of any character from the company with reference to this transaction? A. No, sir.

Q. Ever receive any financial statements or reports prior to the spring of 1909? A. Not from the company.

Q. After you learned of this matter what steps did you take for protection of your rights? A. I united with the other complainants in this case in bringing a suit.

Q. First submitting it to counsel for an opinion? A. Yes, sir.

CROSS-EXAMINATION by Mr. McCarter:

Q. Admiral from nineteen hundred and three down to the present time or until nineteen hundred and nine, rather, these previous six years, have you been at sea or on shore? A. On shore duty.

Q. In this country? A. Yes, sir.

Q. Were your dealings with your sister, Miss Kate Endicott— A. I have been out of the country but for only short times.

Q. Were your dealings with Miss Kate Endicott resulting in the purchase from her of thirty shares in this company direct or through your brother the Judge? A. Direct.

Q. Had you talked with the Judge concerning the project before you bought of Miss Kate? A. I took means to learn somewhat of its value and I think I may have mentioned the matter to my brother and also to my sister Hannah, who held some of the stock.

Q. They were local people and you were a citizen of the world, so to speak? A. Yes; they were my brothers and sisters.

Q. And their knowledge, of course, was more precise than your own? A. Yes.

Q. How often were you accustomed during this period to come down here and see your family? A. About once a year.

Q. The old homestead still in this county? A. Yes; May's Landing.

Q. And your brothers and sisters live here in the county? A. Yes, sir.

Q. Now, during the interim, 1903 until 1904, when you bought some stock of Mr. Henry, had you learned anything about the company from your brother the Judge? A. Yes, about its physical condition.

Q. And did you know this Dr. Henry? A. No.

Q. Did you buy that stock direct or through the agency of your brother? A. Through my brother.

Q. Had you ever met Mr. Henry, Dr. Henry? A. No.

Q. Had you inquired at that time from Judge Endicott anything with regard to the progress the company would make, that is between October, 1903— A. And 1909?

Q. No, sir; between October, 1903, when you made your first investment, and March of the following year when you made your second investment of five shares? A. I don't know that I did. I remember a conversation with him about that time—it may have been before my first purchase or after or between the two—I am not certain about that, and he told me he thought it was worth two hundred dollars and he had always advised his sister not to sell because he thought it would eventually be worth considerably more; it was a fair price.

Q. Did you carry your stock certificates with you or leave them with your brother? A. No, sir; myself; they were sent direct to me by the company.

Q. And the company had your address then? A. Yes, sir.

Q. Did you ever attend any annual meetings? A. No, sir.

Q. Did you ever make any inquiry of anybody from 1904 until 1909 concerning the status of the company? A. Yes, sir.

Q. Of whom? A. Of my sister, Hannah, and her husband, Mr. Howell; of Dr. Marvel and of my brother, Judge Endicott.

Q. Dr. Philip Marvel? A. Yes, sir.

Q. When did you inquire of him? A. In 1906; October, 1906.

Q. Did you know the land itself that the company owned? A. I had been through it and had its limits pointed out to me by my brother.

Q. Did you know that the company had had pretty hard sledding in its early stages? A. No, I didn't know much about that. Dr. Marvel told me something of its early history. I think I learned more of its details from him than any one else.

Q. That was in your talk in 1906? A. In 1906; yes.

Q. But previous to that time, before you talked with Dr. Marvel, did you know that the company had practically no cash capital? A. No, sir; I didn't know that.

Q. Did you know that they had to borrow to pay their taxes? A. No, I don't think I knew that until sometime in the year 1904 when I was informed by Mr. Howell, who sent me what purported to be a financial statement of the company at that time.

Q. 1904? A. He attended the annual meeting, I think.

Q. Have you got that report with you, Admiral? A. I am not certain, but I have some papers here.

Q. I would like to see that. A. That is, I presume it was his statement of the annual report; didn't purport to be an authenticated copy. (Witness looks through his papers.) I don't appear to have that here, but I have it at my home. I know I preserved it. I only brought some which I thought I would need to refresh my memory.

Q. That was sent to you by your brother-in-law? A. Yes.

Q. In 1904? A. In 1904.

Q. And in that you learned something of the—A. I beg pardon. I am not certain that is in 1904. I have a letter from his wife, my sister, in 1904 in regard to the company.

Q. Well, I am asking you to recall as accurately as you can when this was? A. My impression was it was subsequent to this letter from my sister; subsequent to that. That is my impression.

Q. What is the date of that letter, Admiral? A. February twenty-fourth, 1904.

Q. And sometimes during the same year? A. Well, I am not certain now. I just spoke from impression or memory. I though that was the paper in 1904.

Q. Is there anything private in that letter between your sister and yourself? If so, I don't want to see that, but I would like any matters referring to anything with reference to the company? A. May I read it first?

Q. Certainly. Of course, I don't want to bother about anything except such parts as pertain to this particular matter and if it is unimportant I don't want that. A. Have I the privilege of consulting my attorney as to whether it is proper?

Q. Certainly.

(The letter in question was then handed to Mr. Gaskill for him to read.)

Mr. Gaskill: I don't see the slightest objection, Admiral, to Mr. McCarter seeing it.

A. This doesn't place it in evidence?

Q. No. A. You are welcome to it. There are

only a few words at the end, no matter, no secret at all.

(The letter in question was then handed to Mr. McCarter.)

Q. Admiral Endicott, I show you the stub of certificate number one hundred and forty dated March 5th, 1904, and ask you after looking at that if you do not think you are mistaken in assuming that you yourself got that certificate direct from the company or whether you must have gotten it from your brother the Judge? A. I have not signed this.

Q. No. "M. T. Endicott by A. B. Endicott." A. They may have forwarded to me through him. They frequently forwarded checks for my dividends through him, and sometimes sent them direct.

Q. I am only asking you now if you are not mistaken? A. I said I bought it through him, the five shares.

Q. The certificate evidently came through him? A. Very likely it did. I am not sure about that.

Q. Now, at any rate, previous to your talk with Dr. Philip Marvel, to which I will direct your attention in a moment, you gained the impression, did you not, that the value of the shares of this company was somewhat problematical? A. I gathered the impression that it would probably be worth a good deal more than two hundred dollars a share. I didn't gain the impression it would probably be worth less.

Q. Did you gain any knowledge at all of the difficulties that they suffered, namely, of their lack of cash capital, the fact that they had to borrow to pay their fixed charges like taxes? A. I don't think I knew anything of that, until I learned it through my brother-in-law.

Q. 1904? A. I am not certain now about that date.

Q. About that time? A. Yes. That was after I became interested in the stock.

Q. Did you learn through your brother-in-law of the threatened suit by Mr. Risley for filling in? A. No, sir.

Q. You never knew that they had incurred a large bill for filling and that Mr. Risley threatened them with suit— A. No, sir.

Q. —in June, 1898? A. No, sir; I knew nothing about that. I have no recollection of it.

Q. Never heard of that? And did you hear that they were borrowing from the banks largely on the credit of endorsements of the directors? A. No, sir.

Q. Did you have any curiosity to ascertain any of those things? A. If I had known they were embarrassed, of course, I would have done so. I simply satisfied myself that the stock was valuable and worth that and would appreciate in value. After I learned that I retained my stock.

Q. Had you learned what cash capital they had or hoped to get with which to make the necessary improvements? A. No, I think not.

Q. You know the original condition of the land, didn't you, namely that it was wild land? A. Yes.

Q. And needed to be graded and filled and all that? A. I knew that.

Q. Of course you knew that required money? A. Yes.

Q. You never had curiosity to ascertain where that money was to come from? A. No, I didn't know how it was coming on.

Mr. McCarter: We have no objection to your offering that letter.

Mr. Gaskill: Letter that Admiral Endicott produced, from his sister dated February 25, 1904, can now be offered by the complainants, being the paper that was called for by the defendants' counsel.

Said letter admitted in evidence and marked Exhibit C-13.

Q. After the receipt of the letter which has just been marked and which is dated the 25th of February, 1904, you evidently purchased five more shares from Dr. Henry? A. Yes, sir.

Q. Now can you recall the information you derived from your brother-in-law? A. Mr. Howell?

Q. Yes, sir? A. I couldn't quote from it.

Q. I don't mean, of course, verbatim? A. It was a financial statement for the year and showed the expenses during the year and liabilities and showed a sort of a balance sheet and that showed that—I think that showed that land had been sold to pay taxes—I just have that impression. I am sorry I haven't it here, because there wasn't nothing—

Q. Now you subsequently met Dr. Philip Marvel, on the ferry boat, was it? A. Yes.

Q. Between Camden and Philadelphia? A. Yes.

Q. And do you recall that talk? A. I have got a note of it. I have a memorandum, if I can refresh my memory. I made a memorandum at the time.

Q. Certainly? A. You want to know what he told me?

Q. Yes, sir? A. That was in October, 1906. Conversation with Dr. Marvel. I asked in regard to the amount of stock and he told me that there were 2,200 shares issued; there were 1,787 outstanding.

Mr. Bourgeois: How many?

A. Seventeen hundred eighty-seven outstanding.

The Vice Chancellor: Twenty-two hundred issued?

A. Twenty-two hundred issued.

The Vice Chancellor: And how many outstanding?

A. Seventeen hundred and eighty-seven; and four hundred and thirteen in the treasury. He gave me this without reference to any books or notes, from memory, and I noted it.

Q. Was that in response to an inquiry of yours? A. Yes. I was introduced to him for the purpose. I asked my brother—may I tell just how it was? I was going up from Atlantic City to Philadelphia with my brother, Judge Endicott, and I was talking with him about the company and asking him something about its condition and he said "Dr. Marvel knows a great deal more than I do and I will introduce him." He introduced me to Dr. Marvel and my brother remained in Camden and Doctor and I went over on the ferry and I asked him a few questions and this is the information he gave me.

Q. Anything further? Is that the margin of the newspaper you wrote on? A. It is. I tore it off from a paper I was reading and put the date on. He told me that at current prices for real estate in the vicinity he considered the property worth $500,000. He said there was a debt of about $12,000 upon the property which was drawing six per cent interest. He further said that the company had recently bought—

Q. Beg pardon; I didn't hear that? A. He said that the company had recently bought the riparian right on the ocean front and on the thoroughfare costing about $10,000. Shall I tell what he thought?

Q. No, I want to know what he said? A. Well, he told me what he thought. Dr. Marvel—

Mr. Gaskill: That is proper.

A. Dr. Marvel thinks the next five years will make great increase in value. He says he would buy all he could at $200 per share or less.

Q. Now what was the date of that interview? A. It was in October, 1906. There is something here which I think fixes the date a little more nearly. I find the earnings of one or two railroads for the week ending October 6th. Those weekly earnings are generally published within two or three days after the expiration of the week and for that reason I think it must be in the neighborhood of the 10th of October, as near as I can get at it.

Q. Now previous to that interview with Dr. Marvel you had been interrogating your brother the Judge about the affairs of the company? A. Well, I had been; ridden down over and seen the property, but I don't remember any definite information about its condition.

Q. You had been interrogating him, hadn't you, and he said Dr. Marvel knew all the details? A. On that occasion I did.

Q. Previous to that occasion, previous to the talk? A. Perhaps I did. I can't remember definitely.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. As preliminary to a question, I wish to read this letter that has been offered:

"Chelsea, Feb. 25, 1904.

"Dear Mord:

"As I promised, I write to let you know that I have a prospect of selling my St.

Leonard stock. Dr. Marvel is talking of getting some one to join him and buying it. Lew went to him and said nothing about your taking some of it. I mean that you talked of it. I think he will want it all if he gets this person to go in with him. So if you are anxious for some of it let me know at once, as I do not want it to go any further without saying something about another party. Lew attended the meeting of the St. Leonard Company the other day and from what he learned he thought I had better sell, as it might be some years before it would be sold. They valued the shares at $350 which Lew thinks is too high. Joe Thompson said right in the meeting that he would sell out for $250. Dr. Youngman said he would sell also. While others think very different about it, I think they are too high in their ideas. Marvel seemed very pleased to buy at $200. Lew don't think they will realize what they are expecting to, still, he says, it is one of those things that you can not tell anything about. Let me know as soon as convenient what you think about it.

"Your aff. sister,

"HANNAH HOWELL."

(The rest is about his sister.)

Q. Who is Lew? A. That is her husband, Mr. Howell.

Q. Mr. Howell that you have spoken of? A. Yes.

The Witness: May I supplement my answer to one of your questions?

Mr. McCarter: You are answering Mr. Gaskill.

Mr. Gaskill: This was about the time of the so-called Thompson resolution, two days after the annual meeting.

Q. Now, Admiral, you were asked by Mr. McCarter, after he had seen this letter, if the value of the shares was not problematical. I ask you if the problem was not what it was worth between $200 and $500 rather than it being of no value?

Mr. McCarter: I think that is very leading, Judge.

(Question withdrawn.)

Q. I will put it this way: What was the problem, if any, in your mind as to the value of this stock? A. As to how much it would increase.

Q. How much it would increase? A. Yes.

Q. Over what? A. Over what I paid for it.

Q. Which was $200 a share? A. Which was $200 a share.

Q. Only one other question. You told Mr. McCarter that you had a report of the annual meeting from your brother-in-law, Mr. Howell. I do not clearly understand whether it was an official report issued by the company a copy of which he sent you or whether it was a letter from him giving his impressions and record of what took place at the meeting; which was it? A. I understood it—it was a letter from him—and I understood it to give his impression or such information as he gained at the meeting and that letter refreshed my recollection at the time. I didn't read all of it this morning, but it rather confirms my statement; I think it was 1904.

Q. You are willing this letter shall be left with us until it is copied in the record, Admiral? A. Yes.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. Admiral Endicott, do you recall where this conversation between Dr. Philip Marvel and yourself took place? Was it on the ferry boat standing? A. On the ferry boat sitting.

Q. Did you make the memorandum in his presence? A. I did, in regard to the number of shares of stock outstanding, and so forth, and whether I wrote the other in his actual presence or not I don't know. If I didn't I did it immediately afterward. I know I wanted to put it down while it was fresh in my memory.

Q. Have you any personal recollection of the matter except as your memory is refreshed by the memorandum? A. As to when I made the note?

Q. No, as to the conversation? A. As to what occurred?

Q. Yes? A. I have no recollection of anything further. I think I put down everything he told me.

Q. What I mean is if you hadn't had the memorandum would you have recalled the incident? A. I would have recalled the incident, yes, very well.

Q. And the facts? A. And the principal facts, yes.

Q. You didn't buy any of Mrs. Howell's stock, but bought some of Dr. Henry's? A. Yes.

Q. After that letter? A. Hers was a larger quantity.

Q. Did you hunt up your brother the Judge after the talk and suggest the buying of some more to him? A. No, sir.

Q. How did it come about that you did secure the remaining five shares? A. Well, he knew that I was thinking about buying some more and he

wrote me he knew of a gentleman in Philadelphia had five shares he would sell for $200 and I wrote to him to get it for me.

Q. From that time, the interview with Dr. Marvel, to 1909, with whom did you talk concerning the company's affairs, five years? A. Well, I think I talked with my sister and my brother. I don't remember talking with any others.

Q. Did you ever go to the company's office to make any inquiries during those five years from 1904 to 1909, as to how business was going? A. I think not, sir.

Q. Did you ever make any effort to inquire from anybody unless it were your sister or her husband, neither of whom were directors, as to the affairs of the company during those years, 1904 to 1909? A. No, sir; it was my object to attend the annual meetings, but it was not practicable to come here and I didn't do so.

Q. During this period did you make any inquiry as to the method of financing the company? A. I think not. I don't recall any.

Q. Did you ever make any inquiry as to the source of the cash necessary for the promotion of the object of the company, namely, the improvement of the land, by filling and clearing, paving, and so forth? A. No, sir; I had the impression that it was paying its way by the sale of property.

RE-DIRECT-EXAMINATION by Mr. Gaskill:

Q. Did you ever receive any notice of any annual meetings? A. Yes, sir.

Q. Of stockholders? A. Yes, sir.

Q. What one? A. I think I received two or three; I have them here if you want them.

Q. Just produce them, will you, please? A. One of February 14, 1908.

Postal card notice is produced.

Q. That is signed by C. J. Adams secretary, isn't it, Admiral? A. Yes, it is.

Mr. Gaskill (reading): "Atlantic City, N. J., Feb. 14, 1908. The annual meeting of the St. Leonards Land Company will be held at the office of C. J. Adams Company, room 6 Real Estate and Law Building, Monday, February 24, 1908, at 10 o'clock a. m., for the election of directors and officers for the ensuing year and such other business as may come before said meeting.

"By order of the president.

"C. J. ADAMS, Secretary."

It is addressed to Mordecai T. Endicott, R. A., No. 1330 R. Street, N. W., Washington, D. C.

Said notice offered in evidence and marked Exhibit C-14.

Mr. Gaskill: Witness produces another notice, in typewriting on a sheet of paper having the letterhead of C. J. Adams Co., Real Estate and Insurance, Atlantic City, dated February 11, 1910, addressed to Mordecai T. Endicott, R. A.—

Q. That means Rear Admiral? A. Yes.

Mr. Gaskill (reading): "No. 1330 R. Street, N. W."—

Q. That is northwest, I take it? A. Yes.

Mr. Gaskill (reading):

"Washington, D. C.

"Dear Sir: The annual meeting of the stockholders of the St. Leonards Land Company will be held at the office of the company, room 6 Real Estate and Law Building, Atlantic City, N. J., at 11 o'clock, a. m., on Tuesday, February 15, 1910, for

the election of directors and transaction of such other business as may properly come before the meeting.

"Very truly yours,

"C. J. ADAMS, Secretary."

Signed in typewiting.

Said letter or notice offered in evidence and marked Exhibit C-15.

A. I thought I had another, but I don't find it.

Q. Those two are the only notices you find among your papers? A. Yes, sir.

Q. You say you thought you had one more. Do you recall what the date of that other one was? A. I do not.

Q. Whether it was earlier or later than these? A. What is the last, 1906?

Q. No, 1910; was the last and the other one was 1908? A. I had the impression it was near the date of this or just later, February 11, 1910.

Q. You will leave these papers with your nephew, Allen, Jr.? A. Yes.

Q. Did you receive direct from the company the dividends that were declared and paid or did they come through your brother, the Judge? A. Some of them I received direct and some came through my brother the Judge.

Mr. Gaskill: Witness produces two letters, both on the letterhead of C. J. Adams Company, the first one dated September 15, 1909 (reading):

"Mordecai T. Endicott, R. A.,
No. 1330 R. Street, N. W.,
Washington, D. C.

"Dear Sir:

"Enclosed please find check of the St. Leonards Land Company for $700, being

dividend of $20 per share. Receipt for this is not necessary.

"Very truly yours,

"ST. LEONARDS LAND COMPANY,

"Lucius I. Wright,

"Assistant Secretary."

The other:

"November 24, 1909.

"Mordecai T. Endicott, R. A.,
No. 1330 R. Street, N. W.,
Washington, D. C.

"Dear Sir:

"Enclosed please find check of the St. Leonards Land Company for $700 being dividend of $20 per share. Receipt for this is not necessary.

"Very truly yours,

"ST. LEONARDS LAND COMPANY,

"Lucius I. Wright,

"Assistant Secretary."

Said letters marked Exhibits C-16 and 17 respectively.

Q. Have you any other communications from the company? A. None from the company.

Q. Admiral, did you ever receive any notice of a stockholders' meeting held in the year 1904, and the one held in the year 1907? A. I think not.

Q. Quite sure? A. I am pretty sure.

Q. Have you carefully kept all of the papers in connection with this matter? A. I have endeavored to keep everything.

Q. And have you looked through those papers to see if you had any such notice? A. I have.

Q. And don't find any? A. No.

RE-CROSS-EXAMINATION by Mr. McCarter:

Q. You won't say you didn't get a notice of

the meeting held February 23, 1906, will you, Admiral? A. I will not.

Q. Nor you won't say you didn't get a notice of the meeting held February 23, 1907? A. I will not, but I don't think I received two in addition to these.

Q. Will you say that you did not receive a notice of an annual meeting held on the 23d of February, 1904? A. I can not say.

Q. I beg pardon? A. I do not say.

Complainants rest.

Defendants' Testimony

JOHN B. ADAMS, a witness produced on behalf of the defendants, being first duly sworn according to law, upon his oath, testifies:

Direct-examination by Mr. Bourgeois:

Q. Captain, you are the brother of Israel G. Adams? A. I am.

Q. You reside in Camden? A. I do.

Q. Are you a stockholder in the St. Leonards Land Company? A. I am not.

Q. Were you ever a stockholder in that company? A. Never was.

Q. Were you ever importuned to purchase stock of that company?

Mr. Gaskill: We enter the same objection as before on the ground this evidence is immaterial and irrelevant.

The Vice Chancellor: What is the plan or purpose, to show its market value?

Mr. Bourgeois: Sure.

Question allowed.

A. I was importuned to purchase it.

Q. When? A. Well, I imagine the spring of 1898, and all the way along, probably the early part of the summer, several times.

Q. What makes you think it was the spring or early part of 1898? A. At that time I had a very large land deal on myself and the trouble of this company prevented me putting that deal through that year.

Q. At what price was the stock of the St. Leonards Land Company offered to you at that time? A. Fifty dollars a share.

Q. In what quantities? A. Any quantity I wanted.

Q. By whom? A. Israel G. Adams, my brother.

Q. Did you purchase it? A. Not a share.

Q. Did you make any inquiry to ascertain the value of the stock at that time? A. I did.

Q. What did you ascertain the value of the stock to be?

A. No value—

Mr. Gaskill: I object to that.

The Vice Chancellor: It would be no service, of course, unless he shows what investigation he made. If you follow it up by showing that he made any investigation, I will permit you.

Mr. Bourgeois: I expected to do that.

Objection withdrawn.

Q. What investigation did you make, Captain, to find out the value of the stock? A. Well, I asked I. G. some very strong questions why it was they were so anxious to sell for fifty dollars a share.

Q. And what did you find out? A. He said in the sheriff's hands about.

Q. Did he tell you that for that claim they were about in the sheriff's hands? A. Yes.

Q. What? A. Filling, grading, and everything he could mention.

CROSS-EXAMINATION by Mr. Gaskill:

Q. I understood you to say that you determined it was of no value at all? A. That is what I learned from my investigation.

CLEMENT J. ADAMS, a witness produced on behalf of the defendant, having been previously duly sworn, being re-called, on his oath testifies:

Direct-examination by Mr. Bourgeois:

Q. Mr. Adams, you were examined on the previous hearing with regard to when the resolution which bears date October 15th, 1898 was actually passed and you stated at one time that it was passed October 15th, and at another time it was passed in June, 1898. Since the last meeting or hearing have you endeavored to recall when that resolution was in fact passed? A. I have.

Q. When was it in fact passed, that is the resolution that bears date October 15th, 1898? A. That was passed at that time. I was confused with the resolution of May 19th in which we were authorized to borrow ten thousand dollars.

Q. Mr. Adams, Mr. Joseph Wilson testified that he attended a stockholders meeting of the St. Leonards Land Company with Mr. Harry Scull, at which meeting neither Judge Endicott, nor Judge Thompson, nor yourself, nor Israel G. Adams, nor Dr. Marvel nor Dr. Youngman, nor Louis Kuehnle were present and that that meeting was held on the opposite side of the street from your office. Was there ever a meeting of

the St. Leonard's Land Company held on the opposite side of the street from your office? A. There never was.

Q. Was Harry Scull a director or a stockholder in the St. Leonards Land Company? A. He was not.

Q. Ever? A. No.

Q. Mr. Wilson also said that he made inquiry concerning the Land Company from you and from Israel G. Adams. Do you recall of any conversation had with Wilson, with Joseph Wilson concerning the Land Company and its finances? A. I had several talks with Mr. Wilson.

Q. Do you recall a particular instance at the corner of Fourth and Walnut Street, Philadelphia, when you had a conversation with him? A. I do.

Q. What was that conversation? A. I told him the condition of the company at the time we negotiated those loans and the embarrassing condition that we were in.

Q. You mean by that the loans of fifteen hundred dollars each made to the company? A. I do.

Q. And did you tell him that they were the loans that you had reference to? A. They were mentioned in fact at that time and later in Camden, New Jersey, in the room of the Camden Safe Deposit and Trust Company.

Q. Mr. Adams, Judge Thompson testified that up until just prior to the liquidation of the company, which was in 1909, that none of the minutes had been written up in the minute book of this company. Is that correct.

Mr. Thompson: I didn't say that.

Mr. Bourgeois: That is what I read your testimony. Let me see where it is.

Judge Thompson at page 235 testified as follows:

"Q. Did you have occasion at any of the meetings of the company to notice the condition in which the minutes had been kept? A. I did.

"Q. And what did you notice? A. That they were badly and very indifferently kept.

"Q. Were they written up and presented in a written form in the book at each of the meetings of the company? A. They never were presented in written form until several years after the organization of the company.

"Q. Can you state, from your recollection, whether or not at any time there was any considerable period when there was no minutes except the rough notes? A. There were no minutes ever entered in the minutes book from the organization of the company until shortly prior to the time when the company was practically ready to liquidate and then they were written up at that time covering the period from the organization of the company until February, 1904 and there never has been a minute written from that time down to the present in the minute book that I have seen, at least."

Q. Now, the Judge testified that those minutes that were written in the minute book were not written in there until just prior to the liquidation and then they were written from the beginnning down to the year 1904; is that correct? A. It is not correct.

Q. When were the minutes that are written in

this minutes book actually written in the book? A. These were minutes in the book from the minutes that were passed by the company just previous to Miss Kirkbride, while Miss Kirkbride was in my office.

Q. But I want to know when these were written with relation to the time when the meetings were held? A. They were taken off and transcribed at that same time.

Q. That is as long as they were transcribed? A. Yes.

Q. From 1898 up until 1904, and after that time none of them were transcribed; is that it? A. They were not.

Q. Were those all transcribed at the same time? A. They were not.

Q. Were they all transcribed by the same person? A. Yes. That is Miss Freas.

Q. That is the organization was Miss Freas? A. Yes.

Q. And then after that they were in the handwriting of whom, did you say? A. Miss Sarah Kirkbride.

Q. And she is now deceased, I understand? A. She is.

Q. Now, Mr. Adams, did you ever borrow this money and use the stock of the St. Leonards Land Company as collateral? A. From the company?

Q. No, not borrow from the company, but borrow from the banks, anything of that kind, use the company's stock as collateral, your stock? A. Yes, I borrowed the $1,500.

Q. I don't mean that. Did you make a loan or borrow from the Second National Bank on one occasion $5,000 and put up $10,000 par value of the stock for it? A. I did.

Q. When was that? A. I think that was in 1898.

Q. What was the result of that loan? A. The loan ran for four months and they asked me to reduce it. At the end of four months I did reduce it $1,000.

Q. And then what? A. And then at the expiration of that time they asked me to reduce it again and I took the loan out of the—

Mr. Gaskill: I make the objection this is self-serving testimony, immaterial, irrelevant and incompetent.

Q. Was anything said about what they wanted you to do if you let it remain in there at the same amount? A. At the second renewal?

Q. Yes. A. Yes.

Objected to as hearsay.

Question allowed.

Q. What? A. Wished the amount reduced.

Q. If you didn't reduce it what did they want you to do if it remained there? A. Take the loan out of the bank, which I did.

Q. What with regard to the collateral? A. They didn't regard the collateral as sufficient.

Q. Who told you they didn't consider the collateral sufficient? A. Well, the bank asked for it. I negotiated the loan through Mr. Levi C. Albertson.

Q. And all your negotiations in that transaction were with the bank or some officer of the bank? A. They were.

Q. Mr. Adams, Judge Endicott testified on page 216 of the testimony, to the effect that the reason the company didn't get along better in its early—the reason the company didn't get along better was because all of the sales were made through I. G. Adams and Company's office and Judge

Thompson testified on page 233 and 234 that the reason they didn't get along better was because: "A. There were two reasons; I think one was that the price fixed by the company was too high in advance of the market value and in the second place, I don't think there was any real estate agent in town that would advocate the sale of those lots outside of Adams and Company." Page 234: "Q. Why not? A. Because of it being necessary to divide their commission with Adams and Company." I want to call your attention—first—

Mr. Bourgeois: First, I want to offer in evidence the minute of January 12, 1898. Now I haven't got the loose minute here, but I want to use this first.

Mr. Gaskill: Is it in this book?

Mr. Bourgeois: It may be there.

Q. January 12, 1898. I want to offer that in evidence. I offer that minute in evidence and call your attention to this clause, Mr. Adams: "On motion, decided to allow I. G. Adams and Company one-half per cent of all sales made by outside agents and two per cent in addition to the one-half per cent made by themselves," and ask you if that is the authority you had for selling the land and receiving a commission? A. It is.

Mr. Gaskill: I object to that answer and ask it be stricken out. I have the minute book in my hand and I have it open to the minute of January 12, 1898. Whereabouts is any such thing in this book as that that you are reading? There is not any such thing in the book as my friend was reading. He has been mislead by somebody else making a copy from something else.

Mr. Bourgeois: This is a copy from the original, typewritten in my office; copied from the original there.

Question withdrawn.

Q. Now, I call your attention to another minute of 1899, of August 23, page 33 of the minute book, the last clause of which reads as follows: "On motion it was decided to place the sale of the lands of the company in the hands of the different real estate agents in the city and the parties selling receiving the proper commission of 2 per cent for the sale of the lands and that the said I. G. Adams and Company receiving ½ per cent commission from the company in case they do not make the sale." Was that resolution, or after that time, after this resolution of August the 23d, 1899, did I. G. Adams and Company have the exclusive sale of this property? I say after the resolution where it is put in everybody's hands did you have the exclusive sale of it? A. We did not. We had—can I explain something else?

Q. I will ask you something. During the time that you had the exclusive sale, that is in so far as it was exclusive, during the time that you received the half per cent commission, what was the consideration of your receiving that commission? A. We did the advertising, all the maps of the company, for which the company never paid a dollar, nor a cent, we made the advertising, the newspaper advertisements, gave our attention to it, office free without any consideration whatever.

Q. Excepting this— A. Except this case and then it was open to all the agents.

Q. Now, will you tell me, please, who were present of the directors at this meeting of August 23, 1899? A. There was present I. G. Adams, C. J. Adams, Joseph Thompson, A. B. Endicott and M. D. Youngman.

Q. Turn to January 12th, 1898, and tell me who was present at that meeting? A. What was that date?

Q. January 12th, 1898? A. Philip I. Marvel, M. D. Youngman, Joseph Thompson, Louis Kuehnle, A. B. Endicott and I. G. Adams.

Q. I show you what appears to be the original minute of January 12th, 1898, and ask you whether or not that is the original minute of that meeting?

The Vice Chancellor: Original pencil draft? Original minutes are supposed to be the book.

Mr. Bourgeois: I suppose that is right.

A. It is.

Mr. Bourgeois: I offer this in evidence.

The Vice Chancellor: Does it differ from the one in the book?

Mr. Bourgeois: Yes, because it contains this clause which is not in the book. It reads as follows: "Endicott, Marvel, Thompson, I. G. Adams, Kuehnle and Youngman. January 12th, 1898. Richards proposition to build canal objected to. On motion decided to allow I. G. Adams and Company ½ per cent of all sales made by outside agents and 2 per cent in addition to the ½ per cent made by themselves. On motion decided to fill all the land belonging to the company's land. Also decided to get several estimates for levelling and clearing the blocks on the south side of Atlantic Avenue, to report at next meeting. On motion decided to sell to Mr. Cloud at cost all the stone now on the ground."

The Witness: Car load of stone dumped there for gravel.

Recess taken until 2 p. m.

Afternoon session, 2 p. m.

CLEMENT J. ADAMS, resumed:

Direct-examination resumed by Mr. Bourgeois:

Q. Now, Mr. Adams, Judge Thompson testified that on one occasion he came and asked you to see the minutes and you refused to permit him to see them. What have you to say about that? A. I never remember having objected to Judge Thompson seeing the minutes at any time.

Q. Did you ever object to anybody seeing the minutes excepting on the occasion of one meeting night when you got into a quarrel, all of you? A. That is correct.

Q. Excepting that did you ever object to anybody seeing the minutes, that is any of the directors or stockholders? A. I did not.

Q. Now, what was it on the occasion of that meeting when Judge Thompson requested you to let him see the minutes and requested Dr. Marvel to have you let him see the minutes? Why was it you refused? A. Judge Thompson was very much enraged and used some language hardly becoming to the occasion.

Q. To whom did he use that language? A. To myself.

Q. And it was because of his language to you that you refused to accede to his demand to get the minutes; is that true? A. That is true.

Q. Do you recall what it was that Judge Thompson said to you that lead you to refuse to let him see the minutes? Do you recall the language? What did he say to you? A. Well, used an oath, I think it was; I can't tell you what the oath was, and demanded to see the minutes, that I open the safe; it was already open in my own office, my own safe.

Q. Was there any other reason excepting because of the language that he used to you for your refusing to permit him to see those minutes? A. He appealed to the president, Dr. Marvel, and Dr. Marvel sustained me and told Judge Endicott he was not using the proper language—

Q. Judge Endicott or Judge Thompson? A. Judge Thompson—and told me he sustained me in not giving him the minutes, sustained me.

Q. For what reason did he sustain you in not giving them? A. The language he used.

Q. Now, Mr. Adams, I show you a memorandum that I think was made up by you or under your direction, and ask you if you can tell whether or not there were notices of directors' meetings sent out.

Mr. Gaskill: I object. Here is a list of dates which he wants the witness to use. I want to know whether he made up that list.

Mr. Bourgeois: I want to ask him that.

The Vice Chancellor: I think before he inspects that paper the judge has a right to know.

Mr. Bourgeois: How can I find out unless I ask him?

By the Vice Chancellor: Q. Have you seen the memorandum? A. Yes.

Q. Was it made by you? A. Yes.

Q. When? A. Made up from the books when the notices were sent out.

Q. This particular paper, when was this made up by you or under your direction, whichever it was? A. It was made up during this last meeting here.

Mr. Gaskill: I am not going to permit you to hold those figures before him.

Q. That is since the April meeting? A. Yes.

Mr. Gaskill: I object to this paper which the counsel has in his hands being submitted to the witness as any memorandum from which he can refresh his memory to testify, it appearing to be not a memorandum made up at the time, but simply a compilation by him since this case was started as to when he thinks, according to the minute book, certain things were done.

The Vice Chancellor: Objection sustained.

Mr. Bourgeois: If the Court please, I am not going to ask the witness to testify from any memorandum. I am going to ask him if on these dates, which he has made up since that time by reference to the books, notices were sent out, not by reference to this; I want to know that independent of this.

The Vice Chancellor: Can't he take them from the original data?

Mr. Bouregois: Yes, we can do that, only it will take longer; that is all.

The Vice Chancellor: I think you better do that rather than the shorter method.

By Mr. Bourgeois: Q. Mr. Adams, I hand you the minute book and also the loose minutes of the St. Leonard's Land Company, and ask you to refer to a minute of an annual meeting on the 23d of February, 1904, and see if you find a minute of that meeting?

The Vice Chancellor: Your purpose is to take each annual meeting and ask him whether notices were sent out?

Mr. Bourgeois: That is what I am going to ask him.

The Vice Chancellor: I am asking if that is your purpose.

Mr. Bourgeois: That is my purpose.

The Vice Chancellor: Won't his testimony be just as valuable if he testifies generally notices were sent out?

Mr. Bourgeois: Yes, but I want to show annual meetings were held.

The Vice Chancellor: More than in these minutes?

Mr. Bourgeois: Oh, yes, some are in these loose sheets. But he can find out; won't take him more than all the afternoon.

Q. Have you found the annual meeting of February 23d, 1904? A. Not yet.

Q. Not yet? A. February 23d, 1904?

Q. Yes, did you find it? A. Yes.

Q. Will you tell me whether or not there was a call sent out from that meeting? A. There was a call.

Q. To whom was the notice sent? A. This notice was in the paper for ten days, advertised regularly, and then sent directly not only to the directors of the St. Leonard's Land Company but to each stockholder appearing on our books.

Q. Now, Mr. Adams, refer to the loose mniutes, which you will find in the package before you, and tell me if there was a call for a meeting, an annual meeting, on February 23d, 1906? A. There was.

Q. Was any notice sent out of the call for that meeting? A. There was a call sent out, notice sent out to call that meeting; yes.

Q. And of what nature? A. The annual—regular statement of the annual meeting of the St. Leonard's Land Company.

Q. And to whom was the notice sent? A. It was sent not only to the directors of the company, but to the stockholders of the company.

Q. Was there a call for an annual meeting of—

The Vice Chancellor: Was there an annual meeting on that date?

Q. Was there an annual meeting on the 23d of February, 1906, pursuant to that call? A. There was.

The Vice Chancellor: And the minutes of that are not in the regular minute book?

Mr. Bourgeois: Not in the minute book. None of these are entered in the minute book.

The Vice Chancellor: Yes, there is one of February, 1907, and one of February, 1908?

Mr. Bouregois: Not in the minute book. Last meeting is directors' meeting of February 23d, and that followed the meeting of February 23d, 1904.

Q. Now, Mr. Adams, was there a call for an annual meeting, stockholders meeting, for February 23d, 1907? A. What was that date?

Q. February 23d, 1907.

The Vice Chancellor: Mr. Bourgeois, can you state whether in the meeting of February 23d, 1906, whether in the loose minutes of the meeting there is any reference to this loan?

Mr. Bourgeois: Will I state? I don't think there was. There was not to my knowledge.

A. That was 1907, was it?

The Vice Chancellor: February 23d, 1907, he said, yes.

Q. February 23d, Mr. Adams, 1907? A. I don't find that memoranda here.

Q. It is a loose copy, Mr. Adams, that precedes an adjourned meeting of March 2d, 1907, an ad-

journed meeting of that meeting of March 2d, 1907. A. I have the March 2d, 1907.

Q. Now see if you don't find the record of the previous meeting. Keep the one March 2d out.

The Vice Chancellor: Were there no stockholders' meetings prior to 1904?

Mr. Bourgeois: Well, I think so, but I am not quite sure about that. I know there were some, but how many I don't know.

Mr. Gackill: Minutes don't show any, I don't think, Mr. Bouregois.

Mr. Bourgeois: Well, there was an original meeting, a stockholders' meeting.

A. I don't seem to find that. Can't get my eye on it. It is here somewhere.

Mr. Gaskill: To save time, Mr. Bourgeois, you may use your carbon copy of the minute of February 23d, 1907.

Mr. Bourgeois: If this is the only one. you want to use the carbon copy and allow us to examine all of these.

Mr. Gaskill: Trouble is your copies are not actual.

Mr. Bourgeois: Judge, if you think that is correct, why can't we testify and on cross-examination you show the inaccuracy?

Mr. Gaskill: Oh, no, a very kind offer, but I prefer not. Here is a copy that we made that which you are welcome to use.

Mr. Bourgeois: No.

The Vice Chancellor: Why can't he testify that he sent out notices of all annual meetings? Why won't the purpose be served by him testifying that he sent out notices of all annual meetings, if that is a fact?

Mr. Bourgeois: It would, if your Honor

please, excepting it wouldn't show how many annual meetings there were.

Now, if your Honor please, I will offer in evidence from the bundle that Judge Gaskill and Mr. Endicott had an original minute of a stockholders' meeting held February 25th, 1897.

Said minute marked Exhibit D-4.

The original notice for the meeting of February 23d, 1906.

Said notice marked Exhibit D-5.

The minute of the adjourned meeting of March 2d, 1907.

Said minute marked Exhibit D-6.

Minute of the annual meeting of February 24th, 1908.

Said minute marked Exhibit D-7.

Minute of February 11th, 1910.

Said minute marked Exhibit D-8.

Minute of the annual meeting of the stockholders of February 15th, 1910.

Said minute marked Exhibit D-9.

Q. I ask you, Mr. Adams, whether or not notices of these various meetings were sent out to the stockholders and directors? A. They were.

Q. State whether or not notices were sent out to the stockholders in the cases of all stockholders' meetings? A. Notices were sent out of the stockholders' meetings, yes.

Mr. Bourgeois: If your Honor please, there were two of those records we do not appear to have found in this hasty examination and I want to make further search for and produce; one is the meeting of 1908 and the other 1909.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Mr. Adams, you looked at the minute book with reference to the meeting of February 23d,

1904, in order to determine whether or not notice had been sent. Just turn to that record and tell me what there is there that enables you to say that notice was sent of that meeting?

Mr. Bourgeois: If the Court please, that is not stated correctly; I asked Mr. Adams to refer to that minute and state if a meeting was held.

The Vice Chancellor: I appreciate that, but he can explain.

A. I don't understand your question, judge, whether the notice was sent?

Q. That isn't what I asked you. I ask you what is there in connection with the minute of the meeting of February 23d, 1904, as entered in the book to which you referred that enables you to recollect that a notice was sent to the stockholders? Point it out. A. Notice—would be none there— notice was sent to every annual meeting to every stockholder and every director.

Q. Then you are satisfied from recollection, aren't you, Mr. Adams, and not by reference to this minute book, with reference to that minute, that meeting? A. It was customary to give ten days' notice of the annual meeting.

Q. Then you are testifying from recollection that a notice was sent and not from anything that is in the minute book? A. I am testifying, judge, to the fact, because I signed those notices.

Mr. Gaskill: Am I entitled to an answer?

The Vice Chancellor: Yes, as to whether he is testifying from anything in the minute book. Is there anything in the minute book, Mr. Adams, from which you can testify as to that fact?

A. There is not.

Q. You are relying on your recollection, aren't you, Mr. Adams and your custom? A. Our usual custom of making ten days' notice.

Q. There isn't any copy of the notice pasted in the minute book, is there? A. Appears not to be in this one, but there are copies of those notices.

Q. In those loose memorandums you looked over to find out whether or not notices had been sent out of these stockholders' meetings you didn't find any copy of any notice that was sent, did you? A. Yes, there is a copy of a notice pinned to some of them.

Q. That is the notice in the newspaper, isn't it? A. Well, my list that I mailed from in the office.

Q. And it is by reference to that list since you were examined as a witness that you now say that you sent notices to all of them? A. Information since that? No.

Q. I say you have looked at that list since this suit commenced and from the information thus gained you testify that notices were sent? A. I testify from our mailing book in the office which has been there for several years.

Q. You haven't got that mailing book here? A. It is in the office. I can produce it.

The Vice Chancellor: Did you, Mr. Adams, attend to this duty or was it turned over to your clerk?

A. My stenographer done it under my direction. I signed all notices as well as Dr. Marvel signed some of them as president.

Q. Now, in answer to Mr. Bourgeois, you said that these minutes were written from time to time as the occurrences took place; is that right? A. The original minutes; yes.

The Vice Chancellor: Referring now to the minutes in the book.

Mr. Gaskill: Referring to the minute in the book.

Q. Now, isn't it a fact that after the original entries of the incorporation and so on by Miss Freas that all of the rest of it is written in one handwriting and with one pen and one color of ink down to the middle of page 37? A. It was written by Miss—a lady since dead—a stenographer in my office.

Q. Weren't they all written at one time? A. No.

Q. And on the same day? A. They were not.

Q. With the exception of the latter part of the last minute of February 23d, 1904; wasn't that written at a different time and with a different pen? A. No, that was written at the same time.

Q. Do you mean to say that all that appears on page 37 was written at the same time? You say that was all written at the same time? A. This was all written at the same time (pointing to page 37).

Q. Did I understand you to say, Mr. Adams, that all of the meetings of the directors were held at your office, and none held elsewhere? A. The first meeting was held at Judge Thompson's house, I think, on States Avenue. I think that was the preliminary meeting. I think the organization meeting was held at his home on States Avenue, if I remember correctly. Dr. Marvel—some meetings were held at Dr. Marvel's house owing to sickness and the others were held in our office.

The Vice Chancellor: I understood Judge Gaskill to ask you with regard to stockholders' meetings, didn't you, judge?

Mr. Gaskill: No, directors' meetings.

Q. Now, going back a little to this meeting when Judge Thompson demanded the minutes and you

said that he used some pretty strong language. Wasn't that remark of his in emphatic language after you had said that you didn't know where the minutes were when he demanded an inspection of them? A. No, sir.

Q. And didn't he then say "you are a damn liar; they are right in the safe and if you would open the safe he would turn right to the place where they were"? A. He made use of violent language.

Q. Didn't he say you was a damn liar when you said you didn't know where they were? A. I forget just what the expression was. He asked where the minutes were and I said they were in the—

Q. That is not answering my question. Didn't you say to him in response to his demand for the minutes that you didn't know where they were and didn't he then say you was a damn liar, if you would open the safe he could point right to where they were? A. No.

Q. And didn't he then make a motion that you be required to produce those minutes and didn't Dr. Marvel refuse to put that motion? A. That is true.

Q. I call your attention to C 5-1 and ask you when that was passed by the directors? A. This —as I was asked this morning in regard to the meeting of May, 19th, 1909—I was confused with the data there where we were authorized to borrow $10,000 and offered double the amount of stock.

The Vice Chancellor: 1898, you mean?

A. 1898.

Q. That is the resolution that you testified a month ago was adopted in June, 1898, isn't it? A. We had a meeting.

Q. Answer that question. A. Yes.

Q. And it was pinned fast to the minutes of October, 1898? A. No, I beg pardon.

Q. Wasn't it at that time pinned fast to the minutes of October 15th, 1898, a month ago? A. It was related—

Q. That isn't what I asked you. Wasn't that resolution just shown to you pinned fast to the minutes of October 5th, 1898, a month ago when it was shown to you? A. It may have been, but it wasn't at that meeting.

Q. Wait a moment. Now I want you to turn to the minute book of the minute of August 23d, 1899—

Mr. Bourgeois: August 23d, judge, or August 3d?

Q. —August 23d, 1899, I think it is page 33, if my notes are right, 32 and 33. What is your question?

Q. Now then you have that before you, haven't you? I now show you—just set that aside for a moment—that minute is signed by you as secretary in the book? A. Yes.

Q. I now show you Exhibit C-7 and ask you if that is not your original minute of that meeting; isn't that in your handwriting, the paper shown to you? Isn't this your handwriting, Mr. Adams? A. Yes.

Q. And isn't this your signature to it as secretary? A. It is.

Q. Now then, turning to the minute as you have it in the book of that meeting, please read me the last thing that occurs there, page 33. A. "On motion it was decided to place the sale of the lands of the company in the hands of different real estate agents of the city and the parties selling receiving the proper commission of two per cent for the sale of lands and that the said I. G. Adams

and Company receives one-half per cent commission from the company in case they do not make the sale."

Mr. Gaskill: I now read into the record, if your Honor please, the original minute signed by the witness on that date, Exhibit C-7.

Mr. Bourgeois: Judge, you don't want it to appear that the difference between what Mr. Adams has read and what you are reading is the only difference, do you?

Mr. Gaskill: I propose to show no such action as that was taken at that meeting.

Mr. Gaskill then read Exhibit C-7 as follows:

"Atlantic City, Aug. 23, 1899.

"A meeting of the St. Leonards Land Company was held at the residence of Philip I. Marvel, 1606 Pacific Avenue, August 23, 1899, at 4 o'clock p. m. There was present at said meeting Philip I. Marvel, I. G. Adams, C. J. Adams, Joseph Thompson and A. B. Endicott and M. D. Youngman. On motion the following resolutions was read and adopted: *Resolved,* that the right be granted to the Atlantic City Sewerage Company for the consideration of one dollar to occupy the streets belonging to this company for the purpose of laying mains and connections thereto and that the proper officers of the company be authorized to make and execute and deliver a deed in accordance with this resolution.

"On motion it was decided to place the sale of the lands of the company in the

hands of different real estate agents of the city and that the parties selling receiving the proper commission for such sale.

"On motion adjourned to meet at the call of the President.

C. J. Adams, Secretary."

Q. Without reading into the record I call attention to the difference between the minute of the meeting of January 12th, 1898, from the record in the book, January 12th, 1898. Is that in your handwriting, Mr. Adams, put across there? I am calling your attention to that pencil, January 12, 1898 written diagonally across the sheet. Is that in your handwriting? A. That is not in my handwriting.

Q. That date is not in your handwriting? A. That seems to be.

Q. Which seems to be? A. The date.

Q. The date is in your handwriting, but the minute isn't ? A. I couldn't say that; the minute is not in my handwriting.

Q. Mr. Adams, in your experience in borrowing money from banks isn't it true that upon renewals of notes that are carried some time the blanks insist upon reductions being made on each renewal as an ordinary rule? A. Often times; yes.

Q. That is the general rule, isn't it? A. Well, it is a rule.

Q. And it isn't the first time that you have known a bank to insist on a loan being paid because they weren't satisfied with the security, is it? A. No.

RE-DIRECT-EXAMINATION by Mr. Bourgeois:

Q. Mr. Adams, where the bank is satisfied with the collateral security do they require you to reduce the loan? A. Not as a rule.

Q. Now how long since Miss Kirkbride has been in your office? A. I think it is a matter of five or six years; I can tell definitely in the office.

Q. But it has not been within the last five or six years? A. No.

DR. PHILIP I. MARVEL, one of the defendants, being first duly sworn according to law, upon his oath testifies:

Direct-examination by Mr. Bourgeois:

Q. Doctor, you live in Atlantic City? A. I do.

Q. And have lived there since when? A. Since 1884. I came near forgetting.

Q. And during all of that time have you been practicing your profession as a physician? A. I have.

Q. You are a stockholder in the St. Leonards Land Company? A. I am.

Q. An officer therein? A. Yes.

Q. What? A. President.

Q. And have been president since when? A. Since the organization of the company.

Q. Will you state to the Vice Chancellor the conditions of the land which afterward became the land of the St. Leonards Land Company just prior to the organization of that company?

Mr. Gaskill: We enter the same objection; immaterial what the condition of the land was.

(Question admitted.)

A. The section subsequently known as St. Leonards was a hilly and irregular tract of land which was covered largely by briars and brush and brambles and wild grape vines, etc., without streets or form other than the irregular form as it

would be included from what I have stated. I was induced to buy some sections or portions of the land in that district and then it was learned that Mr. Adams, the two Mr. Adams, also owned some land in that section and through the instrumentality of Mr. Rogers, J. B. Rogers, we talked the matter over and we felt with the prospect of getting considerable land in that section and putting it into a corporation, there was an opportunity to make some money in the way of speculation and we proceeded there to do.

Q. Now, that was when you individually owned the land and Mr. Adams; now which Mr. Adams was it owned that land? A. Well, my impression is that it was both C. J. and I. G.; whether it was in the company or whether they owned it separately, I don't know; I don't remember.

Q. They were then partners in business? A. Yes.

Q. Now, who were some of the other owners of land in that section—when you came to develop this idea you learned that other people owned some land down there, did you not? A. Yes.

Q. Who were some of the other people that owned? A. It is difficult for me to call names, but if you will tell me the father-in-law of Dr. Cuskaden that will suggest the name to me.

Q. Derestus B. Steelman. A. The Steelman's owned land in that section. I think there was land owned in that section by Waterall and then there was some small sections owned by residents here in the town.

Q. Judge Endicott owned some? A. Judge Endicott bought some later. There was the Atlantic Land Company of which we bought considerable.

Q. That is S. B. Richards was president of it, wasn't he? A. Yes.

Q. Did Dr. Youngman own land there at that time? A. I don't know whether it was at that time or subsequent to that.

Q. And Judge Thompson? A. Yes, either at that time or subsequent.

Q. Now, when it came to the point where you determined to form a corporation and develop this land what did you do? A. We bought more land and placed it in the hands of Judge Endicott, that is in the title of Judge Endicott and also in the title of Judge Thompson and we had considered the advisability of buying so much land and then redistricting it, that is replotting it and we found by doing so—

Q. Why did you contemplate replotting it? A. Because in doing so we could lay out the blocks five hundred by two hundred and fifty and thereby gain enough land from the old plotting to give us two sections or to give us a section.

Q. What was the old plotting? A. That was three hundred by six hundred.

Q. And you did form a corporation? A. We did.

Q. Now at the time you formed this corporation, Doctor, after you had bought all of this land, what was the fair value of that land? A. I should say two hundred and fifty thousand dollars.

Q. How long previous to the date of the incorporation in 1896 was it that you had first begun to purchase land down there? A. Well, I am not absolutely sure with reference to the date, but I think it was in the early part of the year, of the same year.

Q. Now after you had purchased the first of your lands and before you formed the corporation, did the value of lands and the price of them down there increase or decrease? A. Just ask that question again.

Q. I say after you had purchased the first of your lands and before you formed the corporation had the value of those lands down there increased or decreased, that is the prices? A. Price had increased.

Q. And was that also true with relation to the Adamses? A. Yes.

Q. When the corporation was finally formed how did you place your property in the corporation, I mean what was the basis of value at which you placed it in the corporation? A. Well, I think it was based on the—

Q. Doctor, let me show you what I want. I want to know whether you put it in at a price which you actually paid for it or at some advanced price? A. We put it in at some slightly advanced price.

Q. Corresponding to what? A. Corresponding to the advance that real estate had taken at the time and then furthermore—well, I am going to say we had, in arranging our land, replotting it, we had also added to this particular tract, relatively at least, those two blocks or one section; for that section we regarded it as worth more.

Q. As more valuable? A. Yes.

Q. Were the lots as they had been plotted by the Camden and Atlantic Land Company, that is where the blocks had been three hundred by six hundred feet, were the lots in those blocks of any more value in the market, would they sell for more than the lots you afterwards plotted? A. No.

Q. Now whatever gain there was in that extra section was actual gain in value? A. Yes.

Q. Now when you conveyed—you formed your corporation and then you conveyed the land to the corporation? A. Yes.

Q. Was it free and clear of encumbrances at that time? A. No.

Q. What was the encumbrances on it? A. Sixty-one thousand.

Q. Sixty-one or sixty-five one? A. Sixty-five one—sixty-five thousand one hundred dollars.

Q. Yes, and what was the capitalization of the St. Leonards Land Company? A. Two hundred and fifty thousand.

Q. How much stock of the St. Leonards Land Company was given in consideration of the land that you gentlemen sold to them? A. How?

Q. How much stock did they give you for the land? A. Original issue was twenty-five hundred shares.

Q. Yes. A. And there was issued eighteen hundred and thirty-nine shares for the land.

Q. And what became of the six hundred and fifty-one shares. A. Six hundred and fifty-one shares was put in escrow as collateral or security for the mortgage, additional security, or at least to offset the mortgage, I should say.

Q. Was it put in escrow or never issued? A. That never was issued.

Q. That remained in the company? A. It remained in the company and remained as an offset to the sixty-five thousand one hundred dollar mortgage.

Q. And that eighteen hundred and thirty-nine shares—now wait—then the company had the land? A. Yes.

Q. Now tell me whether or not at that time there were any streets in that land across that land? A. There was not.

Q. Was there any street which is now a continuation of Atlantic avenue down there? A. No, there really was no street; the railroad passed through, but there was no street.

Q. And the street along the railroad wasn't graded? A. No.

Q. Nor the cross streets weren't graded? A. No.

Q. What was necessary to be done to the land in order to put it in a saleable condition?

Mr. Gaskill: I don't suppose, it is necessary, if your Honor please, to repeat objections to this line of testimony, the objections having already been made to one witness and being considered that the testimony heretofore objected to come in under the objection.

(Question repeated.)

A. Had to be graded and laid out, the streets laid out and gravelled and the sidewalks curbed.

Q. What was the condition of the land lying direct northerly of Ventnor avenue and next to the thoroughfare? A. That was the portion of land that was mostly referred to in my first statement as hilly and irregular, surface covered with bush, and bramble and briars.

Q. I mean between Ventnor avenue and the thoroughfare? A. Oh, south—north rather.

Q. North. A. North of that was a marsh or low meady land.

Q. And what did you have to do with that before it could be put on the market? A. That had to be built up several feet.

Q. How? A. Partly by the hills that were levelled and partly by pumping out of the inlet in the rear of it or north of it.

Q. Now Doctor at the time this land was sold to the company I understand the company parted with all its stock excepting the stock that was required to take care of the mortgage. The land, was it saleable in lots at that time? A. It was not.

Q. What was done by those of you who formed

that corporation toward developing the land so it might be put on the market? A. There was a certain amount of stock issued for that purpose.

Q. To whom was it issued? A. To me as trustee.

Q. Was that a part of the eighteen hundred and thirty-nine shares that had been given for the land or any other stock? A. How is that?

Q. Was the stock that was set aside for development purpose a part of the eighteen hundred and thirty-nine shares that had been issued for the land? A. That was a part of the eighteen hundred and thirty-nine shares.

Q. Now were there any tracts of land within the bounds of what you determined to call St. Leonards that at that time were not owned by the company? A. There was.

Q. What, if anything, was done towards securing those lands? A. There was a certain number of shares of stock set apart for that specific purpose.

Q. And how many shares was set apart for that purpose? A. Two hundred.

Q. That was for the purpose of land. Were any of those shares used for any other purpose than to purchase land? A. Not to my knowledge.

Q. Were any of those shares actually transferred for the purchase of land; the shares themselves? Of the two hundred shares? A. Were they set apart, you say?

Q. No, I want to know if they issued any of those shares for the purpose of land? Let me ask you, do you remember five of those shares having been issued to Judge Endicott for the purchase of land? A. I was going to say they were.

Q. And give to C. J. Adams. A. C. J. Adams.

Q. Do you know whether some of the other shares of that two hundred issued were sold for

cash and the cash used to purchase land? A. Well, it was the intention that they should be, but the way the books were kept it is difficult to determine whether they were issued from that or from the four hundred and ninety-nine shares.

Q. Do you remember if some land was purchased, I think, from Lottie Babcock? A. Yes.

Q. Paid cash for it? A. Yes.

Q. And that cash was received from the sale of shares? A. Yes.

Q. Doctor, tell me whether or not— A. And I might say that she also received some stock in return, I think, for a mortgage.

Q. Now Doctor, how much of the eighteen hundred and thirty-nine shares was set aside for the improvement of the land down there? A. Four hundred and ninety-nine shares.

Q. And that was transferred to whom? A. Transferred to me as trustee.

Q. As the other two hundred shares had been? A. Yes.

Q. That made four hundred and ninety-nine hundred dollars for the improvement? A. For the improvement.

Q. If it was sold at par? A. Yes.

Q. What sort of improvement do you mean when you say for improvements, what kind of improvements? A. For grading and districting the section and gravelling, putting in filling and putting in sidewalks.

Q. Do you know how much money the improvements of which you have spoken actually cost the company? A. Something over fifty-eight thousand.

Q. Then the original issue of four hundred and ninety-nine shares had all been sold for that purpose? A. May I qualify that statement a little?

Q. Yes. A. There are other items here enu-

merated in the fifty-eight thousand and something.

Q. Such as what? A. Well, there was—that was an inprovement too—attending to the ground afterwards, moving it and keeping the grass in and repairing the work that had previously been done along the inlet and perhaps there were other items.

Q. Now during the period of development was there a ready sale for the shares of the St. Leonards Land Company? A. There was not.

Q. Was any of that stock that had been issued to you as trustee ever sold at par to your knowledge? A. Not to my knowledge.

Q. All sold at a discount? A. All sold at a discount.

The Vice Chancellor: Well, any substantial discount?

A. Some of it was sold for five dollars a share and I think it was sold as low as ninety-two dollars a share.

Q. Five dollars a share less, five dollars discount? A. Yes, ninety-five; and I think as low as ninety-two.

Q. When was the last of the sales for cash made; I mean prior to 1909? A. I don't recall just at this time that there was any sale; the books will show—after 1900.

Q. Let me ask you if there was any sale after the first part of the year 1898? A. I can't recall that there was unless it was this—my memory seems to take me back to the fact that Mr. Wright and Miss—the secretary in Mr. Adams' office received theirs for services later than that.

Q. Yes, that was three or four shares. A. For cash?

Q. I said sold for cash? A. I don't recall any was sold for cash after 1898.

Q. I call your attention to the minute of May, 19th, 1898, a resolution for you to borrow money. A. Yes.

Q. Do you recall the condition of the company with regard to its improvement, that is the lands, and also the financial condition of the company at that time? A. I do.

Q. What was the condition of the company with regard to its lands and its improvements? A. We were making extensive improvements at that time in the way of levelling the land and grading it, rather filling in and gravelling it and making streets and so forth.

Q. And what was the condition of the company at that time with regard to its finances? A. We didn't have any.

Q. Wasn't any condition or any finances? A. We didn't have any finances.

Q. And that was the reason of the resolution of May 19th? A. It was.

Q. At that time was a committee appointed to wait upon the banks to secure moneys? A. There was.

Q. Who constituted that committee? A. Mr. Clement J. Adams and myself.

Q. What did you do as a member of that committee? A. I spoke to one of the directors of the Union Bank and he afterwards informed me that they didn't care to loan the money on the stock of the company as security or collateral. I then went to the Second National Bank and spoke to the cashier and he said that they wouldn't loan the money on the collateral; that they would loan it on my personal endorsement or on members of the company's personal endorsement.

Q. Doctor, I notice in the resolution of May 19th, 1898 the name of West Jersey and Seashore

Railroad Company and in some of the minutes and later resolution the name of Alvin P. Risley, will you tell me what the relationship was that existed between Risley and the Railroad Company and the St. Leonards Land Company? A. The St. Leonards Land Company had entered into an agreement or contract with Alvin P. Risley for the work to be done on the St. Leonards Land Company or at least a portion of it and he was, Alvin P. Risley had contracted with the railroad company for gravel and whilst Alvin P. Risley was responsible to us we were, that is the company was responsible to the railroad through Alvin P. Risley for the gravel.

Q. And then does that account for this resolution referring to the railroad company? A. It does.

Q. Did you succeed in securing the money from the banks that you had endeavored to secure? A. We did not.

Q. What was the condition of the company relative to the urgency of this money or for this money? A. We were threatened with—we were threatened that the sheriff would be placed on us if we didn't furnish the money.

Q. And when that threat came along what did you do? A. We endeavored, of course, to find someone who would loan, some institution that would loan the money and we couldn't find such institution and then we as individuals, at least we called probably an informal meeting at first, at least we talked informally to each other about how we might raise the money and it was proposed that we raise it, by some one of the directors, that we raise it by a company's note with individual endorsements by the officers of the board of directors. Dr. Youngman and myself as well

as others refused to be further obligated personally because we were—at least I was already obligated and Mr. Adams was obligated.

Q. That is I. G. Adams? A. I. G. Adams. — No, I am wrong; please let me change that—we were obligated for our personal indebtedness for a part of the property and to do that we felt that it would be making us equally, each responsible for the full amount, that it would interfere with our being able to transact our own affairs, so we refused to go on a company's note. Subsequently a meeting was called in June in which or at which we agreed that we would loan the company fifteen hundred dollars each.

Q. Now who was to loan the company fifteen hundred dollars each, that is according to your action there, your agreement? A. Well, we had hoped that all of the directors would concur with what we consented to do, but as a matter of fact only five concurred.

Q. What do you mean, concurred financially, substantially concurred by assent? A. No, financially concurred. At the meeting in June we were all present excepting Mr. Endicott and Mr. Thompson. Mr. Endicott was reached by 'phone and concurred, as I understood, in the proceedings of the meeting.

Q. Now, do you remember, Doctor, being present when Mr. C. J. Adams telephoned to Judge Endicott? A. I do.

Q. And do you recall what he stated to Judge Endicott the purpose of the meeting was? A. I do.

Q. What was it? Tell us the substance if not in words? A. It was to the effect we were pressed for this money and it must be raised and that we had concluded to each furnish the company with

fifteen hundred dollars and take for it the company's note. That was substantially what was said.

Q. What did Judge Endicott say or couldn't you hear what he said? A. No, I couldn't hear what he said but Mr. Adams reported to the Board of Directors—

Mr. Gaskill: Objected to.

The Vice Chancellor: It is not competent for him to testify more than he heard.

Q. Now, Doctor, do you know if Judge Thompson had notice of that meeting? A. I do.

Q. Who gave him notice of it? A. I did myself.

Q. And what was said to the Judge? A. Judge said he had a small holding and rather a damn sight lose that than put any more in.

Q. Now what was the result of the meeting from a financial standpoint? A. We raised or at least we pledged seventy-five hundred dollars to the support of the company and took—

Q. And later did you advance it to the company? A. We did.

Q. Do you know of your own knowledge what that money was used for? A. Well, I can only say this that it was to defray the expenses of the company, so far as I know.

Q. Now, Doctor, after you had had the meeting and had determined to loan to the company fifteen hundred dollars each were Judge Endicott and Judge Thompson notified of the action that had been taken? A. Well, I am—

Q. Or was this conversation you have repeated after the meeting was held? A. No, this conversation that I repeated was before we held the meeting. We had been in conference and Mr. Adams went to the 'phone and called up Mr. Endi-

cott after we had agreed what we would do and I went to the 'phone and called up Mr. Thompson.

Q. Then do you know if they had notice of the meeting that you were going to hold that meeting? A. Yes, I am quite sure they did.

Q. And they were neither present? A. They were neither present. I say I am quite sure they had notice and I have no reason to doubt but what all the directors had notice.

Q. I want to show you a collateral note signed by you to the order of Dr. Youngman and ask you whether or not that note was in furtherance of this scheme of loaning fifteen hundred dollars to the company? A. It was.

Q. And the date of that appears to be June 15th, 1898? A. June 20th.

Q. June 20th; when was the meeting with reference to the date of that note? A. About June 15th, I think.

Q. Was it or was it not the same day? A. Well— I would have to refer to the minutes to determine the exact date.

Q. There do not seem to be any minute of it; I wondered if you remembered, do you Doctor, whether or not Dr. Youngman paid his money the same date? A. Yes, I think he did.

Q. And the note was given to him—A. Given to him on the 20th.

Q. That wasn't given to him, as a matter of fact, that note. Did you get a collateral note similar to the one that you have in your hand? A. I did.

Q. And did each of the other directors excepting C. J. Adams get a note of that kind? A. So far as I know they did.

Q. This note which the doctor holds in his hand is marked Exhibit D-1. I show you another note bearing date the same date, payable to Louis

Kuehnle, and ask you if that is one of the notes issued as security or evidence of the indebtedness of fifteen hundred dollars? A. It is.

Q. Now, Doctor, those notes say that you have pledged thirty shares of stock, that is the company has pledged thirty shares of stock as collateral security for the loan of fifteen hundred; upon what authority did the directors pledge the company's stock at two for one for these loans? A. On a previous resolution that was passed by the company.

Note given to Mr. Kuehnle just referred to offered in evidence and marked Exhibit D-10.

Q. What was the previous resolution of which you speak? A. The one that I referred to is the one passed in the meeting on May the 19th, 1898.

Q. Will you read that resolution, please? A. "Resolved that the president and treasurer be authorized to borrow the sum of ten thousand dollars and to issue double the amount of stock to be applied for the payment of gravel purchased and to be purchased of the West Jersey and Seashore Railroad Company."

Q. Then it was under that resolution that you really had your action in June following? A. Yes.

Mr. Gaskill: I object to that and ask that answer be stricken out. I object because it is leading and calls for a conclusion.

The Vice Chancellor: Very objectionable, Mr. Bourgeois, in form.

Question withdrawn and answer stricken out.

Q. Doctor, do you know whether or not when these five directors advanced the money to the St. Leonards Land Company they advanced the

full fifteen hundred dollars or was the interest deducted? A. The interest was deducted.

Q. For the period of four months? A. Yes.

Q. All of them? A. So far as I know it was.

Q. When the notes came due or were about maturing in October, 1898, what was the financial condition of the company? A. The company was without funds with which to pay the notes.

Q. What was the outlook for the future, the future outlook? A. It was very bad.

Q. Tell me what the directors did with regard to these maturing notes—what did you do with regard to them? A. We held a conference and determined or at least from conditions, from the financial condition of the company it was very evident that we would have to pay the discounts on renewing our own notes and under that—under conditions so straightened as that we felt the better plan for us was to take our own notes and accept them under the provisions of the resolution of May, accepting two shares of stock in lieu of one hundred dollars and release the company from any further obligation whatever with reference to the notes and at the same time to give the company a period of one year in which to redeem the stock.

Q. Upon their paying interest on it? A. Upon their paying interest on it.

Q. Now was any corporate action taken along that line? A. There was undoubtedly action taken in the board.

Q. That is what I mean. A. Yes.

Q. Do you recall who made the motion? A. I think Dr. Youngman made the motion.

Q. Was the motion that was made in accordance with the testimony you have just given? A. It was.

Q. And after the motion was made do you know what the result was, whether it was carried or not? A. It was.

Q. Do you know if a minute was made of it and put in the form of a resolution? A. It was supposed to be.

Q. Was there ever a motion made in the board that you were to loan this fifteen hundred dollars to the company and receive fifty per cent excess? A. No.

Q. On the fifteenth day of October, 1898, had or had not this money already been loaned to the company? A. It had been loaned to the company.

Q. Excepting C. J. Adams and this went in afterwards? A. Yes.

Q. Yours had been before? A. Yes.

Q. And Dr. Youngman's? A. Yes. We had all agreed to it in June and it was handed in at different times.

Q. Dr. Youngman's on the 20th of June, was it, and Mr. Kuehnle's on the 21st of June, 20th, and I. G. Adams on the 23d? A. At different dates.

Q. And yours on the 7th of July? A. Yes.

Q. Now after the meeting of October 15th, 1898, did any of the directors ever charge interest on that fifteen hundred dollars against the St. Leonards Land Company? A. Not to my knowledge.

Q. Did you ever receive any interest on your fifteen hundred dollars after that time? A. I did not.

Q. Did the company within the period of one year thereafter redeem the stock? A. It did not.

Q. Was the company during the year succeeding October 15th, 1898 in a financial condition to redeem the stock? A. It was not. From money in the treasury it was not.

Q. Beg pardon. A. It was not from the standpoint of money in the treasury.

Q. Was it from the standpoint of selling lots down there; was the land in a position so it could be sold? A. No, what land we sold at the time we sold at a sacrifice.

Q. What was the first sale of land that was made by the company, do you recall? A. I think it was to Dr. Charles Penrose, but I am not absolutely sure.

Q. Wasn't the Herring block before that? A. My impression is it was just the reverse. It may be the opposite.

Q. Well, at any rate the two first sales were the Herring property and Dr. Penrose property? A. They were.

Q. The Herring property was sold through Mr. Bacharach? A. Yes.

Q. November 1899? A. Yes.

Q. Now how much money did the St. Leonards Land Company get from the sale of the Herring property to Mr. Bacharach in cash, do you remember? A. I don't remember the exact amount, perhaps a couple of thousand dollars.

Q. Was it forty-five hundred dollars? A. I think there was a mortgage left on it of seventeen thousand dollars.

Q. Seventeen thousand, yes. A And it was sold for twenty-two thousand or twenty-two thousand five hundred.

Q. And there had been one thousand paid down, had there not? A. Yes.

Q. I guess forty-five hundred, Doctor, I think it was. A. I am not sure of the exact amount.

Q. That was November 1899. Now do you remember if the company just at that time needed more money than forty-five hundred dollars? A. It did.

Q. Do you remember if at that time there was another bill due to Alvin P. Risley for grading? A. There was.

Q. And do you know what means were taken to raise moneys at that time over and above the money the company had? A. The I. G. Adams Company made a personal note for it.

Q. In what amount was that? A. Fifty-five hundred dollars I think.

Q. Now was there ever a time, Doctor, prior to nineteen hundred and eight when this company had its head above water financially? A. 1908?

Q. 1908? A. There was not.

Q. Did you personally ever endorse to help them get money? A. I did.

Q. To what extent? A. May I refer to memoranda?

Q. Yes, I guess you may unless the Judge has some particular reason why you ought not.

Mr. Gaskill: This is referring to the obligations of the company for company's indebtedness and not the witness's obligations for the purchase of the land which he put into the company?

Mr. Bourgeois: No, this is the company's.

A. The company borrowed three thousand dollars on February 5th, 1902 for which I personally endorsed the note and it borrowed—if you wish me to I will read all of the dates at this time for which I personally endorsed notes and for which the company, at which times the company was needing money.

Mr. Gaskill: I have no objection to his doing it, but I do not waive my objection to the incompetency of the testimony.

A. Then the first note for the company with personal endorsement was February fifth, 1902, three thousand dollars, which was paid off in

September, 1905. Second note for the company was in February 1904 for thirty-five hundred dollars and was paid off in June 1906. Third note for the company was September 18th, 1905 for four thousand dollars and was paid off July 20th, 1906. Fourth note for the company was May 1906 for thirteen thousand dollars and was paid off May 1907. Fifth and last note for the company was May 4th, 1907, thirteen thousand dollars, finally paid off in 1909.

Mr. Gaskill: I understand these were the witness's personal endorsements and not endorsements as president of the company; is that right?

A. They were endorsed both president of the company and personally.

Q. It was the company's note by you personally endorsed? A. Yes, the company's note by me personally endorsed.

Q. Now I show you other notes, one of May 8th, 1904, endorsed by Philip I. Marvel, Israel G. Adams and Philip I. Marvel, and ask you if that is also some of the company's indebtedness? A. Yes.

Said note marked Exhibit D-12.

Q. Also note dated May 9th, 1904, personally endorsed by I. G. Adams and Philip Marvel and ask if that is some of the company's indebtedness? A. These may be in part renewals or may be original notes; I am not sure about that. This was the company's note and personal endorsement.

Said note marked Exhibit D-13.

Q. Also a note of September 9th, 1904 for two thousand dollars, individual endorsement by Israel G. Adams and Philip I. Marvel and ask you if that is some of the company's indebtedness? A. Yes.

Said note marked Exhibit D-14.

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Q. Also a note of January 9th, 1905, for two thousand dollars individually endorsed by Israel G. Adams and Philip I. Marvel, and ask you if that is some of the company's indebtedness? A. Yes.

Said note marked Exhibit D-15.

Q. Also a note of May 9th, 1905 for two thousand dollars similar in form to those previously shown you, which I now read: "Atlantic City, N. J., May 9, 1905. Four months after date we promise to pay to the order of Israel G. Adams, at the Atlantic Safe Deposit and Trust Company of Atlantic City, N. J., two thousand dollars, without defalcation or discount, value received. St. Leonards Land Company, per Israel G. Adams, Treasurer," endorsed, "Israel G. Adams, Philip I. Marvel, St. Leonards Land Company, per Israel G. Adams, treasurer," and ask you if that also is the company's indebtedness? A. It was for the company's indebtedness.

Said note marked Exhibit D-16.

Q. And the company received the proceeds of all those notes, did it not? A. It did.

The Vice Chancellor: Unless he says they were renewals.

Q. If they were renewals then they received the proceeds of the originals? A. Of the originals.

Q. Now about the stock, Doctor, that was issued—I show you a letter from Judge Endicott under date of January 27th, 1909, addressed to you and ask you if you received that letter from the Judge? It is marked Exhibit D-2. A. Yes.

Q. Doctor, won't you refer to the minute of April 12th, 1897, please?

(Witness complies.)

Q. Have you it? A. Yes.

Q. Tell me who were present at that meeting? A. Records show Joseph Thompson, I. G. Adams, Philip Marvel, C. J. Adams and A. B. Endicott.

Q. What was the first motion passed at that meeting? A. "On motion of C. J. Adams it was decided to grade and gravel the fourth section including all streets and that bids be invited for same."

Q. Is there any record there of any objection to the meeting by Judge Endicott? A. None recorded that I see.

Q. Now turn to date of May 6th, 1897. A. Yes.

Q. Tell me who were present at that meeting? A. "Following directors were present: A. B. Endicott, I. G. Adams, C. J. Adams, Philip I. Marvel and M. D. Youngman."

Q. Tell me what the first minute is there? A. "The work of completing Atlantic Avenue West from Little Rock Avenue to line of contract of Z. T. Baldwin was reported progressing in good shape and that work will be ready for gravelling in a few days. A committee to arrange."

Q. Now is there any objection at that meeting or was any objection at that meeting made by Judge Endicott to this improving? A. I don't see any recorded here.

Mr. Gaskill: That minute isn't signed, is it, Mr. Marvel? A. No.

Q. Now look at October 12th, 1897. A. October 12th, 1897.

Q. Tell me who was present there, was Judge Endicott? A. "There were present I. G. Adams, M. D. Youngman, C. J. Adams and Philip Marvel."

Q. What, if anything, was done in regard to the improvement at that meeting? A. "On motion of Dr. Youngman it was decided to award the contract for levelling the hills from Dudley

place east to Oxford place from the north side of the Camdem and Atlantic Railroad to the thoroughfare to Alvin P. Risley at the following prices, ten cents per cubic yard, one dollar and fifty cents for the spreading of gravel and one half of one cent for curbing. On motion of Dr. Youngman it was decided to award the contract for filling the meadow adjoining the thoroughfare and bulkhead the same from Cambridge place to Surrey place to Mr. Bailey at ten and twelve cents per lineal foot.''

Q. That is all about the improvement, I think, isn't it? A. ''On motion of Dr. Youngman it was ordered that the president prepare a contract.''

Q. Now turn to the next meeting of November 4th here and tell me who was present. A. There were present Joseph Thompson, A. B. Endicott, Louis Kuehnle, M. D. Youngman, I. G. Adams and C. J. Adams.''

Q. What does that minute say with regard to the previous meeting? A. ''Minutes of the previous meeting were read and approved.''

Q. Is there any record in that meeting by Judge Endicott that he objected to this improvement? A. None that I see.

Q. Read down further and see. A. ''On motion it was ordered that the vote by which the contract for filling the lands of the company and bulkheading the same was awarded to B. Gordon Biddle be reconsidered. On motion the contract was awarded for the filling of the lands to Alvin P. Risley for ten cents per cubic yard and for each carload of gravel spread south of the north line of Ventnor Avenue one dollar and fifty cents, for each carload of gravel spread north of the north line of Ventnor Avenue, two hundred cents,

for each lineal foot of curbing one and one half cents; work to be commenced at once."

Mr. Gaskill: And that minute isn't signed either, is it, Doctor?

A. It is not.

Q. Now turn to the next minute, November 15th. A. Present I. G. Adams, C. J. Adams, Joseph Thompson, A. B. Endicott and Philip I. Marvel.

Q. Tell me what the minute is at that meeting in regard to improvement? A. Minutes of previous meeting read and approved. On motion the following resolution read and adopted: *Resolved,* that the right be granted to the Ventnor Light and Water Company for a consideration of one dollar to occupy the streets, lanes and alleys belonging to this company for the purpose of laying water mains, gas pipes and conduits and for erecting poles for the purpose of stringing wires upon for the purpose of transmitting electricity and that the proper officers be authorized to make, execute and deliver a deed in accordance with this resolution.

Q. Is there a motion that the president be authorized to make a contract with Alvin P. Risley for the bank, read that? A. "On motion was authorized to make a contract with Alvin P. Risley and company for making bank on the thoroughfare front subject to plans and specifications of Ashmead and Hackney, Civil Engineers, said bank to be maintained for the period of two years by the said Alvin P. Risley Company."

Q. Now the next meeting January 12th, 1898; tell me who was present at that meeting? A. Present Philip I. Marvel, M. D. Youngman, Joseph Thompson, Louis Kuehnle, A. B. Endicott and C. J. Adams.

Q. Read the minute touching the filling of land there the latter part of the meeting. A. "On motion of I. G. Adams it was decided to get estimates for levelling and grading the property on the south side of Atlantic Avenue and adjoining the ocean. It was also decided to fill all the low lands belonging to the company being all that section not included in former contracts and the same to be awarded for grading, filling and banking to the lowest bidder. On motion the bill of the Daily Press of two hundred and seventy-eight dollars and Sunday Gazette of two hundred twenty-eight dollars and thirty-four cents were ordered paid."

Q. Any objection by Judge Endicott to that minute or to that action? A. None recorded in the minutes.

Q. Now look at February 10th, 1898, that must be 1899. A. This is February 10th, 1898, here. There were present Philip I. Marvel, I. G. Adams, Louis Kuehnle, and Joseph Thompson. Minutes of previous meeting read and adopted. Bids received for A. P. Risley to grade, gravel and bank all that section ordered at the previous meeting under the contract for each cubic yard of sand filled ten cents, for each carload of gravel spread one dollar and fifty cents, for each lineal foot curbing one and one-half cents; it was ordered to Alvin P. Risley.

The Vice Chancellor: What is the purpose of this, Mr. Bourgeois? Suppose it should be admitted that Judge Endicott had not at any time protested against the improvements, what effect would it have on the case?

Mr. Bourgeois: It might have some effect towards lessening the weight of Judge Endicott's memory about other things.

Q. Now turn to the minute of May 19th, 1898 and tell me if Judge Endicott was present at that meeting. A. "There were present I. G. Adams, Philip I. Marvel, Louis Kuehnle, A. B. Endicott, Joseph Thompson and C. J. Adams."

Q. At that meeting were the minutes of the previous meeting read and approved or read and adopted? A. Well they are not—yes, the minutes of the previous meeting were read and adopted.

Q. Now, Doctor, tell me whether or not Judge Endicott, during the time the development of this land was under consideration and in progress objected to the developing of it in excess of the actual money you had in hand? A. Judge Endicott did make some objection at one time.

Q. Now when was that? A. I don't know the exact time, but my impression is it was later than the time to which you are referring that is it was after nineteen hundred.

Q. And what objection did he make? A. As I recall our conversation on the street one afternoon—

Q. I don't mean on the street, I mean did he make an objection in the meeting? A. No, not to my knowledge; that is—I might qualify that—I think he did at one meeting perhaps in 1902 or thereabouts.

Q. 1902? A. Well, after 1900. I will put it after 1900, but, if I remember correctly, that was in an informal discussion over matters before the meeting had opened.

Q. And after the loans had been made by you five directors to the company? A. Yes.

Q. Now, Doctor, when did you first know that there was objection or contention about the five

of you directors who loaned the money holding the thirty shares of stock each? When did you first find that out? A. In 1908.

Q. 1908. Refer to the minute of March 3d, 1908—oh, it isn't there—here it is. I call your attention to the minute of March 3d, 1908 and ask you to read that and tell me if you can, either by reference to that or from any other source, when in 1908 was it that you first learned of the contention upon the part of some of the directors that you were not entitled to retain these thirty shares of stock? A. "Atlantic City New Jersey, March 3d—

Q. You needn't read it aloud; just read it. A. I recall the circumstance.

Q. Now I want you to—tell me if you can, either from having read that minute or from any knowledge you possess, when it was that you first learned of a contention that you were not entitled to hold these shares of stock, these thirty shares of stock.

Mr. McCarter: First learned anybody claimed he was not entitled to it.

A. I fix the time in my mind from other circumstances and from the circumstances that I consulted or took legal advice after that, this meeting. This was a surprise to all of us.

Q. Of whom did you take legal advice? A. Of George W. Coles, my brother-in-law, and of Judge David Marvel of Wilmington.

Q. When was it you took advice of your brother-in-law, George W. Coles, regarding your position concerning this stock? A. In June following.

Q. How do you fix the time? A. I with some others, I with my brother-in-law, Mr. Joseph Borton and Mr. Louis Kuehnle were interested

in matters in Goldfield, Nevada, and after having kept up a lease there in 1907 ourselves until we found that it wasn't profitable, we subleased.

Q. You what? A. We subleased, that is we held the lease in 1906 and in 1907 we subleased and the terminus of that sublease was in June, 1908 and in the autumn of 1907 I was in Nevada and the condition of affairs there caused one or two banks to break and the company who subleased from us were caught with their funds in the bank and were compelled to give up the lease. We did nothing until the expiration of their term which was in June—

Mr. Smathers: What has this got to do with this?

Mr. Bourgeois: This is how he fixes the time when this came up.

Mr. Gaskill: It seems to me an unnecessarily long detail to fix the date.

The Vice Chancellor: Go ahead.

A. —in June, at the expiration of this sublease, we called a meeting of that company and it was at the table, after that company had disposed of its matters of business, in the presence of Mr. Kuehnle, I consulted Mr. Coles with reference to this.

Q. And that you say was June, 1908? A. June, 1908.

Q. Now prior to the 3d day of March, 1908, had either Judge Thompson or Judge Endicott ever made any contention to you personally or to the Board of Directors at a meeting when you were present that you directors were not entitled to keep the thirty shares of stock that had been issued to you? A. No.

By the Vice Chancellor: Q. Hadn't you ever heard Judge Thompson's compromise resolution,

it is called, of 1904? A. I heard of Judge Thompson compromise resolution later than 1904.

Q. At that time you hadn't heard of it, you hadn't before that time? A. Not before that, no.

By Mr. Bourgeois: Q. Now, Doctor, I haven't the resolution, but will have it, it has been called here the Thompson resolution—when did you first hear of the Thompson resolution and under what circumstances did you hear of it? A. At a meeting the date of which I can not fix excepting that it was after the date of March 3d, when we talked this matter over without action.

Q. Yes. A. During the meeting to which reference was made this morning when Judge Thompson used profane language to Mr. Adams.

Q. Was that meeting before you met Mr. Coles in your office in June? A. Subsequent.

Q. Subsequent to that? A. Well, now I can't say absolutely about that; it was subsequent to March 3d.

The Vice Chancellor: March 3d what year? A. 1908.

The Vice Chancellor: That is the Thompson resolution, that he claims was in 1904, was subsequent to March 1908?

Mr. Bourgeois: Yes.

Q. Now do you recall, Doctor, of having a conversation with Dr. Youngman at your front gate about that resolution after March 3d and prior to your meeting with Mr. Kuehnle and Mr. Coles at your home?

Mr. Gaskill: I object to that as incompetent.

Mr. Bourgeois: I mean for the purpose of fixing the time is all.

The Vice Chancellor: All right for fixing the time.

A. I recall Dr. Youngman's—

Mr. Gaskill: Answer is yes, or no.

A. I recall Dr. Youngman—

Mr. Gaskill: I insist on an equivocal answer to that question, yes, or no.

The Vice Chancellor: I sustain your position, Judge Gaskill: Can you recall it? Do you recall the conversation?

A. I recall the conversation, yes, but I don't recall the date.

Q. When and under what circumstances did you first hear of the Thompson resolution and from whom? A. C. J. Adams in C. J. Adam's office.

Q. At a meeting of the board or privately? A. Privately preceding a meeting of the Board.

Q. What transpired with relation to that resolution at the meeting following the conference you had with C. J. Adams? A. At the call of the meeting Mr. Adams called me back in the back office and showed me this resolution. He asked me if I knew anything about the said resolution. I said I did not. He said it was claimed by Mr. Thompson that the resolution had been passed—

Mr. Gaskill: I object to this conversation between these persons prior to the meeting.

Q. Don't tell what he said, Doctor, but tell what was done.

Mr. Gaskill: At the meeting.

Mr. Bourgeois: Well, he can tell what was done before the meeting if he don't tell what was said.

A. I advised Mr. Adams—

Q. Not what you advised. A. The resolution was brought before the meeting.

Q. Now when the resolution was brought before the meeting what happened? A. May I tell

why I had the resolution brought before the meeting?

Q. Yes, you may.

Mr. Gaskill: I think the minutes is the best evidence if there is any minutes of that, if the Court please.

Mr. Bourgeois: Judge didn't think so when he offered Judge Thompson and had him testify.

Mr. Gaskill: Let's see if there is any minutes.

Mr. Bourgeois: The doctor's recollection is the best.

The Vice Chancellor: I think he can testify.

A. I advised Mr. Adams to bring the matter up before the board; as soon as the board was called to order, which he did, and I stated the question before the board. I stated the question of the resolution before the board of directors and asked that they might answer Mr. Adam's individual question as to whether that resolution had ever been before the board before or not.

The Vice Chancellor: This is a meeting of about what date?

A. This was between March 3d, 1908 and August 17th, 1909, but as to the absolute date of it I can't fix. Mr. Adams interrogated each individual of the board asking them in open board if they had ever seen that resolution or if it had ever been passed, to which Mr. I. G. Adams, C. J. Adams, Louis Kuehnle, Maurice D. Youngman and myself answered no.

Q. That is to both questions that you never had seen it before and never had been passed? A. Yes, to both questions. Mr. Thompson said it had been passed, Judge Endicott said he didn't know whether it had been or not.

Q. Now, Doctor, that is what you said that time.

Now tell us whether or not in fact that resolution had ever been passed by the board of directors? A. It had not.

Q. Had any motion to the effect of that resolution ever been passed by the board of directors? A. At no meeting at which I had ever been present.

Q. Had any motion of the nature contained in the resolution, of the nature of the resolution rather, ever been made at any of the meetings? A. Not at which I was present.

Q. Was such a motion made on the 3d day of March, 1909? A. No.

Q. Could you tell us—A. In 1908 you mean?

Q. Yes, 1908. Can you tell us what the discussion was that was had about this question on the 3d of March, 1908? A. As I recall it Judge Thompson brought up the fact and said we had no legal right to do what we had done with reference to this stock. At least the purport of it was this and it was a surprise to all of us. The question had never been raised before, to us at least, and Dr. Youngman and I that night after the meeting was over we discussed—

Objected to. Objection sustained.

Q. You and the doctor had a discussion over it? A. Yes.

Q. And after you had the discussion over it did you change your mind as to whether or not that resolution or motion had ever been before the meeting?

Mr. Gaskill: I object as to whether this witness ever changed his mind about the matter.

The Vice Chancellor: I think it may be answered.

A. The resolution had not been before the meeting, consequently we didn't discuss it.

Q. Did you change your mind? A. No.

The Vice Chancellor: The first place it appears on the minutes is March 3d, 1908. Isn't the first place that anything appears on the minutes about any question being raised March 3d 1908?

Mr. Bourgeois: That is right; that is the first place it appears on the minutes.

Q. Now, Doctor, after March 3d, 1908, and after the meeting at which this resolution was discussed, when was the question next brought before the board? A. After this particular meeting when it was discussed?

Q. After the meeting of March 3d, 1908 when it was discussed and after the meeting at which the resolution was discussed in the board, when was the next time that this question about the ownership of those thirty shares of stock each was brought before the board? A. It was brought before us two or three times after that, but I can't tell you the exact meeting.

Q. Tell me when it was with relation to the date of liquidation? A. On August 17th, 1909?

Q. Yes. Now let us see that minute of August 17th, 1909. Now I call your attention to the minute of August 17th, 1909, and ask you to look over that so as to familiarize yourself with it somewhat. (Handing minute to witness.)

Adjournment taken to 9:15 a. m. May 7, 1912.

Morning session, May 7, 1912.

Hearing resumed at 9:15 a. m.

DR. PHILIP I. MARVEL, resumed:

Direct-examination resumed:

By Mr. Bourgeois: Q. (Last question repeated from the night before.) State who it was that demanded or requested that the minutes of that meeting should be written up before you left? A. I demanded it.

Q. You did? A. I did.

Q. Now why was that demand made? A. Because of what had preceded this meeting.

Q. State what had preceded that meeting? A. At the meeting of March 3d, 1908, when this matter was first brought to our attention in the board.

Q. Now what matter do you mean? A. I mean the matter of our not having had a legal right to have transacted the business which we did transact in October, 1908, where we accepted our notes or where we took back our notes and accepted the stock of the company in lieu thereof. After our discussion that evening we were very much disconcerted to think that we had placed ourselves, according to Mr. Thompson's statement, in a position where we were suspected of crooked doing and following this, at the meeting to which reference was made yesterday and at which meeting Mr. Thompson used the profane language just referred to—

Q. Now just what language did Judge Thompson use if you can tell; just repeat what it was that lead up to the refusal to hand out these minutes? A. The purport of it was this that Mr. Adams showed me this resolution in the back office and stated that he did not know how the resolution had gotten into his office and asked me if I had ever seen the resolution or if it had ever been passed. I said no, I hadn't nor had it ever been passed at any meeting at which I had been

present and I advised him, as soon as the meeting was opened, that he should interrogate every member of the board to see if they knew whether it had been passed or not. He did this with the results that I stated yesterday. Mr. Thompson became very indignant and asked for the minutes. The minutes were not produced and then reference was made to the fact that he would show where this resolution was passed and where it came from if the minutes were produced. And then the conversation was backwards and forwards until he told Mr. Adams that it was a damn lie with reference to the minutes, that is the resolution not having been passed. He called upon me or demanded me to have Mr. Adams produce the minutes. Previous to that, however, I had told Mr. Thompson that that was improper language to be used before the board and that I should insist that no further language of that character should be used. He then demanded that the minutes be produced. I said in view of the fact that he had used the language he had to Mr. Adams I should not demand the minutes, if Mr. Adams wished to produce them that was his affair. On this occasion we were very much disturbed and very indignant at the manner in which this matter had come about. Dr. Youngman and I, after the meeting had closed—

Mr. Gaskill: I object to what took place.

Q. Just wait a moment there, doctor. Now at that meeting did Mr. Adams, the secretary, say to Judge Thompson that he did not know where the minutes were? A. He did not.

Q. Did he do anything more than refuse to let Judge Thompson see the minutes? A. My recollection is that he told him the minutes were in his safe and the safe was unlocked, but he would not produce them.

Q. Now then you were telling me how it was that you demanded or requested that the minutes of the meeting of August 17th, 1909 should be written up before you left the meeting. You have told me about the previous meeting. Now then there was a conversation, as I understand, between you and Dr. Youngman after that? A. Yes.

Q. Don't tell what the conversation was. A. Well, there was a conversation.

Q. Now what else was it? A. And from that conversation I made up my mind that further minutes of the meeting would be written up in the minute book or in some way that we might have a minuate, a complete minute of our meeting.

Q. Had this conversation that you had with Dr. Youngman reference to the dispute over the minutes that had arisen upon the meeting when the resolution was questioned? A. In part.

Q. Now, I notice by that minute—that was a meeting where the motion was made that you men should turn back the stock, as I understand of August 17th, 1909. Now, doctor, later than that there was another minute of August 31st, 1909, which purports or which contains a resolution that $30 the dividend on the thirty shares of stock held by each of the five directors should be deposited in the Atlantic Safe Deposit and Trust Company until the matter was finally determined and then—there are two meetings here that I want to get—

Mr. McCarter: I think it was March 17th, isn't it?

A. August 17th, 1909. August, isn't it?

The Vice Chancellor: That was one of the resolutions introduced August 17th, 1909. There was a series of resolutions introduced.

Q. I call your attention to the resolution providing for the payment of the dividend on the seventy-five shares of stock held by these five directors into the Atlantic Safe Deposit and Trust Company until the validity of the issue of those shares should be determined, and then I call your attention also to the resolution of August 31st, 1909, in which the previous resolution of August 17th was rescinded. Will you tell me whether or not any dividend had been paid on any of the shares of stock pursuant to the resolution of August 17th, 1909? A. Had not.

Q. And can you give me or state the condition of affairs and the situation with regard to the St. Leonard's Land Company's property and moneys on the 31st day of August, 1909, so that we may know what it was that lead up to the rescinding of the resolution to pay $30.00 a share, I think it was and provided for the payment of $200.00 a share dividend? A. Well, between the meeting of August 17th, and the meeting of August 31st, we had taken counsel with reference to our position in the matter and at the same time there had been taken on the stock of the company an option at a certain definite price and it seemed to be that the parties who had taken the option were eager to have the premium paid by the company to take care of their option—

Q. That is the dividend? A. The dividend, yes. To take care of their option and we surmised at least I surmised—

Mr. Gaskill: I object to that.

Q. Not what you surmised, what took place? A. My inference was—

Mr. Gaskill: I object to that.

Q. State what took place? A. At any rate the resolution was rescinded and the company agreed

that this premium should be paid of $200.00 a share.

Mr. Gaskill: By premium I suppose you mean dividend? A. Dividend, yes.

Q. At the directors meeting of August 31st, 1909 and previous to the voting on the second resolution, was there any conversation had with relation to whether this contention over the seventy-five shares of stock was to continue or whether it was to be eliminated? A. There was previous to the directors being called to order.

Q. Who was present at that time? A. Mr. Kuehnle and Dr. Youngman and Mr. I. G. Adams, I think.

Q. Either Judge Thompson or Judge Endicott present, do you know? A. I am not sure whether they were or whether Mr. Bacharach was present.

Q. Now, I call your attention to the resolution offered by Judge Thompson at the meeting of August 31st, 1909, which reads as follows: "The following resolution was offered by Judge Thompson: 'Whereas in the organization of this company there was issued to Dr. Marvel as Trustee six hundred and ninety-nine shares of stock, of which two hundred and eleven shares were never sold by the company; Therefore, be it resolved that the said two hundred and eleven shares held by him as trustee aforesaid be returned and cancelled. On motion of Louis Kuehnle the above minutes were unanimously approved." Now, Doctor, did that two hundred and eleven shares that the resolution provided should be cancelled include the one hundred and fifty shares in dispute or was that two hundred and eleven shares outside of the one hundred and fifty shares? A. Outside.

Q. Tell me, if you can, whether or not the reso-

lution to turn back the two hundred and eleven shares, in other words all of the shares that had been issued to you that had not been sold, excluding the one hundred and fifty shares in dispute, whether that resolution was supposed to be a confirmation of the whole transaction and closing of it.

Mr. Gaskill: I object to that as incompetent and calling for a conclusion.

The Vice Chancellor: I don't know how he can testify excepting by his own understanding of it. I don't think he can give it any force stronger than it appears on the books.

Q. Doctor, at the time this resolution was offered by Judge Thompson what was said with regard to it? A. Well, I don't know that I can recall the exact statement.

Q. Can you recall the substance of what was said? If you can state it. A. We had previously taken counsel and it seemed evident—

Mr. Gaskill: I object to that; that is not responsive.

Q. Just what was said there at the meeting at the time Judge Thompson offered this resolution. Now was any comment made when he offered the resolution? Did he say anything? A. Yes, I am sure he said something, but it is difficult for me to recall just what he did say.

The Vice Chancellor: Was this a unanimous resolution?

Mr. Bourgeois: Unanimously adopted. "On motion of Louis Kuehnle the above minutes were approved."

Mr. Gaskill: There is not any record there as to whether that resolution was adopted or not.

Mr. Bourgeois: I thought that was a record of it.

Q. Was that resolution adopted? A. My impression is it was.

Q. Were the shares of stock turned back? A. Which, the two hundred and eleven?

Q. The two hundred and eleven? A. Only by resolution; they had never been issued.

Q. What I mean is when they made the dividend were they included or not included? A. Not included.

Q. Didn't participate in any dividend? A. Did not participate.

The Vice Chancellor: The minutes only show that resolution was offered; don't show it was adopted.

Mr. Bourgeois: I thought it meant it was adopted.

Mr. Gaskill: This is the minute, Mr. Bourgeois. The following resolution was offered by Judge Thompson, "Whereas in the organization of this company there was issued to Dr. Marvel, Trustee, six hundred and ninety-nine shares, of which two hundred and eleven shares were never sold by the company; Therefore, be it resolved that the said two hundred and eleven shares held by him as trustee aforesaid be returned as cancelled." That is all that appears. The next item is: "On motion of Louis Kuehnle the above minutes were unanimously approved." There had been other transactions at that meeting.

The Vice Chancellor: There had been a general approval of the minutes.

Mr. Gaskill: I have assumed that resolution was adopted.

Mr. Bourgeois: No doubt but what it was adopted as a matter of fact. When I first read it I thought that had reference to the adoption of that particular resolution, not the approval of the minutes.

The Vice Chancellor: Well, it will be assumed it was adopted unless someone questions it. I suppose that is what was intended, probably.

Mr. Gaskill: We do not intend to question its adoption.

Q. Doctor, tell me whether or not, with the exception of the two instances you mentioned yesterday, Judge Endicott ever protested against the expenditure of moneys by the company for the improvements of the land of the St. Leonards Land Company? A. I don't remember that he did.

The Vice Chancellor: I don't remember but the one instance that appears in your testimony. You stated two instances, didn't you?

Mr. Bourgeois: Yes, I thought Doctor said once in 1902 and once prior to that; that is my recollection, maybe it is only one, I don't know.

The Vice Chancellor: I thought Dr. Marvel's testimony was that latter was the first instance.

Mr. Bourgeois: Well, that is 1900, and then he says there was another time in 1902.

The Vice Chancellor: The letter of Judge Endicott's was in 1898.

Mr. Bourgeois: In 1899, January 1899.

The Vice Chancellor: It was touching the action of 1898.

Mr. Bourgeois: And the other was in 1902.

The Vice Chancellor: The 1902 transaction I don't recall in Dr. Marvel's testimony.

A. May I state that I referred to a conversation on the street and the opposing attorney stopped me.

Q. Doctor, state whether or not Judge Endicott or Judge Thompson ever protested to you individually or protested in any meeting of the Board of Directors of the St. Leonards Land Company at which you were present prior to March third, 1908, against you five directors holding the shares of stock that had been issued to you in June of 1898 and which you had assumed as your property in October 1898? A. Answering the last part of your question first I would say no. Answering the first part of your question, Mr. Endicott had at this time to which I referred yesterday of talking to him on the street, in answer to the matter, talked over in a general way, in which I referred to the fact that I felt that he and Mr. Thompson should have taken the same interest in the matter that we had. He there said that he had been opposed at all times to our obligating the company beyond our ability to pay.

Q. Now when and where was that conversation?

The Vice Chancellor: This question that was just asked you was touching your proportion of the stock and you are speaking now of the general policy of making improvements.

A. Then I have misunderstood the question.

Q. (Repeated) "Doctor, state whether or not Judge Endicott or Judge Thompson ever protested to you individually or protested in any meeting of the Board of Directors of the St. Leonards Land Company at which you were

present prior to March third, 1908, against you five directors holding the shares of stock that had been issued to you in June of 1898 and which you had assumed as your property in October 1898?" A. No.

Q. Did they or either of them ever demand that the company redeem those shares of stock prior to the third day of March, 1908? A. No, not to me, nor in the board meeting.

By the Vice Chancellor: Q. Or within your knowledge, did you know of any such claim on their part? A. I did not.

Q. Either directly or through rumors? A. Did not.

Q. Had no knowledge of any instance? A. Had none.

By Mr. Bourgeois: Q. Did the protest of Judge Endicott or Judge Thompson ever go further than to request you individual members or you individual directors to turn back the stock? By that I mean did either Judge Endicott or Judge Thompson ever introduce a resolution or offer a motion, make a motion in the board directing the company to prosecute for the redemption of those shares? A. At no meeting at which I had ever been present had either of them ever made any motion or taken any step to that end.

The Vice Chancellor: That is prior to August seventeenth, 1909?

A. Prior to August seventeenth. Unless you consider at this particular meeting where the fracas occurred between Mr. Thompson and Mr. Adams.

Q. What I am getting at is this, Doctor, whether either of them ever made a motion that the company redeem that stock? A. They had not.

Q. Did either of them ever make a motion that the company tender to those directors the moneys that the directors had loaned to the company in 1898? A. At no meeting at which I have been present.

Q. Now they of course knew that the money had been loaned? A. They did.

Q. I want to call your attention, for the purpose of getting it on the record, to the cash book under date of June twentieth, 1898, and ask you if under that date there is an item of moneys received from Dr. Youngman? A. There is.

Q. Of how much? A. Of fourteen hundred twenty-eight dollars and fifty-nine cents.

Q. Was that the fifteen hundred dollars that he agreed to loan less the interest money and discount due and the interest on the mortgage and discount on the note? A. It was.

Q. Now I want to show you or call your attention to the opposite side of the ledger under date of June twenty-first, 1898, and ask you if there appears there an expenditure of money? A. There does.

Q. To whom and what amount? A. To the West Jersey and Seashore Railroad on account of gravel, fifteen hundred one dollars and fifty cents.

Q. Now I want to call your attention to an item of receipts under date of June twenty-third, 1898, and ask you from whom and what that amount was? A. From Louis Kuehnle, fifteen hundred dollars.

Q. And then to an expenditure under date of June twenty-third, 1898, and ask you to whom and what amount? A. To the West Jersey and Seashore Railroad on account of gravel fifteen hundred dollars.

Q. Then to a receipt under date of June twenty-fifth, and ask you from whom and what amount? A. I. G. Adams on note four months, fifteen hundred dollars.

Q. And to an expenditure under the same date? A. To the West Jersey and Seashore Railroad on account of gravel, fifteen hundred dollars.

Q. And just below that another expenditure. A. Of interest on Louis Kuehnle's note thirty dollars.

Q. Mr. Kuehnle paid the whole fifteen hundred dollars and then they paid him back the thirty dollars interest? A. Yes.

Mr. Bourgeois: That is pages eight and nine of the general ledger.

Q. Doctor, you held two hundred shares of the capital stock for the purpose of purchasing land as trustee? A. Yes.

Q. You held four hundred ninety-nine shares as trustee the proceeds of which were to be used for improvements? A. I did.

Q. State whether or not any moneys remained in your hands the proceeds of that stock which had not been turned over to the St. Leonards Land Company? A. There has not.

Q. You have paid it all over? A. At no time did I receive a dollar or have to return to the company; it was paid into the hands of the treasurer.

Q. State whether or not any of that six hundred and ninety-nine shares of stock has been appropriated to your own use or to the use of any other person except the purchaser, except by a motion or a vote of the Board of Directors? A. There never was.

Q. In other words the stock has all been—

Mr. Gaskill: Hold on; let him testify, not you.

Mr. Bourgeois: I am not going to testify. I just want to find out if a certain thing is true.

Mr. Gaskill: Better ask him questions instead of telling him.

Q. Were the hundred and fifty shares of stock that were issued to the five directors issued pursuant to a vote of the Board of Directors or was it done by you without a vote? A. By a vote of the Board of Directors.

Q. Page 306 of the company's ledger account has been offered in evidence and it shows these shares of stock, thirty shares each or the value of them as having been entered on the book under May eighteenth, 1909, the ink appears to be recent. Tell me whether or not that was the date of the issue of the shares or were the shares issued in June 1898?

The Vice Chancelor: What was the date of this entry?

Mr. Bourgeois: 1909.

The Vice Chancellor: There is no entry made on the books until this date?

Mr. Bourgeois: There is in the stock book.

Mr. Gaskill: I object to that question because the certificate book is the best evidence of when the shares were issued.

The Vice Chancellor: I think the entry is competent to tell what it would indicate.

A. The stock was issued in June 1898.

Q. Now can you tell whether or not these entries of May eighteenth, 1909 were anything more than bookkeeping entries? A. Not to my knowledge, they were not.

Q. Who kept the books of this company? A. Mr. Lucius Wright.

Q. Was he a director? A. Not in the early—well, I don't think he ever was a director; no, he wasn't a director.

Q. Doctor, a minute was shown in which it was resolved that none of the company's stock should be sold for less than par. What stock did the St. Leonards Land Company have? A. The company's stock.

Q. Well, what was it; how many shares? A. Six hundred and fifty-one.

Q. Now Judge Endicott testified for a number of years he was under the impression that the stock of this company had been returned, I mean the hundred and fifty shares of stock in dispute, had been returned to the company or at least seventy-five shares of it. Was there ever any transaction or action upon the part of the five directors, so far as you know or upon your part in fact which could have lead Judge Endicott to believe that those shares had been returned to the company?

Mr. Gaskill: I object to that as calling for a conclusion surely.

Mr. Bourgeois: Calls for a fact.

Objection withdrawn.

A. There was not.

Q. Was there ever a time when these five directors, within your knowledge, and yourself in fact ever consented to return the hundred and fifty shares or any part of that hundred and fifty shares back into the company? A. No.

By The Vice Chancelor: Q. You mean there is not except upon redemption with the time mentioned? A. How is that?

Q. You mean, of course, except for the redemption by the company, except within the year. A. Yes, within the year specified, of course. There was later this reference made when it was under discussion at that particular meeting in August where I agreed that the matter should be submitted to a Judge, a friendly suit should be had and the matter should be submitted to the Judge for his decision and the Board of Directors should abide by his decision.

Q. My recollection is you did not agree to that? A. I did not later, but that was my proposition and then when it was taken up two members of the Board had left the meeting and because they were not present I did not agree to it.

By Mr. Bourgeois: Q. And you didn't agree to having it submitted to Charles L. Corbin? A. I did not.

Q. Now Judge Thompson, in his testimony, testifies that this resolution was brought before the board on the twenty-third day of February, 1904, that was at a directors' or stockholders' meeting, I don't know which.

Mr. Thompson: Directors.

Q. Directors' meeting. The minutes show that you were present at that meeting. Judge Thompson testifies as follows: "I said that the company had no right to sell its stock for less than par in that way and after considerable discussion a resolution was passed growing out of this discussion and the fact that part of the stock should be returned." Was any such resolution passed or offered at the meeting of February twenty-third, 1904? A. No.

Q. Was there any discussion of that subject at that meeting? A. I can not remember any and therefore say no.

Q. Well, Doctor, what I want to get at is this, if there had been considerable discussion of it would you or wouldn't you remember it? A. I think I should remember it, particularly as this concerned us as individuals.

The Vice Chancellor: Isn't that the meeting at which Judge Thompson says his compromise resolution was passed?

Mr. Bourgeois: Yes, that is the one.

Mr. Gaskill: And your Honor will notice that the minutes have never been closed or signed.

Q. Now, Doctor, Marvel, can you tell whether or not this company was in a position, a good financial condition all these years or whether they were obliged to borrow money to pay their current charges? A. We were always obliged to be borrowing money up until 1907.

Q. How did you get money for paying taxes with? A. Had to go into the bank and discount notes.

Q. Now one other question and I think that is all I want unless I think of something else; what was the order of development of that land down there of the St. Leonards tract and immediately adjoining it on the East and the West? Which was first developed, I mean which first was developed by the building of houses? A. Why on the East and West of the tract; it developed around us.

Q. Was there ever a time, Doctor, from the date when you had the land in condition for sale, that that land was not in the market for sale? A. There never was.

Q. Were as many sales made as it was possible for you to make? A. So far as I know. That is to say we were constantly trying to sell lands.

Q. And did sell a little along? A. Yes.

Q. Judge Endicott testified that it would have been possible, that the directors might have sold land with which to pay off the money that had been borrowed from you directors; could that have been done? A. The land that we did sell we had to discount to dispose of it; that is, I mean discount our prices. If we discounted it low enough probably we could.

Q. Could you have sold it at what you considered the fair value of it and raised money? A. No.

Q. Did Judge Endicott ever make any motion in the Board or ever request you individually to sell land for the purpose of redeeming this stock? A. No.

Q. Did Judge Thompson ever make any motion that the land be sold for the purpose of redemption of this stock? A. No.

CROSS-EXAMINATION by Mr. Smathers:

Q. Doctor, I hand you the company's minute book and ask you to turn to page thirty-seven, please.

(Witness complies.)

Q. Page thirty-seven is a directors' meeting of the company, is it not? A. So states here.

Q. And the last minute written up in the book? A. It is.

Q. What is the date of it, the meeting? A. February twenty-third, 1904.

Q. Do you observe on that page any erasures? A. Yes.

Q. Do you notice about the middle of the page it is written in one sort of ink and from there down it is written in different sort of ink? A. The lower part of it is in heavier stroke.

Q. Isn't the ink blacker? A. That is what I

mean by heavier stroke. It may be the changing of the pen or changing the ink.

Q. Now, will you turn to the following page thirty-eight; do the minutes appear to be complete? A. No, I don't think they are.

Q. Isn't any motion to adjourn? A. Doesn't seem to be any.

Q. Is it signed by anyone as secretary? A. No.

Mr. McCarter: Previous meeting isn't signed either.

The Vice Chancellor: This meeting is adjourned; this one isn't.

Q. Doctor, will you turn back to three or four of the meetings before that and tell us whether or not there is a motion to adjourn at the end? A. Some of them are.

Q. Well, will you answer the question? A. What is that?

Q. (Repeated) "Doctor, will you turn back to three or four of the meetings before that and tell us whether or not there is a motion to adjourn at the end?" A. There is. Doesn't say whether we did adjourn or not, though.

By the Vice Chancellor: Q. Doesn't say what? A. Doesn't say whether we adjourned or not.

Q. On motion adjourned, isn't it? A. I beg your pardon; it is. I thought "a motion to adjourn." On motion adjourned.

By Mr. Smathers: Q. Doctor, on and after 1902 is it not a fact that Judge Endicott insisted at different times that the company should redeem the stock? A. Not to me.

Q. Well, did he to any of the other directors to your knowledge? A. Not to my knowledge.

Q. Do you remember him ever bringing the matter up at any of the meetings? A. I do not.

Q. Do you remember him insisting that no improvements should be made until the money was provided for with which to make them? A. As I referred to this morning.

Q. And no other way? A. No.

Q. Doctor, will you give us the exact words that Judge Thompson used when you appealed to him to loan the company some money as the others did? A. You mean over the 'phone?

Q. You testified yesterday as to a certain remark he made; will you give us those words? A. So far as I can remember it was to this effect, that his holdings in the company were small and he would rather a damn sight lose what he had than to put more money in.

Q. Will you tell us when that was? A. I was in Mr. Adams' office and telephoned to his house. He was not at his house, they told me the number of the telephone and—if I remember correctly it was in the Yacht Club I am not sure about that—and they told me the number to call and I called him.

Q. Do you remember where it was you reached him finally? A. Well, at the end of the phone, the number which was given me at his house.

Q. You say you finally did get him at the house? A. I say his house gave me a number I could probably reach him.

Q. Do you know when that was, Doctor? A. It was on the evening of this meeting in June.

Q. Remember the date of it? A. Well, we have always set down the date of it as June twentieth.

Q. Well, was that the date? A. It was around or about June twentieth.

Q. What year? A. 1898.

Q. Sure of that are you, Doctor? A. How is that?

Q. Are you sure of that? A. I am sure of that.

Q. What were Mr. Thompson's holdings, large or small, compared with yours? A. Comparatively small, I should think, at that time. Mr. Thompson's original holding, if I remember correctly, was thirty-five shares and he had disposed of eighteen or seventeen; I don't remember which.

Q. Now will you give us the name of the director of the Union National Bank that you spoke to about a loan? A. Thompson Irving.

Q. Who is Thompson Irving? A. My father-in-law.

Q. Did you speak to him at his house or your house or at the bank meeting? A. It wasn't at a bank meeting. It may have been at his house or my house; it may have been on the street. I don't remember just where.

Q. Doctor, yesterday didn't you say that you personally saw Judge Thompson on the street at the time he said he didn't want to loan the money? A. I said Judge Endicott on the street.

Q. Doctor, you testified yesterday that two hundred shares of the original issue of 1839 were given to you in trust to buy additional lands with and four hundred and ninety-nine shares of the 1839 issued were given to you in trust to improve the lands? A. For betterments, yes and improvements.

Q. When you testified to that were you testifying from recollection or from minutes of the company? A. From recollection and the minutes both.

Q. Do the minutes show that? A. Not from the minutes, from recollection and the bookkeeping.

Q. Now, will you turn to the bookkeeping, please, and show where it indicates two hundred and the four hundred and ninety-nine were given

to you in trust for the purpose you testify? A. On page 306.

Q. Of what book? A. Of the general ledger under the account of Philip Marvel, trustee, it distinctly states that the four hundred and ninety-nine shares were for improvements and two hundred shares for real estate purchase.

Q. There were no minutes to that effect, were there? A. Not that I know of.

Q. Do you know why there were not? A. I do not.

The Vice Chancellor: My recollection of the minutes are that they disclose that the two hundred shares were for the purchase of additional land, but do not state what the remaining portions were. Am I not correct about that?

The Witness: It was always understood.

The Vice Chancellor: The minutes, as I recall them, show that the two hundred shares were for the purchase of additional land, but do not specify what the remaining shares were for?

Mr. Gaskill: I think the minutes are entirely silent, if your Honor please.

Mr. Bourgeois: On page fifteen.

Mr. Gaskill: On page fifteen it is not as full as he has got it in the book at all; total number of shares held by them, 1839 (carried out); Philip Marvel, Trustee, 499 shares; Philip Marvel, Trustee, to be used in purchasing additional lands, 200 shares.

The Vice Chancellor: That is my recollection of it, Judge.

Q. There are no other minutes concerning the two hundred and four hundred ninety-nine shares

held by you in trust except the one just read? A. I don't know of any other. I don't recall any other.

Q. Then concerning the four hundred and ninety-nine held by you in trust you testify from recollection on that? A. How is that?

Q. I say concerning the purpose of the four hundred and ninety-nine shares being given to you to develop lands you testify from recollection? A. Purpose is so declared here in the ledger and it was always understood, always my understanding—

Mr. Gaskill: We object to your understanding.

Q. Do the minutes state, Doctor, for what purpose the four hundred and ninety-nine shares were given you in trust?

Mr. McCarter: Three times he says he don't know.

A. Am I to answer that?

The Vice Chancellor: Yes, if you know whether the minutes in any way state that.

A. I have no knowledge of the minutes so stating excepting the reference made in the minute book to which attention was invited and the ledger here to which your attention was invited.

Q. Doctor, you say in June 1898 you five directors agreed to loan and did loan the company fifteen hundred dollars each? A. We did.

Q. Do the minutes show that transaction? A. I don't know that they do.

Q. As a matter of fact they don't, do they? A. I haven't seen any minute of it.

Q. Well, will you turn to the minute book, please, and see?

Mr. Bourgeois: Can't we admit, Judge, that the minutes do not show it?

A. May I make a statement?

Mr. Gaskill: No, we object to your making a statement.

A. Well, I really haven't examined the minutes as to that minute.

Q. There is no minute, Doctor, of the date at which you say that occurred of June fifteenth or twentieth, 1908; I think we all agree on that, don't we? A. Well, there is none we see here.

Mr. Gaskill: Nothing in the minute book, I think, Mr. Bourgeois, we can agree between May of that year and October.

Mr. Bourgeois: We will agree.

Q. Doctor, do you know why the minutes do not disclose that transaction? A. I do not. Here is the point—

Mr. Gaskill: Wait until another question is asked.

Q. Doctor, was it in June 1898 or later that the directors determined to take two for one of the company's stock to secure this loan? A. It was in June 1898 that they accepted as collateral to their loan two shares of stock for the price of one.

Q. Was there any minute in June of that transaction? A. There was undoubtedly a memorandum minute made at that meeting.

Q. Do the minutes show that there was a minute in June of that transaction of where you took the stock as security? A. That was the practice at each meeting and the minutes don't show.

Mr. Gaskill: That is the minute books don't show?

A. Minute books don't show.

Mr. Gaskill: We call upon counsel to produce any pencil memorandum of minutes of any meeting in their possession.

Mr. Bourgeois: And the other side say they would be happy to produce it if they had it.

Q. Doctor, was it at the June meeting that the company determined to limit the company to one year in which to redeem the stock? A. It was not.

Q. When was that determined upon? A. In October when the note became due.

Q. So the company—so the directors loaned, agreed to loan and did loan in June, agreed in June to take stock as collateral security, but it was at a subsequent meeting in October that you determined to limit the company to one year in which to redeem the stock; is that right? A. That is right.

Q. Doctor, pursuant to what resolution, May 19th or October 5th, did the directors determine to loan this $1,500 to the company and accept stock as collateral security? A. To the resolution of May, 1898.

Q. Now does that resolution authorize the directors to loan to the company $1,500 each? A. We didn't take the stock in June as a loan.

Q. Just answer the question. A. The resolution does not.

Q. Does that resolution authorize the company, that is the directors, to limit the company to one year in which to redeem stock given as collateral security? A. Resolution does not.

Q. Then how do you justify your action in loaning the money, as you did, and taking the stock pursuant to a resolution of May 19th, when it does not authorize it? A. A full board of the company had passed this resolution authorizing the placing of the stock as collateral and we acted under that resolution in accepting the stock as collateral and we presumed that we had the right to accept it as we did accept it, giving the company a specified and definite time in which to redeem it.

Q. When did you determine that to give the company a specified and definite time in which to redeem it? A. In October, 1898.

Q. Why didn't you determine it in June when you loaned it? A. For the very reason that we were only loaning the company money. We were not then purchasing stock or taking the company's obligation as our own.

Q. The resolution of May 19th authorizes you to borrow $10,000, doesn't it? A. Yes.

Q. Did you borrow $10,000? A. We attempted to borrow $10,500; we borrowed $7,500.

Q. Wasn't that to borrow $10,000 from the bank? A. It was.

Mr. McCarter: Don't say so.

Mr. Bourgeois: I ask the resolution be produced there.

Mr. McCarter: It is very dangerous to take recollections of resolutions.

The Vice Chancellor: Doesn't say from the bank.

Mr. Bourgeois: Simply says to borrow $10,000.

Mr. Gaskill: The resolution is not in writing, Mr. McCarter. What you call a minute of it is, but the minutes are absolutely to be discarded. I say that resolution is not in writing and you can't produce the original resolution.

Mr. McCarter: I don't care what you say, Judge, I say there is a minute of May 19th, 1898.

Mr. Gaskill: I insist that the question is entirely pertinent and that the minute in no way helps the witness to answer.

Q. Doctor, I call your attention to resolution dated October 5th or 15th, I don't know which, 1898, which reads as follows; "Resolved that each

director borrow the sum of $1,500 for the period of one year and to receive 50 per cent of the company's stock as collateral security to said loan, to meet the obligation of Alvin P. Risley, contractor, company to have the privilege of redeeming said stock in one year from date, with interest at 6 per cent, otherwise to revert to borrower." Doesn't that resolution authorize the directors to each loan $1,500 to the company as each director did?

Mr. McCarter: I think the resolution speaks for itself. I think the question is improper. We object to it.

The Vice Chancellor: I think as cross-examination it is proper to test the witness' testimony in that manner. I think the question is proper.

(Question repeated.)

A. It does authorize.

Q. Doesn't that resolution authorize the pledging of the company's stock as collateral security? A. As it reads it authorized whatever power it embodies.

Q. As it reads does it not authorize the company in being limited to one year in which to redeem the stock? A. If it bound the directors; if it was an exact resolution that the directors had offered, which it is not.

Q. Doctor, what action was taken by the company, by the directors on this resolution in October?

Mr. Bourgeois: On what resolution, Judge?

A. Do you refer to the resolution that you just read?

Q. Are there any other October resolutions, Doctor, in 1898? A. Well, this isn't the exact copy of the resolution that was passed that night.

Q. We hand you a resolution and ask you if that is not the original resolution of October 15th, 1898? A. May I say that the resolution—this is not the exact wording of the resolution as brought before the meeting.

Q. What you have in your hand, does that purport to be a resolution of October 15th, 1898? A. It does.

Q. In whose handwriting is it? A. Well, I am not sure, but I presume in Mr. C. J. Adams handwriting.

Q. Is it yours? A. It is not.

Q. Any portion of it in your handwriting, that little paper on top? A. No, it is not.

The Vice Chancellor: Is it not in Dr. Youngman's handwriting?

A. It is not. I know Dr. Youngman's handwriting. That isn't his.

Q. Doctor, was there any action taken by the board on that resolution that you have in your hand? A. There was an action taken on the resolution given in the meeting. This isn't the exact resolution given in the meeting.

Q. Then there was no action taken on the resolution which you have in your hand? A. Not as it reads.

The Vice Chancellor: Then Doctor, you understand this to be not a resolution, an original resolution which some director handed up by the secretary's attempt to embody an oral resolution in writing; is that what you mean to testify to? A. Exactly what I mean.

Q. With reference to the first leaf here that is pinned on, C 5-1, do you know whose handwriting that is in, was that Youngman's? A. No, sir; I don't know whose handwriting it is. It isn't Dr. Youngman's.

Q. The resolution on the minutes appears to have been offered by Dr. Youngman, but don't seem to be no writing of his here. A. That is not Dr. Youngman's handwriting. Dr. Youngman's handwriting is characterized by backhand.

Q. Doctor, if the resolution which is marked Exhibit C 5-1 does not express the exact resolution that was passed at that meeting, will you give us what that resolution was?

Mr. McCarter: You mean what resolution was passed?

Q. What resolution was in fact passed? A. I can give you as near as I can recollect. Dr. Youngman gave the resolution, proposed it, and can give it to you better than I can, but I can give you what in my recollection was the resolution and it was, the resolution that night was dictated or at least was given by Dr. Youngman almost in the same terms as the resolution which had been passed in May, that is it was to represent the same number of shares of stock and to apply to us as collateral, had applied to us, already applied to us as collateral for the money that we had loaned the company.

Q. Is that your answer, Doctor? A. That is my answer.

Q. Doctor, you filed two answers in this case, did you not? A. Mr. Bourgeois filed the answers.

Q. Yes. Did you read the answers over before they were filed? A. I am sure I read the first one over and I think I read the second one over.

Q. The amended answer? A. Yes.

Q. And you read them both over. In the first answer did you not, in that answer, claim that this loan by the directors, individual directors of the company, was made pursuant to the resolution of of October 15th, copy of which is marked Exhibit C 5-1? A. If I did the answer will show it.

Q. I am asking you? A. Well, I am not sure whether I did or did not, but the answer will show it.

Q. You permitted that answer to be filed as then stating the situation as you then understood it, did you not? A. What is the question?

(Former question repeated): "In the first answer did you not, in that answer, claim that this loan by the directors, individual directors of the company, was made pursuant to the resolution of October 15th, copy of which is marked Exhibit C 5-1?" (Last question also repeated): "You permitted that answer to be filed as then stating the situation as you then understood it, did you not?"

Mr. McCarter: Is that in the answer?

Mr. Gaskill: Page seven of the original answer.

Q. Doctor, I read you paragraph six of the first answer filed by you in this case: "Defendants further answering say that they admit that on the 15th day of October there was a meeting of the Board of Directors of said company, at which five members, to wit, Philip Marvel, M. D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, were present, and that at said meeting a resolution was offered and passed in the following language:

"Resolved that each director borrow the sum of $1,500 for the period of one year and to receive 50 per cent excess of the company's stock as collateral to said loan to meet the obligation of Alvin P. Risley, contractor. The company to have the privilege of redeeming said stock in one year from date, with interest at 6 per cent, otherwise to revert to the borrower."

"Defendants further say that while said resolution was inaptly drawn, the intent thereof was to pledge $3,000 of the capital stock of the company for each $1,500 loaned to the company, and that in the event of the company re-paying said loan within the period of one year that the loan to the company should thereby be cancelled and the stock should become the property of the person so loaning the money to the company.

"Defendants further say that after the passage of said resolution each director, including Allen B. Endicott and Joseph Thompson, was asked to advance to the company $1,500 with which to pay the said outstanding indebtedness; that each of the directors responded to said request, excepting Joseph Thompson and Allen B. Endicott, each of whom refused to advance any moneys to said company; that the other directors who are now defendants in this suit each advanced $1,500 to the said company, and the moneys thus received were used by said company in liquidating the indebtedness of said company." A. That recites the facts as the minutes showed at that time, as the minutes show it.

Q. Are those the facts that you want to testify to now, Doctor? A. Those are the facts so far as they refer to that particular resolution, that particular resolution is not the proper wording of the resolution which was given that night.

Q According to this answer you say, pursuant to that resolution you loaned this money, $1,500 each; is that so, or isn't it so? A. We loaned money that night?

Mr. Bourgeois: Answer doesn't say that.

A. The money was loaned to the company that night?

Q. Does that answer state the facts, Doctor, as

you recollect them? A. They state the facts as I understand as they refer to the minutes that were made by the Board of Directors.

Q. Doctor, when was it you said that you first learned of the company's objection to your directors holding the stock as your stock? A. In the March meeting of 1908.

Q. That was the first knowledge you had of the other directors objecting to your holding, is that right? A. That was the first knowledge that I had that I can recall.

Q. How do you fix that date, Doctor? A. I fix it by the surprise that came to us at the time and then by a discussion with Dr. Youngman and myself had afterward.

Q. Well, how would the surprise fix it in your mind? A. Well, Mr. Endicott and Mr. Thompson had been employed as our attorneys. This company was considered as sort of a close corporation as being interested in the company, friends, and we discussed matters pro and con as friends would discuss them, and if there was a matter of legal importance that matter was always referred to Mr. Thompson or Mr. Endicott—I say always, I mean up to that time—to Mr. Thompson or Mr. Endicott and, so far as I can recall, we always gave deference to their opinions and acted as they directed us. I don't think we ever questioned their opinion in a single instance up to that time.

Q. Well did that which you have just related assist you in determining the date? A. What assists me in determining the date was the conversation with Dr. Youngman afterwards.

Q. Well, how long after this date which you said you first had knowledge of it was it you said you first had the conversation with Dr. Youngman? A. On that very evening.

Q. And that is the way you determine the date? A. Yes.

Q. Is it not a fact, Doctor, that was the first time that you had knowledge of the fact that the company did not intend to let you directors keep the stock? A. That was the first time.

Q. In other words, what I mean to say, it was then you first learned of the company's determination to compel you to return the stock and not when you first learned that the company objected to it? A. That was the first time I had any knowledge of the fact that we had acted other than what was legal and just to the company.

The Vice Chancellor: Or that anyone objected to it?

A. Or that anyone objected to it.

Q. Well, when did you first learn of the company's determination to compel the directors to return the stock? A. Well, we assumed from the attitude of Mr. Thompson and Mr. Endicott that evening of this meeting at which Mr. Adams and Mr. Thompson had their altercation, that that was their attitude. We had not assumed it before.

Q. Then that was— A. That was some time between March 3d, 1908 and August 17th, 1909; that is this Adams-Thompson meeting.

Q. Doctor, didn't you consider that a little bit sudden or peremptory on the part of the other directors that they should at this time suddenly offer or insist upon you directors returning this stock when they had not said anything about it before? A. At this particular meeting the discussion was in an informal way, in perfectly ordinary language, that is to say there was no feeling shown at all; it was more in the form of friendly advice. However it was at the same time a surprise to us that we had done anything that was illegal.

Q. Wouldn't you think, when they were friendly to you, that they would in a quiet way tell you before taking any definite action to return the stock and give you an opportunity to return it? A. Well circumstances had changed at that time. The outlook for the company was very different from what the outlook of the company was in 1898 or at any time between then and 1906.

Q. Doctor, when an effort was made in the Board of Directors to have the directors that had the stock to return the stock do you remember how you voted on the motion? A. I voted not to do it.

Q. Would you mind giving us your reason for opposing that course? A. I believed at the time that we accepted the stock in lieu of the company's indebtedness to us that we were, we had discharged our obligation to the company and that we had accepted it in perfect good faith, that we had given the company an opportunity to redeem it, that no one had raised a question that it should be redeemed and that we felt justly entitled to it, and under those circumstances I voted against returning it.

Q. Was that your only reason? A. How is that?

Q. Was that your only reason for so voting? A. Well, that was the substance of the principal reasons; I don't know whether that was absolutely the only reason.

Q. You didn't give any other reasons then or haven't any other reasons to give now? A. I may have given other reasons then, I don't recall I did.

Q. You say you gave the company ample opportunity to redeem. When did you do that? Ever serve notice upon anybody to redeem? A. I did not. I didn't know that it was necessary.

Q. Didn't think it was necessary? A. I say I didn't know it was necessary; didn't know it was a legal requirement.

Q. Did you serve notice on the company or the stockholders they should redeem this stock? A. I did not; this matter had all taken place in the open directors meetings and never any attempt to cover it up in any way.

Q. Didn't you think the stockholders whom you represented had an interest in the stock? A. We did, but the majority of the stock was almost always represented in the Board of Directors.

Q. Didn't you think it was proper that you should notify all the stockholders and give them an opportunity to redeem their stock before you would have a sacrifice from them of two for one? A. We didn't consider that there had been a sacrifice. The stock had been offered to others at the same price at which we took it at that time. We would have been very glad to sell the stock for $50 a share, to have gotten money so that we wouldn't have had to personally obligate ourselves. I might say just here—

Mr. Gaskill: Wait; don't sum up, as Mr. McCarter says.

Q. Doctor, did you surrender to the company the notes for which this stock was given as security? A. Well, not the note—

Q. Will you answer that yes or no, please. A. Yes, we surrendered the obligation and the notes, of course, were surrendered at the time.

Q. Haven't you got your note now in your pocket? A. I have not and I am not holding it against the company either.

Q. Where is the note? A. I don't know.

Q. Don't you know as a fact that the other directors have got theirs? A. I know as a fact that one or two of them have, but I haven't.

Q. Do you know as a fact that the company has got any of the notes? A. I do not beyond what has been exhibited.

Q. Did you ever cancel your note and hand it over to the company? A. If I didn't in the act I did—

Q. Will you answer that yes or no. A. I will say yes, because I considered it cancelled.

Q. Now, Doctor, following the motion which you voted against, which you have just been testifying about, there was another motion made to submit this legality of the issue of the directors to some lawyer for an opinion. Do you remember how you voted on that motion? A. I voted against it.

Q. Remember why you voted against it? A. Because I didn't think it carried any responsibility beyond the opinion of the man and his friendship to the parties from whom it was to come.

Q. Do you remember the reasons you gave at that time for voting against it? A. In substance I gave the opinion, I think, that I was willing that it should be submitted to the Court and abide by the decision of the Court.

Q. And the next motion was made that it be submitted to the Court, was it not? A. That was much later.

Q. Wasn't it the same time? A. Same evening, but not the same time.

Q. Why did you vote against it if you gave as a former reason that you wanted it to be submitted to the Court? A. Because two members of the board had already retired from the board.

Q. What had that to do with your personal attitude on the subject. A. I felt the responsibility of the presiding officer of the Board of Directors, when there was a matter of great importance before it and I thought it should be the privilege of every member of the board to make his own statement about it.

Q. Now, there was a meeting following that, wasn't there? A. Yes.

Q. That was a week or two afterwards there was a meeting in which all the directors were present? A. I think even in a shorter time.

Q. When all the directors were present? A. Yes.

Q. At that time did you bring up this subject? A. I did not.

Q. Why didn't you? A. We had taken legal advice in the intermediate time.

Q. I thought a while ago you said that legal advice wasn't binding, wasn't settled? A. How is that?

Q. Didn't you say a while ago that you considered when the matter was brought up to seek legal advice that legal advice wasn't conclusive, didn't settle the matter, and you wanted to submit it to the Court?

Mr. McCarter: Also said something about the legal adviser.

(Question repeated.)

A. Under the existing circumstances and the particular time I did.

Q. Now, is that your answer, Doctor? A. That is my answer.

Q. Well, what were the particular circumstances, Doctor? You say under the particular circumstances at that time. What were the particular circumstances that changed your attitude toward the transaction. A. The circumstances were that I proposed—well, I might say in the first place, this meeting was rather a sharply contested meeting between the so-called two factions —and that my proposition was in the first place turned down and the substitute was made by either Mr. Thompson or Mr. Endicott and—I think by Mr. Thompson—we likewise turned it

down or at least I turned it down and the other members of the board agreed with me. After this meeting had—after this meeting had passed and prior to the next meeting of the board we had held counsel and made up our minds to take legal advice in the matter and we were acting under legal advice.

Q. And those are the circumstances? A. Those are the circumstances.

Q. Now, Doctor, the reasons which you have just given are the reasons and the only reasons you had for voting as you did on those several motions that you can recall now? A. I wouldn't say the only reason, the only major reason; there were minor reasons.

Q. Did you give at that time as a reason or why didn't you give at that time as a reason that the company did not own this stock, that it belonged to you and the other directors? A. I think the minutes will show the reasons I gave.

Q. Will you answer that question? A. I think I have answered it. I said I think the minutes show the reason, the major reason I gave. I may have made minor reasons.

Q. (Repeated): "Did you give at that time as a reason or why didn't you give at that time as a reason that the company did not own this stock, that it belonged to you and the other directors?" A. May I have the minutes read at that meeting setting forth what I stated?

The Vice Chancellor: Here is a copy of them, Doctor.

A. Another reason stated—

Mr. Gaskill: Wait, Doctor, there is one single question pending they want answered.

Mr. McCarter: Which resolution are you talking about, Judge Smathers; let us get this straight?

Mr. Smathers: At the time he voted no on the motions, first the motion to redeem the stock, secondly to seek counsel, third to take it into Court.

A. That was the meeting of August 17th and it is recorded in that—

Mr. Gaskill: We didn't ask you what is recorded, we want an answer to the question that is pending.

(Same question repeated.)

A. Well, I may have given as a reason that it belonged to the directors because I believed that it did.

Q. Well, now, did it? A. From our standpoint it did.

Q. Did you say it that night? A. I may have said so.

Q. Do you remember? A. I don't remember absolutely. I don't dispute that I said it.

Q. Didn't you say a while ago that you stayed there and insisted on those minutes being written before you left? A. I did.

Q. Then why didn't you have that reason incorporated in the minutes? A. There are reasons incorporated there.

Q. Is that among them? A. I don't see it, but that doesn't change my feeling about it whatever.

Q. Didn't you personally write out and hand to the secretary there— A. These minutes was a compilation of three or four of us, Judge Thompson wrote out part of the minutes, Judge Endicott wrote out part and I wrote out part.

Q. Did you not write your objections and hand them to the secretary on the several motions that were put? A. I probably did.

Q. Well, didn't you? A. Yes, I did; part of

them at any rate. Some of them I may have given orally, and didn't write out, but I did write out some and give to him.

Q. Well, were the minutes read and approved before you adjourned that night? A. They were.

Q. Well, did the minutes include this reason which I have just asked you about? I don't ask you to read. Will you look it over and say if that is included?

Mr. Bourgeois: If the Court please, that is a conclusion. We say the minutes do include that reason.

The Vice Chancellor: He can point it out if he finds it.

Mr. Bourgeois: If the Court please, the whole minutes show that is the reason this action was taken.

The Vice Chancellor: That may be, but let the witness point out anything that he thinks may embody that reason.

(Question repeated.)

A. The answers here recorded are extracts of what we had been talking about; they do not contain everything that had been stated, consequently do not contain all that had been said.

Q. Will you state, Doctor, whether you gave that as a reason that night? A. I can't say positively.

The Vice Chancellor: You understand what he means? I think he means, Doctor, if I understand him, whether you gave as a reason that this stock never did belong to the company?

A. I don't think I did.

The Vice Chancellor: Is that what you mean.

Mr. Gaskill: That is it.

Q. Doctor, on page 11 of your amended answer you say: "Defendants admit that these five di-

rectors voted in favor of pledging said stock to themselves as security for said loan of $7,500, but deny that said stock was the stock of defendant company and say that Philip I. Marvel held said stock in a dual trust." I ask you to explain to the Court what you mean by a dual trust?

Mr. Gaskill: Let me correct that answer; it is an answer to the amended bill. There are three answers on file, firstan answer, then just before the previous hearing they filed an amended answer and then pursuant to the suggestion of the Court we filed an amended bill and this is the answer of the amended bill to which Judge Smathers has called attention. Judge Smathers was reading from the last answer filed.

Mr. Bourgeois: If the Court please, before the witness is required to answer that question we contend that he is entitled to see those pleadings.

The Vice Chancellor: Let him see them if he wants. He has not expressed any wish of that kind.

Q. Have you read the answer? A. I have read about half that I was asked to read.

Mr. Gaskill: Well, Doctor, it is the fifth line of the second sentence of the seventh paragraph and then the second full sentence of it on the fifth line.

A. I have read that.

Mr. Bourgeois: You have the privilege of reading the rest of that paragraph if you want to so as to find out what was in my mind.

A. If I feel that I need to read the remainder of it I will ask the privilege.

Q. Will you explain to the Court in what capacity you held that stock? A. My understanding was—

Q. I don't want your understanding. A. I can't tell definitely from what I understood.

Q. What was the bargain, is what I want to know? A. What was the bargain?

Q. Yes. A. I don't think there was any bargain, but I might ask what you mean the question to refer to, that is the bargain refer to?

Q. You say the stock was never the company's stock, it was stock held by you in trust for certain people; now I want you to explain to the Court the transaction. A. May I explain from the standpoint of the stock?

Q. That is what I am asking you about. A. Then my understanding was that 1839 shares of the stock was issued for the lands in addition to the 651 shares that were set aside as a sort of collateral for the mortgage that stood against the land. That there was reissued from the 1839 shares to me as trustee for the benefit, for the specific benefits that are stated there in the book, that 699 shares, 200 shares of which were to be applied to the further purchase of real estate, 491 shares for the betterments and improvements of the lands and that this stock was put in that manner because at the time that we organized our company and began business as a corporation we had no cash in the treasury and we had to have something which we might dispose of for the benefits of the company and it was this stock that was to be used for that purpose.

Q. That is the 499? A. The 499 for the betterments of the company and the 200 and for the real estate purchase.

Q. Who was to get the benefit for the 499 shares of stock? A. That was never discussed until after this meeting. I say it was never discussed, I mean had nothing determined.

Mr. McCarter: Which meeting do you refer to.

A. I refer to one of the meetings in August, 1909.

Q. Doctor, in case the 499 shares were not used in improvements, whose stock would that become? A. Well, it ought to have been the members of the board who turned it in, legally, I suppose.

Q. Well, I mean, did you have any understanding with the other members than as to whose stock it would be? A. It was talked over informally among the so-called Marvel faction against the Thompson and Endicott faction and we didn't want any further losses in the matter and we didn't hesitate to let—

Q. I am talking about in the beginning. Was it talked over and understood then whose stock it would be in case it was not used, all of it not used for the purpose of making improvements? A. I think we all assumed to whom it belonged at the time.

Q. Belonged to whom? A. It belonged—it was put in the treasury of the company for the betterments of the company and in proof of that fact later on, when we were discussing the matter about selling the stock at less than the par value, it was stated that we had a right to do it if the emergency of the company so demanded.

Q. Did you regard at that time that you were holding that stock for the company or for the individual members? A. We were holding it for the betterments of the company.

Q. You claim in your answer that in case of a sale the proceeds belonged to the company, but in case the stock was not sold then it remained the stock of the individual members. Is that right? A. The purpose of turning that stock back was for the betterment of the company and that was the purpose for which we used it.

The Vice Chancellor: Can't you answer that question, Doctor? You don't seem to have responded exactly.

A. I didn't catch his idea.

The Vice Chancellor: I don't think he has directly answered your question.

Q. (Repeated.) "You claim in your answer that in case of a sale the proceeds belonged to the company, but in case the stock was not sold then it remained the stock of the individual members. Is that right?" A. Undoubtedly remained the stock of the individuals if we had asserted our right to it.

Q. Well, did it or didn't it, Doctor? A. I believe it did.

The Vice Chancellor: Was there any understanding of that kind at the outset? Wasn't it determined at the time this stock was put in trust who it belonged to, who it was in trust for and who were the *ceste qui* trusts?

A. I don't know the matter was discussed at any length, Judge, at that time. but certainly it was assumed it was issued for the property purchased and belonged to us as individuals and was turned back for the improvement of the company, or in other words, to offset—we had put the property in at a small advance over what we had paid for it and we hadn't the cash to put into the treasury, so we turned the stock back for the purpose of improvement.

Q. Well, when you turned it back didn't it then become the stock of the company? A. I don't think it did unless a vote of the Board of Directors should vote it to the company. It did become the stock of the company at our last meeting when the Board of Directors—

Q. I am talking of the meeting when the 1839 shares were issued to the three men and that is-

sue was returned into the company and cancelled and in lieu thereof—A. No, it was issued in my name as trustee. It wasn't issued to the company.

Q. What do you mean issued to you? A. It was issued to me as trustee.

Q. The 1839 shares issued to you? A. No, that was issued to Mr. Thompson, Mr. Endicott and myself for property purchased.

Q. That certificate was returned to the company and cancelled? A. Yes.

Q. It then became the property of the company, didn't it?

Mr. Bourgeois: This stock?

A. No, because we received a good deal of that stock for his holdings, individual holdings.

The Vice Chancellor: Simply surrendered for cancellation for new certificates.

Mr. McCarter: I suggest to your Honor —I may be wrong—that this is a legal proposition.

The Vice Chancellor: I think so, excepting so far as any agreement was actually made.

Mr. McCarter: I think we have got all the facts.

Q. There was no agreement or understanding between the directors at that time as to whose property it would be? A. There was no actual agreement. That was my understanding.

Q. Now, Doctor, if that was your understanding on your part and the other individual directors, why didn't you state that at the time the company wanted to redeem the stock? A. Our meeting was rather an excited meeting and you could not always be responsible for recalling everything.

Q. And that is the only excuse you have for not recalling that at that time? A. I can't think of any other at this time.

By the Vice Chancellor: Q. This part I suppose was true, or was it true, that it was in the power of the board at any time it needed money and found purchasers for this stock to sell it and apply the proceeds to its own use? A. Yes.

Q. The original owners of this stock did not reserve any control in themselves so far as proprietorship was concerned, did they or didn't they? A. How is that?

Q. Did the original owners of this stock reserve any control over this or any proprietorship in it? A. There was no declared ownership concerning it, but, as I said before, we had regarded that we had the right to sell that stock because it had been previously issued and if an emergency came we could offer it for whatever we could get for it.

Q. And for the benefit of the company? A. For the benefit of the company, yes.

Q. That is what I wanted to know, whether any one reserved the right to deny to the board of directors this privilege to sell this stock and to apply the proceeds to the benefit of the company. Did they or did any one question that right? A. No, there was not one to my knowledge questioned the right.

By Mr. Smathers: Q. Doctor, notwithstanding you regarded this as the individual directors' property and not the company's property you, as a member of the board of directors, voted that the company's stock should be given to you as collateral security for the loan; is that right? A. I voted—it may be so stated in the minutes that it was the company's stock—but I voted that this

stock that we had been issuing from, the stock in the hands of the trustee, should be given to the members of the board of directors.

Q. But in the resolution of May 19th or October 15th, isn't it provided that the company's stock should be given to you five directors as collateral security for the loan of fifteen hundred dollars? A. There was no stock issued that was issued out of any other fund than the trustee's fund after the primary issue.

Q. Well, Doctor, did you loan the fifteen hundred dollars to the individual directors or did you loan it to the company? A. Why, purported it to be to the company.

Q. What do you mean by purported? A. I supposed we were loaning it to the company.

Q. Did you have any deal with the individual directors? A. We did not.

Q. Did you have any with the company? A. No further than the company was represented by the board of directors.

Q. Was it your intention to loan this to the company or to the individual directors? A. To the company.

Q. Did you take the company's note or the individuals' note? A. Took the company's note.

Q. Did you take the company's stock or did you take the individuals' stock?

Mr. Bourgeois: I object to that as a question of law.

The Vice Chancellor: The company surely pledged the stock. They held it in pledge. They certainly held the company's pledge.

A. The stock was issued from the stock that was in my hands as trustee.

Q. Who pledged the stock? Whose pledge did you have? A. The board of directors.

Q. In the name of the company when it was first given to you? A. I presume it was. I think the notes were given in the name of the St. Leonards Land Company. I want to say to the Court I am not trying to evade anything but there are technicalities one has to be very careful of.

The Vice Chancellor: What ever else might have happened the company pledged this stock and whether the pledge they held it under was the pledge of the company and what right the company had for pledging the stock, I suppose we have got to ascertain.

Q. Doctor, what was your interest in this stock as an individual?

Mr. McCarter: I object to this question as a legal question.

The Vice Chancellor: I think so. If we can get down to what transpired we will make more progress.

Mr. Smathers: I am only asking what was his interest in this stock, not from a legal proposition but his proportion. I want his percentage, that is what I want.

The Vice Chancellor: Can the witness answer what his proportionate holding was in this trust stock?

A. I think it was two hundred and fifty-seven shares.

Mr. Bourgeois: Out of how many?

The Witness: Out of eighteen hundred and thirty-nine.

Q. Doctor, what I wanted to know is this: You claimed that two hundred shares and four hundred and ninety-nine shares were given to you in

trust for the company. Now, while it was given to you in trust for the company, the proceeds to be used for the company, yet the stock remained, that is the title to the stock remained in the individual directors; is that right? A. As to the technique of what took place I can't state but the books recite what actually did take place and that is, that so much of this stock was issued to me or in my care or in my control, whatever way you want to regard it, for specific purposes and I always felt that I had no right to issue that stock for other purposes.

Q. Now, did you regard that you had a personal interest in that stock aside from the company?

Mr. McCarter: I object to it again. What he regarded can't change the situation at all. The facts are the important things.

The Vice Chancellor: I should think it competent, Mr. McCarter, for the witness to be asked whether, when he let this stock go into the trust, he parted or considered at the time that he absolutely parted with all beneficial interest in it individually, if that is the purpose of the inquiry, or whether he in his own mind in that transaction reserved to himself any proprietorship or individual ownership.

Mr. Smathers: That is what I want to do, to show by his whole conduct.

The Vice Chancellor: If you will confine your inquiry as to whether at any time he intended to part with his individual ownership in his proportion of the trust stock.

Q. Doctor, you heard the situation as explained by the Vice Chancellor, will you answer it? A. Will you state it again?

The Vice Chancellor: Whether, at the time you consented to this stock being placed in trust for the benefit of the stock, you intended to divest yourself of any personal, individual rights or interest in it and turn it over absolutely for the benefit of the company, or did you, in that transaction, intend to retain for yourself individual rights in this stock? A. I can answer that in the statement that I made a short time ago with reference to the turning, the reason for turning the stock back to the company, and furthermore, that we did not go into the ultimate outcome of the stock at the time; that we had figured out the fact that there was certain parcels of land in conjunction with what we had purchased and we supposed it would cost about that much more to purchase that and we had also figured out what we presumed to be the approximate cost of the improvement and had set aside that amount of stock for that purpose but as to figuring out what would be the ultimate use or application of any stock left over, I do not recall there was anything said whatever.

The Vice Chancellor: I think he has answered the question very fully, and he has answered the same as he answered before. Now, can we make a little better progress?

Q. Doctor, did you ever assert any individual interest in that stock? A. I don't know that I did.

Q. It was always the action of the company toward the stock? A. How is that?

Q. It was always the company's action toward the stock and not your individual action?

The Vice Chancellor: He said he never asserted any individual interest in it.

Q. Doctor, the two hundred and eleven shares which were returned to the company was a part of the trustee stock was it not? A. It was.

Q. Did you claim any interest in that? A. Did I claim any interest?

Q. Did you assert any individual interest in that? A. May I explain the result of my legal consultation?

Q. I am asking you the question? A. And then I will say I did. I will have to explain why.

Q. Did you get it? A. I didn't get it.

Q. And it is a part and parcel of the other trustee stock isn't it, of which you now hold some one hundred and fifty shares? A. Both issued from the same certificate.

Q. Doctor, in your answer you say that the company never offered to redeem the stock. Would you have permitted it to redeem it? A. We certainly would.

Q. Then you would have permitted the company, who didn't own the stock, to redeem it, wouldn't you? A. Whether the company owned the stock or whether the company didn't own the stock, our transaction was with the company.

(Question repeated.)

A. We could only act toward the company as we regarded it and the transaction was perfectly open and above board and we intended to deal with the company as we would deal with an individual.

Q. In your answer you claim that the company never offered to redeem the stock until the statute of limitations barred your claim against this company. Did you ever offer to force your claim against the company? A. We talked over the matter of the stock in the board of directors and its redemption and there was not a time for two

or three years when there was any money in the treasury with which to redeem it and would have had to go—

Q. I am asking, doctor, your action. A. We did not. We would have had to give the company's note again.

Q. You say the company never offered to redeem until the stock became valuable. I ask you if you as a director and officer who loaned the money to the company, ever sought to have the company redeemed until the stock became valuable? A. There was never a time from 1899 until 1908 when I was not personally an endorser for the company for much more than the amount of the stock.

Mr. Gaskill: I ask the answer be stricken out.

The Vice Chancellor: I think so.

(Question repeated.)

A. No, it was talked of, however, that is, there was no legal action taken.

Q. Did you, or any other director of the company, who had loaned money to the company, undertake to have the company redeem the stock before it became valuable? A. What is the question?

(Question repeated.)

A. Not legally.

Q. Doctor, you were familiar with the by-laws of the company were you not? A. In a measure.

Q. Were you familiar with the by-laws which provided that the stock should not be sold for less than par? A. I suppose I have read it, yes.

Q. And did you regard your taking stock at the price you did as collateral security a violation of that? A. I never regarded it so.

Q. Doctor, at the time you and the other

directors loaned the money to the company, who were the officers of the company? A. Who were officers?

Q. Yes. A. C. J. Adams was secretary, I. G. Adams was treasurer, and I was president of the company.

Q. And how long did you gentlemen remain officers of the company? A. From its organization until August, 1909, or about that time when Mr. Adams was deposed as treasurer because of the fact that he had disposed of his stock. The rest of us remain officers of the company.

Q. Who were present besides you three gentlemen at that meeting?

Mr. McCarter: Which meeting?

Q. When the money was loaned. A. The June meeting?

Q. Yes. A. There was Mr. I. G. Adams, Mr. Louis Kuehnle, Dr. M. D. Youngman, C. J. Adams and myself.

Q. Five of you? A. Yes.

Q. And the five that were present voted in favor of this resolution to loan the money? A. Yes, sir, we voted in favor of a resolution which that purports to be.

Q. Now, when you undertook to limit the company to one year in which to redeem who were present at the meeting? A. I think the same five members.

Q. And all five of you voted in favor of the resolution? A. That is my impression.

The Vice Chancellor: Q. That was five of the seven members of the board? A. Yes.

Q. There was no member present at any time when it was voted on that was not a party who had loaned money to the company that is, a disinterested director? A. I don't recall that there

was ever any action of the board of directors taken in reference to the matter at any other time.

Q. Doctor, how many directors were there? A. Seven.

Q. And was there ever any change of the personnel of the directors? A. Oh, I presume, I think there was eight, I think Mr. Disston was elected a director and think if I recall—I am not absolutely sure about this last statement—but if I recall correctly he gave his excuse that he was not able to attend and resign. I don't know that he ever did legally, I think he resigned verbally.

Q. Did he ever attend a meeting? A. There is a record, I think, of his attending one annual meeting, but I have no record of his attending any other meeting.

The Vice Chancellor: Q. Who was this other director? A. William Disston of Philadelphia.

Q. Was there at the organization seven directors? A. There was.

Q. And were they ever increased at any time? A. Not excepting as I have stated.

Q. Doctor, how many directors constituted a quorum of the company? A. Five, a majority.

Q. Was there ever any time during the history of the company a disinterested quorum present at any meeting—when I say disinterested quorum, I mean men who had not loaned money to the company.

Mr. Bourgeois: That would seem to be selfevident.

The Vice Chancellor: Yes, doesn't the evidence disclose all that, that the whole five men voting in favor of those two resolutions were the men who loaned the money?

Mr. Smathers: I think it is selfevident myself.

Q. Now, doctor, as an officer of the company did you ever take any action, either in the meeting or out of the meeting, to compel the company to redeem the stock?

Mr. McCarter: He said that three times.

A. I did not.

Q. Did any of the other officers of record ever take any such action? A. Not to my knowledge, excepting as has been stated.

The Vice Chancellor: By an action to compel the company to redeem the stock I suppose you refer to a foreclosure?

Mr. Smathers: Yes, or any other action.

The Vice Chancellor: What other action could there be, a notice to sell or effort to sell, would you include that in your question?

Mr. Smathers: I am going to include that following it up.

Q. Did you or any other of the directors ever present that question of the loan to an official board of the stockholders for ratification or disaverment? A. Not to my knowledge.

Q. Did you or any of the other directors ever serve notice on the company or any member of the board of directors to have the stock redeemed? A. Did not.

Q. And you never in fact undertook to sell the stock did you doctor, at a public sale? A. Did not.

Q. Doctor, would it not have been to the advantage of the company to have had this stock redeemed at the expiration of one year?

Mr. McCarter: That is a very problematic question your Honor. They hadn't the money to redeem it and didn't redeem it.

The Vice Chancellor: I suppose this is the proper cross-examination on values, as to the value of the stock. You have given very full testimony on that.

Mr. Bourgeois: But this testimony should be limited to the limitation of the year or the expiration of the year.

(Question repeated.)

Mr. Bourgeois: He doesn't say when, if he is speaking of the present time we say yes.

The Vice Chancellor: At the expiration of the year.

A. No, because it would have embarrassed the company.

The Vice Chancellor: Q. At the expiration of the period named in the notice of redemption would it have been to the advantage of the company to have redeemed this stock? A. It would not. It would have embarrassed the company.

Q. Was it to your personal advantage, doctor, at the time you voted against the question of redemption?

(Question withdrawn.)

Q. Doctor, in what way do you think that it was not to the advantage of the company to have the stock redeemed at that time, what do you mean? A. The company was already in debt and to have reimbursed us and taken the stock back would have been to have put the company in further indebtedness and we would have personally had to assume that indebtedness.

Q. Do you think it lightened the financial burden—do you think it lightened the financial burden of the company for every dollar you put in the treasury you took out two in value of the stock? A. We couldn't have done that at all times.

Q. I am asking if you will answer that question?

Mr. Bourgeois: If the Court please, there is no evidence they ever took out two for one at one time; they took out nothing but the stock.

The Vice Chancellor: I think it is proper cross-examination.

(Question repeated.)

A. It would not. The stock was not worth two dollars at that time.

Q. That is your opinion about it? A. It was my opinion and the stock was offered at fifty dollars a share on the street at the time.

Q. Did anybody have authority from the board to offer it at fifty dollars or sell for fifty dollars? A. Certainly regarded they did.

Q. Do any of the minutes show that? A. Minutes do not show that and all the minutes are not shown; that is on the memoranda and very evident the memoranda have been lost.

Q. Weren't the minutes, as a matter of fact, so very poorly and indifferently kept? A. Most assuredly and the minutes were a frequent subject of discussion and the minutes were read mostly from memoranda.

Q. Doctor, when was this so-called stormy meeting? A. August 17th, I think, 1909. That is that was one of the stormy meetings; there had been one previous to that time.

Q. Well, had you, previous to that meeting, been informed that there was in existence the so-called Thompson resolution, Exhibit C-4? A. I had absolutely no knowledge of the Thompson resolution until the meeting at whch we have referred, at the time Mr. Thompson used the profane language in the board of directors.

Q. Mr. Adams hadn't called your attention to the existence of the resolution? A. At that meeting he had.

Q. I say previous to the meeting? A. Just before the meeting took place he called me in the back room and showed me the resolution and said he had found it—I am not sure whether on his desk or in the minutes.

Q. Did he tell you he had found it in the minutes of the company? A. I just said I don't know. I am under the impression he said he found it on his desk, but I wouldn't state that as a fact.

Q. Did you read that resolution, doctor, at the time? A. At that time I did and authorized Mr. Adams to come into the board as soon as the board open and interrogate each member.

Q. Did you observe on the corner written in pencil "Offered by Mr. Thompson"? A. I don't know that I did. I can't recall whether such a thing was written on at that time or not. Those minor facts I don't have any recollection of.

Q. Didn't you interrogate Mr. Adams as to where he found this resolution? A. My impression is that Mr. Adams said he found it on his office desk.

Q. Did he tell you when he found it there? A. He found it that afternoon.

Q. Now when he went into the meeting to present it to the different directors, had the other directors known of it? A. Not to my knowledge.

Q. Now will you describe to the Court just how he presented it to each of the directors to find out whether or not they had signed it? A. The resolution was handed around to each one of them. In the first place it was read and then it was handed around to each member of the board and then Mr. Adams made his own interrogation as to

whether that resolution—and addressed his interrogation to each member as to whether that resolution had ever been before the board before.

Q. As a matter of fact didn't he just shove it up in the face of each member and ask them if they had seen that and each one said no without looking at it? A. That is not my recollection. My recollection is it was handed around.

Q. You suggested to Mr. Adams how it should be presented to those different members? A. I suggested to Mr. Adams that he make a personal matter of it to each member. Mr. Adams was very indignant about it and it was a mystery where the resolution came from.

Q. Now doctor, at what meeting was it that Mr. Thompson demanded the minute books of Mr. Adams? A. At this particular meeting.

Q. Do you remember what lead up to him demanding the minutes?

The Vice Chancellor: This was the meeting of March 3d, 1908, wasn't it? A. No, this was between the meeting of March 3d, 1908 and August 17th, 1909. I can't designate the exact date of this particular meeting, but it occurred between those dates.

(Question repeated.)

A. I remember a part of what lead up to it, what I have just recited.

Q. What purpose, doctor, did he want to see the minutes? Did he tell anybody what he wanted to see them for? A. I think Mr. Thompson said that if Mr. Adams would show him the minute book that he would show him that it had been passed.

Q. That this resolution, Thompson resolution had been passed? A. I think a matter to that effect.

Q. Isn't that the fact, isn't that what he stated? A. I say that so far as I know that was what he stated as far as I remember and the fact that each of us had declared personally—

Q. Just a minute before we go into that. What did Mr. Adams say when Mr. Thompson demanded the books? A. As I remember Mr. Adams said that it had never passed and it did not appear in the minutes and then Mr. Thompson demanded the minute book but in the meantime—

Q. Just a minute there; when Mr. Thompson demanded the minute book did Mr. Adams say he didn't know where the minute book was? A. No, Mr. Adams said the minute book was in the safe and the safe was unlocked but he wouldn't get it.

Q. Are you positive Mr Adams didn't say he didn't know where the minute book was? A. Mr. Adams didn't say he didn't know where the minute book was.

Q. Isn't that what provoked the profane language? A. All the profane langauge, first the presentation of the resolution and the question.

Q. I ask you if Mr. Adams stating that he didn't know where the minute book was is not the thing that caused Mr. Thompson to state what he did? A. I don't think so.

Q. Didn't Mr. Thompson say that "if you will open that safe I will show you right where that minute book is"? A. Matters to that effect, perhaps those were the exact words.

Q. Why was he saying that if Mr. Adams had said that the minute book was there?

Mr. McCarter: I don't think the witness ought to be compelled to reconcile why.

A. Mr. Adams said that it had not been passed and wasn't on the minutes and Mr. Thompson

said if he would open the safe I think, he would show him, and Mr. Adams said it wasn't true, it wasn't on the minutes and then Mr. Thompson said it was a damn lie. That is as near as I can remember the words.

Q. Mr. Adams then refused to present to the board the minute book? A. He did.

Q. Did Mr. Thompson demand of you as president to have the minute book produced? A. He did.

Q. Why didn't you have it produced? A. I said in view of the fact Mr. Thompson had used insulting language to Mr. Adams it should be left to Mr. Adams as to whether he produced the book or not.

Q. Now do you think that altered Mr. Thompson's legal right to have that minute book as to what language he used to Mr. Adams? A. Well, I don't know whether it did from a legal standpoint or not, but it was very discourteous to both Mr. Adams and the other directors.

Q. Suppose Mr. Adams had been a liar would that be any excuse for not producing the minute book? A. It was on that ground I refused to demand Mr. Adams to produce the minute book.

Q. Did you inspect the minute book yourself to see? A. I did not, neither before or after.

Q. Wouldn't that have settled the question if you had? A. Might have done so. There is no proof it would or not because the minutes were not written up.

Q. Why didn't you get out the minute book and satisfy yourself? A. The facts were these that the minutes were both taken and read in the Board of Directors and had been for sometime on memorandas and it had been a question of not infrequent occurrence of rather sharp words to

Mr. Adams why he was so dilatory about having his minutes written up and we had stated to him not once but a number of times that if those minutes were not written up and recorded after his meetings that there would be some trouble more than likely to follow and furthermore that we all or at least I asked him to have Miss Mina Freas, I think, write the minutes up the following day after the meetings.

Q. Doctor, you haven't answered my question yet.

(Question repeated.)

A. Well, I think we were all to incensed that night to know what we were doing or what to do.

Q. Didn't you tell, doctor, as president of the company that all the directors had a right to see the minute book? A. Of course.

Q. And did you think one director had a right to withhold the minute book from another director? A. I left it entirely with Mr. Adams whom he left the book with.

Q. Why should you favor Mr. Adams? A. I didn't favor Mr. Adams, any more than any other director. A statement was made in open board and was left entirely to Mr. Adams' option.

Q. It was concerning a very important matter, wasn't it, to the board at that time, that is the production of the minute was in relation to a very important matter? A. It so turns out to be.

Q. At that time there was a dispute in the board about a certain matter? A. There was a dispute about this resolution and the production of the resolution would have settled it, but to some extent the presentation of the resolution before the board was like a red flag in a bull's face.

The Vice Chancellor: Q. But prior to that time there had been a claim made before the board that this stock ought to be returned? A. Yes, on March 3d.

Q. And at this meeting Judge Thompson asserted that a resolution had been passed which contemplated the return of half of this stock. Now wasn't it very appropriate at that time for those who were confused with not having conformed to the provisions of the later resolution to investigate the matter and see whether the resolution had been passed or not? A. That is true, Judge, but there was an impression before the board that this resolution had been in some way smuggled into Mr. Adams' office and we couldn't account for it and it never has been accounted for and each member was appealed to personally that night to know whether such a resolution had ever been passed and there was no one in the board excepting Mr. Thompson, who would venture to say it had been, Mr. Endicott, himself saying that he had no knowledge of it or saying that he didn't know.

By Mr. Smathers: Q. If it had not been passed what objection could there have been to presenting it to the board? A. The resolution was produced to the board that night and brought to each individual's attention and each individual denied it had been before the board excepting Mr. Thompson.

Q. Doctor, what was the object to producing to the board the loose memoranda of the minutes; what was the object? A. There wasn't any objection existed excepting this fact that Mr. Adams I considered had been insulted in an open meeting and it should be to his option.

Q. Before that? Mr. Adams wasn't insulted until after he refused to produce the minute book? A. Yes, I should say that he was when Mr. Thompson said in the face of every other member, excepting Mr. Endicott, denying the fact that resolution had ever been before the board and then for Mr. Thompson to insist that it had and then demand the minutes and he would show where it was and using very improper language.

Q. Well, if it had been—there was no improper language used by Mr. Thompson until after Mr. Adams had refused to produce the minute book, was there? A. Well, the statements that had been made, that is the profane language—

Q. Will you answer the question? A. I say not the profane language but Mr. Thompson's manner that evening was insulting from beginning to end.

Q. If the minute had been produced it would have shown either that Mr. Thompson was in error or Mr. Adams was in error? A. It would, but it wasn't my place to settle the matter between Mr. Adams and Mr. Thompson.

Q. It was your place as president of the company to have the minutes before the board; is that right? A. It might have been my place under other circumstances.

Q. Why didn't you do it, doctor? A. For the very reason I told you; for no other reason.

Q. You approved of Mr. Adams' conduct refusing to produce the minute book, did you? A. No further than leaving it optional to him.

Q. Why didn't you present it to the board and have them vote on it as to whether it should be produced or not? A. It wasn't asked; Mr. Thompson himself appealed directly to me.

Q. Do you think you were justified in arbitrarily settling the matter? A. Any member of the Board of Directors could have made a resolution or a motion and I would have been compelled to put it and no such motion was made.

Q. Doctor, did any of the other directors present express to you a desire to have the minute book produced besides Mr. Thompson and Mr. Endicott? A. I don't recall that they did.

Q. Did they express this disapproval of Mr. Adams refusing to produce the minute book? A. I don't know that they did in the meeting.

By the Vice Chancellor: Q. This company, doctor, was organized at what time, do you recall, in 1896? A. In the autumn; in November or in the autumn, 1896.

Q. I wanted to inquire what your testimony was with reference to the value at which this land was turned over to the company at that time. Did you say it was the full fair market value? A. We regarded it as full, fair, market value, as to a matter of cost it cost a few dollars less.

Q. Now what was there that occasioned a depreciation in the value of that land, which I understand comprised the entire assets of the company, occasioned a depreciation and how soon after that did the depreciation begin in the value of that land? A. Well, as a matter of fact, I don't know that the land ever depreciated actually below the amount for which it was capitalized; at the time when we bought a portion of the land we bought it without there being any boom. There was a boom that began about the time we secured the last pieces of our purchase and property went on to prices that were above what we had paid for it. We then priced out lots after it had been graded and laid out, at a price which, of course, made the

property from the standpoint of prices very much more valuable. There were unimproved lands that lay between this and Atlantic City proper. There were lands that lay beyond us and to the north of us that were improved and put in the market within the next year or two and those properties, those lands were laid out in lots with less, that is less in size. Our lots were laid out, the corner lots sixty-five feet by one hundred and twenty-five on the main streets and the intermediate lots sixty by one hundred and twenty-five and on the cross streets fifty by one hundred and twenty-five and were laid out with restrictions that houses should be built, no house should be built which would not cost a certain amount and each house should be placed on a basement at a certain uniform height and should be placed away from the property line a certain distance and away from the street a certain distance. The properties adjacent to us on both sides and north of us were sold the majority of them, or offered for sale without any restrictions and those lots were smaller than our lots consequently that, in a measure interfered largely with the sale of our lots with restriction and in the size of them. It was—and then, as a matter of fact, the progress of building took place between us and Atlantic City a good deal more rapidly than it did with us; up, I think, until 1903 or perhaps 1904 there were a very few houses built on our tract.

Q. I wanted to confine my inquiry entirely to the period between your incorporation and the fall of 1896 and the summer or fall of 1898. During that time had there been any material depreciation of your assets as a whole? When I say assets I mean the land, because that is all the

assets you had. A. Well, the boom had about subsided. I don't know there was any actual depreciation, but the demand for land in that locality had absolutely subsided, but at that time we must keep in mind that this land had not yet been plotted and graded, only a portion of it was then under the process of being graded.

Q. Then in 1898 at the time this money was loaned by the directors to the corporation you would say that the assets of the company were substantially the same in value? A. So far as our opinion is concerned, but if it had been forced under sale it would not have brought anything like the amount.

Q. Wouldn't have brought so much? A. Wouldn't have brought anything like the amount for which we had incorporated, nor the amount that we had paid for it.

Q. You think there had been a depreciation of value? A. Yes, that is, as I stated, in fact that the demand was not there. The actual value in the land, of course, is made by the demand.

Q. How much would you say there had been in the way of depreciation from 1896 to 1898? A. I don't know that I can state it in exact figures, but—

Q. Perhaps you can percentage it? A. I would say—

Q. That is best, I suppose, an estimate? A. I don't believe that if the land had been allowed to have been put under the hammer, as we were threatened, that it would have brought more than fifty per cent of what it had been valued it. I may be wrong in that estimate.

Q. That is would it have brought more than 50 per cent of what it would have brought under the hammer in 1896? Compare the hammer in one

date to the hammer in the other date. A. If you compare it in this way, if you compare it in the late fall and early winter in 1896, when the boom was at its height, it certainly would have brought more under the hammer then.

Q. I wanted to compare the two dates one the date of incorporation of your company when you placed a valuation on the land and conveyed to the company and the date when this money was loaned to the company. I understand there had been some change in your condition which had arisen from the fact that you had no demand, but I wanted to find what change there had been in the condition, in the actual value. A. The part of the value in the property we expected to come from the improvements and the improvements were just, got prices so we hadn't added to the value we expected to get from the improvements and, whilst it might not have depreciated 50 per cent, it certainly would have been more nearly that if it had been put under the hammer between the different dates at which you stated.

Q. What was the situation just later, could you tell me whether that depreciation continued or was it about that time arrested? Take a year later when the note became due, any material change? A. There was not and for two or three years afterward there was.

Q. And continued about the same up until along during 1904, that is eight years. A. Nineteen hundred three and four there was some slight change.

Q. In what way? A. In this respect that there had been buildings that had been—the ground between us, the section between us and Atlantic City had been graded and improvements had taken place there, which improvements gave us some ad-

vantage, but up until 1906 or seven we were able to sell very little property. I mean to say at the prices at which we had valued the property. In fact I think the books will show that in most every instance any property that was sold up until 1906 possibly 1907 it was almost always sold under stress and at a discount.

Q. But you wouldn't think there was very much modification or change in values during those years subsequent to 1898 until you finally had a great revival? A. Well, I would from 1896 on until around 1904 to 1905 there was very little change.

Q. After that it improved? A. After that it began to improve owing to the circumstances that prevailed in that immediate neighborhood. We always had faith in the future of the property.

Q. Now had it occurred to you, Doctor, that in the surrender by the orignal vendors of the land to the company of approximately a third of the stock of the company, a little less than a third, you had really enhanced the value of your stock just that perecentage above par? A. Well, I don't think that we ever regarded it in that light.

Q. That would be the effect of it, wouldn't it? Your whole assets were the property you had conveyed to the company. It would be equivalent really to reducing the stock one-third and in that manner your stock would be worth a third more.

Mr. Bourgeois: The proportion, if your Honor please, is a quarter instead of a third because there was 2,500 shares.

The Vice Chancellor: The proportion actually is 27 9/10 per cent of the whole, that is to say 699 shares is 27 9/10 per cent of 2,500 shares.

Mr. Bourgeois: Yes, but this land was subject to a mortgage of $65,100.

The Vice Chancellor: I assume the stock set aside to pay the mortgage should be applied to that purpose and then it would be 27 9/10 per cent.

A. It never was applied to that purpose, though, your Honor.

The Vice Chancellor: No, it wasn't; it was never used at all.

Q. One other inquiry, Doctor, and that is this: I don't quite understand why this transaction should have taken this form of allowing the company one year to redeem this loan and at the end of that time lose its right in the stock in case they failed to redeem during that period, when you, with the company in substantially the same financial condition, so far as the value of its assets was concerned, were endorsing in other transactions for smaller amounts, some amounts and larger amounts—on one occasion I think you said there was $13,000. Now why couldn't you directors, instead of appropriating this stock, have had the banks make a loan to the company on your endorsements and had the stock restored to the company? Did you get the thought that I wish to hear your explanation on? A. State it again.

Q. Why should this stock in this transaction, involving only this amount, not be restored to the company, when you were quite wililng about that time or subsequent to that time to endorse for the company very much larger amounts? A. We didn't endorse in larger amounts, your Honor, until very much later.

Q. During the time, however, during that time however you have just stated there was very little difference in the value of the assets? A. Up until 1904 and 1905 and because of the surrounding improvements our property began to grow very much more valuable.

Q. And I understood in 1904 you endorsed in your transaction for as much as $13,000. A. Not so early as that, I don't think.

Q. I noted it in my mind; I haven't it on my notes. A. The first endorsement of a large amount was 1906.

Q. 1906? A. 1906. That was in May, 1906, $13,000.

Q. Up until that time, as I understood you a few moments ago, there had been very little change from 1898? A. If I said so I meant to say, as I repeat, until 1904 and 1905 and on it began to improve and after 1906 or about that time the surrounding improvements began to improve the value of that land.

Q. You have testified your endorsements were made as early as 1904? A. Yes, there was an endorsement of $3,000 in 1902 and there was an endorsement of $3,500 in 1904. Those endorsements were for taxes that were imperative to the preservation of the company.

Q. Why didn't you, when these notes became due, instead of appropriating the stock and applying it to your own use, and discharging the company from its indebtedness to you, if you were not anxious to get the stock, have the company to execute a note to the bank and endorse it and in that manner save the stock for the company?

Mr. McCarter: You mean this man individually or all of them?

Q. You or the others. A. The directors refused to go on a company's note because it made each individual responsible for the full amount.

Q. Of course you did that? A. I did that later, to be sure.

Q. And didn't the other directors? A. No.

Q. Only you? A. Only myself and Mr. Adams as treasurer.

Q. You and Mr. Adams are the two? A. Mr. I. G. Adams and myself.

Q. Why didn't you individually do that so far as your stock was concerned, so far as your own was concerned? A. At the particular time you refer to we took the amount you will observe that my note—this is a personal matter entirely—you will observe my note wasn't paid until July.

Mr. Bourgeois: Your moneys you mean.

A. My moneys weren't paid until July and the reason for that was this that my obligations in the bank at that time were such that I was under the necessity of getting Mr. Thompson Irving to take the note and make me indebted to him, so I considered that a pretty good reason why I couldn't involve myself further with personal notes of the company at that time and not until 1902 did I feel that I was in shape to do it.

Q. Did I understand that you did not want the stock when that year finally expired? A. I didn't want it. Every director that had taken that stock would have most gladly turned that stock back to the company and received the amount they had paid for it and even up until 1902 they would have gladly have done it.

Q. Then why didn't you give the company an extension of time in which to redeem? You didn't make any use of the stock, did you? A. No, never have made any use of it.

Q. Company could easily have paid you interest on the stock? A. Not if you would strike a balance of its treasury, couldn't.

Q. I notice the company did pay you interest on the original discounts; now— A. That is to say we paid the discounts and the company accepted the note discounted.

Q. I had in mind Mr. Kuehnle's there was an entry of $30 interest to Mr. Kuehnle. A. There was one case it did.

Q. Couldn't the company have raised the necessary money to have paid the interest on this amount? A. I presume if we had borrowed more money we could. We tried to expend the money as judiciously as possible. As a matter of fact—I speak for myself and not for the other directors—we were regarding the condition of the company and the interest of the company instead of our own personal interests.

Q. Well, if you didn't want this stock what was your idea in limiting the company to one year to pay for it? A. That was only a matter of form; that was all. We had no other object in limiting it to one year excepting a mere matter of form, which I supposed to be taking a legal form.

Q. If at the end of the year you still didn't want the stock, why didn't you give the company another year to pay for it? A. As a matter of fact we did; this the minutes doesn't show we did. As a matter of fact that matter was discussed in open board and it never occurred to any of us that we were doing an illegal thing or that we were not generous to the extreme even to the company.

Q. You considered in doing what you did you were doing a generous thing? A. We did. Never occurred to one of us, so far as I know certainly, never occurred to myself that we were transacting business in our own interest.

Q. Between yourselves? A. Between ourselves and not until Mr. Thompson brought the matter before this meeting had it ever occurred to me that we had been doing or had done what was illegal or what was against the interests of the company.

By Mr. Smathers: Q. Doctor, between 1896 and 1898 did you ever try to mortgage any of the lands to secure money? A. We did.

Q. What efforts were made? A. You will find, according to the records, that in 1899, I think is the date, that we took a mortgage from the Atlantic Safe Deposit and Trust Company of $10,000 and paid off an equal amount to the Atlantic Land Company to get them to release certain portions of land whereby we might sell individual lots from and in that way take care of our indebtedness.

Q. Did you have as much trouble in securing a mortgage as you did in selling the stock? A. Did we have as much trouble?

Q. Was there as much difficulty in getting your property mortgaged in order to raise the money to carry on the business as there was in selling your stock? A. Well, I think this whole procedure shows we had considerable difficulty in getting money to carry on the business of the company to the extent even of two directors refusing to assist us and so far as giving a mortgage was concerned, I think I. G. Adams and Mr. Clem Adams were responsible for getting the Atlantic Safe Deposit and Trust Company to accept this mortgage. I don't know whether they became in any way personal sponsors for it or not, but it was through them this mortgage was gotten.

Q. Was any other mortgage placed beside that one mortgage? A. There was mortgages placed on the land that was sold, on the lots that were sold.

Q. I mean mortgages aside from the sales, purchase money mortgages? A. Aside from the first mortgage?

Q. Only one mortgage placed? A. Yes.

Q. What member or members were appointed as a committee to secure money on mortgages, if

any? A. Well, I think Mr. Adams' office was instructed once or twice to sell mortgages. In fact I am sure they were to sell mortgages to raise money.

Q. You mean to sell mortgages they owned or place mortgages? A. To sell mortgages the company owned. You are speaking about placing mortgages.

Q. Placing mortgages on your land. A. I don't recall any.

Q. When was this, Doctor? A. That this mortgage was—

Q. Trying to sell mortgages, Mr. Adams was authorized to sell mortgages? A. I can't give you the exact date; perhaps Mr. Adams can.

Q. Were the mortgages ever offered to the banks as collateral for the loans? A. I don't know that they were.

Q. Didn't the company always hold mortgages, Doctor? A. Not always.

Q. Well, when was there a period it did not? A. It did after it sold; it held mortgages from the time it sold part of its real estate.

Q. When did it first begin to hold mortgages? A. At the time when we sold the minutes or at least the books will show the date which the first property was sold, but I think it was either in 1899 or 1900 or 1901.

Q. When was the Bacharach block sold? A. I refer to the Bacharach block and I refer to the Penrose block.

Q. From that date on, whatever date that was, you had mortgages? A. We did.

Q. Between 1896 and 1899? A. I am not sure with reference to the loan made from the Atlantic Safe Deposit Company, whether one of those mortgages wasn't put up for a time as security for

the transaction. Such was talked of whether it was really done I don't remember.

Mr. Bourgeois: Which transaction, Doctor?

A. The transaction at which the company borrowed $10,000 from the Atlantic Safe Deposit and Trust Company and gave a mortgage on certain lands that the Atlantic Land Company released. It was merely transferring a part of the mortgage, a part of the land to another party and placing a mortgage on it.

Q. Doctor, you say between 1896 and 1898 if the property was put up at a forced sale it would not bring one-half? A. No, I didn't say that.

Q. What was it you said? A. I said it wasn't of the value it was before and probably wouldn't have brought much more than one-half.

Q. Now at that time when you say it wouldn't have brought much more than one-half do you recollect some of the prices you had on the lots? A. I do.

Q. What say? A. I do.

Q. Suppose you divided those prices in half, cut the prices which you had on them in half, how much—you would have sold them for one-half the prices you put on them—how much would it amount to? A. I suppose if we had sold at one half I suppose it would have amounted to somewhere in the neighborhood of very nearly the value—

Q. What you turned into the company for? A. Not what we turned into the company for, very nearly the value we had priced the land at.

Q. What do you mean 250,000? A. I mean 250,000, yes.

Q. Did you sell many lots between that period at a discount or at a value which you did not

think commensurate with the value of the land? A. We only sold as many lots as—well I will put it in a different way—the lots we did sell were sold at discounts and we sold it under stress of the demands made upon the company. We were trying at all times to protect the future interests of the company.

Q. As a matter of fact at all times you had high prices on your lands and you wanted to get big prices for your lots, didn't you, Doctor? A. Yes, I think we did.

Q. And you would rather sacrifice your stock rather than sell your lots? A. We didn't try really to sacrifice much of the stock.

Q. You said you tried to sell on the streets for $50? A. We did when we were threatened with a sheriff's sale.

Q. Why didn't you try to sell some lots at that time? A. I think we did. I think Mr. Adams bought some lots.

Q. What did you do at that time in the way of selling lots cheap? A. I can't recall any particular instance excepting this, except we offered lots to the stockholders of the company and members of the Board of Directors had got a reduction and Mr. Adams took advantage of it just as we did even later, even years later when Mr. Thompson took advantage of it.

Q. Was the company ever sued or a judgment ever entered against the company? A. Not to my knowledge.

Q. What were these threats outside of the Risley claim and the West Jersey and Seashore Railroad claim that you speak of? A. Those were the only threats that I know of.

RE-DIRECT-EXAMINATION by Mr. Bourgeois:

Q. Doctor, they have been asking you about the sale of individual lots in 1898. Tell me the order of priority for demand in opening up a tract of land, is the demand first for individual lots or is it first for large tracts? A. For large tracts.

Q. And after the large tracts are secured what must be done before there can be any demand for the individual lots? A. They must be graded and plotted and put in condition that is inviting to the individual lot holder.

Q. And in the meantime, the interim, something has to be done to carry the property along? A. It has.

Q. Tell me whether in 1898—you had acquired large tracts of land in 1896, the company had? A. Yes.

Q. Tell me whether in 1898 this tract of land had been developed so that there was a demand for the individual lots? A. Had not; it was under the process of development.

Q. And you didn't begin to sell the individual lots until some considerable time after 1898, two years or more? A. As I recall the first sale was made in 1899.

Q. That was a large tract for the purpose of rediviling? A. And the next sale was a portion of a block.

Q. A half block, the Penrose block. When did the sale of the individual lots commence, that is excepting the sale to yourselves, you sold some to I. G. Adams, but the outside sales to the public generally, were there any sales for individual lots prior to 1900? A. No, I don't think there were individual lots sold excepting to Mr. Adams and Mr. Disston until much later than that.

Q. Now about this mortgage that the Atlantic Safe Deposit and Trust Company took, did you by placing that mortgage with the Atlantic Safe Deposit and Trust Company reduce the amount of the mortgage indebtedness on that land or only transfer it? A. Only transferred it. We couldn't give title prior to that time because the mortgage of $65,100 was on the whole land.

Q. Then the replacing of this $10,000 mortgage was for the purpose of putting your land in the position where you might be able to dispose of a part of it for the company's benefit. A. Or releasing certain parts.

Q. Now from 1898 until 1905 was there ever a time when the company could have taken care of its fixed charges such as interest on mortgage, taxes and so on, and paid interest on this loan of $7,500? A. No.

Q. What was the rate of interest on that $65,100; do you recall? A. I think it was 6 per cent.

Q. Now was there ever a time when all of the directors of this company would individually endorse to enable this company to get moneys for its absolute necessities? A. There never was such an offer; no.

Q. With the exception of the loan that the two Adamses made and this for the benefit of the company, were there any other endorsements by the directors made by anybody excepting yourself and I. G. Adams? A. Not to my knowledge. I say no.

Q. When this money was returned in 1898 or when the year had expired in 1899 were you in a position to personally endorse for the St. Leonards Land Company? A. I was not.

Q. And your first endorsement was 1902? A. Yes.

Q. You were asked by Judge Smathers whether or not it would have embarrassed the company to redeem the loaned moneys in 1899 and you answered that it would. I ask you whether it was advantageous to you to loan, that is whether at that time it was advantageous to you to loan the company moneys as you did? A. It was not.

Q. I ask you whether in October, 1898, it was advantageous to you to cancel the indebtedness of the company to you and take in place of it the company's stock as you did? A. It was not.

Q. Was it advantageous to you to retain that stock in place of the $1,500 in October of 1899? A. Was more advantageous to have had the money.

Q. And was it advantageous to you at that time to have retained the stock than had your money? A. It would have been much more advantageous to have had my money.

Q. Did Judge Thompson or Judge Endicott ever raise any objection to the directors retaining this stock until after the value of the land had become certain and fixed? A. No.

Q. And that was after what year? A. In 1908

By the Vice Chancellor: Q. When did it first become advantageous to you to retain the stock rather than to have the money with interest? A. I presume when the distribution of the premiums began.

Q. That was about what time? A. 1909.

By Mr. Bourgeois: Q. When, Doctor, did the land— A. It was advantageous if I had wanted to use the stock as collateral; it was advantageous before that.

Q. Well, Doctor, it would have become advantageous to you to have had the stock instead of the money at the time that the land attained a fixed

value so as to make your stock worth more than 50 per cent on the dollar? A. Yes.

Q. Now when was that time? Was it prior to 1906? A. It is possible that it could have been sold, if we would have found a purchaser, for more than $50 per share, but—

The Vice Chancellor: Prior to 1906?

A. Prior to 1906. I say it is possible it could have been, but things were very inactive so far as the company was concerned and we were in financial stress at that time quite as much and I say quite as much because the sheriff was pressing us the other time, but our indebtedness was quite as much at that ime as it had been before.

Q. Did you know that Admiral Endicott had paid or what Admiral Endicott had paid per share for his stock? A. I did not.

Q. There was a letter offered in evidence yesterday from Mrs. Howell to Admiral Endicott in which it recites that you and some person else were proposing to buy some stock at $200 per share. Did you ever make any offer to Mrs. Howell or Mr. Howell to purchase their stock for $200 a share? A. I think she was mistaken, but not intentionally, probably Mr. Howell called upon me and asked me to purchase the stock and I told him I could not, but I would see what I could do to get him a purchaser and he left the price of $200 with me.

Q. Did you succeed in getting him a purchaser? A. I did not. Mr. Howell afterwards offered me the stock for $175.

The Vice Chancellor: What was the date? Do you remember the date?

A. I think, according to the statements made yesterday, that was in 1906.

Mr. Bourgeois: 1904.

A. 1904, was it?

Mr. Bourgeois: I think 1904.

A. Mr. Thompson in the Board of Directors said that the stock was only worth $200 in 1909.

Q. Did he so state? A. He did. He also said that he would sell his to me for $175 if I would give him the cash that night.

Q. Doctor, who was it that had the option to purchase this stock in 1909? A. How is that?

Q. Who was it had the option to purchase this stock in 1909? You spoke about someone having an option to purchase. A. Purchase which stock?

Q. A large block of stock you spoke about in 1909? A. Well, that wasn't the company's stock; it was individuals stock.

Q. Who was it that had that option? A. Mr. Bacharach as I understand and those who were interested with him.

Q. Now was there any desire by you at the time of making this loan or agreeing to accept the stock of the company in place of the loan to make a profit out of the company? A. There never was any such a desire or any such thought.

Q. In your stating what the resolution was that was passed in 1898 I think you didn't give me the full answer. Will you state again what that resolution was in fact that was offered about the surrendering of the note and taking the stock and then the redeeming of it what was it? A. The facts relating to it were these that at that meeting to have continued the notes of the company would have meant to have paid the interest individually, so it was agreed between the directors at that meeting that we take the stock, become responsible therefor and exempt the company from any further responsibility and take as security for the year that we were going to give the company in which to redeem it, we accepted the stock on the same basis that the resolution passed in May had

been given, authorizing us to borrow money elsewhere.

Q. And gave them one year in which to redeem? A. Gave them one year in which to redeem. As to the wording of that resolution, Dr. Youngman worded the resolution and worded it, intended to word it and did word it in line with our action.

Mr. Smathers: Pardon me, that was October 15th, 1898?

A. That was June 1898.

Q. That is when the loan was made; I want to know about the resolution in October? A. The resolution was made by Dr. Youngman in October, but the transaction primarily took place in June.

Q. I want you to give me, as near as you can, the resolution or motion that Dr. Youngman made in October 15th, at which the stock was taken by you people and the company given a year to redeem? A. Well, that motion was to the effect that the company should be given the privilege of redeeming the stock at the end of one year and that we had accepted the stock in lieu of the company's obligation to us.

Q. Now at that time was the company in financial condition to have paid the interest on that loan if it had been continued? A. It was not with the other indebtedness that it had.

Q. Now you were asked but not permitted to answer or at least suggested the difference between the outlook for the company in 1898 and in 1908. Tell us what the difference in outlook was? A. Well, in 1898 the property owned by the company, by the St. Leonards Land Company was not graded and only a portion of it was under the process of being graded, the streets were not completed and lots were not laid out, streets were neither completed nor gravelled, part of them were under the process of grading.

Q. Any street to get down to that opened up? A. No, only a part of it was being done at that time and the surrounding lands were very similar in condition to what ours was excepting that they were not at that time under the process of being graded and put in condition to sell.

Q. Which surrounding land do you mean? A. I mean the land between the St. Leonards Land Company and Atlantic City or between Atlantic City and the St. Leonards Land Company and the land that was west of the St. Leonards Land Company with the exception of a very small portion in the immediate neighborhood known as Ventnor and that in 1909—

Q. 1908? A. 1908 that is, the grading and repairing and improving along not only our property had been completed, but the property in the vicinity between Atlantic City and our property and the property in the vicinity west of Ventnor and our property.

Q. How many houses had been built on the tract of land immediately adjoining yours on the east, that is between yours and Atlantic City in 1908, approximately? A. Well, approximately I should say two hundred.

Q. That is in Ventnor? A. In 1908?

Q. Yes. Now what was the condition of the building in the lower end of Atlantic City in 1898 as compared with 1908? A. They could scarcely be compared.

Q. In 1898 did they have the Newton tract down there? A. No.

Q. In 1898 did they have anything below Albany Avenue? A. I think they had a pest house and something of that sort.

Q. That was down in Ventnor next to your land? A. Yes, adjoining or at least nearly adjoin-

ing our land, which we tried hard to get removed.

Q. In 1898 did the street cars run down to Ventnor as they did in 1908 to turn or did they turn— A. No, they ran right through to Longport.

Q. But they only ran hourly, did they not, or two hours? A. Somewhere about that time.

Q. And those that ran down to Longport had little dummy engines? A. Steam cars.

Q. But the street cars in 1898 made their turn where? A. Well, I think at the so-called Excursion House or Excursion House property, just about where Albany Avenue is, may have been further down, but my impression is it was Albany Avenue.

Q. That is about a mile easterly of the westerly line of Atlantic City, isn't it?

Mr. Smathers: May it please your Honor, this is Mr. Bourgeois's witness and he ought not to be leading him on.

The Vice Chancellor: I don't think he can move the avenue any.

A. It is several squares, fully a mile, I should think.

Recess taken to 2 p. m.

Afternoon session.

Hearing resumed at 2 p. m.

DR. PHILIP I. MARVEL, resumed:

Re-direct-examination resumed by Mr. Bourgeois:

Q. Now, Doctor, in the cross-examination you stated to Judge Smathers that you didn't get

your claimed interest in the 211 shares of stock that were surrendered to the company. You weren't permitted to say why you didn't get it. Please state why you didn't get your claimed interest in those 211 shares?

Mr. Smathers: He didn't say he claimed any interest.

Mr. Bourgeois: You asked him if he got his claimed interest in the 211 shares and said no and started to tell you why and you said "no, I don't want that."

Q. Why was it you surrendered those 211 shares without? A. After discussion among other members of the board we concluded that we had acted very honorably from our standpoint from the very beginning and that we would raise no question about those shares.

Q. Now at the time that those 211 shares were voted back to the company under what understanding or impression were you with regard to the 150 shares now in dispute?

Mr. Gaskill: I object to that as incompetent.

(Question withdrawn.)

Q. Doctor, was there any other reason than that which you have stated why you did not get your claimed interest in the 211 shares which you turned back into the company? A. There were reasons why we didn't demand it.

Q. Why? A. I had had conversations with Mr. Thompson in his office where Mr. Thompson and I talked rather freely and I stated to Mr. Thompson that we had consulted legal advice and Mr. Thompson, in his comment with reference to it, lead up to the statement that so far as he was concerned he should drop the matter and then there were statements made, I don't know by

whom, but the impression came from it that it had been considered that the whole matter would be dropped and particularly we were lead to believe that if we would allow these matters to go through and allow the premium to be given on the stock—

Mr. Gaskill: Is all this a matter of conversation with Judge Thompson? A. No.

Mr. Gaskill: I ask that it be stricken out if it is not.

Mr. Bourgeois: He is stating his reasons why.

Mr. Gaskill: I am objecting to that as incompetent.

The Vice Chancellor: I apprehend it to be competent for the witness to state, perhaps, not conversations he has had with various people, but for him to state any understanding that he possessed irrespective of the source from which it was received, that lead him to that course. I think so. If it is claimed upon his part that this was intended to be in any sense a compensation to the company, it may be relevant. I don't know whether that claim is made or not. I think he may state, but I do not think he is privileged to state conversations he has had with different people. That is he may state what impelled him to do so, that is if it was a gift or something that he understood it.

(Witness's answer repeated.)

A.—that further difficulty that had been in the company would be at an end.

Q. What do you mean by further difficulties that had been in the company would be at an end?

A. That is whatever understanding that there

seemed to be between our—perhaps I can put it in a different way—that the difference that existed between Mr. Thompson and Mr. Endicott on the one side and between myself, Dr. Youngman and the other directors on the other side.

Q. Now you testified on your cross-examination that at no time within two or three years after October 15th, 1898, could that stock, the 150 shares, have been redeemed. Why could it not have been redeemed? A. Well, it could have been redeemed if we had taken the cash and not applied it to other things, but there was at no time but what the company was greatly in debt. I don't know what else you mean.

Q. Yes, that is what I mean. And because of the company's indebtedness the company was not in a position to redeem the stock; is that it? A. We conducted all affairs of the company in the manner in which we felt would least embarrass the company and all transactions whatever prior to the time when this matter was first called up was always for no other purpose than in the interest of the company.

RE-CROSS-EXAMINATION by Mr. Smathers:

Q. Doctor, what did the other directors do or say that lead you to believe that when you let the 211 shares of stock go back that would be the end of difficulties in the company? A. Well, there were various conversations. I can't repeat the different conversations.

Q. Well, with whom? A. Our understanding.

Q. Who did you have the conversations with? A. They were conversations in which Mr. Bacharach was present. They were conversations in

which Mr. I. G. Adams was present and those conversations I had with Judge Thompson.

Q. Now when was this conversation with Mr. Thompson? A. It was after I had been to Newark with Dr. Youngman and consulted Judge Skinner and the time at which I consulted—

Q. When was that, Doctor? A. I have the envelope here that brought Judge Skinner's opinion and that is marked August 26th, 6:30 p. m., 1909.

Q. And it was after that that you had the conversation with Judge Thompson? A. It was after that I had the conversation with Judge Thompson.

Q. In his office? A. Yes, I think it was in his office.

Q. Anyone else present? A. I don't remember that there was.

Q. What was the occasion of your calling on Judge Thompson? A. I don't remember just now what it was.

Q. Well, now, did he give you—what did he say or do in that conversation that lead you to believe that was going to be the end of difficulties? A. We talked over the matter pro and con and the Judge volunteered the statement that he didn't care who gave me the opinion, the opinion was wrong. I volunteered to him some of the statements that Judge Skinner had made and then the conversation went on leading from one thing and another until he said so far as he was cocerned the matter was at an end.

Q. And that lead you to think so far as he was concerned he wouldn't do anything? A. That was the purport of it; may not have been the exact words.

Q. What did Judge Endicott say that lead you to believe that was going to be an end of difficul-

ties? A. I don't know whether I had a conversation with Judge Endicott with reference to it; I may or may not have had; I don't recall any. I had a conversation with Mr. I. G. Adams.

Q. Mr. I. G. Adams and the other directors who were interested in the loan weren't making any dispute, were they, over this matter? A. No.

Q. The impressions they gave you wouldn't influence you at all, would it? A their opinions might influence me.

Q. Well, Mr. Thompson then, as I understand it, is the only director that said anything that lead you to believe so far as he was concerned that would be the end of difficulties? A. Well, I can't say the only director, because of his conversation.

Q. I am talking about the only director that had been opposing your stock? A. Perhaps that is true; I don't remember whether I had a conversation with Mr. Endicott or not; I don't recall.

Q. Doctor, you spoke of the sheriff a while ago pressing you all the time. A. Not all the time.

Q. You seemed to indicate that in your testimony? A. Didn't mean to.

Q. When was it that the sheriff was pressing you? A. Sheriff was pressing us at this particular time.

Q. When was this particular time? A. In June, 1898.

Q. Was the sheriff actually pressing you or was Mr. Risley wanting his money? A. Mr. Risley gave us notice that unless the money was paid within twenty-four hours the West Jersey Railroad was going to put the sheriff on us and Mr. Risley gave us notice himself that unless we paid his bill that he would put the sheriff on us within twenty-four hours.

Q. And that is what you meant by the sheriff pressing you? A. He said, "If the sun goes down before this is settled, I will put the sheriff on you."

Q. You stated at the time you took this stock as collateral security you had no desire to make a profit out of it? Have you since then become desirious of making a profit out of it? A. Not further than belongs to me and further than my rights attached to that stock.

Q. Then you will accept your fifteen hundred dollars with lawful interest? A. We did offer at one time to accept that.

Q. Will you do it now? A. If the Court says I must do it I will; if he doesn't, I won't.

Q. That proposition was made to you in 1909? A. That proposition was made by us before it was made by others to us.

Q. Will you answer that question, wasn't it made to you in 1909? A. Yes.

Q. Why didn't you accept it then? A. I have given my reasons before and there were other reasons, too, minor reasons.

Q. You didn't know when it was the Bacharach purchase was made, that is the sale of the tract to Mr. Bacharach, I called your attention— A. I think I stated around about the time, but not the exact date.

Q. Don't know whether it was 1899, 1900 or 1901; that is what you said? A. Or even 1898. I don't remember which it was, but I said the books show.

Q. Mr. Bacharach's testimony, page 54, says it was 1899, and from that time on I understand the company had mortgages in its treasury; it owned and controlled martgages; is that right? A. It owned that mortgage, yes. There was a mort-

gage standing against the company for sixty-five thousand one hundred dollars at the time.

By the Vice Chancellor: Q. Was the Bacharach mortgage on property that had been released? A. Yes.

Q. Was a first mortgage on the property it covered? A. First mortgage.

Q. And how much money? A. Seventeen thousand, I think.

Mr. Smathers: Mr. Bacharach's answer was "purchased a block of land known as block No. 1 of the St. Leonards Land Company for twenty-two thousand dollars, five thousand cash and seventeen thousand mortgage."

The Vice Chancellor: That was in 1899?

Mr. Smathers: July, 1899.

The Vice Chancellor: That was before the period of redemption expired.

Mr. Bourgeois: That wasn't July 1899.

Mr. Smathers: That is what the testimony says.

Mr. Bourgeois: Then we will have to correct his testimony, because the settlement was not made until November, 1899, until after the year had expired.

By Mr. Bourgeois: Q. Do you know if the Herring mortgage was pledged with the Atlantic Safe Deposit and Trust Company as collateral security for the payment of that ten thousand dollar mortgage they took? A. I am under the impression it was, but I am not sure about that.

Q. Now you spoke about the meeting of 1909, of August 31st; was Mr. Bacharach there? A. He was in the Law Building and in Mr. Adams's room.

Q. And did he take some part in this discussion that lead you to think this whole thing was closed? A. Yes, in a general promiscuous discussion.

Q. And what position did he hold in the company at that time? A. He was a stockholder.

Q. Hold some office? A. He was general sales agent or manager of the real estate part of it.

Mr. Gaskill: He wasn't a stockholder of record at that time. He was not an officer of the company and anything that he said can't certainly be material.

Mr. Bourgeois: He had options on five hundred and forty-five shares of stock at that time which made him owner of that stock so far as equity is concerned.

Q. Was Mr. Adams—was that meeting of August 31st after Mr. Adams had given an option of sale for all his stock to Bacharach? A. It was.

Q. And did you have a conversation with Mr. Adams at that time that lead you to believe that this thing had been closed? A. I did.

Q. With any of the other directors? A. Well, I think we were all talking promiscuously there. I say all, I mean those who were against the proposition.

Q. Now you stated this morning that you urged Mr. Adams to have Miss Freas to write the minutes in the book in 1908 or 1907. Do you mean that you urged him to have Miss Freas do that or some person else? A. I mean this that in the early history of the company it was suggested by different ones of the directors that he have Miss Freas write up the minutes, just as to who may have been suggested later I don't know.

Q. And as to who did do it? A. Or as who did it I don't know.

Q. Now I call your attention, Doctor, to an account in your ledger of mortgages receivable, page 328, and show you or point out to you the first item and ask you what date it is and what that item is? A. November 13th, 1899.

Q. To what? A. To William H. Herring seventeen thousand dollars.

Mr. Gaskill: What was that date? A. November 13th, 1899.

Q. Now just after—that is in ink, is it not? A. Yes.

Q. Just after William H. Herring I see a word in pencil, what is that? A. "Assigned." That is my impression it was assigned and there were others assigned. May I say to the Court that these resolutions and motions were decided in the board and then were left to the treasurer and Mr. Wright to transact the business.

By Mr. Smathers: Q. Doctor, did we understand you to say that in 1909 Judge Thompson offered to sell his stock for one hundred and seventy-five dollars a share? A. When?

Q. 1909? A. In nineteen—if I did say it I want to correct it and say it was between March 3d, 1908 and August of 1909, that at one of our meetings this matter came up and Judge Thompson had declared in the open meeting that the stock wasn't worth more than two hundred dollars a share. It was the time which Mr. Adams or someone was circulating an application to get as many of the directors and stockholders to sign their right to sell their stock for two hundred and fifty dollars a share or a little before that, I believe, and in the conversation I think I stated in the meeting that I believed the stock would be worth a great deal more and Mr. Thompson, to push his side, simply said "Will you give me

two hundred dollars a share for my stock?" I said "I might if I had the money." He said, "Well, will you give me one hundred and seventy-five?" I said "yes, if you give me time." He said "No, if you take it you take it with the cash tonight."

Q. But you didn't take him up? A. I did not.

Q. Doctor, will you take the book you are just reading from and read off the first ten mortgages in the book received by the company, their dates and amounts.

Mr. Bourgeois: How far down does that take you?

Mr. Gaskill: Down to 1907; it includes 1906.

A. November 13th, 1899, to William H. Herring, seventeen thousand dollars, assigned.

Mr. Gaskill: That lead pencil marking we don't want, Doctor? A. All right. December 1st, 1899, Jake and Daniel Myers seven thousand. You say you don't want the assigned?

Mr. Gaskill: No, because there is no record here when it was assigned or for what purpose. A. April 2nd, 1900, I. G. Adams two thousand; April 2nd, 1900, I. G. Adams fifteen hundred; April 2nd, 1900, I. G. Adams, fifteen hundred; May 13th, 1900, Cora Elder, two thousand; August 20th, Ventnor Heights Light and Development Company fifteen hundred; July 1st, Sarah Kirkbride, twenty-five hundred; 1902, September 27th, George A. Bourgeois, forty-nine hundred. June 18th, 1902—

Mr. Gaskill: 1904, Doctor? A. 1904, that is right. To George A. Bourgeois, nineteen hundred dollars.

Q. There were other mortgages following that are there not, Doctor? A. Yes, most of which are marked assigned.

Q. Weren't they sold the reason they were assigned? A. Not in all cases; I don't know, they might have been in many.

By Mr. Bourgeois: Now, Doctor, about those mortgages and sales. Take for instance those two mortgages that I gave to the company. How much reduction, if any, was made to the selling price of the lots in order to make those sales? Take the one of 1904 where the mortgage was nineteen hundred dollars. Do you remember what lot that was? A. I don't know that I do.

Q. The lot on Derby Place. A. Just in the rear of your property?

Q. Yes. Now what was the price of these lots, the asking price on those lots? A. My recollection is it was three thousand dollars.

Q. And tell me, if you know, if that lot was sold to me for two thousand dollars and took one hundred dollars in cash and the mortgage for nineteen hundred? A. I think it was.

Q. They needed mortgages, did they? A. They needed money.

Q. And you could dispose of mortgages better than you could lots? A. Decidedly.

Q. Now take the other lot, the one in which I gave the mortgage of forty-nine hundred dollars and I want to ask you, do you remember the price at which you held the corner lot at Somerset and Atlantic Avenues, that is where Elton Risley's house now is? A. We held it at one time at six thousand dollars.

Q. And the lot was sold to me, was it not? A. Yes.

Q. At five thousand dollars? A. I can't say; you perhaps know better what you paid for it.

Q. And one hundred dollars was paid in cash and the mortgage given for forty-nine hundred?

A. Yes, I know we sold on very small cash margins for the purpose of getting money.

Q. And that relieved the company how? A. We could pledge the mortgages or sell the mortgages and get money.

Q. And you got rid of carrying charges? A. Yes.

Q. Look over those properties and tell me if there is a single property there, excepting the Herring property—I know nothing about that one—where the properties were not sold at reduced prices from those that the company had determined to ask for them? A. Well, in a general statement I would say that it was true of the company that in most all of the transactions that were made there was some inducement given in order to sell the land. If there were any individual cases where it was not, I don't recall it. Very last sale that was made, as I recall, was made to Judge Thompson and Judge Thompson, I think, will bear out the statement that it was sold to him for two thousand dollars with the distinct statement that it was done so in order that we might start improvement in that section to benefit the general property and it was sold him at five hundred dollars under the price with the promise on his part to build a house on it or with the statement that he would build it.

By. Mr. Smathers: Q. Doctor, you had an asking price and you had a selling price on all of them, didn't you? A. Well, it so seems.

Q. And as a matter of fact didn't you reduce the price on all of them as being too high? A. Not as being too high. We did reduce the price in order, lastly, in order to clean up the sale quickly to give an inducement to purchasers.

Q. Well, didn't some of the directors think all

along they were too high and insist upon them being reduced? A. Mr. Thompson thought the prices was too high and the estimate of the stock was too high.

Q. Who else thought so? A. Mr. Endicott at one time or another entertained the same belief and we priced the property. We went over and repriced the property I think some two or three different times at those gentlemen's suggestion.

Q. Reduced them each time, didn't you? A. I don't know that we reduced them each time. We did reduce them once I am sure of and I think once we raised the price.

ISRAEL G. ADAMS, a witness produced on behalf of the defendants, having been duly sworn according to law, being re-called testifies:

Direct-examination by Mr. Bourgeois:

Q. Mr. Adams, I call your attention to a record of some mortgages given by you to the St. Leonards Land Company bearing date April 2nd,1900, one for two thousand, one for fifteen and another for fifteen hundred and ask you whether or not you purchased some land from the St. Leonards Land Company? A. I did.

Q. In 1900? A. The deed is dated April 2nd, 1900.

Q. What induced you to purchase that land? A. Well, the company was in need of funds and they reduced the price from twelve thousand to eleven thousand five hundred and I paid five hundred dollars each on each lot and gave a second mortgage so they could use the funds.

Q. How did that help the company, they being in need of funds? A. Selling mortgages.

Q. Have you the lots yet some of them? A. Yes, sir.

Q. Now how much was the land of the St. Leonards Land Company fairly worth at the time the land was sold to the company? A. Well, I don't remember without referring to the books.

Q. You don't recall? A. I don't recall; no.

Q. Do you remember what has been called here the Thompson resolution? A. Since this case came up?

Q. Since this case came up? A. Yes.

Q. Are you able to tell or fix your mind when that first was brought to your attention? A. I think it must have been about the time I was bargaining to sell out to Isaac Bacharach.

Q. That was about 1909? A. That was about 1909.

Q. Or prior to that? A. About that time.

Q. Have you a distinct recollection or not of it? A. Well, not a distinct recollection, but I remember him saying that at that time we had no right to keep that stock at that time, but when the company was in need of funds why there was no objections to it.

Q. No objection to it? A. No.

Q. And what, if anything, did Mr. Bacharach take from you at the time of the transfer of your shares to him? A. The day before the settlement, I think it was September 15th, 1909, he gave me a letter saying that he shouldn't lose any thing by it.

Q. In other words you were to guarantee him against loss from those thirty shares? A. Yes; first payment made to me was June 1st, 1909.

Q. And he purchased the shares from you, did he? A. Yes, made settlement September 15th, 1909.

Q. How long after you directors made the loan to the company was it before any objection was made, that you can recall, to the directors retaining that stock? A. About this time.

Q. Do you remember what the financial condition of the company had been from 1898 to 1904? A. It was always in debt and always in need of funds.

Q. What was its condition in 1908? You say it was always, was it also at that time in need of money in 1908? A. Well, we had to either raise the money and pay for that gravel and work or be sold out at sheriff's sale.

Q. That was in 1898? A. Yes.

Q. Why didn't you let it be sold at sheriff's sale? You could have protected yourself, couldn't you? A. I expect I could.

Q. Now why didn't you let it be sold out? A. Why I induced other people to come in there and hadn't been my habit getting other people's money and cleaning them up.

Q. What did you do to prevent it being sold out? A. Loaned the company money.

Q. After you helped them and loaned money in 1898, along in 1904 and may be earlier than that, did you come to the assistance of the company again? A. By endorsing notes; yes.

Q. I show you a series of notes here on which your name appears and ask if they are in your handwriting, that signature? A. They are my handwriting.

Q. Mr. Adams, state whether or not at the time the directors—

Mr. Gaskill: Were they the same notes shown to Doctor?

Mr. Bourgeois: Yes.

Q. State whether or not at the time you five directors loaned to the company the fifteen hundred dollars each and at the time, in October, when the company considered or concluded to cancel that indebtedness and take the stock as payment for it, was there any advantage to you by that transaction? A. I tried to sell that stock to my brother, John, for I felt—

Mr. Gaskill: I object to that answer and ask it be stricken out.

(Answer stricken out.)

Q. Was there any advantage to you at that time? A. No, sir.

Q. When was it that that transaction first appeared to have been advantageous to you? A. Well, I understand the price I sold for I didn't get my interest back on the money advanced.

Q. How is that? A. The bookkeeper down in C. J. Adams' office says the time I sold to Bacharach for two hundred and fifty dollars a share, I didn't get the interest back at the price sold.

Q. What I want to know is when was it that this stock became worth par value or more than par? When was it it became worth than fifty dollars a share? A. Well, nobody seemed to care for it for three or four years, four or five years nobody wanted it, no demand for it, vacant land nobody cared to invest in.

Q. When was it that the land of the St. Leonards Land Company became desirable, that is in the market, when there became a sale for it? A. Why in the year 1908 with a book, down the beach. Probably the Chancellor don't understand here there is periods when vacant land will sell and will be three or four years couldn't sell, scarcely any price for it and of course the St.

Leonards Land Company dawned through a dull period and this period of development came on again and came a demand.

Q. And that period when it came on again was in 1908? A. 1908? 1909, I should say.

Q. Was there any intent, Mr. Adams, upon the part of yourself or any of the directors, to your knowledge, of gaining any advantage over the other directors and stockholders in the loaning of this money to the company in 1898 or in taking of the stock in consideration of the loan in October, 1898?

Mr. Gaskill: I don't think it is a proper question to ask what a man's intent is.

The Vice Chancellor: I think that is competent in a charge of this kind.

A. I think not. I think the only reason Thompson and Endicott did not take theirs was they was afraid to, afraid we wouldn't be able to carry the thing through.

Q. And the stock would be absolutely worthless? A. And the stock would be absolutely worthless.

Q. What I am asking you is did you have any intent to gain any advantage over them? A. No.

Q. Was the loan made because you were anxious to put your money out or to help the company? A. To save the company being sold out.

Q. You endorsed quite a little for the company, I think? A. Yes, sir.

Q. And Dr. Marvel did? A. Yes, sir.

Q. Who else of the directors did? A. I don't know that any of them did.

Q. Did Mr. Kuehnle ever endorse for the company? A. He may have done so; I guess not though.

Q. Did Dr. Youngman ever endorse for the company? A. I think not.

Q. Did Judge Thompson ever endorse for the company? A. He was too careful.

Q. He did not? A. No.

Q. Did Judge Endicott ever endorse for the company? A. No, sir; he was careful too.

Q. Did C. J. endorse for the company? A. I don't know that he did; he might have done it. I don't know.

Mr. Gaskill: Wasn't he careful too?

A. Who, Clem? Seemed to fall on Doctor and I, the endorsement part of it.

CROSS-EXAMINATION by Mr. Smathers:

Q. Mr. Adams, at the August meeting in 1909 I call your attention to this motion: "On motion of Judge Endicott seconded by Joseph Thompson that the five directors who loaned $1,500 each to the company and who received thirty shares as collateral be requested to return fifteen shares of the same and accept six per cent interest," and ask you if you remember how you voted on that motion? A. I probably voted no; I don't know. I don't remember.

Q. You stated that you did not intend to make any profit by taking the stock, didn't you? A. At that time; no, sir.

Q. Did you afterwards? A. I haven't figured it out, but Mr. Bauers in C. J. Adams says I didn't make interest.

Q. Did you intend to make any profit afterwards? You say you didn't at the time you took it? A. At the time I took it, of course, it was stock practically dependent upon how much cash we would put up to take care of the company.

Q. You say you didn't intend to make any profit at the time you took it, did you afterwards intend to make any profit? A. Afterwards kept the stock as anyone else; thought I had a right to.

Q. Did you intend to make a profit afterwards? A. Had two attorneys in the company, didn't think anything wrong in it. They thought they didn't want to loan the money.

MISS MINA J. FREAS, a witness produced on behalf of the defendants, being first duly sworn according to law, on her oath testifies:

Direct-examination by Mr. Bourgeois:

Q. Miss Freas you used to work in the office of I. G. Adams and Company, I think, did you not? A. I did.

Q. At the present time you work where? A. With the Atlantic City Fire Insurance Company.

Q. And after leaving the office of I. G. Adams and Company and previous to your employment with the Atlantic City Fire Insurance Company you worked where? A. With Charles R. Adams and Company and Israel G. Adams.

Q. Now, when did you leave the firm of I. G. Adams and Company? A. I think in May 1901.

Q. You at one time held three shares of stock, I think, in the St. Leonard's Land Company? A. I did.

Q. And were you acquainted with that company? A. Yes.

Q. How did you become acquainted with it? A. In the beginning in the preparation of deeds for the company when they began to purchase land and preparation of deeds and mortgages and

papers.

Q. Papers pertaining to the purchase. You drew their deeds, did you? A. Yes.

Q. And in consideration of the services you had rendered to them they gave you some stock, I think? A. They did.

Q. I show you the minute book of the St. Leonard's Land Company and ask you to examine it and tell me whether or not those minutes are in your handwriting? A. They are not.

Q. In whose handwriting are they, if you can tell me? A. This is Sarah Kirkbride's handwriting.

Q. That is the first part of it? A. Yes.

Q. Yes? A. This is Lucius Wright's.

Q. That is on page thirty-five? A. Yes, some.

Q. Thirty-six, thirty-seven and thirty-eight are Lucius Wright's? A. Yes.

Q. Did you ever have anything to do with the minutes, writing of the minutes or the minutes of the St. Leonard's Land Company? A. No.

Q. I show you a list on a letter head of Charles R. Adams and Company which purports to be a stock list of the St. Leonard's Land Company under date of February 26, 1904, and I ask you in whose handwriting is that list? A. This is my handwriting.

Q. Do you remember of having made that list out for any person? A. Why I made a number of lists.

Q. Do you remember on one occasion of making a list out for Judge Thompson? A. Yes.

Q. And this may have been that list? A. Yes.

Q. Did you on the 26th of February, 1904, that is when this list was made out, or at any other time get information from the minutes of the St. Leonard's Land Company for Judge Thompson? A. I don't recall so doing.

Q. Did you in 1904, get information from the minutes of the St. Leonard's Land Company for Judge Thompson? A. Not that I remember.

Q. What were your relations with C. J. Adams in 1904, Miss Freas? A. Well, not as cordial as in former years.

Q. When I. G. Adams and Company, which was composed of I. G. Adams and Clement J. Adams, dissolved with whom did you go? A. With Israel G. Adams.

Q. And what was the relationship from that time on between you and Clem Adams? A. Well, not as cordial as during the time of his employ.

Q. And how long did that strained relationship continue? A. For several years.

Q. Well, for how many? A. Well, I don't know that I can say exactly; for five years anyhow, I should judge.

Q. That was 1901, until 1906; did he speak to you? A. Yes.

Q. During that period of time from 1901 to 1906, would you have gone to him for information about the minutes of this company?

Mr. Gaskill: I object as to what she would do; question is whether she recollects doing it.

Q. Did you ever? A. No, I think not.

Q. During that period of about 1904, did you ever go to his safe to get information about the minutes? A. No.

Q. Did you ever during that year go to the minute book of the St. Leonard's Land Company to get information about the minutes? A. No.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Miss Freas, calling your attention to this paper containing the list of the stock of the St. Leonard's Land Company, where did you get the

information from which you made that up? A. From a stock ledger.

Q. There was a stock ledger? A. Yes.

Q. And where was that? A. Sometimes in the office of the one firm and sometimes in the other.

Q. And was that true of the other books and papers of the company? A. No, I only know of the stock ledger.

Q. Where were the stock certificate books? A. I don't know about that.

Q. Weren't they at the office of I. G. Adams the treasurer? A. They may have been between the two offices.

Q. And that might have been so of other books and papers which you have no clear recollection of? A. I don't think so.

Q. You can't say positively? A. No.

DR. MAURICE D. YOUNGMAN, one of the defendants, being produced on behalf of the defendants, being first duly sworn according to law, on his oath testifies:

Direct-examination by Mr. Bourgeois:

Q. Doctor, you are a practicing physician in Atlantic City? A. Yes, sir.

Q. You are a homeopath? A. Belong to that school; yes, sir.

Q. And Dr. Marvel is an allopathist? A. He is a regular.

Q. You are a stockholder and director of the St. Leonard's Land Company? A. I am.

Q. And have been since 1898, and prior thereto? Yes.

Q. Do you remember, Doctor, the condition, the financial condition of the St. Leonard's Land

Company in the spring of 1898? A. In the spring of 1898?

Q. Yes? A. Well, we were in bad shape.

Q. In bad shape? A. Yes.

Q. I call your attention to the minute of May 19, 1898, and the resolution therein contained and ask you whether or not you had knowledge of the passing of that resolution, I don't mean if you were there that day, but did you know that such a resolution had been passed? A. Well, I didn't know it until the meeting on the 15th of June. I was in Philadelphia at that time.

Q. And you weren't present at the meeting of May 19th? A. No.

Q. But on the 15th of June you say you knew it. How did you know it then, Doctor? A. Well, the meeting was called and I attended the meeting and I found the gentlemen there in great stress of mind because they had been given notice by Mr. Risley that the sheriff would be put upon the company unless the money was coming within twenty-four hours, that he had reached the limit of his patience. A great deal of talk had gone forward during the preceding months and we had no money and the money had to be had at once.

Q. Who was present at that meeting? A. Dr. Marvel, C. J. Adams, I. G. Adams, Louis Kuehnle and myself.

Q. Do you recall whether or not Judge Endicott and Judge Thompson had notice of it? A. Yes.

Mr. Gaskill: I suppose he wouldn't know except by hearsay.

Mr. Bourgeois: If your Honor please, if I am sitting in a room and hear someone called on the telephone it isn't hearsay.

The Vice Chancellor: You may state the extent of your knowledge.

A. The extent of my knowledge is I heard C. J. Adams call up Judge Endicott.

Q. And what did C. J. Adams say? You could hear that? A. He came back and said—

Q. Did you hear what C. J. said? A. I couldn't hear what Judge Endicott said over the 'phone.

Q. Could you hear what C. J. Adams said? A. Yes, I could hear what he said.

Q. What did he say? A. He said this meeting was called and we had to have this money and we had agreed to raise $10,000 by putting in $1,500 apiece, each one of us, and those of us who were present had agreed to put up our $1,500 after having declined to make a company note and endorse any notes and would they do that and Judge Endicott—

Q. You don't know what he said? A. No.

Q. Do you know whether or not Judge Thompson was notified? A. Judge Thompson was notified by Dr. Marvel and he said practically the same thing.

Mr. Gaskill: How do you know that?

A. I heard him go to the telephone and speak to Judge Thompson or somebody purporting to be Judge Thompson.

Q. You heard Dr. Marvel's end of the conversation? A. Heard Dr. Marvel.

Q. You said a moment ago, Doctor, that Mr. Adams told Judge Endicott that the directors would not endorse a company note. Just tell us what took place at that meeting with relation to that, will you? A. Well, it was a very long meeting and we were always pretty blue and I particularly was very despondent over the situation. They wanted to make a company's note and I said I for one wouldn't endorse a note and Louis Kuehnle said the same thing. I said I had lost

money enough endorsing notes in other things and I would pay my part of a loss, but wouldn't pay any other fellow's loss. It was finally decided then to raise this $10,000, each one of us to furnish this $1,500, and then we supposed naturally that Judge Thompson—

Mr. Gaskill: One moment, Doctor.

Q. Did Judge Endicott and Judge Thompson put up their 1500? A. No, sir.

Q. When, with relation to the meeting did you pay your 1500? A. They got it immediately for I understood the money had to be paid immediately.

Q. Now what do you mean by immediately? A. Next day.

Q. Next day. Now the payment that you made appears to have been not $1,500 but $1,428 and some cents; how did it come about that you didn't give them the whole $1,500? A. Because the understanding was that we were to put $1,500 up in cash and take the company's note at four months, that is six per cent interest, and two shares of stock for each hundred dollars, upon the same basis as had been offered to the bank, a report of which was made previously in the meeting of their failure to get any money from the bank and we agreed to take the same terms ourselves and they gave me the discount on it and then there was a small balance owing me from the company.

Q. Now, Doctor, you say that they made a report to the meeting of an effort to borrow the money from the banks; what was that report? A. The report was that there was a meeting held in May, the month preceding, that the committee had been appointed to borrow $10,000 from the

banks upon the stock of the company offering two for one and that that committee had been unable to do it.

Q. Was any report made of what banks, to what banks they applied? A. Well, the Union National Bank and the Second National Bank and I think the Trust Deposit Company was applied to.

Q. And you were to have two for one, that is two shares of stock for one dollar, I mean two shares of stock for each one hundred dollars that you loaned? A. Yes.

Q. Now I ask you how it was that you didn't give them the whole $1,500?

The Vice Chancellor: He explained that.

Mr. Bourgeois: Did he? Then I was remiss.

Q. I show you a note made payable to yourself bearing date June 20, 1898, and ask you if from that note you can fix the date of the meeting? A. Well, yes, I think it was June 15th.

Q. You think the meeting was June 15th? A. June 15th.

Q. And the note was dated a few days later? A. Yes.

Q. This note I showed you is Exhibit D-1? A. The reason I say that, June 16th I find I went out of town and I didn't come back—I often do go away the end of June to a medical convention that meets at that time and on the 16th of that year I found I left and as I didn't come back until the 27th or 28th it must have been the 15th.

Q. The interest was deducted from your note and paid on some of the other notes, I mean from your loan, from the $1,500? A. Yes, the discount was taken from the note. A small amount of money that was coming to me for

something else, I have forgotton what, was also deducted, I think.

Q. Did you hold one of the mortgages against the St. Leonard's Land Company? A. I own one or two mortgages that they took in the sale of lots, but I have forgotten what.

Q. Amounted to about $1,200? A. More than that.

Q. Eighteen? A. More than that. One mortgage I think is 1,500 and the other is 2,000.

Q. Now, Doctor, what was the financial condition of the company when these notes matured? A. Just the same. We had no funds at all.

Q. Why didn't you sell the land? A. Couldn't; you see the land didn't—was still largely wild land. It wasn't saleable; besides there wasn't a good market then for land.

Q. What was the condition of the market down there from 1898 to 1904? A. Why there was no market.

Q. Was no market? A. No.

Q. Well now you say that when the notes matured the company was still in bad financial condition? A. Yes.

Q. What action did the board of directors take upon the maturity of these notes with regard to them? A. Well, there was a meeting in October. The notes were due and they were taken up and talked over. There was no funds to meet them and it was decided that we should release the company from the notes and take the stock as we had offered the banks, two for one, and give the company one year to redeem that stock on that basis.

Q. And was that done? A. That was done.

Q. You made the motion, I think, at that time? A. Well, that was quite a long meeting and I re-

member distinctly I sat back against the wall in this manner with my chair tilted back and to expedite the matter I worded the resolution—

Q. Yes? A. —to that effect and Mr. Adams or someone else took it down in writing.

Q. Well, now I show you what is called Exhibit C 5-1 and ask you whether or not that memorandum is your handwriting, top one there? A. No, sir; it is not.

Q. Did the resolution that you dictated follow this pencil memorandum that you should receive fifty per cent excess? A. No, sir; did not.

Q. What did your resolution provide, how much stock were you to get? A. My resolution provided that we should receive two shares of stock for one.

Q. And Doctor, at that time in October, did you make any loan to the company or had the loan been made? A. The loan was made. We didn't make any loan then.

Q. It had previously been made? A. In June.

Q. Did your resolution in October provide for the making of a loan that each should borrow $1,500? A. Well, my memory of the June meeting is that there was no resolution written out at all.

Q. I don't mean that. I want to find out whether your resolution in October followed that memorandum, whether at that time you said anything about borrowing $1,500? A. I did not make the June resolution.

Q. This is October, purports to be the Otcober resolution; I want to find out whether or not in October you said anything about borrowing money? A. None in October; we had borrowed the money in June.

Q. And your resolution was that you were to

take the stock, release the company from the indebtedness and give the company a year to redeem? A. That is right.

Mr. Gaskill: I am not objecting to your testifying because I want to get through this afternoon, but I am going to call a halt. I prefer the witness answering.

Q. Now, Doctor, after October 15th, 1898, and within a year from that date, what was the condition, financial condition of the company? A. Why it was very poor.

Q. When the resolution which you offered in October of 1898 was offered, was there any intent upon your part or so far as you know upon the part of any of the other directors who had loaned the company money, to profit at the expense of the other directors and stockholders? A. No, sir; on the contrary I felt I was being very generous.

Q. Thought you had been generous? A. Yes, indeed.

Q. Tell me whether or not when the moneys were loaned in June, 1898, there was any intent upon your part or on the part of the directors, so far as you know, to benefit by the making of this loan? A. No, sir.

Q. Doctor, what, so far as you know, was the value, the market value—I don't mean the actual value of the land—but the selling value of the stock in 1898 of the St. Leonard's Land Company? A. In 1898?

Q. Yes? A. Well, the selling value of it—I don't know—it was very, very low because we couldn't sell it. At every meeting it was talked about selling some stock and paying taxes, and paying for gravel and paying for other things, but the stock was never sold and I wouldn't have bought it.

Q. Do you know if any of the directors or stockholders had any other friends or more friends they could sell to? A. I presume they had friends they could sell to but they had too high regard for their friends than to sell; I certainly had for my friends.

Q. When did the conditions change so as to make this stock of value? A. Well, in 1906, seven, eight; really not until 1908.

Q. Now in the interim between 1898 and 1906, we will say, what was the condition down there that prevailed with regard to the sale of lands, sales of lots? A. Dead.

Q. Was there ever a time when the company had money enough to have paid the interest on those mortgages or mortgage, and its taxes and at the same time have redeemed this loan between 1898 and 1904? A. No.

Q. Did you ever personally endorse for the company? A. No.

Q. Doctor, you have heard here what is called the Thompson resolution; when did you first learn of the existence of that resolution? A. Well, in the spring of 1908.

Q. And under what circumstances did you hear of it? A. I went to the meeting one evening and found the gentlemen assembled and had been in but a few minutes when Mr. Adams or Dr. Marvel rather read the resolution.

Q. I show you a resolution and ask you to look over it. I show you Exhibit C-4 and ask you to look over it and tell me if that is the resolution that was read? A. I didn't read it at that time but this is the resolution.

Q. That he read? A. Yes, that he read.

Q. Did Dr. Marvel read it aloud? A. Dr. Marvel read it aloud.

Q. After he read it what happened? A. He handed it back to Mr. Adams and Mr. Adams went around and asked each one of us individually if we had ever seen that resolution or if it had been passed and upon my part I said no.

Q. What did Dr. Marvel say? A. He said he had not.

Q. What did Mr. Adams say? A. He said he had not.

Q. Mr. I. G. Adams, what did he say? A. He said he had not.

Q. What did Mr. Kuehnle say? A. He said no—

Q. What did Thompson say? A.—rather violently. Judge Thompson said it had been.

Q. What did Judge Endicott say? A. He said he didn't remember; couldn't say.

Q. You say that was in the spring of 1908? A. Yes.

Q. How do you fix that? A. No, that wasn't in the spring of 1908. That was sometime after that meeting. I should say that was in October.

Q. Of the same year? A. Same year. The reason I say October is because I find—I found in looking over some other matters that I was present at a meeting of the St. Leonard's Land Company probably in October of that year and at the previous meeting in March I think the subject had been introduced.

Q. Discussed? A. Discussed.

Q. In that meeting in March was there any action taken with relation to it? A. No action taken; it was only discussed.

Q. Now Doctor when was the first time that you ever knew that Judge Thompson or Judge Endicott or anybody else contended that you had not the right to retain those shares of stock? A. At the meeting in the spring of 1908.

Q. That is the March meeting? A. March meeting.

Q. And prior to that time you say you had not? A. Had heard nothing of it.

Q. Judge Thompson testified that this resolution, called the Thompson resolution, had been passed in 1904. What have you got to say about that, Doctor? A. Well, I find that I was present at a meeting in 1904—

Q. Yes? A. —and that resolution was never passed at any meeting I was present at. I missed some meetings, but that was never passed at a meeting I was present at.

Q. Do you recall the incident when Judge Thompson requested Mr. Adams to produce the minutes and Mr. Adams refused? A. Yes, I was present at that meeting.

Q. What was the language of Judge Thompson on that occasion, do you recall; can you repeat it?

The Vice Chancellor: That was at the same meeting, wasn't it?

Mr. Bourgeois: When the resolution was discussed, yes.

A. In the first place we were all very much overwrought and excited and a great deal was said and Judge Thompson asked for the minute book and he asked Mr. Adams to get him the minute book and turned to him and said "where is the minute book?" in a very angry tone and Mr. Adams said "I don't know," and he said "you do know; it is in that safe," and he said, "you are a liar"; he said "open the safe and I will get the minute book."

Q. And that was what— A. Or he may have said "you lie." I won't say.

Q. Can't be particular about that language?

A. No.

Q. And what was it or rather did Mr. Adams get the minute book for him? A. Mr. Adams didn't get the minute book. Mr. Adams was also very angry and Mr. Thompson turned then to Dr. Marvel and said "I demand as president of this board that you command him to give me the minute book," and Dr. Marvel said that "after the language you have used towards Mr. Adams I will leave it entirely with him whether he will give you the minute book or not."

Q. Now, Doctor, coming down to the minute of 1909, of August 31st—do you remember the meeting of August 17, 1909, I suppose— A. I was there.

Q. —when they had several votes taken? A. Yes.

Q. And at which it was resolved to pay a dividend of thirty dollars a share and deposit the dividend on the hundred and fifty shares in the trust company? A. Yes.

Q. Do you recall the meeting following that which was held on August 31st, 1909? A. Yes.

Q. At which the resolution was rescinded and another resolution to pay $200 a share was passed? A. Yes.

Q. Do you recall that? A. Yes.

Q. Now the minutes show that at the close of that meeting or near the close of it a resolution was passed, and it is agreed that it was passed, a resolution was offered by Judge Thompson, which it is agreed was passed, providing for the return of the balance of 211 shares of stock of the 699 shares of trustee stock to the company. Do you recall what lead up to the passing of that resolution, that is the returning of that stock? A. At the August 31st meeting?

Q. Yes? A. No, I do not.

Q. Don't recall? A. I recall the circumstances of the meeting and could give you my impression of why that was done if I was allowed.

Q. Why did you vote for the passage of that resolution? A. To turn back the 211 shares of stock?

Q. Yes?

Mr. Gaskill: I object unless it was a reason that was disclosed there, no secret on his part.

Mr. Bourgeois: Suppose he did it by reason of some act that took place then.

Mr. Gaskill: Ask him that.

The Vice Chancellor: I think he may testify. Of course I recognize the general principle that motives in matters of this kind, touching which we have taken so much testimony, do not operate to deny to a corporation the power of rescision, the power of repudiation of a contract made by the directors of the company, but I think these transactions touching motives concerning which so much testimony has been taken here are beneficial to give atmosphere to the case. I do not believe any case can be understood in its fullness unless it is accompanied by its own atmosphere. I do not know how better to describe it. The circumstances which surround all the different transactions which make the history of the matter in dispute. Without such an atmosphere the case, to me, always assumes the aspect of dry picking of old bones. I think that the testimony of this nature is beneficial in getting at the real facts.

(Last question and answer repeated.)

A. Well, in the first place, Mr. Bacharach was anxious to have a settlement because he wanted his money to pay for the stock on which he had taken the option and in the next place I always had understood that that 217 shares of stock, or what was left of it—of course I didn't know the exact amount—was the remnant of the fund that had been turned back by those of us who had the land to create a fund to develop the land, that was what was left, and I thought that we had all of us a fair understanding when we contend that—it was on the day of settlement—and to make the computation, that that remnant of the fund should be turned back. That while, if a little figuring and bookkeeping was done it might perhaps enure to the benefit of some few if it wasn't or others if it was, as we were winding up the company and we had a good big bunch of money and Mr. Bacharach had worked hard and we wanted to settle things up, that was the best way to do it and not being a bookkeeper myself and supposing it was all right and all settled, that was one of the steps in making the final settlement, so I voted for it.

Q. What do you mean by settled? A. I mean was company was at an end. This was the beginning of an end, a final distribution, I mean a distribution of $200 a share is a large amount, there wouldn't be a great deal left after that to distribute.

Q. And when, with relation to this resolution, had the resolution been passed paying this $200 a share? A. Why first.

Q. And then when they did the figuring to find out how much they would pay a share on how many shares did they figure? A. Well, that I can't tell you; I am not familiar enough with the

figures, but the idea was, in my mind, to clear the field from paying the dividend of $200 a share and as all the stock had been sold out of this trustee fund, what was left should represent the holdings of the stockholders at that time and the money should be distributed *pro rata* among that stock.

Q. You got your dividend of $200 a share? A. I did.

Q. On the thirty shares in dispute? A. Yes, sir.

Q. Now Doctor, Judge Endicott has testified that he was continually or frequently protesting against development of this land; did you ever hear any such protests? A. No, sir.

Q. You attended the meetings fairly regularly? A. Well, fairly regularly, but I missed some.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Where is that note, Doctor, that was given you? A. I haven't it, Mr. Gaskill.

Mr. Bourgeois produces note marked Exhibit D-1.

Q. That is the note that was given you, Doctor? A. That is.

Q. Been in your possession ever since until you handed it over to counsel at the trial of this case? A. Never had it in my possession.

Q. Never had this note in your possession? A. No.

Q. Did you ever get the stock the certificate for the stock? A. I got the stock but I left the note.

Q. Whom did you leave the note with? A. Left it at Mr. Adams' office at the time I took the stock, the note transaction was made.

Q. You never had this at all? A. Never had it.

Q. Didn't get it even in June when it was drawn? A. No. Shall I tell you the circumstance?

Q. No, just answer my questions, doctor, please. You loaned the company fifteen hundred dollars in June 1898 on a note and took shares of stock as collateral security for it? A. That was true.

Q. And you knew a note had been made to you for that amount? A. Yes.

Q. Yet you hadn't interest enough in the note to take it in your possession? A. Yes, I had interest, but I hadn't time.

Q. Hadn't time? A. No.

Q. Then did you leave it with Adams to keep for you? A. Yes.

Q. How long did you leave it with Mr. Adams, which one of the Mr. Adams? A. C. J.

Q. Does he attend to some other matters of business for you generally? A. Nothing.

Q. Nothing at all? A. No, sir.

Q. How long did you leave this note with C. J. Adams? A. Until after the October meeting.

Q. And what did you do with it then? A. Then I went to get the stock and left the note.

Q. Well, you didn't change the custodian of the note at all, did you? A. No.

Q. Left the note just where it was before? A. He was secretary of the company.

Q. And you got the stock then in October? A. Yes, sir.

Q. You hadn't the stock in June? A. No, sir.

Q. Then when you loaned the money you had nothing to show for it either in the shape of a note or stock? A. Nothing, excepting the note in Mr. Adams's hands.

Q. Note was in Mr. Adams's hands? A. Yes.

The Vice Chancellor: Stock also I suppose?

A. Stock also. That is not just as it is—

Mr. Gaskill: Just wait a moment, doctor.

Q. Well, Doctor, you got two certificates for that thirty shares of stock, didn't you? A. Yes, sir.

Q. How came you to lose the first one? A. It was lost in C. J. Adams's office.

Q. The man you left it with to take care of it for you? A. Well, he couldn't find it the day I wanted it.

Q. So you had another certificate issued? A. Yes, he made a duplicate and sent it to me.

Q. Where is that other certificate? A. In my box at the Atlantic Safe Deposit and Trust Company.

Q. Did you ever return it to the company? A. No, sir.

Mr. Bourgeois: Which one?

Mr. Gaskill: Certificate one hundred and twenty-four.

Q. Didn't you return it at one time, Doctor, and it was pasted in the certificate book and removed? A. No, sir.

Q. Something has been pasted on the certificate book for those thirty shares and removed from appearances. A. Well, it wasn't; never was pasted in.

Q. I say that is the fact from this certificate? A. It looks so there, but I have no knowledge of that.

By the Vice Chancellor: Q. When did you say you got this stock, actually took the stock from C. J. Adams? A. Well, at the meeting where the notes were to be given. As I said I went out of town with the understanding, I said to Mr. Adams, "you keep my note;" he was secretary of the company; "you keep my note and stock un-

til I come back." Well, when I came home in the summer I was very busy here, got into work and paid no more attention to it until the October meeting.

Q. That is what I wanted to know when did you actually get the stock? A. Sometime in the October meeting. I went to him to get the stock and couldn't find either the note or the stock.

Q. That is the October after the June, that is October 1898? A. Yes, sir; 1898.

Q. Well, why didn't you at the time you took the stock also take the note? A. He couldn't find either the note or the stock subsequently, it was subsequently found in a drawer in his safe, but he sent me, issued me a new certificate of stock. I never had the note at all, never saw that note until this case came up.

Mr. Bourgeois: If he can refresh his memory by his receipt for this stock, I think the whole thing can be cleared up. (Showing certificate book to witness.)

Mr. Gaskill: This is certificate one hundred and twenty-four?

Mr. Bourgeois: Yes, this is certificate one hundred and twenty-four; that is the one secondly issued.

A. That is what I say. You see this was during 1901 and at that time I probably went over the securities I had in my box and found from my inventory that was missing and went to C. J. Adams and he sent me that certificate but the first one you will remember, Mr. Bourgeois, was found with the note. The certificate of stock, I never got it.

By Mr. Gaskill: Q. Then the fact is true that you didn't receive any certificate at all in your own possession for the stock until you signed for certificate one hundred and twenty-four on April

twenty-second, 1901? A. I couldn't say that. I may have had that certificate a couple of years before that signature.

Q. The certificate itself is dated April 22d, 1901. A. Then probably that was it.

Q. Well, if the certificate is dated the same day of the receipt you didn't receive it before the date of the certificate, did you? A. Oh, no; probably not.

Q. Doctor, you have been accustomed years back every summer or every year to take long vacations and be absent from Atlantic City for quite a long time, haven't you? A. Yes, two months generally.

Mr. Bourgeois: In the summer did you say, Judge?

A. No, winter time.

Mr. Bourgeois: No he said summer.

A. Not the summer, went away in June for two weeks.

Q. And when are you accustomed to go away? A. In the winter.

Q. When? A. About December or January.

Q. And be gone how long? A. Two or three months.

Q. Now Doctor, I show you a resolution that is attached to the rough or preliminary minutes of the meeting of October 5th, 1898, marked in this case Exhibit C 5-1. Did you offer that resolution? A. This resolution?

Q. Yes. A. Yes, sir; not in these words.

Q. You dictated the resolution to Mr. Adams who write it down as you dictated it, I think you said? A. Yes, sir.

Q. Was it read after he wrote it down? A. I don't remember.

Q. I call your attention to the minute on page thirty-one of the meeting of October 5th, 1898 and ask you if that records this resolution as being offered by you? A. No, sir.

Q. Here: "And on motion of Dr. Youngman the following resolution was unanimously adopted." A. Yes, but that is—

Q. That isn't what I asked you. I asked you doesn't the minutes show that resolution was offered by you? A. It does.

Q. Now then you were present at the next meeting, were you not, following this, recorded in the minute book under date of August 23d, 1899, M. D. Youngman? A. Yes.

Q. Now then was the minute of the preceding meeting read and approved? A. Yes. Now Mr. Gaskill—

Q. Wait one moment, Doctor. You have no knowledge when Mr. Risley was paid, have you? A. Personal knowledge?

Q. Yes. A. No.

Q. You have no personal knowledge? A. No.

Q. Doctor when you loaned this fifteen hundred dollars in June of 1898 it was on a note that came due the following October, as I undrestand? A. Yes.

Q. Were you willing in October 1898 to receive the principal of that note, you having already been allowed the discount on it? A. I would have been glad to have the principal.

Q. Been glad to. At that time there was, as I understand you to say, a renewal for one year or rather a privilege given to the company to pay it at the end of a year from October, 1898?

Mr. Bourgeois: That isn't the testimony?

A. There was no renewal, the note transaction was closed and we took the stock two for one.

Q. With the understanding that the company might redeem the stock at the end of the year? A. Yes.

Q. By that you mean pay the note—A. No, the note was done for.

Q. Pay the loan, the money you had advanced to the company? A. Redeem the stock.

Q. What do you mean by redeem the stock; that is just what I want to get at. A. Pay us back the money with interest and get the stock.

Q. That is pay you back fifteen hundred dollars with interest and take the stock? A. Yes.

Q. You were willing in 1899, you were willing to take your money back? In October of 1899 were you willing to take your fifteen hundred dollars with interest? A. Yes.

Q. And how long after that were you willing to take fifteen hundred dollars with interest? A. I should say a couple of years, two or three years.

Q. And when was it you changed and was no longer willing to take back the fifteen hundred dollars with interest? A. Well, you must remember—

Q. Answer the question; I don't want to remember anything. A. In 1907 or 1908.

Q. Changed your mind in 1907 or 1908? A. Yes.

Q. Were you willing at any time up until 1907 or 1908 to take the fifteen hundred dollars you had loaned the company with interest on it up to that time? A. Yes.

Q. In other words then, Doctor, as long as the company was unable in your judgment to pay you back you were willing to take it and when it was able to pay you back you wasn't willing to take it; that is the situation, isn't it? A. Company was never able.

Q. Wasn't it able in 1908, when you say you changed your mind?

Q. According to the book you had a good many thousand dollars of mortgages at that time, hadn't you, had sold a great deal of land? A. No.

Q. Who offered the resolution in June, Doctor? A. I don't know.

Q. Did you? A. It was the result of the general discussion.

Q. I didn't ask you anything about that, just answer my questions, please, and we will get along faster. A. I did not.

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

Q. Do you remember at any time during the years preceding 1908 when Judge Endicott brought up in the directors meetings this matter of your having taken that stock and keeping that stock? A. Prior to 1908?

Q. Yes. A. No.

Q. Any discussion about it? A. No.

Q. No remarks made by him or no claim made by him? A. No.

Q. You weren't present at every meeting? A. No.

Q. Now the angry language or the profane language that has been attributed to Judge Thompson was used on the night when this Thompson resolution, so-called, was produced by Mr. Adams and shown around to the different directors; that is true, isn't it? A. Yes.

Q. Not at that meeting the minute book was not produced, was it, nor the loose minutes? A. Well, I think not.

Q. Now didn't Judge Thompson there at that meeting that night when this resolution was produced and the question was asked of the different directors, didn't Judge Thompson say to the secretary that he could show by his own books and

papers, if he would produce them, that that resolution had been adopted or action had been taken which was afterwards put in the form of that resolution? A. I don't think I understand that.

(Question repeated.)

A. I can't remember all that; he demanded the minute book.

Q. And didn't he say to C. J. Adams that he could prove by the minute book or minutes that resolution had been adopted if he would produce them? A. I couldn't say that; he demanded the minute book.

Q. Didn't he demand it for the purpose of showing by the minute or minute book that resolution had been adopted or action similar to that had been taken? Wasn't that the purpose of his demand? A. That I can't say.

Q. Well, didn't he say that that was the purpose of his demand, that he could show it by the minutes or the minute book if they were produced? A. That I couldn't say. He demanded the minute book and it was in reference to this very resolution, but what the words were, what he said, what statement he made, that I can't say.

Q. Well, the demand was made by Judge Thompson of Mr. Adams for the minute book before the Judge got so excited that he used any profanity? A. Everybody was excited.

Q. Answer my question, Doctor.

The Vice Chancellor: The demand of Judge Thompson was made in connection with his claim this resolution had been passed, wasn't it? A. Yes, I think it was.

Q. And the Judge didn't call Mr. Adams a liar until after Mr. Adams had been demanded by the Judge to produce the books? A. I think not.

Q. Mr. Adams I think you said replied, after

Thompson asked for the minute book, Mr. Adams replied that he didn't know where it was; I think you said that on your direct-examination; that is true too, isn't it? A. Well, now, I don't know whether that is the minute book or the minutes because the minutes wasn't always in the book.

Q. When I said minute book there understand me as meaning the minutes whether they were written up in the book or whether loose memorandum of minutes or the minute book? A. He demanded the minutes.

Q. And Mr. Adams in response to that demand said he didn't know where they were? A. That is right.

Q. And Mr. Thompson called him a liar? A. That is right.

Q. And said if he would open the safe he would point right where they were? A. That is right.

Q. And they were not produced? A. They were not produced, I think.

Q. And Dr. Marvel, although requested to order the secretary to produce them, didn't do so? A. No.

By the Vice Chancellor: Q. Now Doctor, when the subject in dispute was whether a resolution had been passed touching your surrender of this stock and the surrender of half of this stock and Judge Thompson claimed that it had been passed and demanded the production of the minutes apparently in order to substantiate his claim that this resolution had been passed, why didn't you, why weren't you enough interested in what those minutes contained to join in Judge Thompson's request and help him demonstrate the truth of what he said? A. Well, I will tell you, Judge, you see this thing had been going along for a good many years and we felt sore I particularly.

Q. Well, it had been— A. Ten years and during the ten years nothing was said about it and then when the thing finally became valuable to these two men, who laid down and declined to put up any money, and we were all very sore about it and I had been losing money doing the same thing previously and hated to take the risk here. I didn't want to see the thing go by default, and then after ten years and then finally like a piece of fireworks bursting out, and the thing showed signs of going into a good thing and we all of us were hot.

Q. That would be this suggestion—Judge Thompson claims that back in 1904 a resolution had been passed by you gentlemen to the effect that one-half of this stock should be surrendered. Now weren't you vitally interested to know whether such a resolution had been passed? A. Yes.

Q. And he said it could be demonstrated if Mr. Adams would open that safe? A. It should have been done. We were all angry and at loggerheads to think such a thing should be brought forward at that time.

Q. But he said this was a transaction in 1904, that wasn't so very long after your loan had been made? A. It was four years.

Q. But not ten years that you are speaking now. A. Five years.

Mr. Bourgeois: Vice Chancellor, I think you are kind of misleading the witness. Judge Thompson says 1904 this witness says 1908.

The Vice Chancellor: But in 1908 Judge Thompson claimed, according to this witness, that in 1904—

Mr. Bourgeois: This witness testifies

that in 1908 the matter came up for the first time.

Q. When did Judge Thompson claim that this resolution had been passed? A. I don't know that he made any claim when it had been passed, but it was in 1908 that this resolution first came up.

Q. I understood that, but I also understood that he claimed at that time, according to your statement, that this resolution had been passed in 1904; am I mistaken about that? A. You are mistaken about that.

Q. Did he indicate it had been passed long before or anything of that kind? A. That I don't know. At the time I supposed, if it had been passed, it had been done at some meeting at which I had been absent and I was indignant that it should have been done. I wouldn't have consented to it; that thing was revolutionary.

By Mr. Gaskill: Q. Doctor, when this stock was put in the hands of Doctor Marvel as trustee there was no agreement, no written agreement among the parties who had sold the land to the company about that trust stock, was there? A. I can't say.

Q. You have no knowledge of any? A. I may have had, I don't remember.

Q. You have not now any present knowledge of any such agreement? A. Written agreement?

Q. Yes. A. No.

Q. You yourself didn't reserve any individual interest or control over any of that stock, did you? A. Well, excepting the primary understanding when the company was formed, you know, which was that there was to be the stock issued for the land that we turned in and then to create a fund to develop it, we would return back—

Q. To the company? A. To the company that stock.

Q. This four hundred and ninety-nine shares? A. Four hundred and ninety-nine shares.

Q. For the benefit of the company? A. Yes, you see the company was formed before I went in it. I didn't go to the first meeting and I only came along to the second and third meeting and it was explained to me how the thing had to be done.

Q. Now, Doctor, as a matter of fact the stock that you gentlemen took didn't cost you quite a hundred dollars a share when you calculated the value of the land or what you paid for the land, did it? A. In the first place?

Q. Yes. A. Well, I don't know about the other gentlemen, but the land I turned in did represent nearly a hundred dollars.

Q. Nearly a hundred dollars but not exactly a hundred dollars? A. Pretty close.

Q. And wasn't it, when you sold any of this stock afterward for the purpose of making improvements and sold it at a slight discount, the purpose was to put the men in who came afterwards on the same level as you gentlemen who went in at first, wasn't it? A. No, it was more to get money to develop. For instance, they didn't consider me; they sold me twenty shares of stock at the full price.

Q. When, Doctor? A. After I put in my land.

Q. When? A. I can't recollect. I think Mr Kuehnle paid full price for his.

Q. Now, Doctor, you were present at this meeting of October fifth, 1898, when this resolution was adopted and your motion. Was your attention called at that time to the fact that there was no minute of the June meeting at which you say this loan was authorized? A. No, sir.

Q. When did you first learn that there was no minute written in the book between May nine-

teenth, 1898 and October fifth, 1898, and no loose memoranda, and no loose memorandum of any minute? A. That is rather a comprehensive question. I can answer if you will let me do it in my way.

Q. My question is when did you learn of it? A. Since this suit began.

Q. Since the trial? A. No, since this suit began.

Q. When you were preparing your answers? A. When we were preparing our answers.

Q. Doctor, when was it that you got this twenty-two shares? A. I couldn't tell without referring to the book.

Q. Just refer to the book. Wasn't it April twelfth, 1897? A. You see they gave me ninety-one shares for my land and I got twenty-two shares afterwards, for which I paid one hundred dollars a share.

Q. You received that certificate May 25th, 1897, didn't you? A. Yes.

Q. These twenty-two shares you have spoken of you gave a hundred dollars a share for? A. Yes.

RE-DIRECT-EXAMINATION by Mr. Bourgeois:

Q. Doctor, you were shown the minutes of October 15th, 1898, which contained the resolution and then you were shown the minutes of the next meeting which appear to have been read and approved, at which meeting you were present. You were going to make some explanation about that approval; what was it? A. No, I was going to make an explanation about the resolution of October, 1898. If you read the resolution of October, 1898, you might suppose that resolution was passed in June, don't you see?

Q. Yes. A. Now that resolution, as I worded

it, recited something like this. Whereas, on June 15th, 1898, it was decided that the directors of the company would pay each one the sum of fifteen hundred dollars in cash and receive as collateral security two shares for each hundred dollars paid for the period of four months and accept the company's note— You see?

Q. Yes. A. —Now, therefore, as the company is not able to redeem or pay these notes, be it resolved that the notes be cancelled and we accept the stock of the company, with the privilege upon the part of the company to redeem that stock within one year.

Q. I see. A. Now, the resolution was something of that kind, don't you see, and it was quite as long as that, but whoever took it down there, either I talk very fast or he wrote very slowly and not being a stenographer, whoever took it down got it in this shape.

Q. Now, doctor, was there ever a time when the Thompson resolution, which provided that you directors had agreed to turn back seventy-five shares of those hundred hundred and fifty shares of stock issued to you, was passed? A. Never at any meeting when I was present.

Q. If ever any such resolution was passed, did you know of it? A. I never knew of it.

Q. Did you ever do anything that could lead Judge Endicott or Judge Thompson to suppose that you intended to turn back fifteen of the thirty shares of stock that had been delivered to you? A. No.

By Mr. Gaskill: You voted in August, either 17th or 31st, 1908, when the dividend was to be paid upon the stock at the time of the liquidation of the affairs of the company, that the dividend on seventy-five shares of the stock should be deposited with the trust company. That was the no

tion by Mr. Kuehnle as I find by the minutes. Why did you vote for that motion if you had no knowledge of any such action previously by the board of directors to the effect that seventy-five shares only were to be retained and the others to be returned? A. Well, because in October, 1908, or some time after this resolution had been discussed and the question was brought up again in the meeting of August seventeenth, 1909, indeed the last few meetings it was usually the subject of discussion, and as we couldn't agree and spent a good many hours over it, it was finally, upon the resolution of Louis Kuehnle, resolved we should put that in escrow until the thing was settled in some way and then it was at that meeting various ways of settling it was suggested and one was to submit to some eminent lawyer and another to have a friendly suit and so on.

Q. That is your explanation, doctor, of the reason you thus voted? A. I voted yes for that reason.

LUCIUS I. WRIGHT, a witness produced on behalf of the defendants, being first duly sworn according to law, on his oath testifies:

Direct-examination by Mr. Bourgeois:

Q. Mr. Wright, did you make calculations and draw the checks for the dividends at the winding up of the St. Leonards Land Company? A. I did.

Q. Will you tell me how much the first dividend amounted to that was paid? A. The first dividend that was declared September 15th, 1909, of two hundred dollars a share on sixteen hundred and thirty-eight shares.

Q. Now did that sixteen hundred and thirty-eight shares include the hundred and fifty shares that were held by the five directors this suit is over? A. It did.

Q. After the payment of that first dividend how much cash was there in bank to the St Leonards Land Company's credit? A. Eighty-seven hundred and thirteen dollars and forty cents.

Q. Now the second dividend was of how much per cent? A. The second dividend declared in November 24, 1909, of twenty dollars a share.

Q. On how many shares? A. On sixteen hundred and thirty-eight.

Q. And after the payment of that dividend how much cash was left in the bank? A. Sixteen hundred fifty-six dollars and sixty-five cents.

Q. Now the third dividend was of how much? A. The third dividend ten dollars a share, declared April 9th, nineteen hundred and ten.

Q. On how many shares? A. Sixteen hundred and thirty-eight.

Q. And after the payment of that dividend how much was remaining in bank? A. Ten hundred seventy-five dollars and forty-two cents.

Q. Now the next dividend was of how much? A. Thirty dollars a share, declared November 18th, nineteen hundred and ten.

Q. On how many shares? A. On sixteen hundred and thirty-eight shares.

Q. And after the payment of that dividend how much money remained in bank? A. Thirty hundred and thirty-six dollars and eight cents.

Q. The next dividend was? A. Ten dollars a share.

Q. When? A. January 13th, 1911.

Q. On how many shares? A. Sixteen hundred and thirty-eight.

Q. And after the payment of that dividend how much money remained in bank? A. Four hundred ninety-eight dollars and sixty-one cents.

Q. Now the next dividend? A. March 20th, 1911, twenty-five dollars a share.

Q. On how many shares? A. Sixteen hundred thirty-eight.

Q. And after the payment of that dividend there was how much money remaining in bank? A. Twenty-two hundred forty-four dollars and thirteen cents.

Q. The next dividend? A. April 14th, 1911.

Q. Of how much a share? A. Twenty dollars a share, 1,638 shares.

Q. And after the payment of that dividend there was how much remaining in bank? A. Twenty-eight hundred eighty-four dollars and forty-seven cents.

Q. That was the last dividend declared, wasn't it? A. No, sir, one December 13th, 1911, dividend of four dollars a share.

Q. How much? A. Four, on sixteen hundred thirty-eight shares.

Q. Now, Mr. Wright, how much was there left in bank after paying that dividend? A. Four hundred six dollars and twelve cents.

Q. That made a total of three hundred nineteen dollars a share dividend up to that time, did it not? A. Yes, sir.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Mr. Wright, all of these dividends, as I understand, were on the whole 1,638 shares? A. Yes.

Q. And that included the one hundred and fifty shares in dispute? A. Yes, sir.

Q. So that the holders of those hundred and

fifty shares have received each one all these dividends on this disputed stock? A. Yes, sir.

Q. When you say that there was a cash balance at these different times you don't mean to say that was the only asset remaining to the company? There were mortgages? A. Not at the time—there was mortgages.

Mr. Bourgeois: Q. There were mortgages after that? A. There were mortgages given for a year when the property was sold; they didn't mature until a year from the sale.

Q. So that there were other assets on hand at the time each of these dividends were declared beside the cash balance up to the eighth, at any rate? A. Yes.

Q. And in addition to this cash balance of $406.12, after the payment of the eighth dividend, was there any other assets? A. Yes, sir.

Q. What; to what amount? A. Since that date there is a mortgage been paid off of Thomas B. Endicott of $600.00.

Q. Yes, anything else? A. That is all since the last dividend.

Q. And are there any other mortgages held by the company now? A. Yes.

Q. To what amount? A. $3,300.00.

Q. There is $3,300.00 more of mortgages? A. I will verify that; thirty-three hundred, yes, sir.

Q. Any other assets beside the four hundred and six dollars and twelve cents balance and the six hundred six received and the thirty-three hundred of mortgages? A. I don't know of any.

Q. Can you, by turning to the books there, tell me when it was the Risley claim was paid?

Mr. Bourgeios: What do you mean by the Risley claim, Judge?

Mr. Gaskill: Just what has been meant here by the Risley claim.

Mr. Bourgeois: They have been testifying here, the books speak for themselves, he is asking the witness a question—

Q. I want to put it on the record, what do the books show when is the date when the Risley claim was paid for grading and when was the claim for the gravel that was bought either from the West Jersey or Risley or both?

Objection withdrawn.

A. The Risley claim was paid in instalments, a great many of them.

Q. Yes; just give us the dates of those instalments and the amounts.

Mr. Bourgeois: If the Court please, this isn't cross-examination?

Mr. Gaskill: I know it isn't, I am making him my witness so far as this is concerned. He is the bookkeeper.

A. Wish all the items so far as paid to Mr. Risley?

Q. Yes. A. April 10, 1907, Alvin P. Risley, $400; April 16, 1907, $300; April 17, 1907, $300; April 22, 1907, $620; May 14, 1907, $990; May 14, 1907, $630.

Q. These are in 1907? A. 1907.

Q. Not 1897? A. 1897; yes. They are all 1897.

Q. What does that total? A. I am under the impression there is another item there in regard to gravel which came under Risley's contract but which the company paid direct to the railroad company of June 8th, 1897, $1,000.00.

Q. To the railroad company? A. Yes, for gravel. Same year, June 23d, Risley, $882.00; July 24, same year, $276.20; August 7th, same year for gravel, $1,199.00 August 16, same year, Risley, $1,251.10; on the same date the com-

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pany issued five shares of stock to Alvin P. Risley at par value, making $500.

The Vice Chancellor: Still in 1897?

A. 1897, yes, sir. November 23, same year, Risley, $603.10; December 18, same year, Risley, $720.00. Now we commence in 1898: On January 20th, Risley, $1,800; January 27, same year, $1,000.00; February 14, same year, Risley, $500.00; February 19, same year, Risley, $500.00; February 26, same year, Risley $1,000.00; March year, Risley, $850; April 2d, same year, Risley, $700; April 9th, same year, Risley $200; April 16th, same year, Risley $500; April 25th, same year, Risley $1,675.24; May 28, same year, Risley $200; June 18th, same year, Risley, $200; June 21, same year, the railroad, $1,501.50; June 23, same year, railroad for gravel, $1,500; June 25, same year, railroad for gravel, $1,500.00; July 30, same year, railroad for gravel, $437.50; August 6th, same year, Risley, $250; September 27, same year, Risley, $220.50; November 28, same year, Risley, $38.00; December 6th, same year, Risley $200. That is the ending of that year. Commencing—

Q. I don't care to go beyond 1898. When was he paid in full, when was the account closed, Mr. Wright, this Risley account? A. The last payment to Risley was April 5th, 1902.

Q. He kept on doing work all the time, then did he? A. Evidently, yes.

Q. How much was due Mr. Risley in October, 1898, October 15th, just figure that, will you, please? A. How much had been paid?

Q. How much was due him? What was the balance due Mr. Risley? A. I couldn't tell you.

Q. Isn't there any entry in the books showing what the contract was or what his bills were? A. No. The bills were paid according to the certificate from the surveyor.

Q. Well, have you those certificates? A. I think I could find some of them, yes.

Q. Well, I wish you would look, Mr. Wright, and let us know how the account stood October 15th, 1898.

The Vice Chancellor: It would be instructive, perhaps if we could have some sort of balance sheet at that time, what it owed or what assets it had at that time. I don't know whether it is practical.

Q. Can you make up a balance sheet as suggested by the Vice Chancellor of the assets and liabilities of the company as of date of October 15th, 1898? A. Yes, sir.

Q. And you will make up such a paper? A. Yes, sir.

Mr. Gaskill: Vice Chancellor, I am willing if Mr. Wright will certify that to be correct that it may be used.

The Vice Chancellor: Used as part of his testimony.

Q. Will you make up such a certificate and certify over your signature that it is a correct statement of assets and liabilities at that time? A. I will.

Q. As well as give the balance due Mr. Risley? A. I will.

Q. Then about how soon can this be handed in, Mr. Wright? A. Why, sometime tomorrow.

RE-DIRECT-EXAMINATION by Mr. McCarter:

Q. Mr. Wright, do you know whether or not during this period covered by the so-called Risley

account and particularly about the time of June, 1898, the Messrs. Adams gave Mr. Risley on account of his claim against this company their own personal obligation? A. I don't recollect it.

Q. Don't remember that? A. No.

Q. Now you were asked by Judge Gaskill with regard to some mortgages that remained after the eighth dividend was paid on the 30th of last December? A. Yes, sir.

Q. What were those mortgages and do you know where the company got them? What were they? A. They were purchase money mortgages.

Q. For property sold by the company? A. Yes, sir.

Q. They represented mortgages that were taken but not due at the time that the dividend was declared? A. Yes, they were all due.

Q. All due? A. All but one.

Q. Which one wasn't due? A. I forget the particular one, but I think there was one three-year mortgage was given just before the final sales were made and which didn't mature until the 30th of March of this year.

Q. 1912? A. Yes.

Q. Now were any of these mortgages, either the thirty-three hundred or the six hundred due before the eighth dividend was declared? A. All but this one.

Q. How long before that had that been due? A. Due a year from sometime in 1910.

Q. A year from what time in 1910? A. Made payable at any time within a year, the mortgages, were, in 1909; they were different dates running from July to September, I think.

Q. In fact they had not been paid? A. They had not in fact been paid.

Q. And were not paid at the time the eighth dividend had been declared? A. These few

amounting to thirty-three hundred that would be thirty-eight hundred, because there is a $600.00-mortgage been paid since the dividend has been declared, that would make $3,900.00 at that time.

Q. What I am trying to get at is how much of these mortgages amounting to $3,900.00 had actually been paid in cash previous to the declaration of the eight dividend on the 15th of December? A. Had not been put into cash; had not been paid off.

LOUIS KUEHNLE, one of the defendants, being produced on behalf of the defendants, being first duly sworn according to law, on his oath testifies:

Direct-examination by Mr. McCarter:

Q. Mr. Kuehnle when did you become a stockholder in this company? A. 1897, I think; records ought to show there.

Q. And did you come into it by buying stock or did you contribute land? A. No, sir; I bought stock.

Q. What did you pay for the stock you bought? A. I think I give about $1,800.00 for twenty shares. I think the books show they give me a premium of $90.00 a share.

Q. Were you familiar with the land?

Mr. Gaskill: Don't mean that; gave a premium of $10.00 a share.

A. I said charged me $90.00 a share.

Q. Were you familiar in any way with the land before you went into the enterprise? A. I knew where the land was, but I wasn't familiar with it to know the locations of it.

Q. Do you remember the resolution that was passed on the 19th of May, 1898 for a loan, to borrow from the bank, to get one? A. Yes, sir.

Q. Were you present at that meeting? A. I believe I was.

Q. What was the condition of the finances of the company at that time? A. Oh, we had been struggling ever since I could remember, struggling, struggling every meeting, was the taxes wasn't paid or gravel wasn't paid or Risley wasn't paid, nothing but hard luck story every time you went to a meeting.

Q. Now do you remember hearing any report from any committee or any gentlemen at a meeting of the company or the board with regard to their success in making a loan at the banks? A. I heard the report; yes, sir.

Q. What was that report? A. That they couldn't loan the money, wouldn't accept the secuities. The truth of the matter was that I was a member of the board of directors in the Atlantic Safe Deposit and Trust Company; we turned it down.

Q. Then an application was made to the company of which you were a member? A. Yes, sir.

Q. And that was turned down there? A. Yes, sir.

Q. By the board? A. Yes, sir.

Q. About that time, Mr. Kuehnle? A. About that time they asked for a loan.

Q. Do you remember who made the application to the Trust Company on behalf of the St. Leonards Land Company? A. I think it came from C. J. Adams.

Q. Well, now, do you recall the incident of the directors themselves loaning some money to the company? A. I do.

Q. And when did that occur? A. Why I know I loaned them fifteen hundred dollars and got collateral note for it dated June twentieth, 1898.

Q. Have you that note in your pocket? A. Yes, sir.

Q. I think it has been produced once or twice. Did you attend a meeting previous to getting this note dated June twentieth, 1898, and which is marked Exhibit D-10, of the board of directors? A. Well, if the minutes show, I used to attend quite frequently.

Q. You have no present recollection? A. No.

Q. Do you recall the incident of securing this note and paying the money? A. Yes, sir.

Q. When did you in fact pay the money? A. I paid the money some time in June, the twentieth, I believe.

Q. What did you get to secure the note? A. A certificate of thirty shares of St. Leonards Land Company.

Q. About the same time? A. Yes, sir.

Q. Do you remember the circumstances of the directors meeting in June of 1898 and some telephoning occurring between some of those who were present and Judge Endicott and Judge Thompson? A. No, I don't think I do.

Q. Don't recall that? A. No.

Q. Now do you remember your note maturing? A. Sure.

Q. Was it paid? A. Not yet, no, sir.

Q. Well, Mr. Kuehnle, did a meeting occur in October when that note matured at which you were present, at which any action was taken? A. I think there was. I think there was a resolution passed that we should extend the loan for another year. In the event that the company couldn't pay that it was to be in the possession of whoever owned it.

Q. I don't hear the last part of the answer. A. It was to be in the possession of whoever owned the note or owned the money in other words.

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

Q. Did you hear any objection made to that action that was taken at that time from either Judge Endicott or Judge Thompson the other directors during the following years? A. No, sir; never until about 1908, I should I think it was, that Judge Endicott in a meeting of the board undertook to have the resolution passed or a motion made that we were to give back this stock or part of it.

Q. When was that if you recall? A. I think it was in 1908.

Q. It has been testified by Judge Thompson in this case that in 1904 this so-called Thompson resolution, marked Exhibit C-4, was presented and passed; was any such resolution—

Mr. Gaskill: We don't claim that; Mr. McCarter, Mr. Bourgeois misstated that.

Q. It is claimed by Judge Thompson, in his testimony, that some talk occurred as to what it was assumed would be done and that he was instructed to draw a resolution, which he subsequently drew, and incorporated in the form of the document I show you, Exhibit C-4, the so-called Thompson resolution. Did you ever hear of any such transaction as that that ever occurred in 1904? A. No, sir.

Q. Look at that so-called Thompson resolution and tell me when you first remember having heard of it or of any resolution of which it purports to be the draft? A. Why this matter came up some time in 1908. I was asked if I knew

anything about this resolution and I had no knowledge of it and so stated at that time.

Q. Then you were present at that meeting where that inquiry was put to each gentleman? A. I was; yes, sir.

Q. I want you to tell the Vice Chancellor so far as you can recall exactly what occurred with regard to that resolution which was presented. A. It was presented by Mr. Adams, I think it was first read by Mr. Adams presented to every director who was there and I think there was a full quorum, if my recollection serves me right, and the question flatly put to them, "Was this resolution passed to your knowledge?" I believe everyone stated no, with the exception of Judge Thompson and Judge Endicott had no recollection or something to that effect, but Judge Thompson stated that it was passed.

Q. Now, so far as you recall, do you remember any previous occasion when you had ever heard of that resolution or of a resolution of that character? A. No.

Q. Previous to that time had you ever heard any complaint from either Judge Endicott or Judge Thompson or anybody of the transaction?

A. No, sir.

Q. —consummated at the end of October 1898? A. No, sir.

Q. What had been the financial condition of the company, Mr. Kuehnle, between 1899 and five or six years following? A. Well, we were in very hard circumstances from reports at every meeting they had; I didn't go into the books myself.

Q. Well, what reports were made generally? A. Well, they were short of funds, couldn't dispose of the property, several times agitated that thought the land was too high, reduce them and

get people, induce them to buy some of this property, try all kinds of schemes, but it didn't seem to work.

Q. I have been asked to ask you how you fix the year 1908 as the time when this so-called Thompson resolution was first brought to your attention? How do you fix the time? A. Well, there was a certain party here, from Harrisburg, and we had a mining deal on and I was in consultation with Dr. Marvel quite often.

Q. You and he were interested in that same deal? A. Yes, sir.

Q. And how do you tie up to that with regard to this matter? A. Well, we discussed both subjects, you know I would go to see Dr. Marvel quite often.

Q. And while you were discussing that subject, this mining deal, this matter was also discussed? A. Sure.

Q. How do you fix that time, the time of the mining deal as being in the year of 1908? A. Well, I haven't good memory, but I remember that.

Q. What were you down at Dr. Marvel's for? A. Why we went down—at that time we was talking over a mine we thought we were going to make a lot of money out of, you know; Doctor was the president, his partner a gentleman from Harrisburg and a lawyer going out, I believe, and inspected the mine and was ready to report at that time. The consummation was to take place in July, I think it was, in 1908.

Q. Now, Mr. Kuehnle, had you endorsed the paper of the company in 1897 or 1898? A. No, sir.

Q. Were you willing to do so? A. No, sir. That is the reason I put up my money. Dr. Youngman and myself agreed that we wouldn't do it, go on

a joint note and the understanding was that the seven directors were to put up fifteen hundred dollars apiece; the five of us, I believe, done it and the other two gentlemen failed.

Q. Now do you remember that a later meeting in 1909, I think it is on August seventeenth or August thirty-first, the later meeting, that a resolution was passed which, of course, we have heard a great deal with regard to turning back two hundred and eleven shares of stock and paying a dividend of two hundred per cent? A. Mr. Thompson, I believe, made that resolution or offered it.

Q. You voted for that, didn't you? A. I did, yes, sir.

Q. How did you happen to do that? A. Because I thought it was proper. My understanding was these two hundred and eleven shares was in the treasury, never been issued, and consequently never entitled to any of the benefits, and naturally make our stock that we held worth so much more money.

Q. During the time that you voted that had it been arranged to pay the dividends on the balance? A. There were dividends paid of two hundred dollars on each share outstanding on the books in the name of the parties owning it.

Q. After the note D-10 matured did you ever attempt to collect it? A. No.

Q. Did you ever receive any interest on the loan that you made? A. First four months.

Q. After the October following June twentieth, 1898. A. No, sir.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Mr. Kuehnle, when you made this loan in June, 1898, did you receive that note that has been produced here, your note? A. Yes, sir.

Q. Have you had that note ever since? A. Ever since.

Q. Did you receive the shares of stock at the same time? A. I did.

Q. And you kept the shares of stock ever since? A. Yes, sir.

Q. Both note and stock been in your possession ever since? A. Yes, sir.

DR. PHILIP MARVEL, one of the complainants, being re-called, testifies:

Direct-examination by Mr. Bourgeois:

By Mr. Bourgeois: Q. What amount of money was spent for improvements by the St. Leonards Land Company up to and including 1898? A. 1898?

Q. Yes. A. From 1897 to 1898 inclusive fifteen thousand dollars or thereabouts. In 1899 fifteen thousand dollars or up until 1900 had been expended thirty thousand four hundred and nineteen dollars.

Q. 1900 how much? A. In 1900 seventy-four hundred dollars.

Q. 1901 how much? A. Four thousand.

Q. 1902 how much? A. I don't happen to have a record of 1902. I have made my first total at the end of 1901 to be forty-four thousand and twelve dollars.

Q. And how much from that date on? A. From that date on to 1907 there was expended the difference between forty-four thousand and twelve dollars or between fifty thousand nine hundred and seventy dollars and fifty-two cents and forty-four thousand and twelve dollars.

Q. Which was six thousand dollars? A. About six thousand dollars.

Q. That is between 1901, is it, and 1907? A. That is between the beginning of 1902 and including 1907.

CROSS-EXAMINATION by Mr. Gaskill:

Q. Doctor, these moneys, this expenditure for improvements were partially moneys that were borrowed, partially moneys received from the sale of stock, partially from the sale of lots and partially from the sale of mortgages that you had taken as purchase money on lots? A. The general receipts of the company.

Mr. Bourgeois: Now, Judge, that is all we have. There is one question I still want to ask Dr. Youngman if I can think of it tomorrow and tomorrow morning we may want to produce one witness for about five or ten minutes.

Q. You had in 1897 a quarter of a million dollars of assets, 1898, and spent fifteen thousand dollars in cash from the receipts you have just spoken of for those two years? A. A quarter million less sixty-five thousand one hundred dollar mortgage that was against the property.

Q. Which you afterward paid off the sale of lots and so on? A. From time to time.

By Mr. Bourgeois: Q. Was that mortgage ever paid off, that sixty-five thousand one hundred dollar mortgage? A. I think from time to time—I don't know whether the whole morgtage was paid off from time to time it was reduced.

Q. Some lots were released? A. Yes.

Defendants rest.

Complainants' Rebuttal

JOSEPH THOMPSON, a witness having been duly sworn, being re-called, testifies:

Direct-examination by Mr. Gaskill:

Q. Judge Thompson, Dr. Marvel has testified that at the time the resolution was adopted directing the return of the two hundred and eleven shares of the trust stock that you said in effect that if the dividend was paid that all difficulties would be at an end? A. I have no recollection of saying anything of the kind.

Q. They also, several of the witnesses, have testified that at the close of the June meeting in 1898 they called you over the 'phone and told you of the meeting that was in progress and what was being done and agreed to be done by the several directors; have you any recollection of any such conversation as that? A. I don't recall at this time that I was called; however I won't say that I was not.

Q. Did you offer to sell to Dr. Marvel your stock in 1909 at one hundred and seventy-five dollars a share? A. I did not. I paid in 1909 two hundred and fifty dollars a share.

Q. In 1908 did you make any such offer? A. I did not; I offered to sell probably three or four years before that, I offered to sell the stock, I think, at one hundred and seventy-five dollars a share, but that was three or four years before.

Q. Judge Thompson, at the meeting that has been referred to when Mr. Adams produced the Thompson resolution and made a certain inquiry of the different directors, did you at that time, when you demanded the production of the minute book or the loose minutes, state the purpose of your demand and, if so, what was that purpose as stated.

Mr. McCarter: It has all been gone into, your Honor; Judge Thompson testified what occurred on that day.

The Vice Chancellor: I think it would be advantageous to have it gone over again. The other witnesses seemed to be more or less uncertain as to what was said.

A. The purpose of my demanding the production—

Q. The purpose you stated, Judge? A. Why to settle the dispute in relation to the resolution which I claimed had been passed.

Mr. McCarter: I don't think that is responsive.

(Question repeated.)

A. I can not recall the language—

Q. As near as you can? A.—that is my language at this time, but the purpose in demanding the production—

Mr. McCarter: I object to that.

A. —I demand the resolution to sustain the position which I had taken with respect to it.

Q. And that is that the resolution had been passed? A. By the inspection of the minutes yes.

Q. Did you tell the directors or Mr. Adams that if he produced the minutes that you could show that that resolution of yours had been passed?

Mr. Bourgeois: Objected to as having been all gone over and very leading.

The Vice Chancellor: Well, I think you can answer.

Mr. McCarter: Your Honor, he is undertaking on his direct-examination to give the conversation that occurred at that time.

The Vice Chancellor: That is true, Mr. McCarter, but if he has given a vague statement of what occurred I think he ought to be permitted to go into it. I will permit him to testify as to what occurred there. It has been brought into a great deal of prominence in the course of the trial; I don't know it has a great deal of force.

Q. Testify to all that occurred, Mr. Thompson, as though you had not testified before, if you want to repeat further, you may. A. It would be extremely difficult to testify all that occurred. That meeting covered a period of several hours, I think five. I insisted upon the production of the minutes because—

By the Vice Chancellor: Q. Did you state what you wanted them for? A. I wanted them—

Q. Did you state to them what you wanted them for? A. I did. I don't know in what language, but generally I stated that the production of the minutes would show that my insistment at that time that this resolution had been previously passed would appear if they were produced.

By Mr. Gaskill: Q. That was the purpose of making the demand? A. That was the purpose; yes.

Q. And did you get provoked later? A. I did finally, yes.

Q. They say that you called Mr. Adams a damn liar? A. I did, when he said that he didn't know where the minutes were.

Q. Now, Judge Thompson, to go back to the beginning of things, I asked you to state to the Vice Chancellor what the understanding or agreement or arrangement was with reference to the

four hundred and ninety-nine shares of stock that was placed in the hands of Dr. Marvel as trustee?

Mr. Bourgeois: That is objected to in so far as the understanding and arrangement was, if there was any agreement we have no hesitancy or objection to it.

The Vice Chancellor: Well, I don't suppose any written agreement was executed at the time and the only way I know of of arriving at the purpose of the transaction was to testify as to what was done. I guess we will have to go back to the old formula, Judge, as to what was done.

Q. Was there any agreement entered into by you and the other owners of the land sold to the company with respect to the four hundred and ninety-nine shares of stock placed in the hands of Dr. Marvel as trustee, by which you or any of the others retained any personal interest or control in that stock or over it? A. There was not; the stock belonged to the company.

Q. And was it turned over to Dr. Marvel as trustee for the benefit of the company without any reservation? A. It was so far as I had any knowledge. I had no interest in it; that is sure.

Q. Was there ever, to your knowledge, any claim made by any of the directors who were vendors of the land to the company prior to this suit, that they had or had had from the beginning any individual right or claim or control in and to or over that stock? A. I never heard of their making any claim of any interest in it.

By Mr. Bourgeois: Q. Judge what time in 1909 was it that you purchased shares of the St. Leonards Land Company stock at two hundred and fifty dollars a share? A. The title ac-

tually passed the middle of September, the agreement to purchase was I guess two months before that.

Q. That was part of the stock that was transferred to Isaac Bacharach? A. Yes.

ALLEN B. ENDICOTT, a witness produced on behalf of the complainants, having been previously duly sworn, being re-called, testifies:

Direct-examination by Mr. Gaskill:

Q. Judge Endicott, at the time the four hundred and ninety-nine shares of stock were placed in the hands of Dr. Marvel as trustee by you and the other owners of the lands sold to the company, was there any reservation by you or any of the others to your knowledge of any individual interest in or control over that stock? A. None whatever.

Q. And what was the stock transferred to Dr. Marvel for? A. For the benefit of the company.

Q. Absolutely? A. Yes.

Q. And as treasury stock? A. Yes.

Mr. Bourgeois: That is objected to as leading.

Q. I understand, Judge Endicott, that you wish to make a correction in your testimony? A. First as to the two hundred and eleven shares, there is some testimony as to that.

Q. What about those two hundred and eleven shares and the resolution with reference to their return to the company? A. No suggestion that they were returned for the purpose of settling any differences was ever made in my presence until today and by the witness on the stand.

Q. Now then what correction do you wish to make with reference to your representing your

sister Kate? A. That is a slight matter; I don't know it is important. When I was interrogated as to the price paid by my brother to my sister for shares of stock I said I knew the price and that I represented her in that transfer. I am reminded since by the testimony of my brother that he dealt directly with my sister and by looking at the stock book, seeing the receipt, that I didn't make that transfer; when she received the stock I receipted for her and I probably had that in mind when I made that statement before.

By the Vice Chancellor: Q. I would like to ask you whether after hearing the testimony of the various witnesses here for the defense to the effect that they never heard of this transaction questioned until 1908, you still adhere to your testimony that it was questioned as early as 1902 or 1904 at board meetings at which you were present? A. I stated before that I was uncertain as to the time, but I thought it was about that time. I have heard nothing which leads me to change my opinion of that. I did not say nor do I mean that I offered any resolution or made any motion in the board meeting, but it was discussed with the directors. It wasn't a pleasant subject for them to hear apparently and the matter was dropped, but I introduced it frequently.

Mr. Gaskill: May I call your Honor's attention to the fact that C. J. Adams on the stand admitted a number of times that it had been brought up by Judge Endicott.

Complainants rest.

Both sides rest.

EXHIBITS

In the case between Mordecai T. Endicott, *et als.*, Complainants, and Philip I. Marvel, *et als.*, Defendants.

Exhibit C-1

Stock certificate book of St. Leonards Land Co., containing certificates 1 to 103, inclusive, introduced on page 119. Everything necessary from this book will be found in the testimony.

Exhibit C-2

Stock certificate book of St. Leonards Land Co. containing certificates 103 &c., introduced on page 135. Everything necessary from this book will be found in the testimony.

Exhibit C-3

Account of Philip I. Marvel, Trustee, as found on page 306 of the ledger of St. Leonards Land Co., as follows:

Philip Marvel, Trustee

1897			Dr.		
Mch. 20	To	499 shares for impvmt.	305	49,900	
" " "		200 " for pur. R. Est	305	20,000	
1904					

Exhibit C-3

Feb.	24	"	I. G. Adams 5 shs. cancelled			304	500		
"	"	"	C. J. Adams 4 "	"		304	400		
1897			Cr.						
Mch.	20	By	M. D. Youngman	22	Shs.	314	2,200		
Apr.	21	"	Laura Babcock	5	"	376	500		
"	22	"	Louis Kuehnle	20	"	377	2,000		
May	1	"	Wm. Disston	55	"	378	5,500		10
July	"	"	" "	56	"	378	5,600		
Aug.	2	"	" "	55	"	378	5,500		
July	1	"	C. J. Adams	5	"	313	500		
"	1	"	A. B. Endicott	5	"	311	500		
Aug.	16	"	Alvin P. Risley	5	"	338	500		
Dec.	13	"	J. B. Rogers	3	"	316	300		
1898			(Services)						
Jan.	5	"	Peter B. Reed	11	"	381	1,100		
"	6	"	Jos. W. Wilson	11	"	382	1,100		20
"	27	"	" " "	9	"	382	900		
"	"	"	Peter B. Reed	9	"	381	900		
Feb.	26	"	" " "	10	"	381	1,000		
"	"	"	Jos. W. Wilson	10	"	382	1,000		
Mch.	30	"	" " "	10	"	382	1,000		
"	"	"	P. B. Reed	10	"	381	1,000		
Apr.	16	"	" " "	10	"	381	1,000		
"	18	"	Jos. W. Wilson	10	"	382	1,000		
"	22	"	Jno. McDonald	10	"	383	1,000		
									30
1904									
Feb.	24	"	Mina J. Freas	3	"	316	300		
"	"	"	L. I. Wright	3	"	316	300		
1909									
May	18	"	M. D. Youngman	30	"	327	3,000		
"	"	"	Louis Kuehnle	30	"	327	3,000		
"	"	"	I. G. Adams	30	"	327	3,000		
"	"	"	Philip I. Marvel	30	"	327	3,000		
"	"	"	C. J. Adams	30	"	327	3,000		40

Exhibit C-4

Resolution prepared by Judge Thompson and read into the testimony on page 216.

Exhibit C 5-1

"*Resolved,* That each Director borrow the sum of $1500 for the period of one year and to receive 50% excess of the Company's Stock as collateral to said loan to meet the obligations of Alvin P. Risley, contractor. The Company to redeem said stock in one year, with interest at 6%, otherwise to revert to the borrower."

Exhibit C 5-2

"Oct. 5th, 1898.

"Entered but noted as October 15, instead of October 5.

"Pursuant to call a meeting of the St. Leonards Land Co. was held at the office of I. G. Adams & Co., Real Est. & Low Building, Atlantic City, N. J., at 8:30 p. m. There were present, I. G. Adams, C. J. Adams, Dr. Youngman, Philip Marvel and Louis Kuehnle. The subject of the Co's indebtedness to Alvin P. Risley was discussed to some extent and on motion it was decided that each member borrow to the amount of $1,500 each and should receive from the Co. stock 50% in excess of loan as collateral to the same; on motion adjourned.

C. J. ADAMS."

Exhibit C 5-3

Telegram

160 N. Y. Jx 69 820 PM
Dr M D Youngman, Palace Hotel

"*Resolved,* That each director borrow the sum of fifteen hundred dollars for the period of one year, and to receive fifty per cent excess of the corporation stock as collateral to said loan to meet the obligation of Alvin P. Risley, contractor. The company to have the privilege of redeeming the said stock in one year from date with interest at six per cent, otherwise to revert to the said borrower."

M. D YOUNGMAN.

Exhibit C 5-4

Pursuant to call a meeting of the Directors of the St. Leonards Land Co. was held at the office of I. G. Adams & Co., Real Estate and Law Building, Atlantic City, N. J., Oct. 15, 1898, at 8:30 p. m. There were present at said meeting I. G. Adams, C. J. Adams, M. D. Youngman, Philip I. Marvel and Louis Kuehnle.

The subject of the Company's indebtedness to Alvin P. Risley was discussed at considerable length, and on motion of Dr. Youngman the following resolution was unanimously adopted:

"*Resolved,* That each Director borrow the sum of $1500 for the period of one year, and to receive 50% excess of the Company's stock as collateral to said loan to meet the obligations of Alvin P. Risley, Contractor, the Company to have the

privilege of redeeming said stock in one year from date with interest at 6%; otherwise to revert to the borrower."

On motion adjourned, subject to the call of the Chair.

Exhibit C-6

Minutes of the meeting of August 23, 1897, containing resolution offered by Dr. Marvel, and introduced in testimony on page 223 as follows:

"On order of the President a meeting of the St. Leonards Land Co. was held in room 3 of the office of I. G. Adams & Co., Real Estate and Law Building, Atlantic City, N. J., August 23rd, 1897, at eight o'clock, p. m. There were present A. B. Endicott, Philip I. Marvel, Joseph Thompson, M. D. Youngman, William Disston, I. G. Adams and C. J. Adams. The minutes of previous meeting were read and approved. On motion of Joseph Thompson it was ordered that the system of water and sewerage take in all the lands of the Ventnor Land Co. adjoining and West of the St. Leonards Land Co. land and that Ashmead and Hackney be employed to prepare a system of sewerage for the St. Leonards Land Co., also including the lands of the Ventnor and Co., west to Portland Avenue. Dr. Marvel offered the following Resolution:

"Whereas, the St. Leonards Land Co. did on the fifteenth day of April, 1897, enter into a sealed contract with William Disston, of Philadelphia, for the purchase of $20,000 of the Capital stock of the Company, payable as follows: $5,000 on the first day of May, 1897; $5,000 on the first day

of June, 1897; $5,000 on the first day of August 1897, and $5,000 on the first day September, 1897; and

"Whereas the said William Disston having paid for $15,000 worth of the stock and received the same as per agreement.

"Be it resolved, that in consideration of the said William Disston building a house to cost not less than $5,000 on lot purchased by him of the Association, that the payment of the $5,000 coming due on September 1st, 1897, be extended to May 1, 1898, and that it then be optional with him whether he takes the same or not."

On motion adjourned.

Exhibit C-7

Minutes of the meeting of August 23, 1899, introduced on page 229.

Atlantic City, Aug. 23/99.

A meeting of the St. Leonards Land Co. was held at the residence of Philip I. Marvel, 1606 Pacific Ave., Aug. 23, 1899, at 4 o'clock p. m. There were present at said meeting Philip I. Marvel, I. G. Adams, C. J. Adams, Jos. Thompson and A. B. Endicott and M. D. Youngman.

On motion the following resolution was read and adopted:

Resolved, That the right be granted to the Atlantic City Sewerage Co. for the consideration of One dollar to occupy the streets belonging to this Company for the purpose of laying mains and connections thereto, and that the proper officers of the Company be authorized to make and exe-

cute and deliver a deed in accordance with this resolution.

On motion it was decided to place the sale of the lands of the Company in the hands of the different real estate agencies of the city, and that the parties selling receive the proper commission for said sales.

On motion adjourned to meet at the call of the President.

C. J. ADAMS,
Secretary.

Exhibit C-8

Carbon copy of resolution of Judge Thompson, which resolution was introduced above as Exhibit C-4 and read in the record on page 216.

Exhibit C-9

A list of the stockholders given Judge Thompson by Miss Mina Freas, introduced on page 273.

Stock List St. Leonards Land Co. Feby. 26, 1904

Page		
2	Israel G. Adams	252
4	Clement J. Adams	257
7	Clarence L. Cole	1
9	Philip I. Marvel, Trustee	361
13	Allen B. Endicott	171
16	Joseph Thompson	18
17	M. D. Youngman	114
18	Louis Kuehnle	20

Exhibit C-10

19	Laura Babcock Reed	5	
20	William Disston	166	
21	Philip I. Marvel	224	
26	J. Byron Rogers	3	
27	Peter B. Reed	50	
28	Joseph W. Wilson	50	
29	Thompson Irwin	35	
31	Hannah E. Howell	35	10
32	John MacDonald	10	
33	Charles E. Davis	10	
34	James B. Reilly	17	
35	Charles P. Henry	10	
36	Mordecai T. Endicott	30	
37	Charles R. Adams	1	
38	I. Morton Adams	1	
39	Florence Adams	1	
40	Mabel E. Adams	1	
41	Mina J. Freas	3	20
42	Lucius I. Wright	3	
		1,849	

Israel G. Adams	cer #	113	30	Sh.	
Louis Kuehnle		114	30		
Philip I. Marvel		115	30		
M. D. Youngman		116	30		
Clement J. Adams		117	30		
M. D. Youngman		124	30		30
			180		

Exhibit C-10

St. Leonards Land Co. envelope, in which Judge Thompson kept the list of stockholders, &c.; Plain long envelope, "St. Leonards Land Co." written thereon in ink. 40

Exhibit C-11

Graham-Chisholm Company,
Manufacturing Stationers,
20 Warren Street.

New York, Nov. 3, 1905.

Thompson & Cole,
Atlantic City, N. J.

Gentlemen:

We beg to hand you herewith sketch which we suggest would look very attractive on the small letterhead which you ordered in yours of the 26th inst. If this meets with your approval, would you return it to us at your earliest convenience, and we will engrave the die and proceed with the work without any delay.

We would be glad to have you place your orders with us for anything that you may require, and trust that you may see your way clear to give us your patronage in the future. Thanking you for your courtesy, we are,

Yours respectfully.
GRAHAM, CHISHOLM Co.,
Per Graham.

Exhibit C-12

New York, 6/8/06

Thompson & Cole, Atlantic City, N. J.
To Graham-Chisholm Company, Dr.

.....

Order No.
8123

Exhibit C-13

Quantity	Description	Price
500 covers	#6 blue med. die and prtd blk	$4.50

Received Payment
GRAHAM, CHISHOLM CO.,
Per. K. C.
June 15, 1906

Exhibit C-13

Chelsea, Feb. 25, 1904.

Dear Mord:

As I promised, I write to let you know that I have a prospect of selling my St. Leonord stock. Dr. Marvel is talking of getting some one to join him and buying it. Lew went to him and said nothing about your taking some of it, I mean that you talked of it. I think he will want it all if he gets this person to go in with him. So if you are anxious for some of it let me know at once, as I do not want to go any further without saying something about another party. Lew attended the meeting of the St. Leonard Company the other day and from what he learned he thought I had better sell, as it might be some years before it would be sold. They valued the shares at three hundred & fifty which Lew thinks is too high. Joe Thompson said right in the meeting that he would sell out for two hundred & fifty. Dr. Youngman said he would sell also. While others think very different about, I think they are too high in their ideas. Marvel seemed very pleased to buy at two hundred. Lew don't think they will realize what they are expecting to, still he says it is one of those things that you

cannot tell anything about. Let me know as soon as convenient what you think about it.

Love to all

Your aff. sister

HANNAH HOWELL.

Exhibit C-14

Postal card notice of the meeting of February 14, 1908, read into the record on page 375.

Exhibit C-15

Typewritten notice of the meeting of February 11, 1910, on C. J. Adams' stationery; read into the record on pages 375 and 376.

Exhibit C-16

Letter of the St. Leonards Land Co. on the letterhead of C. J. Adams Company, dated September 15, 1909, addressed to Mordecai T. Endicott, read into the record on pages 376 and 377.

Exhibit C-17

Letter of St. Leonards Land Company to Mordecai T. Endicott, dated November 24, 1909, read into the record on page 377.

Exhibit D-1

Note of the St. Leonards Land Co., in favor of Maurice D. Youngman, dated 6/20/98, for $1429.-59, signed by Philip I. Marvel, President and I. G. Adams, Treasurer; as follows:

$1428.59

"....Days Interest....

$.....

Atlantic City, N. J., June 20. 1898.

St. Leonards Land Co. have this day borrowed of Maurice D. Youngman Fourteen Hundred Twenty-eight and 59/100 Dollars payable in four months from the date hereof and have deposited the following:

Certificate No. 116 for thirty (30) shares in the capital stock of St. Leonards Land Company as collateral security for the payment of the same. And, in default of the payment of said loan at maturity, hereby authorize and empower the holder of this obligation to sell, transfer and dispose of said collateral securities, or any part thereof, at private or public sale, with the right of becoming the purchaser and absolute owner thereof, without notice to St. Leonards Land Co., its successor or assigns, and apply the proceeds of the same to the discharge of said loan, interest and expenses of sale; and, in case of any deficiency in realizing proceeds, holding St. Leonards Land Company responsible for any dificiency, with interest.

Payable at THE ATLANTIC SAFE DEPOSIT AND TRUST COMPANY.

(Seal)

PHILIP I. MARVEL,
Pres'dt,

ISRAEL G. ADAMS,
Treasurer."

Exhibit D-2

Letter of Allen B. Endicott to Philip I. Marvel, dated January 27, 1899, read into the record on pages 247 and 248.

Exhibit D-3

Sample letterhead of Thompson & Cole, which is sufficiently described in the testimony, page 299.

Exhibit D-4

Original minute of the stockholders meeting of 2/25/97, introduced in the testimony at page 394:

"Atlantic City, N. J., Feby. 25/1897.

A meeting of the stockholders of the St. Leonards Land Co. was held at the office of I. G. Adams and Co. room No. 3 Real Estate and Law Building, Atlantic City, N. J. at three o'clock P. M. There were present I. G. Adams, C. J. Adams, and Philip I. Marvel. It being the annual meeting of the Company and there being no quorum present, the meeting adjourned subject to the call of the President.

C. J. ADAMS,
Secretary."

Exhibit D-5

Original notice of stockholders meeting of 2/-23/06, introduced on page 394; also notice of said stockholders meeting as published in Atlantic City Daily Press, introduced on page 118 and 119 and bill for such publication:

"NOTICE is hereby given that the annual meeting of the St. Leonards Land Company will be held at the office of C. J. Adams Co., Room 6, Real Estate and Law Building on Friday, February 23, 1906, at 10 o'clock A. M. for the election of directors and officers for the ensuing year, and such other business as may come before said meeting. By order of the President. C. J. Adams, Secretary. Atlantic City, N. J., February 13, 1906."

"Atlantic City, N. J., Feb 14 1906.
St. Leonards Land Co., C. J. Adams, Sec.
to ATLANTIC CITY DAILY PRESS, Dr.

Feb. 14	S. N.	10 times	4.80

Received payment 5/18/06
ATLANTIC CITY DAILY PRESS
Per G. Soeding, Jr."

Exhibit D-6

Original minute of adjourned meeting of March 2, 1907, introduced on page 394:

"Atlantic City, N. J., March 2nd, 1907.

An adjourned meeting of the St. Leonards Land Co. was held at the office of C. J. Adams Co. Room 6, Real Estate and Law Building, on Saturday evening, March 2nd, 1907, at 8 P. M.

The following persons were present: Joseph Thompson, Philip I. Marvel, A. B. Endicott, M. D. Youngman, I. G. Adams and C. J. Adams.

Exhibit D-6

The minutes of the previous meeting were read and approved. A resolution was offered by Joseph Thompson and adopted, as follows:

"That a street of the width of fifty feet, to be known as Winchester Avenue, be opened between Ventnor Avenue and the Thoroughfare, and beginning in the westerly line of Surrey Place and extending of that width to the Easterly line of Dudley Place; also beginning in the Westerly line of Dorset Place to the easterly line of Derby Place, being one hundred and sixty-five feet north of the northerly line of Ventnor Avenue; also beginning in the westerly line of Derby Place two hundred and fifteen feet North of the northerly line of Ventnor Avenue, and extending to the easterly line of Cornwall Place, and that Blocks 11, 13, 14 and 15 and 16, be subdivided so as to have a depth of eighty-seven and one-half feet fronting the Southerly line of Winchester Avenue, also the Northerly line of Ventnor Avenue in said blocks.

It is further Resolved that all lots fronting on the Thoroughfare north of Winchester Avenue be made thirty-five feet on the corners, and between corners thirty feet, and extending from the Northerly line of Ventnor Avenue to the exterior line as laid down by the Riparian Commissioners; with the following Restrictions:

'That no building shall be erected on said Winchester Avenue nearer than five feet of the Northerly line of said Winchester Avenue and not nearer than five feet of the side lines of streets extending northward of said Winchester Avenue to the Thoroughfare, nor nearer than three feet of the side lines of lots located on the northerly side of said Winchester Avenue.' "

Exhibit D-7

On motion of Joseph Thompson it was decided that Lots 9, 10, 11 and 12 in Block 13, be offered at $20 per front foot, and that Lots 13, 14, 15 and 16 in Block 13, be offered at $25 per front foot, and that the cash required be one-third of the purchase price of said lots, the Company to accept a mortgage at six per cent. for the balance of the purchase price.

The Secretary was authorized to have a Supplementary Map made and filed, showing the above changed, and also to get estimates for the grading and graveling of Winchester Avenue, and also the curbing and sidewalks, and have same awarded to the lowest bidder.

The Officers of the Company were authorized to execute all papers under the revised plan.

On motion adjourned, subject to call.

C. J. ADAMS,
Secy."

Exhibit D-7

Original minute of annual meeting of February 24, 1908, introduced on page 394:

"February 24th, 1908.

Pursuant to call the Annual Meeting of the St. Leonards Land Co. was held in Room 6, Real Estate and Law Building, Atlantic City, New Jersey. The following persons were present: Philip I. Marvel, I. G. Adams, M. D. Youngman, Joseph Thompson, C. J. Adams and Lewis Howell.

On Motion of Dr. Youngman, the meeting stood adjourned to meet at the same place on Wednesday, February 26th, 1908, at 8 o'clock P. M.

C. J. ADAMS,
Secy."

Exhibit D-8

Minute of February 11th, 1910, introduced page 394.

"Atlantic City, N. J.
February 11th, 1910.

The annual meeting of the stockholders of the St. Leonards Land Co. will be held at the office of the company, Room 6, Real Estate & Law Building, Atlantic City, N. J., at 11 o'clock A. M., on Tuesday, February 15th, 1910, for the election of Directors and the transaction of such other business as may properly come before the meeting.

C. J. ADAMS,
Secretary."

Exhibit D-9

Minutes of Annual Meeting of Stockholders, dated February 15, 1910, introduced on page 394.

"Atlantic City, N. J., Feb. 15th, 1910.

The annual meeting of the stockholders of the St. Leonards Land Company was held this morning at 11 o'clock at the office of the Company, Room 6 Real Estate and Law Building, the following stockholders being present:

Dr. Philip I. Marvel, C. J. Adams, Judge Allen B. Endicott, Joseph H. Marvel, Thomas Irwin, J. Byron Rogers, and Lucius I. Wright.

Judge Endicott made a motion that Dr. Marvel be made Chairman and C. J. Adams Secretary, of the meeting and that the polls be opened for the election of officers at 11 A. M. and remain open until 12 o'clock noon.

The meeting was then opened for the nomination of Directors.

Exhibit D-9

Judge Endicott nominated Dr. Philip I. Marvel, C. J. Adams, Joseph Thompson, Isaac Bacharach, Thompson Irwin, Dr. M. D. Youngman and Louis Kuehnle.

C. J. Adams nominated Judge Endicott.

Thompson Irwin nominated Lucius I. Wright.

On motion of Judge Endicott Joseph H. Marvel was made Judge of the election and Mr. Carlton E. Adams and Miss Stutzbach clerks of the election.

On motion it was resolved that the nominations now close, it being 12 o'clock noon, and that the result be declared by the Judge of the election. After counting the ballots Joseph H. Marvel, Judge of the election, declared the result as follows:

Dr. Philip I. Marvel	6 votes
C. J. Adams	6 votes
Judge Allen B. Endicott	6 votes
Louis Kuehnle	6 votes
Joseph Thompson	6 votes
Isaac Bacharach	6 votes
Dr. M. D. Youngman	6 votes
Thompson Irvin	No. votes
Lucius I. Wright	No. votes

cast by 764 shares of stock; and

Dr. Philip I. Marvel.
C. J. Adams
Judge Allen B. Endicott
Joseph Thompson
Isaac Bacharach
Louis Kuehnle
Dr. M. D. Youngman

the seven receiving the greatest number of votes were declared elected.

On motion the Stockholders' Meeting adjourned

and the Directors elected were instructed to meet at the call of Dr. Philip I. Marvel, Chairman of the meeting.

C. J. ADAMS,
Secretary."

Exhibit D-10

Note of St. Leonards Land Co. to Louis Kuehnle, introduced on page 416:

"Atlantic City, N. J., June 20, 1898.

The St. Leonards Land Company have this day borrowed of Louis Kuehnle, Fifteen Hundred Dollars, payable in four months from the date hereof, and have deposited the following: Certificate No. 114 for thirty shares of the capital stock of the St. Leonards Land Compny as collateral security for the payment of the same. And, in default of the payment of said loan at maturity borrower hereby authorize and empower the holder of this obligation to sell, transfer and dispose of said collateral securities, or any part thereof, at private or public sale, with the right of becoming the purchaser and absolute owner thereof, without notice to borrower heirs executors or administrators, and apply the proceeds of the same to the discharge of said loan, interest and expenses of sale; and, in case of any deficiency in realizing proceeds holding borrower responsible for any deficiency, with interest.

Payable at THE ATLANTIC SAFE DEPOSIT AND TRUST COMPANY.

PHILIP I. MARVEL,
Presdt.

ISRAEL G. ADAMS,
Treasurer.

Exhibit D-11

There is no record in the testimony of the admission of any Exhibit numbered "D-11."

Exhibit D-12

Note of St. Leonards Land Co. as follows:

"Atlantic City, N. J., January 8th, 1904.

$2000.00

.....Four.....months after date we promise to pay to the order of Israel G. Adams at The ATLANTIC SAFE DEPOSIT & TRUST CO. of Atlantic City, N. J. Two thousand 00/100 Dollars without defalcation or discount, value received. No. 9952 Due May 9.

ST. LEONARDS LAND COMPANY
per Israel G. Adams
Treasurer.

PAID

ENDORSED: Israel G. Adams, Philip I. Marvel, St. Leonards Land co., per Israel G. Adams, Treas.

Exhibit D-13

Note of St. Leonards Land Co., as follows:

"$2000.00.

Atlantic City, N. J., May 9th, 1904.

.....Four.....months after date we promise to Pay to the order of Israel G. Adams at The ATLANTIC SAFE DEPOSIT & TRUST CO. of Atlantic City, N. J.

Exhibit D-14

Two Thousand 00/100.....Dollars without defalcation or discount, value received.
No. 367 Due 9/9/4

ST. LEONARDS LAND CO.,
per Israel G. Adams
(PAID) Treas.

ENDORSED: Israel G. Adams, Philip I. Marvel,
ST. LEONARDS LAND CO.,
G. Adams, Treas."

Exhibit D-14

Note of St. Leonards Land Co., as follows:

"$2000.00.

Atlantic City, N. J., September 9th, 1904.

.....Four.....months after date we promise to Pay to the order of Israel G. Adams at The ATLANTIC SAFE DEPOSIT & TRUST CO. of Atlantic City, N. J.

Two Thousand ..... Dollars without defalcation or discount, value received.
No. 779 Due 1/9/5

ST. LEONARDS LAND COMPANY
per Israel G. Adams,
(PAID) Treas.

ENDORSED: Israel G. Adams, Philip I. Marvel,
St. Leonards Land Co., per Israel G. Adams, Treas. Protest waived,
Israel G. Adams."

Exhibit D-15

Note of St. Leonards Land Co., as follows:

"$2000.00.

Atlantic City, N. J., January 9th, 1905.

Four..... months after date we promise to Pay to the order of.....Israel G. Adams at The ATLANTIC SAFE DEPOSIT & TRUST CO. of Atlantic City, N. J.

Two Thousand ..... Dollars without defalcation or discount, value received.

No. 1181 Due 5/9/5

ST. LEONARDS LAND COMPANY

per Israel G. Adams,

(PAID) Treas.

ENDORSED: Israel G. Adams, Philip I. Marvel, S. Leonards Land Co., per Israel G. Adams, Treas."

Exhibit D-16

Note of St. Leonards Land Co., as follows:

"$2000.00.

Atlantic City, N. J., May 9th, 1905.

.....Four.....months after date we promise to Pay to the order of Israel G. Adams at The ATLANTIC SAFE DEPOSIT & TRUST CO. of Atlantic City, N. J.

Two Thousand 00/100.....Dollars without defalcation or discount, value received.

No. 1454 Due 9/11

ST. LEONARDS LAND COMPANY,

per Israel G. Adams,

(PAID) Treas.

ENDORSED: Israel G. Adams, Philip I. Marvel, S. Leonards Land Co., per Israel G. Adams, Treas."

Memorandum

(*Filed,*)

IN CHANCERY OF NEW YORK

Between MORDECAI T. ENDICOTT, *et al.*, Complainants, and PHILIP I. MARVEL, *et al.*, Defendants.	On motion for allowance of counsel fee and costs.

Allen B. Endicott, for the motion.
George A. Bourgeois, opposed.

LEAMING, V. C.

I do not think costs should be taxed against the defendant directors. They supplied to the corporation pecuniary help at a time when such help was desperately needed, and I attribute to them no improper motives in taking over the stock in satisfaction of the money due from the company.

The taxed costs should, in my judgment, be borne by defendant corporation. The recovery enures to the benefit of the corporation and the corporation should discharge the taxed costs incident to the recovery.

It is not my practice to allow counsel fees to prevailing parties in lieu of the allowance provided by statute pursuant to the power for that purpose conferred by 1 G. S., p. 445, Sec. 91, except in foreclosure cases especially provided for by Court rule.

Memorandum

In suits involving the administration of trust funds such allowances are almost uniformly made to the several litigants payable out of the fund. These allowances are pursuant to the general powers of the Court and in no way dependent upon the statute above referred to. Such allowances are designed to be measurably compensatory for the services performed for the fund by the respective parties in the litigation.

But under the power conferred by the statute above referred to the allowance is to the prevailing party only, and when made is not, in the practice as I understand it, in an amount designed to compensate counsel in such manner as to relieve his client from that burden. It is, on the other hand, an allowance to be embodied in and takes the statutory allowance provided for in a taxed bill of costs.

In view of the fact that the taxed costs in this suit are to be paid by the corporation which receives the fruits of recovery, I think it proper to allow a small counsel fee to be included in the taxed bill; but not in an amount commensurate with the value of the time and labor of counsel for complainants.

I will advise a clause in the final decree allowing a counsel fee to be included in the taxed bill of costs to the amount of five hundred dollars.

Submitted July 7, 1913.

Determined July 31, 1913.

Opinion

Between MORDECAI T. ENDICOTT, *et al.*, Complainants, and PHILIP I. MARVEL, *et al.*, Defendants.	Final hearing on bill to set aside a sale and for an accounting.

The amended bill herein has been filed by certain stockholders of the St. Leonard's Land Company for the benefit of that corporation. The relief sought is against five of its seven directors. The corporation is joined as a defendant because the board has refused to authorize the suit.

The controversy arises through loans of money made to the corporation by the five defendant members of its board of directors. The directors who made the loans each received from the company to secure the loans certain collaterals which collaterals have since been applied in satisfaction of the loans. The amended bill seeks to enforce the restoration of these collaterals and an accounting.

In May, 1898, the corporation was in pressing need of money. At that time certain capital stock of the corporation (which stock is conceded to have been fully paid) was held by an individual in trust for the corporation for purposes of sale by the corporation for its use. May 19, 1898, a resolution of the board was adopted authorizing the president and treasurer to borrow for the corporation $10,000 and to cause double that amount of the trust stock above referred to to be pledged as security for the loan. The resolution is vaguely worded, but its meaning has been made reasonably clear. Failing to find any person outside the

board willing to make the loan, five members of the board—defendants herein—each loaned the corporation $1,500 and received therefor collateral notes of the corporation pledging thirty shares (par $3,000) of the trust stock already referred to. The other two members of the board refused to make similar loans. The money so borrowed was used to pay debts of the corporation. The minutes of the board disclose no resolution specifically authorizing these loans and pledges, but the testimony indicates that such a resolution may have been adopted at about the time the loans were made. The minutes are, in fact, so inadequately kept that they afford little light touching the transactions of the board. The notes were severally dated June 20, 1898. To one of the directors who made a loan no note appears to have been given, but stock was issued to him to secure his loan. Under date of October 15, 1898, shortly before the notes matured, the minutes of the board disclose the following resolution as having been adopted:

> "*Resolved,* That each director borrow the sum of fifteen hundred dollars for the period of one year, and to receive fifty per cent excess of the company's stock as collateral to said loan, to meet the obligation of Alvin P. Risley, contractor. The company to have the privilege of redeeming said stock in one year from date with interest at six per cent, otherwise to revert to the borrower."

This minute, like many others found in the minute book, is almost unintelligible, standing alone. It appears to authorize an original loan for one year, whereas the loan had been already made by five members of the board and the remaining two

members, who were not present at that meeting, had positively refused to loan. The amount of collateral referred to in the resolution is fifty per cent excess, whereas the amount which had been already given was one hundred per cent excess. The resolution is also silent touching the amount to be credited to the company for the collateral in the event of the company failing to redeem it. The testimony of the directors who made the loans and who were all present at this meeting is that the resolution which was adopted was to enable the company to have one year in which to redeem the stock which had already been pledged, failing in which the stock should then become the absolute property of the pledgees and the indebtedness of the company became thereby discharged. The testimony of one of the directors who made no loan is to the effect that he never knew of any action of the board limiting the period of redemption until shortly before the bill was filed, and that he had, from time to time, urged at board meetings the redemption of the stock. The earliest date at which he could positively he state he so urged at a board meeting was in the year 1902. No further action touching these loans appears to have been taken by the board before February, 1904, and a dispute exists touching the action which it is claimed was taken by the board at that time. It is claimed that at that time a redemption of the stock of the company was urged by the two "dissenting" members of the board and resisted by the five members who had made the loans, and that one of the dissenting members then offered a compromise resolution to the effect that one-half of the pledged stock should be surrendered and the remaining portion retained by the pledgees, to the end that the amounts paid by the several

pledgees should be the par value of the stock by them retained. The testimony touching the compromise resolution is in hopeless conflict. The two dissenting members of the board testify that the resolution passed with one of them voting against it. The other members of the board testify that no such resolution was ever adopted. It is probably impossible to state, with entire certainty, what the truth may be touching this resolution. Its absence from the minute book is of little or no probative force in view of the way the minutes were kept. None of the transactions herein referred to have at any time been brought to the attention of a stockholder's meeting of the corporation. At a meeting of the board August 17th, 1909, a further demand for the return of the pledged stock was peremptorily refused and permission to permit suit to be brought by the company was also denied. This suit is therefore brought by stockholders in behalf of the corporation to enforce the rights of the corporation.

Allen H. Endicott and Joseph H. Gaskill for complainants.

Bourgeois & Coulomb and Robert A. McCarter, for defendants.

LEAMING, V. C.:

It will be observed that present conditions have arisen from two several transactions authorized by the board of directors of the corporation in which complainants are stockholders. The first transaction was a loan to the corporation by five of the seven members of its board. The notes of the corporation which were executed for the money so loaned were collateral notes in the usual form pledging as security the stock here in ques-

tion. No objections to that transaction have been urged by complainants. The corporation was in urgent need of the money and efforts to procure the loan from others, with the same collateral, had failed. The second transaction occurred when these notes fell due. That transaction was an engagement entered into at a meeting of the board between the corporation and these five directors to the effect that the corporation should have one year's time in which to redeem the collateral by paying back the money, failing in which the collateral should then become the absolute property of the directors who made the loans, and the indebtedness of the corporation should be thereby discharged.

It will be perceived that this was an engagement made by the corporation, through the medium of its board of directors, with members of its board, touching property of the corporation. The infirmities of such a contract which arise from the circumstance that it is made by the board with members of the board have been repeatedly defined in this state. Such contracts are not void by reason of the circumstance stated; they are voidable. They can not be enforced, as such, against the will of the corporation, promptly asserted. Enforceable obligations of the corporation may arise from the transaction—such as an obligation to repay money loaned—but can not arise from the convention as against the promptly asserted will of the corporation.

There will be found in reported cases statements to the effect that a contract voidable because made between a corporation and its directors may be avoided or repudiated by the corporation at the instance of a stockholder; the suggestion being that upon a bill being promptly filed

by a stockholder in behalf of the corporation the voidable contract becomes thereby void and its contractual force destroyed. It seems clear that this view, if it can be said to have at any time been entertained in this State, can not be longer accepted consistently with the principles defined by our Court of Appeals in United States Steel Corporation vs. Hodge, 64 N. J. Eq. (19 Dick.), 807. It is there pointed out that where the only infirmity of a contract is the single circumstance that it has been made by a board of directors, acting in behalf of the corporation, with members of the board, the power to sanction such a contract belongs to the stockholders in stockholders' meeting assembled. Indeed that power is everywhere recognized, even to the extent of holding that the failure of stockholders' meetings to promptly repudiate the contract on the ground stated after adequate notice of such meetings is operative to affirm the contract. If the option to affirm or disaffirm a contract which is voidable because made by the corporation, through the medium of its board of directors, with or for the benefit of members of the board, resides in the body of stockholders it seems obvious that a single stockholder can not exercise that option and render the contract void by the mere act of filing a bill for that purpose; if the option resides in the stockholders clearly it can not be exercised by less than all the stockholders except in a stockholders' meeting. In the present case the corporation has not asserted its option to either sanction or repudiate this engagement touching the collateral here in question; the transaction has at no time been brought to the attention of a stockholders' meeting. Any presumption of ratification by the corporation arising from mere lapse

of times become impotent when it affirmatively appears that no stockholders' meeting has ever been apprised of the transaction. It may therefore be here assumed that the power of affirmance or disaffirmance still resides in the body of stockholders so far as that power is dependent upon the mere circumstance that the engagement in question was with directors instead of with disinterested third parties.

But there are engagements which may be made by directors of a corporation with themselves in behalf of the corporation which ratification or even express sanction of the majority of stockholders at a stockholders' meeting can not support against the will of a single dissenting stockholder. In cases of that nature (as well as in cases of voidable contracts which have been promptly repudiated by the stockholders), a single stockholder may maintain a bill for relief in behalf of his corporation similar to the present bill, in the event of his inability to procure the corporation to faithfully prosecute such a suit in its own behalf. While the business management of a corporation primarily belongs to its directors, and while, unless specially restrained, their powers necessarily include the exercise of a broad field of business discretion, yet that discretion must be lawfully and honestly exercised; they can not give corporate property to themselves or to others, nor can the majority of stockholders sanction such an act. The transactions of a board which can not be sustained against the will of a single stockholder, either with or without the sanction of the remaining stockholders, are acts which are either *ultra vires,* fraudulent or illegal. U. S. Steel vs. Hodge (*supra*).

The transaction which is here challanged is the result of a resolution passed at a meeting of the board of directors in which five of the seven members of the board were present; these five directors were the five persons who had theretofore made the loans to their corporation. At the time the resolution was passed by them these five directors severally held notes which they had theretofore caused the corporation to execute to them for the money which they had loaned, and these notes were about to mature. These several notes pledged the stock here in question as collateral security for their payment. By the resolution which was then adopted the corporation was given one year in which to pay these notes, falling in which the collateral which secured the notes was to become the absolute property of these directors. It has been held that a contract between a pledgor and pledgee of the nature stated is void on grounds of public policy and inoperative to terminate the equity of redemption. 2 Kent's Com., Sec. 583; Story's Com. Bail., Sec. 345; 22 Am. & Eng. Enc. Law, (2d ed.), 877. But assuming that no legal obstacle exists to prevent a pledgor from contracting with his pledgee that in consideration of an extended time for payment the pledge shall automatically become the property of the pledgee in the event of failure to pay at the time agreed upon, providing the contract be found fair, open and intelligent, yet such a transaction necessarily demands the closest possible scrutiny of a Court of Equity whose especial duty is to guard and preserve equities of redemption against harsh or unconscionable conduct of creditors toward their debtors. See 31 Cyc., 858, 859. The claim is made in this case that at the time this resolution was passed and also at the

time the period of redemption expired the collateral here in question was worth about double the amount that it was pledged to secure. I incline to the view that this claim is well founded, but before reviewing the testimony on that subject another concurrent element of the transaction will be here considered.

It will be observed that at the time the resolution whichi limited the period of redemption was adopted the individual interests of the five directors who passed the resolution were essentially hostile to the corporation in any effort made or to be made by them looking to the enforcement of the indebtedness. They could have sued the corporation for the recovery of the money due them. They could have sued to foreclose the equity of redemption of the corporation in the collateral. They could, possibly, have sold the collateral under the specific power contained in the instrument of pledge. But in any of these proceedings an absolutely essential prerequisite would have been such notice to the corporation as the circumstances demanded to fully and adequately disclose the fact of hostile proceedings against the corporation by those with whom the management and guardianship of the business interests of the corporation were for the time being primarily intrusted. This I understand to be the underlying principle upon which our Court of Appeals bases its decision in Marr vs. Marr, 73 N. J. Eq. (3 Buch.) 643. The proceedings which were in fact taken can scarcely be regarded as less hostile in their inherent nature than either of the three proceedings above suggested. Instead of pursuing either of the open remedies referred to an arbitrary date for forfeiture of title to the collateral was fixed and that at a meeting of the

board at which no director was present except those sustaining the relations of hostile interest. So far as the evidence discloses this resolution of forfeiture—it seems impossible to otherwise characterize it—was unknown to any other director or stockholder of the corporation until years after the period of redemption had expired; so far as practical notice to the corporation is concerned the resolution may be said to have remained wholly in the breast of men who adopted it until long after its terms became operative to vest absolute title in them. At the expiration of the period named for redemption there was no one other than these interested directors to even consider in behalf of the corporation the propriety of a redemption. At the expiration of the year no action was taken by the board in the nature of a consideration in behalf of the corporation of the propriety of redemption, and no thought appears to have been seriously given to that subject by any one.

It is not intended by these observations to attribute bad faith to these five directors. On the contrary it may well be doubted whether at the time referred to either of them really wanted the stock at the price. What is here made the basis of this decision is the principle of law which denies to directors of a corporation who are its creditors holding collateral security the right to in effect foreclose the equity of redemption of the corporation in the collateral without adequate notice to the corporation which they represent. If it be found that the value of the collateral was far in excess of the amount of the debt, the illegality of the transaction as against the will of a single dissenting stockholder becomes the more apparent.

After so long a period of time it is not easy to determine with accuracy what a fair market price for its capital stock may have been at the time here in question. The corporation was organized in the year 1896 with an authorized capital stock of the exact amount of the value of the land which it was proposed that the corporation should purchase. The land was then conveyed to the corporation, subject to a mortgage. Stock was issued to the vendors of the land to the amount of the purchase price less the amount of the mortgage. Stock to the amount of the mortgage was unissued; the plan being to retain that stock to meet the mortgage. The evidence is in harmony to the effect that the par value of the stock issued in payment for the land represented the real value of the land, in excess of the mortgage, at that time. The vendors of the land thereafter transferred a large percentage of the stock which had been issued to them to a trustee for the corporation under a trust enabling the corporation to sell the trust stock to raise money for the purchase of additional land and for development purposes. It is a part of this trustee stock which is now the subject of dispute. Purchasers for this trustee stock were found from time to time at prices ranging from $92 to $95 per share (par $100 per share) until the early part of the year 1898. The resolution here in question was adopted October 5, 1898, and, if deemed operative to vest title to the stock in defendant directors in October, 1899 will confer title upon them at $50 per share. No sale of either the trustee stock or of other stock of the corporation appears to have ever been made at less than in excess of 90 per cent of its par value. In September, 1899 Judge Endicott—one of the directors who was not pres-

ent at the time the resolution in question was adopted and who testifies that he did not know of its adoption until shortly before this suit was brought, purchased by Charles F. Davis stock of the corporation for $150 per share. In 1900 he sold stock at $120 per share. In 1903 and also in 1904 for $200 per share. His testimony is to the effect that the value of the stock of the corporation steadily increased from the beginning. Judge Thompson, the other absent director, sold stock in 1899 at par and also above par, and testifies that it has at no time been worth less than par. There is testimony to the effect that in 1898 or 1899 stock was offered "on the street" for $50 per share, but no specific instances were given and no sales at less than $92 per share appear to have been made at any time. A resolution of the directors was adopted May 6th, 1897 to the effect that no company stock should be thereafter sold at less than par. Whether this resolution refers to the trustee stock is not certain. That resolution has at no time been rescinded.

While it is difficult, as already suggested, to at this time determine with accuracy what the market value of the stock in question may have been in 1898 and 1898, the evidence would seem to demand a finding that it was in excess of $90 per share, or approximately double the amount at which defendant directors took overthe stock here in question.

It is strenuously urged in behalf of defendant directors that such laches is to be attributed to complainants as should be operative to afford a bar to relief under the present bill. It seems clear that this defense can not prevail. The rule as stated in Cook on Stockholders, Sec. 685, is as follows:

"Laches is a defense only when the stockholder with a full knowledge of the facts has delayed an unreasonable length of time in bringing his action. These two elements, knowledge and delay, are the essential elements of the defense. Until the stockholder has full and complete knowledge of all the essential facts which would be likely to induce him to institute the action, the beginning of the time from which laches will run can not be said to commence. * * * But it is not incumbent on the stockholder to keep himself informed as to the various acts of the corporation. He is not chargeable with knowledge merely because he might have ascertained the facts by an examination of the corporate books. Moreover, it is the well established rule that lapse of time alone can not support the defense of laches. There must be both knowledge and delay."

See also 2 Cook on Cor., Sec. 731. No laches can be attributed to some of the complainants. The fact that other complainants who have joined in the bill are found to own stock the title to which has passed through former owners to whom laches may be attributed can afford no bar to the assertion of the rights of the corporation by complainants to whom no laches can be attributed. The objection of laches of the individual stockholder goes to his right to assert the property rights of the corporation; that right can not be impaired by the laches of another stockholder who may have joined in the bill. The right of action is in no sense joint. *Marr vs. Marr*, (*supra*), can not be regarded as adverse to this view. In *Marr vs. Marr,* the corporation was a defunct body and could not for that reason be appropriately made the recipient of the recovery.

The delay in this case has in fact caused no real injury to defendants. The stock in question is still held by them except as to one of them; as to that one it is held by his grantee who holds the indemnity against the result of this suit. The recovery will restore to defendant directors the money they loaned with interest upon their returning the stock to the trustee from whom they received it and returning to the treasury of the corporation the dividends they have received on the stock.

I will advise a decree pursuant to the prayer of the bill.

Final Decree

IN CHANCERY OF NEW JERSEY

Between
MORDECAI T. ENDICOTT, *et al.*,
Complainants,
and
PHILIP I. MARVEL, *et al.*,
Defendants.

This matter coming on to be heard in the presence of Allen B. Endicott, Jr., and Joseph H. Gaskill, Solicitors and of counsel for complainants, and George A. Bourgeois and Robert H. McCarter, Solicitors and of counsel for the defendants upon bill filed by Mordecai T. Endicott, Joseph H. Wilson, Charles P. Henry, Eva Davis Dodd, J. Estell Evans and Frederick C. Robbins, stockholders of a corporation under the laws of

the State of New Jersey known as the St. Leonard's Land Company, who filed the bill on behalf of the corporation, and for the benefit of the shareholders of the same, against the St. Leonards Land Company, Philip I. Marvel, trustee, Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants, the said Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams being directors of the said St. Leonards Land Company, and the Court having read the bill and answer and taken proofs in open Court in support of the allegations contained therein, and having heard the argument of the counsel of the respective parties, and duly considered the same;

And it appearing that the said Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants, each loaned said Company the sum of Fifteen Hundred Dollars for the uses and purposes of the Company, and that they each afterwards received as collateral security for said loans thirty shares of the stock of said Company held by Philip I. Marvel, Trustee, for the benefit of said Company, which said stock so pledged and received as collateral security was part of the assets of said Company, and belonged to the shareholders thereof;

And it further appearing that said loans made by said Philip I. Marvel, Morris B. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants were not repaid when the notes given for the same became due, and that thereupon the said Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants each converted to his own use said shares of stock so pledged as

collateral security without notice to the stockholders of said Company, and without selling the same, or in any way foreclosing the equity of redemption therein;

And it further appearing that said shares of stock so pledged as collateral security are of large value greatly in excess of the amount loaned said Company, and that said transaction was an engagement made by the Corporation through the medium of its Board of Directors with members of its Board touching the property of the Corporation, and that the transaction had at no time been brought to the attention of the stockholders' meeting, and that no notice thereof was given to the Corporation, or the stockholders thereof.

It is thereupon on this thirty-first day of July in the year of our Lord, One Thousand nine hundred and thirteen, ORDERED, ADJUDGED AND DECREED that the said Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants as aforesaid, transfer to said Corporation said shares of stock so pledged as collateral security and converted by said Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defendants, to their own use, and that they repay to the said Corporation all dividends received by them on said shares of stock, and all moneys paid to them, and to each of them on said shares, by way of distribution of the cash assets of said Company, together with interest on the same from the time of the receipt thereof.

And it is further ordered, adjudged and decreed, that upon the transfer by the said Philip I. Marvel, Morris D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, defend-

ants, of said shares of stock, and the repayment of all moneys received by them on said shares by way of dividends or distribution of assets with interest thereon, that they shall each be entitled to receive from said Company the said sum of fifteen hundred dollars loaned the said Company, together with lawful interest on the same.

And it is further ordered, adjudged and decreed, that the taxed costs of complainants be paid by the said St. Leonard's Land Company, and that there be included in the taxed bill of costs by way of counsel fee to counsel of complainants a counsel fee of five hundred dollars in lieu of the allowance for counsel fee now provided by statute.

E. R. WALKER, C.

Respectfully advised
E. B. Leaming, V. C.
A true copy.

SAM K. ROBBINS,
Clerk.

Notice of Appeal

IN CHANCERY OF NEW JERSEY

Between MORDECAI T. ENDICOTT, *et als.*, Complainants, and PHILIP I. MARVEL, *et als.*, Defendants.	On Bill for Relief.

The defendants hereby appeal from the whole and every part of the decree made in the above cause on the thirty-first day of July, A. D., nineteen hundred and thirteen, and particularly from that portion of said decree directing the said de-

fendants, Philip I. Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams and Israel G. Adams, to transfer to the St. Leonard's Land Company thirty shares of the capital stock of said Company, and directing and requiring the said defendants to repay to the said corporation all dividends received by said defendants on said shares of stock, and all moneys paid to them and each of them on said shares, by way of distribution of the cash assets of said Company, together with interest on the same from the time of the receipt thereof; and also from that portion of the decree allowing to complainants' counsel a fee of Five Hundred Dollars, to be paid by the St. Leonard's Land Company in lieu of the counsel fee now provided by Chancery.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel with Defendants.

I conceive there is good cause for appeal in the above stated cause.

HARRY R. COULOMB,
Of Counsel with Defendants.

Petition of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

Between Mordecai T. Endicott, *et als.*, Complainants and Respondents, and Philip I. Marvel, *et als.*, Defendants and Appellants.	On Bill for Relief.

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

The petition of Philip I. Marvel, Trustee, Philip I. Marvel, individually, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams, Israel G. Adams and St. Leonard's Land Company, defendants and appellants in the above stated cause, respectfully shows that your petitioners find themselves aggrieved by a final decree made in the Court of Chancery of New Jersey, by his Honor, Edwin R. Walker, Chancellor of the State of New Jersey, bearing date the thirty-first day of July, A. D., nineteen hundred and thirteen, in a cause wherein the said Mordecai T. Endicott, *et als.*, are complainants and the said Philip I. Marvel, *et als.*, are defendants, in this respect, to wit:

1. Because said decree orders, adjudges and decrees that Philip I. Marvel, Maurice D. Youngman, Louis Kuehnle, Clement J. Adams, Israel Israel G. Adams, transfer to the St. Leonard's Land Company thirty shares of stock each.

2. Because said decree orders, adjudges and decrees that said defendants repay to said St. Leonard's Land Company all dividends received by them on said shares of stock and all moneys paid to them and to each of them on said shares by way of distribution of the cash assets of said Company, together with interest on the same from the time of the receipt thereof.

3. Because the Chancellor in said decree finds as a fact that each of said defendants received thirty shares of the stock of the St. Leonard's Land Company as collateral security for the loan of Fifteen Hundred Dollars.

4. Because the Chancellor in his said decree finds as a fact that the said defendants converted to their respective uses said shares of stock without notice to the stockholders of the St. Leonard's Land Company.

5. Because the Chancellor in his said decree finds as a fact that the transaction aforesaid was an engagement made through the medium of the Board of Directors with members of its Board touching the property of the corporation, and that the transaction had at no time been brought to the attention of the stockholders' meeting, and that no notice thereof was given to the corporation or the stockholders thereof.

6. Because the Chancellor in his said decree allows complainants' counsel a Five Hundred Dollar counsel fee.

And your petitioners appeal from the said decree in the above respects:

1. Because the complainants were barred by laches from maintaining their said bill for the relief prayed for.

2. Because the prosecution of said suit was barred by an Act of the Legislature of the State of New Jersey, approved April 8, 1903, and known as chapter 182 of the laws of that year, page 362, entitled "A supplement to an Act entitled 'An Act concerning corporations,' Revision of 1896."

3. Because all of the complainants at the time they acquired their stock in said corporation knew of the transaction whereby the defendants acquired the shares of stock mentioned in said decree.

4. Because at the time the defendants loaned to the said corporation the sum of Fifteen Hundred Dollars for the uses and purposes of said Corporation, the said corporation was without financial credit in the City of Altantic City and could not borrow any moneys whatsoever from any banking institution or individual, and the act of said defendants was an act tending to preserve the assets of said Company.

5. Because none of the stockholder complainants who were stockholders at the time of the transaction in question advanced any money, either by loan or otherwise, to said corporation, nor would any of the stockholder complainants permit any of the financing institutions with which they were connected to advance any money to said corporation, giving as their reason that said corporation was financially irresponsible, and that the stock of said corporation was without value, and that the assets of said corporation were insufficient to meet their then existing liabilities.

6. Because the transaction in question was acquiesced in by all of the stockholders holding stock at the time of said transaction.

7. Because all of the stock owned by stockholders who are complainants in this cause, but who were not stockholders at the time of the transaction in question was owned or held by stockholders who knew of said transaction and acquiesced in it.

8. Because no objection was ever made to said transaction or no attempt made to set it aside until after said stock had enhanced in value.

9. Because said corporation and none of the complaining stockholders or directors ever offered to repay to the said defendants said sum of Fifteen Hundred Dollars with interest, so as aforesaid loaned by them respectively, until after said stock had enhanced in value, although they and each of them knew of said transaction.

10. Because the effect of said decree is to permit stockholders who were not parties complainant to participate in the division of said stock.

BOURGEOIS & COULOMB,
Solicitors for and of Counsel
with Appellants.

Answer to Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

PHILIP I. MARVEL, *et als.*, Respondents, vs. MORDECAI T. ENDICOTT, *et als.*, Appellants.	On Bill for Relief

The answer of the above named Respondents to the Petition of Appeal of the above named Appellants:

These Respondents not acknowledging all or any of the matters which in said Petition of Appeal are contained to be true, for answer thereto, nevertheless, say and admit, that a decree was, on the thirty-first day of July, nineteen hundred and thirteen, made and entered in the Court of Chancery in the cause for that purpose mentioned in the said petition as is therein stated; but as to the substance and form thereof, these Respondents pray to refer thereto when the same shall be produced. And these Respondents are advised and believe, that the said decree is agreeable to equity, and they pray that the same may be affirmed, with costs to be adjudged to these Respondents.

ENDICOTT & ENDICOTT
Solicitors for and of
Counsel with Respondents.